

Proper address and epistemic conditions for acting on sexual consent

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Abstract: It has recently been argued that to permissibly act on someone's consent to sex, the agent must possess *firsthand evidence* of the consent directly from the consentor. This view is motivated by a case where it seems impermissible to act on testimonial knowledge of someone's consent to sex. Although we agree that it is impermissible to act as if there is consent in this case, we argue that the explanation in terms of a lack of firsthand evidence is unmotivated, fails to draw the right moral boundaries, and comes with the theoretical cost of abandoning the search for general epistemic conditions for permissible action. Instead, we propose an explanation in terms of an ontological deficiency: a necessary condition on morally valid consent is unsatisfied in the relevant case. This is the condition that A consents to B ϕ -ing through speech act α only if α is *properly addressed* to B. Although this condition seems implicit in some existing accounts of consent, it has never been explicitly stated or put to theoretical use. In addition to explaining the above case without introducing special epistemic requirements for acting on consent to sex, the condition gives communicative accounts of consent an explanatory edge compared to attitudinal accounts.

Keywords: Sexual consent; address; speech acts; testimony; epistemic norms of practical reasoning.

I. INTRODUCTION

One of our central moral powers is the power to consent. This power enables us to create permissions for others through issuing our consent to them. Under normal conditions, Lou has a duty to not touch Mary's body and would therefore be wronging Mary were she to do that. But through her consent, Mary can create a permission for Lou to touch her. In this way, the power of consent enables us to control how we normatively relate to others, by keeping some at a distance and letting others into our personal sphere.¹

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¹ Renée Jorgensen Bolinger, "Moral Risk and Communicating Consent," *Philosophy & Public Affairs* 47, no. 2 (2019): 179-207; Heidi Hurd, "The Moral Magic of Consent (I)," *Legal Theory* 2, no. 2 (1996): 121-46.

In recent years, there has been a surge of interest in understanding the nature of consent and its moral dynamics. Of particular interest in the recent literature is the case of *sexual consent*, especially in connection with the question of what consent policies ought to regulate interpersonal conduct.² One important question raised here concerns the *epistemic standards* that receivers of consent must meet in order to adequately respect the authority of consent-givers. Or to put the question in terms of permissions: what kind of epistemic warrant must a consent-receiver have for their belief that a putative consent-giver gave their consent to sex in order to permissibly act on this consent? Answering this question has direct implications for how we should outline policies supposed to regulate consent both in the context of sexual intercourse and many other types of consent-sensitive conduct.³

An attractive approach to this question holds that there is nothing special about the epistemic standards one must meet to permissibly act on the consent of others to sex. Of course, the high stakes involved plausibly make the epistemic standards more stringent than in many other contexts, by demanding a greater than normal degree of evidential certainty for acting on others' consent to sex. But on this view, there is no *fundamental* difference between the epistemic standards that must be met to permissibly act on sexual consent, and those that must be met in other high-stakes contexts with an increased demand on evidential certainty.

Such an approach would be in line with the assumption underlying much philosophical debate about epistemic norms of practical reasoning, that we should aim for a *general* theory, identifying epistemic conditions for practical reasoning that apply in *all* contexts. For an example of a view taking this idea seriously, consider the so-called *knowledge norm of practical*

² For recent discussions of sexual consent and consent policies, see e.g. Emily C. R. Tilton and Jonathan Jenkins Ichikawa, "Not What I Agreed To: Content and Consent," *Ethics* 132, no. 1 (2021): 127–54; Tom Dougherty, "Yes Means Yes: Consent as Communication," *Philosophy & Public Affairs* 43, no. 3 (2015): 224–53; Tom Dougherty, "Affirmative Consent and Due Diligence," *Philosophy & Public Affairs* 46, no. 1 (2018): 90–112; Tom Dougherty, *The Scope of Consent* (Oxford: Oxford University Press, 2021); Tom Dougherty, "Coerced Consent with an Unknown Future," *Philosophy and Phenomenological Research* 103, no. 2 (2021): 441–61; Hallie Liberto, "The Problem with Sexual Promises," *Ethics* 127, no. 2 (2017): 383–414; Hallie Liberto, "Coercion, Consent, and the Mechanistic Question," *Ethics* 131, no. 2 (2021): 210–245; Victor Tadros, "Consent to Sex in an Unjust World," *Ethics* 131, no. 2 (2021): 293–318; Alexander Guerrero, "The Epistemology of Consent," in *Applied Epistemology*, ed. Jennifer Lackey (Oxford: Oxford University Press, 2021); and Jennifer Lackey, "Sexual Consent and Epistemic Agency," in *Applied Epistemology*, ed. Jennifer Lackey (Oxford: Oxford University Press, 2021). For some recent discussions of sexual wrongs that are *not* explained by the absence of consent, see e.g., Melissa Rees and Jonathan Ichikawa, "Sexual Agency and Sexual Wrongs: A Dilemma for Consent Theory," *Philosophers' Imprint* (forthcoming), and Elise Woodard, "Bad Sex and Consent," in *The Palgrave Handbook of Sexual Ethics*, ed. David Boonin (Cham: Springer, 2022).

³ Dougherty, "Affirmative Consent."

reasoning, according to which it is permissible for you to rely on *p* in your practical reasoning, and thus to act as if *p* is the case, if and only if you *know* that *p*.⁴ This norm is claimed by its defenders to hold for any *p* whatsoever, and hence also the proposition that someone consents to sex. Counterexamples to the norm tend to consist of cases where the stakes involved seem to demand (or allow) an evidential degree of certainty that is higher (or lower) than that required for knowledge. Critics might point out, for example, that it could be inappropriate to rely on the proposition that you were born in a particular year by betting your house on it, even though you count as knowing that you were born that year. Or that it could be appropriate to rely on the proposition that the bus leaves at noon by leaving your office ten minutes prior to that, even if you don't quite count as knowing that the bus leaves at noon, if nothing much depends on catching the bus. But critics of the knowledge norm do not conclude from such examples that special epistemic conditions apply to permissibly relying on these propositions in practical reasoning. Rather, they search for alternative general conditions that can accommodate all cases, for example by finding a general way of letting the practical or moral stakes involved determine the required level of evidential certainty.

Recently, however, some prominent contributors to the debate over sexual consent have departed from this general approach. They say that being permitted to act as if somebody gave their consent to sex not only requires a higher degree of evidential certainty than that required in many other contexts, but also the possession of a *particular kind* of evidence.⁵ Jennifer Lackey defends this view by presenting a case in which it seems plausible to say that one person knows that another consents to sex, and yet is not permitted to act as if the person consents, because the knowledge comes about *secondhand* in the form of testimony from a third-party, rather than *firsthand* from the consenting agent. If Lackey is right, we not only find ourselves with a counterexample to the sufficiency of knowledge for action. More importantly, we also find ourselves with the result that the evidential standards required for acting on someone's consent to sex are fundamentally different from the standards we employ for other actions. The wider

⁴ Versions of this norm are defended by e.g., Jeremy Fantl and Matthew McGrath, "Evidence, Pragmatics, and Justification," *The Philosophical Review* 111, no. 1 (2002): 67-94; John Hawthorne, *Knowledge and Lotteries* (Oxford: Clarendon, 2004); Timothy Williamson, "Contextualism, Subject-Sensitive Invariantism and Knowledge of Knowledge," *The Philosophical Quarterly* 55, no. 219 (2005): 213-35; and Jason Stanley, *Knowledge and Practical Interests* (Oxford: Oxford University Press, 2008). For critical discussion, see e.g., Jessica Brown, "Knowledge and Practical Reason," *Philosophy Compass* 3, no. 6 (2008): 1135-52.

⁵ Dougherty, "Affirmative Consent"; Lackey, "Sexual Consent."

upshot of this would be that the search for a general epistemic norm of practical reasoning must be misguided, or at least admit important exceptions.

