

Giving Consent

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Accepted 5 September 2024 | Published online 7 November 2024

Abstract

By giving consent, we sometimes give permission or make it the case that we are not wronged. What does it take for an act to be an act of consent? This is the question this paper deals with. The question does not presuppose the view that consent is a communicative act. For those who take it as a mental state, the question is what does it take to express consent? It will be argued that an act is an act of consent if and only if the consent-giver believes she gives someone permission to do or omit something by performing the act. A normative intention is not required for consent. It is further argued that this view also bears on the question of what falls within the scope of consent and shows how it differs from the evidential account advocated by Tom Dougherty. I also argue that the view defended in this paper does not imply – as some think – that the consent-receiver could wrong the consent-giver without being able to know that this is the case.

Keywords

Consent – normative powers – giving permission – wronging someone

1 Introduction

By giving consent, we sometimes turn a wrong into a permissible act. Emma's speech-act, "It would be fine with me if you took my bike," gives the consent-receiver the permission to take her bike. But what is it that transforms Emma's speech-act into an act of consent? The question does not presuppose the view

that consent is a communicative act. For those who think that consent is a mental act (see Ferzan 2018), the question is: “What does it take for a mental act to be an act of consent?” And for those who take consent to be a mental state (see Alexander 1996, 2014; Hurd 1996) the question is: “What does it take for an act to be an expression of consent?”¹ And for those who take consent to be a communicative act (Dougherty 2015), the question is: “What does it take for a communicative act to be an act of consent?”

Consider this case:

Physician case: Paula signs a consent form without having the intention to release the physician from her duty not to undertake the surgery. She signs the consent form because she wants to please the physician.

Paula signs the consent form thinking that the physician will take her signing of the consent form as permission to undertake the surgery. She signs the consent form even though she does not intend to release the physician from her duty not to undertake the surgery. Does Paula consent to the surgery even though she does not intend to release the physician from her duty not to undertake the surgery?

One can also think of cases where one does not know that one’s consent is required to make a certain act permissible. Consider Tom Dougherty’s patriarchal marriage example:

Patriarchal Marriage. Wife believes that her wedding vows have irrevocably waived her sexual rights against Husband. Several months into the marriage, Wife wants to have sex and says to Husband, ‘I know that you do not need my permission for sex, but would you like to have sex?’

DOUGHERTY 2021, 91

Wife thinks that Husband does not need her permission. She neither intends to release Husband from the duty not to have sex with her, “nor intends to communicate that she is releasing him from his duty” (Dougherty 2021, 92). Furthermore, she does not understand her speech-act as consent. However, on Dougherty’s view, “Wife consents to sex with Husband” (Dougherty 2021, 92). As Dougherty argues, she consents because she explicitly states that Husband is not under a duty not to have sex with her. Thus, she consents without intending and without knowing that she consents.

¹ As Alexander puts it: “Signification provides evidence of consent” (Alexander 2014, 105).

Here is another example:

Table case: Host and Neighbor live in apartments with a communal garden. The rental agreement says that only Host is allowed to use a garden table near to their door. Host falsely believes that the rental agreement says that Neighbor is also allowed to use the table. Host says to Neighbor, “Would you like to have a drink at the table with me tonight?”²

Host has no intention to release Neighbor from her duty because Host thinks that her consent is not required. In addition, Host does not know that her speech-act, “Would you like to have a drink at the table with me tonight?” will be perceived as consent. Neighbor thinks that Host knows that she is the owner of the garden table near to her door and takes Host’s speech-act as her consent. Does Host consent to Neighbor, even though she does not know that what she does will be taken as consent? Dougherty writes:

Host neither intends to release Neighbor from a duty not to use the table, nor intends to communicate that they are releasing Neighbor from this duty. Yet Host consents to Neighbor using the table

DOUGHERTY 2021, 91.

