

It's a Hard 'No': Feminine Refusal at the Limit of Consent

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We see you, Bob. And if we see you, it means we are right there with you tiptoeing in line, right behind you, and, in that place, where rules, clarity, law and separation cease to exist, we will show you exactly what we mean by violation.

—Michaela Coel, *I May Destroy You*

Rape law in the United States has relied on a conceptualization of consent since at least nineteenth century common law, when rape was defined as the “forcible carnal knowledge of a female against her will and without her consent.”¹ Up until the late nineteenth century, the age of consent for girls in the U.S. was ten years old, and it was relatively easy for the state to try cases in which the girl was under the statutory limit.² It was exceptionally difficult, however, for the state to prove forcible rape for women over the age of ten, especially if the defendant was white. Women and girls had to prove that they not only resisted their rapist(s), but that they kept resisting until the act was over. The burden of proof thus rested with the women, who had to convince the court that the act was not consensual.³ In cases against

¹ Saidiya Hartman, “Seduction and the Ruses of Power,” *Callaloo* 19, no. 2 (1996): 537. The official language of rape law from the Crimes Act of March 18, 1796 reads as follows:

[A]ny person, who shall have carnal knowledge of a woman, forcibly and against her will, or who shall aid, abet, counsel, hire, cause or procure any person or persons, to commit the offence; or who, being of the age of fourteen years, shall unlawfully and carnally know and abuse any woman child, under the age of ten years, with or without her consent, shall, on conviction, be adjudged guilty of a high misdemeanor, and be punished by fine and solitary imprisonment at hard labor, for any term not exceeding fifteen years. (qtd in Leigh Bienen, “Rape I,” *Women’s Rights Law Reporter* 3, no. 2 (1976): 45.)

² Jane E. Larson, “‘Even a Worm Will Turn at Last’: Rape Reform in Late Nineteenth-Century America,” *Yale Journal of Law & the Humanities* 9, no. 1 (1997): 1.

³ *Ibid.*, 11. “Until recent rape reforms took effect,” Larson observes, “courts typically required evidence of overwhelming force and utmost resistance as proof that the victim had not consented, making the claim of consent a formidable and often insurmountable defense to a charge of forcible rape” (11).

white defendants, women were also not allowed to testify without being cross-examined and subjected to humiliating questions about their sexual history.⁴

Though rape laws were changed to be made race-neutral after the Civil War, it was nearly impossible to try men of any race for the rape of a Black woman in the Reconstruction and post-Reconstruction periods.⁵ As Jennifer Wiggins has shown, there was only one legally recognized form of rape in the late-nineteenth century United States: “The legal system’s treatment of rape is not designed to protect women from sexual coercion. Through discriminatory punishment, the language of opinions, scholarly writing, and the manipulation of doctrine, the legal system has implicitly defined rape so as to limit it to the rape of white women by Black men.”⁶ The conventional reasoning behind this legal precedent was that Black women were naturally promiscuous and that rape was not possible. The logic of Black women’s exclusion from the law thus hinged on the court’s conception of consent, and which testimonies of resistance could be believed and which could not. Coercion, moreover, as Wiggins points out, was not considered a punishable offense for Black or white women, because of the law’s narrow definition of consent.

The prevailing belief in Black women’s natural lasciviousness at this time stems from the paternalist definition of the enslaved under slave law, and, more specifically, what Saidiya Hartman describes as the “discourse of seduction” within the relations between the enslaved and their enslavers. “Seduction,” Hartman writes, “erects a family romance, in this case, the elaboration of a racial and sexual fantasy in which domination is transposed into the bonds of mutual affection, subjection idealized as the pathway to equality, and perfect subordination declared the means of ensuring great happiness and harmony.”⁷ At stake in the discourse of seduction is the imputation of a reciprocity between the enslaved and enslaver, where consent is not so much deemed impossible as it is unnecessary and irrelevant

⁴ Jennifer Wiggins, “Rape, Racism, and the Law,” *Harvard Women’s Law Journal* 6 (1983): 128.

⁵ *Ibid.*, 106.

⁶ *Ibid.*, 132.

⁷ Saidiya Hartman, “Seduction and the Ruses of Power,” *Callaloo* 19, no. 2 (1996): 547.

to the relations in question: an idyllic family romance where everyone allegedly stands to benefit.

