Review of *Green Light Ethics*, by Hallie Liberto

Jonathan Ichikawa

Draft in Progress, December 21, 2023

Hallie Liberto's Green Light Ethics offers a framework for conceptualizing permissive consent. The book is a philosopher's work of philosophy. Although it touches on non-ideal social realities, especially sexism, it is most centrally a contribution to a quite abstract literature in normative ethics, following in the tradition of scholars like David Owens, Heidi Hurd, Alan Wertheimer, and Tom Dougherty — it may have a few too many ϕ s and abstractions to be accessible to and comfortable for many people outside the analytic philosophical tradition. The central approach to permission and consent is general — not specific to sexual consent — although some discussions are specific to sex.

I have always appreciated and learned from Liberto's work on this topic, and I was excited to read her new book. As I'd hoped, it exhibits fresh and interesting moral and philosophical instincts, and advances plausible and interesting ideas. I did feel, however, that it was sometimes more difficult than one hopes to identify exactly what those ideas are. At key points, I found myself wanting more precision or explanation. I am not the kind of philosopher who shuns abstraction — I value both the concrete/non-ideal and the theoretical/abstract. And I'm not afraid of all those ϕ s. But as I see it, the point of writing in that mode — the reason it can be worth the cost in accessibility and style — is the ability to express and examine complex ideas with a high degree of precision. As I was reading this book, I found that much of my own intellectual contribution centred around attempts to interpret Liberto's ideas and technicalities, before I was in a good position to learn from them. This was a bit of a shame, because there are intriguing ideas in this book, well worthy of consideration. I'll give my own reconstruction of a few of them below, along with some critical engagement.

1 Domain Authority

Liberto posits that there are certain domains over which people hold a special kind of moral authority, which she calls "domain authority." Someone would wrong you if they acted in your domains outside of your normative control. For example, you have domain authority over sexual contact with your body; any action by others within that domain must be in accordance with your moral control, or they are violative. Liberto typically uses the following abbreviations

to discuss domain authority: S is a person who may or may not be giving P permission to ϕ , which is a potential action that P might perform. ϕ here is always an action within D, a particular domain of S's moral authority. Since ϕ is within D, so ϕ would wrong S if P ϕ 'd without S's appropriate authorization.

In the case of sexual domain rights, D is S's bodily sexual domain; P would wrong S by performing some act ϕ within that domain outside of S's authority. (ϕ might be sexually penetrating S, for example.) The framework generalizes. D might be my home, and ϕ could stand for potential actions within my home for which any S would need my permission: entering it, say, or drilling a hole in the wall. I'll follow Liberto's use for these abbreviations. Note that ϕ will always refer to an act within S's domain D.

One of the more distinctive contributions of Liberto's framework is her insistence that subjects retain their domain authority, even as they exercise it to permit action within their domains. When S consents to ϕ , Liberto says, S does not $waive\ any\ rights\ against\ \phi$. If they did, ϕ would no longer be part of S's domain of authority D. It is possible to waive rights in this way — this is what happens with property transfers. But Liberto argues that things are quite different for permissive consent. If I invite P into my home, or permit P to touch me sexually, they may do so without violating my rights, but that is because their action is done in accordance with my ongoing moral control. The requirement of such control persists, which is why Liberto rejects the orthodox description that I've waived my right against ϕ . The relevant right is that P may only ϕ in accordance with my authority. And that right, Liberto insists, is one that I retain while consenting. I found this to be an appealing and plausible feature of Liberto's framework.

One question Liberto doesn't discuss much concerns just what domain rights people have, and why. The framework is intuitive for sex, bodily integrity, and property. But Liberto also seemed interested in applying the framework to other cases, where it was less obvious what the relevant domains might be. For example, she says there are domain rights violations implicated when society does not provide adequate protections against accidental shootings, 1 or when a professor disappointed by a colleague's sexual rebuff shares his negative opinion of her work with his colleagues. While wrongs may be perpetuated in such cases, it was not obvious what plausible D's were being breached outside of S's moral control. I would have needed a more detailed discussion to be convinced that domain rights is the correct framework for these examples.