What does it take for an act to be an act of consent? This is the question which this paper will deal with. I will argue that an act is an act of consent if and only if the consent-giver believes that she gives someone permission to do or omit something by performing the act. I will call this the ‘belief model of giving consent’ (BMC). On the BMC, there is no normative intention required for consent. The BMC holds that whether consent is given is determined by the consent-giver’s belief that by performing a certain act she gives the addressee permission to do or to omit something.

The paper has four parts. The first part (II) presents the idea of how giving consent should be understood. The second part (III) discusses how the BMC bears on the question of the scope of consent and shows how it differs from Dougherty’s evidential account of consent. The third part (IV) deals with the objection that following the belief model of consent we have to accept the – as some think – implausible view that a consent-receiver might in certain cases wrong the consent-giver without being able to know that she wrongs her. It will be argued that this does not follow. The fourth part (V) concludes.

² This is a modified version of an example given by Dougherty (2021, 91).

2 Giving Permission

When we give consent, we exercise a normative power. By exercising this normative power we bring about a certain normative change. And we think that we succeed in bringing this normative change about by giving consent. This is nothing we hope for; it is something we believe to bring about by consent (see Koch 2018). It is valuable to us to have the power to create permissions. Its value is the reason why we have this power (Raz 1972; Renzo 2022). It is held to be of value to us for different reasons. It enables us a) to exert control over what others do to us (Tadros 2016, 222; Kleinig 2010)³ or b) to exert control over what others *may* do to us (normative control) (Hurd 1996, 124) (whether they may enter our legitimate domain) or c) because it enables us to have a non-instrumentally valuable form of interaction (Healey 2022).

Whatever it is that makes having the power of consent valuable, having the power is of value to us only if the consent-giver exerts partial control over its exercise. That we can exert control over giving consent in typical scenarios is a necessary condition for having the power to be of value to us. It is having the power to consent – not each particular exercise of the power – which is of value to us. We can give consent to things which we regret afterward having given consent to. But it is in our interest to have the power to release others from duties they have towards us. It is only good to have the power to consent if we exert control over its exercise, at least in typical, not necessarily in all possible scenarios. If we have the normative power because it is valuable to us to have this power, giving consent should be under our control. It must not – at least not in typical scenarios – be given by accident. Such accidental consent might happen in unusual cases. But the normative power of consent is only valuable if its exercise is largely under our control. If we could regularly give consent by accident, the normative power of consent would not be valuable for us. It would allow others to do things we would not want to allow them to do. The power we are interested in having is the power to be able to determine whether and how others may enter our moral domain, a power that entitles us to control our moral domain. It is an entitlement to, as Hallie Liberto puts it, “effective gatekeeping control” (Liberto 2022, 147). Thus, it cannot in typical scenarios be given by accident.⁴

3 As Tadros puts it: “We value having this control, and other people respecting our control, simply in itself. When we are subject to consent-sensitive duties, and we respect those duties, we are independent of each other, just in the sense that we can restrict bodily interference by others” (Tadros 2016, 222).

4 See also Renzo: “If the existence of the power to release others from obligations they owe us is explained by the fact that being able to exercise such power is valuable to us in some respect, it is only to be expected that the power will operate so as to facilitate the realization of whatever makes the exercise of the power valuable” (Renzo 2022, 52).

It must be noted that by consenting, we give permission or make it the case that we are not wronged by a certain act. As concerns the latter, consider this case. John is only allowed to borrow Jill's bike, which Jill owns with Jennifer, and Sibyl, if the two also consent to John borrowing the bike. If Jill has given her consent, but Jennifer and Sibyl have not yet been asked, John is not allowed to take the bike. The other two have to give their consent to make this permissible. Thus, Jill's consent alone does not make it permissible. Yet, her consent does make a moral difference. If John took the bike, he would commit a wrong, but he would not wrong Jill. John would wrong Jennifer and Sibyl. The moral change which Jill's consent brings about consists in making it the case that she is not wronged by John's taking the bike. Jill cannot release John from his duties towards the two other owners of the bike. Jill can only make it the case that she is not wronged by John.

