

A Relational Theory of Consent

In this article, I argue that consent is a fundamentally relational normative power. While mental, communicative, and hybrid views treat consent as an individualistic power—one wholly located in the consenting party—I argue that this widespread assumption is mistaken. First, I argue that mental views render consent incongruent with its fundamentally relational aim by examining a case of what I call *Nonconsensual Moral Sainthood*. I then show how hybrid views inherit the same issue by retaining a necessary mental component. Finally, I argue in a series of six cases that purely communicative views again align consent’s nature opposed to its constitutive aim. Drawing on the failures of existing theories, I introduce and defend the Relational Theory of Consent: normatively successful consent is necessarily and sufficiently constituted by (i) a communicative or expressive act and (ii) volitional uptake by the recipient whereby the consent-receiver’s action is determined by the issuer’s consent or dissent. I argue that consent succeeds only if it passes a Counterfactual Efficacy Test. The lesson is that consent is not just about me. My consent is about *me*, it’s about *you*, and it’s about what we do *together*.

Human beings possess many types of powers. We have physical powers (jumping, punching, waving), volitional powers (intending, deciding), and political powers (voting, protesting). Perhaps our most important abilities include our *normative* powers—promising, commanding, apologizing, forgiving, and the like. When exercised, these powers change the normative features of one’s situation (Owens 2011, Alexander 2014, & Koch 2018).¹ Making a promise, for instance, creates a change in the normative landscape; the promiser now has a duty to follow through unless they are released of this burden by the ‘promisee.’

Some powers can be exercised without the cooperation of other individuals. I don’t need your help to successfully form an intention or to wink. But other powers intrinsically require social cooperation. Voting is one such power. This doesn’t mean I lack the power to vote; it just means that my power relies on other people’s cooperation. Thus, my ability to vote is more fragile than my ability to intend or to imagine.

Consent is one of our central normative powers. In essence, consent is our normative power to make “otherwise (*pro tanto*) prohibited acts (*pro tanto*) permitted” (Koch 2018).² But there’s a vast debate about what exactly consent *is*—what exactly we *do* when we consent or dissent to an activity.

In our theorizing about consent, we need to keep in mind our actual human practices. We must remember how consent shows up in the real world: You propose some activity with me, where that activity requires my permission to proceed. Perhaps you ask to pet my dog, perform an operation on me, enter my home, have sex with me, or engage in a jiu jitsu match. These activities require my consent if they are to be done without moral issue.³ When I consent to any of these activities, my

¹ The concept of a *normative power* was introduced specifically in the moral domain by Raz (1972 & 1975).

² See also Shiffrin (2008, 501), Watson (2009, 160), Owens (2011), Dougherty (2015), and Manson (2016).

³ After all, putting me in an arm bar without my consent is an assault.

consent has a constitutive aim: to determine whether you proceed in your proposed activity with me. If I consent, I waive you forward. And if I dissent, I aim to halt your advance. But notice that either way, my consent or dissent targets our joint activity. We must first and foremost remember that consent is fundamentally *relational*. It's not just about me. My consent is about *me*, it's about *you*, and it's about what we do *together*.

In the philosophical literature, however, there is a widespread consensus that consent is a fundamentally *individualistic* power. The power to consent is wholly (or at least primarily) located in the consenting party. The person receiving consent figures little into most philosophical analyses. This assumption is common across various accounts of consent. Most mental views, communicative views, and hybrid views all share this notion: that my power to consent is mine alone. My ability to consent does not require your cooperation to be successfully exercised.

I suggest this widespread assumption is mistaken. Both parties matter equally; consent is a fundamentally relational normative power, one that depends on both me and you. So in our investigation of what consent *is*, we need to keep an eye on what consent is supposed to *do*.⁴ Here, we can see why our theory of consent matters. For one, it's independently important to us that we get our normative concepts right. But furthermore, how we think about our normative concepts affects our downstream moral theorizing. Thus, our account of consent is not just a descriptive question; we need our concepts to enable the normative work they're aimed at doing.

My task at hand, then, is to give an account of consent that enables and supports its constitutive normative function. Here's how I'll proceed: In section 1, I offer a few opening remarks about the scope of consent. In section 2, I examine and criticize purely mental views of consent. I levy the same critique against hybrid views in section 3, and in section 4, I consider the possibility of consent as communication without volitional uptake. In section 5, I present the Relational Theory of Consent and extoll its virtues. In section 6, I address remaining worries.

Section 1: A Few Ground-Clearing Remarks

In this paper, I aim to provide an account of consent in general. Much of the literature analyzes the concept of *sexual* consent more specifically, but an explanation for this narrowed scope is rarely provided.⁵ But this restricted scope is somewhat confusing: if one sets out to provide a theory of '*adjective-phenomenon*' rather than just '*phenomenon*,' it would be good to justify this restriction, especially when it's not clear why that subset would operate by special norms. In other words, it's not clear what

⁴ I take this to be a broadly Strawsonian thought—that we can look to our actual practices to learn certain normative lessons about that practice. (In “Freedom and Resentment,” Strawson’s insight was to allow what it means to hold someone responsible inform us about the conditions of responsibility.) Zangwill (2013) interestingly pursues this investigative reversal for love, abandoning the idea that we can figure out the descriptive and conceptual questions about what love *is* before we determine other normative questions about love.

⁵ For instance, see Kukla (2021), who doesn’t defend this assumption. C.f. Ichikawa (2020) who does argue for varying conceptions of and standard for consent across various differing domains. Interestingly, in a review of Garcia (2023), Kukla (2026) argues that Garcia’s strictly sexual theory of consent is lacking because we need a theory of consent more broadly, and that Garcia doesn’t do enough to argue for ‘sex exceptionalism.’

aspect(s) of *sexual* consent cannot be explained by a theory of consent more broadly. I am not suggesting that this is impossible, only that this narrowed scope is rarely explained.

Of course, this narrowing makes sense sociologically.⁶ In English speaking countries, the word ‘consent’ crops up most commonly in discussions of sexual ethics. We don’t tend to speak in terms of ‘consent’ when discussing two people agreeing to box, inviting someone into your home, or allowing someone to pet your dog. But just because we don’t use the word doesn’t mean the same normative power isn’t at play across a wide range of cases. Therefore, my theory will be a view about consent most broadly. (I should also clarify here that my theory is aimed at understanding and explaining the moral issues of consent, not legal.) This account will aim to operate in any domain where consent is germane.

This brings us to our next point of clarification: consent’s domain. I’ll be working under the widely accepted idea that consent is relevant only to actions which would, without obtaining valid consent first, violate someone’s moral rights.⁷ I’ll refer to these actions as *Rights-Violating-Actions* (RVA’s). For instance, if I think I need your consent to wave to you from across the street, I’ve misunderstood the proper domain of consent. Consent isn’t relevant here because waving to you does not violate any of your rights. The relevance of consent is determined by the type of action we’re considering. Waving hello is not an RVA; taking your photograph in a public place might be an RVA; punching you in the face is certainly an RVA.

This assumption about consent’s proper domain aligns with another intuitive notion: that nonconsensual ϕ -ing is a basic moral wrong when ϕ is a Rights-Violating-Action.⁸ In this paper, I will remain neutral on what actions are in fact RVA’s. When I give examples, I’ll try to stick to uncontroversial actions which, when performed non-consensually, violate a moral right. I’ll also remain neutral on why nonconsensual ϕ -ing is a basic moral wrong. I align with views on which the basic wrong of nonconsensual ϕ -ing is explained by ϕ ’s violating another’s autonomy.⁹ But I will not rely on this assumption in my argument.

Finally, when I talk about consent as the successful exercise of a normative power—one that performs some moral transformation—I do not necessarily mean that consent is an unlimited source of moral magic. Just because successful consent is transformative does not mean that consent can transform the morally repugnant into a moral good. When philosophers wax poetic that “consent

⁶ Ichikawa (2020) argues that our current linguistic practices are problematic because they reinforce the idea that women only typically grant permission for sex, which puts them in a diminished agential role.

