

**ARTICLE**

# Why does duress undermine consent?<sup>1</sup>

**Tom Dougherty**Department of Philosophy, University of  
North Carolina at Chapel Hill**Correspondence**Tom Dougherty, Department of Philosophy,  
University of North Carolina at Chapel Hill,  
240 E Cameron Ave, Chapel Hill NC 27599,  
United States of America  
Email: tom.dou@gmail.com**Abstract**

In this essay, I discuss why consent is invalidated by duress that involves attaching penalties to someone's refusal to give consent. At the heart of my explanation is the Complaint Principle. This principle specifies that consent is defeasibly invalid when the consent results from someone conditionally imposing a penalty on the consent-giver's refusal to give the consent, such that the consent-giver has a legitimate complaint against this imposition focused on how it affects their incentives for consenting. The Complaint Principle says that this consent is defeasibly invalid to make room for the Authorization Principle, which allows sincere authorizations to constitute valid consent, even when these are issued by an agent acting under duress. The Authorization Principle has application only in cases of third-party duress because when the consent-receiver is the source of the duress, the consent-giver is not sincerely authorizing the action.

**KEYWORDS**

Coercion, Consent, Duress, Valid

## 1 | INTRODUCTION

When all goes well, your consent can release others from duties that they owe you.<sup>2</sup> For example, if you let a hairdresser cut your hair, then your consent can make it permissible for them to do so. But all does not always go well. If you're agreeing to an avant-garde hairdo because the hairdresser has threatened you with their scissors, then it'd still be wrong for them to cut your hair in this way. Because of the duress that you are under, your consent to that haircut is morally *invalid*. By this, I mean that the consent fails to release the hairdresser from the duty that they owed to you not to cut your hair.

A full theory of consent must answer the question of why certain forms of duress invalidate consent. But to carve out a tractable topic for a single essay, I will only offer a partial answer to this question. I am going to limit our discussion in two ways. First, I am going to focus on types of duress that

involve an agent attaching penalties to someone's refusal to give consent. Second, I am going to make an idealizing assumption that the consent-giver has accurate beliefs about the consequences of their refusing to consent.<sup>3</sup> From now on, I will have both constraints implicitly in mind when I talk of "duress." Here is an illustrative example of a case that fits both constraints:

*Threat. Bully sincerely threatens to smash Victim's glasses unless Victim lets Bully pinch them.*<sup>4</sup>

In the *Threat* case, Victim's consent to the pinch is invalid because of Bully's threat. Bully's duress operates by conditionally imposing a penalty on Victim's decision to refuse consent. In this essay, I will develop an answer to the question of why this type of duress invalidates consent.

I will begin by looking at reasons to reject various explanations of why duress invalidates consent in Section 2. This discussion will get on the table a range of cases that must be handled by an account of consent under duress. In Section 3, I begin developing the centerpiece of my proposal—the Complaint Principle. According to this principle, duress invalidates consent because the consent-giver has a legitimate complaint against their consent being induced by means of the duress—a complaint that is focused on the way that the duress alters the consent-giver's incentives for refusing consent. A key feature of this principle is that it explains the invalidity of the consent in terms of what is morally problematic about the inducement. In Section 4, I refine this proposal by making room for an important exception. The Authorization Principle allows that someone under duress can give valid consent, when this consent constitutes an authorization for how they would like the consent-receiver to behave, given the circumstances that are beyond the consent-receiver's control.

## 2 | PROBLEMS WITH CANDIDATE EXPLANATIONS

In this Section, I am going to look at candidate explanations of why duress invalidates consent. Some of these contain insights that I will aim to incorporate into my own proposal, which I develop in subsequent Sections. But as comprehensive explanations of why duress invalidates consent, these candidates face counterexamples. As we will see, often the problem is not that the explanations are down the wrong track, so much as that they do not go far enough. Since there are many candidates and space is limited, I will not attempt to show that these challenges deliver knockout blows. Instead, I will move swiftly through the terrain, with the primary purpose of setting up and motivating my own proposal, as well as getting on the table a range of problem cases that ought to be explained by an account of consent under duress.

So why does duress invalidate consent? A natural thought is that it does so by making the consent insufficiently voluntary. This thought focuses on the idea that the duress is undermining the consent-giver's agency. But natural as this thought is, it struggles to handle the differences between the following cases:

*Boycott. Uncool says that if Club-owner does not let Uncool into the VIP area, then they will stop coming to the club and it will lose \$1,000 in profit. Since the club's finances are in dire straits, Club-owner lets Uncool into the VIP area.*

*Slander. Uncool says that if Club-owner does not let Uncool into the VIP area, then they will spread false rumors and the club will lose \$1,000 in profit. Since the club's finances are in dire straits, Club-owner lets Uncool into the VIP area.*

Club-owner's consent is valid in *Boycott* but not in *Slander*. But Club-owner acts just as voluntarily in each case.<sup>5</sup> In both cases, the club's poor finances oblige them to take the deal offered, and the duress equally undermines their agency.<sup>6</sup> The difference between the cases does not concern Club-owner's agency, but the moral features of the circumstances that they are in.

The moral difference between those cases appears to concern the legitimacy of the threat that Uncool uses. But while Uncool is attempting to illegitimately manipulate Club-owner, it would be a mistake to focus on the consent-receiver's *intentions* in creating the duress.<sup>7</sup> As well as threats, consent can also be invalidated by a warning:

*Warning. Angry knows they will akratically lose control and smash Victim's glasses if they do not let Angry pinch them. Not wanting Victim to have smashed glasses, Angry warns Victim about this.*<sup>8</sup>

When Angry gives the warning, they are not trying to control Victim's behavior. Instead, Angry is motivated by an altruistic concern for Victim's best interests. Yet Victim's consent would be invalidated all the same. And the same can be true when someone consents because of another person's reputation for imposing penalties. Consider:

*Reputation. Fearful receives accurate testimony from Trustworthy that Menace is disposed to smash people's glasses if they do not let Menace pinch them. Fearful lets Menace pinch them to avoid having their glasses smashed.*

The case's description leaves entirely open what Menace's intentions might be. Yet because Fearful is consenting only to avoid Menace smashing their glasses, Fearful's consent is invalid.

These cases suggest that rather than looking at the consent-receiver's intentions, we would do better to look at the effect of the duress on the consent-giver's decision-making. We might hypothesize that their consent is invalidated because their decision-making is being illegitimately constrained in the sense that they are deliberating while lacking an option that they are entitled to have.<sup>9</sup> This principle would apply to duress because duress removes a conjunctive option of the consent-giver—the option of both refusing to consent and also avoiding the penalty. For many forms of duress, the consent-giver is entitled to have this option open to them because the penalty would violate their rights. For example, Bully's duress takes away Victim's conjunctive option of avoiding a pinch and smashed glasses, and Victim has a right that their glasses not be smashed. But it would be too narrow to say that consent is invalidated only when the consent-giver's decision-making is constrained by threats that would violate their rights.<sup>10</sup> In addition, some forms of duress illegitimately constrain a consent-giver, even though the duress does not involve a threat to the consent-giver's own rights:

*Distant Bomb. Terrorist has placed a bomb in the city center. Terrorist threatens to detonate the bomb unless Farmer lets Terrorist pinch them.*

Removing the option of [refusing to consent and no explosion] does not violate Farmer's rights, since Farmer's rights are not violated by the explosion. Yet it is plausible to say that Farmer's decision-making is being illegitimately constrained in the sense that they are entitled to deliberate about whether to let Terrorist pinch them, without the explosion hanging on their choice.