Let us come back to the control we should be able to exert over our giving consent to others. What does it mean to have control over our giving consent? Some think that intentional control is required for consent (Manson 2016, 3327). On their view, one consents only if one performs a communicative act with the intention to release someone from a duty which she has towards the consent-giver. Others think that a normative intention is not required for consent (Dougherty 2021, 86). It is thus not clear what it means to exert control over your giving consent. It seems to me sensible to say that consent would not be controlled by the consent-giver if she consented by making a speech-act she would not understand as a permission-giving act. Consider this case. Sally visits another country. She does not know that people there say "No" to express consent. She is asked by someone whether she can borrow her bike. She says "No" without knowing that her speech-act will be taken as consent. If it was the case that she had consented to another person using her bike, her consent would not be under her control. She would have given consent by accident. But the power of consent should under ordinary circumstances be under our control. At most, only in exceptional cases should consent be given by accident. An adequate understanding of what it means to give consent should account for this fact. That is, it should meet the control requirement according to which consent cannot be given by accident under ordinary circumstances. And consent cannot be given by accident if consent is tied to the beliefs of the consent-giver. This leads us to the following proposal of how giving consent should be understood. I will call it the 'belief model of consent' (BMC):

(BMC) An act is an act of giving consent to do x only if the consent-giver believes that the act she intentionally performs gives the consent-receiver the permission to do x .⁵

On the BMC, you consent only if you believe the act you perform to be a permission-giving act. Sally's "No" is not consent on this view. An act is not consent if the consent-giver thinks to be doing something else than giving permission to someone. Thus, the BMC meets the control requirement as it has been stated above.

The BMC states a necessary condition for when something is an act of consent. Plausibly, there is another necessary condition for that. The consent-receiver has to be under a consent-sensitive duty with respect to the actions. For instance, suppose that you mistakenly believed this umbrella to be yours, someone asked to borrow it, and you said "Sure." Then you would not be giving consent, since you cannot make it permissible for them to take it. Your "Sure" is only consent if the umbrella is yours, and they can permissibly borrow it if and only if you consent. Actually, I think that these two conditions together are jointly sufficient for something to be an act of consent. A modified version of the BMC thus states:

(BMC*) An act is an act of giving consent to do x if and only if (i) x is such that the consent-receiver may permissibly do it if and only if she has the permission by the consent-giver, and (ii) the consent-giver believes that by performing the act she gives the consent-receiver the permission to do x .

Here is why I think the BMC* is true. An act of consent should meet the control requirement and apply to an action that is consent-requiring in the stated sense; otherwise, it would not be consent. Thus, the BMC* states two necessary conditions. And these conditions also seem to be jointly sufficient. One might question whether these two conditions are jointly sufficient because one might think that further conditions have to be met for an act to be an act of consent. One might argue that, for instance, a normative intention to release the consent-receiver from a duty is required. Or one might hold the view that the expression of a will to permit something is needed for an act to be an act of

5 David Owens understands consent as the communication of an intention of hereby making it the case that someone would not wrong by performing the consented act (Owens 2012, 166). On the BMC, consent is an act which the consent-receiver understands as a permission-giving act.

consent. The advocates of these views have to show that I only consent if one of these further conditions has been met for the act to be an act of consent. That is, they have to show that an act that meets the control requirement concerning a consent-requiring act is not enough for the act to be an act of consent. As long as this is not shown, one may hold the view that the two conditions mentioned are jointly sufficient for an act to be an act of consent.

Consider again the patriarchal marriage case. Wife thinks that Husband does not need her consent to be permitted to have sex with her. But if she takes her speech-act, "I would like to have sex with you," as permission, then she has consented to Husband having sex with her. She has consented even if she thinks that her husband does not need her consent. Consent is given by Wife if she takes her speech-act as a permission-giving act. By contrast, if Wife already believes that her husband is permitted to have sex with her, she is not giving consent to him having sex with her. Her speech-act expresses her desire to have sex with him. If what he does is permissible, this is thus not due to her consent.