⁷ Liberto echoes this sentiment: “Consent is the appropriate concept for talking about the permission we can give to others to use or tread on our property, touch our bodies, and read or access private information. We have authority over these domains” (2021, 213).

⁸ Owens’ concept of a *bare wrong* is what I have in mind. A bare wrong is a “breach of a valid [moral duty] which involves no action against any human interests” (2011, 404). Owens argues the primary wrong of breaking a promise or violating consent is a bare wrong and the harms created by the breaking or violating are secondary wrong-making features. See also Gardner (2007, 3-8). This assumption about the violation of consent being a basic moral wrong is shared by Woodard (2026, 545 & 2022, 301), West (2010 & 2017), and Archard (2007). C.f. Ichikawa (2020) with respect to the notion that consent is not a necessary condition for morally permissible sex.

⁹ See Beauchamp (2010) and Schaber (2018, 59-60).

turns a trespass into a dinner party; a battery into a handshake; a theft into a gift; an invasion of privacy into an intimate moment,” this overinflates the transformative power of even successful consent (Hurd 1996, 123).¹⁰ Consent does not necessarily turn rape into loving sex, nor does it turn a home invasion into a dinner party. Yes—consent, when successful, can turn a violation of one’s rights into a permissible activity. Consent’s normative power is genuinely transformative, but not without limit.

With these remarks on the table, I’ll now begin constructing the relational theory of consent. In sections 2-4, I’ll first argue against several existing views of consent. This negative work will help us correctly build a theory capable of the normative work consent aims at doing. In the next section, I’ll first consider purely mental views of consent.

Section 2: Mental Views

According to mental views, consent is something that occurs solely in the head, constituted by a mental state or action. Mental views admit that consent is typically communicated or expressed in some form, but they maintain that the expression is different than consent itself. Communication is important, but only as *evidence* of consent (which has occurred solely in the head). Thus, consent need not be communicated in any way for it to be successful, valid consent.

While any specific mental view will have its own bespoke contours, there are widespread similarities we can examine. All mental views locate consent in a mental state or action. Hurd, for instance, argues that “to consent is to exercise the will” (1996, 124-125). Thus, Hurd requires consent to go above and beyond a mere desire, which is a passive mental state. Consent must be intentional; “if consent constitutes a choice (and not merely a wish), then consent is a *purposive* mental state” (Hurd 1996, 126, emphasis added). Alexander likewise understands consent solely as a mental state—“that of [a person] waiving her right that the conduct not occur” (2014, 107). Alexander takes care to define consent in a way that does not require any outward communication: “The mental state that I believe constitutes consent is that of waiving one’s right to object—or, if that sounds too much like a non-mental action, that of mentally accepting without objection another’s crossing one’s moral or legal boundary” (2014, 108).¹¹ Both Hurd and Alexander explicitly reject any expression or communication as a necessary component of consent (Hurd 1996, 135-138 & Alexander 2014, 102-107).¹²

Several problems plague mental views of consent. First, consider a comparison to apology. Imagine I wrong you and later feel regretful for what I did. I want to make things right. So I apologize to you...but I apologize only in my head. If I later claimed that I had already fully apologized, you’d be right to think I was simply confused about what it means to apologize. And an explanation of the form ‘*I did apologize—I just didn’t communicate it*’ would be deeply unconvincing. An apology isn’t

¹⁰ See also Alexander: “Consent can convert what would otherwise be a trespass into a dinner party, a battery into a boxing match, a theft into a gift, and a rape into consensual sex” (2014, 102).

¹¹ In a slightly less demanding account, Westin (2004) argues that consent is the mental state of acquiescing to the consented-to action.

¹² See also Husak (2006) and Dsouza (2013).

something that purely happens in the head, and whether it's then communicated is another matter. Apologies are (at least partially) constituted by outward communication to the wronged party.¹³

Why must apology include communication? Consider what an apology constitutively aims to do: it's supposed to convey a change of heart on behalf of the wrongdoer—that they have come to see their action as the wronged party sees it. An apology aims to convey that the wrongdoer sees what they did was wrong, (re)commit to shared principles, and condemn their own action.¹⁴ In other words, apology is fundamentally relational; it's supposed to change the dynamic between *two* people. Because of what apology *aims* to do, we know (at least in part) what apologies must *be*.¹⁵ A purely mental view of apology goes wrong because it makes the phenomenon's nature incongruent with its constitutive aim.

The same issue plagues purely mental views of consent. Consent is fundamentally relational; when I consent or dissent to ϕ , my consent aims to convey something to the other party: namely, whether I grant or withhold permission to proceed in ϕ -ing with or to me. Thus, views of consent where everything happens in the head render consent's nature incongruent with its constitutive aim.¹⁶ Defenders of the mental view have replies for this worry. Both Alexander and Hurd argue that while consent is a purely mental phenomenon, the mental state or action which constitutes consent is often subsequently communicated. But of course, the communication of the mental phenomenon is a secondary action which does not constitute consent in part or in whole. Communication of consent is morally and legally important, but it's not a feature of the phenomenon itself. I remain skeptical of this reply because I again worry that the nature of consent is masking its fundamentally relational nature.¹⁷

However, another problem still lingers. If consent is a purely mental phenomenon, we can quickly see an issue in cases of I'll call “Nonconsensual Moral Sainthood.” These are cases wherein an agent behaves like a moral saint yet ultimately engages in a Rights-Violating-Action without having secured valid consent. Consider the following case:

¹³ Because apologies have fundamentally relational aim, for me to apologize requires the recipient to know I am apologizing. If I fail to secure this uptake, I fail to apologize. And if I never communicate the apology, I make this aim impossible (Emerick, Stockdale, & Yap 2023).

¹⁴ See Bovens (2008, 221), Fabre (2023), Smith (2008, 60), Walker (2006), Martin (2010), and MacLachlan (2015).

¹⁵ And to point out that the communicative aspect of apologies varies greatly by relationship is not an argument that apology is a purely mental phenomenon. Sure, in one marriage an apology may look like flowers being left on the table with nothing ever actually being said. But this can still clearly communicate an apology. C.f. Alexander (2014, 103-104).

¹⁶ “A promise does not serve to make known some already completed promise made in the mind, it aims at effecting the promise. A command does not seek to make known some already completed command in the mind. The same is true of consent. Command, promise and consent are constitutively aimed at other people's recognition of those acts as ones which are performed with a distinctive intention to change the normative situation. One cannot coherently perform such an act whilst aiming to complete it in the mind alone” (Manson 2016, 3331). Contrast this with something like letting go or deciding (mental actions). These are not fundamentally interpersonal in what they *aim* to do. Thus, a purely mental account makes sense given the phenomenon's constitutive aim.

¹⁷ A related problem lingers for mental views: when you withdraw your consent, you're changing the normative landscape. But the other party needs a reasonable opportunity to alter their behavior in response to your change. The mental view struggles to explain how all this is possible.