Hartman does not reference Freud directly, but in calling this legal and rhetorical phenomenon a “discourse of seduction,” and one that “erects a family romance” between the enslaved and the enslaver, she invokes what has come to be known as Freud’s “seduction theory” from the late nineteenth century.⁸ In this theory, Freud speculated that his patient’s symptoms were attributable to a repressed sexual trauma from their early childhood. As we know now, he infamously abandoned this theory starting around 1897 and turned instead to develop a conception of the fantasy. According to his updated theory, which he describes retrospectively in his *Autobiographical Study* of 1925, uncovered memories of sexual abuse did not correspond to actual lived experiences, but were rather repressed fantasies necessarily constructed within the work of an analysis.⁹ Some feminist critics have understandably read Freud’s abandonment of the seduction theory, and his statement in a letter to Wilhelm Fliess that he could “no longer believe his neurotica,” as a frank admission that he doubted the testimonies of women.¹⁰ In his movement from testimony to fantasy, others argued, perhaps even more devastatingly if true, that Freud was perpetuating the dangerous idea that women in fact wanted the abuse that they were describing, and were bringing it on themselves.¹¹

Freud tried in vain for years to gather evidence for his original seduction hypothesis, and in the absence of any tangible evidence of sexual

⁸ As Hall Triplett has compellingly shown, Freud’s original theory about childhood sexual abuse went unnamed until his *Autobiographical Writings* of 1925, in which Freud reflects back on his original theory and its preliminary role in his development of a theory of the fantasy. It is somewhat anachronistic then to refer to this theory of abuse as Freud’s “seduction theory.” “The Misnomer of Freud’s ‘Seduction Theory,’” *Journal of the History of Ideas* 65, no. 4, (Oct., 2004): 647-665.

⁹ Sigmund Freud, *An Autobiographical Study*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume XX*, trans. James Strachey et al. (London: Hogarth Press, 1955), 34. [Hereafter, SE + Volume Number]

¹⁰ *The Complete Letters of Sigmund Freud to Wilhelm Fliess, 1887-1904*, ed. and trans. Jeffrey M. Masson (Cambridge, MA: Harvard University Press, 1985), 264.

¹¹ Rochelle Semmel Albin, “Psychological Studies of Rape,” *Signs* 3, no. 2 (1977): 423-435. Albin specifically writes that “Freud bequeathed to us the notion of rape as a victim-precipitated phenomenon” and that “actual physical rape was the natural outcome of the female’s pain-inflicting psyche” (424).

abuse he admitted that the theory “broke down under the weight of its improbability.”¹² Hartman, too, attempted to gather from the archive of slavery a body of evidence that would testify to the open secret of Black women’s subjection, but found instead only the fragments of a white patriarchal discourse that refused to acknowledge the difference between domination and desire for the enslaved, and thus rendered any retrospective knowledge about the latter impossible. For both Freud and Hartman, the point is not that these unverifiable testimonies are untrue, but that any notion of truth that would subject such testimonies of sexual abuse to extrinsic verification or the standards of empirical proof is hopelessly incapable of recognizing the trauma at stake in them.

Hartman subtly turns the feminist critique of Freud on its head to emphasize not the veracity of women’s testimonies, but the historical fact that rape law is structured by white patriarchal fantasy. Further, she helps us to see that fantasy can structure the terms and contours of a discourse prior to any subject’s subjection to it, and it is discourse—here, the discourse of seduction—that locks the subject out of speech, and censors their testimony by subordinating the subject’s being to the desire of the Other.

Psychoanalysis supports the subject’s mobilization against such discourses and desires. Moreover, psychoanalysis, especially since Lacan, could not be clearer that the task is to go beyond the limits of what can be said about any discourse or fantasy of seduction, in order to make a space for the speech of the subject, because otherwise the subject, locked out of speech, can only be entrapped within the discourse, and by the desire of the Other. Though feminism is right to insist that we believe women, we must also recall that Freud is no more invested than Hartman is in relegating women to the family romance and the seductive logic that constitutes its violence. If anything, his primary hope for his patients was that they find a way out of its treachery, and if Freud did not go far enough, he nevertheless lit the path by which Lacan and others could insist that the subject of the unconscious is not the ‘I’ of the ego, but the gap which resists the closure of the difference between ego and Other, and which is the space of a desire that is constitutively at odds with the tumult of seduction.

¹² Sigmund Freud, “On the History of the Psycho-Analytic Movement,” SEXIV, 16.

A psychoanalytically-informed conception of consent, then, would be one that takes as its starting point the subject's primary refusal with respect to the desire of the Other. But, as Freud well knew, there was no such thing as a 'no' in the unconscious, which is why the figure of negation (as in his example, "It's *not* my mother") was so important to the development of his method as an ethical point of contact between the unconscious and the ego.¹³ For the subject matter at hand, however, when the testimony and abuse of real women is at stake, it is very important to emphasize that, for Freud, negation (*Verneinung*) is not only or simply the opposite of the repressed — is not, in other words, the latent content that the work of analysis bears out within the manifest speech of the analysand. Rather, the manifestation of negation within an analysis, as Alenka Zupančič emphasizes, is an aporetic "with-without" that names the presence of an absence and is not the negation of a truth. This "with-without," or this lack in being, is the residue of the subject of the unconscious and the condition not only for desire, but as Freud tells us in this same essay, judgment and thought as well. If we take the implications of this insight seriously, psychoanalysis would be founded on the ethical and practical bankruptcy of denying the testimonies of women, precisely because this knotted "with-without" is the hard, irreducible kernel of the analysand's interpretation and can belong to no one else, including the analyst.¹⁴