Take Hallie Liberto's example.

Believing She is Underaged: Simone believes herself to be 15 years old when she is actually 18 ... Simone tells Priscilla that she is 18 and Priscilla believes it. Simone also enthusiastically verbalizes her objective in having sex with Priscilla ... However, Simone thinks to herself throughout the sexual act: "Priscilla is having sex with me, a minor, who cannot give morally valid consent"

LIBERTO 2022, 131

Has Simone given consent to Priscilla having sex with her? Simone believes that her speech-act "will render Priscilla's sexual advance respectful" (Liberto 2022, 137). Is this enough for the speech-act to be an act of consent? Liberto writes:

Simone performs a speech-act of consent to Priscilla that she believes will render Priscilla's sexual advance respectful, even though Simone believes herself to be unable to give Priscilla her sexual consent

LIBERTO 2022, 137.

Simone thinks that she cannot give morally valid consent. She believes that what she says renders Priscilla's advance respectful but she does not think that she has consented. Even though her speech-act rendered Priscilla's advance respectful, she thinks that Priscilla wronged her. Thus, she does not take her

speech-act to be a permission-giving act. “Rendering an act respectful” and “giving permission” are not the same. Thus, on the BMC, Simone has not consented to Priscilla’s sexual advance. Liberto writes:

Simone thinks to herself throughout the sexual act: “Priscilla is having sex with me, a minor, who cannot give morally valid consent. I am being wronged, even though this is my objective. Priscilla may not have sex with me without violating my rights. She doesn’t have any meaningful permission”

LIBERTO 2022, 131.

On the BMC, you consent if you believe that you give another permission by the act you perform. Compare this to Tom Dougherty’s “expression of the will” view (see Dougherty 2021, chap. 8 and 9). On this view, an agent can give consent either via directives or via expressing permissions. Both ways of giving consent are expressions of the consent-giver’s will for how the consent-receiver may act. Dougherty writes:

Since expressions of permission and directives are both expressions of the consent-giver’s will for how the consent-receiver acts, the argument provides a rationale for why these should be grouped together as ways in which we consent

DOUGHERTY 2021, 124.

On the “expression of the will” view, person X gives consent to person Y “if and only if X deliberately engages in behavior B that indicates that X is releasing Y from you are releasing the other person from a duty” (Dougherty 2021, 121). On the BMC, however, X might deliberately engage in behavior that indicates that X is releasing Y from a duty, without thereby giving consent. That is, X might deliberately perform an act that indicates that X is releasing Y from a duty without taking the act herself as permission giving. According to the BMC, whether someone has consented is on the BMC determined by the consent-giver’s beliefs. X gives consent to Y if X intentionally performs an act which X believes to be permission giving. X does not consent if X intentionally performs the act without taking it as a permission-giving act. Consider this example:

Ignorant patient. The patient does not know what consent forms are. The patient thinks that they are about verifying one’s identity. The physician says to the patient, “If you consent to the surgery, you should sign this

consent form.” The patient does not pay attention to what the physician is saying and signs the consent form.

The physician thinks that the patient has thereby given consent and has no reason to doubt this to be the case. However, the patient did not take her signing of the consent form as a permission-giving act. If the patient’s belief determines whether consent has been given, she has not consented to undergo medical treatment. Imagine that the physician finds out by chance that the patient had no idea of what consent forms are and thought that by signing the consent form she was verifying her identity. The finding is evidence for the belief that the patient had not consented to the surgery. The patient was meant to be doing something else. Finding out that the patient has no idea what consent forms are provides the physician with evidence that the patient did not consent to the medical treatment.

