

CONSENTING UNDER COERCION: THE PARTIAL VALIDITY ACCOUNT

BY SAMEER BAJAJ AND PATRICK TOMLIN

How is the validity of our consent, and others' moral permission to act on our consent affected by coercion? Everyone agrees that in cases of two-party coercion—when X coerces Y to do something with or for X—the consent of the coerced is invalid, and the coercer is not permitted to act upon the consent they receive. But coercers and the recipients of consent are not always identical. Sometimes a victim, Y, agrees to do something to, with, or for Z because they are being coerced by X. Recently, several philosophers have argued that consent under third-party coercion can be fully valid. We argue that this view has troubling implications. We develop a novel view of consent in third-party coercion cases, which we call the partial validity account. The core idea is that, under severe coercion, Y's consent is at most partially valid—it reduces the strength of, but does not completely dissolve, Z's consent-sensitive duties. We argue that the partial validity account gets the right results in important cases and explains the moral factors at play better than alternative accounts.

Keywords: consent, coercion, permission, valid consent, partial validity, third-party.

I. INTRODUCTION

When is our consent valid? And how is the validity of our consent and others' moral permission to act on our consent affected by coercion? Here, we focus on third-party coercion: cases in which X coerces Y into doing something with, for, or to Z. One especially important context in which these issues arise involves people being coerced into having sex. As such, readers should please take care to note that throughout the paper we consider cases involving violent threats aimed at coercing persons into sex. We focus on such cases both because the literature concentrates on sexual consent and because any account of coercion and consent must get these extremely important cases correct.

It is obvious that coercion sometimes invalidates consent. Consider:

Two-Party Coercion: X tells Y that if she does not have sex with him he will kill her. Y agrees to have sex, and X has sex with Y.

Everyone agrees that in cases such as *Two-Party Coercion*, when a coercer receives consent, that consent is invalid, and the coercer is not permitted to act upon the consent they receive.¹ Similarly, when Dick Turpin offers his victims the choice of ‘your money or your life!’ he does not receive the money with their valid consent.²

But coercers and the recipients of coerced consent are not always identical. Sometimes a victim, Y, might agree to do something to, with, or for Z because they are being coerced by X. Consider this case:

Coercion to Perform: X tells Y that if she does not have sex with Z, he will kill her. Z overhears this. Y agrees to have sex with Z, and Z has sex with Y.³

Many of us will initially react to this case in the same way that we do to *Two-Party Coercion*: The consent that Y gives is not given freely, and so it is not valid consent. But several philosophers have recently challenged this initial judgment. While it is true that Y does not give her consent freely, it also seems that Z acts permissibly. Furthermore, Z would have acted impermissibly had Y *not* given her consent. Since the permissibility of Z’s actions relies on Y giving consent, Y’s consent, we might think, must be valid (Boonin (forthcoming); Dougherty 2021a; Gerver 2021; Liberto 2021; Tadros 2021).⁴

We agree with these philosophers that Z acts permissibly in *Coercion to Perform*, yet we are sceptical of the claim that Y issues fully valid consent. In part, this is because of what this claim implies in a different set of cases—those in which a third party coerces someone *to consent*. An example of this type of case is:

Coercion to Consent: X tells Y that if she refuses to consent to sex with Z, he will kill her. Z overhears this. Y agrees to have sex with Z, and Z has sex with Y.

In *Coercion to Perform*, X is trying to coerce Y into performing an act (sex with Z), to which consent stands as a potential barrier. Y can only avoid death by performing the act. In contrast, in *Coercion to Consent*, X is not coercing Y in order to get her to perform some further act. What X demands is that Y *consents*; Y will avert X’s threat simply by consenting to the act.

¹ Imagine that, in all our cases, X really will kill Y if she does not do as X wants, and that all parties know this. There is no way for anyone to stop X, either from issuing the threat or from carrying it out if Y does not comply.

² There is much philosophical discussion about the ontology of consent. Our focus here is on consent’s validity and the relationship between validity and permissibility. As such, we aim to stay as neutral as possible on the ontology of consent. Where we think our argument requires any commitment to the ontology of consent, we will make this as minimal as possible, will flag it, and will defend it.

³ This case is based on a case of Mollie Gerver’s, ‘Coerced Sex 3’. See Gerver (2021: 265).

⁴ Joseph Millum (2004) rejects this analysis, claiming that the consent is invalid even if the act is permissible.

It is clear that Z acts impermissibly in having sex with Y under *Coercion to Consent*, and that he seriously wrongs her. It also seems clear that in such circumstances, this is because Y has *not* issued valid consent to sex. The challenge for those who believe that Y gives fully valid consent to sex under third-party coercion in *Coercion to Perform* is to explain why she does not give fully valid consent in *Coercion to Consent*, also issued under third-party coercion. The crucial difference between the cases is whether sex is necessary to save Y's life. But the consequences of a consented-to act, while morally important, are not usually considered relevant to whether or not the consent is valid.

In this paper, we argue that explaining why Y's consent is valid in *Coercion to Perform* but not valid in *Coercion to Consent* is more difficult than has been recognized. We develop a novel view of the morality of consent in third-party coercion cases that provides a compelling explanation of these cases and what Z is permitted to do in them. We agree with our opponents' substantive judgments about permissibility. That is, we agree that in *Coercion to Perform*, Z acts permissibly and that this permissibility is conditional upon Y giving consent. We also agree that in *Coercion to Consent*, Z acts impermissibly and that this is explained by lack of valid consent. What we disagree with, ultimately, is that Y's consent is *fully* valid in *Coercion to Perform*, where we understand fully valid consent in the usual way as dissolving the relevant consent-sensitive duties.⁵

We defend an alternative view: Under severe coercion, Y's consent is at most partially valid—it reduces the strength of, *but does not completely dissolve*, Z's consent-sensitive duty not to have sex with her. Thus, the consent is not fully valid since these duties are not fully dissolved.⁶ Since Z has compelling reasons to have sex to save Y's life in *Coercion to Perform*, the act is all-things-considered permissible, *despite* violating the weakened consent-sensitive duty.

Both Y's consent and the life-saving effects of the sex are necessary conditions for permissibility in this case. Since the consent-sensitive duties are still present, the consent that Y issues is not sufficient for permission—Z must *also* appeal to the fact that the sex is necessary to save Y's life (or some other compelling reason). But were Y to refuse consent, the consent-sensitive duties would retain their full force, and Z would not be permitted to have sex with her, and so the permissibility of the conduct still turns on Y giving consent. Crucially, however, even though the sex is permissible, it still wrongs Y in a way that is related to the defective nature of the consent she gives. Because this view gets the right verdicts about permissibility and can explain the wrongs

⁵ Dougherty (2021a: 320) claims that 'by definition, consent is valid when it succeeds in releasing someone from a duty'.

