

THE VALUE OF UPTAKE

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MUCH of the recent philosophical literature on consent focuses on a debate between two kinds of views about what consent is. So-called mental views of consent claim that consent consists in a mental state or an attitude of some kind.¹ According to these views, having the right kind of mental state or attitude is both necessary and sufficient for morally transformative, successful consent.² “Behavioral” views of consent deny that a mental state is sufficient—something more than that is necessary for consent to work its “moral magic.” According to one popular view, the additional element is communication—for example, a verbal yes, a nod, or an inviting gesture.³

Arguments for both types of views often appeal to ideas about what the *function* of consent is. Proponents of mental views tend to emphasize how consent functions to extend the consent giver’s individual autonomy or control over her normative boundaries with others. Proponents of behavioral views sometimes emphasize how consent serves as a tool that lets us coordinate our actions with other people. These different ideas about what consent *does for us*—what its function is—motivate different views of what consent is and what it takes to give morally transformative consent.

My argument here will follow a similar strategy. I will argue that consent has an often-overlooked *relationship-shaping* function: acts of consent can shape our relationships with others directly when we gain permissions that are constitutive of a new kind of relationship. Indirectly, acts of consent can create trust, intimacy, and other preconditions of personal relationships. I will then argue that this function grounds an argument for a claim about what it takes to give

- 1 Alexander, “The Moral Magic of Consent (II)” ; Alexander, Hurd, and Westen, “Consent Does Not Require Communication” ; Ferzan, “Consent, Culpability, and the Law of Rape” ; and Hurd, “The Moral Magic of Consent.”
- 2 When A’s consent to B’s ϕ -ing is successful, or morally transformative, it releases B from an obligation not to ϕ . An attempt to consent can be undermined by factors such as coercion, deception, or incapacitation (e.g., due to intoxication)—in what follows, and for all cases discussed below, I will assume that none of these undermining conditions are present (consent is given voluntarily, with sufficient information, and so on).
- 3 Dougherty, “Yes Means Yes.”

morally transformative consent: when consent serves its relationship-shaping function, an act of consent needs to be cosigned by both parties. More precisely: when *A*'s consent to *B*'s ϕ -ing plays a relationship-shaping function, *A*'s consent needs to be *accepted* by *B* in order for it to be morally transformative (where ϕ is an action).

This argument has an upshot for the debate between mental and behavioral views of consent. Mental views of consent deny that consent requires acceptance by its recipient. Some (but not all) behavioral views also deny that consent requires acceptance. So there are views in both camps that are committed to saying that in all cases, a consent giver can *unilaterally* change her moral boundaries with others. If my argument here is correct, this is a mistake. Consent cannot be unilateral if it alters the parties' relationship.

I will start by discussing the backdrop of the debate between mental and behavioral views of consent in some more detail and explaining the distinction between unilateral and bilateral conceptions of consent. I will then explain consent's relationship-shaping function and show how it creates a need for acceptance, uptake, or cooperation of some kind on the consent recipient's part. We will want to know next what precisely is required—what *is* uptake? The answer to this question depends in part on our background view of consent and our motivations for it.

1. TWO DISTINCTIONS IN THE ONTOLOGY OF CONSENT

Sometimes when we talk about consent, it can be unclear whether we are talking about a speech act, a legal concept, or something else. When I talk about consent here, I am talking about a normative power.⁴ More precisely, I am talking about the normative power that you exercise when you permit someone else's doing something by releasing that person from an obligation to not do that thing.⁵

- 4 An anonymous reviewer has suggested that it may be a mistake for theorists of consent to assume that consent is a unified phenomenon at all. I doubt that the fact that "consent" means different things in different domains (philosophy of language, legal discourse, everyday parlance, etc.) gives us good reason to think that the *normative power* of consent is not a unified phenomenon. I believe it is: its essential feature is that it releases others from obligations. The reviewer may have in mind the idea that the normative power of consent looks different in different contexts, and I wholeheartedly agree: what it takes to release someone from an obligation they owe to us can depend heavily on things such as the parties' relationship, the risks of the interaction, and the stringency of the obligation in question.
- 5 More precisely, you do this by releasing that person from an obligation *owed to you, the consent giver*, to not do that thing. Consent operates on what are sometimes called "directed"

This notion of consent may not cover everything that gets called “consent” in everyday parlance or in specialized domains such as the legal realm. For example, in everyday conversations about sexual consent, the word “consensual” is sometimes just meant to mean “morally permissible.” This does not track the normative power of consent, because consent alone is not enough to guarantee that any encounter—sexual or otherwise—is morally permissible all things considered.⁶ What matters is that what I talk about when I talk about consent here does track what is at issue in the debate between mental and behavioral views—let us turn to these now.⁷

