

## *Lecture 5: Consenting from a point of view*

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*Handout (with references) & appendix: [RICHARDPETTIGREW.COM/LOCKE](http://RICHARDPETTIGREW.COM/LOCKE)*

*What came before . . .*

(i) Norms that govern the doxastic component of our point of view: norms for ur-priors; norms for updating on evidence received; norms for gathering evidence and forgetting it; (ii) Norms for action from a point of view. Note: these are all focused on the components themselves; not on how they are formed.

*. . . and what's to come*

Norms that depend on the way in which the axiological component is formed—in particular, norms governing the effect of consent.

It's an interesting question whether something similar is true for the doxastic component.

*Preferences determine many normative facts . . .*

*Rational choice theorist.* They determine what you should do prudentially speaking.

*Social choice theorist.* They determine what we should do collectively.

*Public reason liberal.* They determine what states may do and what they must do.

*Preference-satisfaction welfare theorist.* They determine how well your life goes.

*Moral philosopher.* They partly determine what others may do when that affects you.

*Consent and other actions*

What explicit consent usually does: it switches the moral facts. Explicit consent to X can

- (i) make X permissible where previously it was impermissible; and
- (ii) make intervention by others to prevent X impermissible where previously it was permissible.

Other acts usually do the same: promising, requesting, offering, embarking on a joint project together. The key thing is the switch in

facts. Explicit consent is the clearest example of this sort of action, but it is not the central one nor the most common.

But explicit consent, promising, requesting, offering, etc. doesn't always have this effect: e.g.,

- (a) Cases in which the consent, etc. is coerced.
- (b) Cases in which the person giving consent, etc. is not presented with the range of options to which they're entitled.<sup>1</sup>
- (c) Cases in which the person's faculties of practical reasoning are impaired in some way.
- (d) Cases in which the person consents to someone violating one of their unwaivable duties.<sup>2</sup>
- (e) Cases in which the preferences on which the consent, etc. is based were formed in particular ways.

<sup>1</sup> (Gerver, ta).

<sup>2</sup> Cf. (Hills, 2003).

(e) is my focus here.

### *Examples*

FOOD INEQUALITY.<sup>3</sup> According to Papanek, women in a certain community in Java ate less than they needed to adequately nourish themselves so that their husbands could eat more than they needed to nourish themselves. They genuinely preferred this situation: they did not wish to be rid of it.

<sup>3</sup> (Khader, 2011; Papanek, 1990).

One woman recalled being taught in childhood that women are superior to men because they can control themselves, while men can't, and so they must subject themselves to rigorous discipline.

THE ANGEL IN THE HOUSE.<sup>4</sup> Woolf describes 'the Angel in the House', a figment of her mind whose presence she feels looking over her shoulder and chastising her as she tries to write something critical about a bad book by a man:

<sup>4</sup> (Woolf, 1931/2009). Thanks to Natalie Stoljar for introducing me to this example.

She was intensely sympathetic. She was immensely charming. She was utterly unselfish. She excelled in the difficult arts of family life. She sacrificed herself daily. If there was chicken, she took the leg; if there was a draught she sat in it—in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others.

CLASS INEQUALITY.<sup>5</sup> According to Gramsci, the working class of 1930s Italy accepted the existing social hierarchy because the religion in which they were raised and which permeated that society—in

<sup>5</sup> (Gramsci, 1971).

Gramsci's term, the *hegemonic system*—taught that poverty is the dignified state, beloved of God, and they brought their preferences into line with this. They positively valued their own economic situation.

MEDICAL TREATMENT. Sometimes, people will give explicit consent to very risky medical procedures, or to assisted suicide, or to 'do not resuscitate' orders because of preferences that are grounded in valuing human life only when it is 'productive', and in disvaluing any human life the person deems a 'burden'. We might worry that preferences like these can be formed under unjust pressure in a way that makes the consent based on them ineffective.