Hyper-cautious, Nonconsensual Sex: Arthur and Victoria are at a bar. They chat for a few hours, and at the end of the night, Victoria asks if Arthur wants to come back to her place. Arthur is a moral saint, and he expresses a worry about Victoria having several drinks that night. He conveys that he's quite attracted to her and indeed wants to have sex, but he also wants to be sure that she's making this decision with a level head. The next day, Victoria again says that she'd like to have sex with him. Arthur is glad to see that her desire wasn't just a result of the alcohol, but he now worries that she might be acting on a whim—they just met after all. So he suggests that they get to know each other more, and if she still wants to have sex, then he'd feel comfortable. This hyper-cautious moralism continues for a month. At the end of the month, Victoria indicates that yes, she still wants to have sex with Arthur. They have sex. However, Victoria lacked whatever mental state is said to constitute consent.¹⁸

Here's what we know about this case: Victoria lacked whatever mental state constitutes consent—an intention (Hurd 1996), acquiescence (Westin 2004), or waiving of a right to complain (Alexander 2014). For our purposes, it doesn't particularly matter why Victoria lacked this mental state. She could be lying or misrepresenting her inner life, she could be a broken agent who cannot form these states, or some one-off mental misfire could have occurred. The point is that she lacked whatever mental state constitutes consent. Therefore, when Arthur and Victoria have sex, the sex is by definition nonconsensual. And sex without consent is a Rights-Violating-Action. Thus, because Arthur had sex with Victoria without her consent, he therefore acted wrongly.¹⁹ This result is a straightforward consequence of the mental view's commitments, yet it feels implausible to say Arthur committed a moral wrong.²⁰

The greater issue, however, is that mental views lack a compelling reply to this concern. Of course, its defenders are not insensitive to this style of worry.²¹ A typical mentalist reply emphasizes the distinction between performing a morally wrong action and being blameworthy for committing that act.²² So in a case like this, defenders of the mental view can argue that while Arthur committed

¹⁸ Thanks to XXX for suggesting this style of case.

¹⁹ Whether the wrong was serious or minor does not matter; my objection will work either way.

²⁰ Manson (2016, section 3) makes a similar argument, especially with respect to his case called 'BOSS.' Manson, however, essentially uses this case to set up a battle of intuitions. Manson argues that mental views give an unintuitive answer in cases of what he calls "deceptive" acts of consent, and he then aims to provide an account which can make sense of these cases. But Manson admits that mentalists can just bite the bullet: "In these examples we have two candidate acts of consent (or refusal) in play. We have R's explicit act, and her mental act. The freely made, intentional, explicit act seems to be a better candidate for normative effectiveness than the purely private act. Many people may share the anti-mentalistic intuition here. But the mentalist may not" (2016, 3324). I'm going to push the argument deeper, arguing that mental views cannot provide a sound theoretical basis for their unintuitive answer. My relational view of consent will also differ from Manson's robust reason-changing account.

²¹ Defenders of the mental view have largely focused on converse cases: cases in which the would-be-victim mentally consents while the might-be-aggressor does not know this because the former does not communicate their mental state. Hurd (1996), Alexander (2014), and Dsouza (2013) argue that if A acts without knowledge of V's consent, A has not wronged her precisely *because* V did in fact have a mental state constituting consent. Here, however, I am worried about the opposite type of case: one in which there is an apparent communication of consent without the constitutive mental state.

²² See Alexander: "Consent is a mental state, and whether and how it is signified bear on the culpability of those whose acts require others' consent but not on whether they have received that consent" (2014, 113). Hurd makes a similar but

a moral wrong, he is wholly blameless because he is fully excused; he could not have known that Victoria didn't consent, and he is therefore excused from blame or punishment of any kind. Thus, mental views purport to provide the following internally consistent verdicts:

1. Victoria did not consent to sex because she lacked the mental state constituting consent.
2. Arthur and Victoria therefore had nonconsensual sex.
3. Arthur therefore wronged Victoria.
4. Arthur is not blameworthy because he is fully excused.

Claims 1-3 are simply principles of a mental view. Claim 4 is the most promising way to avoid an implausible conclusion about Arthur's responsibility for wronging Victoria: Arthur committed a wrong, but he is not blameworthy.

This reply, however, fails upon closer inspection. The issue is that excuses render an agent unworthy of blame, while their action itself remains a genuine moral wrong.²³ An excuse is therefore different than a justification. If an action is justified, it was the all-things-considered right thing to do.²⁴ That is not what's being claimed here. When mentalists say that Arthur is excused, they are not saying what he did was right; they are maintaining that he acted wrongly but is not blameworthy for his wrongful action (because he couldn't have known better). So even if Arthur is fully excused, what he did was still wrong. But on the assumption that *ought* implies *can*, we must be able to point to what Arthur should have done differently to avoid committing a wrongful act. But I contend that there is nothing we say Arthur should have done differently. He went far beyond the call of moral duty, exercising extreme caution in his attempt to have consensual sex. So the notion that he acted wrongly but is excused does not give a plausible account of this case.²⁵

converse move: "in order to alter the morality of another person's prima facie wrongful act, [consent] need not be accompanied by any observable behavior. While a defendant may be culpable for acting in the absence of any observable behavior that manifests the *mens rea* of consent, the defendant's actions may not be wrongful if in fact the plaintiff possessed the *mens rea* of consent" (1996, 138). In this quote, Hurd is expounding the converse lesson: that someone may be blameworthy for acting without securing communicative evidence of consent without in fact wronging a person who has mentally consented to an act. She is nevertheless driving the same conceptual wedge in between the notions of blameworthiness and wrongdoing.

²³ This is a widely accepted understanding of how excuses generally work. See for instance Baron: "to excuse is to say that what the agent did was wrong, or at least untoward, but that it would be unfair to blame him for the action" (2006, 26); Kelly: "An excuse establishes that although the agent acted wrongly she should not be blamed or should not fully be blamed." (2013, 248); Madison: "One has a good excuse when, roughly, although what one did is wrong and is therefore properly criticizable, there is a consideration that lessens the degree of blame appropriate, perhaps even to the point of blamelessness" (2018, 4554).

²⁴ If one attempts to justify an action, one attempts to show that one acted for good reason (and thus should not be blamed because the action was not wrong) (Austin 1956, 1-5 & Watson 1987, 123). However, if one offers an excuse for an action, one attempts to show that while they did not act for good reason, and the action was wrong, they do not deserve blame. Say I push you. You, in turn, blame me. If I explain that I pushed you because you were about to be hit by a car, I would be offering a justification for my action. If I explain that I pushed you by accident because I slipped in mud, I would be offering an excuse for my action; my action isn't justified, but I'm not worthy of blame either—I'm excused.

²⁵ To be clear, I am not saying that it's impossible to be fully excused while still wronging someone or infringing a right. I am arguing that this sort of explanation falls flat in cases of nonconsensual moral sainthood because we cannot point to anything the moral saint should have done differently. This doesn't deny that what resulted might be *bad*, but it is not *wrong*.

The mentalist is at a crossroads. By definition, Victoria did not consent. Arthur therefore committed a Rights-Violating-Action without consent. Arthur therefore wronged Victoria. But the response that Arthur acted wrongly yet is excused does not work because we cannot spell out what he ought to have done differently.

There are three possible ways to proceed. The first is to say that nonconsensual sex (or any nonconsensual RVA) is not necessarily a pro tanto moral wrong. But this seems like a bad result; the entire point of consent-talk is supposed to explain how and why consent makes otherwise Rights-Violating-Actions no longer pro tanto wrongs (Owens 2011, 404-406).²⁶ If we abandon this relationship, we seem to be giving up on theorizing about consent. The second option is to posit moral duties that we cannot fulfill *in principle* (since we cannot ever be sure of another's mental content). But this denies the notion that ought implies can and seems to undercut the point of moral duties in the first place; they are supposed to be obligations we can at least aspire to act in accordance with.

The third—and the most plausible—option is to accept that consent cannot be a purely mental phenomenon. Accepting this idea motivates the consideration of a hybrid view: an account on which consent is constituted by a necessary mental and communicative component. In the next section, I'll consider the prospects of a hybrid view.

Section 3: Hybrid Views

Hybrid views, as the name implies, understand consent as necessarily involving both a mental and communicative component.²⁷ Owens has provided an influential and representative hybrid account on which consent involves the waiving of a claim-right against an RVA (2011, 407).²⁸ The waiving of this right involves a mental action (forming an intention to waive the right) and the communication or expression of the resulting mental state (the intention): “I propose [we] reserve ‘consent to X’ for cases where you (intentionally) communicate the intention of hereby making it the case that someone would not wrong you by X-ing” (2011, 408).²⁹ Dougherty has also defended a ‘performative view’ on which “a private intention is insufficient for morally valid consent. Instead, morally valid consent always requires public behavior” (2015, 227). In short, hybrid views understand consent as necessarily and sufficiently constituted by a mental and communicative component.

