

BOOK REVIEW

Querying Consent: Beyond Permission and Refusal.
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In public conversations about sexual assault, harassment, voyeurism, revenge porn, and a range of other types of sexual behavior involving others, there is a tendency to treat the presence or absence of consent as marking the threshold between conduct that is permissible and perhaps worthy of celebration and conduct that is beyond the pale, amounting to violence of one sort or another. Over the past several years, however, various philosophers and jurists have called into question the wisdom of focusing so intently, one might even say myopically, on consent in the sexual sphere. *Querying Consent: Beyond Permission and Refusal* likewise develops the insight that a preoccupation with consent, in and beyond the sexual realm, obscures the ways in which it facilitates exclusion and exploitation, and fails to make room for valuable social practices and ways of life that do not involve “consent” in any straightforward, narrow sense of the word.

The contributors are, by and large, scholars of literature and cultural studies, not law or legal philosophy. Readers of *Querying Consent* should not, therefore, look for much by way of in-depth legal analysis or policy proposals—or even more than passing engagement with the leading contemporary philosophers of consent, whether sexual or otherwise. (Heidi Hurd, with her evocative suggestion that consent works a kind of “moral magic,” receives the most attention of any contemporary moral and legal philosopher in the volume, and this is not sustained or terribly enlightening.) The contributions are most interesting and worthwhile in their use of examples and literary texts to problematize the idea of consent, using them to illustrate, among other things, how the idea of consent both presupposes and reinforces exclusionary notions of rationality; how talk of “consent” can legitimate exploitative practices, concealing participants’ experiences of desperation, loneliness, alienation, and despair; and the ways in which the language of consent must sometimes be stretched to accommodate practices that promote human flourishing precisely because participants are simultaneously willing and resistant.

The last of those themes is explored at greatest length in the first four chapters of the volume. Karmen MacKendrick, in her discussion of consent to verbal and visual display, argues that the practice of confession—whether to an abbot, an analyst, a talk-show host, or to others on social media—presupposes that revealing one’s intimate secrets is both a source of shame *and* a source of excitement and empowerment. One does not truly “confess” to that which one would have revealed anyway, and it therefore demands resistance. At the same time, the overcoming of resistance is treated

as a sign of courage entitling the analysand, guest, or Twitter-user to respect—and self-respect. So the act of confession treads an uncertain boundary between humiliation and self-aggrandizement. Likewise, MacKendrick continues, the exposure of one's body may be exciting precisely because we are unsure how to feel about it and are resistant to showing it to others. Again, shame and excitement mingle. Thus, suggestions that consent and dignity are necessarily fellow travelers turn out to be clumsy caricatures: we consent, at least sometimes, so that we can invite shame and humiliation.

A broadly similar theme is explored by Amanda Paxton. Drawing on Victorian poetry, Paxton provocatively suggests that the relationship between the human soul and the divine has a “somasochistic” dimension: one must submit to the divine, but do so willingly. Indeed, she suggests in the course of an examination of Gerald Manley Hopkins, consent must be “enthusiastic” and “ongoing” if the individual is to truly commune with God. Yet one does not, as it were, deal with God as if they were on equal terms, or as parties to a commercial transaction—and if one did, the satisfactions of living in spiritual harmony with God would arguably be lost. Once again, then, familiar pictures of consent are turned on their head. Consent, far from serving to guarantee liberty (in the sense of “license”), metastasizes into a way for human beings to impose limits on their liberty—though perhaps now in a way that can be reconciled with dignity.

The contributions by Greenblatt and Valens also invoke somasochistic practices as an example of the difficulties we can run into when we think about consent as nothing more than a means of pursuing rational self-interest. Conceived in such terms, consent contains the seeds of its own limitation—there is no reason to respect or honor the “consent” of a person who accedes to treatment that is harmful or degrading or humiliating or dehumanizing. Debates about the limits of consent thereby become sites in which dominant cultural narratives about what sex is about and for can be imposed on marginalized communities. BDSM practices, with their mixing of sex and violence, are particularly threatening.

