

3 Normative Powers, Agency, and Time

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Agency and time are intimately related. Agency is often defined as the power to bring about and prevent change, and change takes time. Agents do not merely persist in time like stones or other typical three-dimensional objects; they have active abilities or capacities to alter their circumstances. That is central to what it is to be an agent. Not all changes are agentially caused, some are just impersonal events, and not all theories of action pay attention to agency, but to the extent that agency is thematized, it is linked to their power to change the world.¹

What is less often discussed is the relevance of different kinds of change to agency. This article focuses on non-causal normative change and on the question of whether agents have *normative powers*, i.e., power to bring about normative change directly. Such normative change proper can be distinguished from descriptive changes in the worldly circumstances (which naturally may be normatively significant) on the one hand and from institutional change (which equally may be normatively significant) on the other hand. Normative powers can be said to be “capacities to create normative reasons by our willing or say-so” (Chang 2020, 275).² If there are such powers, they are to be included in a theory of agency as well. Are there such powers?

To get the question in focus, it will prove helpful to characterize the three kinds of changes (1.1) and the relevant kind of normativity: the “normativity proper” of oughts and normative reasons, rather than that of social norms and institutional decrees (see Section 1.2). This distinction is relevant for separating normative change proper from institutional change. Sections 1.3–1.4. explain how descriptive and institutional change are normatively significant, without direct exercises of proper normative powers. The contrast to them puts the exercise of normative powers in sharper relief. Section 1 thus carves the conceptual space for normative powers.

Is there something that occupies that conceptual space? Do we have such (proper) normative powers, to bring about normative change directly, and not merely by changing the reason-giving descriptive features of the circumstances and in some pre-institutional (as opposed to post-institutional

as it were) way? This paper argues, by answering some challenges to the view, that we do. Section 2 responds to two challenges, one arguing that *all normativity is institutional* (2.1) and a *Challenge from Supervenience*, claiming that exercises of normative powers would violate considerations of supervenience (2.2).

Section 3 responds to a challenge – generalizing Kent Hurtig’s (2020) challenge about consent – which states that exercises of normative powers are valid only in cases when they do not matter – they never bring about a “normative transformation” at the level of what the agent overall ought to do. Discussing this challenge is illuminating in showing that consent – and thus at least some normative powers – is normatively transformative in some cases. It also locates the main contribution of exercises of normative powers at a different level than that of overall oughts. It also suggests further conditions for consent being relevant and valid – sometimes normative powers are invalid and thus void of normative effects.

Section 4 concludes that rational agents as possessors of normative powers are not merely responsive to pre-existing normative reasons, they can also create normative reasons (Chang 2020; Laitinen 2020b). A “responsive” view of rational agency sees us as being able to track existing normative reasons and bring about at least descriptive changes (on which normative changes supervene). The “constructive” or “creative” view of rational agency sees us as being able to construct at least an institutional world but if we have also properly normative powers to create normative reasons.³ This chapter argues we are both responsive and creative.

1. Carving the Conceptual Space for Normative Powers

1.1. Descriptive, Institutional, and Normative Change

Descriptive change is an alteration in the descriptive features of the situation: before closing the door, the door was open, and afterward, it is closed, and it was the agent who closed it. It is relatively clear that agents can do such things.

Institutional change takes place in pre-existing (or as a borderline case, emerging) institutional setting, positive law being one primary example. In that setting, the institutional standing or status of individuals can change. Say, Joe Biden can become the president of the U.S. With social roles, individuals acquire rights, obligations, tasks, and prerogatives. Institutional reality is ripe with different roles that come with defined further institutional powers: priests are able to perform marriages, and presidents are able to declare wars, etc. Acquisition and exercise of such pre-defined institutional powers (what John Searle (2010) dubbed “deontic powers”) will also bring about institutional changes. Now all of institutional reality seems to depend on the brute capacity of humans (together) to institute such task-role systems (Tuomela 2013). To avoid infinite regress, it must

be the case that such brute capacity is not institutionally created. So *qua* human agents, we have the power to institute, to create institutional reality, and *qua* role holders within the existing institutional reality, we have the extra powers that come with whatever role one happens to hold. Both the institutional reality and one's place in it are historically contingent (cf. Ásta 2018), but the brute human capacity to create institutions is pre-institutional and not dependent on such historical contingencies.

Both descriptive changes and institutional changes *can be normatively significant*. That a forest is on fire is a strong reason not to go to the forest. Legislating a valid law forbidding entrance to forests creates a different reason against going to the forest. In these cases, a normative change results from descriptive or institutional change and exercise of "descriptive" or institutional agential powers, respectively.

Is there additionally such a thing as *direct normative change* via exercise of normative powers, which would be separate from the normative alterations resulting from exercises of descriptive or institutional powers? Can we, for example, will reasons for action into existence, merely by promising, consenting, giving a word, committing, by our say so?

