Soble—‘Antioch’s Sexual Offense Policy’
and Kittay—‘Reply to Soble’

• Soble begins by considering the ethical principle:

  If you are in doubt about whether your sexual partner has consented, ask them explicitly.

• This seemingly innocuous principle, he says, is incorrect.

  – It is incorrect because somebody may fail to have doubts even when they should.
  – The problem is that many people—especially men—don’t have doubts when they should have doubts.

• He then considers Susan Estrich’s argument:

  P1 In our society, women are acculturated to not say ‘no’. Sometimes, a hesitant ‘yes’ can mean ‘no’ from a woman’s perspective.

    C If a woman says ‘no’, then she must really mean ‘no’.

• Soble thinks that there’s a problem with this argument. The problem is that women in our society are also acculturated to say ‘no’ when they really mean ‘yes’—they are acculturated to not be seen as ‘too easy.’ But then, following the same line of reasoning above,

  P1 In our society, women are acculturated to not say ‘yes’ right away. Sometimes, a ‘no’ can mean ‘yes’ from a woman’s perspective.

    C If a woman says ‘yes’, then she must really mean ‘yes’.

• But this conclusion is plainly false. Women can say ‘yes’ when they really want to say ‘no.’

• Soble’s conclusion: Issues with consent are a mess. The Antioch Code attempts to deal with the mess by instituting a clear standard:

  – According to the Antioch Code, explicit verbal consent must be obtained before any sexual act, even for long-term partners. This consent must be obtained for each new level of sexual intimacy. No assumptions about consent can be made.
• **Kittay**: Soble misunderstands the Antioch Code. It only requires explicit verbal consent for sexual acts which are not “mutually and simultaneously initiated.”

• Soble thinks that the Antioch Code fails on two points: 1) it detracts from the pleasure of sex; and 2) it under appreciates the communicative power of body-language.

1. Firstly, it detracts from the pleasure of sex.

   * Julia Reidhead argues that it need not: she says that asking for consent can be “an opportunity for undergraduates to discover that foreplay and wordplay can be happily intertwined.”
   * Soble contends that we cannot understand the requests for consent in this way. Since, if they are themselves acts of foreplay, then consent must be obtained for those acts of foreplay. But then we would have to get consent in order to ask for consent; and if this request for consent is a sexual act as well, then we’ll have to ask for consent for it. And so on and so forth. This leads to an infinite regress, and so it won’t be possible to ever get the requisite consent, if Reidhead’s account is correct.

   - **Kittay**: Soble’s infinite regress goes astray at the first step. The Antioch Code was written by the students themselves. By negotiating and agreeing to the final code (which is reappraised each year by the student body), the students have already consented to the sexual act of being asked for consent. So, while prior consent for such sexualized requests for consent is needed, it is also supplied by the student’s consenting to be governed by the Antioch Code.

2. Secondly, it under appreciates the communicative power of body-language.

   * As the discussion of Susan Estrich’s argument shows, we cannot always trust the verbal; a ‘yes’ can be said hesitantly, or fearfully, by somebody who doesn’t really want to engage in the sexual act.
   * Even the Antioch policy allows that certain bits of body language, like pulling or pushing away, can unambiguously mean no.
   * Similarly, certain bits of body language can unambiguously mean ‘yes’—such as, responding to a request ‘May I kiss you?’ by smiling and puckering your lips.

   - **Kittay**: The Antioch Policy allows for clear signs of non-verbal consent.