According to psychoanalysis then, the imperative to believe women thus goes well beyond the culturally-circumscribed limits of what women can say, feel, and know. In calling attention to the historical conditions that foreclosed the gap between Black women's experiences and the fantasies of certain white male others, Hartman's analysis of the "discourse of seduction" also reveals that there is a question prior to the question of the credibility of a given testimony. What, she compels us to ask, are the conditions necessary for consent and resistance to be possible in the first place, and how do we retroactively solicit the historical narratives and testimonies of enslaved Black women when the crimes against them were not even legally coded as crimes? The prior question then is whether the speech of the subject within

¹³ Sigmund Freud, "Negation," *SEXIX*, 234.

¹⁴ Freud did not from the beginning realize the consequences of offering interpretations to his patients. We can recall the case study of Dora, in which Freud's elaborate interpretation of Dora's desire led to the termination of the analysis.

a given testimony is not foreclosed by the very structure that would claim the right to adjudicate the crime against them in the first place.

This is all the more important to ask, as Hartman's historical limit case of consent reveals, if the one relaying that testimony is caught in a cultural logic that refuses to acknowledge the difference between domination and reciprocity. The lost history Hartman traces exemplifies this violent logic, but there is no shortage of cases in our recent cultural memory where domination and reciprocity are rendered indistinguishable in the face of a coercive and unrelenting power.¹⁵

If the testimonies of Black women represent an incurable lacuna in the archive of slavery, and if we nevertheless want to retrieve something of the historical truth that is located there, we must broaden our criteria for what constitutes that archive and transmits that truth beyond the plantation discourse in which Hartman found only the ruins of a white patriarchal fantasy of absolute mastery, as if Black women's subjectivity were only ever the white man's dream. As a work of literature that itself demands interpretation, I attempt such an expansion through a reading of Pauline E. Hopkins' novel *Contending Forces* (1900), which performs the logical refusal that is the condition for the possibility of acquiescence and consent. Working through the physical and psychological fallout of this legal violence in the Nadir period of U.S. history, the novel exemplifies the process of extricating Black feminine desire from its structural entanglement within a white supremacist and patriarchal legal order. Her Black female characters insist on the right to interpret their lives and losses for themselves, and through their conversations on the inscrutability of religious law and social custom they recover the aporetic conditions of refusal that lay the ground for both judgment and desire, and not just in this particular case, but universally.

In centering its implicit critique of law on the figure of Sappho Clark, a survivor of rape forced to change her name and identity to escape the shame of her violation, Hopkins' novel functions as a form of narrative evidence to fill the silence of Black women's censored testimonies. But it also demands that we confront political liberalism's construct of consent, so central to rape law up until the present, from the margins that it

¹⁵ *Quid pro quo* within Title IX disputes is an example of the kind of sexual coercion that can transpire within our contemporary sexual-political landscape.

constitutively excludes. Psychoanalysis is also concerned first and foremost with that which ends up excluded, and with founding a conception of the subject against — though nevertheless and necessarily in relation to — any discourses of seduction that would claim a monopoly on the right to interpret woman's desire, and in the process attempt to render real women into mere objects of male fantasy. As Lacan has emphasized, especially in his later thinking, a woman cannot strictly speaking be the object cause of desire, and no other person can themselves be the object (a) for another. As an untranslatable variable designating the impossible object of desire, the object (a) is necessarily on the other side of the narratives and discourses that support seduction.

(a) discourse of seduction

One of the most illustrative and, for the same reason, violent examples of patriarchy's vast and persistent misrecognition of woman's desire is the legal and moral status of enslaved Black women in the United States. Even after rape laws were changed to be made race-neutral after the Civil War, the legal system refused to acknowledge Black women's right to consent. This legal precedent stems from a stereotype regarding Black women's natural promiscuity during the antebellum period, when the status of the enslaved as both person and property exempted them from protection under common law, and the sexual violations perpetrated against Black women were not considered the business of the court.¹⁶ In relegating their injuries to another scene within the American family romance—to the “backyard cabins,” where slave owners could act with legal impunity — the courts did not only exclude Black women from common law. The definition of consent so integral to rape law also scaffolded the contrary terms of their subjection, precisely because they were considered incapable of giving or withholding consent, and thus operated in the eye of the courts as the negative image of white femininity.