¹Liberto (2022, 110). Liberto says that when a toddler shoots S under these circumstances, S has "most certainly been the victim of a Divergence Strike." (Divergence Strikes are defined on p. 95 in terms of domain rights.) Although Liberto calls the toddler in this case 'P,' I think this is a departure from her usual abbreviations summarized above, since she goes on to clarify that the parents or local lawmakers — not the toddler — are the ones making impermissible moves in D.

²In her (241–2) discussion of this case, Liberto says only that such a comment would wrong S; she does not explicitly say that such a comment would be a violation of any D. But she is invoking her past (226) discussion of consent under coercion, which is explicitly given in terms of D. Liberto's argument only works if she is assuming that the comment would wrong S because it falls within D.

2 Effective signaling

One of the central ways in which people exercise moral control over others' actions in their domains, Liberto thinks, is through permissive consent. The main way people do this is via a process she calls "effective signaling," in which S excercises authority over D by sending a certain signal to P, which gives P permission to ϕ .

I found the general idea of effective signaling interesting and promising, but didn't leave the book with as clear an idea of what exactly Liberto intended than I'd hoped I would. Liberto characterizes effective signaling in a few different ways. The first official statement of it, on p. 137, is this:

Effective Signaling S implements the decision to send a signal to P that (a) S understands to make P's domain behavior respectful of S, and (b) the signal itself makes it possible for him to practically deliberate towards doing ϕ in D in a way that affords her effective control over "P doing ϕ in D." This effective control is that to which she is entitled in virtue of her moral authority in D.

The variable ϕ appears only in clause (b), but what's at issue is an effective signal that gives permissive consent for P to ϕ . I think this is also meant to be implicit in (a) — we're holding fixed that P's domain behaviour is ϕ . Liberto's intent is that clause (a) establishes that S takes the signal to be one which would render P's behaviour 'respectful'. I think that 'understand' here is intended in a non-factive way. (Sometimes Liberto glosses this clause as one about belief, e.g. on p. 32.) Later (p. 144), Liberto puts clause (a) in different terms: "S understands to make P's domain behavior respectful of S" is replaced with "S understands to give P a permission." Liberto doesn't comment on the difference between these formulations. Here is my own attempt to precisify an approach to effective signaling close to what Liberto may have intended:

Effective Signaling* S gives permissive consent for P to ϕ , where ϕ is an action in S's domain of authority D, iff S implements the decision to send a signal σ to P, where

- (a) S understands that σ gives P permission to ϕ , and
- (b) σ makes it possible for P to practically deliberate towards doing ϕ in D in a way that affords S effective control over whether P will ϕ .

Surprisingly, Liberto argues that this condition can be met even if S believes that σ does not permit P to ϕ . Liberto offers this case:

Believing She is Underaged Simone believes herself to be 15 years old when she is actually 18. ... She also believes that 15-year-old minors are not cognitively nor legally equipped to give consent. However, she very much wants to have sex with Priscilla, who is 25. She tells Priscilla that she is 18 and Priscilla believes it. Simone also enthusiastically verbalizes her

objective in having sex with Priscilla, and Priscilla is similarly enthusiastic and accepts the sexual offer. However, Simone thinks to herself throughout the sexual act: "Priscilla is having sex with me, a minor, who cannot give morally valid consent. I am being wronged, even though this is my objective. Priscilla may not have sex with me without violating my rights. She doesn't have any meaningful permission."

Here, S is Simone, P is Priscilla, D is Simone's sexual domain, ϕ is some particular sexual action Priscilla might perform in that domain, and σ is Simone's enthusiastic verbal suggestion that they have sex. Liberto says that σ is an effective signal, and so Simone gives valid consent. But, Liberto also says, because Simone has a particular mistaken combination of moral and factual beliefs, she believes that she is incapable of consenting to sex.⁴ Liberto argues that this shows there can be consent without knowledge of consent or the intent to consent. She says that her view implies that there is consent, because "Simone performs a speech act of consent to Priscilla that she believes will render Pricilla's sexual advance respectful, even though Simone believes herself to be unable to give Priscilla her sexual consent.⁵"

Liberto thus seems committed to all of the following:

- Simone consents to Priscilla's sexual actions ϕ , via the effective signal σ .
- Simone believes that she does not consent to ϕ , and that Priscilla's ϕ ing would violating her rights.
- Simone understands that σ gives Priscilla permission to ϕ , and/or that σ renders Priscilla's ϕ -ing respectful.