But there are problems with the idea that an agent's consent is invalid whenever their decision-making is illegitimately constrained. Someone can give valid consent to one person performing an

action, while a third-party takes away their option of refusing to consent without an illegitimate penalty.<sup>11</sup> Consider:

*Crockery Dilemma. Bully threatens to smash Victim's vase, unless Bystander smashes Victim's teapot. Bystander is aware of the conditional threat, but cannot prevent Bully from smashing the vase. Victim asks Bystander to smash the teapot.*

In this case, Bully has constrained Victim's choice, by taking away their option of refusing to consent without an illegitimate penalty. Yet Bystander would not wrong Victim by smashing the teapot. However, Bystander would wrong Victim if Bystander still owes Victim a duty not to smash the teapot. Therefore, Victim's consent has released Bystander from this duty. Now, by definition, consent is valid when it succeeds in releasing someone from a duty. So the *Crockery Dilemma* case illustrates that someone can validly consent, even though their deliberative options are being illegitimately constrained by a threat.

We might think that this problem arises because the consent-giver's options are being illegitimately constrained by a third-party. To screen off this counterexample, we might add the condition that duress invalidates consent only when the duress come from the consent-receiver. But that requirement goes too far in the other direction. It faces counterexamples in the form of cases in which consent is invalidated by a threat from a third party:

*Third-Party Acquiescence. Bully proposes to smash Victim's glasses if and only if Victim does not ask Stranger to pinch them. In other words, Bully is allowing that Victim's making the request will save their glasses, even if Stranger has no desire to pinch Victim and so refuses the request. Stranger knows the terms of Bully's threat but is powerless to prevent Bully from enforcing the threat. Victim asks Stranger to pinch them.*

Since Victim only makes the offer to avoid having their glasses smashed by Bully, and Victim has no desire at all for Stranger to pinch them, Stranger would wrong Victim by pinching them. Since Stranger would wrong Victim by pinching them, Stranger remains under a duty not to pinch them. However, Stranger would be released from this duty if Victim's consent were valid. Therefore, we can conclude that their consent is invalid. Therefore, the *Third-Party Acquiescence* case illustrates that third-party duress can invalidate consent.<sup>12</sup>

That completes our survey of initially promising explanations of why duress invalidates consent. Let us briefly take stock. We cannot explain the invalidity of someone's consent by saying that duress undermines the voluntariness of the consent: this will not explain why valid consent is given in the *Boycott* case but not in the *Slander* case. Indeed, that pair of cases shows why the explanation cannot concern metaphysical (i.e. non-moral) features of the consent-giver's agency. We cannot say that consent is invalidated because the consent-receiver is attempting to exercise manipulative control over the consent-giver. This view lacks the explanatory power to explain why consent is invalidated in the *Warning* and *Reputation* cases, in which the consent-receiver lacks manipulative intentions. We cannot say that duress invalidates consent because it involves a threat to infringe the consent-giver's rights: that view lacks the explanatory power to explain why the consent is invalid in the *Distant Bomb* case. We cannot say that consent is invalidated when their choice is constrained by the absence of options that they are entitled to have: this will not explain why consent is valid in the *Crockery Dilemma* case. And we have to reject the condition that consent is invalid only when the duress comes from the consent-receiver, as this implies the wrong result for the *Third-Party Acquiescence* case. These are points that must be accommodated by a successful account of consent under duress.

### 3 | THE COMPLAINT PRINCIPLE

The problem with several of the explanations that we just considered is that they were insufficiently general: they lacked the explanatory power to cover all cases in which consent is invalidated by consent. In responding to this shortcoming, it would be an over-reaction to jettison these explanations altogether. Rather, we should be interested in whether we can work their materials into a more comprehensive account. That is what I aim to do next.

Specifically, I aim to develop a defensible version of the view that duress invalidates consent because it illegitimately constrains the consent-giver's decision-making. I think that this development requires being more restrictive about the types of illegitimate constraint that invalidate consent. To be specific about this, I will invoke the notion of a personal complaint against another person's behavior, and the notion of a rebuttal of such a complaint. Since these notions will play central roles in my proposal, I will start by saying a little about how I am understanding each notion.

As we noted at the outset, valid consent releases the consent-receiver from a duty that they owed to the consent-giver. These directed duties have one of the following two structures:

*X owes Y a duty to omit action A*

*X owes Y a duty to perform action A*

For simplicity, I will focus on duties to omit actions, but everything that I will say applies equally to duties to perform actions. A characteristic feature of these duties is that their breach involves a wrongdoing. For example, if a stranger breaches their directed duty not to pinch you, then they would wrong you by pinching you. Prospectively, the fact that they would wrong you means that you are entitled to demand that they do not do so. Similarly, it means that you are entitled to take reasonable measures to prevent them from doing so, e.g. you would be entitled to grab their wrist to prevent the pinch. Retrospectively, if they wrong you, then you will have suffered a moral injury. As a wronged party, you would have a special status with respect to the stranger's action, entitling you to hold them accountable. Consequently, they would be obliged to acknowledge their mistreatment of you and apologize. They may also have to offer compensation that makes up for, or at least mitigates, any harm you have suffered. Importantly, these phenomena are rooted in aspects of your relationship with them. You are not objecting to the mere impermissibility of their action, but the fact that *they* has wronged *you*.

These are ways that we hold each accountable for how we treat each other.<sup>13</sup> We often do so expressively by performing certain speech-acts, such as a speech-act of demanding or a speech-act of complaining. But underlying these speech-acts are legitimate grounds for demands or complaints. With respect to complaints, these grounds specify the respect in which you have been morally injured. For example, you would have a complaint against being pinched by the stranger. These grounds exist whether or not you perform any speech-act. If you are unable to communicate, then you still have the grounds for the complaint. I will have in mind these grounds, rather than their expressions in speech-acts, when I say that you would have a "complaint" against them pinching you.<sup>14</sup>

The contours of our rights at least partly determine our grounds for complaint. I will not offer anything like a full theory of rights here, but will note that often our default rights protect us from harms or trespass by others. In this way, these rights give us spheres of freedom from others' interference, within which we can go about living our own lives. We end up with personal domains that protect critical interests of ours. But since we are social creatures that live alongside each other, this protection comes at the cost of restricting their liberty, and so it is unreasonable for us to enjoy unlimited protection. Instead, there are some situations in which others harm us without infringing our rights. Suppose A has a crush on B, and so A is heart-broken when C partners up with B. Even though C's

action has caused A emotional or psychological harm, C would normally not have wronged A. C has their own valid interest in pursuing liaisons of their own choosing. This limits the extent of A's rights with respect to the harms that they suffer as a result of C's interactions with B. Consequently, A would not have a complaint against C causing them this harm. In light of C's own valid reasons, C has a *rebuttal* of a putative complaint from A.