Some think that the control over your moral boundaries must be intentional control and that consent is only given if the consent-giver intends to give the consent-receiver the permission to do something by performing a certain act. Neil Manson, for instance, writes:

By the act of consent, R intends to set aside S’s reasons to refrain from acting in certain ways via S’s recognition that R intends to do so

MANSON 2016, 3327.⁶

Tom Dougherty, on the other hand, rejects what he calls the “intention condition”⁷:

(T)he following claim is false: Intention condition. An action A falls within the scope of the consent that X gives to Y only if X intends to release Y from their duty not to perform A

DOUGHERTY 2021, 86.

According to the BMC, no normative intention is required for consent. You give consent by performing a certain act only if you believe that you thereby

6 See also Miller/Wertheimer (2010, 85). David Owens holds that by consenting, you communicate the intention to change the normative situation (Owens 2012, 166). However, you might communicate this intention without actually having it. Thus, you could consent in Owen’s sense without having the intention to release the consent-receiver from a duty. I take this to be Owens’ view.

7 Renée Bollinger holds the same view; Bollinger (2019, 182, 190). Liberto writes: “On my account ... there is some intention required. But it is not an intention to consent ...” (Liberto 2022, 166).

give permission to someone to do or to omit something. You believe that by signing a consent form, you grant permission to the physician. By signing the consent form, you communicate that you release the physician from her duty not to undertake the medical treatment. You do not have to intend to release her from the duty. Consent can be given with different intentions. You might sign the consent form to please the physician or to release another person from her duty. Whatever your intention is, you consent if you believe that your act is a permission-giving act, provided that the act which you consent to is only permissible with your consent.

I have presented various cases where we were not sure whether consent has been given. Let me sum up what the BMC tells us about these cases. Paula consents to the physician undertaking the medical treatment because she understands her signing of the consent form as a permission-giving act. Wife consents to having sex with Husband if she takes the expression of her desire to have sex with her husband as a permission-giving act. I think that the same applies to the Host case. If Host takes her invitation as a permission-giving act, she gives consent to Neighbor. If Host just wants to express her desire to have a drink with Neighbor, she is not giving consent. Ignorant patient has not consented to the medical treatment even though the physician might have good reasons to think that Patient has consented to the treatment.

3 What You Consented To

The BMC bears on the question of what makes it the case that an act falls within the scope of consent. Consent has a certain scope. On the BMC, an agent gives consent if she takes her act to be permission giving. She gives consent to the consent-receiver doing *x*, if she believes that she gave the consent-receiver permission to do *x*. The consent-receiver might be justified in taking the consent-giver's act as permission to do *y* and not *x*. The consent-giver would not have permitted her to do *y*. She would have permitted her to do *x*.

Compare this with Dougherty's 'reliable evidential account' of the scope of consent. On Dougherty's view, the scope of consent is not determined solely by the consenter's beliefs.⁸ A has given consent to B's doing *x* if on a reasonable

8 This holds also for Renzo's view of consent according to which consent does not exclusively depend on "facts internal to us (i.e., whether we have formed certain mental states), the existence of full-blooded consent also depends on the world being a certain way (i.e., whether the intended recipients of our consent are connected to those mental states in the right way by tracking the signs that are evidence of those states)" (Renzo 2022, 70).

interpretation of the evidence B ought to conclude that A has consented. B needs reliable evidence that A consented to her doing x. Dougherty writes:

Evidence is reliable if and only if the consent-giver and the consent-receiver must reasonably accept that this evidence bears on how the consent ought to be interpreted

DOUGHERTY 2021, 140.

The interpretation of someone's behavior as consent should be supported by reliable evidence.⁹ There might be reliable evidence available to the consent-receiver which she "is not aware of ..." (Dougherty 2021, 140). The available evidence might not sufficiently support the conclusion that someone has consented to you doing x. If this is the case, you should "adequately investigate what someone meant to cover with their consent" (Dougherty 2021, 144). You have a duty to ask whether the consent-receiver really meant to consent to you doing x. The "Due Diligence Principle" tells us that someone has consented to you doing x, if and only if the enhanced reliable evidence supports your conclusion that she consented to you doing x. An act falls within the scope of the given consent if it meets the requirements of the "Due Diligence Principle" which Dougherty defines in the following way:

Due Diligence Principle. At time t, an action A falls within the scope of the consent that X gives to Y if and only if (i) at t, X gives consent or, prior to t, X has given consent and has not subsequently revoked this consent; (ii) at t, the available reliable evidence sufficiently supports the interpretation that X intends their consent-giving behavior to apply to Y performing A; and (iii) at t, the enhanced reliable evidence also sufficiently supports this interpretation

DOUGHERTY 2022, 149.

