**Caring for Valid Sexual Consent**

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When sex is truly consensual, we would expect that it would not cause a feeling of violation.   
So, are we attending to all things that can compromise a person’s agency and the validity of their sexual consent?

1. Exploring a Neglected Condition for Consent

**The Traditional Autonomy-Compromising Conditions:** The ability to freely give and revoke consent, the capacity to understand and reason about what one is consenting to, and the ability to adequately use those capacities.

While necessary, focus inwardly on one's reasoning and expressive capacities, neglecting the significance of the attitudes and actions of the consent-receiver(s) for effective consent.

**The Trust Condition (*TC*):**

A validly consents B to do ϕ to them only if A trusts B to only ϕ with A's consent, and refrain from undertaking any actions beyond ϕ on A without further consent.

**The Proposed Solution:** Trusting the consent-receiver(s) to act only within the scope of their consent is a necessary condition for valid consent.

1. Trust as a Belief in One’s Commitment

* Trust as more than mere reliance (Marušić 2017; McLeod 2021)
* Trust encompassing the expectation that a person has concerning their co-agent's capacity and willingness to act according to consent.
* In this paper, I adopt Katherine Hawley’s In this paper, I adopt Katherine Hawley’s (2014, 2017) conception of trust: a belief that the trustee is competent and committed to doing what they are trusted to do.

1. Trust in Consent

Introducing trust as a condition for valid consent, the trustor and trustee become the consent-giver and the consent-receiver, respectively.

## **How Hawley’s account of trust helps us in thinking about consent?**

* No demands on the consent-receiver’s motives (2014, 16) , which would raise the bar too high, rendering many daily practices non-consensual.  
  *Examples: the valet, the physician, the dance-partner.*
* Acknowledges the consent-receiver(s) as active agents, willing (and accountable) participants in the shared activity in which we are engaged.
* The consent-receiver’s actions as a primary consideration in one’s decision to consent (2014, 16).

## **Justified Trust**

* The knowledge analogy.
* “Consent turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party” (Hurd 2004, 504)
* Just as knowledge acquires its normative stance by virtue of justification for holding a belief, consent has its normative power by virtue of the justification for trusting.
* Therefore, for appropriately fulfilling TC, A must properly (i.e., justifiably) trust B to only ϕ with A's consent, and refrain from undertaking any actions beyond ϕ on A without further consent.
* The problems of consent without justified trust:  
  (i) The effectiveness of consent is left to chance.  
  (ii) The plumber case.

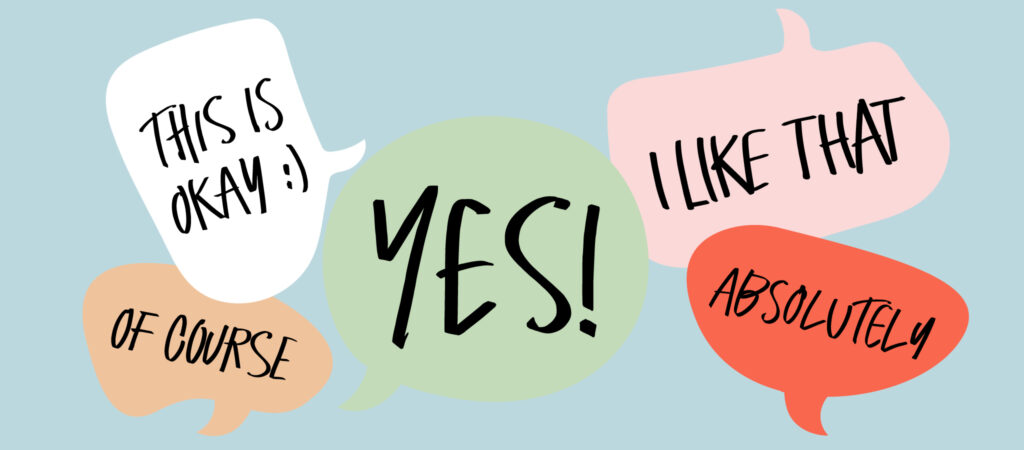
## ***TC* in our daily practices of consent**

* Examples: Landlord consent; Medical consent.