In that example, C's rebuttal appeals to the fact that A has no right over how C interacts with B. Other rebuttals can justify rights infringements. Suppose that D is about to fall asleep in an important meeting, and will be hauled over the coals by their boss if they do. E is sitting across from D, and notices this. They see that the only unobtrusive way to prevent D falling asleep is to kick D under the table, and so they kick D. Since D has a right against being kicked by others, E thereby infringes D's right. But E does not thereby wrong D because they act for D's sake, in a manner that D would authorize. In light of this, E has a rebuttal of a putative complaint from D against being kicked.

In the kicking example, E's valid rebuttal of a putative complaint is also a justification of their behavior: E could invoke this rebuttal to justify the kick to D. But not all interpersonal justifications constitute rebuttals of complaints. Suppose that F credibly threatens to shoot G unless G kicks H, and so G kicks H. In light of the threat, G would be able to justify their behavior to H: they could point out that although they gave full moral consideration to H's right against being kicked and to the harm that H thereby suffered, there were weightier moral considerations in play. Since H would have to accept that G was justified in acting in this way, H could not reasonably resent the way that they have been treated. But this does not take away from the fact that H retains a legitimate complaint against this treatment. G is still obliged to recognize that they have infringed H's right, and apologize for this.<sup>15</sup> If it were possible for G to compensate them, then they ought to do so, since G is prohibited from transferring onto H the costs of G escaping F's threat. Therefore, even though G was justified in their behavior, they have still morally injured H.

For our purposes, the most important rebuttal of a putative complaint is that the individual has given them valid consent. By giving this consent, they choose to relax some of the protection that they enjoy from another person. There is a variety of self-centered and altruistic reasons that they may have for relaxing this protection. But as the phenomenon of duress makes clear, not all instances of consent are valid, and hence do not succeed in waiving a right. In those instances, the fact that consent is given does not constitute a rebuttal against a putative complaint. Instead, the original complaint remains on the table.

Framing our topic in this way, the salient question becomes: why does consent under duress not constitute a rebuttal of a putative complaint? At a high level of abstraction, we can say that the consent does not constitute a rebuttal because the consent was being induced in a problematic way. The consent-giver can then counter-rebut the putative rebuttal by saying that it was inappropriate for the consent-receiver to rely on their consent in the usual way, given that it has been induced in a problematic way. To illustrate, take the simplest case with which we began:

*Threat. Bully sincerely threatens to smash Victim's glasses unless Victim lets Bully pinch them.*

Suppose Bully does indeed pinch Victim. Victim would have a legitimate complaint against their doing so. Bully could try to rebut this complaint by saying that Bully had Victim's consent. But Victim has a successful counter-rebuttal. They can say that they only gave this consent because they were being illegitimately threatened, and that Bully was wronging them by inducing their consent with the threat. Since Bully was wronging them by inducing their consent with a threat, Victim has an independent legitimate complaint against Bully threatening them in this way. In light of this independent complaint

against the consent-inducement, Victim is able to counter-rebut Bully's appeal to their consent, and thereby insist on their original complaint against being pinched.

This counter-rebuttal relies on an independent rationale of why it is wrong to issue illegitimate threats that induce consent. In this way, our account of why certain forms of duress invalidate consent passes the buck onto an independent account of why it is wrong for consent to be induced by certain forms of duress.<sup>16</sup> But this does not make our account circular, since these accounts address different questions. The question of whether X's consent to Y performing action A is valid is a question concerning whether the consent creates a new moral permission for Y to perform A. The question of whether it is wrong for Y to use e.g. a threat to induce X's consent is a question concerning the permissibility of inducing consent with the threat. Importantly, we will often address the latter question by subsuming it under the more general question of which actions are wrong in virtue of being illegitimate ways to influence each other's conduct. For example, with respect to the *Threat* case, we can say that quite generally it is wrong for Bully to control Victim's behavior by threatening to smash their glasses, and so *a fortiori* it is wrong for Bully to control whether Victim consents with this threat. In that respect, our explanation would be leaning on our independent explanation of why, in general, someone wrongs another by coercing them.<sup>17</sup>

Generalizing from our analysis of the *Threat* case, our discussion suggests the following provisional principle:

Complaint Principle (First Draft). If X consents to Y performing (/omitting) action A, but

- (i) X does so only because Y is imposing a penalty on X's refusal to consent; and
- (ii) X has a legitimate complaint against Y conditioning this penalty on X's refusal to give consent;

then X's consent is not valid.

I call this the "First Draft" of the principle to flag that we will need to revise it in due course. But once it is suitably revised, I will argue that it explains why duress invalidates consent. We can view the principle as specifying the respect in which the consent-giver's decision-making must be constrained in order for their consent to be invalid. Condition (i) specifies that the constraint must play a causal role in the giving of consent.<sup>18</sup> Condition (ii) specifies that the constraint must be such that the consent-giver has a legitimate complaint against the imposition of this penalty, conditionally on their decision to give consent.

I just motivated the Complaint Principle by appealing to the grounds that a consent-giver might have for complaining about a consent-receiver's conduct. In addition, we can also motivate the Complaint Principle on extensional grounds: it has the explanatory power to handle most of the cases that we have considered so far. In both the *Threat* case and the *Slander* case, the consent-giver has a legitimate complaint against the threatened consequences being attached to their refusal to give consent. The same is straightforwardly true of the *Warning* and *Reputation* cases, since in these cases the consent-giver faces exactly the same penalties for refusing to consent as the consent-giver faces in the *Threat* case. The grounds for all these complaints are simply that the consequence in question would infringe one of their rights.<sup>19</sup> In the circumstances, this fact makes it the case that the consent-receiver wrongs the consent-giver in virtue of inducing consent by means of conditionally attaching this consequence to their refusal to consent.<sup>20</sup>

The Complaint Principle also handles cases in which the penalty for someone's refusal to consent falls on a third party. Our earlier example was the *Distant Bomb* case in which Terrorist threatens to detonate the bomb in the city, unless Farmer lets Terrorist pinch them. By itself, the detonation of the bomb would not wrong Farmer. But Terrorist does wrong Farmer by making this the consequence

of not letting Terrorist pinch them. Farmer has good reasons for not wanting their actions to causally contribute to the detonation. For a start, Farmer has altruistic reasons not to want their actions to contribute to others' suffering. Moreover, were they to contribute to others' suffering, they they would have performed an action that was morally bad in a respect—in the respect that it led to harm to others. Indeed, in the circumstances, this bad-making feature will almost certainly make it morally wrong of them to refuse to consent. Farmer has good reasons to avoid performing actions that hurt others, actions that are morally bad in a respect and actions that are wrong. So by making the detonation conditional on Farmer's refusal, Terrorist is limiting Farmer's options concerning what they can do without penalties that they have good reasons to avoid. In these respects, Farmer has a legitimate complaint against Terrorist making the harm to the city-dwellers a condition on their refusal to consent. And this is not a special claim about consent. Farmer would have a similar complaint against Terrorist imposing this condition on e.g. Farmer's decision whether to grow barley in their fields.