### *Some complexities*

First: in cases in which consent, etc. doesn't switch the moral facts in the ways given by (i) and (ii), it may nonetheless change the moral facts in some way, e.g., X might remain impermissible *on its own*, but the consent, etc. might make X permissible *following some further actions, such as scaffolding*.<sup>6</sup>

<sup>6</sup> (Kukla, 2021).

Second: in cases like the above, we are torn between (i) respecting the genuine preferences of the individual and the autonomy—in the sense of sovereignty—of their choice, and (ii) being sensitive to the way in which the preference was formed and any resulting compromise of their autonomy—in the sense of authorship. And we must recognise that declaring consent ineffective can rob those giving the consent of certain goods.<sup>7</sup>

<sup>7</sup> (Terlazzo, 2016; Tadros, 2021).

Third: surely we should just endeavour to remove the injustice that gives rise to the preferences in the first place? Yes, but sometimes that is out of our personal control; and we must figure out what we may do in the mean time.

Moreover, there are difficult cases in which people have preferences formed under injustice for continued restriction of their preferences.

### *Two attempts at an account*

#### *A perfectionist content-based account*

What matters isn't the way the preferences were formed, but the content of the preferences.

Two problems: (i) consent can be ineffective even when it is based on preferences that take to be valuable something it is perfectly permissible to take to be valuable; and (ii) consent can be effective even when it is based on preferences that take to be valuable that which is objectively disvaluable for the person holding the preferences.

### *A historical account*

David Enoch: “My suggestion, then, is that an important class of cases of nonautonomous preferences is those that were shaped (in the appropriate way) under the causal influence of unjust conditions, conditions that violate the rights or entitlements of the relevant agent.” What’s more, the causal pathway from the injustice to the preference must be of the right sort: “the shaping of the preference has to be sensitive to the unjust circumstances being, well, unjust.”<sup>8</sup>

**LONE ACTIVIST** René is a gay activist campaigning for LGBTQ+ rights. He greatly values addressing political problems collectively. However, he comes to live under a homophobic, unjust regime that criminalises collective action, particularly targeting queer liberation groups. It places restrictions on freedom of association, lobbying, protesting, etc., in ways that affect those groups disproportionately. As a result, he turns to more individualistic approaches, trying to influence individual people in positions of power, writing newspaper columns on his own, and providing what assistance he can personally provide to queer people he knows. Over time, he comes to value that sort of approach; indeed, he comes to favour it over more communal approaches.

**PRESSURED PARENT** Holt is pressured very heavily by their partner, family, and society to become a parent when their initial preferences are strongly against doing so. However, becoming a parent proves a personally transformative experience for them and their preferences change so that they value raising a child greatly.<sup>9</sup> They are now considering having a second child, and they want to do so based on these preferences.

<sup>8</sup> (Enoch, 2020, 185-9). See also, (Bartky, 1990; Walker, 1995; Superson, 2005). To illustrate the sensitivity condition, consider Enoch’s kidnapped pianist.

<sup>9</sup> (Paul, 2014, 2015).

### *On the Formation of Preferences*

**MECHANISM 1: SANCTIONS.** Preferences can be formed, or changed, because the price of not having them is too high.<sup>10</sup>

**MECHANISM 2: BELIEFS.** Preferences can be formed, or changed, by gaining beliefs about what is objectively preferable.<sup>11</sup>

**MECHANISM 3: ASSOCIATION.** Preferences can be formed, or changed, by associating other things of value with them, or by ensuring that other things will lose value if you don’t have the preferences.

**MECHANISM 4: IMITATION.** Preferences can be formed, or changed, by imitating the preferences of those around you.<sup>12</sup>

**MECHANISM 5: AMOR FATI.** Preferences can be formed, or changed, in order to avoid inevitable dissatisfaction: that is, we form a prefer-

<sup>10</sup> E.g., possibly *FOOD INEQUALITY*, and *THE ANGEL IN THE HOUSE*.

<sup>11</sup> E.g., possibly *FOOD INEQUALITY*, and *CLASS INEQUALITY*.