Hybrid views appear to solve several issues plaguing purely mental views of consent. The communicative element explains the means by which consent does its normatively transformative work and makes consent closer to other normative powers like apology or promise-making.

²⁶ This isn't to deny the possibility of lesser-evil-style cases wherein performing an RVA against someone without their consent (or in the face of their dissent) is the all-things-considered right thing to do.

²⁷ Alexander indicates that hybrid views are perhaps the most common in the consent literature (2014, 104).

²⁸ See also Miller & Wertheimer (2010).

²⁹ See also: “In consenting to X you might just be communicating a present *intention* of allowing X to happen whilst retaining the option of calling things off” (Owens 2011, 407, emphasis added).

However, for any account on which a mental state or action is a *necessary* component of consent, the problem of Nonconsensual Moral Sainthood applies. We can re-run the previous case and produce the same issue: if Victoria lacks the necessary mental feature, then she hasn't consented and the sex is nonconsensual. This leaves us with the same dilemma by retreating to excuses: we must either conclude that nonconsensual RVA-ing is not pro tanto wrong, or posit (potentially *many*) moral duties we cannot fulfill in principle. We should reject either solution.

We thus arrive at an even stronger conclusion: consent apparently neither *is* nor *requires* a mental component. I admit that this conclusion raises immediate questions. These questions deserve answers, and I will be sure to provide them after painting a more positive theory of consent. Right now, we still have one final account of consent to examine.

Section 4: Communicative Views

If consent is neither identical to nor requires a mental component, this seems to suggest that consent is a purely communicative or expressive act. Indeed, several philosophers have endorsed this type of view. Wertheimer has argued that consent is a performative act of communication which does not require any mental component (2000, 566-573). Wertheimer draws on an analogy to marriage to illustrate how the communicative act of consent works: “One does not consent to be married by having the mental state of wanting or intending to be married. One does not consent to be married until one does something, like saying ‘I do’” (2000, 567). In describing (but not endorsing) the communicative view, Manson explains that “an agent can change [their] normative situation just by making the appropriate kind of speech act in particular contexts” (2016, 3325). Archard follows this line, arguing that consent “is an act rather than a state of mind. Consent is something I do rather think or feel” (1998, 4).

It's important to clarify that on most communicative views, communication itself is understood quite broadly. It includes verbal communication—like speaking the words ‘yes,’ ‘I consent,’ or ‘go ahead’—but also nonverbal communication—like shaking one's head, giving a thumbs up or waving someone on/in, or even simply proceeding with an activity at hand (like walking back to the center of the ring with one's hands up) (Dougherty 2015, 230, 247-248 & Archard 1998, 4).

So if consent neither is nor requires a mental state, perhaps, as the above views suggest, consent is only a communicative act that does not require uptake by the consent-receiving party. If consent requires only communication, then whether I have successfully consented to ϕ does not depend on how my consent affects *you*. Consent is still all about *me*. One draw of this approach is that it keeps my normative powers my own—whether I successfully consent is wholly up to me. For most consent theorists, this is a desideratum of any view. I am not so sure. Consider the following spectrum of cases. Imagine these cases flow from left to right, starting with the first and ending with the sixth. The plan is to work inward from both ends; first, we'll examine cases 1-3, then look at the sixth, fifth, and finally fourth.

Case 1: Mid-Punch Consent

A (for aggressor) walks up to V (for victim), set on punching her in the face. A cocks his fist back and starts to throw the punch. Midway through the forward progress of his fist, V, understanding the situation in full and herself independently wanting to be punched (for whatever reason you like), hastily consents to A punching her. She offers a quick ‘I consent’ as the punch is thrown.

I think that most will see this case as an instance of unsuccessful or invalid consent. Of course, V successfully manages to utter the words ‘I consent’ before the punch lands, but the absurdity of seeing this as genuine consent I think illuminates something off about this case. Any person (whether V herself or someone else watching the situation) who thinks that this is an instance of valid, successful consent—a morally transformative exercise of a normative power—is, I suggest, simply confused. Whatever it means to validly consent, this cannot be it. But why? Presumably, the reader will join me in thinking that at least one thing going wrong in this case is the lack of time between the ‘consent’ and the act to which V ‘consents.’ There’s only a fraction of a second between the utterance and strike—not enough time for consent to work its magic.³⁰ So perhaps the following will work:

Case 2: Consenting on the Wind-Back

A walks up to V, set on punching her in the face. As A squares his shoulders, V, understanding the situation in full and herself independently wanting to be punched, consents to A punching her. She offers a quick ‘I consent’ as A begins to draw back, such that, if he decided to, he could have stopped the punch. A hears and understands the content of V’s utterance, but doesn’t care either way—he was going to punch her regardless.

Case 2 is similar in most regards to Case 1, but with enough time in between V’s ‘consent’ and A’s punch that, had he wanted to, A could have stopped the punch. So if Case 1 went wrong only because V’s ‘consent’ didn’t have enough time to make a difference, Case 2 should be an instance of valid, morally transformative consent. But I suggest that Case 2 should still strike the reader as invalid, unsuccessful consent. Yes—there was enough time for V’s ‘consent’ to make a difference, but A didn’t care what V willed in the first place. Whether V consented or dissented, A was going to punch her. Consider then a third case:

Case 3: Consent During the Approach

A walks towards V, fully determined to punch her in the face, regardless of what she says or does. Seeing A approach her aggressively, V, understanding the situation in full and herself independently wanting to be punched, consents to A punching her. She calls out: ‘If you’re walking over here to punch me, I consent to being punched.’ A hears and understands the content of V’s utterance, but doesn’t care either way—he was going to punch her no matter what she said or did.

³⁰ It would have been possible to start with a case where A punches V and *after* the punch, V consents to being punched by A. This seems absurd. But it’s absurd not simply because the thing which V consented to already occurred. Moving the consent on the temporally prior side of the punch doesn’t necessarily make it valid either.

Here, unlike a potential worry about Case 2, there is no question that A had time to hear, understand, and fully process the content of V's speech-act. There is ample time for V's 'consent' to do whatever it aimed to do. But I suspect that readers will still feel that something is going wrong here—that V's 'consent' is falling short of its aim. While V's utterance had enough *time* to work its magic, there is something else missing from the picture—something that makes V's 'consent' unsuccessful in a crucial way. The problem is that A had settled his mind about what he was going to do before V consented or dissented; nothing V said or did could affect his action. It is for this reason that V's utterance is not an exercise of successful, normatively transformative consent. Just as we saw in Cases 1 and 2, in Case 3, even though there is a greater time delay, V's 'consent' played no role in determining what A did to her.

Now consider the other end of the spectrum. We've started with Case 1 on the far-left side and worked inward through Case 2 and 3. Here, we'll now move to the far-right side of the spectrum and work inward from Case 6 to 5 and 4. This side of the spectrum will be populated by a series of cases based on Woodard's recent discussion of what she calls 'Epistemically Unsafe Sex' (2022, 2026). This notion is derived from the experience of women who consent to sex but "feared that a 'no' would be ineffective...even in the absence of psychological or social pressure" (2022, 306).³¹ These women worried "about finding out that their consent was modally irrelevant: if they had not consented, their partner would have proceeded to have sex with them anyway" (2022, 306). Interestingly, Woodard explicitly endorses that consent can be successful and valid while failing to affect what the consent-receiver would do in the absence of that consent (2022, 311-312 & 2026, 545).³² In other words, consent can be counterfactually inefficacious yet fully valid.

We can think about 'Epistemically Unsafe Sex' as a wide range of cases. In each case, there is a worry about the counterfactual world in which the woman dissented to sex: if they had dissented, would that have been effective? Cases 6, 5, and 4 will explore this range.