⁶ Tom Dougherty (2021b) has recently argued that we should introduce the idea of 'partially valid' consent into our conceptual framework in order to cope with cases of minor two-party coercion. This is helpful to our argument here, as there are independent reasons, offered by Dougherty, to go beyond the 'orthodoxy' of considering consent's validity in binary terms. We discuss below (see Section VI) how our view relates to Dougherty's.

Y suffers, it provides a compelling alternative to both the common view that wrongful coercion always invalidates consent and the view that consent can be fully valid even if wrongfully coerced.

Since we agree with our opponents that Z acts permissibly under *Coercion to Perform* and does so *because of Y's* consent, there may be a concern that our dispute is merely verbal. Our opponents are happy to label this valid consent because it makes the difference in permissibility, while we are not happy to label it 'fully valid'. We do not think, however, that this dispute is merely verbal. Our differences concern the proper moral analysis of these cases and the role of consent in our moral thinking. The view we develop reconceptualizes the relationship between consent, consent-sensitive duties, wrongdoing, and permissibility. It may be that our opponents in the end agree with us or can modify their views to take account of ours. But that is not the same thing as a verbal dispute. What we say here has not been articulated by our opponents and is not available to them via a mere switch in terminology.

The paper proceeds as follows: In the following section, we outline the standard understanding of the relationship between valid consent, permissibility, and consent-sensitive duties. It is this picture that we believe consideration of third-party coercion cases should lead us to reject. We then turn our attention to two recent prominent attempts to justify the claims that Z acts permissibly in cases like *Coercion to Perform* but does not in cases like *Coercion to Consent*. In Section III, we examine Mollie Gerver's account and argue that it runs into problems. In Section IV, we turn our attention to Tom Dougherty's account, which is able to avoid certain problems with Gerver's account but faces others. In Section V, we raise a broader theoretical concern: Any account that claims that Y gives fully valid consent in *Coercion to Perform* can deliver the right conclusions about permissibility but cannot provide the right *moral description* of what happens in the cases—they fail to capture how the defective character of Y's consent morally taints the sex that Y and Z have. We argue that consent is not only concerned with who is permitted to do what but also with the wrongs we suffer. This insight provides the basis for our positive account of consent under third-party coercion, which we present and defend in Section VI. Section VII concludes.

II. VALID CONSENT AND DUTIES: THE STANDARD PICTURE

Consent often makes the difference to whether some conduct is permissible or impermissible. By giving valid consent, Ian can make it permissible for Tom to touch his hair when it otherwise would not have been. How does consent do this? The most common view is that valid consent *removes* or *dissolves* consent-sensitive duties that Tom has, thereby releasing Tom from those duties.

The standard picture defends these key claims:

- (1) Consent is either valid or invalid
- (2) Valid consent removes consent-sensitive duties
- (3) Valid consent can make otherwise impermissible conduct permissible, and it does so by the mechanism in (2), that is, by removing consent-sensitive duties.⁷

Consideration of third-party coercion cases should lead us to reject each of these claims. We will argue that the validity of consent comes in degrees, such that consent can be partially valid. Partially valid consent does not remove but rather *weakens* consent-sensitive duties without fully removing them, and partially valid consent can be the difference-maker between whether some conduct is permissible or impermissible. Therefore, our view fundamentally rethinks the nature of valid consent and its relationship to consent-sensitive duties and permissibility.

We focus on the relationship between consent and whether conduct is all-things-considered permissible. However, the relationship between consent and permissibility is a complex one, even before we get to issues of third-party coercion. In order to help us be as clear as possible, we will work with the following concepts:

Permissibility—whether the conduct is all-things-considered morally permitted.

Wronging in a consent-sensitive manner—where conduct infringes or violates consent-sensitive duties, and so wrongs the rights-holder.

Wronging in a non-consent-sensitive manner—where conduct infringes or violates other directed duties, and so wrongs the rights-holder.

Valid consent is not always sufficient for permissibility. Ian may consent to Tom touching his hair, but if Tom knows that this will lead to disastrous consequences for Simon, he is not permitted to touch Ian's hair. Were he to do so, Tom would not wrong Ian, but the conduct is nevertheless impermissible. In this paper, we set aside cases with negative effects on third parties. Consented-to conduct can also be impermissible when it would violate non-consent-

⁷ We do not say that in order to make some conduct permissible, consent must remove *all* the relevant consent-sensitive duties, as some believe that consent to Conduct A can make Conduct B permissible where Conduct B is close to, or related to, Conduct A. Victor Tadros (2022: 456–9) argues that if you consent to Bob borrowing your car in order to see his friend in Town A, and Bob then discovers that his friend is in the next town, Town B, Bob is permitted to drive to the next town *even though this was not consented to*. However, consent is still crucial, for without the consent Bob would not be permitted to take the car at all. So consent to A makes B permissible. We are neutral on this question in this paper. The crucial point is that on the standard picture, consent makes conduct permissible by fully removing consent-sensitive duties (in this case, removing the duty not to A makes B permissible). We will set these issues aside and focus on cases in which the consented-to conduct is the conduct that is under evaluation. We are grateful to a *Philosophical Quarterly* referee for assistance here.

sensitive duties to the consenting party, even if the consent is fully valid and the consenting party is not wronged in a consent-sensitive manner. We will not discuss cases involving infringing or violating non-consent-sensitive duties.

Valid consent is not always necessary for permissibility. Sometimes people are unable to give consent. For example, life-saving operations may be carried out on unconscious patients without their express consent, and things may be done to or for children or certain adults because they lack the capacities necessary to issue valid consent. More controversially, some paternalists argue that, where the consequences of refusal would be seriously bad for someone, something that would ordinarily require valid consent can be done to them even if they refuse consent. In these cases, the permissibility of an action is not undermined by the absence of valid consent, though a lack of consent may still be relevant to whether or not somebody is wronged in a consent-sensitive manner. Again, our cases will not be of this type.

We argue that consent can make the difference to whether conduct is permissible *without* removing the relevant consent-sensitive duties, and so the consenting party is wronged in a consent-sensitive manner by the conduct they consent to. Third-party coercion can render consent *partially valid*, and partially valid consent weakens but does not remove consent-sensitive duties. We motivate these claims by examining two alternative accounts.

III. GERVER ON RELATIVE AUTONOMY

Mollie Gerver offers one of the clearest and most theoretically sophisticated attempts to explain and defend the view that it is possible for agents to give valid consent in cases of third-party coercion. In this section, we will introduce Gerver's account and explain some initial concerns with it.