1.2. Normativity Proper: Reasons and Oughts

The chapter will adopt the view that the normativity of reasons and oughts, which is here called *normativity1*, or normativity proper, is central.⁴ It is an open question whether all de facto requirements or expectations or socially constructed norms are normative in that sense. Arguably it depends on the contents of the norms and the authority of the legislative process, whether we have good reasons, or ought, to meet the requirements, to obey the law, or to follow the etiquette, or to conform to others' interpersonal expectations, requests, demands, or prescriptions. Whether and when positive norms generate such normative1 reasons is a difficult and important substantive question (that will be touched in Section 3.4).⁵

In another sense, social norms are trivially and constitutively normative, or by definition normative in another sense, *normativity2*: some forms of behavior are ruled as acceptable (e.g., driving on the right) and others as unacceptable (e.g., driving on the left) in light of the norm. Even a morally bad norm (that we have no reason to follow, and which ought to be changed, and ought not to prevail) classifies behaviors as acceptable or unacceptable in light of that norm or standard.⁶ So surely social norms are then by definition normative? Call this conformity to social norms and actual expectations *normativity2*. It is *not* an open question whether social norms are normative in *that* sense—they are by definition normative2. But importantly, it is an open question whether one has good reasons, or sufficient reason, or ought, to follow any social norm—that is, whether the norm in question is normative1 (they are meant to be, but may fail). An unjust social norm might give us opposite

reasons – we might have reasons to oppose existing social norms because they are unjust.

In this chapter, “normativity” is used only in the sense of normativity¹. It is in that sense that it is an open question whether social norms, positive law, interpersonal expectations, and so on are normative.⁷ This chapter focuses on the question of whether we have normative powers and can bring about normative change in that sense. By contrast, this chapter takes for granted that we have powers to bring about institutional change, and while it is an open philosophical question in social ontology to make sense of that, there are no urgent skeptical challenges: it is more or less a platitude that humans can create an institutional world. While institutional change is also normative² change, I will merely call it institutional change for clarity.⁸

1.3. The Normative Significance of Descriptive Change

Normatively significant descriptive facts are ubiquitous. The fact that the trash bin is full is a reason for me to empty the trash bin. The fact that my tooth is aching is a reason to take a painkiller. That a boulder falls is a reason for the driver to swerve. The fact that I’m tired is a reason to postpone a decision. That I dropped into a well is a reason for others to help me out. That a taxation system is unjust is a reason to try to change it. That current industrial arrangements pose a threat of catastrophic climate change is a reason to collectively transform them. That a comment would be a grave insult is a reason against making the comment,⁹ and so on and so forth.

Facts or considerations that speak in favor (or against) certain acts are normative reasons. In any situation, there are several reasons, and what the agent ought to do overall depends on the overall balance of reasons. Each of the facts or considerations can be called a “contributory” reason, as they contribute to the overall balance. What one has most reason to do, or ought to do, results from the balance of the contributory reasons and can be called the “overall” balance of reasons (Dancy 2004).

In a helpful terminology, an ordinary, descriptive fact (e.g., that a boulder falls) is a *normatively significant* fact, when it functions as a contributory reason (Parft 1997). So, for example,

Fact 1: The trash bin is full.

Fact 2: Fact 1 is a reason for agent A to empty the trash bin.

Fact 2 is a *normative fact*, which involves a reason. Fact 1 is a *normatively significant* fact, because it figures in the normative fact. There can be meaningful disagreement about descriptive features (is the trash bin really full?) and about their normative significance (even if it is, is it really a reason?).

Suppose then that there is a descriptive fact that is not a reason for anyone to do anything: let us assume it is not relevant to anyone's duties, practical goals, or relevant for promoting value of any kind.

Fact 1*: the average wind speed at the measuring station at Somewhereville on Tuesday the 24th was a bit less than on Monday the 23rd.

Fact 2*: Fact 1* is not a reason for anyone to do anything.

We can say that in this case Fact 1* is normatively insignificant. One interesting class of insignificant descriptive differences consists of irrelevant details of otherwise significant facts: the more finely individuated details do not show up on the normative radar, as they were. If the trash bin is full, one has a reason to empty it, and it often does not matter much what kind of trash is in it, or what the detailed spatial arrangement between different pieces of trash is. Or if one sees that someone is about to go and walk on thin ice, one has reason to warn them independently of whether it is Monday or Tuesday, morning or afternoon, if they are wearing green or pink, etc. And if someone insists they have human rights, almost any particular features from age and gender to shoe size and number of siblings do not matter. Or, in another way, as organisms are multiply realizable as atom-level arrangements, it does not matter which exact atoms currently compose the rights-bearing organism or organism in need. Such variations show that there are a number of further insignificant descriptive facts even in cases that contain normatively significant descriptive facts. Understanding normativity includes understanding which descriptive facts are normatively significant and which are not, and in virtue ethics the virtue of *phronesis*, practical wisdom is the name for that ability to discern normative significance.

Ordinary "descriptive" worldly change concerns those facts (Fact 1 and 1* in the schema) that are not themselves normative. In case they are normatively significant, they make a difference to normative facts or considerations (Fact 2 in the schema), but if they are normatively insignificant, no normative change occurs.