The primary point of disagreement between mental and behavioral views is whether morally transformative consent requires an expression of consent in the consent giver’s outward behavior. According to mental views, it does not; the right mental state—provided that the agent is not coerced or deceived or in a state where she is incompetent to consent—is necessary and sufficient for morally transformative consent.⁸ Different mental views of consent differ on the details of which mental state they take to be relevant to consent. For instance, according to Heidi Hurd, to consent to someone’s ϕ -ing is to intend that person’s ϕ -ing.⁹ Larry Alexander identifies consent with the “subjective

or “bipolar” obligations (Thompson, “What Is It to Wrong Someone?”; see also Darwall, “Bipolar Obligation”).

In some exceptional circumstances, a third party *A* can release *B* from their obligation to *C*. For example, next of kin can be authorized to consent to a medical procedure on behalf of a comatose patient. I will set scenarios such as this aside here, and focus on the more common case where the relevant obligation is owed to the consent giver herself.

It is common to assume that bipolar obligations correspond to rights (the thought has its origins in Wesley Newcomb Hohfeld’s influential analysis of legal rights in *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*. If they do, then consenting is the very same thing as waiving a right. In light of recent challenges to the idea that all bipolar obligations correspond to rights, I will refrain from saying that consent is the power to waive one’s rights against others. (See, e.g., Cornell, “Wrongs, Rights, and Third Parties”; and Martin, “Personal Bonds.”)

- 6 Suppose *A* consents to have sex with *B* and vice versa; their encounter may still be morally impermissible because it is harmful, or alienating, or infringes the rights of a third party (suppose *A* has promised *C* to never have sex with *B*). The same applies to interactions not involving sex.
- 7 See, e.g., Wertheimer, *Consent to Sexual Relations*; Hurd, “The Moral Magic of Consent”; Bolinger, “Moral Risk and Communicating Consent”; and Dougherty, *The Scope of Consent*.
- 8 Communicating that one has the relevant mental state can be instrumentally useful: it gives others good evidence that one has in fact consented. There may even be good reason to require that we secure good evidence of others’ consent before acting in ways that risk being wrong if consent is not given. But this is different from saying that the behavior or evidence of it constitutes part of the consent giver’s consent.
- 9 Hurd, “The Moral Magic of Consent,” 125–34.

mental state” of choosing to forgo a moral objection to another’s action.¹⁰ Kimberly Ferzan argues that consent is “willed acquiescence.”¹¹

There is a popular argument motivating mental views that appeals to the connection between consent and *autonomy*. By giving consent, a person can voluntarily choose to permit something that would otherwise wrong them. By revoking consent that was previously given, they can choose to impose an obligation on another person. The power to consent makes the consent giver, to use H. L. A. Hart’s memorable phrase, a “small-scale sovereign” over the obligations that others owe to them.¹² Hurd, for example, appeals to this function to argue that consent must consist in a mental state:

If autonomy resides in the ability to will the alteration of moral rights and duties, and if consent is normatively significant precisely because it constitutes an expression of autonomy, then it must be the case that to consent is to exercise the will. That is, it must be the case that consent constitutes a subjective mental state.¹³

We might wonder whether autonomy in fact resides in the alteration of one’s rights and others’ duties and whether consent is significant just because it plays this function. But even if we grant both of these points, there is a gap in the argument: outward behavior such as communication can also constitute an expression of the consent giver’s autonomy. The fact that consent functions as an expression of autonomy does not tell decisively in favor of a mental view of consent.¹⁴ Ferzan bridges this gap by claiming that “autonomy is best respected by recognizing that the consenter has it within his or her power to allow the boundary crossing simply by so choosing.”¹⁵ The thought here is that if consent is important because it expresses the consent giver’s ability to will the alteration of her rights and others’ duties, then it best expresses that ability if it is maximally within the consent giver’s control. Our mental operations are more fully within our control than our outward behavior. So consent consists in a mental state—or so the argument goes.¹⁶

10 Alexander, “The Moral Magic of Consent (II),” 165–66.

11 Ferzan, “Consent, Culpability, and the Law of Rape,” 402–7.

12 Hart, *Essays on Bentham*.

13 Hurd, “The Moral Magic of Consent,” 124–25.

14 Cf. Dougherty, *The Scope of Consent*, 25–26.

15 Ferzan, “Consent, Culpability, and the Law of Rape,” 405.

16 Due to space constraints, I am not going to evaluate how well this argument supports mental views over alternatives. See Dougherty’s *The Scope of Consent*, 30–34, for a more thorough assessment of this motivation for mental views. I will come back to the connection between consent and control in section 3.