There remain our cases of third-party duress—*Broken Crockery* and *Third-Party Acquiescence*. I will postpone discussing these until Section 4. For now, I will instead note that while the Complaint Principle has the aforementioned advantages, our first draft of the principle needs modification. Recall that the second condition of the principle was the following:

- (ii) X has a legitimate complaint against Y conditioning this penalty on X's refusal to give consent;

This condition is too broad, as it would catch in its net orthogonal complaints that are irrelevant to whether someone's consent is invalidated by duress.<sup>21</sup> Consider variants of our earlier *Boycott* case:

*Humiliation. Spouse and Club-owner are married. Spouse says that if Club-owner does not let Spouse into the VIP area, then they will stop coming to the club and it will lose \$1,000 in profit. Given the social context, Spouse humiliates Club-owner by making this threat.*

*Promise. Uncool promises that they will not make any legitimate threats to Club-owner. Uncool breaks this promise by saying that if Club-owner does not let Uncool into the VIP area, then they will stop coming to the club and it will lose \$1,000 in profit.*

By inducing Club-owner's consent, Spouse wrongs Club-owner with a humiliating threat. And by inducing Club-owner's consent, Uncool wrongs Club-owner with a broken promise. As a result, Club-owner would have legitimate complaints against the ways that they have been treated. Yet even though these inducements wrong Club-owner, they still validly consent. Unfortunately, in light of condition (ii), the first draft of the Complaint Principle mistakenly says otherwise.

Consequently, we should modify this condition so that it is more specific about the type of complaint that gives rise to invalid consent: the complaint must be grounded in terms of how the conditioning affects the consent-giver's decision-making. Along these lines, I propose a second draft of our principle:

Complaint Principle (Second Draft). If X consents to Y performing (/omitting) action A, but

- (i) X does so only because Y is imposing a penalty on X's refusal to consent;
- (ii) X has a legitimate complaint against Y conditioning this penalty on X's refusal to give consent; and
- (iii) this complaint concerns the way that the penalty alters X's incentives for refusing consent;

then X's consent is not valid.



As well as handling the *Humiliation* and *Broken Promise* cases, this modification is also motivated by considerations concerning the counter-rebuttals that a consent-giver can make. If X attempts to complain about Y performing A, then Y can attempt to rebut this attempt by pointing out that Y consented. In response, X can now attempt to counter-rebut this rebuttal by pointing out that Y wronged X when inducing their consent. The success of this attempted counter-rebuttal intuitively depends on whether the wrong is grounded in how the consent was induced (i.e. whether the wrong is incidental to the incentives bearing on X's decision to consent). The need to accommodate this point motivates our adding condition (iii).<sup>22</sup>

Some people may feel that the Complaint Principle is leaving something out, insofar as it does not place any restrictions on the strength of duress that invalidates consent. For example, some people may think it necessary to require that the consent-giver "could not reasonably resist" suffering the penalty for refusing to consent. It would be easy to amend the Complaint Principle to include such a requirement. To do so, we would only need to add a further condition (iv) to this effect. But I am inclined not to add this condition. I see why we would want to add such a condition when giving accounts of other ethical aspects of duress. For example, it seems to me plausible that duress constitutes a defense against an agent's wrongdoing only when the agent could not reasonably withstand the duress. In that context, we hold people accountable for behaving permissibly by placing a high bar on the types of duress that they must endure. But in the case of consent, I see no reason for imposing this bar. Instead, it seems to me sufficient that the consent-giver was motivated to give consent because of the duress. And that point is accommodated by condition (i) alone.

#### 4 | THE AUTHORIZATION PRINCIPLE

So far, we have been focusing on cases in which the consent-receiver is the source of the duress. Now, let us broaden our analysis to include cases in which the duress comes from a third-party. Recall our earlier case:

*Third-Party Acquiescence. Bully proposes to smash Victim's glasses if and only if Victim asks Stranger to pinch them. In other words, Bully is allowing that Victim's making the request will save their glasses, even if Stranger has no desire to pinch Victim and so refuses the request. Stranger knows the terms of Bully's threat but is powerless to prevent Bully from enforcing the threat. Victim asks Stranger to pinch them.*

Intuitively, Stranger lacks Victim's valid consent. In its second draft, the Complaint Principle does not entail this. That draft only specifies that consent is invalidated by duress that originates with the consent-receiver.

But that detail is easily modified. We can re-formulate the view as follows:

Complaint Principle (Third Draft). If X consents to Y performing (/omitting) action A, but

- (i) does so only because **someone** is imposing a penalty on X's refusal to consent; and
- (ii) has a legitimate complaint against **someone** conditioning this penalty on X's refusal to give consent; and
- (iii) this complaint concerns the way that the penalty alters X's incentives for refusing consent;

then X's consent is not valid.

The difference from the second draft is the substitution of the emboldened “someone” in the place of a term referring to the consent-receiver. In its third draft, the Complaint Principle now gets the right result about the *Third-Party Acquiescence* case: Victim gave consent because of a penalty that Bully was conditioning on their refusal to give consent, and Victim had a complaint against Bully conditioning this.

But by making this modification, the Complaint Principle now faces a difficulty with our other case of third-party duress:

*Crockery Dilemma. Bully threatens to smash Victim’s vase, unless Bystander smashes Victim’s teapot. Bystander is aware of the conditional threat, but cannot prevent Bully from smashing the vase. Victim asks Bystander to smash the teapot.*

For the reasons canvassed earlier, we should allow that Bystander has Victim’s valid consent. But the third draft of the Complaint Principle yields the opposite result. Victim chose to consent only because there was a penalty attached to their refusing to consent, and they had a legitimate complaint against someone conditionally attaching this penalty to this refusal.

One option is to simply bite the bullet at this stage. We could say that Bystander acts permissibly, on the grounds that they act in the way that Victim believes best serves their interests, given the circumstances that Bystander and Victim are unable to control. As such, the *Crockery Dilemma* case could be one of the exceptional cases in which an agent acts permissibly despite lacking someone’s valid consent. Other cases might involve those in which a patient is highly intoxicated, and in need of urgent medical treatment. The intoxication makes it impossible for the patient to give valid consent. Still, even though the patient does not give valid consent, it is permissible for the physician to act in the patient’s best interests, guided by any available information concerning the patient’s beliefs, desires and intentions about how they would like to be treated in the circumstances that are beyond the physician’s control. We could appeal to a similar rationale to say that in the *Crockery Dilemma* case, Bystander acts permissibly, given that it is impossible for Victim to validly consent, and Bystander acts in Victim’s best interests, guided by how Victim would like them to act. Victim’s expressed choice could still remain morally significant. However, its significance would lie not in establishing valid consent, but instead in determining what Victim sees as the lesser of two evils, and hence how Bystander ought to behave in order to serve Victim’s interests according to how Victim sees their interests.