The ordinary agential powers are powers to bring about changes in the descriptive situations (Fact 1 and Fact 1*). The power to change normative facts (e.g., Fact 2 in the schema) is here called a normative power. It is helpful to formulate a conditional *normative principle*: "If Fact 1, then . . .". For any normative fact (Fact 2, 2*, . . .), there is a similar principle. The only difference between a fact and a principle is that the principle leaves it open whether there is an obtaining state of affairs or not; that is, whether Fact 1 really is a fact or not. By contrast, as formulated, the normative fact (Fact 2) entails Fact 1. It may well be that there are two types of candidate normative powers – the power to create a valid principle which holds over situations (and are non-committal to whether

the principle applies in the situation here and now) and the power to create a token normative fact (with or without implications for similar cases elsewhere) (Shafer-Landau 2003).

1.4. *The Normative Significance of Institutional Change*

The human institutional reality is in its entirety the making of human agents, past and present. It is clear that humans have the requisite capacities and powers to create an institutional reality, and the institutional roles may contain new powers. Institutions can also adopt policies, for example, in recruitment or student admission. In Michael Bratman's (2007, 283–310) example, a university decides, for example, to give legacy considerations weight in their practical reasoning. Adopting such criteria means that something is a reason to the admission committee that wasn't before it. It is relatively clear that institutions can bring it about that some feature is a reason to accept a candidate.

Are such institutional powers normative powers in the relevant sense? The distinction between what social norms require (normativity₂) and what the agent ought to do (normativity₁) is accepted by virtually all moral theories, in different vocabularies. If the social norms require of an agent (typically a role holder) to Φ , it is an open question whether the agent thereby ought to Φ . Sometimes the answer is positive, while sometimes the agent ought to disregard the norms, and sometimes the agent ought to do exactly the opposite in the spirit of disobedience.

A simple moral argument can be given: if the social norms are morally horrendous, moral agents should follow their own conscience rather than the social norms, and to the best of their ability, try to change the social norms. In a typical variety of cases, however, when the social norms are not horrendous, but yet far from ideal, the agent both ought to obey the social norms in force (despite their imperfections they may play important coordinating roles, for example, and have been legislated in legitimate way) and try to work to get the social norms improved.

Nonetheless, social norms and declarations are *supposed to* be good enough, so that they do provide agents with reasons for action. That is the point of social norms, after all. In the cases when they succeed, a normative change is brought about via the exercise of institutional powers. It is a different kind of normative change from one which directly results from descriptive change in the situation. That a road is blocked by boulders is a reason to find another route. But even in the absence of boulders, a law can make it impermissible to use a route.

Thus, social norms seem to be able to bring about normative change, in a different way: in two descriptively similar situations, the agent has reason to Φ in one but not in the other, in virtue of the institutional change.¹⁰

2. Is the Conceptual Space Empty? Two Challenges

2.1. Are There Pre-Institutional Normative Powers?

Direct normative change differs, then, both from descriptive change and from institutional change. Both of these may be normatively significant, and indeed institutional change is typically supposed to bring about normative change.

Do human agents have a more direct normative power, for example, to promise, to give their consent, or in other ways bind their wills, that does not derive from, for example, collectively accepted institutions or norms? If human agents do have such powers, they are either original powers or derive from contingent institutions. But human agents have in any case the original power to create the contingent institutions, so original powers need to be postulated in either case. The question is merely whether a better theory of promising sees it as a contingent institutional practice or a non-contingent human power to bind one's will.

Thus, one argument against "original" normative powers is that the only normative powers derive from contingent institutions. Call this *the challenge from institutional powers*. It would hold there are no direct normative changes – only institutional ones.

Here's a case that suggests that there could be normative powers in the absence of institutional setting.

DESERT: Suppose two strangers meet in a desert, outside of the reach of any institution. They are tired and have some shelter but need water from the oasis that is still some distance away. Both would have enough energy to walk that distance. A volunteers to go and get water for both, and B gladly accepts. A visits the oasis and comes back without bringing water to B. B is by now significantly more tired and is not sure whether he has enough energy to walk the distance and come back to the shelter.

A does not violate any institutional norms, as there are none at play. A would have had independent reasons to bring water to B, even without having given his word: B needs water. But the promise certainly adds an extra reason, and indeed without it, B would have gone to get water himself. If there is a new reason, then the exercise of normative power, promise, directly adds a reason that was not there independently in virtue of the descriptive facts of the situation and in the absence of institutional settings.

Thus, there is reason to think that at least some normative powers are direct and pre-institutional, not in need of institutional standing. Note that even if it would turn out that all normative powers do presuppose institutional roles, human agents would still have institutionally mediated normative powers.

2.2 A Challenge From Supervenience

An opposite challenge to normative powers can be posed, the *Challenge from Supervenience*. It captures the sense that it should be the world that fixes normative reasons and oughts, and not our thoughts.

Here's the challenge: It is widely agreed that how things are normatively supervene globally on the descriptive features. In an exact descriptive duplicate of the world, the reasons would be the same, for the counterpart agents in that world. The descriptive features of the world fix what we have reason to do, and there is no other way to change the normative shape of the situation, than by changing the descriptive shape of the situation. There is no room for exercises of normative powers if supervenience holds; or so the challenge claims.

How to assess the challenge? The question is twofold: how do past exercises of normative powers figure in the situation here and now, and what does supervenience look like at the time of exercising normative powers?