The proposal faces the following difficulty. Suppose that the enhanced reliable evidence supports the interpretation of the consent-receiver that A has consented to B doing x. However, A does not believe that she has given permission to B doing x. Thus, B's interpretation meets the "Due Diligence Principle." However, intuitively, A has not consented to B doing x. If B finds out by chance that A did not mean to consent to B doing x, but rather to B doing y,

⁹ Dougherty rejects the "available reliable evidence principle" because it is not able to capture the fact that the scope of consent might change over time (see Dougherty 2021, 148).

B has to revise her interpretation of what A has permitted her to do. B had to conclude that A did not consent to her doing x, but rather to her doing y.

4 Taking It as Consent and Wronging the Consenter

Emma consents to Brenda taking her bike. According to the BMC, Emma consents to Brenda taking her bike if she believes that her speech-act gives Brenda permission to do so, and she is not mistaken about what it is which she is or is not able to give permission about. The consent-giver consents to what she believes she gives permission to. There are cases, however, where the consent-receiver has a different understanding of the permission. Dougherty has the following example:

Parking. Driver's car is a model 206. Because Resident mistakenly thinks that Driver's car is a model 306, Resident is explicitly thinking of a model 306 when forming their intention about which duties to release Driver from. Consequently, Resident intends to release Driver from a duty not to park a model 306 in Resident's parking space. Resident expresses this intention by saying, 'You may park in my space.' Driver parks their model 206 there

DOUGHERTY 2021, 93.

Let us assume that Resident believes that she has given Driver permission to park her 306 model. However, Driver takes the utterance as permission to park her 206 model. Say that Driver has no reason to doubt that Resident's permission was meant by Resident as permission to park the 206 model.

What did Resident consent to? Dougherty argues that Resident consents to Driver parking her 206 model in Resident's parking space. He writes:

The public meaning of the consent-givers' behavior differs from their private intentions. With respect to determining the scope of their consent, the public meaning of their behavior wins the day. From this, it follows that the Intention Condition is false

DOUGHERTY 2021, 95.

The Intention Condition is – as we have already seen – false. However, the view that the public meaning of the behavior wins the day is also false.¹⁰ Resident

¹⁰ For a similar view see Bollinger (2019).

has given permission to Driver parking her 306 model in Resident's parking space. Resident has not given permission to park her 206 model. The scope of consent is determined by the consentor's belief. If Resident believes to have given permission to Driver parking the 306 model, the permission given is the permission to park the 306 model. If Resident had at the same time also given consent to parking the 206 model, she would not have known that and how she has given permission to park the 206 model. She would have given consent to Driver parking the 206 model by accident. Under ordinary circumstances, this should not be the case.

If this was true, Driver parking her 206 model would act without Resident's consent and would thus – as it seems – wrong Resident. Driver would not be culpable for doing so, insofar as she was justified in thinking that Resident consented to Driver parking her 206 model. Driver would not be culpable, but she would wrong Resident. Authors such as Larry Alexander think that it is sensible to distinguish in such cases between being culpable and wronging someone. These two things can come apart. Alexander writes:

An actor can commit a wrong without being culpable (because he mistakenly believes he has received consent). And he can be culpable without committing a wrong (because he does not believe he has received consent when in fact he has, or when he believes he has crossed another's boundary without consent when he has not in fact crossed that boundary)

ALEXANDER 2014, 103.