Gerver's key claim is that when X coerces Y into consenting to Z φ -ing, Y's consent is fully valid if Y consents with 'relative autonomy' *from* Z. Y consents with relative autonomy from Z if 'Y is choosing between options that include all those Z has a duty to offer Y, and no autonomy-reducing options Z has a duty to not offer Y' (Gerver 2021: 249). When Y validly consents to Z φ -ing, Y dissolves Z's consent-sensitive duties not to φ , and Z is permitted to φ based on Y's consent.

According to Gerver, a major advantage of her view is that it explains why Z having sex with Y is permissible in cases such as *Coercion to Perform*, but not permissible in cases such as *Coercion to Consent*. Gerver analyses the two cases as follows. In *Coercion to Perform*, Z is permitted to offer Y the option of having sex, and so Y's consent to sex is valid. In *Coercion to Consent*, in contrast, Z offers Y an option he ought not to offer (having sex).⁸ Z was instead required to offer

⁸ Z ought not to offer *only* the option of having sex. In some circumstances, he may offer the option of having sex if he *also* offers the option of not having sex.

Y the option of her agreeing to sex but not having sex. Therefore, Y's consent is not valid.

This analysis of the cases has important defects that are instructive and help motivate our positive account. In the remainder of this section, we explain these defects.

III.1 *Conditional consent?*

Gerver's view seemingly implies that Y gives valid consent to sex with Z *on condition that they do not have sex*. Consider a version of *Coercion to Consent* in which Z offers Y the options that he should.

Coercion to Consent II: X tells Y that if she refuses to consent to sex with Z, he will kill her. Z overhears this, and tells Y that if she does consent to sex, he will not have sex with her.

In *Coercion to Consent II*, Z offers Y the option that he *is* required to give her—the option of Y consenting to sex but not having sex. This allows Y to escape the threat of being killed (by giving valid consent) while avoiding unwanted sex with Z. What does Gerver's account say about this case? It appears that since Z gives Y all the options he should and doesn't give any he shouldn't, Y consents to sex with relative autonomy from Z. Gerver's account thus seems to imply that Y fully validly consents to sex.

This raises a concern, however. If Z offers sex, he does not have Y's valid consent; if he doesn't offer sex, he does have her valid consent. But if Z has consent to sex only on the condition that he doesn't offer sex, in what meaningful way can we then say that Z has valid consent to have sex with Y? It seems a strike against a theory of consent if it allows that A can validly consent to B φ -ing only on the condition that B does not φ . Imagine if Nina says to Matt 'You may borrow my car on Tuesday, so long as you don't borrow my car on Tuesday.' Does Matt have Nina's valid consent when he borrows the car on Tuesday? It seems not. Gerver's view appears to allow that Matt can have Nina's consent to borrow the car, up until the point he borrows the car, when he would no longer have consent. This makes 'having consent' less morally important than it actually is, for Matt cannot actually borrow Nina's car without wronging her in a consent-sensitive manner. Yet this is what it is to have valid consent.

III.2 *The wrong result*

The above concern arises because Gerver's view apparently delivers the verdict that, in *Coercion to Consent II*, Y gives Z valid consent to sex because he gives Y all the options he should give. If Gerver's view does imply this, then not only

does this give rise to the concern outlined above, but it is also concerning in and of itself, for, intuitively, it is the wrong result.

Gerver agrees that this would be a troubling result. She denies, however, that her view has this implication. She claims that Y cannot give valid consent to sex in either *Coercion to Consent* or *Coercion to Consent II*. Here's what Gerver says of cases with the structure of *Coercion to Consent II*:

In this example, [Y] has relative autonomy because [Z] is giving her every option he can provide, and no autonomy-reducing options he has a duty to not provide. He gives her the option to either give him permission or not, thus helping her avoid [X]'s harm, and does not deny her a nonexploitative offer, given that he does not have sex...[And yet, if she really has decided to give permission with relative autonomy, it still seems [Z] does not actually have permission to have sex. If valid consent entails the successful giving of permission, he has not obtained her valid consent. In other words, third-party coercion seems to invalidate consent despite [Y] having relative autonomy from [Z], and despite [Z] neither engaging in coercion himself nor being ignorant [X]'s threat. (Gerver 2021: 265)

We agree with Gerver that Y does not give valid consent to Z in *Coercion to Consent II*, and that Z therefore does not have permission. But we are not sure on what basis Gerver's view can deliver this conclusion since Y consents with relative autonomy from Z. Gerver appears to rely on the idea that Y does not validly consent to sex because *if Z were to request sex*, this would be an unacceptable restriction of Y's options. But Z doesn't request sex in this version of the example—Z offers Y all the options he should. So, on what basis is the consent invalid? It cannot be that Z *could have offered* an impermissible option, but didn't. In many paradigmatic examples of valid consent, consent-seekers could have offered an impermissible option but didn't. Suppose that Michael and Jasmeet are adults who genuinely desire to have sex to express their authentic love for one another and explicitly consent to sex without coercion or any threat of harm. It is implausible to think their consent is not valid because either could have offered an impermissible option—for example, threatening harm for refusal—but didn't.

III.3 *Consent or no help*

A further problem for Gerver's account is that *even if* it can explain why Y does not validly consent to sex in *Coercion to Consent II*, one apparent advantage of Gerver's view then disappears. Gerver claims that in *Coercion to Consent II*, Z 'gives [Y] the option to either give him permission or not, thus helping her avoid [X]'s harm'. But Gerver also says that Z cannot receive this permission. Both of these claims cannot be true, for we cannot give what cannot be received.

In our original statement of *Coercion to Consent* and in Gerver's discussion of it, we stipulated that X was demanding that Y *consent*. But there are two

possible ways to understand these cases—in order to avoid the threat, Y must *merely consent* (e.g. must give a mere expression of consent⁹), or in order to avoid the threat, Y must actually *give valid consent* (e.g. must give an expression of consent that grants permission). Consider the cases under the latter description.¹⁰ In that case, Y can only be helped by actually giving valid consent, in which case the concerns laid out in the previous two subsections apply. If Gerver is able to show that her view can deliver the outcome that Y doesn't give valid consent in *Coercion to Consent II* (something we have argued above will be difficult), then she cannot explain why Z can help Y, which was supposed to be an appealing entailment of her view.

Our view, which we will flesh out further below, is that it is best to regard Y's consent as compromised in both *Coercion to Consent* cases, and she is therefore unable to give fully valid consent. Z is not permitted to have sex with Y because he has no compelling reason to have sex with Y, and she has not given fully valid consent.

III.4 Summary

Gerver attempts to provide an account of when consent is valid under third-party coercion. For Gerver, the coerced party's (Y) consent dissolves consent-sensitive duties owed by a third party (Z) when Z offers Y all the options they have a duty to offer and none of the options they have a duty not to offer.