Case 6: Consent with an Unfounded Modal Fear

Back at V's apartment after a date, A proposes having sex with V. V is attracted to A and wants to have sex with him. She consents to sex, but has a small fear lingering in the back of her mind—a worry about whether her consent *mattered* to A. But in this case, V's fear is unfounded, and she knows this; A did not pressure her for sex, nor has he done anything to indicate that he wouldn't be modally sensitive to her dissent (or lack of consent). Still, V found herself wondering.

Case 6 is an instance of 'Epistemically Unsafe Sex,' one in which V has no specific support for her fear about what A would have done had she not consented. Woodard argues that consent in the presence of a counterfactual fear is still successful, valid, normatively transformative consent (2022

³¹ Woodard draws heavily on the work of psychologist Gavey (2005) and writer Gattuso (2015).

³² This is *not* to say, as Woodard clearly points out, that there's nothing morally wrong occurring in such cases (2022, 2026).

& 2026). Woodard’s verdict seems quite plausible, though I worry that we need more information to fully adjudicate this question. I’ll return to this worry in a moment.

Case 5: Consent Under a Well-Founded Fear

Back at V’s apartment, A proposes having sex with V. V consents to sex, but has a significant fear lingering in the back of her mind—a worry about whether her consent *matters* to A. V’s fear is not without basis, even though A does nothing to overtly pressure her into sex; A is a morally shady person, he was openly dismissive of multiple feminist issues while on their date, and V has heard some disconcerting things about his past behavior. Still, she finds herself physically attracted to A, and it’s not like she plans on a serious relationship with him. V consents to sex, even with this fear about what A would have done had she dissented.

In this case of ‘Epistemically Unsafe Sex,’ V’s fear about whether her consent mattered to A—whether her counterfactual dissent would have been effective—was well-founded. Even while V doesn’t *know* what A would have done, Woodard again concludes that this is a case of valid, successful, normatively transformative consent (2022 & 2026). To be clear, Woodard is careful to add that a case like this might be an instance of morally ‘Bad Sex.’ But even if there’s something morally suspect going on in this case, it is *not* a matter of whether V validly and successfully consented (2022, 311-313). I find Woodard’s verdict—that V successfully consented—again plausible enough, though my prior worry still lingers. I still think we need something more fully adjudicate this case.

Case 4: Moot Consent

Back at V’s apartment, A proposes having sex with V. V consents to sex, but has a significant fear in the back of her mind—a worry about whether her consent *matters* to A. V’s fear is well-founded; A is a morally shady person, he was openly dismissive of multiple feminist issues, and V has heard some disconcerting things about his past behavior. Still, she finds herself physically attracted to A. V consents to sex, even with this fear about what A would have done had she dissented. A does nothing to overtly pressure V into sex, but in this case, V’s fears were *right*. If V would have dissented to sex, A would have proceeded anyway. That is, V’s actual consent was *moot*—it did not matter to A. A was set on having penetrative intercourse with V no matter what.

Case 4 is a disturbing instance of what Woodard calls *moot consent*: “Roughly, A’s consent to B is moot if B would have ϕ ’d even without consent” (2026, 545). Like in Case 5, V’s fears are well-grounded. But in Case 4 V’s fears are *accurate*—A was modally insensitive to V’s consent or dissent. We can think of moot consent as an edge case of ‘Epistemically Unsafe Sex.’ In all such cases, V doesn’t know whether her fears are counterfactually accurate. But V can have more or less reason to think her worry may be right. In moot consent cases, however, V’s fears are *in fact* right: A would have had nonconsensual sex with V, had V dissented. Even in these cases, Woodard maintains that the actual consent given was successful and valid: “the consent-receiver wrongs the consent-giver by

mistreating their consent: consent fails to play a proper role in their practical deliberations and reasons for action. However, the consent remains valid and hence morally transformative” (2026, 545).

Notice, however, that Case 4 and Case 3 are isomorphic; they share the same normative features and should therefore share the same verdict about whether V successfully consented. In both ‘Moot Consent’ and ‘Consent During the Approach,’ V’s claim right against A was at stake. (In Case 3, V’s claim right was a right not to be physically assaulted and in Case 4 it was a right not to be sexually assaulted). In both cases, even in the presence of a well-founded concern about whether her consent mattered, V attempts to consent to what A has proposed. But in both, it’s a fact that V’s ‘consent’ played no role in determining whether A proceeded with his Rights-Violating-Action (punching or penetrating).

But as things stand, our verdicts differ. I’ve suggested that it would be a mistake to see the ‘consent’ given in Case 3 as successful consent. Woodard argues that consent/dissent can be counterfactually inert while remaining valid. This is why she sees Case 4 as a successful exercise of consent’s normative power.

But notice that if we want to retain Woodard’s thesis, we’ll have to revise our verdict, not only in Case 3, but in Cases 2 and 1 as well. Clearly, Woodard would see Case 3—‘Consent During the Approach’—as valid consent. But if consent doesn’t require any uptake by its recipient, then it’s not clear why the ‘consent’ offered in Case 2 and 1 is not valid as well. The only difference between Case 3 and 2 was the amount of time between the ‘consent’ and the punch. But this time delay was itself normatively irrelevant, since A was determined to punch V no matter what. So there’s nothing this time difference is *doing* with respect to consent. The same holds for Case 2 and Case 1; the only difference between the two cases was the time delay between consent and punch. But again, if A’s mind was fully settled, then the time between consent and punch isn’t relevant. If A had more time in either case, it wouldn’t have changed what A did. So if Woodard maintains that successful consent doesn’t require uptake by its recipient, then she should say Cases 3, 2, and 1 *all* depict valid consent. Should we agree?

I argue that we should not. To see why, consider how the situation in Cases 1-3 would have played out had V *dissented* to being punched. Imagine she proclaims ‘I do not consent to you punching me’ in each case. What changes? In Case 1, nothing changes—she still gets punched. But the natural reply is to say that A didn’t have time to alter his course of action. Case 2 then added a time delay. But the same issue lingered. In Case 3, the issue is even more clear; there was more than enough time for A to understand the content of V’s *dissent*. But what would have actually changed, had V dissented? Like Case 1, if V had dissented to the punch, her dissent would have been wholly ineffective. Therefore, I suggest that both V’s attempts to either *consent* or *dissent* in Cases 1-3 would have been unsuccessful. Neither would have been valid, morally transformative exercises of her normative power because V’s ‘consent’ played no role in determining what A did to her.³³

³³ I should also highlight that in cases 3 and 4, V has the ability to say the words ‘I consent’ or ‘I dissent.’ So the reply that my cases only show that V lacks the ability to dissent cannot be made sense of on a communicative view. V *does* have this ability; she can say whatever she wants. The point, I hope, is that this very fact—that she is free to make

Additionally, changing our verdicts in the opposite direction (Woodard’s side of the spectrum), is not such a painful revision. To square our verdicts, we’ll need to say, contra Woodard, that Case 4 is not successful consent, since V’s ‘consent’ played no role in determining whether A proceeded in having sex with her. Here we can see the need for a luck-resistant theory of consent. The woman in Cases 4 may get *lucky* when she agrees to sex, but to successfully *consent* must be more than getting lucky. As Dougherty points out, “it is one thing for people to happen to behave in the way that we wish; it is another for them to do so because they are guided by our requests” (2015, 231). The women in Woodard’s cases of ‘moot consent’ merely get lucky; they do not *guide* the way they are treated.