Since it is obvious that Simone knows that she is giving signal σ , it's hard to see how these could all be true. In addition to giving rise to an exegetical puzzle, I think Liberto's conclusion here attenuates the moral control that subjects S have over actions in their domains D: By arguing that S can consent to ϕ without believing or intending that they are doing so, Liberto gives subjects less control over their moral rights in D than one might wish.

According to Liberto, subjects exercise moral control over others' behaviour by sending effective permissive signals. It is important to Liberto that subjects have a lot of control over and strong epistemic access to *which signals one is sending.*⁶ But she posits much less control over and knowledge of whether one is actually permitting anything. By Liberto's lights, one can consent without

³Liberto (2022, 131)

⁴Liberto does not comment on whether, if Simone really had been underage, she would have been right to think there was no consent. But I think there are good reasons to reject this idea. Even though sex between adults and minors is and should be criminal, and is always or almost always wrongful, I think it can involve genuine sexual consent. See Rees and Ichikawa (forthcoming).

 $^{^5}$ Liberto (2022, 137)

⁶This is a particularly important theme in her Chapter 7 discussion of deception, which I'll discuss in section 4 below.

intending to do so. In the same way that, if I am blindfolded, I may accidentally bang my knee by deliberately stepping in a particular direction, someone may accidentally consent to P ϕ -ing by deliberately sending a signal that was intended to do something else.

3 Consent and Intention with False Beliefs

Liberto's thought experiment about Simone and Priscilla is an odd one, in multiple respects. It's a complex case turning on false beliefs and misleading communication. So if — as appears to be the case — accommodating Liberto's intuition about this case is theoretically challenging, we may have reason to second-guess the intuition.

Moreover, the protagonist Simone behaves quite strangely. According to Liberto, Simone (falsely) believes that she is unable to give Priscilla permission to touch her sexually, and so when she does so, Simone believes that she is suffering a sexual assault. But Simone doesn't react the way most people who think they're suffering a sexual assault would. Simone, Liberto tells us, has a strong desire for that sexual contact, and voluntarily expresses that desire to Priscilla, hoping and expecting her to interpret it as a sign of permission and to initiate sexual contact on that basis — even while at the same time taking herself to be deceiving her sex partner as to whether she consents.

Liberto thinks this is an effective signal, but that Simone does not intend to give permission to Priscilla or believe that her signal gives permission. I'm not convinced that, in plausible versions of the case, Simone lacks such an intention or belief. Part of the intuitive motivation for Liberto's verdicts here, I suspect, has to do with the interpretation of some potentially ambiguous expressions of Priscilla's thoughts. Liberto stipulates that, during their sexual encounter, Simone thinks to herself: "Priscilla may not have sex with me without violating my rights. She doesn't have any meaningful permission." Such thoughts or statements would typically be a way of expressing refusal. But in this highly unusual context, we should interpret them instead merely voicing false beliefs: "She doesn't have my permission" is her description of moral reality, not an attempt to establish it. It would typically be a way to refuse, which would obviously suggest no intent to permit. But for this case to make sense, we imagine Simone doing something different: she's merely acknowledging (what she takes to be) this moral fact. It may feel to Simone like there is an externallyenforced social norm that puts moral constraints on Priscilla — I want this, and it wish it were allowed, we can imagine her thinking. She may be focusing on legal, rather than moral, permission. She may feel indignant at the paternalism of conventional morality.

Seen in this light, maybe Simone does, intentionally and knowingly, express a permission to Priscilla. She may think that there are additional external moral constraints over which she has no control, while still knowing that she herself is giving permission. As Liberto acknowledges at various places through-

out her book,⁷ not every wrong action is a consent violation. It is thus perfectly comprehensible to suppose that Simone believes she is being wronged while also intending, believing, and indeed knowing that she is consenting.

4 Contents of Intentions and Speech Acts

Several points of Liberto's book touch on questions about the contents of various attitudes and speech acts: subtleties about what exactly one intends, or believes, or understands a signal to signify, end up playing important roles in her framework. I agree that these subtleties are often morally important, and I welcome the metasemantic framing that Liberto brings to them. But often, I thought that Liberto's specific metasemantic verdicts were insufficiently explained or motivated.