It is worth pausing to clarify what sort of permissibility or appropriateness is at play when it is claimed that it can be (im)permissible or (in)appropriate to rely on a proposition in one's practical reasoning because of insufficient evidence for that proposition. In the above examples concerning the permissibility of relying on one being born in a particular year, or on the bus leaving at noon, there is no question of *moral* permissibility. Although imprudent, one would not (necessarily) be guilty of a moral failing by betting one's house on being born in 1977. However, acting as if someone consents to sex without having sufficient evidence of such consent clearly would be a moral failing. This might be taken to suggest that these cases have little to do with one another, and that there is no single epistemic norm of practical reasoning being violated in cases involving moral and mere prudential failings. But we take it that both moral and prudential failings of these kinds can be explained by a failure to satisfy an epistemic condition for relying on the relevant propositions. If p is required for the prudence of ϕ -ing, one would be imprudent in ϕ -ing without having sufficient evidence for p . And likewise, if p is required for the moral permissibility of ϕ -ing, one would be guilty of a moral failing in ϕ -ing without having sufficient evidence for p . What is proposed by proponents of general epistemic norms for practical reasoning is that there is a common epistemic standard (such as knowledge) that must be met in all cases for it to be permissible to act as if a proposition is true, even if failing to meet this standard can result in both moral and prudential failings depending on the particular action.⁶

In this paper, we offer an alternative explanation of the case discussed by Lackey, and in doing so indirectly defend the search for a general epistemic norm of practical reasoning. Although we agree that it is impermissible to act as if there is consent in Lackey's case, we argue that the explanation in terms of a lack of firsthand evidence is unmotivated and fails to draw the right moral boundaries. Instead, we propose an explanation in terms of an ontological deficiency: a necessary condition on morally valid consent is unsatisfied. This is the condition that A consents to B ϕ -ing through speech act α only if α is *properly addressed* to B. Although this condition seems implicit in some existing accounts of consent (and of speech acts more

⁶ It should be noted that, to our awareness, the assumption that epistemic conditions on prudence are the same as the epistemic conditions on morality has not been explicitly defended, even if it is clearly presupposed by proponents of general epistemic norms for practical reasoning. A defense of this assumption is beyond the scope of this paper, but we hope to take it up elsewhere.

generally), it has never been explicitly stated or put to theoretical use. In addition to explaining Lackey's case without introducing special epistemic requirements for acting on consent to sex, the condition challenges attitudinal accounts of consent, and illustrates the potential of speech act theory in understanding the nature of consent. It is important to note that these contributions are independent. Even without the concern to defend a general epistemic norm of practical reasoning, there are substantive and practically important questions about the moral dynamics of consent that our proper address condition helps address. Similarly, one could endorse our condition on consent without thereby committing oneself to the existence of general epistemic conditions for practical reasoning.

The rest of the paper is structured as follows. In §II, we introduce Lackey's case and argue that although it does not support introducing special epistemic demands on acting on consent, it constitutes an important explanatory target for theories of consent. In §III, we introduce the idea that speech acts must typically address some among the hearers to be successful. In §IV, we rely on this to argue that successful acts of consent require that the consentee is properly addressed by the speech act constituting the consent. In §V, we show how this condition explains Lackey's case while avoiding special epistemic demands on acting on consent. In §VI, we consider two objections. In §VII, we show how the proper address condition affords communicative accounts of consent an explanatory edge compared to attitudinal accounts, before concluding in §VIII.

II. LACKEY ON SECONDHAND KNOWLEDGE OF SEXUAL CONSENT

Begin by considering the following case described by Lackey:⁷

Secondhand Knowledge: Sally reports to a handful of her male college student friends that she consents to having sex that evening with one of their classmates, Sam. The students know Sally well, she has never withdrawn consent in the past after giving it, and they have no reason to believe that this occasion is unusual in any relevant respect, so they reliably convey this information to Sam. Given that Sam has very good reason to believe that his classmates are trustworthy, and has no evidence to the contrary, he comes to know that Sally consents to having sex with him that evening.

⁷ Lackey, "Sexual Consent," 326.

Lackey presents this case as a counterexample to the sufficiency of knowledge for action, i.e. that if S knows that p , then S is permitted to act as if p . The example stipulates that Sam knows that Sally consents to having sex with him. But Lackey finds it implausible that Sam is permitted to act on this knowledge by engaging in the sort of behavior towards Sally that sexual consent would permit. In that case, we have an example of someone knowing p without being permitted to act as if p , and thus a counterexample to the sufficiency of knowledge for action.

Lackey considers several ways one might attempt to defuse the counterexample. One might doubt, for example, that Sam can really know based on testimony that Sally has given consent, given that Sally might withdraw her consent before Sam learns about it and can act on it. But Lackey rejects such doubts, noting that in other contexts, we don't find that the possibility of withdrawal undermines the possibility of knowledge. If I consent to letting you stay in my house, for example, you can know that I consent, despite the possibility that I may have changed my mind in the last few minutes. And we can always modify the counterexample to make this possibility less likely: Imagine that Sally tells her friends that she consents to sex with Sam, the friends tell Sam immediately after, and then Sam proceeds to initiate sex with Sally without seeking firsthand assurance from her.⁸ Even when the temporal gap is truncated in this way, it seems that Sam acts inappropriately by acting as if Sally consented.

In this paper, we are not primarily interested in whether knowledge rather than some other general epistemic condition (such as rational belief) is sufficient for permissible action. Rather, we are interested in Lackey's explanation for *why* Sam is not permitted to act on his knowledge of the consent. According to Lackey, this is explained by Sam lacking an "altogether different kind of epistemic support for his belief; namely, he needs firsthand evidence from Sally herself that she consents to sex."⁹ Lackey contrasts a deficiency in the *kind* of epistemic support with a deficiency in the *quantity* of epistemic support. As she notes, "it doesn't help for Sam just to pile on more of the same kind of epistemic support on behalf of his belief that Sally consents to sex. For instance, it won't do for him to hear this from five or six friends, rather than four of them."¹⁰ According to Lackey, this is "due to Sally's being uniquely positioned with respect to [whether she consents to sex], both agentially and epistemically,"¹¹ which means that Sam must

⁸ See Lackey, "Sexual Consent," 329, for a very similar case adduced to support the same point we are making here.

⁹ Ibid., 336.

¹⁰ Ibid.

¹¹ Ibid.

learn of the consent directly from her to permissibly act on it. That Sally is uniquely positioned *agentially* means that she is the only person who is capable of exercising her agency in such a way that she waives her moral right against being intimately touched.¹² That Sally is uniquely positioned *epistemically* just means that “by virtue of the exercising of one’s agency being constitutive of whether one consents to sex, one is typically epistemically better positioned than anyone else to know whether one is doing so.”¹³

This demand for firsthand evidence for permissibly acting on sexual consent has also been endorsed by Tom Dougherty, who writes that:

it is relevant that sexual consent is a paradigm of high-stakes consent, and this feature increases the investigatory burden on sexual partners to establish each other’s willingness to have sex. This burden should be understood in terms of the type of evidence that they are required to seek. The agent would need to have found clear and unambiguous evidence of their partner’s willingness to have sex. In addition, as Jennifer Lackey has argued, *the agent would need to receive this evidence from first-hand testimony from their partner; relying on third-parties’ testimony would be inappropriate, given the stakes involved.*¹⁴

Although we agree with Lackey and Dougherty that Sam may not act as if Sally has consented to sex, we find their diagnosis of why this is the case problematic.

First, the explanation offered as to why the type of evidence should matter is not convincing. The example stipulates that Sally *does* consent, thus exercising her unique agential authority to waive her moral right against being intimately touched. And although Sally may be uniquely well-positioned to know of this consent, the example also stipulates that Sam comes to share this knowledge. Going further, as Lackey indicates in one of the above passages, we can imagine Sam becoming even *more* certain of Sally’s consent than he is in the example, by receiving more testimony, and by the testimony being even more reliable. Indeed, if Sam already counts as knowing in the original example, the additional testimony will bring him “a grade of knowledge closer to certainty.”¹⁵ But then it’s hard to see what special epistemic role there is left

¹² Ibid., 333.

¹³ Ibid., 334.

¹⁴ Dougherty, “Affirmative Consent,” 104 (italics added).

¹⁵ Lackey, “Sexual Consent,” 336.

for firsthand evidence to play. It cannot simply be that firsthand evidence from the consentor will always be more reliable than secondhand testimony. Even firsthand evidence of consent is fallible and can sometimes be misleading (perhaps Sally was being insincere or misspoke when she communicated her consent). And we can imagine secondhand testimony of sexual consent being arbitrarily reliable, short of making it certain that there is consent.