While I think that analysis has some promise, it does come with some intuitive cost: when presented with the *Crockery Dilemma* case, I think that most people’s intuitions will be that Bystander straightforwardly does have Victim’s valid consent. Since I take this intuition seriously, I am moved to look for ways to modify the third draft of the Complaint Principle. I see one attractive way to do so. This relies on a plausible, if contested, view of what consent is. According to this view, valid consent requires engaging in external behavior, which conveys that the consent-giver is changing their relationship with the consent-receiver.<sup>23</sup> At this level of abstraction, I think it is safe to construe this as a speech-act, simply on the grounds that it is meaningful behavior. But in saying this, I require neither that the speech-act be correctly interpreted by the audience nor that the communicative behavior be verbal. For consent-giving, a paradigmatic speech-act is the explicit granting of a permission, as when a speaker says (stiltedly), “I hereby permit you to walk across my lawn.” In addition, consent can be given by a range of other speech-acts, such as requests, offers, and invitations.<sup>24</sup> I leave open here whether these other speech-acts implicitly communicate the granting of a permission. Hence I leave open whether all tokens of consent can be reduced to implicit or explicit communications of permissions. I am relying only on the claim that speech-acts like requests, offers, and invitations can constitute consent.

Once we conceive of consent as granted by speech-acts like requests, we can make use of this conception in our inquiry into why Victim gives valid consent to Bystander. We can distinguish sincere requests from insincere requests, according to whether 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. 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. This analysis naturally fits the *Crockery Dilemma* case. Victim requests that Bystander smashes the teapot, in order to express what they most prefer Bystander does, holding fixed the circumstances that are beyond their control. If Victim were directly able to control Bystander's behavior with their own choices, then Victim would choose that Bystander 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.

Not only does this analysis yield the right result about the *Crockery Dilemma* case, I think it also does so for the intuitively correct reason. As such, I am inclined to endorse the following principle:

*Authorization Principle. If X sincerely performs a speech-act that authorizes Y to perform A as an extension of X's own agency in circumstances that are beyond the control of Y, then Y has X's valid consent to perform A.*

It is worth flagging that this principle will only have application in cases of third-party duress. Consider any case of two-party duress in which the consent-receiver is the source of the duress. If the consent-giver were able to control the consent-receiver's behavior, as their proxy agent, the consent-giver would simply choose to remove the duress altogether. To clarify, I aim for these remarks about control to concern the control that the consent-receiver has at any point in time. In the *Warning* case, it is true that at the time that Angry issues the warning, they are unable to control their future violence. But on the assumption that Angry is able to control whether they inflict violence at the time at which they do inflict this, the violence counts as being under their control for the purposes of applying the Authorization Principle. In this way, any requests that the consent-giver makes under two-party duress are not sincere authorizations, but instead are forced speech-acts that would indicate sincere authorization only when performed free from duress.

It is also worth flagging that the Authorization Principle does not entail the incorrect result that Victim validly consents in *Third-Party Acquiescence*. In that case, Victim is not sincerely authorizing Stranger to pinch them. Given that Bully will impose no penalty on Victim if Stranger does not pinch them, Victim has no desire whatsoever that Stranger pinch them. Consequently, if Victim were able to control Stranger's behavior as their proxy agent, then Victim would choose that Stranger not pinch them. Bully's duress is causing Victim to insincerely misrepresent how they would like Stranger to act as their proxy agent. But the Authorization Principle concerns only sincere authorizations.

The Authorization Principle implies that Bystander has Victim's valid consent in the *Crockery Dilemma* case. Since the Complaint Principle implies otherwise, we need to modify the Complaint Principle. Fortunately, this modification need not involve major surgery. We can simply revise the Complaint Principle so that it specifies a defeasible condition for consent being invalid, and allows that the Authorization Principle marks out a defeating condition. Accordingly, I propose:

*Complaint Principle (Final Draft). If X consents to Y performing (/omitting) action A, but*

- (i) X does so only because someone is imposing a penalty on X's refusal to consent;
- (ii) X has a legitimate complaint against someone conditioning this penalty on X's refusal to give consent; and
- (iii) this complaint concerns the way that the penalty alters X's incentives for refusing consent;

then X's consent is defeasibly not valid.

The defeating condition is that X authorizes Y to perform A as *per* the Authorization Principle.

Revised in this way, the Complaint Principle still yields the right results about all the other cases that we considered, as the defeating condition is not present in these cases. The only case in which the defeating condition is present is the *Crockery Dilemma* case, which was exactly the case for which we wanted the Complaint Principle not to wrongly imply that the consent is invalid.

The revised Complaint Principle is inelegant, in the way that all principles with exceptions are inelegant. That is a shame, but since "it is more important that our theory fit the facts than that it be simple," we should live with that cost.<sup>25</sup> Still, we should be less comfortable with the exception if it seemed to us *ad hoc*, and generated only to ward off counterexamples, such as the *Crockery Dilemma* case. If that were the only rationale for the defeating condition, then our overall account may seem unprincipled. But fortunately, the exception we are adding to the Complaint Principle is also motivated by our bigger picture view of how complaints can be made or rebutted as the result of our interactions with each other. The exception for the Authorization Principle is making room for the consent-receiver to offer a rebuttal to any putative complaint. The nature of the rebuttal is that the consent-receiver has tried their best to act exactly as the consent-giver has indicated that they would like them to act, given the circumstances that are beyond their control. Given the consent-receiver is unable to prevent the duress, there is nothing that the consent-receiver could have done to give the consent-giver more control over the course of affairs.<sup>26</sup> This provides the consent-receiver with a rebuttal of putative complaints about how the consent-giver has been treated. Therefore, the need for the exception for the Authorization Principle is not just motivated by the desirability of getting the right result about the *Crockery Dilemma* case. The Authorization Principle is also motivated by the fact that we can appeal to the fact that another person has authorized us to act in a certain way by making a sincere request, in order to rebut any complaints that they might make about our conduct.

## 5 | CONCLUSION

This completes the defense of my proposed explanation of why consent is invalidated by duress that involves attaching penalties to someone's refusal to give consent. At the heart of my explanation is the Complaint Principle. In its final draft, this principle specifies that consent is defeasibly invalid when the consent results from someone conditionally imposing a penalty on the consent-giver's refusal to give the consent, such that the consent-giver has a legitimate complaint against this imposition focused on how it affects their incentives for consenting. The Complaint Principle says that this consent is *defeasibly* invalid to make room for the Authorization Principle, which allows sincere authorizations to constitute valid consent, even when these are issued by an agent acting under duress. The Authorization Principle has application only in cases of third-party duress because when the consent-receiver is the source of the duress, the consent-giver is not sincerely authorizing the action.

I will end by returning to the two limitations of our inquiry that we made at the start.