Consider, for example, Liberto's (chapter 7) treatment of deception and the scope of consent. This chapter is about when and why a would-be consenter's false beliefs prevent their signals from amounting to valid consent. Liberto begins her chapter by laying out some of the standard moves in the literature on this question, beginning with the "scope mismatch" strategy of Larry Alexander (1996), Heidi Hurd (1996), and Tom Dougherty (2013). On Liberto's interpretation, all three of those authors say that whether S consents to P doing ϕ , in cases where the ϕ that occurs differs from S's expectations, depends on what exactly S intended to permit.

But there is an important methodological difference between Alexander and Hurd's treatments vs. Dougherty's. Alexander and Hurd think — with common sense — that some false beliefs are compatible with valid sexual consent, and others are not. For example, S can consent to sex while falsely believing that it won't result in S's pregnancy, but not (at least typically) while falsely believing that it is sex with one's partner, rather than an imposter. Their explanation for this difference is to require, for S's valid consent to a given action, that the action "match S's description of it." And, they say, S's description does not typically include whether sex will result in pregnancy, but it will typically include whom the sex will be with.

One challenge to this approach is that it is far from clear that S will typically have a sufficiently determinate descriptive intention. There will be many cases where it's just not clear, as a factual matter, whether some conduct falls under "the" description S meant to consent to. As I understand it, this is one of the central motivations that pushes Dougherty (2013) to suggest that there is no in-principle limit to what kinds of features can be built into the specifics of S's consent — it all just depends on what S happens to care enough about. The only alternative, Dougherty worries, is an objectionable kind of sexual moralizing, whereby theorists — rather than S— decide which features are objectively the most important, for the purpose of demarcating the boundaries

⁷E.g. Liberto (2022, 41).

of consent.8

This is a kind of argument I would expect Liberto to find appealing. In her introductory chapter, Liberto describes her "mechanistic" ambitions of her approach to consent, and sets her framework apart from those that start with moral verdicts about what is permissible, and retrofit judgments about consent to match them. I applaud these motivations, and share Liberto's concern about using moral sensibilities to motivate judgments about consent. But I am not sure that her treatments of particular cases delivers on these ambitions.

Here is a case Liberto discusses in this context, which she takes from Dougherty (2021, 1):

As a young man, Dougherty undergoes an invasive medical procedure, not understanding the meaning of the word "biopsy." He doesn't bother to read the detailed consent form and believes himself to be consenting to some internal examination, but not to the removal of flesh and tissue. He assures the medical staff that he understands what a biopsy is.⁹

Liberto says the ensuing biopsy is nonconsensual, because "[t]he very physical actions that Dougherty means to reference in his effective signal are vastly different than the ones that the surgeons undertake on his body. 10" She says that for this reason, Dougherty's affirmative response isn't an effective signal, and he doesn't give consent.

Dougherty certainly does produce a signal — he signs a form and says "yes, go ahead and perform the biopsy," even explicitly stating (falsely) that he knows what a biopsy involves. Why doesn't this suffice for an effective signal? I couldn't quite tell. I think Liberto thinks that Dougherty's misconceptions about biopsies may result in his failure to understand that his sign gives the doctor permission to perform a biopsy. But if this is so, it depends on controversial subtleties in the social determination of meaning.

It is completely standard in contemporary philosophy of language to think that in specialized contexts like medical ones, semantic deference to experts influences the meanings of one's words and thoughts. Just as, in the famous case, a person with misconceptions about arthritis nevertheless entertains thoughts about the same condition his doctor is considering, 11 one might expect that Dougherty does have thoughts, beliefs, and intentions about biopsies, despite his false beliefs about them, and that in particular, when he says to himself, "my signal gives the doctor permission to perform a biopsy," this is an expression of his understanding that his signal gives the doctor permission to perform a biopsy.

Perhaps Liberto means to reject this aspect of orthodoxy about the social determination of meaning, or perhaps there is some other reason why she

⁸See especially Dougherty (2013, 730). See Tilton and Ichikawa (2021, 133–4, 150–1) for further discussion of this aspect of Dougherty's (2013) treatment.

⁹Liberto (2022, 192).

¹⁰Liberto (2022, 192–3).