Some think that this is an implausible view. As Massimo Renzo puts it:

If you have good reasons to believe that I have consented to ϕ , when in fact I haven't, you are constantly at risk of becoming a wrongdoer

RENZO 2022, 54; see also BOLLINGER 2019.

This could seem to be a more plausible view: Driver is not just not culpable; Driver also does not wrong Resident by parking her 206 model in Resident's parking space. Resident has given Driver the permission to park his 206 model in Resident's parking space by uttering the sentence, "You may park in my space." It is, as Dougherty puts it, "the appropriate interpretation of this utterance" (Dougherty 2021, 93) that covers the parking of a model 206. "The public meaning of Resident's behavior determines what they consent to" (Dougherty 2021, 93). Thus, Resident has consented to Driver parking her 206 model and is thus neither culpable nor does she wrong Resident by doing so. It seems, however, that on the BMC, Driver is not culpable for parking the

206 model, but wrongs Resident by doing so. One might think that the ‘no wronging’ view is more plausible.

Is on the BMC what Driver does a wronging of Resident? Driver would wrong Resident if she flouted a duty she has towards Resident. Driver would not wrong Resident if she satisfied her epistemic duty to acquire reliable consent-supporting evidence and her moral duty not to park her car if she believes that Resident has not consented to her doing so. This can be the case even if Resident has not given her permission to park the 206 model.

The view is this: It is Driver’s duty not to park her car in Resident’s parking space without Resident’s consent. When is this duty satisfied? Driver could think that Resident has consented and be right or wrong about this. To avoid being wrong about this, Driver should check whether her belief that Resident has consented to her parking the 206 model is supported by reliable evidence. Driver satisfies her epistemic duty if she acquires sufficient reliable available evidence. Driver does not wrong Resident if Driver fulfills a) her epistemic duty to acquire reliable consent-supporting evidence, and b) her moral duty to avoid performing any act for which she believes that she lacks Resident’s valid consent. The satisfaction of these two conditions is all that she can do to fulfill the duty not to park her 206 model without Resident’s consent.

One might object here that Driver satisfies her duty not to park her car in Resident’s parking space if and only if Driver does not park her car in Resident’s parking space without Resident’s consent.¹¹ However, what Driver is able to do concerning her duty not to park her car in Resident’s parking space is this: She can acquire reliable consent-supporting evidence and avoid performing any act she believes Resident has not consented to. This is the duty which she can fulfill and thus what she ought to do. She acts wrongly if she does not fulfill this duty.

Her duty is satisfied if the following conditions are met (Consent condition (CD)):

(CD) Driver has a) sufficient reliable evidence for her belief that Resident has consented to her parking the 206 model in Resident’s parking space and avoids b) performing any act for which she believes that she lacks Resident’s valid consent.

If Driver satisfies (CD), she has the permission to park her 206 model. She has permission to park her car and does not wrong Resident by doing so. She does not wrong Resident, because she flouted no duty which she had towards

¹¹ I owe this objection to one of the reviewers.

Resident. She would have flouted a duty if she parked her 206 model without having reliable evidence for her belief that Resident consented to her doing so. But if her belief that Resident has consented is supported by sufficiently reliable evidence available to her, she has permission to park her 206 model.

One might object that this implies that permission can be given by accident and is thus incompatible with the control requirement. But this does not follow. Resident has not given permission to Driver parking the 206 model. Parking the 206 model in Resident's parking space is nevertheless permissible, but not in virtue of Resident's consent, rather in virtue of Driver satisfying the consent-related duty she has towards Resident. Driver does not wrong Resident if this is the case. This holds, even though Resident has not given permission to Driver parking her 206 model. The view is this: Driver does not wrong Resident if Driver fulfills a) her epistemic duty to acquire reliable consent-supporting evidence, and b) the moral duty not to perform any act she believes lacks Resident's valid consent.