In fact, we can devise cases where secondhand testimony will be *more* reliable than its firsthand counterpart. Suppose that Lisa is an expert in decoding body language and can identify very subtle bodily cues that often occur when people issue their consent. Suppose, moreover, that the presence of these cues tends to accurately predict when an instance of consent that seems genuine to non-experts is in fact not. Hence, Lisa has an extraordinary ability to discriminate between genuine consent and merely apparently genuine consent. Intuitively, it seems that a consent-taker solely concerned with evidential reliability should prefer Lisa's testimony over firsthand evidence from the consentor.¹⁶ So, how can the consentor's uniquely favorable epistemic position explain why acting on sexual consent could *never* be permissible in the absence of firsthand evidence directly from the consentor? Lackey and Dougherty might respond that since firsthand evidence is almost always more reliable than testimony, we should always obtain such evidence prior to acting on consent. But it is hard to see any principled epistemic reason for demanding this, especially if the context makes it clear that the secondhand testimony *is* sufficiently reliable, or even *more* reliable than the firsthand evidence.

Second, the explanation comes with the heavy theoretical cost of abandoning the attractive and widely shared ambition of discovering general epistemic conditions for permissibly acting on a proposition. For any proposition, we can imagine numerous different sources of evidence speaking for and against its truth, and thus numerous different ways of coming to know or rationally believe it. I might know that it is raining outside because I can see it through the window, or because I can smell the rain, or because my son just walked in wet, or because it always rains in the evening, or because the forecast tells me, or on the basis of any other evidence that makes it sufficiently likely that it is raining. And in general, it does not matter for the permissibility of acting on such knowledge that it is based on some particular source of evidence, as long as the evidence makes the relevant proposition sufficiently likely (where the required evidential strength may depend on the stakes at play). However, if the permissibility of acting on someone's consent to sex not only requires a suitably high degree of evidential

¹⁶ Alternatively, suppose that Lisa is a very close friend of the consentee which gives her an epistemic advantage in interpreting their communicative actions.

certainty of the consent, but also that particular sources of evidence be present, this general picture is undermined. Instead, we would open up for adopting similarly particular evidential requirements for permissible action in other contexts, thus in effect giving up the search for general conditions. Lackey might avoid this implication by posing that there is indeed something unique about sexual consent that we do not encounter in any other context. After all, she takes the case of sexual consent to provide a counterexample to the (sufficiency part of the) knowledge norm for practical reasoning and explains this deviation with the unique epistemic and agential perspective taken by Sally with regards to her own consent. And of course, Lackey could be right about this. But if we can find a more general explanation that respects our intuitions in cases like Secondhand Knowledge and is consistent with independently plausible principles (such as the knowledge norm), we should prefer this explanation.

Taken together, this motivates the search for an alternative explanation of Lackey's case that avoids letting firsthand evidence play the special epistemic role Lackey and Dougherty ascribe to it. Later on, in §IV, we raise further doubts about the necessity of firsthand evidence by presenting a case where firsthand evidence is present without making the predicted difference to the permissibility of acting as if there is consent. Nevertheless, we agree with Lackey that Sam is not permitted to act as if Sally has consented to sex, and that we ought to explain why he isn't. And we think that the correct explanation of this reveals something important about consent. To our minds, rather than being explained by an *epistemic* deficiency, Lackey's example should be explained by an *ontological* deficiency: something constitutive of morally valid consent is missing, despite Lackey's stipulation that Sally succeeds in validly consenting to sex. What is missing is *proper address*. Although Sally says that she consents to Sam having sex with her, she does not address her consent to Sam. And without proper address, she has not validly consented. Or so we will argue in the next section.

Before we turn to this, however, let us address the possibility that there is a simpler explanation available for why Sam can't act on the testimony of consent in Secondhand Knowledge. Specifically, one might point out that in all realistic scenarios in which Sam approaches Sally to initiate sex, he would have the easily available and virtually cost-free option to gather further evidence directly from Sally to confirm that she consents, and that he therefore ought to do so. The more general principle at work here could be that when the stakes are sufficiently high, and low-cost means for gathering further evidence are available, one has a duty to gather such evidence.

While we think that such a principle is plausible, we can imagine variations of Secondhand Knowledge in which the deficiency of secondhand testimony persists when easy availability of further evidence is controlled for. Imagine that Sally is about to fall asleep, and Sam is downstairs. Sally tells her friend that she consents to Sam waking her up by performing a specific sexual act on her. The friends tell Sam and let us assume that Sam has as much reason to trust his friends as in the original case. Intuitively, it seems just as inappropriate for Sam to act as if Sally gave her consent as in the original version of the case. But that can't be explained by the combination of high stakes and easily available (firsthand) evidence, because Sally will be fast asleep once he initiates the sexual act, and so Sam won't be able to ask her without making the very activity consented to impossible, namely *being woken up by the sexual act*. Were we to instead assume that Sally had consented firsthand to Sam before going to sleep, it would seem permissible for Sam to act as if Sally gave her consent. Hence, an explanation focusing on a duty to engage in low-cost checks does not seem to explain why Sam can't act on the testimony of consent.

It is important to stress that our rejection of the necessity of firsthand evidence for acting on someone's consent is compatible with the fact that, in the vast majority of cases, one can achieve the required level of evidential certainty only by firsthand evidence, because no other sufficiently reliable evidence will be available. It is also compatible with it being the case that, in the vast majority of cases, the easily available and low-cost option to gather firsthand evidence will mean that one has a duty to do so. What we are denying is that firsthand evidence is strictly necessary for acting on someone's sexual consent, and that such an assumption is the best explanation of cases like Secondhand Knowledge, or variations of this case such as the above.

III. SPEECH ACTS AND PROPER ADDRESS

Our preferred explanation of why Sam is not permitted to act as if Sally consents to sex is based on a specific view of the ontology of consent, that is, an answer to the question of what consent is. In the literature, we find significant disagreement over whether consent is best analyzed as a certain kind of attitude, or as a type of performance or communicative act.¹⁷ Our explanation

¹⁷ For prominent defenses of the communicative view, see e.g., Bolinger, "Moral Risk"; Dougherty, *The Scope of Consent*; and Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press; New York: Oxford University Press, 1986). For explicit reliance on speech act theory in analyzing consent, see also e.g., Nathan Brett, "Sexual Offenses and Consent," *Canadian Journal of Law & Jurisprudence* 11, no. 1 (1998): 69-88; Karamvir Chadha, "Conditional Consent," *Law and Philosophy* 40, no. 3 (2021): 335-59; Monica R. Cowart, "Understanding Acts of Consent: Using Speech Act Theory to Help Resolve Moral Dilemmas and Legal Disputes," *Law and Philosophy* 23, no. 5 (2004): 495-525; Ramon Flecha, Gema Tomás, and

presupposes the communicative view of consent. Such a starting point is controversial, and proponents of the attitudinal view may reasonably ask why they should continue reading. But we ask for the reader's patience. Below we will argue that the communicative view of consent makes certain resources available from speech act theory that enables us to explain what goes wrong in our leading example. Later, in §VII, we will suggest that because the attitudinal view cannot draw on these resources, proponents of the attitudinal view face a challenge in explaining why Sam can't act on his knowledge. In other words, while the debate between communicative and attitudinal views of consent is not the primary focus of this paper, we provide indirect support for the communicative view by showing how it can explain cases like Secondhand Knowledge.