¹¹Burge (1979, 77–8).

thinks there's no effective signal here. One way or another, Liberto says that Dougherty does not consent, but I don't see why, unless it is motivated by the moral judgment that his sign isn't adequate permission. But this would be to let ethical judgments guide moral metaphysics, disappointing Liberto's mechanistic ambitions.

5 Coercion and Ranking

Chapter 8 of Liberto's book considers the relationship between consent and coercion. Liberto argues against simple views linking the two, pointing out that coerced agents often retain significant moral powers, and can sometimes use those powers to consent. Under certain circumstances, she suggests, even if S is coerced, S can consent to P performing some action ϕ in D by expressing a ranking of P's potential actions. In particular, Liberto says, this happens when

- the expression of the ranking is a free exercise of S's authority over D;
 and
- there is an action ψ such that:
 - 1. the ranking rates P doing ϕ above P doing ψ , and
 - 2. P doing ψ does not fall within D.¹²

The general idea is that S can consent to something by freely expressing a preference for it over some alternative, where that alternative is something that would not require S's consent. You don't owe it to me not to wear that hideous sweater; however much I detest it, my moral rights do not include control over your attire. If I freely express a ranking of your possible actions that rates your coming into my home — something that it does require my consent for you to do without wronging me — above wearing the sweater, this, Liberto says, is consent to come into my home. ¹³ Here, your wearing the ugly sweater is something I disprefer, but something over which I lack domain authority. So you can wear the sweater without my permission without violating my domain rights. And given my expressed ranking, your entering my home is no less respectful to my decisions than wearing the hideous sweater would have been. This is why Liberto says you have valid consent to enter my home.

Liberto describes (219) a somewhat ghastly case of a sadist coercer who threatens to kill Bea and Carlos unless they have sex with one another. If they choose to comply, Liberto thinks, each *can* genuinely consent to one another, despite the obviously unjust coercion. For example, Bea can consent to sex with Carlos by expressing to him a ranking where Carlos having sex with Bea

 $^{^{12}}$ Liberto (2022, 226). This is my own reconstruction.

¹³Liberto emphasizes that this is so even if I falsely believe that I have the moral right to your exercising better sartorial judgment, and so feel as if my invitation is made under unjust duress. See e.g. Liberto (2022, 221–2).

 (ϕ) is higher than Carlos refusing the sadist's demand (ψ) . Such a refusal would not be an action in Bea's domain — he doesn't need her permission *not* to have sex with her — so if she ranks an action that is in her domain higher than that, this is consent.

Things play out quite differently if one complies with a threatening first-personal demand for sex. If Carlos is the one holding the gun on Bea, demanding that she have sex with him, lest he kill her, then even if she freely exercises her authority to express a preference that he have sex with her rather than kill her, this is not consent, on Liberto's framework. Because here the alternative that she ranks lower — being murdered — would also be a violation of her domain rights. Ranking one violation of one's domain rights as preferable to another does not amount to consenting to it.

This is an attractive and tidy theoretical picture. But there is an obvious challenge: there are cases where S gives coerced agreement for P to ϕ , where the lower-ranked alternative isn't in S's domain of authority, where the coercive features of the situation intuitively undermine consent. Liberto discusses, for example, a case in which S agrees to permit P to perform sexual activities in S's domain, because P has threatened that otherwise they will torture their own pet dogs. ¹⁴ If S freely exercises their authority to express a ranking that rates P sexually touching S higher than P torturing P's dogs, Liberto's view implies that it is valid consent, and the ensuing sexual contact is not a violation of S's authority over their domain. However heinous it is for P to torture their dogs, it is no violation of S's domain of authority. So S's expression of a ranking that rates sexual contact (ϕ) over torturing the dogs (ψ) seems to be exactly what it takes to consent under coercion, according to Liberto.

