

Demystifying Consent

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1 The Standard View: Consent as a Normative Power

Consent is commonly thought of as having a special “normative power”. This notion describes an agent’s ability to “create and rescind normative requirements at will” (Watson 2009, 155). These powers supposedly give agents the ability to waive rights and neutralize the wrongfulness of certain actions.

- “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).
- Even those who reject “magic” terminology (e.g., Enoch 2020) maintain that valid consent determines **permissibility**.

My Thesis:

Negative claim: Rejection of the normative-powers view—Consensual and non-consensual actions differ not merely on permissibility, but also in kind.

Positive claim: Consent plays a modal role— It opens up *new possibilities* for action that were previously unavailable, which the consent-receiver must then properly realize.

2 The Ladder Case

You offer your neighbor Julia a 12-foot ladder for her decorations. She initially declines, but you leave it out to signal the offer stands. Julia later falls, suffers temporary memory loss, and forgets your interaction entirely. Dazed, she sees the ladder, has no recollection of your permission, and decides to take it anyway.

- Despite your valid consent, Julia’s action doesn’t seem to be truly consensual.
- Because she does not act on your permission, the act remains a theft that happens to coincide with your will—a “lucky theft.” (**The Gettier Analogy**)
- Alternative explanations: (i) Uptake; (ii) secondary wrongs

3 Just Different Actions

Consensual and non-consensual acts differ fundamentally in kind, not merely in permissibility.

- Julia’s action is fundamentally different in description of its consensual equivalent.
- **Events vs. Actions** (Ex: Caesar’s assassination)
Events: Physical occurrences described in physical/ causal terms (e.g., “taking a ladder”).
Actions: Driven by will, intentions, and reasons (e.g., “borrowing” vs. “stealing”).
- Feminist theory contests the assumption that rape is simply “**sex without consent**”
Rape is “qualitatively distinct from consensual sex” (Archard 2007, 382). The concept of violation is inherent in the physical act itself (Brison 2002, 6–7).

Three Distinct Structures:

- **Consensual:** “A consents to B ϕ -ing them, and B ϕ -s them.” (compound)
- **Non-consensual:** “B ψ -s A”
- **Consent-violation:** “A consents to B ϕ -ing them, but instead, B ψ -s them.” (compound)

4 Consent’s Modal Role

Instead of a normative power, consent plays a modal role: it opens possibilities for new types of actions previously unavailable.

- **Consent’s Practical Modal Role:** Making a consensual action possible, without changing the relevant rights and duties
- **The Parachute Analogy**
- **Availability vs. Realization**

5 Stakes and Implications

- Moral Realism: The view doesn’t claim mind-dependent duties
- Consensual Relationships: Consensuality without explicit consent
- Shifts moral weight onto the consent-receiver.