We have argued that the following case brings out problems for this view.

Coercion to Consent II: X tells Y that if she refuses to consent to sex with Z, he will kill her. Z overhears this, and tells Y that if she does consent to sex, he will not have sex with her.

We identified three problems. First, Gerver's view implies that we can validly consent to A on the condition that the party we give consent to does not attempt to bring A about. Second, Gerver's view cannot deliver the intuitively compelling verdict that Z does not have valid consent to sex and is therefore not permitted to have sex with Y. Z offers Y all of the options that he should and no options that he should not, and thus receives Y's consent with relative autonomy. Third, if Gerver's account entails that Y does not give valid consent, then it cannot explain why Z can permissibly help Y escape the harm X threatens, and so it loses what is supposed to be an important explanatory advantage of the view.

⁹ As we are trying to stay neutral on the ontology of consent, this is merely an example. The point applies to any view that distinguishes 'consent' from 'valid consent'.

¹⁰ From the fact that Gerver imagines that in order to avoid the threat, Y must *give permission*, it seems Gerver has this formulation in mind.

IV. DOUGHERTY ON REQUEST AND AUTHORIZATION

Tom Dougherty has recently provided an alternative account of why Z has Y's valid consent in *Coercion to Perform* but does not in *Coercion to Consent*. According to Dougherty, if X has placed a penalty on Y's refusal to consent and it is a penalty Y has a complaint against, then Y's consent is 'defeasibly not valid'. However, there are cases in which valid consent to A can be given under third-party coercion—when the victim *sincerely requests* that A be done. In particular, the consent can be made valid under the *Authorization Principle*:

If Y sincerely performs a speech-act that authorizes Z to perform A as an extension of Y's own agency in circumstances that are beyond the control of Z, then Z has Y's valid consent to perform A. (Dougherty 2021a: 327)¹¹

While there are forms of authorization other than sincere request, sincere request is central to Dougherty's explanation of how authorization works in cases of third-party coercion. Here is the core of Dougherty's explanation:

Now when someone sincerely requests another person to perform an action, we can think of them as enlisting that person as their proxy agent to act on their behalf. We might say that they *authorize* the proxy agent to perform that action....[Y] requests that [Z] [does A], in order to express what they most prefer [Z] does, holding fixed the circumstances that are beyond their control. If [Y] were directly able to control [Z]'s behavior with their own choices, then [Y] would choose that [Z] [does A]. (Dougherty 2021a: 327)

What makes a request *sincere*? In the passage above, Dougherty refers to what an agent 'most prefers'. At another point, Dougherty characterizes a sincere request as one in which 'the person making the request genuinely all things considered wants the relevant action to be performed, given the options that are open to the agent'. Elsewhere, Dougherty objects to another view on the grounds that it would give Z valid consent to perform A even though Y has 'no desire at all' that Z do A (Dougherty 2021a: 320).

Dougherty's view is that a sincere request is sufficient for authorization. And, in cases of third-party coercion, authorization is necessary and sufficient for valid consent. While a sincere request is not strictly necessary for authorization (and so valid consent), it is necessary that the agent perform a speech-act that is like sincere request. Sincere request expresses an agent's desire, want, or preference that a given act is performed (we will use the term 'desire' to pick out the relevant attitude).

We can see how this applies to our main cases. In *Two-Party Coercion*, Y's consent is presumptively not valid, and the *Authorization Principle* does not make it valid. This is because the threatener has control over the circumstances

¹¹ We have changed Dougherty's Xs and Ys to Ys and Zs so that they are consistent with the characters in our cases.

that cause Y to consent to sex. In *Coercion to Consent*, Y's consent is, again, presumptively not valid. And since actually having sex will make no difference to Y's avoiding X's threat, she will not *request* sex, even though she consents to it. Therefore, the *Authorization Principle* does not make her consent valid. In *Coercion to Perform*, though, Y consents to sex because she desires to have sex in order to save her life. Therefore, she sincerely *requests* sex, and her consent to sex with Z is valid in that case.

Dougherty's view differs from Gerver's in two important ways. First, Dougherty holds that coercion always puts the validity of consent into question. Since Gerver views the validity of consent as purely relational, all that matters is what is happening between Y (the coerced party) and Z (the third-party)—that Y is consenting to Z only because she is being coerced by X is not directly relevant to the validity of consent.¹² The second important difference concerns *why* it is the case that Y does not issue valid consent in *Coercion to Consent*. For Gerver, this is because *if* Z offers sex, he either offers an option he should not or fails to offer the range of options he should. For Dougherty, it is because Y does not request sex, and a sincere request for sex is the only thing that can overcome the presumption that her consent is not valid.

These differences allow Dougherty's account to escape some of the problems with Gerver's account. Recall, first, that Gerver's account appears to suggest that in *Coercion to Consent* and *Coercion to Consent II*, if Z did not offer sex, Y's consent to sex would be valid, and if Z did offer sex, Y's consent to sex would not be valid. This meant that Y's valid consent to sex was conditional on not being offered sex. On Dougherty's view, in both of these cases, the consent is not valid. This is because the consent is issued under coercion and so is presumptively not valid. Since Y does not request sex in either case, that presumption is not overturned.

The central problem with Dougherty's view is that it claims that consent works very differently in situations of third-party coercion compared with how it ordinarily works. On Dougherty's account, fully valid consent under third-party coercion is possible only if the conduct is authorized by, for example, being sincerely requested. It is key that in order to for Y to authorize Z, Y must communicate that she desires Z to act (hence why request rather than mere assent is required), and Z must act in accordance with Y's desires—as a proxy agent for Y (hence why *sincere* request is required).

But this is at odds with how requests generally relate to consent. Sincere requests are usually sufficient for valid consent, but they are not necessary. Outside of third-party coercion cases, we can obviously validly consent simply by assenting, and can do so even while making it clear that we do not desire that the conduct occur. For example, imagine Joan asks Andrew 'May I come

¹² What options Z ought to offer may be affected by the fact that Y is being coerced, but coercion's role is then indirect.

in?’ and Andrew coldly replies ‘If you must’. Andrew makes it clear here that Joan is permitted to enter, he validly consents to her coming on to his property, but he also makes it clear that he desires that she did not.¹³

So, Dougherty’s account must explain why (1) request rather than mere assent to an act and (2) genuine desire that the act is performed are essential to valid consent under third-party coercion but are not essential to valid consent in other contexts.