What does this mean for Cases 5 and 6? It means that to adjudicate whether V successfully consented in either case, we need to know whether V’s fears were *right*—whether A would have halted his sexual activity with V, had V dissented. In short, we need to know if Cases 5 and 6 were actually instances of Case 4—cases of moot consent. If V’s consent didn’t determine whether A halted or proceeded, then V did not successfully consent. If the men in Cases 5 and 6 would have stopped upon V’s dissent, then proceeding in the presence of V’s consent renders it successful and normatively transformative. But if V’s consent played no role in whether A proceeded, then she did not validly consent to sex—she merely got *lucky*. Moot consent is unsuccessful because it fails to secure the constitutive aim of consent: to determine whether A proceeds or halts his otherwise Rights-Violating-Action. This is precisely what V’s consent aimed to *do* and precisely the source of feminine fear in cases of Epistemically Unsafe Sex. The women in Cases 5 and 6 are worried whether they are actually in Case 4—whether they would be assaulted if they did not consent to sex. Moot consent is not consent at all because it fails to generate the right volitional uptake in its recipient.

Section 5: The Relational Theory of Consent

If I am right, we’ve learned that successful consent must be more than a communicative act; it must be a communicative act which succeeds in generating the right sort of volitional uptake in its recipient—namely, that the consent-receiver’s action be determined by the other’s consent/dissent. If V is to successfully consent to A’s proposed Rights-Violating-Action ϕ , then A must take himself to be permitted in ϕ -ing *because* A consented. And if V would dissent to A’s proposed ϕ -ing, then A must take himself to be required not to ϕ and therefore not ϕ on this basis.³⁴

whatever speech acts she likes, but that these will have no effect on what A does to her—is illustrative of the claim that successful consent must therefore require *more* than simply these speech acts. (She also has the ability to think these thoughts or make the parallel movements of volition. So the same thought applies to mental views.)

³⁴ There’s a further question raised by the requirement that A not ϕ on the basis of V’s dissent: what exactly counts as not ϕ -ing *on that basis*? V’s dissent (or lack of consent, withdrawal of consent, etc.) could still determine A’s not ϕ -ing in several different ways under this formulation: A could cease ϕ -ing simply because he respects the normative power of V’s dissent. ‘She doesn’t consent to ϕ -ing, so I will not ϕ because she doesn’t consent.’ This would be to treat consent as a kind of normatively basic power. Or, somewhat similarly, A could cease because it would be morally wrong: ‘She doesn’t consent to ϕ -ing, so I will not ϕ because it would be wrong to ϕ without/against her consent.’ A more distant motivation, however, could be legal repercussion: ‘She doesn’t consent to ϕ -ing, so I will not ϕ because it would leave me legally liable to ϕ without/against her consent.’ V’s consent is, of course, still causally effective in a case like this, but

Thus, for consent to be successful and valid, it must pass what I'll call a Counterfactual Efficacy Test: V's apparent consent to ϕ with A is only valid consent if, had V dissented to ϕ , A would have halted³⁵ their ϕ -ing on the basis of V's dissent. Thus, we can state our account of consent as follows:

The Relational Theory of Consent: normatively successful consent (or dissent) is necessarily and sufficiently constituted by

- (i) a communicative or expressive act and
- (ii) volitional uptake by the recipient of that consent whereby what the consent-receiver does with respect to Rights-Violating-Action ϕ is determined by the issuer's consent or dissent.

The relational theory of consent returns to the fundamental aim of our actual consent practices: when we give or withhold our consent, we are aiming to determine what another person does with or to us.³⁶ This is the fundamentally relational nature of our normative power to consent. While other theories strive to make consent an inalienable, individualistic power, the relational theory of consent embraces the fragility of interpersonal coordination. My power to consent is not just about me. My consent is about *me*, it's about *you*, and it's about what we do *together*.

Because consent is a collaborative undertaking, the successful exercise of consent's normative power cannot occur without cooperation by both consent giver *and* receiver. A direct consequence of the relational view is that other people can remove my ability to consent by what they're prepared to do if I dissent. At first pass, this might sound strange. If consent is *my* normative power, then how can *you* take it away? But notice that many of our powers depend on the cooperation of others. We are social beings with socially scaffolded agency (Kukla 2021). So it should be no surprise that my consent,

perhaps this causal route is not precisely the gold standard of *how* V wanted her consent to determine A's action. For now, I will leave open the motivational mechanism by which V's dissent effects A's action. I will say that V's consent/dissent is successful simply if it does or would determine what A does on the basis of her consent/dissent, knowing that there could be multiple explanations for *why* A's action was determined.

Here we can see how the relational theory of consent differs from a robust reason-changing account (see Enoch 2011 & 2012 and Manson 2016). On what we might call a 'weak' version of this view, I have successfully exercised a normative power (like consent but also requesting or promising) if my exercise of that power gives you a reason to act in accordance. But if this is all it takes to exercise my power to consent, then the consent-receiver need not ever *act* in alignment with my consent/dissent, as long as they recognize that my dissent gives them a reason not to ϕ . So the dissent-receiving party could never act in accordance with the other's dissent, but as long as they recognize that the dissent gives them a reason to stop ϕ -ing, the dissent counts as successful. But this returns us to the issue of consent failing its counterfactual (or even actual) efficacy test. My relational theory of consent requires something stronger than the mere recognition of a reason; the consent or dissent-receiving party must act in accordance with the consent or dissent if either is to be successful.

³⁵ Or never initiated.

³⁶ Here I'll again emphasize why consent cannot be a purely mental phenomenon: if consent is *just* something that happens in the head (a state or action), then it cannot possibly aim to determine what you do to/with me. But then consent cannot in principle ever pass the counterfactual efficacy test, and this is damning to a theory of consent. This is the entire point of consent; it's supposed to be morally transformative *because* it determines whether you engage in rights-violating activity ϕ with me. By ruling out this aim in principle, purely mental views of consent give up the very thing consent aimed to do.

itself being a fundamentally relational phenomenon, needs your cooperation if it is to be successfully exercised.

Consider a mugging. If a thief is going to steal your wallet no matter what you say, then they have taken away your normative power to consent to the mugging. Of course, they have not yet taken away *all* your powers; you can still choose between your money or your life, for instance. Or you can exercise your physical powers to fight or to run. These powers remain available to you. But because the mugger has determined his will irrespective of what you consent or dissent to, he has stripped you of this specific power. Your remaining choices are now to fight, to flee, or to hand over your wallet. The thing you cannot do, however, is consent or dissent.

Here we can begin to see an explanatory virtue of the relational theory. On the widespread notion that consent is a fundamentally *individualistic* power, the consent-giver's obligations are clear. But if successful consent requires nothing from its recipient, it's less clear what duties obtain for the consent-receiver. What must *another* do in order to facilitate the exercise of *my* powers of consent?

The relational theory has no trouble explaining the duties of consent-receivers. For any Rights-Violating-Action, we must have the ability to consent or dissent if our subsequent engagement in that activity is to respect our autonomy. If we lack one of these options, we lack the other. As O'Neill has suggested, "those closely involved in or affected by a proposal have no genuine possibility of dissent unless they can avert or modify the action by withholding consent and collaboration. If those closely affected have the possibility of dissent, they will be able to require an initiator of action either to modify the action, or to desist or to override the dissent" (1985, 259). Because consent and dissent are two sides of the same normative coin, I suggest the same must hold for consent. If my consent is to be valid, then I must have the ability to dissent and to have that dissent be effective in determining what you do with me. In other words, consent must be a two-way power; if one has the power to consent, then one must have the power to dissent (and vice versa). This is what makes the post-consent activity *one's own*—they have entered into the activity of their own volition, and they had the ability to refrain from the activity had they wanted to.

Here we can see the moral duties of those who request and receive consent. They must act in a manner which facilitates this autonomous choice. As O'Neill rightly points out, "to treat others as persons we must allow them *the possibility either to consent to or to dissent from what is proposed*. The initiator of action can ensure this; but the consenting cannot be up to him or her" (1985, 259). This final line points to the *joint* nature of successful consent; the party who proposes a Rights-Violation-Activity must also make it clear that the other's consent *or* dissent will be respected. Indeed, as O'Neill suggests, for the domain of RVA's, a "morally significant aspect of treating others as persons may lie in making their consent or dissent possible" (1985, 259). A failure to fulfill this duty explains the particular kind of wrong involved in violating another's consent. When one invalidates another's consent, they likely do her great harm. But this is not the only wrong committed: because violating another's consent removes her ability to govern what happens to her, this violation is a more basic attack on her autonomy itself.