Suppose now that *A* wants to consent to *B*'s doing something—say, entering *A*'s apartment. If consent consists in a mental state, then *B* has no part to play in this process. Consider, for example, Hurd's view: *A*'s consent consists in *A*'s intending that *B* enter *A*'s apartment. *A* can form this intention without any cooperation from *B*, without *B*'s knowledge, and with no regard to whether *B* wants to have permission from *A* to enter *A*'s apartment. This is a one-sided, *unilateral* conception of consent. So are other versions of the mental view: consent is given in the privacy of the consent giver's mind, and no one else needs to enter the picture.¹⁷

What about behavioral views? Behavioral views of consent reject the idea that a mental state is *sufficient* for morally transformative consent. As with mental views, many of the motivating arguments for behavioral views appeal to the functions of consent. For instance, consent plausibly serves to coordinate complex behavior between people and enables us to undertake joint projects with others. Consent that is publicly observable by its recipient and by third parties seems best suited for this purpose.¹⁸

Behavioral views may disagree over whether a mental state is *necessary*. Alan Wertheimer distinguishes between "hybrid" views, which consider both a mental state and an expression of consent in outward behavior necessary for consent, and "performative" views, which consider an expression of consent necessary and sufficient.¹⁹ As I am using the term here, both kinds of views count as behavioral views of consent.

Whether a given behavioral view is *unilateral* or not depends on what kind of behavior is necessary for morally transformative consent. Consider, for example, the following view:

Successful Communication View: *X* gives consent to *Y* if and only if *X* successfully communicates to *Y* that *X* is giving permission to *Y*.²⁰

17 An anonymous reviewer has suggested that there could be a view according to which morally transformative consent consists in (1) a mental state of some kind in the consent giver and (2) a justified belief in the recipient that the consent giver has the right kind of mental state. They suggest that a view such as this would be an example of a mental view that incorporates an uptake requirement. I have characterized mental views as views that are committed to the claim that a mental state is both necessary and sufficient for morally transformative consent. So strictly speaking, what we have here is neither a mental nor a behavioral view of consent. More importantly, I argue below that uptake is not a matter of the recipient knowing that a consent giver has done their part of the permission giving (section 2.3). The considerations I offer also rule out the proposal that uptake consists in a justified belief.

18 Cf., e.g., Bolinger, "Moral Risk and Communicating Consent," 181.

19 Wertheimer, *Consent to Sexual Relations*, 144–62.

20 Cf. Dougherty, *Scope of Consent*.

Successfully communicating anything to an audience takes some work from the latter. If I tell my friend about my day but they pay no attention to what I am saying, then our communication is not successful—it falls apart. The successful communication view is what I will call a *bilateral* view of consent: consent is not given in the privacy of the giver’s mind, and the sort of behavior that is necessary cannot be performed fully privately either. Compare this view to the following:

Pure Behavioral View: X gives consent to Y if and only if X deliberately engages in behavior B that indicates that X is releasing Y from a duty.²¹

Clarifying which behaviors “indicate that X is releasing Y from a duty” would tell us whether the pure behavioral view is a hybrid view or a performative view of consent.²² But whatever those behaviors are, the pure behavioral view does not require the consent giver’s release-indicating behavior to be observed by the consent recipient (or by anyone else for that matter), nor does it require anyone else to take part in the behavior (by, e.g., being a receptive audience). The pure behavioral view is unilateral, just like mental views of consent.

In asking what consent is, philosophers have tended to focus on whether consent needs to be communicated. The literature therefore tends to focus on the distinction between mental and behavioral views. The distinction between unilateral and bilateral views has not been previously appreciated in the literature, and it carves the space of existing views of consent in a novel way.

I want to argue next that we should favor a bilateral view of consent. I will not say which one—what I say here leaves open the question of which substantive view of consent is correct. I will argue in favor of bilateral views by arguing that consent sometimes needs to be taken up or accepted by the consent recipient.

2. AN ARGUMENT FOR UPTAKE

I will proceed in the following order. First, I will argue that consent has a function that many authors overlook. It has what I earlier called a relationship-shaping function—more on this in a moment. I will then show how this function

21 Dougherty, *The Scope of Consent*, 120. This claim is half of Dougherty’s “expression of will” view of consent: “X gives consent to Y if and only if either X gives consent to Y via a directive or X gives consent to Y via expressing permission” (*The Scope of Consent*, 124).