Dougherty suggests an explanation for these asymmetries when discussing a case in which Bully tells Victim he will smash her vase unless Bystander smashes her teapot, and Victim asks Bystander to smash the teapot:

Of course, Victim would ideally prefer that none of their crockery is smashed. But neither Victim nor Bystander can ensure that their ideal outcome obtains. In that sense, Bystander can do no better to respect Victim’s agency than by choosing to smash the teapot. By smashing the teapot, they would follow their sincere request in the unfortunate circumstances that are beyond their control. In those respects, they would be acting as Victim’s proxy agent, and Victim would be authorizing their behavior.

The key element of Dougherty’s explanation is that ‘Bystander can do no better to respect Victim’s agency than by choosing to smash the teapot.’ Here is one way of understanding of what Dougherty is saying and its connection to valid consent. It is often argued that the power to consent is valuable because, as Massimo Renzo puts it, ‘being able to control the consent-sensitive duties others owe to us increases our capacity to exercise our self-determining agency and shape our lives as we wish’ (Renzo 2022: 52). If Victim’s request provides valid consent and thus dissolves Bystander’s consent-sensitive duty to not smash the teapot, Bystander can permissibly help Victim realize their wishes. This increases Victim’s capacity to organize their life as they see fit. The value of respect for agency that grounds the power to consent thus explains why Bystander should regard Victim’s request as providing valid consent.

However, this still doesn’t explain why sincere request is required for valid consent in cases of third-party coercion but not other contexts. We agree that there is reason to respect others by honouring their requests and helping them realize their desires. This plausibly explains why Bystander has good reason to smash the teapot. But it does not explain why Bystander has valid consent to smash the teapot. Dougherty’s language here is telling—‘Bystander can *do no better* to respect Victim’s agency than by choosing to smash the teapot.’ But this is not how consent standardly works, nor what consent is standardly concerned with. Consent is not concerned with how we can do best by people, how we can best help others, or how we can act as their proxy. Often people

¹³ To be clear, we do not here rely on a communicative view of consent. Andrew’s consent may consist purely of his mental state. Our claim is that if consent is a mental state, the mental state required for consent is not one in which we welcome the conduct.

consent to things that are not in their own interests or are not the best that we can do for them, but the consent is valid and we are granted permission nevertheless.

Consent does not give us reason to do that which is consented to. It removes moral barriers to doing those things. If we have reasons to do what is consented to, they are independent of the fact that they've been consented to. For example, a doctor has good reason to perform the operation, and consent removes a barrier to his acting on that good reason. Consent is not a reason *to* perform the operation. Think about a request in a non-coercion situation where consent is necessary for permissibility—Y requests Z to enter Y's home and take Y's dog for a walk. The request, in our view, communicates two separate things: Y consents to Z φ -ing, and Y desires or wants Z to φ . The first removes the consent-sensitive duties, reasons not to φ . This is what makes it permissible. The second gives Z reasons to φ . This is what makes it a good thing to do. This is why request is sufficient for valid consent (because request contains or implies consent) but is not necessary for valid consent (because request does more than merely consent).

Dougherty allows non-consent concerns to intrude on to consent's territory. That smashing the teapot will help Victim is a reason for Bystander do it. That smashing the teapot is what Victim wants is also a reason for Bystander to do it. That Victim asks Bystander to smash the teapot is also a reason for Bystander to do it. However, all of that is irrelevant to whether or not Y gives valid consent (though of course it may explain *why* Y consents).

We've argued in this section that Dougherty's account faces a challenge. It must explain *why* sincere requests (and so desires or preferences) are relevant to valid consent under coercion when they are not ordinarily. This conflates two different issues—what we have reason to do and what is consented to. In what follows, we will present our own view and explain how it meets these challenges. We will also explain why sincere requests are sufficient but not necessary for granting permission under third-party coercion.

V. DESCRIPTIVE DIFFICULTIES

Above, we have focused on problems that arise in *Coercion to Consent* cases. Here we switch our focus to *Coercion to Perform* cases and broaden our critique, for what we say here applies to *any* view that allows that Y issues fully valid consent to sex in *Coercion to Perform*.

Let's remind ourselves of some areas of agreement with Gerver and Dougherty. In *Coercion to Perform*, Z permissibly has sex with Y. Furthermore, Y's consent *makes* sex permissible—were Y to refuse consent, Z would not be permitted to have sex with Y. It may seem that it follows analytically from these claims that Y issues valid consent. This would be the case if the sole function

of valid consent were to make otherwise impermissible acts permissible. We deny, however, that this is the best way to understand valid consent.

Consent plays an important moral role beyond making otherwise impermissible conduct permissible. Consent isn't just about who has permission to do what. It also helps us to determine who has been wronged and to accurately describe the nature of the wrongs they suffer. If Z has sex with Y without her valid consent, he does not merely act impermissibly—he *wrongs* Y, and wrongs Y in a very particular manner.

Once we have this second role of consent in view, we can see an important problem in Gerver and Dougherty's accounts and any other account that claims that Z acts with Y's fully valid consent in *Consent to Perform*. These views are unable to adequately account for the nature of the wrong suffered by Y. How should we describe the sex in *Coercion to Perform*? It is permissible, as we have seen. But would we describe it as 'fully consensual'? It would surely be a mistake, and an insulting one, to do so. That it would be a mistake is revealing. It shows that consent is not only concerned with permissibility, for we have a permissible act here for which consent was necessary, but we nevertheless do not want to call it fully consensual. The severe coercion makes Y's consent defective, and any account of the conditions of valid consent must be able to take this into account.

How should we describe the wrong that Y suffers? All views can accept that she was wronged by X. However, the wrong that Y suffers, according to the prevailing view, is that she has been coerced into giving fully valid consent—and so she has been coerced *into fully consensual sex*. The idea of non-consensual sex does not appear to play any role in the wrong that she suffers. Yet this is clearly the most natural description of the wrong that Y suffers—the sex is, at least in some sense, non-consensual, or not fully consensual, given X's severe coercion.¹⁴

Now consider how Z ought to feel about the sex. According to Dougherty and Gerver, there is fully valid consent, and all the relevant consent-sensitive duties have been dissolved or removed. Yet, it seems clear that Z ought to feel differently about sex with Y compared with ordinary, consensual sex: Y was, after all, severely coerced into consenting to the sex. Dougherty and Gerver may be able to offer various explanations of how and why Z should feel differently about sex with Y compared with ordinary sex. But since Dougherty and Gerver's views imply that Y gives fully valid consent, the lack of fully valid consent can play no role in how Z ought to feel about the sex.

This seems mistaken. Z ought to feel that he has done the right thing, and that Y's consent partly explains why. But he should also feel that that consent was a compromised, weakend, pale imitation of the kind of consent that

¹⁴ Cf. Millum (2004: 120).

characterizes morally flawless sexual interactions—enough to render sex permissible *in this situation*, but not consent ‘proper’. Z should recognize that the sex, while all-things-considered permissible, wronged Y, and wronged her because her consent was not fully valid. He should regret this, though he should not regret his actions all-things-considered. It is also possible that Z should feel remorseful at having wronged Y, if remorse is connected to acting pro tanto wrongfully rather than to all-things-considered impermissible conduct.