First, past commitments, promises, and other exercises of normative powers must of course be taken into account, in describing the situation the agent faces. Two descriptively otherwise similar situations, where in one I have previously promised to water my neighbor's flowers while they are away, and in another, there is no such promise, are normatively different. Promises by their very nature are meant to be in force over time: if they would cease to be relevant when the act of promising is over, they would be pointless. Thus, to find the relevant base for describing the situation "here and now", one must take the past into account.

Past exercises of normative powers are merely one example of how the past matters: a history of oppression and injustice, or reasons of gratitude for past favors, or history of interpersonal relationships naturally affect the situation here and now. So global supervenience must be formulated in a way that takes the past into account, to capture the normatively significant features in the present. Past exercises of normative powers are among the events in the past that shape the current situation. The interesting point that this reveals is that discussions of supervenience must be sensitive to history.

What does supervenience look like at the time of exercising normative powers? A dualism that would locate agents with normative powers somehow outside the world would have to reject supervenience. A change in the agent's mind would directly change the normative shape of the situation, without anything changing in the descriptive state of the world. A view that holds agents as certain kinds of embodied, worldly creatures, i.e., as organisms or animals with agential capabilities, would have to draw a difference between those aspects of the world that the agent encounters as the circumstance or situation for action and those aspects of the world (the agent's brain, body, living organism, *etc.*) in

which the agent herself is embodied – which in one sense *are* the agent and in another sense are the *agent's* body (roughly, those aspects of the world that cease to function when one commits suicide and that one cares about when one cares about one's health and capabilities, etc.).¹¹ For supervenience to hold, the exercises of normative powers by embodied agents must supervene on physical features: changes in willing and commitment presumably are changes in brain states, etc., and expressions like spoken promises presumably supervene on movements of air, etc. Global supervenience merely tells us that an exact copy of the physical features, including subpersonal brain states and movements of air, will result in an exact copy in the normative features. So at least global supervenience between physical states and normative states can be preserved. The lesson is that supervenience must take into account not only the descriptive state of the situation that the agent encounters but also the states of the agent.

So it turns out that global supervenience can hold even if we accept normative powers. The supervenience base must be historically extended in including the normatively significant facts from the past and it must be extended to include relevant states of the embodied agent.

3. Is Exercise of Normative Powers Ever Transformative? The Case of Consent

This section discusses an argument that exercises of normative powers are not normatively transformative. Given that the sole function of normative powers is to bring about normative change (which may or may not be “transformation” in the technical sense defined later), it would be bad news for normative powers if they are never transformative. The discussion focuses on the case of consent, but similar arguments can be made concerning other powers, such as promising. If the question is whether the exercise of normative powers is *ever* transformative, it suffices to show that it is in the case of one specific normative power, the power to give consent.

3.1. *The Challenge*

It is widely accepted that consent can be normatively transformative. There are things that without B's consent, A ought not to do to B, but with B's consent, it is OK to do to B. It is up to B; it is B's call to consent to the treatment.¹² Standard examples vary from medical treatments to sexual intercourse.

Kent Hurtig (2020) argues for a surprising view that consent is not normatively transformative, it cannot change what we have overall decisive reason to do, that is, ought to do. He defines normative transformation in a clear and precise way, but I think ultimately too narrowly. He focuses on change at the level of overall oughts. A transformation takes place

if before the consent B has a decisive reason – understood as the total balance of reasons – against Phi-ing, and after the consent, B no longer has a decisive reason against Phi-ing. Hurtig argues against a strong thesis, which claims that such transformation necessarily takes place with consent:

The Transformation Thesis (T):

Necessarily, A's validly consenting to B's Phi-ing changes the situation from there being decisive reason for B not to Phi before A consents, to its not being the case that there is decisive reason for B not to Phi after A consents. (There is decisive reason for someone to Phi just in case the balance of total reasons for and/or against Phi-ing favours Phi-ing).

(Hurtig 2020, 106)

A weaker form would say that consent typically, or sometimes, brings about normative transformation in the overall oughts (decisive reasons, balance of reasons). Hurtig (ibid., 98) argues against such weak forms as well, in claiming that “*consent is necessarily not normatively transformative*”. In the next sections, I will try to show that the weaker view – consent sometimes is normatively transformative – is correct. This will require analyzing the kinds of normative change that consent primarily does (removing one moral wrong-making feature, and thereby one strong and important reason against, and so typically tipping the balance at the overall level), which explains its effect on the overall ought.

Hurtig first rightly notes that typical analyses of consent take it that certain conditions need to be met: competence condition, knowledge condition, and voluntariness condition. He argues that when these conditions are met, consent is never transformative. The conditions are in more detail:

The Competence Condition

A's general cognitive and emotional capacities at the time of consenting are “sufficiently mature” and they are not at the time of consenting impaired by conditions like being depressed, seriously intoxicated, in excruciating pain, agitated, and irritable, etc.

The Knowledge Condition

A has sufficient knowledge of all the facts that are relevant to B's Phi-ing. (What is the purpose of B's Phi-ing? How is B's Phi-ing related to that purpose? What are the potential payoffs and risks of B's Phi-ing?)

The Voluntariness Condition

A is not being coerced, unduly persuaded, or manipulated. (A's assenting to B's Phi-ing must be above the threshold of voluntariness.)