22 Verbal communication is one type of behavior that can indicate release from a duty, as is signing a waiver, putting out a public notice, a nod, and so forth. If deliberately engaging in these entails that the agent does so with a particular mental state, the view is a hybrid behavioral view of consent. If not, it is a performative view.

supports the claim that consent needs to be accepted by its recipient in order to be morally transformative, at the very least in cases where consent plays its relationship-shaping function. I will then ask what acceptance or uptake *is*—what does the recipient need to do in order to gain the permission that is offered to her?

2.1. *How Consent Shapes Relationships*

The kinds of relationships that I am primarily interested in here includes relationships such as friendship, romantic partnership, relationships between family members, relatives, and colleagues. Relationships such as these are of interest to moral philosophers because they affect what we have reason to do and what we owe to one another. Friends typically have reason to help one another with their projects, family members owe one another duties of care and support, and monogamous romantic partners owe it to one another not to have other romantic relationships.²³

In many cases, these reasons and obligations are not just an incidental feature of the relationship. They are an essential part of what it is to have that particular kind of relationship with someone. Most obviously, part of what it is to be in a monogamous relationship with another person is to owe it to that person not to have other romantic relationships. Likewise, you and I are friends in part because we have special reason in times of need to lend one another a hand, advice, or a shoulder to cry on. Family members who neither care for nor support one another may still be relatives, but their relationship is closer to one between strangers or acquaintances.

On the flip side of our relationship-based obligations are *permissions* that we have in virtue and as part of our special relationships. For example, casual touch, such as placing a hand on another person's shoulder, is typically permitted between friends and close acquaintances but not between strangers. A parent may be permitted to enter a child's bedroom to clean it up, but if a house guest were to do this, it would be an infringement of the child's privacy. People who are dating often give one another keys to their respective apartments, along with permission to enter when they please. And so on. The range of permissions

23 Not all friendship, families, and partnerships are alike, of course. Which permissions and which obligations I have toward a particular friend, for example, is a complicated function of things such as our own understanding of our friendship, the prevalent understanding of friendship in our culture(s), past interactions between us, explicit agreements, personal preferences, and much, much more. I am going to rely here on what I believe to be commonly accepted ideas about friendship, family, partnership, and so on. But I acknowledge that these ideas are culturally specific, and that personal relationships and their attendant obligations are very malleable.

between two people tells us a great deal about their boundaries and their relationship with one another.

Consider now consent. Consent is a normative power that, when it is morally transformative, gives the recipient permission to act in a way that would otherwise wrong the consent giver. Since personal relationships are characterized by both the obligations they impose on us and the permissions that they grant to us, acts of consent can affect what our relationships with others look like. To illustrate, consider this case:

Nonmonogamy: Colt and Larissa are a monogamous married couple. They are both interested in having romantic relationships with other people. After carefully discussing the matter, they both decide to give the other permission to date people outside of their marriage.

Granting one's monogamous partner permission to date other people is a clear and direct alteration of the existing relationship. In this case, the alteration is welcome to both parties: Colt and Larissa are both enthusiastic about their new nonmonogamous relationship. But we can easily imagine a case where this is not so—I will discuss a case like that in a moment. First, consider another case where consent alters a relationship but in a way that is less obvious:

Apartment Key: Fernanda and Robbie have been dating for a few months. Robbie offers Fernanda a key to his apartment and says: "You can have this, and feel free to come and go as you please."²⁴

As I mentioned earlier, people who are dating often give each other this particular permission. In modern Western dating culture, the act serves as a way of signaling a certain level of commitment to the relationship. The change that this permission might cause in Robbie and Fernanda's relationship is not as clear-cut as the change in *Nonmonogamy*. But accepting (or rejecting!) the permission clearly does make a difference to their relationship and takes it a step further.

24 This is a case of *unsolicited* consent (cf. Pallikkathayil, "Consent to Sexual Interactions"). Some authors have recently argued for notions of consent that rule out the possibility of unsolicited consent: Jonathan Ichikawa argues that attributions of consent (and nonconsent) are linguistically inappropriate unless the consent giver is responding to a request, order, or command, or otherwise acting at "someone else's behest" (Ichikawa, "Presupposition and Consent," 1). For a similar notion, see also Rebecca Kukla, "That's What She Said." As I understand their arguments, Kukla and Ichikawa are primarily interested in a very specific speech act, which they contend can only be performed in response to someone else's request. My focus here is on the power that we have to release others from the obligations they owe to us, and it seems clear to me that this power is operative in cases of unsolicited permission giving, just as it is in cases where one person requests a permission from another.

There is some room for negotiation in cases such as this. Fernanda could respond to Robbie's proposal by saying: "I am okay with having the key to your apartment, but I do not want that to change anything between us. I want to be very clear that taking this key does not mean that I want a serious relationship with you." This can go some way toward preventing the unwanted changes in their relationship, though "overriding" the conventional or cultural meaning of an act such as this is a delicate—and often difficult—thing to do.

