

Department of Philosophy: Graduate Talk Series

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HIB 55

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Sexual Consent and Counterfactual Reasonable Belief

Consent as a philosophical focus outside of bioethics has risen in the past 10-15 years. Much of the discussion has focused on the nature of consent. However, significantly less focus has been given to the receiver (or non-receiver) of consent. I believe this to potentially be the more pressing issue because it is violations of consent which create the most problems in our ethical landscape. Whether or not consent is a mental state, performative action, or a conjunction of both, there is a separate question of what it is for another to reasonably believe they have received consent for a given action, one whose answer does not clearly rely on the outcome of the former. In this paper I argue that reasonable belief in another's sexual consent is best understood as a justified belief in a specific counterfactual: that if the agent were to ask, here and now, whether the other person consents to a particular further act, the other person would say "yes." Engagement in lower-level intimacy—for example, kissing—can provide some evidence about a partner's willingness to continue, but it usually does not, by itself, justify the belief that the partner would consent to an escalation of intimacy, such as groping, genital contact, or penetration, in the absence of a verbal affirmation. Given the high stakes of wrongful sex and the systematic gendered misperception of sexual interest, the evidence in many ordinary escalation cases does not make it clearly more likely that the partner would say "yes" rather than "no" if asked. In those cases, a reasonable belief in consent requires actually asking.

If you have any questions
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