If we take consent to be a communicative act, it is natural to think of consent as a type of speech act. Borrowing a term from J.L. Austin, consent can be regarded as a so-called *illocutionary act* that has the function of constitutively manipulating the normative statuses of speakers and hearers.¹⁸ The characteristic illocutionary force (change in normative status) of a successful consent is that of creating permissions for others.¹⁹ Other types of speech acts shape the normative landscape in different ways. For instance, *commanding* creates duties for others; *blaming* communicates censure; *promising* creates obligations for oneself owed to the promisee (who acquires an entitlement or right); and *apologizing* and *forgiving* play important roles in establishing moral repair and rectification.²⁰

Ana Vidu, "Contributions from Psychology to Effectively Use, and Achieving Sexual Consent," *Frontiers in Psychology* 11 (2020): 92; Tim Grant and Kerrie Spaul, "Felicitous Consent," in *Speaking of Language and Law: Conversations on the Work of Peter Tiersma*, eds. Lawrence M. Solan, Janet Ainsworth, and Roger W. Shuy (New York: Oxford University Press, 2015); Heidi M. Malm, "The Ontological Status of Consent and its Implications for the Law on Rape," *Legal Theory* 2, no. 2 (1996): 147-64; Jan Marta, "A Linguistic Model of Informed Consent," *The Journal of Medicine and Philosophy* 21, no. 1 (1996): 41-60; Bonnie O. Wong, Jason N. Batten, Jacob A. Blythe, and David C. Magnus, "More than Conveying Information: Informed Consent as Speech Act," *The American Journal of Bioethics* 21, no. 5 (2021): 1-3; Neil C. Manson and Onora O'Neill, *Rethinking Informed Consent in Bioethics* (Cambridge: Cambridge University Press, 2007); and Joseph Millum and Danielle Bromwich, "Understanding, Communication, and Consent," *Ergo: An Open Access Journal of Philosophy* 5, no. 20201214 (2018): 45-68. For prominent defenses of the attitudinal view, see e.g., Larry Alexander, "The Moral Magic of Consent (II)," *Legal Theory* 2, no. 3 (1996): 165-74; Larry Alexander, "The Ontology of Consent," *Analytic Philosophy* 55, no. 1 (2014): 102-13; Hurd, "Moral Magic"; Joshua Dressler, "Where We Have Been, and Where We Might Be Going: Some Cautionary Reflections on Rape Law Reform," *Cleveland State Law Review* 46, no. 3 (1998): 409; Douglas Husak, "The Complete Guide to Consent to Sex: Alan Wertheimer's 'Consent to Sexual Relations,'" *Law and Philosophy* 25, no. 2 (2006): 267-87; Victor Tadros, "Beyond the Scope of Consent," *Philosophy & Public Affairs* 50, no. 4 (2022): 430-66; and Peter Westen, *The Logic of Consent: The Diversity and Deceptiveness of Consent as a Defense to Criminal Conduct* (Oxfordshire: Routledge, 2016).

¹⁸ J.L. Austin, *How to Do Things with Words* (Oxford: Oxford University Press, 1976).

¹⁹ Hurd, "Moral Magic."

²⁰ Julian Jonker, "Directed Duties and Moral Repair," *Philosophers' Imprint* 20, no. 23 (2020): 1-32.

Illocutionary acts have so-called *felicity conditions* that determine if some utterance successfully constitutes the intended illocutionary act and produces its characteristic normative effect, or if it instead *misfires*, to borrow another term from Austin.²¹ While some felicity conditions may be unique to a given type of illocutionary act (e.g., one cannot apologize by uttering the words “please borrow my car”), it seems likely that other felicity conditions are shared by all or most illocutionary acts.²² We are going to focus on a specific type of felicity condition that many have noticed in the context of illocutionary acts more generally but which has not been brought to use in the context of understanding the moral dynamics of consent. This is the idea that successful consent must be *properly addressed*. Consider some expressions of this idea (either in general or in the context of specific types of illocutionary acts):

“[I]llocutionary acts invariably involve an element of address, even if only to an audience at large.”²³

“That S is the proper addressee of apology simply means that it is a part of the success conditions of apology that it be addressed to S rather than to someone else... The apology must be made *to* the addressee, just as the birthday card must be made out in the name of its intended recipient, or at least in the second person.”²⁴

“The illocution is addressed to another person, and in making it count as a promise or a piece of advice the speaker at the same time grants a related authority to her audience, in that now her words are subject to a range of assessments from the other person to which they would not otherwise be subject...”²⁵

²¹ Austin, *How to Do Things*.

²² A related question is what role, if any, hearers play in producing illocutionary force. For discussion of this, see Lucy McDonald, “Your Word against Mine: The Power of Uptake,” *Synthese* 199, no. 1-2 (2021): 3505-26; and Lucy McDonald, “Reimagining Illocutionary Force,” *The Philosophical Quarterly* 72, no. 4 (2022): 918–39. We’ll set this question aside here, since as we show below address comes apart from uptake.

²³ Stephen Darwall, *The Second Person Standpoint: Morality, Respect, and Accountability* (Cambridge: Harvard University Press, 2009), 52.

²⁴ Jonker, “Directed Duties,” 10. Jonker explains the moral significance of address with how it satisfies a second-order interest in communicating that one recognizes the others’ interest in what the speech act achieves. Jonker, “Directed Duties,” 21-22. We won’t take this idea on board here.

²⁵ Richard Moran, *The Exchange of Words: Speech, Testimony, and Intersubjectivity* (New York: Oxford University Press, 2018), 133-34.

“If I tell Richard ‘Mark should close the door,’ my utterance (assuming it is properly entitled) has normative implications for Mark, but it does not address Mark. But if I tell Mark ‘Close the door!’ I make a claim on Mark by addressing him (assuming, again, that my utterance is properly entitled). Indeed, I make a constative claim on him, imputing a commitment produced by the act of address itself. The imperative is second-personal because its normative function is carried by a directed address. More generally, second-personal speech acts are those in which the act of addressing is central to the normative function of the speech act.”²⁶

What does it take for a speech act to be *addressed* to a particular person? We will not attempt a general definition, but for our purposes, we can gain a sufficiently precise understanding from considering a number of cases. Classical theories²⁷ understand speech acts as taking place between a *speaker* and one or more *hearers*. For example, the speech act of promising is in part a matter of a speaker placing himself under an obligation towards a hearer of the speech act to do something; and requests are a matter of speakers intending one or more hearers to do something. As pointed out by Herbert H. Clark and Thomas B. Carlson, however, this picture is inaccurate, and its terminology misleading.²⁸ Often, speech acts are not directed at all hearers in the same way, and what the classical theories name “hearers” are more accurately referred to as “addressees.” Consider the following simple example:²⁹

Othello, to Desdemona, in front of Iago and Roderigo: Come, Desdemona.

In this example, although Othello’s audience counts three persons, the request is only addressed to one, namely Desdemona. But this does not mean that Othello does not intend Iago and Roderigo to hear the request. They are not mere unintended bystanders to the speech act. On the contrary, Othello intends for them to know that he requests Desdemona, and not them, to come with him. Nevertheless, the speech act is not directed at them as addressees of the request. In the more accurate terminology, they are hearers, not addressees.

²⁶ Rebecca Kukla and Mark Lance, *‘Yo!’ and ‘Lo!’: The Pragmatic Topography of the Space of Reasons* (Cambridge: Harvard University Press, 2009), 161.

²⁷ E.g., Austin, *How to Do Things*; John R. Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969).

²⁸ Herbert H. Clark and Thomas B. Carlson, “Hearers and Speech Acts,” *Language* 58, no. 2 (1982): 332-73.

²⁹ *Ibid.*, 332.

In conversational contexts with only two participants, the hearer can usually be assumed to also be the addressee. But in multi-participant conversations, the addressee(s) can be harder to identify. A detailed literature exists on the semantic and pragmatic conventions, mechanisms, and cues that are used to identify addressees, but we will not explore this question here in detail. What is important for our purposes is that some speech acts require identifiable addressees, and not merely intended hearers, to be successful.

To see this, consider a variation of the above example, where Othello simply exclaims “Come!,” intending that it be *heard* by all three in the vicinity, but without intending it to be *addressed* to any of them, and without giving any indication of so intending. In that case, we would presumably not say that Othello had successfully made a request, and the three hearers would rightfully be confused to learn that none of them were intended as addressees, if no one else were present. Or suppose that Othello explained that he had intended to address Brabantio, who was *not* present when he uttered “Come!,” and thus could not be addressed in that way. If Othello *thought* that Brabantio was present, that would of course dispel the confusion. But the speech act would clearly be defective nonetheless since Brabantio could not be addressed as attempted.

