

Misattributed Consent and Interpretive Context

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Abstract

I identify a category of miscommunication I call *misattributed consent*, in which one party to a conversation takes another party to have consented to something by making an utterance, while the apparent consenter did not intend their utterance to count as consent. I use this as an entry point to consider the role that context plays in miscommunication. I reconceptualize the notion of conversational context, arguing that an agent-relative account of context, which I call *interpretive context*, makes better sense of cases of misattributed consent than widely accepted views according to which context is shared between all parties to the conversation. In addition to making sense of miscommunications like those involving misattributed consent, an agent-relative notion of conversational context also makes space to identify the normativity of conversational context. I identify one normative principle, The Constraint on Hearer Context. This allows us to distinguish between instances of miscommunication that are mere mistakes and those, like many cases of misattributed consent, that are communicatively criticizable.

I. Introduction

In January 2018, with the #MeToo movement in full swing, the website *Babe* published an exposé in which a young woman, pseudonymously called Grace, describes her experience on a date with the actor and comedian Aziz Ansari (Way 2018). Upon returning to Ansari's home after dinner, Grace reports, he was sexually aggressive with her, and he did not acknowledge or respect her verbal and non-verbal communication that she was uncomfortable and did not want to continue their sexual encounter. One thing that distinguished this case from most other allegation of sexual misconduct that have come to light since the beginning of #MeToo is that it is plausible that Ansari genuinely thought the encounter was consensual—he texted Grace the day after their date to let her know that he enjoyed their time together. This is odd behavior for someone intentionally ignoring

their sexual partner's non-consent, though by no means proof that it was unintentional.¹ Even if Ansari's misconduct was a result of miscommunication, however, this does not mean that Ansari did nothing wrong; it means that his failure was, in part, a communicative failure.

In this paper, I take seriously the possibility that some violations of consent result from miscommunication. I call such cases of miscommunication instances of 'misattributed consent'. With this assumption in mind, I argue for two claims: first, in order to understand miscommunication in general, and misattributed consent in particular, we need a new notion of conversational context. Against Stalnaker (1978, 2002, 2014), I argue that linguistic or communicative contexts are best conceived not as something shared between participants, but as relativized to individuals. I call context, on this understanding, 'interpretive context'. Second, in order to understand the apparent wrongness at play in the cases (presented below) of miscommunication about consent, we must have an understanding of norms governing interpretive context. As I will show, cases of misattributed consent illustrate that interpretive contexts can be impermissible; that is, they can violate interpretive norms.

II. The Phenomenon of Misattributed Consent

First, I will introduce and fill out my notion of misattributed consent. 'Misattributed consent' refers to the phenomenon that occurs when one party to a linguistic exchange takes another to have given their consent to some activity by making an utterance, while the second party does not take themselves to have consented with that utterance. Despite the many, widely publicized examples of misattributed sexual consent, the phenomenon is not unique to sexual contexts. Misattributed consent would be at play if A started dancing with B, falsely believing that B had agreed to dance; if C walked in to D's house without knocking because they were once granted permission to do so, where D intended for this permission to apply only to a single event; or if professor E, after asking her class whether they would mind adding an extra mandatory meeting and receiving no objections, schedules the extra meeting despite that no one felt comfortable telling the professor that they could

¹ There are other explanations for his text: he may have texted her in order to establish plausible deniability of wrongdoing, or else to taunt her.

not or did not want to have an extra meeting. There is a wide range of contexts in which misattributed consent can occur, and the severity of the violation that results can vary enormously.

Analyzing examples of misattributed consent can be difficult: many of the most compelling and high profile cases are of sexual consent, which can be a fraught and contentious topic, often laden with a great deal of emotional and ideological baggage. I take these potential difficulties to be virtues of the cases: differences in ideological presuppositions often directly contribute to the kinds of miscommunications present in these cases. Gender and sexual norms, far from obstructing the communicatively relevant features of the case, make clear how these norms contribute to interpretive contexts. Thus, I'll start by presenting an example of misattributed consent in a sexual context. I'll then give an example from a medical context, offering different but complementary features of the phenomenon.

2.1 Consent in Sexual Contexts

I take the case of Aziz Ansari, described above, to be a paradigmatic case of misattributed consent. We cannot know the precise nature of the communicative exchange between Grace and Ansari, so instead I will offer a generalized version that is broadly consistent with Grace's story. Later, I'll give an intuitive gloss of the case I offer that may or may not accurately describe the case of Ansari and Grace.

Bad Date:

A and B are walking home after a date. A's apartment is on the way to B's. As they approach it, they have the following exchange:

A: Would you like to come up for a drink?

B: Um, I'd like to have one more drink with you, but really, just a drink.

A: Of course, that's no problem.

As soon as they make it into the apartment, A pushes B against the wall and begins kissing her. B pushes him away, saying:

B: Wait, I thought we were just having a drink?