The court's refusal to acknowledge Black women's capacity to give or withdraw consent thus functioned as a limit case against which the very notion of the sexual violation against white women could be normatively

¹⁶ Hartman, “Seduction and the Ruses of Power,” 551.

constituted. This is not to say that enslaved Black women were incapable of resisting the sexual advances of their enslavers — Harriet Jacobs' *Incidents in the Life of a Slave Girl* documents numerous strategies to the contrary — but rather that their lives and physical wellbeing were made to depend on the *appearance* of their willingness, even as this coercion further circumscribed them within what Saidiya Hartman describes as the “discourse of seduction.”¹⁷

The “discourse of seduction,” according to Hartman, is “[t]he confusion between consent and coercion, feeling and submission, intimacy and domination, violence and reciprocity” that “obfuscates the primacy and extremity of violence in master-slave relations”¹⁸ As a discourse formed in and through the ambiguous legal status of the enslaved, rather than a phenomenon of seduction, it is clear that what Hartman describes is not the enslaved woman's culpability for her violation, but rather the discursive process of disqualifying any distinction between consent and coercion so far as relations between the enslaved and enslaver were concerned. This process functions to effectively pin the responsibility for sexual violence on its victims, whose absolute subjection is reconceived as a kind of reciprocal power over their oppressors. The common belief in Black women's natural promiscuity, then, was not only compounded by but was in fact inextricable from their structural position under slavery, in which the paternalist ownership of Black life conflated the distinction between (white) domination and (Black) desire.

This discourse also enabled an interpretation of Black desire in which the enslaved invited the domination that rendered the slaver's violation not only legally acceptable but, even more horrendously, morally innocent. Through this logic, the institution of slavery presumed to settle in advance what Black women wanted, was even grounded upon this presumption, because it thereby secured a monopoly on the right to interpret their desire. And where interpretation is monopolized, there is, strictly speaking, no interpretation at all, only declaration without appeal or remainder.

Perhaps more than any other novel written at this moment in U.S. history, Pauline E. Hopkins' *Contending Forces* is a testament to the necessity

¹⁷ Hartman, “Seduction and the Ruses of Power,” 538.

¹⁸ *Ibid.*

of disentangling a woman's desire from the desire of the Other, and from the entrenched stereotypes that subject Black women in particular to the coercive violence of social and moral law. The politics of feminine refusal is at the core of this text. Just as Grace Montfort's rejection of Anson Pollock's sexual advances at the beginning sets the plot and the wayward lives and desires of its characters into motion, Sappho Clark's rejection of John Langley near the end pushes it into its resolution.¹⁹ While Grace's rape, the murder of her husband, and the enslavement of her two sons is the condition for the possibility of the characters we will meet nearly 100 years later, it is Sappho's story — that of a young Black woman recently relocated to Boston to escape the shame of her rape at the hands of her white uncle in New Orleans — that is the engine of the plot. Through the character of Sappho, Hopkins confronts the disavowed rape of Black women within recent American history, and writes the narrative conditions of feminine refusal for Black women after slavery.

In particular, it is through Sappho's conversations with other women on the difference between compulsion and choice that she is eventually able to reinterpret herself as having been a victim of a crime and extricate herself not simply from the desires of certain male others, but from that big Other God and the law. The best place in the novel to witness Sappho's disentanglement from white desire and law, and with it, her burgeoning capacity to act on her own desire, is in a chapter titled the "Sewing Circle," in which she poses a series of questions to the reputable Mrs. Willis of Boston.²⁰ Sappho specifically asks Mrs. Willis whether "Negro women will be held responsible for all the lack of virtue that is being laid to their charge today?"²¹ Referencing the pernicious stereotype regarding Black women's lasciviousness, Sappho's question subtly exposes a sense of culpability for her rape, and whether the shame stemming from this stereotype will create an obstacle to her hopes for a life with male

¹⁹ As a narrative exposition of the treachery of the "family romance" under slavery, John Langley is actually a distant relative of Anson Pollock, and the offspring of Anson's relations with Lucy, Grace Montfort's beloved maid. Along with Grace and her two sons, Lucy is also seized as an asset by Anson after he lynches Charles Montfort.

²⁰ Will Smith and his sister Dora Smith are the children of Ma Smith, the descendants of the Montforts after Charles escaped enslavement and settled in Boston, where he entered the Black community.