<sup>12</sup> This is sometimes known as the socialization of preferences, e.g., (Bardi et al., 2014; Cieciuch et al., 2024).

ence in favour of one thing over another because the first is available to us and the second is not.<sup>13</sup>

MECHANISM 6: CHOICE. Preferences can be formed by observing one's own choice behaviour.<sup>14</sup>

MECHANISM 7: ATTENTION. Preferences can be formed, or changed, by having extended contact with the object of the preference.

<sup>13</sup> (Elster, 1983; Superson, 2005).

<sup>14</sup> Social psychologists call this *choice-induced preference change* (Brehm, 1956; Festinger, 1957; Bem, 1967; Egan et al., 2010). Cf. Chang's (2017) *hard choices* and Walden's (2024) *quandaries*.

### *Three versions of ATTENTION*

*Epistemic.* The extended contact can *reveal* to us features of the object of preference that were not accessible before, either because we had no acquaintance with the object, or had little acquaintance and at a distance, or paid the object little attention; and these features of the object might be ones we antecedently value.

*Creative.* The extended contact gives us the opportunity to exercise our creative faculties on the features of the object that are accessible to us in order to *construct* values for those features, or for the combination of those features. Sometimes we do this by choosing to treat the object as an instance of a normative concept we already have—in art, *beauty*, perhaps; in judgments about a course of action, *virtuousness* or *dignity*. Sometimes we do it by choosing to treat the object as an instance of a concept we already have that isn't itself normative but whose instances we value once we come to apply the concept to them—in art, *serenity*, perhaps; for a course of action, *self-reliance* or *loyalty*. And sometimes we are moved to develop a new concept precisely by contact with the object in question.<sup>15</sup>

*Reassessment.* The extended contact can change the weights we give to different components of the object.

Plausibly, in the case of René and Holt, their preferences are changed by some form of ATTENTION.

This is also what seems to be going on in the case of Iris Murdoch's (1964) mother and daughter-in-law.

A mother, whom I shall call M, feels hostility to her daughter-in-law, whom I shall call D. M finds D quite a good-hearted girl, but while not exactly common yet certainly unpolished and lacking in dignity and refinement. D is inclined to be pert and familiar, insufficiently ceremonious, brusque, sometimes positively rude, always tirelessly juvenile. M does not like D's accent or the way D dresses. M feels that her son has married beneath him. [...] Time passes [...] M observes D or at least reflects deliberately about D, until gradually her vision of D alters. [...] D is discovered to be not vulgar but refreshingly simple, not undignified but spontaneous, not noisy but gay, not tiresomely juvenile but delightfully youthful, and so on.

<sup>15</sup> Compare: Kant's (1790/2000, 5:314-7) "free use of the imagination".

## *The effectiveness of consent*

### *A hypothesis*

- When your preferences are formed via **SANCTIONS**, and the preference-inducing sanctions are imposed by unjust external forces, the effectiveness of any consent based on them is diminished (and how much scales with the injustice and severity of the external forces).
- If they are formed via **BELIEFS**, and the beliefs are formed in an evidential environment that is manipulated by unjust external forces, the effectiveness of any consent based on them is diminished (and how much scales with the injustice and severity of the external forces).
- If they are formed via **ATTENTION**, even if your extended contact with the object of preference is imposed on you by unjust external forces, the effectiveness of the consent based on them is not diminished.
- If they are formed via **ASSOCIATION**, the effectiveness of the consent based on them is not diminished, unless associating that to which you consent with something you antecedently value reduces the packages of options available to you.<sup>16</sup>
- What of **IMITATION** and **CHOICE**? Both kick in as alternatives to reflective preference formation. The status of consent based on them depends on whether the unjust pressure necessitated using the alternative rather than reflection.

<sup>16</sup> (Gerver, ta).

### *Consequences of the hypothesis*

What does it mean to say that the effectiveness of the consent is diminished? Moral wrongness comes in degrees; so does the amount of scaffolding required to ensure X is morally permissible.

It is possible on this account that someone's first experience of X was the result of consent to X that was ineffective, and yet their subsequent experience of X led them, via **ATTENTION**, to reaffirm that preference but now in such a way that consent to X based on it is effective. Cf. **PRESSURED PARENT**.