Consider one more case outside of the romantic realm:

Friends: Phoebe and Monica are colleagues. Their past interactions have been strictly professional, but they have a good rapport. Phoebe is going through difficulties in her personal life. She approaches Monica and asks: "I know we do not really know each other like that, but is it okay if I ask you for advice about some personal stuff?"

Permission to share personal information and to ask personal questions is characteristic of friendship, which is a relationship that Phoebe and Monica do not yet have. If Monica allows Phoebe to share her worries with her, this changes things between them. Depending on how things unfold afterward, it may be the beginning of a path toward friendship.

These cases illustrate that consent has a relationship-shaping function: acts of consent can shape and alter our existing personal relationships. Unlike the other functions of consent mentioned so far (expressing autonomy, enabling cooperation), the role of consent in shaping personal relationships has received little attention in the literature.

Some authors, however, have argued that *promising* can shape, alter, and enable personal relationships. This should be expected, since consent and promising trade in the same currency of our obligations to one another: consent releases obligations; promises generate new ones. Seana Valentine Shiffrin, for example, argues that by making a promise to someone else, you at once make yourself accountable to the other person for acting as promised and grant them a kind of discretionary authority over whether you are bound to act as promised (the promisee, and only the promisee, can release a promissory obligation at will).²⁵ Without the power to make a binding promise, I could tell you that I *intend* to, say, return your book, or meet you for lunch. But I could not make myself accountable to you for doing so or give you a say in the matter. Shiffrin argues that being able to do this is a precondition of healthy personal

25 Shiffrin, "Promising, Intimate Relationships, and Conventionalism." See also Dougherty, "Yes Means Yes."

relationships in which we are not vulnerable to each other's whims and can relate to one another as moral equals.

It seems to me that consent can play a similar role in creating the preconditions of healthy personal relationships. The duties that other people owe to us typically serve to keep them at arm's length from our bodies, our property, and our sphere of private thoughts and decisions. Consent releases these duties and thereby brings others closer to us—into domains that are normally off-limits to other people. This can foster vulnerability; trust; closeness; and physical, emotional, and intellectual intimacy. These are the more indirect ways in which consent can enable personal relationships.²⁶

2.2. *The Need for Uptake*

Which relationships we have with the people in our lives matters to us a great deal. This may seem like an obvious point, but it is crucial to the argument that I want to make next. One reason why our relationships matter to us is this: the obligations that come with special relationships can be burdensome. For instance, becoming a parent often involves restructuring your daily life, habits, and routines (especially if material support such as parental leave and free childcare is not available), and parents sometimes have to set their own plans and wishes aside to provide for their children. On the flip side, special relationships can allow us to access goods that we could not enjoy otherwise: things like the joys of childrearing, friendship, and partnership—as well as more tangible goods such as the legal privileges of marriage and guardianship. Another reason why our relationships matter to us is that our relationships can reflect our deeply held values. For example, some people forgo marriage for political reasons or because they consider the institution of marriage outdated. Meanwhile, others desire to be married precisely because of the social meaning the institution has.

Given the overwhelming importance of special relationships, it seems to me that we would lack a very important power to shape our own lives if we lacked the power to form personal relationships or to shape our existing relationships. We have a strong interest in being able to shape our own lives in accordance with our values, desires, and plans; we therefore have a strong interest in having a say in what our relationships with other people look like. To be clear, this is not to say that we ought to have complete control or a unilateral say over which personal relationships we have and with whom we have them; I might wish very much to be someone's friend or lover, but I am not entitled to anyone's friendship or

26 By the same token, promises can also directly alter our relationships by bringing changes to the obligations that in part constitute those relationships; for example, a promise to be monogamous, or an exchange of wedding vows, is a direct alteration of the parties' relationship.

partnership.²⁷ But this much seems true: we have a very strong interest in having a say in which personal relationships we have and with whom we have them.²⁸

Given that acts of consent can affect our personal relationships, we have an equally strong interest in having a say in whether acts of consent that affect our relationships are morally transformative. This interest creates a need for the recipient's concurrence or cooperation in creating permissions through consent—a need for something like the recipient's uptake or acceptance.

In the next section, I will say more about what this notion of uptake or acceptance might be. First, let me illustrate the need for uptake by considering Apartment Key once more.

Apartment Key: Fernanda and Robbie have been dating for a few months. Robbie offers Fernanda a key to his apartment and says: “You can have this, and feel free to come and go as you please.”