²¹ *Ibid.*, 149.

protagonist Will Smith, for whom she has recently fallen. "I believe," Mrs. Willis replies, "that we shall not be held responsible for wrongs which we have *unconsciously* committed, or which we have committed under *compulsion*. We are virtuous or non-virtuous only when we have a *choice* under temptation."²²

To the extent that Mrs. Willis invokes the principle of compulsion already implicit in nineteenth century rape law, her response to Sappho extends the law's jurisdiction to include Black women, who were still not regularly recognized as victims even after the Civil War. Her answer thus acknowledges the open secret of Black woman's subjection both during and after slavery, and implicitly confronts the narrow definition of rape law in the nineteenth century.²³ Because victims of rape at this time were required to prove that they not only resisted their aggressor, but kept resisting until the act was over, Mrs. Willis's expansive conception of compulsion pushes beyond the rigid qualifications of the law. In contrast to the criteria for rape within the law, Mrs. Willis's definition of compulsion includes not only forcible acts of violence, but any situation in which a woman is psychologically or emotionally coerced, and thus intrinsically deprived of the right to consent.

By redirecting Sappho's question to a prior consideration of the conditions of choice in the likely case of sexual coercion, Mrs. Willis also implicitly draws a causal relationship between the history of sexual violence and the history of stereotypes against Black women. The phrasing of Sappho's question is also illuminating in this regard, as it reveals her implicit belief that it is not a Black woman's actual actions that will be the source of her damnation or social ostracism, but the "charge" of her "lack of virtue" as such, as if there was no gap between this alleged accusation and reality — no interpretive gap through or beyond the discourse of seduction. Mrs. Willis's explanation explicitly acknowledges nineteenth century American society's attempt to foreclose this gap, and in the process, reminds Sappho that the stereotype surrounding Black women's promiscuity is a second act of violence, because it aims to deprive Sappho of her undeniable right to refusal, which is, at least in part, her right to interpret her rape *as* rape. Mrs. Willis reminds her that no amount of social or physical coercion can deny

²² Ibid, 149-150.

²³ Hartman, "Seduction and the Ruses of Power," 537.

her the right to such an interpretation. At stake here then is not only Sappho's original refusal of her rapist, but also her rejection of a violent social norm: the negation of the symbolic position that would situate her as incapable of such a refusal from the outset. In expanding the possibility of what counts as compulsion, Mrs. Willis also expands what counts as testimony in the life of the subject.

Mrs. Willis's radical practicality thus lies in the authority she gives herself to reinterpret cultural norms and beliefs according to her own personal ethics. Her depersonalized interpretation of sin in turn gives Sappho mental and emotional distance from the culturally-constructed implications of her violation. "God does not look upon the constitution of sin as we do," Mrs. Willis explains. "His judgment is not ours; ours is finite, his infinite."²⁴ By insisting on the impossibility of knowing what God wants from her, Mrs. Willis attempts to release Sappho from a life spent in endless anticipation and self-doubt. In the next paragraph, in what appears a moment of ironic commentary, the narrator attributes precisely this level of interpretive authority to Mrs. Willis: "There was evidently more in this woman than appeared upon the surface. With all the centuries of civilization and culture that have come to this grand old world, no man has yet been found able to trace the windings of God's inscrutable ways."²⁵ The point here, however, is not that Mrs. Willis has successfully interpreted God in all of his unknowability or indeterminacy, but that the very act of interpretation, however impossible, is a radical and important step in testifying to the aporetic constitution of the subject, and in separating oneself from the demands and desires of others, including that big Other, God and the law.

In Lacanian terms, Mrs. Willis thus encourages Sappho to interpret for herself both the desires of men — what Lacan would call the "little other" — and the demands of God and the law. Though she could not have the vocabulary in the late nineteenth century, Hopkins illustrates the process of what Lacan would call separation, in which a subject is able to gain a sense of agency over alienation through the act of interpreting the desire of the

²⁴ Pauline E. Hopkins, *Contending Forces* (Oxford: Oxford University Press, 1988), 157. Unless otherwise noted, all other references are to this edition.

²⁵ *Ibid.*

Other.²⁶ The act of interpretation, read in this way, is both predicated on and is itself a form of negation: a “no” against the tyranny of the Other’s desire, which takes the form of a narrative construction. The narration in this sense, moreover, is a refusal of the law’s monopoly on interpretation. But it is also a creative and generative act that insists on the existence of another equally plausible interpretation.

As if internalizing Mrs. Willis’s religious and philosophical position, Sappho will later form such an interpretation when John Langley, the villainous cad of the melodrama, reveals to her that he knows the secret of her rape, and attempts to blackmail her if she does not become his mistress. Defending herself from any culpability, Sappho replies: “I was a victim, an innocent child!” John’s response to Sappho recapitulates the logic of “reciprocity and submission” outlined above, in which Black women’s vulnerability and impulse for self-preservation could be reimagined in the minds of men as a form of consent — as if their submission to coercive sexual violence was itself proof of their lasciviousness.²⁷ In John’s cynical explanation, Sappho’s Southern birth implicates her in these common stereotypes, and, in what is some truly circuitous logic, attempts to rhetorically entangle her in what he recognizes as an incriminating history of planter rape.