(*ibid.*, 105)

Hurtig also notes that the type of action in question must not be such that it is impermissible with or without consent to do it: If B's Phi-ing is consent-independently impermissible, then A's consenting to B's Phi-ing cannot make it permissible, such as A becoming B's slave, or A allowing B to "kill him for some trivial reason" (*ibid.*, 106). Consent is relevant only in a range of cases that are "consentable".

Hurtig gives a nice example, *Tattoo*, which I will rename *Ugly Tattoo with Consent* later (to contrast it with three other cases: a *Nice Tattoo with/without consent and Ugly Tattoo without Consent*).¹³

Here is the case, *Tattoo*, aka *Ugly Tattoo with Consent* in my terminology:

B approaches A and asks if A is interested in getting a large facial tattoo. A is made aware of all the following salient facts about the procedure and outcome: 1. The procedure will be very expensive. 2. It will be very painful. 3. The tattoo will be ugly and permanent. 4. The tattoo will cause friends and family serious discomfort. 5. A will enjoy wearing it for only a very short period. 6. B will be slightly better off financially by tattooing A. A consents.

(*ibid.*, 106)

Hurtig argues that for the knowledge condition to be met, A should know all the relevant facts. They include the fact that the combined normative weight of 1–4 is far greater than the combined weight of 5–6. If the agent does not know them, then plausibly the knowledge condition is not satisfied and the consent is not valid. But, Hurtig argues, if A does know there is a decisive reason against consenting, he is not fully practically rational in consenting. Hurtig argues that A is actually practically irrational, weak-willed, in such a way that his consent is not valid. In this way, Hurtig builds a case for thinking that consent is valid only in cases where it is done in accordance with the balance of independent reasons for or against Phi-ing, and in these cases, it is not normatively transformative.

How should this challenge be assessed? There are several aspects: first, examining what is the normative effect that consent has, and second, reassessing the claim that B's consent is valid and not normatively void only in cases where it does not make a difference at the level of overall oughts. This takes us to a closer discussion on conditions when consent is valid and on a range of cases where it is valid and makes a normative difference.

3.2. The Primary Normative Function of Consent

To see the normative effect of consent, let us focus first on cases (like tattooing) that would be violations of bodily integrity without consent but are not violations of bodily integrity with consent.¹⁴ If something is a violation of bodily integrity, it is *prima facie* morally impermissible in virtue of being a violation of bodily integrity, and moral impermissibility is a strong reason against an action. Whether it is sufficiently strong to tip the balance of reasons depends on other reasons present in a situation, and as there is an endless variety of situations, these need to be addressed case by case. Furthermore, whether it is morally impermissible depends on the presence of other morally relevant factors that affect its permissibility.

Thus, the normative effect of consent can be captured in the principle (further explainable in terms of rights): “Phi-ing without consent is a violation of bodily integrity, whereas Phi-ing with consent is not a violation of bodily integrity”. Such violations are morally wrong-making, and on their own make Phi-ing *prima facie* wrong. Whether they make Phi-ing (in the situation) morally wrong without the qualification “*prima facie*, depends on other morally relevant features present in the situation: perhaps Phi-ing would have enormous beneficial consequences, etc. That Phi-ing is morally wrong is a strong reason against Phi-ing, whereas “that Phi-ing is morally permissible” is as such no reason in favor of Phi-ing. Whether it is sufficiently strong to tip the balance of reasons depends on other reasons present in a situation.

Another aspect of consent is similar: it would be a paternalistic violation of autonomy to do to B beneficial deeds without B’s consent. “Phi-ing without B’s consent is a violation of B’s autonomy, whereas Phi-ing with B’s consent is not a violation of B’s autonomy”. Again, such violations are morally wrong-making and make Phi-ing *prima facie* wrong and together with the other morally relevant considerations can suffice to make Phi-ing wrong (without the qualification “*prima facie*”), and such that one ought not Phi.

Thus, the normative effect of consent, or normative powers more broadly, is not directly at the level of overall oughts; the effect at that level can be countered by other features. Let us have this route via moral wrong-making in mind in discussing the challenge. Thus, whether or not consent is morally transformative at the level of overall oughts, it can be normatively significant in altering the reasons at play. Let us first consider some cases, assuming consent is possible, and then return to Hurtig’s point that the conditions for consent are not met in *Tattoo* or other potentially transformative cases.

A change in “the moral relations between A and B” (Hurtig 2020, 101 and *passim*.) thus need not be a transformation at the level of the overall balance of reasons against Phi-ing; it can be a change at the level of contributory reasons, before and after consent. Terminologically, we can agree

to use “normative transformation” for changes at the overall balance of reasons and call “normative change” also other changes, for example, changes at the level of contributory reasons for or against Phi-ing.

3.3. *Variations in Which Consent Is Normatively Transformative*

Even though the case, *Ugly Tattoo with Consent*, would manage to show that there are cases in which consent (assuming for now that it is possible) does not bring about transformation in the overall balance of reasons, this leaves it open whether there are also cases in which consent *does* bring about a transformation in the overall recommendation whether to Phi.