Our first restriction was that we limited our discussion to cases in which penalties are imposed on someone's refusal to give consent. Because of this restriction, we have not looked at whether structural

constraints can constitute duress that invalidates consent. Still, our discussion has pointed us to how we might approach this question: we might think about which parts of the social environment the consent-giver is required to accept for the purposes of giving consent, and which they retain a legitimate complaint against—at least insofar as their consent is affected. Similarly, this framing restriction meant that we set to one side cases in which someone consents because another person attaches benefits to their decision to consent. Paradigms would be offers of payment in return for consent. Much of the time, we will see no moral problem with people exchanging consent for payment. After all, this is the situation that every landlord and tenant are in, and we are typically happy to deem a landlord's consent valid. But when exchanges of consent for payment are morally objectionable in some respect, we may become hesitant about judging that the ensuing consent is valid. Exploitative offers would be paradigms. Other examples might be offers that people accept because they are victims of injustice or wrongdoing. While I will not attempt to address these offers properly here, I suggest that the Complaint Principle again points us in a promising direction: we should start by considering whether the consent-giver would have a complaint against receiving this offer.

Our second restriction was to cases in which the consent-giver has accurate beliefs about the consequences of their consent. This meant that we have not looked at cases in which the consent-giver is mistaken in their belief that they will suffer a penalty if they consent. These cases include bluffs, in which the consent-giver does not plan to follow through on a threat (Ferzan, 2017). Although it is beyond the scope of this essay, I suggest that generalizing the Complaint Principle to handle these bluffs would be straightforward: it is plausible that the consent-giver retains their complaint against an action if they consent only because the consent-receiver has issued a bluffing threat. Less straightforward are cases in which the consent-giver mistakenly believes that they will suffer a penalty if they do not consent, but the consent-receiver has no responsibility for this mistaken belief. By introducing these evidential complications, we now face hard questions about the extent to which we should prioritize the perspective of the consent-giver, the perspective of the consent-receiver, or even the perspective of a bystander. My provisional view is that when the consent-giver has reasonably formed the belief that they will suffer this penalty, then their consent is invalid, but I concede the issue is more complicated when they are at fault for forming an unreasonable belief. Here I think we are running up against a general problem for theorizing about the legitimate complaints that we can make, concerning the extent to which these should accommodate sincere but unreasonable beliefs that we have. What we say about this general issue should guide what we say about the special case in which these beliefs lead someone to consent.

## ENDNOTES

<sup>1</sup> For helpful discussions and feedback, I would like to thank Olivia Bailey, Luc Bovens, Nico Cornell, Mike Huemer, Markus Kohl, Niko Kolodny, Matthew Liao, Carla Merino, Véronique Munoz-Dardé, Ram Neta, David Owens, Geoff Sayre-McCord, Sam Scheffler, Dan Shahar, David Shoemaker, Sarah Stroud, Gopal Sreenivasan, Will Tadros, Jonathan Way, Stephen White, and audiences at the University of Maryland, College Park, the University of North Carolina at Chapel Hill, Northwestern University, the University of California at Berkeley, Tulane University, and New York University. A special thanks to Hallie Liberto and Johann Frick: I have learned a huge amount about the topics covered by this essay from conversations with them and from their research. The research for this essay was supported by a 2018-2019 Faculty Fellowship at the Center for Ethics and Public Affairs at the Murphy Institute at the University of Tulane.

<sup>2</sup> Here and throughout, I will use “they” as a singular gender-neutral pronoun largely for the reasons given in (Dembroff & Wodak 2018). Specifically, consent releases someone from a “directed duty” or a “bipolar obligation” (Sidgwick, 1893; Thompson, 2004; Darwall, 2006; Sreenivasan, 2010). These constitute dyadic moral relationships with the structure, “X owes Y a duty that X not perform action A.” Since valid consent releases people from these duties, valid consent is a three-place relation between the consent-giver, the consent-receiver and the action (and not a two-place relation

between the consent-giver and an action). Since this consent releases people from duties, it is sometimes called “permissive consent” (Manson, 2016). Permissive consent contrasts with promises, which create new obligations for the promisor. While permissive consent can (but need not) be embedded within contracts, there are also contracts that do not involve permissive consent (e.g. contracts that only create new obligations).

<sup>3</sup> Together, these restrictions mean that I am setting to one side (i) proposals that induce consent by attaching benefits to the option of giving consent; (ii) constraints on decisions from social structures and norms; (iii) forms of pressure that involve undermining someone’s agency without affecting their options, e.g. by overwhelming them with emotions; and (iv) cases in which the consent-giver mistakenly believes that they will face a penalty for refusing to consent. I address some of these topics in an unpublished companion essay, currently titled “Consent, Duress, and Evidence” (Dougherty Manuscript a), and aim to cover all of them in a book manuscript, currently titled *Consent Under Duress* (Dougherty Manuscript b).

<sup>4</sup> For concision, I leave implicit in the description of this and subsequent cases the assumption that the penalty would in fact be imposed, e.g. Bully is able to follow through on their sincere threat.

<sup>5</sup> Here I am assuming that voluntariness concerns the metaphysical features of someone’s agency that are “beneath the skin,” so to speak, and do not concern their relations with other people. The term “voluntary” is used in various other ways in philosophy. For example, some people say that behavior is voluntary when it is free from coercion and misunderstanding, e.g. (Hyman, 2015: 77). On that use of the term “voluntary,” we cannot explain why duress undermines consent with the claim that the consent is not voluntary: that claim would simply express the fact that the consent is given under duress.

<sup>6</sup> This means that the pair of cases also causes trouble for Harry Frankfurt’s (1988) view that coercion undermines autonomy because the victim does not want to act on the motivation on which they act. But as Japa Pallikkathayil (2011) and Stephen White (2017) point out, a victim of coercion genuinely does endorse their desire to comply with the coercion given the external circumstances that they are in. Critiquing Frankfurt, Pallikkathayil also gives us good general reasons to doubt that a non-moralized conception of autonomous agency can explain why coercion leads to invalid consent, and White gives us good reasons to doubt that such a conception can explain what is wrong about coercion. These cases also cause trouble for Heidi Hurd’s (1996: 138-140) view that duress invalidates consent by excusing someone from responsibility for giving consent. In both cases, Club-owner is responsible for their choice. Hurd motivates her view by claiming an analogy with how duress excuses someone from liability for wrongdoing. But our type of duress does not function an *excuse* for wrongdoing. Instead, it either *justifies* an action, or at least makes the action *less bad*. If you set off the fire alarm to avoid someone smashing your foot, then you’re still responsible for your action of raising the alarm. It’s just that in the circumstances, your action was morally permissible.

<sup>7</sup> Danielle Bromwich and Joseph Millum (2018) propose that consent is invalidated when someone exercises control over another person’s decision. It is not fully clear to me whether they hold that someone’s consent is undermined because someone intends to control them, but I take the natural interpretation of an “exercise of control” to be an intentional endeavor, and Bromwich and Millum mention attempts at control at various points in their discussion. Meanwhile, Sarah Conly (2004) requires a manipulative intention as a necessary condition for coercion, when theorizing which sexual wrongs constitute rape. The problem also arises for views, inspired by Kantian ethics, which focus on how coercion involves imposing one’s will on another, making their choice for them, or using them as a means.