Sappho’s subsequent rejection of John, and assertion of her desire for Will, however, exemplifies a form of resistance largely unavailable to a Black woman inside of slavery. We see this same expression of refusal at the beginning of the novel, when Grace Montfort refuses the advances of Anson Pollock and asserts her commitment to her husband Charles. In expressing her desire, Sappho also distances herself from the coercive force of John’s desire through the assertion of choice. As yet another ‘no,’ Sappho commands John to leave. Here, negation is not simply the inverted

²⁶ Paul Verhaeghe, “Lacan’s Answer to Alienation: Separation,” *Crisis & Critique*, vol. 6, no. 1 (2019): 376. As Verhaeghe explains, “such an interpretation always contains a choice for the subject itself, through which it influences its own identity formation and acquires a certain autonomy” (376).

²⁷ *Ibid.* John’s reasoning is as follows: “‘I know’ said John, ‘but girls of fourteen are frequently wives in our Southern climes, where women mature early. A man as supercilious as Will in his pride of Northern birth would take no excuse, and would never forgive’” (319).

expression of a repressed desire, but is the condition for naming one's desire, as it is extricated from the demands of the inscrutable desire of the Other.

Was will das Weib?

What does this limit case of consent within American history, and this assertion of feminine refusal within American literature have to teach psychoanalysis and the law? Insofar as we are all subject to the logic of seduction, and psychoanalysis wants us to see ourselves through and beyond that logic and the discourses that attempt to render it inescapable, then this historical example teaches us that Sappho is not the exception that founds the rule of consent, but is rather its true paradigm. Black women's subjection to the "discourse of seduction" during and after slavery is among the most extreme and violent that we can imagine, but it does not deprive any woman of her subjectivity any more than the logic of seduction can succeed in pinning down the disconnect between signifier and signified. Sappho, like every victim and survivor who came before and after her, was a subject then, and she is a subject now. No amount of coercion can deny her that.

Rather than defining rape from the center of law or reason and moving outwards toward the margins, the limit case of enslaved and recently emancipated Black women suggests instead that we define sexual violence from the margins first and only then close in on its center. This alternative would force a confrontation between the law and what it has displaced or erased. It would demand that the law take responsibility for the effects of that which it excludes, and to come to terms with the economy of enjoyment that sustains its founding exclusions and animates its violence.

By way of Sappho, we are reminded that psychoanalysis is one of the only discourses, if not the discourse, that takes as its foundation the negation that serves as the condition for the possibility of consent and refusal. Hopkins thus imparts to psychoanalysis not only a historical case study of Black feminine desire on the other side of slavery, but a conception of interpretation as refusal of the desire of the Other. The refusal at stake here is thus also a rejection of one's entrapment within seduction: interpretation as negation that founds the subject's position within the symbolic.

The complexity of ascertaining a woman's desire within the field of seduction is why Freud was more vexed by the question "*What does a woman want?*" than any other. Even with all of his false starts and unfortunate missteps on the issue of femininity, it is undeniable that this question — "*Was will das Weib?*" — has generated not only one of the most important debates within the history of psychoanalysis, but is also, as Serge André writes, the question that "marks the origin of psychoanalysis as a clinical practice."²⁸ In both of his late essays on the topic of female sexuality, the question eventually led Freud to an impasse.²⁹ If he argued in his earlier work that the young girl mirrored the young boy in her movement through the Oedipal complex, Freud drastically revised his position in the 1930s to argue that the little girl's movement from the object choice of the mother to that of the father was riddled with developmental difficulties. The trouble stemmed from the fact that Freud perceived the little girl's "wish for the penis" as "*par excellence* a feminine one," while at the same time arguing that the little boy's characteristic castration anxiety was not an end in itself, but a necessary push that allowed the young man to exit the Oedipal arrangement and develop an ethics of his own.³⁰

Influenced by the writings of psychoanalysts like Helene Deutsche, Melanie Klein, and Joan Rivière, Freud argues in his essay "Femininity" (1933), that for the little girl, it is the tumultuous and unrewarding battle with the mother, who cannot give her what she wants, that sends her into the arms of her father "as if into a haven of refuge."³¹ It is here—in what Rivière had already called the "masquerade" in a different context — that conventional femininity restricts the girl's options to sexual objectification and biological reproduction, to being either an object of masculine desire or a mother.³² Feminine desire for Freud was thus caught by the forced choice, which is no choice at all, between entering the masquerade or wishing

²⁸ Serge André, *What Does a Woman Want?* (New York: The Other Press, 1999), 323.

²⁹ Cf. Sigmund Freud, "Female Sexuality," *SEXXI*, 221-244; "Femininity," *SEXXII*, 112-135.

³⁰ Cf. Sigmund Freud, "Dissolution of the Oedipus Complex," *SEXIX*, 173-179.