In sum, accounts that claim that Z acts with Y’s fully valid consent cannot explain the nature of the wrongs in cases of third-party coercion or how Z should feel. The idea that the sex is not fully consensual is crucial to understanding the situation and should play an important role in Z’s attitudes about what they have done.

VI. PARTIALLY VALID CONSENT, UNDISSOLVED DUTIES, AND PERMISSIBILITY

We believe that these concerns with existing accounts of third-party coercion, even if they are not decisive, warrant the search for, and development of, alternative accounts. In this section, we defend what we call the *partial validity* account.¹⁵ We first explain the key ideas and then explore it as follows. First, we will show how it achieves the intuitively correct result in a range of cases. Second, we will show how it gives the proper moral descriptions of those cases. Third, we will explain how it fills the explanatory gap that Dougherty’s view leaves. Fourth, we show how it is more plausible than Dougherty’s view in some marginal cases. Fifth, we defend our view against the accusation that it deprives Y of control over whether and how she is wronged.

VI.1 *The view*

Our view relies on two key moves. The first is to reject the orthodoxy of seeing the validity of consent in binary terms. We argue that validity comes in degrees. Instead of consent either being invalid, and so normatively inert, or being valid, and so fully dissolving or removing consent-sensitive duties, it is sometimes (because of the conditions under which it is issued) *partially valid*,

¹⁵ Hallie Liberto (2021: 215–16) distinguishes two questions about the relationship between consent and coercion—Question A: what kinds of threats undermine consent?; and Question B: by what mechanism do these threats undermine consent? Our answer, we think, sits somewhere in between these two questions, and is compatible with a variety of answers to both A and B. That is because we are interested in the question of *what happens* when threats undermine consent – what does *undermining* (and, crucially, *not undermining*) amount to? Our answer: threats can weaken consent-sensitive duties without fully dissolving them. This understanding is compatible with a range of answers to both A and B.

and weakens consent-sensitive duties.¹⁶ The second move is to decouple full validity and permissibility. The standard picture is that where consent makes the consented-to conduct permissible, this is because fully valid consent has fully dissolved or removed consent-sensitive duties. Our claim is that sometimes consent can be necessary for permissibility, and so the permissibility of acting hinges on consent, even though the consent is not fully valid, and the duties have only been weakened, rather than fully removed. However, partially valid consent is never sufficient for permission, even in cases where only the consenting party is affected. Since the weakened consent-sensitive duties retain some force, there is a *pro tanto* reason *not* to engage in the consented-to conduct. We require further compelling reasons to outweigh these weakened duties.

Dougherty has recently argued forcefully that we need a scalar understanding of the validity of consent—we should understand consent as fully valid, partially valid, or fully invalid. Dougherty (2021b) uses this scalar understanding to explain why impermissible conduct varies in terms of the gravity of the wrongs done to victims in two-party coercion cases.¹⁷

Our view extends the idea of partial validity to the analysis of cases of third-party coercion. Moreover, we argue that partially valid consent not only makes impermissible conduct less seriously wrongful, but it can also make otherwise-impermissible conduct permissible in cases of third-party coercion. It does so by weakening, rather than fully removing, consent-sensitive duties. The agent must then weigh up the weakened consent-sensitive duties against other sorts of reasons or duties to act, such as the prevention of harm. This is a natural extension of the idea of partial validity—if partially valid consent lessens the extent to which a victim is wronged, it should also weaken the force of the duty not to act. While we view our account as a natural extension of Dougherty's views on partial consent, Dougherty does not, as we have seen, apply the idea of partial consent to cases of third-party coercion, and has their own views on third-party coercion that do not invoke partial consent.

VI.2 Cases

Our view gets the intuitively correct results in relevant cases and explains those results in a compelling way. Showing how it does this will also allow us to show how the view works. Recall the following case:

¹⁶ Others have gestured at similar ideas without explaining how they work or fleshing them out in the way we do. Tadros (2021: 306) talks of 'defective consent'; Liberto (2021: 226) of 'partial permission'. For the idea of 'defective' consent in another context, see Renzo (2022).

¹⁷ Dougherty is focused on how seriously wronged we are by 'sexual misconduct', which we take to mean impermissible sexual conduct. Dougherty never discusses cases in which partially valid consent might render otherwise impermissible conduct permissible.

Coercion to Perform: X tells Y that if she does not have sex with Z, he will kill her. Z overhears this. Y agrees to have sex with Z and Z has sex with Y.

Here is what our view says about this case. The coercion that Y is under makes it impossible for her to give fully valid consent to sex. Her consent is produced by coercion and is therefore not a fully robust expression of her autonomous agency. However, she is able to give partially valid consent to sex. This *weakens* but does not remove the consent-sensitive duties that Z has not to have sex with Y. So, Y's consent alone is not enough to make the sex permissible since the consent-sensitive duties have not been entirely removed. The sex is permissible because Z has a compelling independent reason to have sex with Y—doing so will save her life. This compelling reason is *not* enough to outweigh full-strength consent-sensitive duties—if Y does not give consent, Z must not have sex with Y—but it *is* enough to outweigh the weakened duties when Y gives partially valid consent.

Now consider:

Coercion to Consent: X tells Y that if she refuses to consent to sex with Z, he will kill her. Z overhears this. Y agrees to have sex with Z, and Z has sex with Y.

In this case, our view says that Z must not have sex with Y. This is because the consent-sensitive duties retain some force, and there is no compelling independent reason to have sex with Y. Z does not need to have sex with Y to prevent harm to her, since Y's *consent* is enough to avoid harm.

Now consider the version of *Coercion to Consent* in which X demands that Y give *valid consent*. We can understand this demand in two ways. First, X might be demanding that Y give consent that is at least partially valid. Y can meet this demand *without* giving Z permission to have sex with her since she can give partially valid consent under severe coercion, and Z has no compelling reason to that outweighs the remaining consent-sensitive duties. Second, X might be demanding that Y give *fully valid* consent. We think that this is an impossible demand that Y cannot meet. This may seem like a cost in our view, but a theory of consent under coercion should not allow every possible threat to be avoided by valid consent. This is clear if we reflect on the version of *Two-Party Coercion* in which X demands that Y give fully valid consent to sex *with X*. This is an impossible demand.

However, a variation on one of Dougherty's cases might seem to present a challenge for our view:¹⁸

Tea Pot: X tells Y that he will smash her vase unless Z smashes her teapot. Y is indifferent between the teapot and the vase. Y asks Z to smash the teapot.