Hurtig seems to think not. He writes, “since there is nothing special about [*Ugly*] *Tattoo [With Consent]*, the point generalizes” (107). But what is true about ugly tattoos may not generalize to nice tattoos, and what is true about cases with consent may not generalize to cases without consent. There are four kinds of cases that we need to discuss one by one. One class consists of cases, where there are strong independent reasons against Phi-ing but A consents (Hurtig’s example belongs here). Another consists of cases, where there are strong independent reasons against Phi-ing and A does not consent. In a third class, there are no strong independent reasons against Phi-ing, but A does not consent. In a fourth class, there are cases where there are no strong independent reasons against Phi-ing and A consents.

Consider first *Nice Tattoo without Consent*.

B approaches A and asks if A is interested in getting a wonderful tattoo. A is made aware of the following salient facts about the procedure and outcome: 1. Having the tattoo would enhance the quality of A’s life; 2. B is willing to do this as a favour to A, hoping at the same time to enhance the warm relation between A and B, which matters to both A and B, 3. Making the tattoo without A’s consent would be paternalistic and violate A’s bodily integrity, 4. Making the tattoo with A’s consent will not be violating A’s autonomy or bodily integrity. Yet, A does not consent, and B is made aware of this.

In this case, there is a sharp contrast between A’s reasons to consent and B’s reasons to make the tattoo. A’s consent or lack of it will be very relevant to whether B ought or ought not to make the tattoo. A’s consent is not of course relevant to whether A should consent or not—that would be unintelligible bootstrapping. Before A has given or denied their consent, the overall ought is indeterminate: on the one hand, there are reasons that speak in favor of having the tattoo (and these reasons at the same time speak in favor of giving the consent), but on the other hand, the moral permissibility of tattooing is not yet determinate. The decision *not* to

consent thus has at least the effect that despite these reasons for making the tattoo, it is now established that it would be morally impermissible to do it. There now is a decisive reason against tattooing, and so a moral transformation has taken place. On an alternative reading, it was morally impermissible all along, and what would have made it a case of moral transformation would have been actual consent. That is the case in the next case:

Nice Tattoo with Consent B approaches A and asks if A is interested in getting a wonderful tattoo. A is made aware of the following salient facts about the procedure and outcome: 1. Having the tattoo would enhance the quality of A's life; 2. B is willing to do this as a favour to A, hoping at the same time to enhance the warm relation between A and B, which matters to both A and B, 3. Making the tattoo without A's consent would be paternalistic and violate A's bodily integrity, 4. Making the tattoo with A's consent will not be violating A's autonomy or bodily integrity. A consents, and B is made aware of this.

The consent removes a weighty reason against tattooing. Without consent, B has a decisive reason against tattooing, but with consent, B does not have a decisive reason against tattooing. A normative transformation, as defined by Hurtig, takes place. In the case, *Nice Tattoo and Consent*, there is a normative change at the contributory level, and given 3–5, the change is sufficient to transform the overall balance of reasons.

The remaining type of case, *Ugly Tattoo without Consent*, is similar to Hurtig's case, but A does not give his consent. This denial of consent adds to the stock of reasons against tattooing. It does not make a transformation in overall recommendation but affects the strength of the case against Phi-ing. In *Ugly Tattoo without Consent*, there is an independent decisive reason against tattooing and explicit denial of consent. The normative case against tattooing is stronger than in *Ugly Tattoo with Consent*. The fact that it would be a violation of bodily integrity is a further reason against making the tattoo. This shows how the normative shape of a situation can change in different ways—transformation in the overall recommendation is not the only way (and indeed the overall balance of reasons can be transformed only if there is a change at the level of contributory reasons).

But at least if consent is ever possible in these four kinds of cases, they attest to the normative changes and transformations that consent can bring about.

3.4. *Is Consent Valid in These Cases?*

Hurtig's challenge puts special weight on it being irrational to give consent when the balance of reasons favors not consenting. But let's take the third

case, *Nice Tattoo with Consent*. Here, A has reasons to consent and does so. There is no reason to think A is incompetent or uninformed. Nonetheless, consent is normatively transformative.

It is also clear that there are cases where A has reasons to consent but does not, and yet the withholding of consent is valid. Take a variation of the *Nice Tattoo* – case, where A is approached by several tattoo artists simultaneously but has reasons to only take one tattoo. He would have reasons to consent to C’s tattooing or D’s tattooing but for no further reason chooses E’s tattooing – it is A’s call and needs no further reasons. The case, in relation to C and D, is that of *Nice Tattoo without Consent*.

So, the commonsense view that A can validly, competently, well-informedly, and voluntarily deny consent even in cases where A has reasons to consent is vindicated. A’s reasons to give or withhold consent are different from B’s reasons to Phi, in that the latter are sensitive to A’s actual consent, especially in cases where the decision is A’s call.

Are there are other conditions for the exercise of normative powers, in addition to *Competence, Knowledge, and Voluntariness*?

One condition concerns the contents. As the case of slavery suggests, some contents are “committable”, “eligible”, and “consent-able” and some are not. The “committable”, optional one can be as such worthwhile goals, but if not adopted as (possibly long-term) goals, they do not really figure as reasons at all nor provide grounds for instrumental means-ends-reasons. They need to be activated as it were, via adoption as ends. Some features, by contrast, are reasons giving even without such “adoption as a purpose”, and the responsive view is right that there are such reasons (typical moral reasons for example) and, further, that there are contents which remain ones we have no reason to pursue (see Laitinen 2020b; MacCormick 1972, on “obediential” vs. “voluntary” obligations).