A: Right, sure, let me get some wine.

After pouring two glasses, they sit on the couch together talking for a few minutes, when A once again begins kissing B while pushing her back on the couch, and attempts to unbutton her pants. At this point B gets up and leaves, feeling frustrated and ignored. A is confused about why B left.

Let's stipulate that A and B genuinely miscommunicated: A believes that B consented to sexual activity with him, and B believes that she declined a sexual proposition from A. Yet at no point in the exchange did either A or B explicitly mention sex, nor did B ever utter, "Yes," or "No."

Although this sort of exchange should be relatively familiar,² I'll specify how I understand the exchange in *Bad Date*.

It is safe to say that A and B did not miscommunicate on the first utterance in the exchange: A intended his utterance, "Would you like to come up for a drink," as an invitation for B to come in with the understanding that they will likely have sex, and B recognized it as such. It is immediately after this that the miscommunication begins. Suppose that B, who was interested in continuing the conversation but not in having sex with A, attempted to reject the implicit request for sex while accepting the explicit request for a drink by uttering that she would come up for "just a drink." A's acknowledgment of B's utterance initially appears to indicate that they have successfully communicated until they get inside and he pushes her against the wall to kiss her. B, recognizing that something went wrong in the exchange, tries to reorient the conversation by reiterating her interest in "just having a drink." Again, A acknowledges this in a way that makes it appear as though he has understood her until his nonlinguistic actions—in this case pushing B onto the couch and attempting to unbutton her pants—makes it clear that he either misunderstood or chose to ignore B.

It is undoubtedly true that in many (perhaps most) cases in which someone persistently attempts to engage in sexual acts despite repeated refusals of his advances, the instigator knowingly ignores his interlocutor's refusals. However it is possible that in some of these cases, the instigator continues to instigate as a result of a mistake—albeit a mistake that is the result of problematic beliefs or attitudes. Suppose, for instance, that A believes that women are coy about their desires,

² It is something of a trope in pop culture and media that someone, especially a man, treats a situation as one in which sex is inevitable. See Beck 2018 for a variety of cases in which pop culture treats sex as inevitable or owed whenever a man wants it, and North 2018 for an argument that the Aziz Ansari case is an instance of an ordinary experience of this type. North relates this to research that shows that merely holding certain misogynistic beliefs can make a man more likely to falsely identify a woman as having consented to sex. See Lofgreen et al 2017.

and that it is proper for a woman to hesitate, or even physically resist, before accepting a sexual proposition. If A holds these beliefs, it is not difficult to see how his actions might be a result of misunderstanding rather than an intentional ignoring of B's wishes. Given that A believes that B ought to hesitate before accepting any sexual invitation if she is interested in A, he might think that her utterance indicating acceptance only of the offer for a drink is entirely consistent with her sexual consent. After all, she must find a way to keep open the possibility of sex without being too obvious about her acceptance. This is true, as well, after he kisses her and she reiterates her intention just to have a drink with him; in his mind, she is not attempting to end the expectation of a sexual encounter, she is flirtatiously making him try a little harder. This takes place in the context of a date; it is plausible that B *has*, at certain points in the evening, flirted with A. This calls to mind the refrain sometimes used as a defense in such cases—as though one cannot flirt without consenting to sex—“But she was flirting with me!” In A's mind, there is no inconsistency between B's resistance and her consent, which A took her to have granted when she accepted his invitation to come up to his apartment.

2.2 Misattributed Consent in Medical Contexts

Informed consent in medical contexts is more strictly regulated than in sexual contexts. Although in both cases, we treat violations of consent as morally wrong and often legally prosecutable, the standards in medical cases are more explicitly outlined. In addition to reducing liability, these explicit guidelines can help to address any tension between doctors' commitment to maintaining life and well-being on the one hand, and the patient's right to bodily autonomy on the other (“Informed Consent,” American Medical Association). Although the comparatively more straightforward rules governing informed consent in the medical domain might make instances of misattributed consent less common, it can also be helpful for clarifying just where the communication of consent breaks down when problems arise.³

Blood Transfusion

³ Moreover, one might think that one reason informed consent in the medical domain is so highly regulated is largely precisely because of past cases of misattributed consent between a patient and a medical professional.

C is a Jehovah's Witness who, based on religious convictions, is unwilling to receive blood transfusions. It is a well-established fact between C and their doctor, D, that C is a Jehovah's Witness. Because C has mentioned C's beliefs in a medical context, D correctly infers that C probably does not receive blood transfusions.

However, because C has never required a transfusion, D has never confirmed this. Moreover, D knows that there are some Jehovah's Witnesses that reject the Watchtower teaching that it is a sin to accept blood (Elder 2000).

Now, C is visiting D, complaining of swelling in their leg, sometimes accompanied by minor pain. D does some tests, and comes back to C:

D: It appears you have a benign tumor known as a lipoma in your leg. Although it is not cancerous and is unlikely to do much damage, when they are this large and painful, it is often a good idea to remove them.