Ummni Khan has written extensively about the ways in which the Anglo-Canadian law of sexual consent has marginalized BDSM communities. Greenblatt engages with Khan's work, and introduces some of the legal sources, though not the most important or prominent. Most notably, she references the House of Lords decision in *Brown*, in which consent to homosexual BDSM practices was treated as legally inoperative on the basis of the harms—both physical and moral—that they inflicted upon the participants as well as society more generally. Greenblatt also discusses the Supreme Court of Canada's 1992 decision in *Butler*, in which the majority suggests that depictions of consent to certain sexual acts may make pornography *more* degrading, not less. These and other cases are read as decisions in which a dominant sexual ideology is imposed on vulnerable communities, whose capacity to consent is called into question precisely because they have the audacity to assert it in unfamiliar or discomfiting ways.

Had Greenblatt been more daring in her use of case authorities, she could have gone much further in making her point. In the Canadian context, for example, it has long been established that there cannot be implied or advance consent to sexual touching. In the Supreme Court's 2011 decision in *JA*, the majority found that a person cannot give legally valid consent to sexual touching—including a kiss by one's intimate partner or spouse—that will occur while one is unconscious or asleep. This has obvious significance for those who engage in certain BDSM practices, but it also has implications for those who wish to participate in intimate relationships structured by traditional gender norms. By categorically rejecting the idea that what constitutes sexual “consent” might

depend on context, imposing a single one-size-fits-all model on everyone, the Supreme Court (ostensibly following the will of Parliament) has arguably taken it upon itself to decide whose consent ought to matter—reinforcing the traditional marginalization of some sexual communities, while ghettoizing others.

Moreover, if we are to take seriously the idea that consent itself—and not just sexual consent—is about “winners and losers,” other cases are of arguably even greater significance. Consider the Supreme Court of Canada’s 1991 decision in *Jobidon*, a case in which the majority held that courts have the power to decide, on an ongoing basis, whether certain activities were so lacking in social value that the apparent consent of the participants could be regarded as legally inoperative. Following *Jobidon*, trial judges and appellate courts have occasionally “passed judgment” on the merits of certain practices—sometimes longstanding practices by local communities—by way of determining whether the apparent consent of the complainant should be given legal effect.

In dwelling on these cases, I am not criticizing Greenblatt for not engaging with them. The law is not her central focus, and I do not want to criticize an apple for not being a pear. Rather, I want only to draw attention to the opportunities available to Greenblatt and others in future work.

Several contributions to *Querying Consent* consider the ways in which it makes sense to speak of “consent” in unfamiliar contexts. Many of us would intuitively proceed on the basis that animals, for example, do not consent to their treatment by their owners and handlers. Yet Kimberley O’Donnell suggests that, even in the context of such relationships, there may be something approaching an ethics of consent, in which the willingness of the animal to behave in certain ways is taken into account, and its responses taken on board, lest the relationship degenerate into one marked by brutality. Furthermore, Brian Martin’s discussion of “trigger warnings” raises the question of whether, and to what extent, postsecondary instructors have an obligation to be at least attentive to the experiences of survivors of sexual assault and other traumas in the development of course syllabi and materials—to obtain what he describes as “pedagogical consent.” In suggesting that the language of “consent” is appropriate in these and other contexts, the contributors press home that consent may be a more flexible consent than public discourse would sometimes lead us to think. Perhaps more to the point, these contributions lead one to ask whether the value of these and other relationships—between human and animal companion; between student and professor—is tied to the fact that they are mediated by something like but not quite fully-fledged consent.

Other contributions explore the connection between liberal notions of “consent” and exploitation in a variety of contexts. (Indeed, this idea is a prominent theme in Joseph J. Fischel’s amusing and insightful foreword to the volume.) Mathias Rudolf’s paper, for example, examines the tenuous nature of the consent given by Nigerian trial subjects to take the drug, Trovan, and the way in which an emaciated conception of “consent” is consistent with—indeed, facilitates—exploitation. To take another example, Drew Danielle Belsky considers artists’ treatment of marginalized and disabled subjects in the production of their art. Just as we can question the ethics of treating subjects as mere means to an end in the production of social-science research (for example, some of Milgram’s experiments), Belsky suggests, so we can ask whether the instrumentalization of others in the production of artistic works may be held to ethical standards—and, in fact, may amount to exploitation. For his part, Graham Potts observes that participants in personal digital mapping may do so in order to manage health risks, yet find that they have effectively bargained away rights to their genetic information

in the process. Thus, a persistent theme in the book is that traditional liberal conceptions of consent may disguise forms of exploitation that are ubiquitous in a number of contemporary social contexts.

Querying Consent, in short, is a provocative and stimulating collection that makes a valuable contribution to current debates regarding the moral and political significance of consent, and what it entails.

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