

CONSENT

COURSE DESCRIPTION

Central to our lives is our ability to shape the normative relations we stand in with others. We can make promises and thereby become obliged to others; just as importantly we can give others permissions to act in ways that would otherwise wrong us. Consent is one—or perhaps the—way of giving others permission. (We'll ask if there are others.) This class will open by way of considering the place of consent in ethical theory at large. We'll then turn to the questions that have preoccupied philosophical and legal writing on the topic: first, the “ontological question”: whether consent is some kind of mental state (like an intention to allow someone to ϕ) or something *public* like a successful communicative act. Second, the question of what it takes for a consent to be “valid,” i.e., to genuinely dissolve a duty, waive a right, or otherwise give a permission. We'll consider the three traditional requirements in turn—that the consent have been voluntary (i.e., not coerced), that it have been (sufficiently) informed, and that the consenter is competent—as well as skepticism of the attempt to specify the conditions of validity. We'll then consider feminist critiques of the notion of consent—in particular in its use in sexual ethics. We'll close by reading two (very) recent monographs on consent by Tom Dougherty and by Hallie Liberto. (Note that this class will not directly address the topics of hypothetical consent or consent to political authority.)

PERMISSION TO ENROLL:

This class officially requires my permission to enroll or audit. (Auditors are very welcome!) Graduate students in philosophy hereby have permission. (Is this valid consent? You'll have to take the class to find out!) If you are not a member of the Philosophy Department, please send me an email before term begins with a note about your background in philosophy and your interest in taking the class. I would love to have you! We just want to make sure this class is a good fit for your interests and/or whether some supplemental readings or preparation would be helpful.

All are welcome—with or without prior permission—to attend the first session of class to see if it is a good fit!

MEETING TIMES:

Class: W 9:30-11:45 AM, Emerson 310.

Office Hours: Emerson 204. Normally on Wednesday, 12-2 PM. On the following days, I will be traveling in the afternoon and so will hold office hours by appointment: 2/15, 3/22, 4/5, 4/26.

A NOTE ON THE TOPIC

This course will regularly touch on topics of sexual misconduct, assault, and rape. The literature on consent often treats sex, medical treatment, and medical research on human subjects as the *raison d'être* of a theory of consent. Work on the topic is often motivated by or preoccupied with examples—real cases and abstract thought experiments—of sexual interaction in which consent is absent or somehow vitiated. Frankly, many other standard cases of consent (e.g., of allowing someone to enter or to use one's property) are sometimes only thinly veiled stand-ins for instances of sexual consent.

One of the questions we will ask in this course is whether the preoccupation with consent in sexual ethics, and with sexual ethics in the literature on consent, is apt. Indeed, one of the reasons I am teaching this course is because of a general frustration I have with much of the literature on consent, both in its treatment of sex and the way in which sexual interactions—may well call for treatment quite separate from that of lending someone property—serve to structure thinking about consent in general. But engaging in the contemporary literature, whether as a fully enthusiastic participant, skeptic, or both, will require that we consider sexual misconduct, assault, and rape with some regularity.

While almost any course in normative ethics requires sensitivity to the seriousness of the topics, it will be especially crucial that we approach this topic, and each other, with the respect and care required. If at any point, members of the class need to take a break or excuse themselves, temporarily or for the rest of the day, they are always free to do so. Likewise, if there are particular days (e.g., the day on coercion) that you would like to skip, you may do so without explanation; you may also attend remotely, with or without a. (Just let me know in advance.)

At the end of each session as we look ahead to the next week, I will make a note of any readings with especially troubling or difficult portions so that you may skip a reading—or a section of a reading—if you would like.

Lastly, if at any point the class raises issues that you would like to discuss privately, I am of course available. You must keep in mind, however, that I (like all faculty) am a “Responsible Employee” and am legally required to report instances of sexual misconduct to the Title IX Coordinator. I can always help direct anyone in need to other University resources—including those who are able to discuss personal matters with strict confidentiality. (More [here](#).)