C: What would that involve?

D: I recommend surgical removal in your case. As you know, any surgery is accompanied by risks. Your case is relatively simple, but major complications with bleeding or clotting are possible, which we would ordinarily want to treat with a blood transfusion. But I consider that to be highly unlikely.

C: Okay, I'll do the surgery.

Two weeks later, C comes back for the surgery. Surgeon E is conducting the surgery. The tumor is larger than D initially thought, and lies very close to the femoral artery. E nicks the femoral artery, requiring a blood transfusion, which is performed. When C comes to and learns that they have received a blood transfusion, they are furious. D and E are confused, believing C to have consented to the procedure.

Let's stipulate that in *Blood Transfusion*, C believes they consented to the surgery, but did not consent to a blood transfusion. D believes that C consented to the surgery and, if necessary, to a blood transfusion. C knows that D knows that C is a Jehovah's Witness. For this reason, C reasonably believes that D believes C will not accept blood transfusions. When D explains the risks of surgery, including the fact that it may, but probably will not, require a blood transfusion, C interprets this as an explanation that, *if* a complication comes up, *then* the solution of a blood transfusion is not open to C. This, C thinks, means that the procedure is a bit more dangerous for C than for many others, which is why D made sure to finish by saying, "But I consider that to be highly unlikely." C understands this utterance as a reassurance, as though D were saying, "The risk

to you is higher than normal if there are complications, but the risk of complications is low enough that we shouldn't need to worry about it." Thus, C thinks they have no reason to think that D would take their consent to the surgery as consent to a blood transfusion.

D, on the other hand, believes at the beginning of the exchange that C will not accept a blood transfusion, but they hold that belief loosely because they know that some Jehovah's Witnesses do accept transfusions. Thus, when C agrees quickly to the surgery after D attempted to make clear C's increased risks, D takes this to be sufficient evidence that C is willing to accept transfusions. D would have expected C to ask questions and confirm that they would not accept a blood transfusion otherwise.

Blood Transfusion bears similarities to *Bad Date*. Like A, D recognizes that their interlocutor consented to *something*—in this case, surgery, instead of a drink—but thinks that C consented to more—a blood transfusion. Unlike *Bad Date*, however, in which A's behavior could be characterized as the following of a sexual script,⁴ D's misinterpretation is more accurately characterized as a failure to follow the relevant script: the professional guidelines for what it takes to seek and grant informed consent in medicine. It is up to the medical professionals to secure consent, not the patient. In failing to follow-up with C to ensure that D understood which procedures C consented to, D failed to follow the well-defined script provided by the medical profession. Unlike the script A uses in *Bad Date*, the script for securing medical consent is designed to enable medical professionals to secure straightforward, unambiguous consent from patients.

III. Interpretive Context

The phenomenon I've described, particularly as it manifests in *Bad Date* closely resembles Langton's (1993) and Hornsby and Langton's (1998) discussions of pornography as a subordinating speech act. They discuss situations in which women, despite attempting to say "no" to sex, are not understood as having refused. They argue that pornography has the effect of adjusting the conditions under which certain speech acts can be heard and understood,⁵ with the result that an

⁴ See Maitra (2004) for a discussion of the silencing effects of sexual scripts influenced by pornography.

⁵ Langton (1993) argues that pornography adjusts the felicity conditions for, in particular, sexual refusals, while Langton and Hornsby (1998) argue that pornography creates a linguistic environment

attempt to perform those speech acts is made difficult or impossible. In particular, pornography sets up sexual contexts in such a way that an utterance of “no” cannot count as a refusal because in the sexual narrative put forward by the majority of pornography, a woman’s utterance of, “no” really means, “yes,” if it is treated as a meaningful utterance at all. Kukla (2014) generalizes and adapts this sort of approach, arguing that a phenomenon she calls “discursive injustice” occurs whenever a speaker, despite being properly positioned to make a speech act of a certain type, cannot secure uptake as having produced a speech act of that type in part as a result of their social identity.

These accounts of silencing and discursive injustice are useful and intuitively compelling. In what follows, I attempt to augment this feminist approach to linguistic theorizing by trying to understand *how* these sorts of miscommunications take place. I will look at the role that context is widely understood to play in utterance interpretation and I will argue that common views of conversational context cannot explain how context plays this role in the non-ideal scenarios that Langton, Hornsby, Kukla, and I present. Instead, I propose an alternative understanding of context I call *interpretive context*. I do not assume that communication is a cooperative joint activity that requires a shared context, but instead, I argue that contexts are relativized to individual conversational participants.