³¹ Freud, "Femininity," 129.

³² See Willy Apollon, "Four Seasons of Femininity or *Four Men in a Woman's Life*," *Topoi* 12 (1993): 101-115. For example: "No matter what her age is, the little girl receiving her first doll enters a career where maternity presents an obstacle to femininity. Such is the veil that covers the prejudice making woman the object of masculine desire" (101).

interminably for the phallus.³³ In either case, these culturally-available options do not give woman a choice to be a subject.

What Freud was not prepared to recognize in his own discovery was the universal truth at stake in his encounter with sexual difference. The little girl's impossible wish was not merely a developmental impasse — was not, that is, a deficiency with respect to the little boy's relatively more comfortable navigation out of the Oedipal treachery, as Freud seems to suggest, but the index of the lack in being that Lacan would later designate the site of desire and, as such, the position of the subject. As Serge André has helped us to see, Lacan thereby pushes Freud beyond this stumbling block of feminine sexual development by arguing that castration is not an obstacle to femininity, but is rather its very condition.³⁴

Resuscitating Rivière's work, Lacan famously argues in "The Signification of the Phallus" (1958) that it is in the masquerade, when a woman pretends to be the phallus or object-cause of the Other's desire, that she represses her femininity.³⁵ For Lacan, a woman does not want to be desired and loved for her performance within the Oedipal complex — that "haven of refuge," which conventional femininity temporarily offered her and which Rivière so movingly represents. On the contrary, a woman wants to be loved and desired "for that which she is not"³⁶ — not, in other words, for her ability to "play the role of the Other who does not exist," but for that which she, and she alone, lacks.³⁷ What does a woman want? She certainly does not want to be an object. Differently stated, she wants to *not* be an object.

³³ The consequences of women's stunted sexual development were far-reaching for Freud: Women were both unable to sublimate and possessed a weaker moral and ethical compass than men. Needless to say, these observations were frustrating to many feminists, psychoanalytically oriented or otherwise. Freud describes the social consequences of the young girl's situation as follows: "In these circumstances the formation of the super-ego [for women] must suffer; it cannot attain the strength and independence which give it its cultural significance, and feminists are not pleased when we point out to them the effects of this factor upon the average feminine character" ("Femininity" 129).

³⁴ Francis Restuccia, "Foreword" in Serge André, *What Does a Woman Want?* (New York: Other Press, 1999), xix.

³⁵ Jacques Lacan, "The Signification of the Phallus," in *Écrits*, trans. Bruce Fink (New York: W.W. Norton & Co., 2006), 575-584.

³⁶ Serge André, *What Does a Woman Want?*, 303.

³⁷ Restuccia, "Foreword," xxiv.

Lacanian psychoanalysis thus teaches us that there is no way to know anything about a woman's desire.³⁸ This, in fact, is why Freud's enigmatic question, "*Was will das Weib?*," is not a fatal flaw but, as Lacan and André have made clear, the foundation of the Freudian discovery and the source from which its capacity to trouble even the most apparently radical discourses of feminine empowerment continues to radiate. By centering itself on the impossibility of accurately interpreting another's desire, Lacanian psychoanalysis defines itself distinctly against any discourse or fantasy of seduction, in which the "subject fashions itself in the image of the Other's desire."³⁹

What causes our desire, finally, as Joan Copjec explains, is not an image of what the Other wants from us, as is sometimes understood by Lacan's aphorism the "desire of the desire of the Other," but the lack in the Other that "remains indeterminate."⁴⁰ The inevitable failure of seduction stems from this, even as the indeterminacy of the Other's desire is precisely that which keeps us guessing, so long as we believe that we can one day pin it down, and fashion ourselves in its image once and for all. As Copjec's appeal to structuralism makes clear, however, it is the disconnect between signifier and signified that refuses to be pinned down; it is our subjection to language that discredits every attempt to correctly interpret what the Other wants. It is thus not in spite of but because of the failure of seduction that something like a "discourse of seduction," to return to Hartman's term, becomes a viable strategy of domination. Reducing Lacan's conception of desire to a logic of seduction is all the more dangerous in a "masculinist" social order, where, as Copjec writes, "woman can only be comprehended as a realization of male desires; she can only be seen to see herself through the perspective of a male gaze."⁴¹ Psychoanalysis does not merely thematize woman's entrapment within the male gaze as an inevitable dead end, but

³⁸ For a concise explanation of this problem, see Renata Salecl, *On Anxiety* (London: Psychology Press, 2004). "The subject," Salecl writes, "is also always bothered by the fact that the Other is inconsistent, that the Other is split, non-whole, which means that ... one cannot say what the Other's desire is or how one appears in the desire of the Other. The only thing that can ensure meaning to the Other (and, for example, provide an answer to the question of the Other) is a signifier" (22).