In this case, Y gives consent to Z under coercion. According to our view, then, Y has not given fully valid consent to Z smashing her teapot, and some

¹⁸ This is a variation of Dougherty's 'Crockery Dilemma'. See Dougherty (2021b: 320).

consent-sensitive duties not to smash the teapot remain. Therefore, Z needs a compelling reason to smash the teapot. It may seem that in this case Z does not have such a reason since Y is indifferent between the teapot and the vase. And yet Z appears to act permissibly by smashing the teapot (Dougherty's view clearly delivers the correct verdict in this case).

In our view, however, it is significant that Y *asks* for the teapot to be smashed rather than the vase. The fact that Y asks (and has not been coerced into *asking*) is itself a compelling reason for Z to act. Y has been put in an unacceptable position by X. She will be wronged either way. But allowing Y to choose *which* wrong she suffers respects Y's agency in non-ideal circumstances. Consent under these conditions is only partially valid, and so we need some additional reason to perform the conduct. That a victim desires the conduct is performed (as communicated by sincere request) can be such a reason. That a victim *chooses* the conduct is performed over is *also* be a reason, since allows the victim some degree of control. It isn't, as Dougherty argues, that requests constitute valid consent. It is that the consent that is expressed (whether as a request, agreement, or assent) is only partially valid because it is coerced, and the sincere request supplies the *additional* reason that is needed for permission.

Were Y to say to Z, 'Smash the teapot if you want, I really don't care either way', our view implies that Z ought not to smash the teapot since there is no compelling reason to act. Y has given partially valid consent, but since she does not *ask* Z to smash the teapot, Z seems to have no compelling reason to act, which would outweigh the remaining consent-sensitive duties. We think this is the right conclusion. Y is going to be wronged either way and is indifferent between the wrongings, and Z has no reason to wrong Y (Dougherty's view also delivers this conclusion). Y should not smash the teapot because they want to keep X from smashing the vase. However, we acknowledge that intuitions about this case are likely to vary and aren't decisive in settling the debate.

VI.3 Descriptions

As we argued above, any view that relies on the idea that Y gives Z fully valid consent in *Coercion to Perform* seems doomed to misdescribe the moral situation, even though it can correctly hold that Y's consent makes Z's conduct permissible. Our view better captures the moral factors at play and the relationships between them.

We want to be able to say that Z acts permissibly. Our view, as we have seen, delivers this. We want to be able to say that without Y's consent, Z would have acted impermissibly. Again, our view delivers this, for without Y weakening the consent-sensitive duties by giving partially valid consent, the compelling reason to help her would not overcome these duties. But it does not seem right to say, as Gerver's and Dougherty's views do, that the sex is

fully consensual, or that X has forced Y into fully consensual sex. Rather, the sex is morally compromised by the coercion, and compromised *in a consent-sensitive way*. Our view clearly explains why: Y is wronged because she had sex without her fully valid consent. Z acts permissibly because he has compelling reason that outweighs the remaining consent-sensitive duties, but those duties remain, and are crucial in explaining the wrongs done to Y. Y is wronged by the sex, and is wronged by Z. Z has a reason for this wronging, but this does not erase the fact that he wronged her. Z should feel remorseful about the sex because of the defective nature of the consent, even though it is permissible.

Allowing that Z acts permissibly in *Coercion to Perform*, but consent-sensitive duties against having sex with Y remain, better captures the ‘moral residue’¹⁹ of the act itself, and of the wrongs suffered by Y. This reason to favour our view is analogous to a reason that supports the infringing/violation distinction in rights theory. Suppose twenty innocent civilians are killed as part of a just and therefore permissible war. The rights specificationist will argue that because the act is permissible, the civilians simply lacked the right to life in this instance. But that seems a poor moral description of what goes on. The act is permissible but not morally untainted. Many argue that in order to capture the moral remainder in such cases, we need to introduce a distinction between infringing and violating a right. Following Judith Jarvis Thomson, we can understand an infringement as an act that is permissible though contrary to a right and a violation as an act that is contrary to the right and impermissible.²⁰ The twenty innocent civilians have their rights infringed—and therefore suffer some moral wrong—but they do not have their rights violated. Likewise, holding that Z acts permissibly but without fully valid consent in *Coercion to Perform* captures the moral remainder of his conduct.

However, while there is an analogy between rights infringement and the sort of moral remainder we have in mind in *Coercion to Perform*, there is also a crucial disanalogy. In the war case, the rights of some are infringed, and those people are wronged in order to benefit *others*. In *Coercion to Perform*, under our description, Z having sex with Y wrongs Y in order to benefit *her*. Is this possible? We think it is. Suppose you make your friend Alan promise that, whatever he hears, he won’t worry your parents while you’re away travelling. Alan promises. Alan then hears that you are in very serious danger. Your parents could help. Alan begins to think you were foolish to make him promise, and he was foolish to give the promise. He should tell your parents, so that you can be helped. But that’s *despite* his particular directed duty to keep the promise. The duty doesn’t disappear. Alan acts permissibly and in your interests, but in breaking his promise, he also violates a duty he has toward you.

¹⁹ We take this phrase from Oberdiek (2004: 338).

²⁰ See Thompson (1986: 51).

Our view clearly explains the difference between *Coercion to Perform* and *Coercion to Consent*. In the former, the fact that sex is necessary to save Y's life is crucial to its permissibility. But our view does not try to explain its permissibility by holding that Y gives fully valid consent only when the sex is life-saving. This conflates the reasons we have to help others with the removal of moral constraints on helping. Our view is that Z has a strong reason to save Y's life that outweighs the weakened consent-sensitive duties. Where the sex is not needed to prevent harm—as in *Coercion to Consent*—consent-sensitive duties remain and are decisive.

VI.4 *Explaining the significance of sincere requests*

We argued, in Section IV, that Dougherty's view faces an explanatory gap. For Dougherty, recall, consent under coercion is valid when it is given via a sincere request. We noted that neither requests nor sincerity (desiring or wanting the conduct) are usually necessary for valid consent. Why then, we asked, should they play this role in consent under coercion?

Our view has two advantages over Dougherty's view. First, it explains why and when request makes a difference. Second, since it does not say that sincere request is necessary for the kind of consent that can make the conduct permissible, it outperforms Dougherty's view in some marginal cases.