3.1 Conversational Context as Shared Context

Most widely accepted accounts of conversational context rely on the idea that context is shared between participants. I’ll focus on Stalnaker’s view of common ground (1978, 2002, 2014), according to which a proposition is included in the common ground if all participants accept the proposition, and all participants believe all other participants accept the proposition. For Stalnaker, to accept a proposition is to treat it as true for the purpose of the conversation (2002, 716). Mutually accepted propositions form a background for the conversation, determined by, among other things, the history of the participants’ relationship, common cultural beliefs, and particular features of the conversational exchange in which the participants are engaged.

The context of utterance influences how an utterance can be interpreted. It both narrows the possible interpretations an utterance can have by eliminating all interpretations that are inconsistent with the context (Stalnaker 2002) and guides which of the possible interpretations is most likely

in sexual contexts that undermines reciprocity, which enables hearers to identify and grasp speakers’ communicative intentions.

(Grice 1975, Roberts 2012). Once a speaker makes an utterance and a hearer interprets it according to the context, the communicated content then alters the conversational context, provided that the content is not contested or questioned. For instance, when the utterance in question is an assertion, the proposition communicated by that assertion is added to the context. In successful cases, speaker and hearer add the same new content to the context in tandem. However, when conversational participants make mistakes, this tandem updating is thrown off, often leading to disagreements about what should be included in the conversational context, and eventually, disagreement about the meaning of new utterances. Stalnaker calls these misaligned contexts *defective contexts* (2002, 717).

When these sorts of disagreements happen, participants have miscommunicated. Sometimes we can explain these miscommunications by pointing to a certain utterance that the speaker meant in one way, and give a story about why the hearer interpreted it in another way: perhaps they misheard the utterance, or it was insufficiently specific for the hearer to be expected properly interpret it. In other cases, participants simply have false beliefs about one another, and this leads them to expect that different pragmatic contents can be derived from a given utterance. Sometimes, as we will see, miscommunications happen when norms of communication are violated.

3.2 Interpretive Contexts

As I have spelled out, the common ground view treats context as shared between conversational participants. Yet miscommunication happens when participants treat different information as included in the context. For instance, A treated the proposition, *Women are coy and indirect about their sexual desires*, as an element of the context while B did not. Shared-context views like the common ground view tend to acknowledge that it is what participants *treat* as included in the context that makes a difference to an individual's communicative behavior, rather than what is in fact included in the common ground. On Stalnaker's view, what a participant treats as included in the context *just is* what that participant treats as shared between parties to the conversation. This is one reason to think that the context is the common ground. However, it is not clear that this view is accurate. As I'll show, there are cases in which participants treat proposition which they do not take to be shared in the context they use to interpret their interlocutor.

At present, I'll use 'interpretive context' as a placeholder, to stand for whatever it is that plays the role that context is supposed to play in the interpretation of utterances—whatever set of

propositions⁶ agents treat as pertinent background for the interpretation of an utterance. As we will see, there is more that we can say about interpretive context. Namely, interpretive contexts are agent-relative and do not require that the propositions included in the interpretive context are shared between interlocutors. Thus, we can conclude that the notion of context that is operative in interpretation cannot be a shared-context notion.

3.2.1 Elements of interpretive contexts need not be common ground

To see that interpretive contexts are not shared, we need only look at *Bad Date*. In that case, A includes a number of unshared propositions in their interpretive context. The propositions, *women are coy* and *it is appropriate for women to resist before accepting a sexual invitation* are two propositions that A treats as pertinent for interpretation, and are thereby included in A's interpretive context. We see the result of this inclusion when A interprets B's, "I'll come up for a drink, but really, just a drink," as an acceptance of A's sexual invitation. This is enough to see that that there are cases in which propositions included in the interpretive context are not included in the common ground, indicating that if we want to understand the role that context plays in interpretation, then a shared-context model is not the best one to use.

However, there are limitations to using *Bad Date* as an example. It may appear that I have not offered a substantial objection to shared-context views at all. Any reasonable shared-context model recognizes that interlocutors can be wrong about the common ground. Perhaps all I've shown is that interpretive contexts can include content that they falsely believe to be included in the common ground, which is no objection to shared-context views. I'll now show that it is not necessary that A believes that these unshared propositions are included in the common ground, and thus, shared context views face a genuine challenge.

3.2.2 Agents need not believe that all elements of their interpretive contexts are included in the common ground

Camp (2018) argues that some propositions can be "manifest to both parties" without being included in the common ground. Camp focuses on the phenomenon of insinuation, arguing that insinuated content is often deniable—the speaker can deny that they intended to insinuate anything and insist that they meant only to communicate the content literally expressed by the utterance.

⁶ Non-propositional content may also be included in the interpretive context. I set aside this possibility at present for the sake of simplicity.

Camp argues that deniability exploits the difference between mutual acceptance, which is required for a proposition to be included in the common ground, and mutual belief, which is not (56). In interpreting an insinuation, the hearer will often come to believe the insinuated content, but will not acknowledge that they believe it. The result is that it can be common knowledge among conversational participants that they all believe a certain proposition, but none of them will admit to that fact. Instead, they will deny it and carry on with the conversation as though only the mutually accepted propositions are shared.