³⁹ Joan Copjec, *Read My Desire: Lacan against the Historicists* (New York: Verso, 2015), 62.

⁴⁰ Ibid.

⁴¹ Ibid.

offers a way out of the inscrutable labyrinth that is the domain of the Other's desire by insisting that it is indeterminate from the start.

The implications of this revision of the Freudian discovery are not only important to the practice and theory of psychoanalysis, but also for the limits of consent in matters of sexual violence. If a woman wants to be something more and other than an object, but is misrecognized as the object *par excellence*, as this Other who does not exist, psychoanalysis finds itself upon the responsibility of disentangling the feminine from this violent misrecognition, as much for its own sake as for the sake of women everywhere. Moreover, if the little girl's movement into the Oedipal complex represents a forced choice for Freud, and a compromise with respect to her desire, the theorization of consent has to begin with a question prior to political liberalism's conception of the human, where, according to Judith Butler, "individuals are cast as deliberate and volitional beings," capable of both issuing and withdrawing consent.⁴² We have already seen the limits of this liberal conception of consent in the nineteenth century, when the law implicitly denied Black women not only the right, but also the capacity, to resist, and refused to acknowledge coercion as a punishable offense.

Butler is certainly right that the "unknowingness" of desire renders this conception of consent insufficient, but this characterization is not specific enough to the question at hand, since it does not address the forced choice that precipitates women's entry into patriarchy.⁴³ Against this capitulation to patriarchy, the psychoanalytic conception of the subject demands that we rethink the withdrawal of consent as a resistance from the side of the unconscious, which, as such and by definition, cannot but refuse to compromise on its desire. It is thus not in spite of the repression at stake in the masquerade but on the basis of this repressive function that the masquerade also creates the possibility for what Freud will call negation, and thus offers a point of interaction between the unconscious — where, as we know, there is no such thing as a 'no' — and the ego, which is formed

⁴² Judith Butler, "Sexual Consent: Some Thoughts on Psychoanalysis and Law," *Columbia Journal of Gender and Law* 21, no. 2 (2011): 407. As Butler continues: "Indeed, rarely do debates over age of consent laws think philosophically about the problem of consent, nor do they try to think about what any of us actually do when we claim to consent or what is happening when our actions are regarded consensual [sic] engaged" (407).

⁴³ *Ibid.*, 427. "The juridical subject of consent," Butler writes, "rules out the humility of unknowingness without which we cannot really understand sexuality."

through the desire of the Other, and thus cannot alone create the conditions necessary for the subject's refusal. Insofar as consent then, as a juridical category, forms the cornerstone of the prevailing conception of subjectivity in both liberal humanism and the history of rape law up until the present, psychoanalysis reveals why such a conception of the subject must presume a prior and absolute refusal of the desire of the Other, such that any admission of said desire takes place on terms other than those set within the framework of patriarchy.

Nowhere are the stakes of this alternative conception of the subject and desire clearer than in our society's contemporary reckoning with sexual violence. Psychoanalysis does not undermine the #MeToo movement's injunction to believe women, nor does it require a reconsideration of the rallying cry, 'No means no.' On the contrary, psychoanalysis insists that the underlying and implicit condition for these more popular or juridical conceptions of consent is a prior and radical 'no.' By this account, consent would thus depend upon a structure which is constituted by the refusal of the Other's desire, because such refusal is predicated upon the fact of the subject's own desire, beyond the framework of seduction and the Other's various mechanisms of coercion. The primal *no* is thus at the same time an affirmation of the subject's existence as a lack which no one can possess; otherwise, we cannot say that what is at stake for the subject is desire at all. If psychoanalysis is right about the indeterminacy and inscrutability of desire, then it has to be a hard 'no' at the start.

This psychoanalytic conception of the subject as fundamentally at odds with the logic of seduction, leads us finally to a reassessment of our contemporary consent laws. In contrast to a certain reading of the situational logic of consent in relational psychoanalysis, which posits that consent is founded on one's partner's underlying acceptance of a 'no' as a condition of trust and intimacy, the primary 'no' at stake here is not relational, but is the limit of relationality as such, and is the subject's primary refusal so far as any others are concerned.⁴⁴ Every 'yes' thus logically necessitates a subject who

⁴⁴ For an exemplary account of consent within the framework of relational psychoanalysis, see Ginna Clark, "Yes-Saying, No-Saying, and the Places In-Between: Seduction and the Psychoanalytic Exploration of Sexual Consent," *Studies in Gender and Sexuality* 20, no. 4 (2019): 274-284. Specifically, Clark writes: "In other words, the 'yes' only matters when 'no' is also relationally possible" (276).

is not only structurally capable of issuing a 'no,' but whose very subjectivity is constituted by this negativity or negating function, this "with-without" to which only the subject can testify.

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