These considerations seem to apply generally to the speech acts by which we exercise moral powers, such as the promissory power, the power to consent, and the power to make requests. Consider the promissory power. When making a promise, the speaker places himself under an obligation owed to the promisee to do as promised, such that reactive attitudes become warranted if the speaker fails to do as promised. The obligation created by a promise is always directed towards some particular person or group of persons, and the reactive attitudes are not equally warranted for everyone. In particular, the obligation is only incurred towards those to whom the promise is addressed.³⁰ Suppose that, in the scene above, Othello makes a promise addressed to Desdemona and heard by the rest, that he sees a therapist about his anger issues. In so doing, Othello places himself under an obligation *towards Desdemona*, but not towards the rest. This means that reactive attitudes are especially warranted for Desdemona compared to the rest if Othello fails to see a therapist. Of course, the others may justifiably think less of Othello

³⁰ That an obligation is directed *towards* someone is different from it *concerning* someone. To appreciate this, consider H.L.A. Hart's famous example of a man promising a son that he will take care of the son's mother after he is gone. H.L.A. Hart, “Are There Any Natural Rights?,” *Philosophical Review* 64, no. 2 (1955): 175-91. For discussion, see Nicolas Cornell, “Wrongs, Rights, and Third Parties,” *Philosophy & Public Affairs* 43, no. 2 (2015): 109-43. Although the duty created clearly concerns the mother, and the mother has something at stake in whether the duty is complied with or violated, the obligation is *owed to*, and therefore *directed towards*, the son.

if he fails to do as promised; but they would not be wronged in the directed sense that Desdemona would, and thus would not be warranted in reacting in the same way that Desdemona would. It would, of course, be possible for Othello to address a wider group of people when making his promise, in which case all of these addressees would be wronged by Othello's failure to do as promised. It might even be possible for Othello to make a promise with a very wide address—to *humankind*, for example. But an address is needed, and it will usually be limited.

Some cases may appear to suggest that the address of a speech act can be severed from the person for whom the speech act has normative effect, contrary to what we have just suggested. Consider the following case:³¹

Ann, to Charles, in front of Barbara: Charles, I insist that Barbara tell you who we met at the museum today.

Here, Ann appears to request that Barbara does something, while explicitly addressing her speech act to Charles. But matters are not so simple. As Clark and Carlson argue, the utterance is best interpreted as constituting *two* distinct speech acts, one direct and another indirect: an assertion directly addressed to Charles, and a request indirectly addressed to Barbara.³² In fact, such indirect address is quite common, and can be invoked to achieve subsidiary rhetorical and pragmatic effects, as in the following example:³³

Mother, to three-month-old, in front of father: Don't you think your father should change your diapers?³⁴

The best interpretation of these examples therefore does not suggest that the address of a speech act can be severed from the person for whom the speech act has normative effect, but rather shows that address can be indirect.

³¹ Clark and Carlson, "Hearers," 336.

³² Ibid.

³³ Ibid., 337.

³⁴ As Clark and Carlson note, extreme forms of indirectness are required when convention precludes direct address. Clark and Carlson, "Hearers," 338. As an example, they relay Donald F. Thomson's (1935) finding that in certain indigenous Australian groups, mothers-in-law are precluded by convention from speaking directly to their sons-in-law, but can address them indirectly, for example by addressing a nearby dog or child. Donald F. Thomson, "The Joking Relation and Organized Obscenity in North Queensland," *American Anthropologist* 37, no. 3 (1935): 460-90.

IV. THE PROPER ADDRESS CONDITION FOR CONSENT

The above considerations also apply to the speech act of giving one's consent. Like any other speech act, non-defective consent must be addressed to some person or persons. And the permission to act in the ways that fall within the scope of the consent applies to those to whom the consent is addressed. These observations can be captured by the following necessary condition for morally valid consent:

The Proper Address Condition: A consents to B ϕ -ing through speech act α only if α is properly addressed to B.

The Proper Address Condition says that morally transformative consent must be addressed to the person(s) that will have their moral permissions and duties altered as a consequence of the consent.

In order to put this principle to work, we must say something about when (and when not) consent is properly addressed. In general, we think there are a multitude of ways in which a speech act such as consent could misfire because it lacks an addressee. The least controversial type of case is that in which it is impossible to identify an addressee, either via the semantic content of the utterance or via conversational implicature. We encountered one such case in the previous section with Othello saying "Come" seemingly addressed to no one. We can imagine similar cases of attempted consent where the utterance "I consent to ϕ -ing" seems to be addressed to nobody. It seems plausible that consent misfires in such cases.

A more interesting type of case is one where proper address is lacking because the addressee is absent from the situation in which the speech act is made. This case is different from the previous one because a potential addressee can be inferred from the semantic content of the utterance, but address is lacking regardless. We think that the defectiveness of such speech acts is especially clear in the case of promises, so we will consider such a case first:

Absent Promisee. Othello is with Iago and Roderigo. Desdemona is not around. Othello says: "I promise Desdemona that I will see a therapist."

In this case, we don't think Othello successfully makes a promise to Desdemona. There is an identifiable addressee in the speech act made by Othello, namely Desdemona, but the speech act

is not properly addressed to Desdemona due to her absence. It would be appropriate for Iago and Roderigo to respond that it would be a *good idea* for Othello to make such a promise, and *encourage* him to do so, but not to regard him as thereby having made such a promise. We think that analogous considerations apply to consent. Consider:

Absent Consentee #1. Othello is with Iago and Roderigo. Desdemona is not around. Othello says: “I consent to Desdemona talking about me with my therapist.”

As in the former case, we don’t think Othello successfully consents to Desdemona talking to his therapist about him. There is an identifiable addressee, namely Desdemona, but again, the speech act is not properly addressed to her. It would be appropriate for Iago and Roderigo to respond to Othello that he should go ahead and make his consent to Desdemona, but not to regard him as having already done so.

One might retort that what is lacking in this case is not proper address, but rather *uptake* from relevant addressees. But there is reason to doubt that uptake is necessary for a valid consent.³⁵ To see that address can be preserved even in the absence of uptake, consider:

Absent Consentee #2. Othello sends a letter to Desdemona telling her that he consents to her talking to his therapist. Desdemona never opens the letter, though.

Intuitively, Othello successfully consents to Desdemona talking to his therapist. So too, it seems, had the letter conveyed a promise. But uptake is absent, while it seems natural to say that address is there. If Desdemona read the letter, she could agree that she was appropriately addressed by the letter, and would presumably be permitted to talk to Othello’s therapist.³⁶

³⁵ See, e.g., Dougherty, *The Scope of Consent*, ch. 6.

³⁶ Absent Consentee #2 also shows that proper address is not sufficient for uptake. But is proper address *necessary* for uptake? If it is, uptake-theorists have been presupposing the Proper Address Condition. This, however, is not entirely clear. One way to understand uptake is as a matter of a recipient *recognizing something as a consent*. See Dougherty, *The Scope of Consent*, 78. But communication where proper address is absent (and so doesn’t count as genuine consent in our view) could possibly be recognized by a hearer *as* an instance of consent, even if it isn’t. A stronger conception of uptake requires that hearers *respond appropriately*. See Quill R. Kukla, “Uptake and Refusal,” *Inquiry: An Interdisciplinary Journal of Philosophy* (forthcoming). On such a view, if nobody responds as if a certain speech act was produced (e.g., the priest and congregation don’t respond appropriately to there being said “I do”), it misfires. Proper address might not seem necessary for uptake thus construed either, since a hearer could respond to communication without proper address, believing that it constitutes genuine consent. On the other hand, such a response might not be considered “appropriate” if the communication was not properly addressed,

It is important to note that address can be preserved through secondhand communication.³⁷ It seems possible, that is, for a speech act be conveyed from A to B through some other person C, while preserving B as the addressee of A's speech act. What seems important in such cases is that the speech is *conveyed* and not merely *reported*. Take the example above, where Othello utters "I consent to Desdemona talking about me with my therapist" to Iago and Roderigo. Suppose that Iago and Roderigo simply reported to Desdemona that Othello had uttered those words. In that case, we find it dubious that Desdemona has been properly addressed, and hence that Othello has successfully consented. But if Othello had asked Iago and Roderigo to convey his consent, and they went on to do that (for example uttering "Othello asked us to convey his consent to you talking about him with his therapist"), we find it plausible that Othello has succeeded in consenting with proper address.