Yet it is not necessary for a proposition to have been insinuated by an utterance for it to have the features Camp describes. Suppose we treat A's endorsement of the propositions, *Women are coy* and *It is appropriate for women to resist before accepting sexual invitations*, in the same way that insinuated content is treated. A believes the propositions, and he might (rightly or wrongly) take it to be clear that his date believes the propositions, but declines to treat them as common ground or publicly acknowledge their acceptance of the propositions. In this case, A would use these propositions as though they are included in the context when interpreting B without including them in the common ground.

3.2.3 *Agents need not think a proposition is mutually believed in order to include it in their interpretive context*

Above, I've given a case in which A (rightly or wrongly) believes that the propositions in question are mutually believed. While this is inconsistent with the common ground view, perhaps it is consistent with a different shared-context view. One might argue, for instance, that context is not common ground, but when interlocutors mutually believe a proposition that is explicitly left out of the common ground, that is all that is necessary for an account on which context is shared.

Yet it is not necessary that A believes that B believes that women are coy, or that women ought to play at resisting before accepting sex. Consider another example in which A believes that in addition to being coy, women aren't always aware of what they really want or what they really mean. If A were challenged on his behavior toward B, he might claim, "She didn't know what she wanted! When she said she only wanted a drink, I could tell her real meaning—she wanted me." In this case, A concedes that B doesn't endorse all of the propositions that he used to interpret her utterance. Yet he still maintains that they aided him in deriving her "real meaning." In other words, A included in his interpretive context propositions that, by his own lights, are not shared by B.

3.2.4 *Participants can permissibly include unshared propositions in their interpretive context*

Finally, one might worry about the fact that in focusing on *Bad Date* and its variations, I've focused on a case of miscommunication. Perhaps it is only in cases of miscommunication that unshared content can be included in an interpretive context. If this is right, then the difference between my view and a shared-context view that acknowledges that defective contexts occur might not be significant.⁷ I will now show that even in situations in which communication moves forward normally and successfully, participants sometimes include unshared content in their interpretive contexts.

In her discussion of hermeneutical injustice, Miranda Fricker (2007) points to sexual harassment to illustrate her target phenomenon. In the mid 20th century, victims of sexual harassment were often also the victims of hermeneutical injustice because neither the term 'sexual harassment' nor the concept the term expresses were in wide usage. As a result, there were no conceptual resources to identify sexual harassment or make sense of its features or effects. Sexual harassment was often passed off as harmless flirtation, which made it difficult for those who had been targeted for harassment to be taken seriously as victims of any harm. Fricker gives the example of Carmita Wood, whose experiences were integral to the coining of the term 'sexual harassment.' After quitting her job due to systematic sexual harassment carried out against her, Wood was unable to collect unemployment benefits or to conceptualize the harm that had been done to her. This was in part due to her inability to articulate her loss of employment as resulting from her harassment. It was only after sexual harassment had begun to be a recognizable phenomenon and experience that it became an object of study and a legitimate complaint for those who had experienced it.

I imagine that shortly after the term 'sexual harassment' was coined, those who understood the concept might have used their new hermeneutical resources to interpret their acquaintances' utterances. The following is, I take it, perfectly understandable for those who understand the concept of sexual harassment, yet it does not precisely or coherently state much about the speaker's experience:

⁷ Even if this were right, it is useful to note that as a matter of descriptive fact, people do include unshared propositions in interpretive contexts, even if only in defective contexts.

My boss keeps touching my back and making flirtatious comments. It's started to make me feel uncomfortable. I don't know, I can't explain it. It's innocent, harmless flirting. He's really a nice guy. But somehow, I'm not sure, I just feel...gross.

Simply endorsing the proposition, *unwanted lewd or suggestive remarks or behavior of a sexual nature constitute a type of harassment*, which is not easily done without an understanding of the concept of sexual harassment, allows the hearer to understand not only that the speaker has experienced sexual harassment, but also an ability to interpret the speaker's meaning when she herself says that she cannot fully explain what she means.

Similarly, teachers and therapists are often tasked with using the conceptual resources that they have and that their students and clients lack to interpret utterances more accurately than they would be able to without those conceptual resources. This suggests that including propositions in one's interpretive context that are not shared by one's interlocutor is not only possible, but sometimes necessary for accurate interpretation.