<sup>8</sup> This case is inspired by one of Niko Kolodny’s (2017), who credits A. J. Julius (2013: 362). I am indebted to Kolodny’s essay for the insight that warnings constitute duress. For discussion of the difference between threats and warnings, see (Scanlon 2008).

<sup>9</sup> This is the core idea of Pallikkathayil’s (2011) explanation of why consent is invalidated by coercion.

<sup>10</sup> A view along these lines is suggested by the work of Alan Wertheimer. Wertheimer (2010: 198) proposes two conditions for consent to sexual relations that is not morally transformative:

(1) A proposes to make B worse off relative to the appropriate baseline if she does not acquiesce to the act *and* (2) it is reasonable for B to succumb to A’s proposal rather than suffer the consequences.

Wertheimer (2010: 200) goes on to define the baseline of the first condition in terms of B’s rights—the proposal is coercive when it is a proposal to “make B worse off than she has a right to be.” In earlier work, Wertheimer (1987: 217) offered a general account of coercion along these lines, claiming that whether a proposal is best understood as coercive typically depends on whether it is a proposal to infringe the rights of the person to whom the proposal is made.

<sup>11</sup> This is Hallie Liberto's (Manuscript) important insight, which is at the heart of her critique of accounts that hold that coercion undermines consent by "morally debilitating" the consent-giver. Among her targets is Pallikathayil's (2011) view that consent is invalidated by removing deliberative options to which the consent-giver is entitled, and so my critique follows hers here. I am indebted to Liberto for appreciating how important third-party duress is for understanding duress and coercion, and my *Crockery Dilemma* case is loosely based on a case of hers in (Liberto Manuscript). For other discussion of the effects of third-party duress on consent, see (Miller & Wertheimer 2010; Millum, 2014).

<sup>12</sup> An anonymous reviewer has pointed out that the *Third-Party Acquiescence* case also connects the topic of consent under duress with the topic of exploitation, since if Stranger pinches Victim, then Stranger would be taking advantage of the fact that Victim is subject to an illegitimate influence. One practically important application of this point is the co-occurrence of coercion and exploitation in certain forms of prostitution. For an overview of the literature on exploitation, see (Zwolinski & Wertheimer, 2017).

<sup>13</sup> For a classic account of the relationship between accountability, wrongdoing, and wronging, see (Darwall, 2006).

<sup>14</sup> In invoking complaints, my approach is inspired by Thomas Scanlon's (1998) notion of interpersonal justification, and also his (1986, 1998, 2013) work on the significance of choice in interpersonal justification. I have also benefited from Johann Frick's (2016) recent work on interpersonal justification as involving a certain type of joint deliberation aiming at a proposal for how people are to act. I am downplaying the importance of whether the duress is *justified*, in light of cases like the following:

*Chained Threat. Mafioso threatens to kill Pawn unless they sincerely threaten Club-owner by saying, "If you do not let me into the VIP area, then I will smash the club's windows." Mafioso makes clear that to save their life, Pawn must make the threat and be prepared to follow through on the threat by smashing the windows. But to save their life, it is not necessary for Pawn to enter the VIP area. Pawn makes the threat.*

The duress is justified in the *Chained Threat* case, yet invalidates Club-owner's consent. Instead, I focus on whether the consent-giver has a complaint against the action: in the *Chained Threat* case, Club-owner would retain a complaint against Pawn's threat, since Pawn is threatening to infringe Club-owner's rights over their windows.

<sup>15</sup> In light of these consequences, I think we should say that, innocently, G has wronged H (analogously to how, innocently, G might perform an action that is impermissible). Some people may prefer to reserve the term "wronging" for rights violations—unjustifiable actions that contravene someone's rights. My sense is that there is a merely terminological disagreement here. I am happy for others to use different terms, so long as they agree with the substance of my view, which is that although G has acted innocently, they still have morally injured H in a way that leaves them with a grievance.

<sup>16</sup> This is the key respect in which my view borrows from, and is similar to, David Owens's (2012) "Injury Account," according to which duress invalidates consent because the duress wrongs the consent-giver. See the following note 21 for a friendly modification that Owens's account would need. I see my first draft of the Complaint Principle as an elaboration and precisification of Owens's account rather than a radically different alternative. I note that just as the first draft would need to be revised for the reasons that I propose in the main text, Owens's account would similarly need to be revised.

<sup>17</sup> For recent work on this general question, outside of the context of discussing consent, see (Kolodny, 2017; White, 2017).

<sup>18</sup> Pallikathayil (2011) leaves her account uncommitted about whether to further require that the constrained option be "deliberatively significant." I think that this further requirement is necessary, and that deliberative significance would have to be unpacked in causal terms. If the removal of an option does not make a causal difference to someone's decision to give consent, then the removal does not invalidate the consent. Suppose you decide that you are going to let your sister stay in your spare room while she is in town. Why would your consent be necessarily invalidated if a villain subsequently threatens you with a penalty if you withdraw your consent? If this threat does not make a causal difference to your decision to continue to consent, then your consent could still be valid, and your sister would not wrong you by staying in your spare room.

<sup>19</sup> In this respect, my view incorporates what is attractive about Wertheimer's (2010) proposal that consent is invalidated by coercion, such that the proposed action would violate the consent-giver's rights. But my view is more capacious

than Wertheimer's in allowing that there can be other grounds for the complaints, and by allowing that the complaint can be targeted at the conditioning of a penalty rather than the penalty itself.

- <sup>20</sup> Kolodny (2017) argues that there are cases in which it is permissible to issue a threat, even though it would be impermissible to follow through on the threat. An example would be a threat to retaliate with nuclear warfare in response to a nuclear attack. Although I lack the space to argue for this view here, my view is that these threats still wrong the threatened party, even if these threats are all things considered permissible in light of the benefits of the deterrence.
- <sup>21</sup> This is a problem that confronts Owens's aforementioned "Injury Account." Owens could straightforwardly modify his account along the lines that I suggest in the main text, and so this is only a minor criticism.
- <sup>22</sup> The combination of conditions (ii) and (iii) means that the Complaint Principle leaves room for the idea that a consent-giver could have a legitimate complaint against a penalty being made conditional on their consent, even if they lack a legitimate complaint against the penalty being imposed outright. Examples include certain forms of blackmail. Consider a case that we have not yet encountered:

*Paradoxical Blackmail. Politician emailed Blackmailer using racist language. Blackmailer will share the email with the media unless Politician lets Blackmailer look at them naked.*

If Blackmailer releases the email outright, then Politician would suffer a penalty. The Politician lacks a complaint against suffering this penalty. There is a compelling public interest that Politician's racist behavior be brought to light, and they have weakened their claim to privacy by running for public office. But even though revealing the email would be permissible, it is still wrong for Blackmailer to use this threat to blackmail Politician into giving consent. As a result, Politician would have a legitimate complaint against Blackmailer making the release of the email conditional on Politician refusing to consent to Blackmailer looking at them naked. And if Politician has this legitimate complaint, the Complaint Principle would entail that Politician's consent is invalid. I am grateful to an anonymous reviewer for pointing out that a full analysis of the *Paradoxical Blackmail* case would involve an explanation of why Politician has this complaint, and there is room for disagreement about this explanation. In any event, it is beyond my ability to provide this explanation, and so I leave a full analysis of how blackmail can undermine consent for another occasion. For insightful discussion of the ethical complexities concerning blackmail, see (Shaw, 2012).