Dougherty's view is that, under third-party coercion, sincere request suddenly becomes necessary for permission. But why should this be the case? Our view explains why sincere request will often be sufficient for consent-based permission: A sincere request communicates both consent *and* that the victim genuinely prefers that the consented-to conduct is performed rather than the conduct threatened by the coercer. Consent under these conditions is only partially valid, and so we need some additional compelling reason to perform the consented-to conduct. That the victim prefers the conduct (as communicated by sincere request) can be such a reason. That the victim chooses the conduct over the other can also be such a reason—as we said earlier, it allows the victim some control when their freedom has been severely constrained. It isn't, as Dougherty argues, that *only* requests function as consenting in these circumstances. It is that the consent (whether expressed as a request, agreement, or assent) is only partially valid, and the sincere request supplies the additional reason to act that is needed for permission.

Contra Dougherty, however, not only sincere requests are permission-granting. There are compelling reasons to help people other than their preferring or requesting such help. Consider *Coercion to Perform*. Imagine Z asks Y if she consents to sex, and she says yes. Imagine that she is genuinely undecided whether she prefers sex or death, but consents to sex. Imagine further that it is clearly in her interests to have sex with Z, and thereby avoid death. In this case, Y has not requested sex but has consented to sex, and Z has a compelling

reason to have sex with Y—namely that it will save her life. Our view therefore says that sex in this case is permissible, whereas Dougherty must deny this.

VI.5 *Control over wronging*

In this final subsection, we want to respond to an important objection to our account. It might be argued that our view diminishes the agency of individuals when compared to the traditional view of consent. We've emphasized that consent isn't just about permission to act, it is also about whether or not, and how, we are wronged. Some claim that an important element of consent is *control over* the way that others wrong us, since having such control allows us to determine the moral character of our relationships (Renzo 2022). One concern with our view is that it limits Y's control in this manner. Y may want to grant Z permission *and* make it the case that Z does not wrong her. But our view says that Y can use consent to make Z's act permissible, but that, since that consent only weakens the consent-sensitive duties, Z's act nevertheless wrongs Y.²¹ Y, therefore, cannot make it the case that Z does not wrong her.

We have two responses. The first is deflationary, and the second pushes back a little. The first response is to point out that our view does not give Y *less* control than the traditional view when it comes to whether or not she is wronged—it just gives her a different set of options. Suppose that Y wants to make Z's conduct permissible *and* make it the case that Z does not wrong her in a consent-sensitive manner. The traditional view allows this, but our view does not, since consent under severe coercion can only weaken consent-sensitive duties and not remove them. However, Y may want to make it the case that Z acts permissibly, but she is nevertheless wronged by the sex in a consent-sensitive way. Perhaps she regards the idea that the sex with Z is fully consensual as an insulting fiction given the severe coercion she faces and would like the moral ledger to reflect the consent-sensitive way she is wronged. Our view does allow this, while the traditional view does not, since the traditional view only allows that consent-sensitive duties are fully 'off' or 'on'. Our view rules out 'I consented and you didn't wrong me', and the traditional view rules out 'I consented and you wronged me.' Both views therefore give Y options that she lacks under the other view.

Our second response is to question how important it really is that Y has the power to make it the case that Z does not wrong her in a consent-sensitive manner, and what role it should play in our thinking about consent, its justification, and its shape. It seems to us that our ability to control who does and does not wrong us in a consent-sensitive manner, and the extent of wrong, should *follow from* our best understanding of when consent is fully valid and removes consent-sensitive duties. Our best account of consent should not *follow*

²¹ We are grateful to a *Philosophical Quarterly* referee for pressing this challenge.

from a desire to make sure we have maximum control over who does and does not wrong us *in a consent-sensitive manner*. Indeed, wronging people in a consent-sensitive way makes reference to, and relies on, the idea of the normative power of consent and the existence of consent-sensitive duties. We can't have an interest in controlling who wrongs us in a consent-sensitive way unless we already have the normative power of consent. Control over who wrongs us cannot, therefore, explain the existence of that power. People wrong us in a consent-sensitive way *because* they have consent-sensitive duties. They do not have consent-sensitive duties, *so that* we can control whether they wrong us in a consent-sensitive way.

Even if we are wrong about this, the extent to which we control whether we are wronged in a consent-sensitive manner is at most one input into deciding the best account of the morality of consent. That one account allows less-than-maximal control over when and whether we are wronged will not be decisive if the view has other strengths and explanatory virtues.

VII. CONCLUSION

This essay has defended an approach to analysing consent in cases of third-party coercion. We have argued that this approach describes the moral factors at play in such cases better than leading existing accounts. Our account gets the right results about permissibility in these cases, but it also avoids giving the conduct the moral stamp of approval of fully valid consent. On our account, coercion renders consent partially valid. This means that consent can still perform its 'moral magic'—it can turn an impermissible action into a permissible one—but can only do so if there is an independent, compelling reason to act. An independent reason is required because the consent is only partially valid, and so the consent-sensitive duties remain. This allows us to explain the ways in which the conduct, while permissible, is morally suboptimal and wrongs the victim in a consent-sensitive way.

ACKNOWLEDGEMENT

For comments and suggestions, we are very grateful to Tom Dougherty, Mollie Gerver, Ben Ferguson, Chris Mills, Tom Parr, Victor Tadros, and two anonymous referees for this journal. For the purpose of open access, the author has applied a Creative Commons Attribution (CC-BY) licence to any Author Accepted Manuscript version arising from this submission.

REFERENCES

Boonin, D. (forthcoming) *When Yes Means No: Dilemmas of Sexual Consent*. (forthcoming).

- Dougherty, T. (2021a) 'Why Does Duress Undermine Consent?', *Nous*, 55: 317–33.
- . (2021b) 'Sexual Misconduct on a Scale: Gravity, Coercion, and Consent', *Ethics*, 131: 319–44.
- Gerver, M. (2021) 'Consent and Third-Party Coercion', *Ethics*, 131: 246–69.
- Liberto, H. (2021) 'Coercion, Consent, and the Mechanistic Question', *Ethics*, 131: 210–45.
- Millum, J. (2014) 'Consent Under Pressure: The Puzzle of Third Party Coercion', *Ethical Theory and Moral Practice*, 17: 113–27.
- Oberdieck, J. (2004) 'Lost in Moral Space: On the Infringing/Violating Distinction and Its Place in the Theory of Rights', *Law and Philosophy*, 23: 325–46.
- Renzo, M. (2022) 'Defective Normative Powers: The Case of Consent', *Journal of Practical Ethics*, 10: 49–77.
- Tadros, V. (2021) 'Consent to Sex in an Unjust World', *Ethics*, 131: 293–318.
- . (2022) 'Beyond the Scope of Consent', *Philosophy & Public Affairs*, 50: 420–66.
- Thompson, J. J. (1986) 'Some Ruminations on Rights', in W. Parent (ed.) *Rights, Restitution, and Risk*. Cambridge, MA: Harvard University Press.

University of Warwick, UK