This, however, will strike many as implausible. Consider the following example.¹² A homeowner has outdoor furniture on her front lawn, near the road. A malevolent neighbor puts a sign up saying, "I'm getting rid of all this furniture; please take it for free." A passer-by reads the sign and takes a garden table. Many will think that the property right of the homeowner has been violated by the passer-by, and the homeowner has thus been wronged. But this is not what my account of wronging tells us. If the passer-by had fulfilled her epistemic duty and would not have performed the act if she believed that the homeowner had not given consent, she would not have wronged the homeowner. However, this does not fit the intuitions which many have regarding such cases.

The passer-by takes the garden table without the homeowner's consent. This is not the way it should be and might be interpreted as a wronging of the homeowner. However, the passer-by has fulfilled the duties which she has towards the homeowner if she had no reason to expect anything suspicious about the sign and would not have taken the garden table if she had not been sure to have the homeowner's valid consent. Having fulfilled her duty, she has not wronged the homeowner. She has satisfied the duty that corresponds to the right the homeowner has against her, i.e., the duty of due diligence to act only if she has her consent. Of course, the passer-by is obliged to give the garden table back to the homeowner. The passer-by has not acquired new property because the rights of the parties have not been changed. The property right over the garden table has not been waived by the homeowner (she did not consent).

¹² I borrow this example from one of the reviewers.

Yet, the homeowner has not been wronged by the passer-by, even though the homeowner's garden table has been taken away without her consent. This is, for many, a reason to think that the homeowner was wronged. But the homeowner was not wronged by the passer-by, provided that the passer-by did not flout the duty (CD) she has towards the homeowner.

Let us come back to permission-giving acts. We can make acts permissible without giving permission.

Consider Victor Tadros' example:

Bike ii: X leaves the gas on in the flat that he shares with Y. The only way for Y to get back to the flat quickly enough to prevent a fire is to use X's bike

TADROS 2020, 303.

X's leaving on the gas in the flat makes the usage of the bike a permissible act. However, X did not give permission to Y to use her bike. X did not give permission to Y to use her bike as long as X did not take her leaving the gas on as a permission-giving act. But X made it permissible by leaving the gas on without giving permission. The example shows that we can make acts permissible without giving permission. X could have given permission to Y to use her bike by leaving the gas on. X would have done so if X believed that leaving the gas on is a permission-giving act. X would then have made it permissible to use her bike by giving permission. These two things might coincide, but they do not have to, as the example shows.

In the Driver case, the parking is made permissible by Driver satisfying her epistemic duty to acquire sufficiently reliable evidence for the belief that Resident has consented to her parking the 206 model and her moral duty not to perform any act which she believes lacks Resident's valid consent. If this is the case, Driver is not just not culpable, but she is also not wronging Resident. Thus, the BMC does not imply that you are not constantly at risk of wronging others by doing what they seem to have consented to, because you are not wronging the consent-giver if you satisfy the duties which you have towards her.

5 Conclusion

Consent cannot be given by accident. The BMC tells us why this is the case. Consent is tied to a certain belief of the consent-giver. On the BMC, A consents to B doing x if and only if A believes that the act which she performs is a

permission-giving act. A does not have to intend to give B permission to do x. A's consent might be based on other intentions. A might not believe herself to be giving B permission, but B could be justified in taking A's act as consent. On the BMC, A's act would not be consent. Some think that in such a case, B is not culpable if she does x, but wrongs A by doing x. I have argued for another view. If B's belief that Resident has consented to her parking the 206 model is based on reliable evidence, B does not wrong A. What she does is permissible, even though A has not given permission to B doing so.

Acknowledgments

The author would like to thank for conversations and comments: two anonymous reviewers, Francesca Bunkenborg, Susanne Boshammer, Tom Dougherty, Anna Goppel, Benjamin Kiesewetter, Felix Koch, Andreas Müller, Thomas Schmidt, members of the Research Colloquium at the Humboldt University Berlin, and members of the workshop on 'Sexual Consent' at the University of Zurich.

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