Or alternatively, the optional “committable” goals can provide required, compulsory, mandatory reasons once committed to. Some goals are in themselves mandatory ends, some are optional, and some are forbidden. The optional goals are ones that one is permitted to pursue. Pursuing the optional goals does not necessarily turn the optional goals into required ones. But as autonomous agents have the power to commit themselves, to promise to others or to themselves, such commitments may “upgrade” the contents from merely optional to obligatory. Commitments make a difference only concerning committable goals: some contents are already obligatory, and some remain forbidden. The optional, committable aims can take the form of a “must” or a requirement once the agent has exercised the autonomous power to commit themselves.¹⁵

Another variation on this idea that only some contents are “committable”, “eligible” whereas others are in any case compulsory and others are forbidden, is to say that that the “committable”, “eligible” goals are incommensurable or roughly on a par. This is Ruth Chang’s (2020) view. There is room for a choice when none of the options is better than another.

Already the difference between consenting to a treatment by others and committing oneself autonomously to a long-term goal shows that different normative powers are indeed different, so the ways in which the “eligible” content makes a difference can be expected to be varied.

A further way in which an exercise of normative power may be invalid is that breaches the limits of the authority in question. Typically the agent who exercises normative power has a say in the matter, and so is an authority, whose decision matters relatively content independently. In Joseph Raz’s (1990) example, a superior in the military has the power to command, and even if in one’s judgment the command is suboptimal one ought to obey: it is nonetheless the superior’s call – and the command is an authoritative reason. Similarly, democratic decision-making has authority, and even those who voted against a proposal are bound to the result, even if they explicitly thought that a better candidate proposal was on the table. Such authority has limits though, as all military ethics and theories of civil disobedience agree. The rights of everyone affected are relevant to such limits of the authority (Christiano 2008). Overstepping the bounds of one’s authority is thus a further way in which the exercise of the normative power can be invalid and fails to provide genuine reasons for action.

This brief list of conditions (Competence, Knowledge, Voluntariness; Eligible contents; Bounds of Authority in the rights of affected parties) for exercises of normative powers is not exhaustive but shows that the exercise of normative powers is normatively transformative only within limits.

4. Agency

There are a number of features of agency that would be seriously truncated if we did not have normative powers (Section 4.1). If rational agents have normative powers, they are not merely responsive but also creative (Section 4.2).

4.1. Features of Agency That Entail Normative Powers

A number of features of agency presuppose or entail normative powers. Without normative powers, those features of agency would be significantly truncated.

One is *interpersonal coordination*. In a *Desert*, two people coordinate the efforts to fetch water. In the absence of authority to command, it is a clearly useful device that one of them can create an obligation for oneself and create a corresponding right for the other. It is a good idea, that agents can create reasons, obligations, and rights, that they afterward can respond to and live up to.¹⁶ Without such a normative power, the range of reasons would lack any reasons deriving from voluntary decisions or their expressions.

There have been attempts to redescribe such reasons as deriving, for example, from the reliance in question (Scanlon 1998, cf., however, Gilbert 2004). There seems to be a great normative difference between a case where B relies on A on the basis of B's own private uncommunicated anticipations on what will happen, and a case where A informs B of A's intention to do the anticipated thing. But further, there is a normative difference between A informing B of A's intention and A giving their word *in order to* get B to rely on A. Any plausible theory of interpersonal coordination must take into account such promises, oaths, and so on, which differ from mere communication of intention. Putting them aside gives a truncated image of what agents can do.

Another is *cross-temporal coordination and the power to commit*. Mutatis mutandis, the same points can be given concerning the power of an agent to commit themselves over time. Deciding to run a marathon, to have oneself tied to a post in order to hear the sirens sing, to have a degree in Social Policy, to run for president, to build a house, *etc.*, are examples that show that it is important to have plans, long-term intentions or commitments (see, e.g., Bratman 1999; Liebermann 1998). A form of human agency without such capacities would be truncated. Exercise of such capacities affects the reasons that agents have in future situations: having decided to run a marathon gives one reason to do a certain kind of workout and to buy certain kinds of shoes, whereas a decision to start playing football or doing yoga gives one different reason.

Further, can *personal autonomy* be made sense of without assuming it involves exercise of normative powers? The long-term decisions are at the same time realizations of the value of personal autonomy. If such commitments involve exercise of normative powers, then realizations of personal autonomy do. The concept of personal autonomy helps us to see the value in leading a life in pursuit of such commitments. Successful pursuit of worthwhile commitments contributes not only to a good life but also to an autonomous good life. To the extent that personal autonomy is valuable, exercises of normative powers in leading one's life are valuable; and paternalistic violations of autonomy may show why some good deeds are wrong without consent. Without exercises of normative powers, one's life would not only be truncated in lacking cross-temporal and interpersonal coordination—but it would also be lacking in terms of personal autonomy.