This discussion raises the topic of threats and why they (sometimes) undermine consent. I suggest the relational theory can help us better understand when, why, and how threats invalidate consent. In essence, a threat is the act of making explicit that someone's consent will not pass the counterfactual efficacy test. When the mugger points his gun towards you and says "your money or your life," he is making explicit that your consent to being robbed will not determine what he does. In other words, when threats undermine consent, they do so because they undermine condition (ii): that what the consent-receiver does with respect to Rights-Violating-Action ϕ is determined by the issuer's consent or dissent.

In its general form, a threat is the act of communicating that whether or not a victim consents to ϕ , the aggressor will proceed in ϕ -ing. Thus, the victim's choice is not between ϕ and not- ϕ . That choice has been stripped from them. Their choice is now between ϕ or $\phi+\varphi$, where φ is some additional harm done to the victim by way of pursuing ϕ .³⁷ This is precisely what the clichéd phrase "we can do this the easy way or the hard way" so succinctly explicates. For instance, a mugger's threat communicates that ϕ (the robbery) will be done regardless of your consent. Your choice is now between ϕ and $\phi+\varphi$ —being robbed or being shot and robbed. Likewise, when someone's sexual consent is undermined with an explicit threat, the rapist makes it clear that intercourse will be occurring, and the victim's options are now unjustly limited to whether the intercourse is violent or not.³⁸

Coercion can undermine consent in the same manner: "An initiator who presses on in the face of actively expressed dissent undercuts any genuine possibility of refusing the proposal...any 'consent' the proposal then receives will be spurious" (O'Neill 1985, 259). When sufficiently strong pressure is applied in the face of dissent, it serves to undermine the efficacy of that dissent. Recall the fundamental aim of consent/dissent: to determine what you do with me. So when the initiator of action presses on in the face of dissent, they begin to make clear that one's dissent is or will be ineffective. Coercion makes it clear: there will be an unfair price to pay for failing to consent. So while coercion may not explicitly express that ϕ will occur either way, it does express that the dissenting party will have to

³⁷ There is a happy asymmetry between the person who will *not* ϕ to/with you no matter what you say vs the person who will ϕ to/with you no matter what you say. The first person isn't doing anything wrong or consent-undermining, because consent only grants a permission (or perhaps invitation) to proceed, while dissent maintains and asserts a claim right against another ϕ -ing, when ϕ is a Rights-Violating-Action. The counterfactual inefficacy in the first case is fine because a permission does not create a requirement to proceed. The counterfactual inefficacy in the latter case, however, undermines the possibility of successful consent or dissent.

³⁸ There's a way in which Woodard might agree with all of this and indeed use this line of thought to support her claim that moot consent (the consent that showed up in Case 4) is valid and successful consent. Whether the threat is actually issued, Woodard might say, delineates *valid* consent to morally bad sex from *invalid* consent to subsequently nonconsensual sex. Thus, what matters is whether the failure of the counterfactual efficacy test is made explicit to the victim. So moot consent is still valid consent because the victim does not know her consent is moot. However, I'm skeptical about the normatively significant line being drawn at an epistemic level. It's strange to think a commitment to 'have sex with Victoria no matter what she says or does' only undermines her power of consent if this commitment is verbalized. We must put ourselves in Victoria's shoes: when we respond affirmatively to someone's request for our consent, we take ourselves to be *determining* whether they proceed. But of course, if Victoria's consent is indeed moot, the constitutive aim of her consent is rendered impossible by her aggressor's commitment. What really matters is *whether* her dissent would be counterfactually determinative. So in Woodard's cases of "epistemically unsafe sex," I'm suggesting that what really matters is whether these women's fears are *right*.

overcome some unjust cost to dissent. Coercion often contains a more implicit message: perhaps not that ϕ will occur either way, but that the refuser's options are no longer simply ϕ or not- ϕ . Rather, their options have been unjustly restricted to ϕ or not- $\phi + \varphi$, where φ is some unfair additional cost of dissenting to ϕ .

Finally, the relational theory delivers the right conclusions in cases of 'sent but undelivered' consent. Consider the following case: "Suppose [Rashida] leaves a note permitting [Sharon] to borrow her motorbike. 'Feel free to take the Bonneville for a spin.' Suppose [Sharon] never sees the note" yet takes the motorbike out for a spin anyway (Manson 2016, 3330). Theories which focus on an *individual's* power will see this communication as consent. As long as Rashida had the right mental state when writing the note, mental views will see this as valid and successful consent. So too will communicative and hybrid views on which successful consent does not require uptake. Manson, a defender of a hybrid view, explains that "the act of consent—the change in the normative situation—is made when R performs the appropriate act with the aim of fulfilling the appropriate intention, whether or not S comes to know of that act, is another thing" (Manson 2016, 3330). Even though Rashida's consent didn't work in the way she intended, because she did consent, then when Sharon takes her bike, she doesn't wrong Rashida. Because Rashida waives her claim to complaint by consenting, when Sharon takes the bike, even though she didn't get the note, Rashida has no grounds on which to rightfully complain.

I disagree. This is *not* an instance of valid consent and, when Sharon takes the bike, she *does* wrong Rashida. Sharon didn't take the bike *because* Rashida said she could—she just took it. Sharon failed to show respect for Rashida's claim-right against her using her property without permission. Rashida's 'consent' played absolutely no role in determining what Sharon did. To see why, we can run the counterfactual efficacy test: had Rashida written on the note 'Please do not take my bike out for a spin!', this would not have changed Sharon's behavior. So Rashida's actual attempt to consent was unsuccessful because it did not result in Sharon borrowing the bike *because* she had Rashida's permission.

Consider things from Rashida's perspective. How would you feel upon learning that Sharon never got your note yet took the bike anyway? You'd be angry—and rightfully so. Sharon didn't take your bike on the basis of your consent. What you permitted her to do didn't factor into her behavior, and in this way, she shows you the same disrespect that explicitly going against your consent would show. The relational theory's ability to explain this situation is a virtue of the account. Views that see consent as an individualistic power will see the unread note as valid consent. Thus, most views will either say that resentment towards Sharon is inapt, or they will attempt to justify your resentment by saying that Sharon is blameworthy but didn't wrong you (Manson 2016, 3330-3331). The former is simply mistaken, and the latter is a theoretical highwire act. I suggest it is more straightforward to recognize that Sharon did wrong you because she overtly disrespected you.

Section 6: Mentalist Worries

Proponents of a mental or hybrid view will have lingering concerns. How can we make sense of consent without requiring *any* mental component? My argument seems to result in two related mentalist worries.