IV. Interpretive Norms

In section 3, we saw how shared-context views differ from my view of interpretive context. Interpretive context are agent-relative, and propositions included in an agent's interpretive context need not be shared, nor does one need to *think* all elements of their interpretive context are shared. In this section, I will show how conceiving of communicative context in terms of interpretive context, rather than shared-context views, offers a natural way to conceptualize context as norm-governed. This allows us to identify why the misunderstandings in *Bad Date* and *Blood Transfusion* strike us as more than mere misunderstandings—they are misunderstandings that result from a violation of interpretive norms. In section 4.2, I will give an example of how one such norm could give at least a partial explanation for our intuitions about the violations that occur in our cases. This norm is not meant to exhaust the norms governing interpretive context production, nor do I have space to fully fill out the details of the norm. It is meant primarily to give an understanding of how norms governing context can distinguish cases like *Bad Date* and *Blood Transfusion* from innocent misunderstandings.

4.1 Determining Interpretive Context

An immediate concern arises when proposing the interpretive context view: I have given no constraints on what can be included in an interpretive context. So far, anything that a hearer treats as a part of the context, whether it is shared or not, can be included in their interpretive context. But this allows for the possibility that an interpretive context could have nothing to do with the common ground. Nothing I have said rules out the possibility that one party to a conversation might include *only* propositions that are unshared—and, perhaps, propositions that they have no reason to think are shared—in their interpretive context.⁸ By giving no constraints on what can be included in an interpretive context, we simply allow that A can include a whole array of sexist propositions in his context, and nothing prevents him from including even more outlandish propositions.

Even if there are no constraints on what interpretive context an agent could conceivably adopt, however, that does not mean that there are no constraints on what interpretive context an agent *should* adopt in order to effectively communicate. There is an intuitive pull to the idea that there is something wrong with A's and D's interpretive contexts. As I'll argue, this wrongness is a normative wrongness: A and D have done something communicatively wrong.

The claim that there are communicative norms of one sort or another is not a novel claim; it is difficult to get far in the study of pragmatics without encountering a claim that in order to understand the content pragmatically conveyed by an utterance, we must assume that the speaker was following some set of norms and determine what they must have meant, given that they were following these norms (Grice 1975, Bach and Harnish 1979, Horn 1996, Saul 2002, Sperber and Wilson 1995). Yet the way in which utterance interpretation is norm-governed differs depending on whether we take the notion of context that is operative in linguistic interpretation to be the shared-context notion or the individualized notion of interpretive context. On a shared-context account of interpretation, the context of the conversation is held fixed, while norms of conversation govern how the production and interpretation of utterances align with the context. To follow conversational norms, one must simply apply one's knowledge or beliefs about the shared context properly in producing or interpreting an utterance. That is, the speaker should produce an utterance of a certain kind (one that is cooperative, relevant, true, etc.), according to the current state of the conversation

⁸ Of course, there may be psychological constraints. It might be psychologically difficult or unlikely for a barista, upon hearing, "Hi, could I have a latte," to use an interpretive context that treats information about whale physiology as relevant to the interpretation of the utterance. That is not to say it couldn't happen, but it is difficult to see how, or what sort of role this information would play in interpretation.

(that is, the conversational context). The interpreter's job, then, is to determine what, given the conversational context and the conversational norms, the speaker must have meant by some utterance.

On an interpretive context view, we get a different picture. Norms are implemented not just in making the right interpretive moves, given the context and utterance, but also in determining what the context should be in the first place. On the interpretive context picture, norms are implemented in the construction of the context itself. Participants can violate communicative norms not just by interpreting utterances poorly, given the context, but also by constructing contexts that do not align well with the conversation.

4.2 The Constraint on Hearer Context

In this section, I will begin to look at the norms that govern the formation of interpretive context and show how these norms can help explain intuitions about the misunderstandings that take place in *Bad Date* and *Blood Transfusion*. I will not have space to give a full analysis of the norm that I identify here. Rather, I show that a normative conception of communicative contexts can help us see why some miscommunication strikes us as more problematic than others.

Shared-context accounts are effective at capturing something intuitively right about communication: that communication is, at its best, a constructive and cooperative sharing of content between individuals. This cooperative sharing is done best when participants have coordinated on the what presupposed content they bring to bear on the interpretation and production of utterances in the conversation. It is much easier and more efficient to share new content when each participant is on the same page about what they can assume the other participants presuppose. The problem with shared-context views is that this picture of conversation as cooperative sharing is an overly idealized vision of what happens in conversational communication. It is not standardly the case, nor a necessary feature of a conversation, that participants prioritize identifying contextual information that can reasonably be expected to be shared. However, an idealization can shed light on normative constraints on communication. After all, if idealizations show what happens when communication goes *well*, then we might expect that prescriptive norms recommend ways for agents to aim to make their situations closer to the ideal.