COURSE READINGS:

All readings will be available online. But the following books will be used:

- Judith J. Thomson, *The Realm of Rights*
- Müller and Schaber, *Routledge Handbook of the Ethics of Consent*
- Miller and Wertheimer, *The Ethics of Consent: Theory and Practice*
- Victor Tadros, *Wrongs and Crimes*
- Tom Dougherty, *The Scope of Consent*
- Hallie Liberto, *Green Light Ethics*

GRADING AND ASSESSMENT

- Attendance, Participation (15%)
 - Attendance at all class sessions is required unless you are skipping for content-related reasons. If you are, just let me know—I don’t need an explanation, just tell me that you are not comfortable attending that session.
 - I expect all those taking the class for credit to contribute actively to discussion each week.
- Discussion Posts (10%)
 - Each week, students will have post a short (3-5 sentence) response on Canvas that raises one or two question about or critiques of the reading; the question can be clarificatory! The most useful posts are often those expressing confusion—ideally explaining the source of the puzzlement.
 - Posts are due on Tuesday at 11:59 pm and graded solely on the basis of completion.
 - Posts are not required the week one is presenting.

- Presentation (15%)
 - All students will give one or two (depending on total enrollment) presentations in which they will introduce the day's readings and open discussion. Presentations should be approximately 10-15 min long and use a handout or slides.
- Paper: 5000(ish) words (60%)
 - Graduate students must meet individually with me to discuss a topic for the paper. Topics must be finalized by April 1.
 - By the end of term, students must turn an outline/very long abstract (1500ish words) of their paper.
 - Papers are due by Aug. 15, 2023.
 - Graduate students' papers should engage with some aspect of the literature covered in the syllabus. It *may* also be appropriate to consider a few additional sources if appropriate to the paper topic. Papers should aim to make a sharp criticism of extant arguments or views, advance a positive proposal of their own, or both.

ADDITIONAL REQUIREMENTS

- No laptops. iPads or tablets are fine but may not be used for anything not directly related to the class. If, however, you have some special need—whether that is for an accommodation or because you *really* prefer to take seminar notes on your laptop—send me an email and we can work it out. If you are found using gadgets for impermissible activities (checking email, etc.), your privileges will be revoked or (if applicable) we will meet with Disability Resources.

SCHEDULE AND READINGS

(In putting together this reading list, I drew on syllabi designed by Anni Raty and by Sarah Moss and Scott Hershovitz.)

UNIT I: BACKGROUND

Jan. 25: The Place of Consent in Moral Philosophy

- Judy Thomson, *The Realm of Rights*, Ch. 1 “Claims, Privileges, and Powers”
- Onora O’Neill, “Between Consenting Adults”
- Seanna Shiffrin, “Promising, Intimate Relationships, and Conventionalism” (focus on 481-86, 498-502; you’ll need to read the whole thing by Feb 8)
- Kieran Setiya, “What is a Right?”

Optional Readings:

- Leif Wenar, “Rights,” [\[link here\]](#) *Stanford Encyclopedia of Philosophy* (good background)
- Chris Korsgaard, “The Right to Lie: Kant on Dealing with Evil” (a cousin to O’Neill’s paper)
- Japa Pallikkathayil, “Deriving Morality from Politics: Rethinking the Formula of Humanity” (a criticism of O’Neill and Korsgaard)
- Thomas Hobbes, *Leviathan*, Ch. 13-17 (probably not *actually* worth reading just for today; I’m hoping to host a reading group on this)

Feb. 1: What is Consent?

- Hubert Schrüniger, “What is Consent?,” in *Routledge Handbook*
- Felix Koch, “Consent as a normative power,” in *Routledge Handbook*
- Judy Thomson, *The Realm of Rights*, Ch. 14 “Ceasing to Have a Right”

Optional Reading:

- Kleinig, “The Nature of Consent,” in *The Ethics of Consent* (another helpful overview)

Feb. 8: Foundations of Consent: Interests? Autonomy?