Fernanda's having this permission would change her relationship with Robbie in ways we have already discussed. If she welcomes that change, all is well—but suppose she does not: suppose Fernanda does not want a serious relationship with Robbie, and so she does not want the permissions that are typically associated with a relationship of that kind. It seems clear that Fernanda should have a say in whether she gains the permission that is on offer here and that Robbie should not be in a position to impose it on her unilaterally.

This case illustrates how the relationship-shaping function of consent is in tension with our interest in having a say in the shape of our personal relationships. We can ease that tension by introducing a requirement for morally transformative consent, a requirement for the recipient's uptake, acceptance, or cooperation—in the next section, we will take a closer look at how this notion should be understood. Absent a requirement such as this, consent givers would be in a position to make unilateral changes to their relationships with others; this is the cost of adopting a unilateral conception of consent and a robust reason to favor a bilateral conception.

27 I also do not mean to say that we should always be able to disengage from existing personal relationships at will—except for relationships that are abusive, toxic, or otherwise harmful. If one party to a relationship wrongs the other or violates the norms of the relationship, the wronged party may be perfectly justified in unilaterally disengaging from the relationship. I have in mind something more like a healthy partnership where both parties are dependent on one another emotionally and materially; here, disengaging unilaterally risks harm to both parties.

28 What about involuntary relationships? We do not get to choose our relatives, neighbors, or colleagues. But we do get to (and have an interest in being able to) shape these relationships. That is to say, we have an interest in being able to negotiate and renegotiate our boundaries with the people we have involuntary relationships with.

Is there something else besides a requirement such as this that could ease the tension?²⁹ What we need here is something that prevents the consent giver from making unilateral changes to their relationship with the recipient. I have argued that changes to relationships sometimes happen through acts of consent—in other words, that consent has a relationship-shaping function. The solution, therefore, has to be a requirement on morally transformative consent that prevents the consent giver from unilaterally granting permissions.

2.3. *What Is Uptake?*

Let us take a closer look at what the requirement for acceptance, cooperation, or uptake should look like—from here on, I will call it the “uptake requirement” for short. Our first choice point is between what I will call *weak* and *strong* uptake requirements. A strong requirement applies to all cases of consent; a weak one is limited to a certain class of cases. So a strong uptake requirement for consent would say the following:

In order for *A*'s consent to *B*'s ϕ -ing to release *B* from an obligation not to ϕ , *B* must accept *A*'s attempt to consent.³⁰

I do not think that my argument here supports a strong uptake requirement such as this. The interest that the requirement is meant to protect is tied to consent's relationship-shaping function; this interest is only at stake in cases where an act of consent would alter the parties' relationship. So what I have said here supports the following weak uptake requirement:

In any case where *A*'s consent to *B*'s ϕ -ing would change the relationship between *A* and *B*, in order for *A*'s consent to release *B* from an obligation not to ϕ , *B* must accept *A*'s attempt to consent.

There may be other functions of consent and other interests of ours that support a requirement stronger than this. But note that even this weak requirement is incompatible with unilateral conceptions of consent. If consent is always given in the privacy of a person's mind or through behavior that involves no one

29 Thanks to an anonymous reviewer for pressing me to consider alternatives. I discuss one more alternative in note 32 below

30 In the literature on promising, it is widely accepted that there is a strong uptake requirement for promising (see, e.g., Thomson, *The Realm of Rights*; and Liberto, “Promises and the Backward Reach of Uptake”). Challenging this view, Seana Valentine Shiffrin grants that promisees have an interest in being able to avoid “the sometimes charged relation of moral debtor to the promisor,” but argues that protecting this interest only requires that the promisee be in a position to reject the promise (“Promising, Intimate Relationships, and Conventionalism,” 491).

but the consent giver, then in no case does it require the recipient's cooperation, acceptance, or uptake.

To understand the full scope of this weak uptake requirement, we would need to know *when* consent changes the relationship between the consent giver and the recipient. Whether a particular permission changes things for the pair will depend on a variety of factors, including which permissions the pair already have, how the particular permission would change things between the pair, their shared understanding of their existing relationship (if they have one) and of the meaning of the permission, and so on. To tell whether a relationship would be changed in any given case, we will have to rely on our understanding of details like these.³¹

Next, we will want to know what is meant by cooperation, acceptance, or uptake. What does the recipient need to do in order to complete an act of consent and gain the permission that is on offer?

Suppose *A* wants to consent to *B*'s ϕ -ing, and *B*'s gaining the permission to ϕ would constitute a change to their relationship. Consider first the following suggestion:

Uptake Is Knowledge of Offer: *B* accepts *A*'s offer to permit *B*'s ϕ -ing just in case *B* recognizes that *A* is attempting to permit *B*'s ϕ -ing.