Liberto is aware of this challenge. She denies that her view implies that there is consent such cases. Her move has to do with some subtleties in the semantic interpretation of S expressions and attitudes. She says that in cases of coercion of this latter kind, where consent intuitively is undermined, we should interpret the "implicit content" of the agreements differently. "It seems to me," Liberto writes, "that the context of coercion involving a threat of wrongdoing to a third party changes the implicit content of Frederick's speech act of compliance." In such cases, she suggests that "the implicit 'instead of' clause means something else. 15 "

Unfortunately, I am unable to tell from Liberto's subsequent discussion what it is that she thinks the clause does mean, or what motivation there is for thinking that semantic content of one's expression of agreement systematically varies in the way Liberto posits. Liberto writes:

 $^{^{14}}$ Liberto (2022, 232). Liberto words the threat more colloquially: "Anne threatens to torture her dogs if Frederick does not have sex with her." But since Liberto's interests here concern whether Frederick grants a permission for Anne to ϕ , it is appropriate to focus on permissive questions about Anne's actions. I note also that here and elsewhere late in the book, Liberto seems to be assuming, contrary to an earlier discussion, that there is such a thing as a "having sex" relation that is neutral on questions of consent. (Liberto (2022, 66–70) argues that sex is necessarily consensual.)

¹⁵Liberto (2022, 234)

We do not understand these as permission-giving trades. They are trades of one's own *victimhood* for another's. ... Similarly, when Frederick complies and selects sex with Anne over Anne's wronging of Charlie, Frederick is choosing to convey: take me instead. His implicit "instead of" clause is different from those used in normal cases of compliance to coercion. He is not thereby exercising his authority over the domain of his body by conveying a ranking of Anne's potential behaviors. (234)

Liberto is right that such expressions of preference are not typically understood as permission-giving. But this by no means establishes that the expressed contents do not meet the criteria Liberto lays out; prima facie, they appear to express rankings with the conditions listed above. Since they do not seem to give valid permissions, they are apparent counterexamples to Liberto's view. One cannot suppose that their failure to give permission is a reason to suppose their contents differ, without centrally begging the question in favour of Liberto's treatment of consent under coercion. Liberto's view does not, so far as I can see, predict or explain the intuitive judgments about "trading victimhood" cases. I was left with the suspicion that moral instincts about which kinds of cases Liberto wants to countenance as permitted might be guiding metasemantic judgments about what contents are being expressed in different cases, contrary to Liberto's mechanistic ambitions.

6 Conclusion

I am not as sure about the substance of the criticisms I've raised than I prefer to be, when writing a book review. I may have misunderstood important parts of Liberto's project. I was convinced, as I read this book, that it contained valuable and interesting ideas, worthy of attention and consideration. But I couldn't always precisify them adequately for philosophical scrutiny. Much of the problem might helpfully have been addressed with a bit more good editing: principles were sometimes repeated with key differences between them, for example, and at points I found myself having to guess which words had been accidentally omitted from incomplete sentences. There was even the occasional note to self in an unfinished footnote. Liberto seems to have been let down in part by substandard copyediting — an occupational hazard many of us know all too well.

I have written a longer review than I set out intending to write; this was necessary, I thought, to give an accurate sense of both the promise and the challenges of the book. I hope that some of the work I have done trying to explain and critique it will help others appreciate its contributions and follow suit. Certainly I hope to have the chance to engage in further detail with more carefully-developed and presented versions of many of Liberto's ideas about permission and normative powers. There is, I remain convinced, still much to

learn from them. 16

Bibliography

Alexander, Larry. 1996. "The Moral Magic of Consent." *Legal Theory* 2:165–174.

Burge, Tyler. 1979. "Individualism and the Mental." *Midwest Studies in Philosophy* 4:73–122.

Dougherty, Tom. 2013. "Sex, Lies, and Consent." Ethics 123:717–744.

—. 2021. The Scope of Consent. Oxford: Oxford University Press.

Hurd, Heidi M. 1996. "The Moral Magic of Consent." Legal Theory 2:121-146.

Liberto, Hallie. 2022. Green Light Ethics: A Theory of Permissive Consent and its Moral Metaphysics. Oxford: Oxford University Press.

Rees, Melissa and Ichikawa, Jonathan. forthcoming. "Sexual Agency and Sexual Wrongs: A Dilemma for Consent Theory." *Philosophers' Imprint* .

Tilton, Emily C. R. and Ichikawa, Jonathan. 2021. "Not What I Agreed To: Content and Consent." *Ethics* 132:127–154.

¹⁶Thanks to Alisabeth Ayars, Ritu Sharma, and Emily Tilton for a series of helpful discussions about this book at a UBC reading group, and for comments on a draft of this review. Their questions, challenges, and ideas were of enormous help to me in thinking through Liberto's book.