The possibility of secondhand communication of consent is particularly clear in the context of certain institutions. For example, Dougherty asks us to consider a hospital that has a procedure in place, in which two nurses explain an intervention with low risk to a patient, before the patient signs an informed consent form in their presence.³⁸ As Dougherty points out, if the hospital is set up in the right way, it seems that a physician could permissibly perform the low-risk intervention while relying on the nurses' testimony of the patient signing the form, without checking the consent form himself. Dougherty thinks that in this case, the patient is communicating secondhand with the physician through the nurses, with whom the patient communicated directly, thus preserving address to the physician.³⁹

Is it possible to say something more principled about when chains of communication preserve address and when they don't? We believe so: secondhand communication is properly addressed when it preserves the distinctive reason-giving force facilitated by the authority of the speaker whose normative status is affected by the speech act. Suppose that Thomas asks Lisa to tell Sophia that he consents to her borrowing his lawn mower. In this case, Thomas sets a chain of communication in motion where he intends that Lisa-telling-Sophia-on-his-behalf is the reason why Sophia takes herself to have permission to borrow the lawn mower. Lisa thereby

and hence not an instance of genuine consent. We return to the question of whether communicative theories of consent have presupposed the Proper Address Condition in §VII.

³⁷ Since we have already seen that indirect address can happen without the speech act being relayed from speaker to addressee by a third party, we distinguish between "indirect" and "secondhand" communication.

³⁸ Dougherty, "Yes Means Yes," 249.

³⁹ There is another interpretation of this situation consistent with the Proper Address Condition, namely that the patient addressed his consent directly to the hospital when signing the form, and that the nurses' testimony provides evidence of this direct communication.

comes to relay the reason-giving power instead of merely reporting Thomas's intention.⁴⁰ What is going on in this case seems to align with what many deem distinctive of the speech acts through which we exercise our moral powers: When we consent, promise, or command, we are not merely *indicating* the contents of our will through communication to highlight the existence of already existing reasons. Rather, we are attempting to supply others with a reason that in some delicate way *depends upon* our communication.⁴¹ As Joseph Raz puts it in the context of requests, "A person who makes a request intends his making the request to be a reason for the addressee to comply with it."⁴² Cases of relaying consent fit this schema as we can analyze the entire chain of communication as something that is set in motion by the speaker with the intention that this provides an addressee with a reason.

In order to avoid confusion from this last point, it is helpful to distinguish between coming to know about the contents of people's will on some matter, and coming to know that they consented to something. To see this, suppose again that Thomas tells Lisa that he consents to Sophia borrowing his lawn mower but without asking Lisa to tell Sophia this. We say that there is no consent in this case if Lisa tells Sophia, because proper address is absent. But this is compatible with saying that Sophia can justifiably believe that Thomas would allow her to borrow his lawn mower. In this way, due to the requirement that speech acts must be addressed, we can expect there to be cases where one can acquire excellent evidence about what people would allow, but where consent is lacking entirely. This seems right, as there does not seem to be an address requirement to communicative acts that testify about what people would allow. But knowing what people would allow is not the same as knowing that they have given their consent.

The above point also means that in cases where proper address is absent, and consent therefore is absent, third parties cannot insert themselves into the communicative chain and somehow "repair" it. If Jackie were to tell Lars that she consents to Bruno sharing her medical history with their colleagues, Jackie would not thereby have consented to Bruno sharing her medical history, because her communicative act would lack proper address. Were Lars to tell Bruno about Jackie's statement, this would not mean that Jackie somehow comes to have successfully consented. Lars would simply be reporting a non-consent. It is important to see,

⁴⁰ Lackey rejects that delegation of the authority to consent can occur in the context of sexual interactions. But that is compatible with what we are suggesting here. Lackey, "Sexual Consent," 333.

⁴¹ David Enoch, "Giving Practical Reasons", *Philosophers' Imprint* 11, no. 4 (2011): 1-22.

⁴² Joseph Raz, *Practical Reasons and Norms* (London: Hutchinson & Co., 1975), 83.

however, that there are cases where Lars *reports an instance of properly addressed consent*. And while our view says that valid consent must be properly addressed, it doesn't disallow that an addressee can come to know about someone's properly addressed consent via secondhand testimony. To illustrate, consider:

Knowledge Regained. At a work dinner, Jackie communicates consent to Bruno sharing her medical history with their colleagues the next day. Jackie is aware that she is communicating her consent in a conversational context where the other participants will hear it. Jackie sees that her consent has uptake with Bruno, based on him acknowledging it. Moreover, Lars is present, and he sees that Jackie consents to Bruno, and both recognize Lars's presence. When Bruno wakes up the next day, he has no memory of Jackie communicating her consent to him. Lars, however, reminds him, and Bruno acts based on Lars's testimony.

In this case, we take it that Jackie consents to Bruno and that Jackie's consent is properly addressed. Knowledge Regained is in this way different from cases where proper address, and so consent, is absent. But this doesn't mean that Lars *conveys* Jackie's consent, since he hasn't been instructed by Jackie to do so. Lars merely reports Jackie's consent to Bruno. Could Bruno come to know that Jackie consents, and permissibly act on this, based on Lars's testimony alone? We take it that, in favorable circumstances, the answer is yes. Otherwise, it would seem impossible to transmit knowledge of consent via testimony, which strikes us as a problematic conclusion. For example, suppose Lars went on to tell another person, Lisa, what happened last night. It seems plausible given the circumstances to say that Lisa could come to know that Jackie consented to Bruno based on Lars's testimony.

So, to sum up, proper address via intermediaries requires that the communication is conveyed rather than reported. But if there is proper address and the consent is otherwise valid (as in Knowledge Regained), simple reporting may play a role in transmitting knowledge of the consent. It is important to note, however, that these observations do not provide a complete picture of the ways in which third-party communication may affect consent. In particular, there might be ways of testifying about someone's consent that the consenter would not approve of, and that would lead the consenter to withdraw her consent if she became aware of it, or which would undermine its validity in the first place. In general, if a consent-taker is aware of new information that might lead the consenter to withdraw her consent, he should make the

consenter aware of this information to ensure that her consent is still informed. Suppose, for example, that Jackie was not aware that Lars overheard her consent. This might conceivably matter to whether Jackie still wants to consent, and so Bruno should make Jackie aware of how he was reminded of her consent before acting on it. As we shall see later on, the continued validity of sexual consent is particularly sensitive to such circumstances.

V. PROPER ADDRESS AND SECONDHAND KNOWLEDGE OF SEXUAL CONSENT

We can now return to consider Lackey's case of secondhand knowledge of sexual consent. As noted, we agree with Lackey that Sam cannot permissibly act as if Sally consents to sex. But while Lackey explains this in terms of an *epistemic* deficiency (a certain kind of evidence is missing), the Proper Address Condition allows an explanation in terms of an *ontological* deficiency: if Sally has not *properly addressed* a speech act with the profile of consent to Sam, she has not successfully consented, and hence no consent exists for Sam to know of and act upon. And as the case is described, Sally's speech act is *not* properly addressed to Sam, neither directly nor indirectly or secondhand.

This explains why Sam cannot act as if consent was given, but without running into the problems faced by Lackey's account. First of all, our explanation is consistent with knowledge (or some other general epistemic condition such as rational belief) being sufficient for action, since it denies that Sam comes to know (or even rationally believe) that Sally has consented. It thus explains the impermissibility of his sexual advances, not in terms of an absence of the right sort of evidence, but in terms of an absence of consent. It might be objected that rather than explaining the case, this simply denies its possibility, since Lackey stipulates that Sam knows of Sally's consent. But in light of the other cases we have considered where it seems natural to say that address failed and consent is absent as a result, it seems plausible that this is the best description of what is going on in this case as well. Second, and in virtue of that, our explanation avoids commitment to the awkward and theoretically costly view that the *kind* of evidence should make a difference to whether one is epistemically permitted to act as if there is consent, if the available evidence is otherwise strong enough for permissible action, given the stakes.

In addition to avoiding the problems faced by Lackey's account, ours has further advantages compared to hers. In particular, we can think of cases where Lackey's requirement

about the relevant kind of evidence is satisfied, but it nevertheless does not seem permissible to act as if there is consent. Consider the following case:

Eavesdrop Knowledge: Sally reports to a handful of her male college student friends that she consents to having sex that evening with one of their classmates, Sam. Sam was not supposed to arrive until later in the evening, but comes early and clearly overhears the conversation from a close distance without Sally or their friends noticing.