The purpose of the uptake requirement is to protect the recipient's interest in having a say in which relationships she has and with whom she has them. This rules out the proposal that uptake is knowledge of the offer. Suppose that *B* recognizes what *A* is doing but the permission is unwelcome to *B*. If uptake is mere knowledge of *A*'s offer, then *B* cannot prevent *A*'s consent from going through. So this notion of uptake is too weak to protect *B*'s interest in having a say in whether *A*'s consent goes through or not.³²

31 Thanks to an anonymous reviewer for raising this question. The reviewer also raises the following case, which probes the scope of the requirement: suppose a stranger on a plane offers their neighbor part of their snack. Is there a relationship shift here, and should the neighbor have a say in whether they gain the permission to eat part of the snack? I think so: as I am imagining the case, the relationship between the two strangers would change in a way that makes it okay (and not intrusive or inappropriate) to do various other things that strangers sometimes do on planes, such as engage in casual conversation about the destination and purpose of their travel. The neighbor may prefer to keep their distance, and so has an interest in not gaining the permission through the stranger's say-so. Note that this explanation relies on the cultural norms of plane travel; this is an example of the sort of information that I think we have to rely on to determine whether and how a particular act of consent changes a relationship.

32 At the end of the previous section I raised the question of whether something other than an uptake requirement could protect the recipient's interest. An anonymous reviewer suggests the following: we could posit an additional normative power in the recipient that

Here is another suggestion:

Uptake Is Nonrejection: *B* accepts *A*'s offer to permit *B*'s ϕ -ing just in case *B* recognizes that *A* is attempting to permit *B*'s ϕ -ing and *B* does not reject *A*'s offer.³³

This would better protect *B*'s interest in having a say in whether *A*'s consent goes through. If *B* does not welcome the permission, she can reject it—provided that she has the ability and the opportunity to do so. Contrast this with the following slightly more demanding suggestion:

Uptake Is Communicated Willingness: *B* accepts *A*'s offer to permit *B*'s ϕ -ing just in case *B* recognizes that *A* is attempting to permit *B*'s ϕ -ing and *B* communicates to *A* that *B* is willing to be permitted to ϕ .

This would equally protect *B*'s interest but also require that *B* communicate to *A*—verbally or otherwise—that *B* is willing to change her permissions and the relationship in the relevant way.³⁴ Why might this be important?

Suppose we are already committed to a behavioral view of consent. Our reasons for thinking that giving consent requires an expression in the consent giver's behavior may extend to the recipient's acceptance. For instance, suppose we believe that consent needs to be communicated because it alters third parties' reasons for action: prior to *A*'s consent, third parties may be justified in intervening (or even obligated to intervene) with *B*'s ϕ -ing. If *A* has consented to *B*'s ϕ -ing, then third parties are not justified in intervening. Unless *A*'s consent is publicly observable, third parties will not be able to reliably track their reasons for action. And unless acceptance is also publicly observable, third parties will not be able to reliably track whether *B* has the relevant permission, and so will not be able to reliably track their reasons for action.

enables them to reverse the effect of another person's consent and hand back an unwanted permission at any time. I think that the same considerations that rule out the "uptake is knowledge" proposal cause problems for this suggestion: consent would still go through without the recipient's participation and regardless of whether the recipient welcomes it. The power to reverse the effect of unilateral consent does not prevent the consent giver from giving consent and making changes to relationships unilaterally. In addition, the normative power of reversing someone else's consent would itself be a power that can alter relationships, and so would be in tension with the consent giver's interest in having a say in her relationships. Positing an uptake requirement on consent offers a much simpler solution to the problem at hand.

33 Thanks to an anonymous reviewer for prompting me to consider this proposal.

34 Sometimes acting as one has been permitted to act may be enough to communicate that the permission has been accepted.

Now, I do not intend to argue here that we should adopt a behavioral view of consent for this reason. I bring this up to illustrate that our view of what uptake is may depend on other commitments we have about consent or its functions. The interest that generates the need for an uptake requirement rules out the proposal that uptake is just recognizing that another is giving consent, but it alone does not decide between more robust notions of uptake.

3. INTERLUDE: CONSENT AND CONTROL

I want to return briefly to the idea that consent functions to extend and expresses the consent giver's autonomy. I explained earlier how this function is used to motivate mental views of consent. I also explained that mental views are unilateral: if consent consists in a mental state, then no one but the consent giver needs to enter the picture.