1. *TC* in Sexual Consent

## **The Non-Contractual Nature of Sex**

* Sexual consent implies terms, conditions, and boundaries, but also exhibits non-contractual aspects due to the lack of effective binding external factors, and the dynamic nature of sexual desires.
* The challenges in applying *TC* to sexual consent:   
  (i) The lack of binding external factors requires a commitment to the consensual character of the activity.  
  (ii) The vulnerability in sexual relationships, and the dynamic character of sexual desires requires the partner to be attentive and sensitive to us in a way that can’t be reduced to a commitment to a certain scope of actions.



## **Care Warranting Trust**

* The solution: Thinking about *TC* in terms of a general attentiveness, or “care” toward the consent-giver.
* Relevant conceptions of care:  
  Gheaus (2022): “a disposition to behave in specific ways: being attentive and sensitive to the needs of others and being willing to assist them.”  
  Held (2007): “attending to and fulfilling the needs of specific individuals for whom we assume responsibility.”
* Care encompassing negative and positive attention:  
  (i) Negative attention: Cessation of activity when the consent-receiver perceives the signs of the consent-giver’s unwillingness.  
  (ii) Positive attention: Understanding of the relevant desires and needs that delineate the scope of consent.

Special cases: Sex work, Undesired Consensual Sex (West, 2009, 238).

* This conception of Care is grounded in interconnectedness and interdependence. In this way, care is mutually present, and all parties must have a sensitivity and disposition to their partner’s agential capacities.

## **Dynamics of Care and Mutual Responsibility: Consent as a two-way street**

* The consent-giver’s duty: One must not give consent without trusting their partner’s compliance.
* The consent-receiver’s duty: Demonstrating their trustworthiness (in expression of care) and thus, warranting trust.

1. *Objections*

* The idea of care is incompatible with Hawley’s commitment account of trust.  
  - Response: Assessment of one’s will is often possible only under moral or emotional motivations towards the partner (or to people in general), but those are only contingent. See Tony & Karin’s case.
* The framework proposed places an overly paternalistic demand on sexual consent and jeopardizes sexual agency.  
  - Response: Interdependence entails symmetry, by two asymmetrical relations of care happening simultaneously in sexual acts.
* It sets the bar too high for valid consent, potentially labelling casual sex as non-consensual, or merely faulty sexual interactions as rape.  
  - Response: The bar moves depending on the dynamics we have with our partners and different pragmatic considerations, as well as our confidence in our ability to enforce consent. Furthermore, this is not a dichotomic system, and there might be different degrees of violating *TC*, not all of them constituting rape all the way down.

Works Cited

1. Gheaus, Anca. 2022. “Personal Relationship Goods.” In The Stanford Encyclopedia of Philosophy, edited by Edward N. Zalta and Uri Nodelman, Winter 2022. Metaphysics Research Lab, Stanford University. https://plato.stanford.edu/archives/win2022/entries/personal-relationship-goods/.
2. Hawley, Katherine. 2014. “Trust, Distrust and Commitment.” Noûs 48 (1): 1–20. https://doi.org/10.1111/nous.12000.
3. ———. 2019. How To Be Trustworthy. Oxford; New York, NY: Oxford University Press.
4. Held, Virginia. 2007. The Ethics of Care: Personal, Political, and Global. Oxford: Oxford University Press.
5. Marušić, Berislav. 2017. “Trust, Reliance and the Participant Stance.” Philosopher’s Imprint 17 (17). <http://hdl.handle.net/2027/spo.3521354.0017.017>.
6. McLeod, Carolyn. 2021. “Trust.” In The Stanford Encyclopedia of Philosophy, edited by Edward N. Zalta, Fall 2021. Metaphysics Research Lab, Stanford University. https://plato.stanford.edu/archives/fall2021/entriesrust/.
7. West, Robin. 2009. “Sex, Law, and Consent.” In The Ethics of Consent, edited by Franklin Miller and Alan Wertheimer, 1st ed., 221–50. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780195335149.003.0009>.

**Thank you!**

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