If we suppose that Sally's communication in this case constitutes valid consent, and that Sam comes to know of this consent, would he be permitted to act on it? To our mind, the answer is no. Sam is no more permitted to act on his knowledge in this case, than in Lackey's original case. But Lackey's account cannot accommodate this verdict, since Sam now has the kind of evidence that was missing in the original case: firsthand evidence from Sally herself that she consents to sex. The account in terms of firsthand evidence thus fails to draw the right moral boundaries when it comes to acting on consent. The explanation in terms of proper address, on the other hand, can easily explain why Sam cannot act on what he overhears: since Sally didn't address her communication of consent to him, her communication did not constitute valid consent, and hence there is no knowledge of consent for him to act on.

In the previous section, we considered the various ways in which proper address can be preserved in secondhand communication. Such cases might also help decide between Lackey's account and ours. To make matters clear, we can begin with a case that isn't even secondhand. Suppose that, instead of telling her friends, Sally texts Sam directly on her phone that she consents to having sex with him. We take it that, barring special circumstances, it could be permissible for Sam to act on knowledge of Sally's consent obtained in this way. Consider, then, a case where Sally asks one of the friends to pass on a note to Sam, in which she communicates her consent addressed directly to Sam. In the right circumstances (everyone being suitably trustworthy and well-intentioned, etc.), it again seems plausible that Sam could permissibly act on his knowledge of her consent obtained in this way. After all, what principled difference does it make that the message is passed on in written form on paper by human delivery, rather than as a text delivered electronically?

We are not sure whether such a written note addressed to the consentee but delivered by a third party would constitute firsthand evidence, according to Lackey. But consider, then, the next variant: Suppose that Sally wants to consent to having sex with Sam, but is prevented from

communicating her consent to him directly, either verbally or in written form. Instead, she asks her best friend Sandra to convey her consent by saying the following to Sam: “Sam, I was asked by Sally to tell you that she consents to having sex with you tonight.” Could it be permissible for Sam to act on her consent passed on in this way, supposing otherwise favorable circumstances? We think that it conceivably could, although, because of the nature of sex, the scope of the consent would be limited and liable to continuous confirmation and updating over the course of their interaction. Let us make this last point more concrete. We think that Sam would be permitted to initiate sexual contact based on Sandra’s message, but that Sam when doing so would be required to be open to further evidence as the interaction with Sally unfolds (e.g., evidence from how Sally responds to his initiation). This is in part because such further evidence might undercut the justification gained from Sandra’s testimony. And it is in part because Sam—regardless of the evidential basis of his belief—should be responsive to signs that Sally wants to withdraw her consent, or is unable to withdraw her consent if she wanted to. Notice, though, that claiming that Sam ought to be responsive in these ways is not to say that he needs firsthand evidence to initiate the sexual contact. To see this, consider a variant of the case where the message conveys consent to being woken up by a specific sexual act. In this case, since Sally won’t be awake until Sam initiates, Sam’s being continuously alert to further evidence won’t give him more firsthand evidence before initiating (and Sally is woken up). And yet, we take it that it could be permissible to initiate sexual intercourse based on Sandra’s conveyed message, assuming favorable circumstances.

Lackey is clearly not in a position to accept this verdict. By contrast, this verdict is compatible with the proper address condition, since it falls within the ways in which proper address can be preserved in secondhand communication. We thus think that plausible cases of secondhand communication of consent also speak in favor of the explanation in terms of proper address.

VI. TWO OBJECTIONS

A worry might be that the picture painted here does not leave enough room for simple testimony to play a role in transmitting evidence about consent. This could be worrisome, as third-party testimony is sometimes the only way in which a consentee can learn about the existence of the consent. To appreciate this worry, consider:

Surgery. Desirée tells her friends that she consents to the life-saving surgery planned for her tomorrow. Unfortunately, Desirée loses consciousness and is unable to give her consent to the surgeon before the planned surgery that has to be carried out if Desirée is to survive. Her friends tell the surgeon that she consented to surgery prior to losing consciousness.

Could it really be true that Desirée did not consent and, consequently, that the friends are testifying a falsehood to the surgeon (assuming that they were not instructed to convey her consent)? If we are right, the answer is yes, because the testimony does not preserve Desirée’s authority, and since Desirée’s communicative act was not properly addressed to the surgeon, the consent misfires.⁴³

We think that this is an acceptable result for the following reasons. First, by saying that there is no consent to the surgery, it does not follow that it is all things considered impermissible for the surgeon to carry out the procedure. Following Dougherty,⁴⁴ we can distinguish between the *wrong of acting against people’s will* and the *wrong of not being adequately guided by their directions*. Clearly, in this case, the former wrong is worse than the latter, but it is plausibly the latter wrong that tracks what acting without consent is primarily about (at least if you endorse the communicative view of consent). But we can say that the surgeon has excellent evidence supporting what the content of Desirée’s will is, and he can be confident that she would want the procedure carried out. If so, and given what is at stake, it might on balance be acceptable that the surgeon, strictly speaking, doesn’t act from her consent-based directions. If acting consonantly with people’s will pulls in one direction, and acting on people’s directions in another, it seems that the former should in some cases weigh heavier.

Things seem different in the case of consent to sex, however. Here, it never seems permissible to act in ways that would normally require successful consent, merely on the basis of testimony about someone’s will to have sex—even if the testimony is firsthand. If Sally tells Sam that she really wants to have sex with him, but that she does not consent to having sex with him, Sam would gravely wrong Sally by attempting to have sex with her, despite the excellent evidence that she wants to have sex with him. Part of the reason for this may simply be that, because of the wants and interests at play in sex, the wrong of not being adequately guided by the consent of someone to have sex always weighs heavier than the wrong of not fulfilling their

⁴³ Compare Lackey, “Sexual Consent,” 336, on merely learning something *about* a person instead of learning it *from* her.

⁴⁴ Dougherty, *The Scope of Consent*, 61.

will to have sex. Indeed, since no one is ever obligated to have sex with anybody, it is impossible to wrong someone by not fulfilling their will to have sex.⁴⁵ The wrong of not being adequately guided by their consent will therefore always be the decisive consideration at play.

Another way of challenging our proposal would be to look for cases where the consent is properly addressed, but where it still looks inappropriate for the recipient of this consent to act on a mere report (rather than a conveyance) of the consent from a third party. Above in §IV, we allowed that, in favorable circumstances (such as those described in *Knowledge Regained*), it is permissible to act on knowledge of consent obtained in this way. But we have yet to consider if this is possible when it comes to *sexual* consent. And here, it may seem easy to think of cases where it is inappropriate to act on the report of properly addressed consent. Consider the following case:

Captivated: Desirée, Sven, and Kim are all sitting on a couch. Desirée says to Kim that she consents to having sex with her when they are alone later that evening, but Kim fails to notice because her attention is captivated by social media on her phone. But Sven notices. Later on, Sven tells Kim what Desirée said. Kim proceeds as if Desirée consented.

We take this to be a case where Desirée properly addresses her consent to Kim. To further motivate this, we can suppose that Kim's inattentiveness isn't obvious, since if it was obvious, Desirée's way of addressing her might be considered improper (suppose, for example, that Kim nods, apparently in response to Desirée). Even so, we suspect that many will feel that it is inappropriate for Kim to act as if Desirée consented, based on Sven's testimony. But what explains this if we are confident that Desirée's consent was addressed properly? After all, as we noted in §IV, it should be possible to come to know of, and act on the basis of, a properly addressed consent via secondhand testimony.

We are not committed to any specific explanation of what goes wrong in *Captivated*, since proper address is not meant to guarantee the absence of any other moral problem there might be with acting as if there is consent. But our sense is that *Captivated* illustrates the heightened sensitivity of reported rather than conveyed consent to circumstances about the communication that could lead the consenter to withdraw consent, and consent-takers therefore should make the consenter aware of to ensure that the consent is informed. As noted

⁴⁵ Cf. Amia Srinivasan, *The Right to Sex: Feminism in the Twenty-First Century* (New York: Farrar, Straus and Giroux, 2021).

in §IV, this might be especially relevant in the case of sexual consent, where a sense of privacy and secure intimacy can often be assumed to be a precondition for one's willingness to consent. To see this, consider a particularly stark elaboration of *Captivated*, where Sven tells Kim about Desirée's consent via a public post on Kim's social media. This could very well matter to whether Desirée still wants to consent (and indeed to whether Kim wants to consent), and Kim should thus make Desirée aware of this circumstance to ensure that she does not want to withdraw her consent in light of it. This does not mean that Desirée's original consent was somehow flawed, or that Kim does not come to know of this consent. It simply means that Kim becomes aware of new circumstances that could matter to whether Desirée still wants to consent.