For this reason, I propose a prescriptive constraint on what can be included in a hearer's interpretive context in an effort to aim for the idealizations found in shared-context views. As I have

argued above, even in cases of successful communication, it is not necessary that the interpretive context include only elements of the common ground. Thus, the constraint we need to put on interpretive context should not limit the permissible elements of the context to only elements that the participants believe to be shared. Rather, what we need is a constraint that limits *which* unshared propositions can be permissibly included in the context. Take the case I gave above of the victim of sexual harassment reporting her experiences without being able to fully articulate them. In that case, the hearer is permitted to include propositions in their interpretive context that are not shared by the speaker, but this does not mean that they can include just any unshared proposition. They are permitted to include propositions that are necessary for accurate interpretation of their interlocutor, which would be deemed acceptable by the speaker if it were explained to her. I take it that in general, a speaker would not object when their utterance is interpreted in light of the conceptual resources that are needed for making sense of their experiences.

So far, we have seen that we want a hearer to be permitted in including 1) any shared proposition, 2) any proposition that the speaker would deem acceptable if they were aware and of their interlocutor's inclusion of that proposition in their interpretive context and understood the content of the proposition. Constraint on Hearer Context captures these conditions:

Constraint on Hearer Context: A speaker s is entitled⁹ to expect that a hearer b will not include any proposition p in the communicative context unless s could recognize the reasonableness of the inclusion of p , were b to defend to s why they included it.

In order to give a fully satisfying understanding on this constraint, I should say what it takes for a speaker to “recognize the reasonableness” of the hearer's including some proposition in their interpretive context and specify the notion of entitlement I have in mind. Yet, as I noted, I articulate this constraint not to give a fully satisfying understanding of the norms governing communicative contexts, but rather, to give a sense of how these norms can distinguish cases of miscommunication like those that take place in *Bad Date* and *Blood Transfusion* from, on the one hand, miscommunication

⁹ At present I remain neutral with respect to the nature this entitlement. I expect that it can be derived from convention-based expectations or obligations. Goldberg's (2015) account of practice-generated entitlements to believe may serve as one model for understanding the entitlements I have in mind, though I am open to a stronger formulation.

that does not result from violations of norms, and on the other hand, cases in which a hearer permissibly uses unshared propositions to interpret others.

It is clear that in both *Bad Date* and *Blood Transfusion*, we will see violations of the Constraint on Hearer Context. In *Bad Date*, A includes a set of unshared sexist propositions in his interpretive contexts. If A were made to defend his inclusion of these propositions to B, there would be little he could do. He may rehearse the reasoning we did above to make sense of his behavior, noting that he assumes women are indirect and coy when it comes to their sexual desires. Yet this hardly counts as a defense; after all, if A were to give such a defense, B could reasonably follow up by asking, “Why?” The best A could do would be to explain that his sexist beliefs fall into a recognizable pattern of sexism into which he was inculcated, and he either couldn’t help but include them in his interpretive context—which is no defense at all—or that he assumed that B would accept the same propositions—which could only be a fully acceptable defense if B had made some indication that she shared it, or if it was close to unimaginable to A that B might not share his sexist presuppositions. In the case at hand, however, neither is the case. Thus, A violated the Constraint on Hearer Context.

Similarly, in *Blood Transfusion*, D’s “defense” of their reasoning to C could, at best, follow the reasoning process we stipulated above. Yet it is still not much of a defense. C would be justified in responding with further questions, “But why would you jump to the conclusion that I would accept a blood transfusion in that case? Why would you not confirm with me? Is it not your duty as a doctor to confirm that I am not receiving any procedure to which I do not consent?” D’s explanation may mitigate C’s anger by allowing C to understand how the miscommunication came to pass—often understanding is enough to combat the frustration that can result from misunderstanding. Yet C would still be justified in treating D’s interpretation as a communicative failure.

At the same time, the hearer who understands the concept of sexual harassment will be on sound footing. The hearer only includes propositions that the speaker could recognize as reasonable; given the content of the speaker’s utterance, which articulated experiences of sexual harassment, the hearer had good evidence that the speaker, once she understood what sexual harassment is, would recognize the reasonableness of including the definition of sexual harassment in the hearer’s interpretive context.

IV. Conclusion

I have offered two examples of misattributed consent and showed that the intuitive explanations of these examples are better accounted for by appealing to interpretive context rather than shared-context accounts. I have further shown that an account of interpretive context requires a different kind of conversational norm than other views. The Constraint on Hearer Context requires that anything included in an individual's interpretive context must be defensible to their interlocutor. This picture is more effective in showing, first, how miscommunication is possible in real-world cases, and second, why miscommunications of this sort strike us as criticizable, rather than as mere mistakes.

Finally, placing normative constraints on the construction of contexts offers us a way to move forward in an effort to determine when we can or should hold someone responsible for actions taken as a result of miscommunication or failed attempts at communication. I have shown that A, and by extension, Aziz Ansari, violated interpretive norms, and in so doing, did something wrong; had they followed interpretive norms properly, they would have interpreted their interlocutors properly. This means that they are responsible, in some sense, for their failure to understand. Just what kind of responsibility this is remains to be seen, but we now have useful tools for interrogating this problem.