The first worry: How can one successfully consent to ϕ without knowing what ϕ is or entails? Surely knowledge of the act to which one consents is a minimal mental component of consent. While this assumption sounds plausible, I'm not entirely sure it's right. In other words, I'm not sure consent does in fact require knowledge of the consented-to-act. Agreeing to have sex or to someone entering your home doesn't require knowledge of what those activities entail. Of course, sometimes we have full and total knowledge of what we consent to, and we sometimes explicitly negotiate details in advance.³⁹ But often enough, we only have a rough idea, and the act itself becomes more of an exploration or improvisation. Sex is often like this, but so is inviting someone into your home; you may not be sure exactly how long they will stay, what they'll want to do, or how exactly things will unfold. And this is where the counterfactual efficacy of consent can be most important. Because consent can be revoked at any time, if the activity in question becomes something to which you no longer consent, then if your consent was successful, its withdrawal should also be an effective means of ending the activity. The dinner party guest who becomes a cruel drunk can be kicked out by the withdrawal of consent to remain in your home; the one-night-stand whose sexual desires become a dealbreaker should cease upon withdrawal of consent. In both cases, your original consent was given to a vague and open-ended activity, and when the details make the activity unwanted, then your consent should also entail the power to cease the activity through dissent.^{40 41}

³⁹ Of course, we often attempt to more specifically define the nature of the activity to which we consent. This coordination of the activity sometimes shows up as dealbreaker-talk; we often provide restrictions, qualifications, and specifications on the actions to which we consent. By dealbreaker, I mean a feature of the proposed RVA such that, the consent-offering party "is all things considered unwilling to engage in the [encounter], given that it has this feature" (Dougherty 2013, 719). Dougherty gives a mundane example of how a dealbreaker might invalidate consent: "suppose you tell me that you propose applying some chestnut brown hair dye to my hair. Excited at the prospect of Brunette locks, I say that you may do so. However, you have been mischievously concealing the fact that it is really pink dye. Here I only gave you a moral permission to give my hair a chestnut color. Since the pink color of the dye was a dealbreaker for me, I did not validly consent to what you did" (2013, 719). The idea of a dealbreaker should be a familiar one; we often qualify our consent with strict conditions: consenting to sex only with a condom, consenting to watching your dog only if it's friendly with other dogs, or consenting to having a dinner party only if you leave by midnight. The general form of such statements is something like 'I consent to ϕ only if ϕ includes feature X and/or excludes feature Y.' Tilton and Ichikawa, while they criticize Dougherty's dealbreaker views, make an argument that is friendly to my point here: that a crucial feature of valid consent is that the consented-to activity matches the activity undertaken (2021). My point is simply that while we often explicitly coordinate the details of the consented-to activity, this is neither required to consent nor is the fact that we sometimes do give dealbreakers a defense of mental theories. A purely mental view of dealbreakers themselves is nonsensical; how could I expect my dealbreaker to work if I never communicate it? Likewise, Tilton and Ichikawa's focus on consent matching the activity that actually occurs can only make sense on a communicative understanding. The details need *coordinating*, and that can only be possible with more than a mental state.

⁴⁰ The drunken guest who won't leave at your demand, for instance, is flagrantly invalidating your dissent to them remaining. Your normative power is inefficacious and must now be replaced by other powers—perhaps a physical power to throw them out or a political/legal power to have the police do so on your behalf.

⁴¹ Thus, consent aligns more closely with our other normative powers: "A promise does not serve to make known some already completed promise made in the mind, it aims at effecting the promise. A command does not seek to make known some already completed command in the mind. The same is true of consent" (Manson 2016, 3331). Promises, for instance, do not depend on the mental content of the promiser; it doesn't matter if the promiser lacked an intention for X to in fact occur, if the promiser secretly desires for X to fail, etc. If one issues a promise, then the promise has

The second worry: How can mental incapacitation remove the ability to validly consent if there is no mental component to consent? This is a serious concern which any theory of consent must explain.⁴² In response, I suggest that we keep in mind the familiar distinction between *enabling conditions* to exercise a power vs the *exercise* of a power. What it means to have the right conditions for an action is not the same as the action itself. For me to have the ability to order food in Spanish, I must be able to speak Spanish. But the ability to do so is not the same as the exercise of that ability. Likewise, enabling conditions on consent are not the same thing as consent itself. Thus, prerequisites of the ability to consent can remain vitally important without themselves constituting the power to consent.

The power to consent requires certain agential capacities: the ability to determine one's will, freedom from sufficient coercion or threats, and other cognitive abilities like basic reasons-responsiveness. These may be necessary to successfully transform one's own normative situation, but they are not themselves constitutive features of consent. In the context of medical consent, Jaworska has suggested that these enabling conditions include (i) that the guiding attitude engendering consent aligns with that person's deep self, (ii) that the agent's action and guiding attitudes align, and (iii) that the acting party is reasons-responsive in the right way (2008). Here, I will not take a stand on precisely what prerequisites are required for the ability to consent. I only mean to indicate that there is a robust distinction between enabling conditions and the powers they enable. And if consent is the exercise of an ability in the same sense that other exercises of agency are, it should not be strange to think the same enabling conditions on free and responsible action also enable (but do not constitute) the ability to consent.⁴³

been made. Of course, the promiser's mental content has a role to play in the story, but not with respect to determining if a promise was made. The promiser's mental content tells us about whether they should have made the promise. If one's desires or will fail to align with the content of a promise, then perhaps one simply shouldn't make that promise. But a lack of desire or will certainly doesn't mean that promise, once made, is somewhat invalid.

⁴² Alcott has argued, for instance, that consent is the improper tool to understand certain wrongs like the sexual assault of children. Consent cannot explain the wrongfulness of these cases, Alcott argues, because in many cases the child did consent to their assault: "consent was produced by structural conditions of economic dependency, or was caused by emotional confusion, or was given in an attempt to help or protect others in the family" (2018, 81). I think it's a confusion to view the 'consent' of a young child undergoing emotional and physical abuse as valid, successful consent. But to say this does not require a mental or hybrid view of consent. For one, it's not at all clear that an abused child's consent would pass the counterfactual efficacy test. But at a deeper level, children are simply not capable of being full agents and are thus incapable of engaging in all sorts of actions, including consent. They fail to meet the enabling conditions to exercise free and responsible agency and therefore cannot consent.

⁴³ There seems to be a Frankfurt-style incongruity between consent and free action on my view. Why, following Frankfurt (1969), does free and responsible action not require alternate possibilities (the ability to do otherwise), while consent requires the ability to do otherwise *and* for either consent or dissent to be counterfactually efficacious? In short, this is an incongruity, but it's one I'm happy to embrace. Following Frankfurt (1971), I think it's right that we want our higher-order volition to determine what it is we intentionally do. We want to act in accordance with our own first and second order desires. (This is why Frankfurt suggests the unwilling addict is less of an agent than the willing addict.) It's natural to think our consent should follow this pattern; we want our consent to align with our volition so that what we consent to is that which is that which we actually decide we want to consent to. But if we decided otherwise, and chose instead to dissent, then we would of course desire for that dissent to be normatively effective just like our consent would be. So the question of consent's success (its causal efficacy on the other person) is not necessarily the same question as that of free action—what we choose to consent or dissent to. The content of our will doesn't seem to require that we be able to will differently. But *if we did will otherwise*, then we want *that* will to also be effective in determining what the other does with us. We want the power to freely consent or dissent and for either choice to be effective in determining how

Conclusion

In this article, I have attempted to bring our theorizing into alignment with our actual practices. I've argued that we must remember what consent aims to *do* if we are to understand what consent *is*. When I consent to an activity with you, my consent has a constitutive aim: to determine whether you proceed. If I consent, I waive you forward. And if I dissent, I aim to halt your advance. But in both cases, my consent or dissent targets our joint activity. I have argued that we must remember that consent is fundamentally *relational*, pushing back against the consensus that consent is a fundamentally *individualistic* power. Mental, hybrid, and communicative views miss this critical function of consent. In their focus on an individual's normative powers, these views forget that consent is a two-way street. My consent is about *me*, it's about *you*, and it's about what we do *together*.

To remedy this confusion, I have proposed the Relational Theory of Consent. I've argued that consent must be a communicative act which succeeds in generating the right sort of volitional uptake in its recipient—namely, that the consent-receiver's action be determined by the other's consent/dissent. Thus, if I successfully consent to your proposed activity, then you must take yourself to be permitted in proceeding *because* I consented. And if I were to withdraw my consent, then you must halt your action on this basis. The relational theory of consent returns to the fundamental aim of our actual consent practices: when we give or withhold our consent, we are aiming to determine what another person does with or to us. This is the fundamentally relational nature of our normative power to consent. Because consent is a collaborative undertaking, the successful exercise of consent's normative power cannot occur without cooperation by both consent giver *and* receiver.

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another treats us. The content of my will is not at question in matters of consent. Instead, the issue of successful consent is settled by whether my consent, *whatever my will may be*, determines how you proceed in treating me.

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