4.2. *Responsive, Creative, or Both?*

On a view that can be called Responsiveness Only, the supposed effects of exercises of normative powers seem suspect:

If there is no reason for A to withhold consent, it's difficult to see how A's withholding consent can *create* a decisive reason for B not to Phi.

Such a creation of a decisive reason would involve an objectionable kind of voluntarism about the normative: it would involve bootstrapping a decisive reason into existence *ex nihilo*.

(Hurtig 2020, 110)

This objection nicely voices the responsive view of rational agency: rational agents respond to reasons; they do not create them at will. Ruth Chang provides the exact mirror image to this view; she insists that we do not exercise our normative powers *for reasons*. She calls the responsive view “passive” as in it agents do not create reasons – I prefer the title “responsiveness” as that is in no way passive:

Crucially, our willing in the exercise of robust powers is not itself a choice governed by reasons. It is just something we do. This is perhaps the deepest difference between “passive” and “active” accounts of rational agency. On the passive view, everything we do as an intentional exercise of rational agency is guided by reasons. On the active view, some intentional exercises of rational agency are things we do as matter of will, and are not themselves guided by reasons. It is this freedom to have an active role in determining the reasons we have that is the hallmark of the rational agency that underwrites robust normative powers. Robust normative powers put the agent back in rational agency. By exercising such powers, we have a fundamental say in determining how we should live. In so far as this is an attractive view of rational agency, we have reason to take robust normative powers seriously.

(Chang 2020, 298)

If the view that I have tried to defend in this chapter is right, rational agents are responsive to reasons, and that responsiveness is of course active.¹⁷ Further, the exercises of normative powers are themselves responsive to reasons (reasons to decide this way rather than that way). Even if the reasons would be incommensurable, we are nonetheless responding to reasons. In Jonathan Dancy’s (2000) example, when choosing whether to wear this shirt rather than that shirt, we are still responsive to all the reasons for wearing some shirt. But, despite being responsive, exercises of normative powers are also transformative and creative. We live in a normative reality, some aspects of which are not of human making, some result from previous exercises of normative powers, and with fresh exercise of normative powers we can add to that reality.

Notes

- 1 On the role of agency in theory of action, see Hornsby (2004) and Ricoeur (1992).
- 2 On normative powers, see Raz (1972), MacCormick (1972), Raz (1990), Owens (2012), Raz (2019 ms), Chang (2013), and Chang (2020). Hurd

- (1996) rightly notes that the “moral magic” in normative powers is a matter of creating rights and obligations: “We regularly wield powers that, upon close scrutiny, appear remarkably magical. By sheer exercise of will, we bring into existencethings that have never existed before. What is the nature of these things that we create and destroy by our mere decision to do so? The answer: the rights and obligations of others. And by what seemingly magical means do we alter these rights and obligations? By making promises and issuing or revoking consent.” Cf. also Hohfeld (1919) on powers and Thomson (1990) on rights.
- 3 On constructivism, see Bagnoli (2011, 2013, 2021).
 - 4 See, e.g., Broome (2013), Dancy (2000), Parft (1997), and Raz (1999).
 - 5 See Raz (1999), Christiano (2008), and also Searle (2010) for whom institutional statuses can generate desire-independent reasons for action.
 - 6 Bicchieri (2006), Copp (1995).
 - 7 Accordingly, *moral rights* belong to normativity₁, whereas *legal rights* belong to normativity₂. Moral rights and directed moral obligations differ from reasons and oughts in having a dyadic (interpersonal) structure. For more on dyadic normativity, see Laitinen and Särkelä (2020).
 - 8 Laitinen (2020a) discusses up to eight candidate usages of normativity, arguing that four of them are indeed different senses of “normativity” (normativity of reasons; of social norms; wide-scope oughts; and ought-to-be’s), whereas four others are cases of the previous senses of normativity, or not normative at all (related to linguistic meaning; the “direction of fit” of desires; subjective authority of intentions and motivations; and interpersonal requests and demands).
 - 9 See, e.g., Dancy (2000), Raz (1990), Chang (2020), and McNaughton and Rawling (2004).
 - 10 Thus, the supervenience basis of the reasons includes the instituting of the social norms—if an exact copy of the world history is made, also the same institutional decisions are made.
 - 11 Like any organism, the agent’s body is a self-sustaining and self-regulating entity, so there is a principled answer to what aspects of the world constitute the agent: the organism that has the agential capabilities.
 - 12 Hurtig (2020), 97.
 - 13 Hurtig (2020) goes through similar four cases in the context of asking when is consent valid.
 - 14 This can be further elucidated with appeal to moral *rights*, but for our purposes, we do not need a full analysis of rights.
 - 15 See Lilian O’Brien (2019) on must thoughts.
 - 16 For a theory like Joseph Raz’s, which holds that normative powers exist if they are justified, the very existence of normative powers hangs on them “being a good idea” or as I put it, “a useful device”: “a person’s act is an exercise of a normative power if it brings about or prevents a normative change because it is, all things considered, desirable that that person should be able to bring the change about or prevent it by performing that act” (Raz, 2019 ms, 2).
 - 17 See, e.g., Ricoeur (1992) and Raz (1999) on our being active and passive. Raz argues that we are also active when responsive.

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