- Finish Shiffrin’s “Promising, Intimate Relationships, and Conventionalism” if you didn’t before
- Peter Schaber, “Consent and wronging a person,” in *Routledge Handbook*
- David Owens, “The Possibility of Consent”
- Tom Beauchamp, “Autonomy and Consent,” in *The Ethics of Consent*

Optional Reading:

- David Owens, *Shaping the Moral Landscape*, especially the introduction (available on Oxford Scholarship Online)

UNIT II: ONTOLOGY

Feb. 15: Consent as an attitude

- Heidi Hurd, “The Moral Magic of Consent”
- Kimberly Ferzan, “Consent, Culpability, and the Law of Rape”

Optional Readings:

- Larry Alexander, “The Moral Magic of Consent (II)” (companion piece to Hurd’s; mental state view)
- Larry Alexander, “The Ontology of Consent” (more defense of a mental state view)

Feb. 22: Consent as Communication

- Tom Dougherty, “Yes Means Yes: Consent as Communication”
- Alexander, Hurd, & Westen, “Consent Does not Require Communication: A Reply to Dougherty”

Mar. 1: Consent as Communication, cont.

- Renée Jorgensen Bolinger, “Moral Risk and Communicating Consent”
- Neil Manson, “Permissive Consent: A Robust Reason-Changing Account”

UNIT III: VALIDITY

Mar. 8: Coercion

- Japa Pallikkathayil, “The Possibility of Choice: Three Accounts of the Problem with Coercion”
- Sarah Conly, “Seduction, Rape, and Consent”
- Hallie Liberto, “Coercion, Consent, and the Mechanistic Question”

Optional Readings:

- Mitchell Berman, “The Normative Functions of Coercion Claims” (more on coercion in general)
- Stephen White, “On the Moral Objection to Coercion” (more on coercion in general)
- Tom Dougherty, “Why Does Duress Undermine Consent?” (very recent—on coercion and consent)
- Victor Tadros, “Coercion and Consent,” in *Wrongs and Crimes* (more on coercion and consent)

Highly Optional Reading:

- Seanna Shiffrin, “Duress and Moral Progress”

Mar. 22: Information and Deceit

- Tom Dougherty, "Sex, Lies and Consent"
- Hallie Liberto, "Intention and Sexual Consent"
- Emily C. R. Tilton and Jonathan Jenkins Ichikawa, "Not What I Agreed To: Content and Consent"

Optional Reading:

- Victor Tadros, "Error and Consent," in *Wrongs and Crimes* (followup chapter to last week's optional reading; more of Tadros's picture)

Mar. 29: Competence, Alternatives

- Quill R. Kukla, "A Nonideal Theory of Sexual Consent"
- Franklin Miller and Alan Wertheimer, "Preface to a Theory of Consent Transactions: Beyond Valid Consent"

Optional Reading:

- Steven Joffe & Robert Truog, "Consent to Medical Care: The Importance of Fiduciary Context" in *The Ethics of Consent* (About how a doctor, qua fiduciary, can shoulder some of the conditions of validity for her patient)

UNIT IV: CRITIQUE

Apr. 5: Against Consent

- Michelle Anderson, "Negotiating Sex" (**NOTE:** this paper opens with a graphic description of a rape; if you do not want to read that, you can start on page 3 or go right to Part II)
- Quill R. Kukla, "That's What She Said: The Language of Sexual Negotiation"
- Catherine MacKinnon, "Rape Redefined"

Optional Reading:

- Karamvir Chadha, "Sexual Consent and Having Sex Together" (a defense of consent-based views against critique)
- Natalie Stoljar and Catriona Mackenzie, *Relational Autonomy*, "Introduction" (a helpful way into a non-individualistic way of thinking about autonomy)

UNIT V: NEW BOOKS!

Apr. 12: Dougherty

- Tom Dougherty, *The Scope of Consent*, Ch. 1, 8-12

Optional (but strongly recommended) reading:

- *The Scope of Consent*, Ch. 4-7 (on communicative views of the scope of consent)

Apr. 19: Liberto

- Hallie Liberto, *Green Light Ethics*, Part II

Apr. 26: Liberto

- Hallie Liberto, *Green Light Ethics*, Part III