Explanations alone are often enough to mitigate the frustration of misunderstanding, but that this does not mean that a violation did not occur. Often, in cases of misattributed sexual consent, we feel a pressure to understand how it is possible that someone could misunderstand an expression of non-consent. Then, once we understand, we feel a pressure to forgive the violator of consent, or to write off their wrongdoing as "understandable." Yet, as I have noted, behavior can be understandable and still count as a violation. Thus, in moving forward, I hope that my account allows greater understanding between parties, but that this does not give individuals license to violate consent.

References

- Bach, Kent (1994): "Conversational Implicature," *Mind and Language* 9 (2): 124-162.
- Bach, Kent and Robert Harnish (1979): *Linguistic Communication and Speech Acts*, Cambridge: The MIT Press.
- Beck, Julie (January 2018): "When Pop Culture Sells Dangerous Myths about Romance," *The Atlantic*, Retrieved from <https://www.theatlantic.com/entertainment/archive/2018/01/when-pop-culture-sells-dangerous-myths-about-romance/549749/>
- Camp, Elisabeth (2018): "Insinuation, Common Ground, and the Conversational Record." In Fogel, Daniel, Daniel Harris, and Matt Moss (eds.). *New Work in Speech Acts*. Oxford: Oxford University Press: 40-66.
- Dougherty, Tom (2015): "Yes Means Yes: Consent as Communication," *Philosophy and Public Affairs*, 43 (3): 224-253.
- Elder, Lee (2000): "Why Some Jehovah's Witnesses Accept Blood and Conscientiously Reject Official Watchtower Society Blood Policy," *Journal of Medical Ethics* 26: 375-380.
- Fricker, Miranda (2007): *Epistemic Injustice*, Oxford: Oxford University Press.
- Goldberg, Sanford (2015). "Should Have Known." *Synthese* 194 (8): 2863-2894.
- Grice, Paul (1975): "Logic and Conversation," in Cole, Peter and Jerry Morgan (eds). *Syntax and semantics 3: speech acts*. New York: Academic Press. 41-58.
- Hornsby, Jennifer and Rae Langton (1998): "Free Speech and Illocution," *Legal Theory* 4: 21-37.
- Horn, Laurence (1996): "Presupposition and Implicature," in *Handbook of Contemporary Semantics*, Lapin, Shalom, ed. Oxford: Blackwell, 299-319.
- American Medical Association, "Informed Consent," *AMA Code of Medical Ethics*, Retrieved from <https://www.ama-assn.org/delivering-care/informed-consent>.
- Kukla, Rebecca (2014): "Performative Force, Convention, and Discursive Injustice," *Hypatia* 29(2): 440-457.
- Langton, Rae (1993): "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22(4): 293-330.
- Lewis, David (1979): "Scorekeeping in a Language Game," *Journal of Philosophical Logic*, 8(3): 339-359.
- Lewis, David (1969): *Convention*, Cambridge: Harvard University Press.
- Lofgreen, Ashton, Richard Mattson, Samantha Wagner, Edwin Ortiz, and Matthew Johnson

- (2017): “Situational and Dispositional Determinants of College Men’s Perception of Women’s Sexual Desire and Consent to Sex.” *Journal of Interpersonal Violence*. Retrieved from <https://doi.org/10.1177/0886260517738777>
- MacKinnon, Catharine: “Sexuality, Pornography, and Method: ‘Pleasure Under Patriarchy’”, *Ethics*, 99: 314–346.
- Maitra, Ishani (2004). “Silence and Responsibility.” *Philosophical Perspectives* 18 (1): 189-208.
- North, Anna (2018). “The Aziz Ansari story is ordinary. That’s why we have to talk about it.” *Vox*. Retrieved from: <https://www.vox.com/identities/2018/1/16/16894722/\> aziz-ansari-grace-babe-me-too
- Roberts, Craige (2012): “Information Structure: Towards an integrated formal theory of pragmatics.” *Semantics and Pragmatics* 5 (6): 1-69.
- Saul, Jennifer (2002): “Speaker Meaning, What is Said, and What is Implicated,” *Nous* 36 (2): 228-248.
- Sperber, Dan and Deidre Wilson (1995): *Relevance: Communication and Cognition*, 2nd ed. (Oxford: Blackwell).
- Stalnaker, Robert (1978): “Assertion,” Cole, Peter, *Syntax and Semantics*, New York: Academic Press.
- Stalnaker, Robert (2002): “Common Ground,” *Linguistics and Philosophy* 25: 701-721.
- Stalnaker, Robert (1998): “On the Representation of Context,” *Journal of Logic, Language and Information* 7: 3-19.
- Stalnaker, Robert (2014): *Context*. Oxford: Oxford University Press
- Way, Katie (2018): “I went on a date with Aziz Ansari. It turned into the worst night of my Life,” *Babe*, retrieved from <https://babe.net/2018/01/13/aziz-ansari-28355>