In support of this diagnosis, we can imagine other elaborations of *Captivated*, where it, to our minds, seems permissible for Kim to act on her testimonial knowledge of the properly addressed consent. Suppose that Desirée and Kim are an elderly couple that live in a care facility. Kim is often very distracted and inattentive, and their trusted friend and caretaker Sven often helps Kim find out and remember details about her conversations with Desirée—even conversations about intimate matters. Kim therefore does not have any reason to suspect that Desirée would want to withdraw her consent if she were told that Kim, as she often does, had learnt about it from Sven. In this variant of the case, it seems that Kim can proceed without checking if Desirée still wants to consent in light of how Kim learned about the consent (while being open, as one always should be, to signs that Desirée no longer consents). But if that is plausible, *Captivated* just illustrates how sensitive the validity of properly addressed consent can be to the circumstances of secondhand testimony. It does not show that firsthand testimony is necessary.

VII. IMPLICATIONS FOR THE ATTITUDINAL VIEW OF CONSENT

When proposing the Proper Address Condition, we took for granted the contested idea that consent is best understood as a type of speech act, thus committing ourselves to a version of the communicative view of consent.⁴⁶ And it should be fairly obvious that proponents of the competing attitudinal view of consent cannot endorse the condition on valid consent that we have proposed. It seems like a category mistake to say that attitudes could or ought to be

⁴⁶ See references in footnote 17.

“addressed” to someone, in the sense that speech acts can be. Attitudes are private, and address is a distinctively communicative phenomenon. This might suggest that our argument is without relevance to proponents of the attitudinal account. But that would be too quick. On the contrary, our argument puts some pressure on the attitudinal account of consent. This is because proponents of the attitudinal account should equally want to explain why consent-takers are not permitted to act as if there is consent in cases such as *Secondhand Knowledge*. And if they cannot appeal to our account, what explanation could they appeal to? One option would be to side with Lackey and Dougherty, and insist that the impermissibility of acting in *Secondhand Knowledge* is explained by the absence of a special kind of evidence that must be obtained in order to act on sexual consent. In fact, Lackey motivates her account by focusing on how consent-givers have both a privileged epistemic and agential perspective on their own consent, given that the consent is constituted (partially or fully) by their mental states.⁴⁷ In this way, Lackey’s view turns out to be an ally of the attitudinal view.⁴⁸ However, we have already noted our skepticism about this approach.

Perhaps there are other and more compelling ways of explaining why *Secondhand Knowledge* is problematic that are compatible with the view that consent is an attitude. We cannot rule that possibility out here, but there are reasons for being skeptical. It seems that we in general can come to know of people’s attitudes via evidentiary sources that fail to include firsthand evidence. Suppose that Mitch breaks a promise he made to Michelle. Caroline, Michelle’s friend, lets Mitch know that Michelle is very upset about it. It seems like Mitch could come to know Michelle’s attitudes based on secondhand testimony and, following the knowledge norm of practical reasoning, act as if Michelle is angry without further evidence (e.g., do something to make up for his broken promise). If consent is an attitude, and it seems that we in general can come to know people’s attitudes via secondhand testimony, then proponents of the attitudinal view of consent must explain why consent is an exception to this picture. That strikes us as a significant challenge. Proponents of the communicative view, by contrast, can explain what is problematic in cases like *Secondhand Knowledge* by appealing to what consent is, namely a type of speech act that requires proper address.

⁴⁷ Lackey, “Sexual Consent,” 335.

⁴⁸ Lackey aims for neutrality between the attitudinal view and communicative view of consent by pointing out, following Dougherty, that “the “performative view” of sexual consent grants that an intention is necessary for morally valid consent, but ‘denies that a mere intention can be sufficient, countering that valid consent also requires communication.’” Dougherty, “Yes Means Yes,” 229, quoted in Lackey, “Sexual Consent,” 335.

Our insistence that the communicative view of consent meshes especially well with the Proper Address Condition may raise a question in the other direction: To what extent, if at all, is something like the Proper Address Condition already implied or presupposed by existing communicative views of consent? That is a difficult question to answer, but let us offer some remarks in the direction of an answer. First, proponents of communicative and hybrid views of consent are typically moved by the observation that consent plays a crucial coordinating role between consent-givers and consent-takers.⁴⁹ But that commitment doesn't by itself settle that proper address is necessary for consent. To appreciate this, notice that the kind of behavior in Secondhand Knowledge could coordinate Sam and Sally's conduct, albeit somewhat differently than properly addressed consent. So, a central motivation for endorsing communicative and hybrid views of consent doesn't imply a concern for address. Second, a proponent of the communicative view of consent need not thereby endorse our analysis. For instance, one could take the view that consent is an act of communication, but not a performative, or speech act. Following Austin,⁵⁰ such a view could say that consent is a *constative*. We are not saying that this is a particularly plausible view, or a view that somebody has taken, but it goes to show that the idea that consent is a form of communication doesn't entirely settle whether one should endorse our speech act-based analysis.

However, if we are right that proper address is necessary for valid consent, it would not be surprising if some commentators have implicitly assumed something in the vicinity of this, or have had intuitions about cases that were somehow affected by this fact. One way to bring this point out is by looking at scholarship addressing the question of what kind of communicative efforts may serve to communicate or constitute consent. Here we find the view, for instance proposed by Bolinger,⁵¹ that (just) conventions determine whether some behavior counts as consent. Dougherty,⁵² on the other hand, says that the communication that serves to fix the scope of consent can be interpersonally justified in playing this role. As an example of something that doesn't pass his test, Dougherty suggests:⁵³

⁴⁹ Dougherty calls this the "publicity argument." Dougherty, *The Scope of Consent*, ch. 4, See also Bolinger, "Moral Risk."

⁵⁰ Austin, *How to Do Things*.

⁵¹ Bolinger, "Moral Risk."

⁵² Dougherty, *The Scope of Consent*.

⁵³ *Ibid.*, 135.

Lawn/Tree. Laura climbs a tall tree and leaves a note saying, ‘If I put a sign up on my lawn permitting Maria to walk on it, then this sign only concerns what Maria may do at 3 a.m.’ Laura then puts up a sign saying that Maria may walk on the lawn.

Dougherty claims that this note is irrelevant to fixing the scope of Laura’s consent because Maria could “reasonably reject” that it can play this role.⁵⁴ Using the proper address condition, on the other hand, this could be explained by how the note isn’t properly addressed to Maria. This may prompt the question of what added benefit there would be in focusing on proper address, as opposed to “conventionalism” or interpersonal justification. Our response is that these views could lead us to overlook that there are also “internal” limits on what kinds of communication may count as consent, which may not derive from convention or what can be interpersonally justified. Specifically, one such limit can be found in the nature of consent *qua* speech act that must be properly addressed. Functionally, this ensures the exercise of practical authority and the transmission of reasons that are characteristic of consent. And this is precisely what is brought out by reflecting upon cases such as Secondhand Knowledge.

VIII. CONCLUSION

We have argued that the best explanation of cases like Secondhand Knowledge does not support introducing special requirements on the type of evidence that agents must possess to permissibly act on the sexual consent of others. Instead of explaining the cases in terms of an *epistemic* deficiency, the best explanation points to an *ontological* deficiency: a necessary condition on morally valid consent is missing, namely that the consent be *properly addressed* to the consentee. If this is correct, it has ramifications not only for how we should delineate the moral boundaries of acting on the consent of others, but also for the debate between communicative and attitudinal accounts of consent, since the best explanation of the case would be unavailable to attitudinal accounts. More broadly, our explanation bolsters the hope that we might identify a general epistemic norm of practical reasoning, without special evidential requirements for particular action types.

⁵⁴ Ibid.