I have argued against unilateral conceptions of consent by way of arguing for an uptake requirement for consent. You may wonder at this point whether the emerging bilateral conception of consent still retains a connection to the consent giver's autonomy, or whether an uptake requirement takes consent too far out of the consent giver's control. Tom Dougherty has raised a concern along these lines, writing:

When we discussed the Mental View, we encountered the idea that consent enables a consent giver to exercise autonomous control over their normative boundaries. We also saw that if consent requires uptake with the consent-receiver, then the consent-giver is less able to exercise this autonomous control. Therefore, there is a tension between the ideal that the consent-receiver has control over their consent and the ideal that the consent-giver and the consent-receiver both know whether consent has been given.³⁵

This seems correct, but I do not think we should be too worried about this tension. Focusing exclusively on the consent *giver's* control over their normative boundaries obscures the fact that what those boundaries look like can matter a great deal to the consent *recipient*. In criticizing a behavioral account of consent, Alexander, Hurd, and Peter Westen—all defenders of mental views—write:

Consent . . . merely removes a moral (and sometimes legal) barrier. If it is not communicated, . . . those to whom consent is given may not realize that those barriers are down and that they have permission to cross the

35 Dougherty, *The Scope of Consent*, 60.

consenter's moral (and legal) boundary. But so what? They have no duty to cross, only a permission to do so.³⁶

Much of section 2.2 was dedicated to answering this rhetorical "So what?" Our duties matter to us, but so do our permissions. Unless we keep this in mind, it is easy to overlook the ways our autonomy, when we are the recipients of others' consent, is hampered if consent can be given unilaterally.

4. OBJECTION: REVOKING CONSENT (UNILATERALLY)

Before concluding, I want to consider an objection to uptake requirements for consent. The objection states that because consent can be revoked unilaterally, it should also be given unilaterally. Consider the following case:

Revocation: Angie has moved to a new country and is making friends. In her home country, it is customary to linger after a dinner party while the host clears the dishes. In her new country of residence, clearing the dishes signals that the party is over and guests should leave. At a party at Betty's, Betty starts to clear the dishes. Angie thinks the party is still on and lingers for longer than Betty would like.³⁷

By starting to clear the dishes, Betty tries to revoke her consent to Angie's presence in her house. If Angie's uptake is needed for Betty to revoke her consent, then Betty cannot do so unilaterally. But we do tend to think that consent can be revoked by the consent giver at any point, at their will, for any reason—especially in the context of sexual consent and other vulnerable or high-stakes interactions. Dougherty cites this as a reason to reject uptake requirements for consent, and writes:

In so far as we have reason to expect that giving consent operates similarly to revoking consent, we have reason to reject the Uptake [requirement].³⁸

Do we have reason to expect that giving consent operates like revoking consent? Dougherty does not provide any such reason, and proponents of uptake might take cases such as *Revocation* as evidence that revoking consent does *not* operate like giving consent. More importantly, I think that there is independent reason to think that revoking consent does not operate like giving consent: revocation has its own functions, and these functions are best served

36 Alexander, Hurd, and Westen, "Consent Does Not Require Communication," 657.

37 Cf. Dougherty, *The Scope of Consent*, 78.

38 Dougherty, *The Scope of Consent*, 79.

if revocation can be done unilaterally. The power to revoke previously given consent is the power to reassert or reestablish a normative boundary and to thereby create distance between oneself and others. Unlike consent, which can be used to enable cooperation and intimacy, revocation serves primarily a *protective* function. We use this power to reassert our rights and our boundaries when a previously consented-to act becomes unwanted or unwelcome, or when a consent recipient's behavior becomes hostile or harmful. This function could hardly be served if revoking consent did require the recipient's cooperation. That said, this rationale for unilateral revocation does not speak against the weak uptake requirement I have argued for here—in fact, it does not threaten even a strong uptake requirement for all cases of consent.

5. CONCLUSION

I have argued that consent has a relationship-shaping function and that this function supports the following requirement for morally transformative consent:

In any case where *A*'s consent to *B*'s ϕ -ing would change the relationship between *A* and *B*, in order for *A*'s consent to release *B* from an obligation not to ϕ , *B* must accept *A*'s attempt to consent.

I have discussed the worry that this may take consent too far out of a consent giver's hands and the objection that since revoking consent requires no uptake, neither does giving consent. What I have not done here is offer a complete account of what uptake is; this work will have to be done against the backdrop of a substantive view of what consent is.

The question of uptake has brought to light a distinction that does not yet exist in the philosophical literature on consent: the distinction between unilateral and bilateral views of consent. If my argument here is correct, then we ought to favor a bilateral conception of consent and reject conceptions of consent as a unilateral normative power.³⁹

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