- <sup>23</sup> I defended a view along these lines in (Dougherty, 2015), and have revised my view in (Dougherty Manuscript c).
- <sup>24</sup> Liberto (Manuscript) groups these speech-acts together as "directives" as they involve the agent directing the conduct of the other person. Part of Liberto's motivation for doing so is to handle the type of third-party duress that is exemplified in the *Crockery Dilemma*. I am indebted to Liberto's work and discussion with her on this point when developing my proposal for the role that authorization plays with respect to valid consent. I am also indebted to conversations with Mollie Gerver about how third-party duress can undermine consent. In an unpublished book manuscript, I defend the view that speech-acts like requests, offers, and invitations can constitute consent on other grounds (Dougherty Manuscript c). For example, I argue that the view can explain why consent is given in cases in which the consent-giver is unaware that they are able to grant a permission to the consent-receiver:

*Table. Host and Neighbor live in apartments with a communal garden. The rental agreement says that only Host is allowed to use a garden table near to their door. Host falsely believes that the rental agreement says that Neighbor is also allowed to use the table. Host says to Neighbor, "I know you don't need my permission to use the table, but would you like to have a drink at the table with me tonight?"*

For related cases, see (Owens, 2012; Tadros, 2016).

- <sup>25</sup> The phrase is W. D. Ross's (1930). He employs it in his critique of utilitarianism.
- <sup>26</sup> Thanks to Niko Kolodny for this point.

## REFERENCES

- Bromwich, Danielle, & Millum, Joseph (2018). "Lies, Control and Consent: A Reply to Dougherty and Manson," *Ethics*, 128(2), 446–461



- Conly, Sarah (2004). "Seduction, Rape and Coercion," *Ethics*, 115(1), 96–121
- Darwall, Stephen (2006). *The Second-Person Standpoint: Morality, Respect and Accountability*, Cambridge MA: Harvard University Press.
- Dembroff, Robin, & Wodak, Daniel (2018). "He/She/They/Ze," *Ergo*, 5(14), 371–406
- Dougherty, Tom (2015). "Yes Means Yes: Consent as Communication," *Philosophy and Public Affairs*, 43(3), 224–253
- Dougherty, Tom Manuscript a. "Consent, Duress, and Evidence"
- Dougherty, Tom Manuscript b. *Consent Under Duress*
- Dougherty, Tom Manuscript c. *The Scope of Consent*
- Ferzan, Kimberly (2017). "The Bluff: The Power of Insincere Actions," *Legal Theory*, 23(3), 168–202
- Frankfurt, Harry (1988). *The Importance of What We Care About*, Cambridge: Cambridge University Press.
- Frick, Johann (2016). "What We Owe to Hypocrites: Contractualism and the Speaker-Relativity of Justification," *Philosophy and Public Affairs*, 44(4), 223–265
- Hurd, Heidi (1996). The Moral Magic of Consent I," *Legal Theory*, 2(2), 121–146
- Hyman, John (2015). *Action, Knowledge, and Will*. Oxford: Oxford University Press.
- Julius, A. J. (2013). "The Possibility of Exchange," *Politics, Philosophy and Economics*, 12(4), 361–374
- Kolodny, Niko (2017). "What Makes Threats Wrong?" *Analytic Philosophy*, 58(2), 87–118
- Liberto, Hallie Manuscript. "Coercion, Consent, and Moral Debilitation."
- Manson, Neil (2016). "Permissive Consent: A Robust Reason-Changing Account," *Philosophical Studies*, 173(12), 3317–3334
- Miller, Franklin, & Wertheimer, Alan (2010). "Preface to the Theory of Transactions: Beyond Valid Consent," In Franklin Miller & Alan Wertheimer (Eds.), *The Ethics of Consent* (pp. 79–105). Oxford: Oxford University Press.
- Millum, Joseph (2014). "Consent Under Pressure: The Puzzle of Third-Party Coercion," *Ethical Theory and Moral Practice*, 17(1), 113–127
- Owens, David (2012). *Shaping the Normative Landscape*, Oxford: Oxford University Press.
- Pallikkathayil, Japa (2011). "The Possibility of Choice: Three Accounts of the Problem with Coercion," *Philosophers' Imprint*, 11(16), 1–20
- Ross, W. D. (1930). *The Right and the Good*, Oxford: Oxford University Press.
- Scanlon, Thomas. M. (1986). "The Significance of Choice," *The Tanner Lectures*, accessed at [https://tannerlectures.utah.edu/\\_documents/a-to-z/s/scanlon88.pdf](https://tannerlectures.utah.edu/_documents/a-to-z/s/scanlon88.pdf) on 9/24/19
- Scanlon, Thomas. M. (1998). *What We Owe to Each Other*, Cambridge MA: Harvard University Press.
- Scanlon, Thomas. M. (2008). *Moral Dimensions*, Cambridge MA: Harvard University Press.
- Scanlon, Thomas. M. (2013). "Responsibility and the Value of Choice." *Think*, 12(33), 9–16
- Shaw, James (2012). "The Morality of Blackmail," *Philosophy and Public Affairs*, 40(3), 165–196
- Sidgwick, Henry (1893). *The Methods of Ethics* (5th ed.). London: Macmillan.
- Sreenivasan, Gopal (2010). "Duties and Their Direction," *Ethics*, 120(3), 465–494
- Tadros, Victor (2016). *Wrongs and Crimes*, Oxford: Oxford University Press.
- Thompson, Michael (2004). "What Is It to Wrong Someone? A Puzzle about Justice," in *Reason and Value: Themes from the Moral Philosophy of Joseph Raz* (pp. 333–384). In R. Jay Wallace, Philip Pettit, Samuel Scheffler, & Michael Smith (Eds.), Oxford: Clarendon Press.
- Wertheimer, Alan (1987). *Coercion*, Princeton NJ: Princeton University Press.
- Wertheimer, Alan (2010). "Consent to Sexual Relations," in Miller Franklin, & Wertheimer Alan, (eds.) *The Ethics of Consent* (pp. 195–220). Oxford: Oxford University Press.
- White, Stephen (2017). "On the Moral Objection to Coercion," *Philosophy and Public Affairs*, 45(3), 199–231
- Zwolinski, & Wertheimer, Alan (2017). "Exploitation," *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition). In Edward N. Zalta (Ed.), Retrieved from URL=<<https://plato.stanford.edu/archives/sum2017/entries/exploitation/>>

**How to cite this article:** Dougherty T. Why does duress undermine consent? *Noûs*. 2019;1–17.  
<https://doi.org/10.1111/nous.12313>