What is a Right?

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July 25, 2023

(Draft; do not cite without permission)

Natural rights are rights that do not depend for their existence—as opposed, perhaps, to their determinate content—on social convention. Such rights are often explained in terms of moral duties, with the rights-holder identified by a special relation in which they stand to the duty in question. Consider, for instance, the will and interest theories of rights, on which rights consist in duties subject to the will, or grounded in the interests, of a given individual.[1]

In this paper, I present a puzzle about the nature of rights that rules out not only standard will and interest theories but also theories of rights on which they are explained in terms of joint commitments or demands, and the idea that natural rights are irreducible or primitive.[2] In the second half of the paper, I illustrate how the puzzle can be solved, sketching a theory of rights that reduces them to facts about the validity of consent and the reasons that consent provides.

1. Hart's Thesis and the Reciprocity of Rights

We can extract the puzzle that interests me from H. L. A. Hart's classic treatment of natural rights. According to Hart's Thesis, "if there are any moral rights at all … there is at least one natural right, the equal right of every man to be free" (Hart 1955: 175). The equal right to be free is a right against

[1] For a development of the Will Theory, see Steiner 1994; and for the Interest Theory, Raz 1986.

[2] For rights as demands, and an appeal to joint decision, see Gilbert 2018; and for rights as primitive, Thomson 1990.

coercion and restraint "save to hinder coercion or restraint" (Hart 1955: 175) and a liberty to act in ways that do not coerce or restrain other people and are not designed to injure them. The details do not matter—though it is worth pausing over the distinction between what are sometimes called "claim-rights," which place claims on others, and "liberties," which involve the absence of claims or duties. To say that I have a liberty to φ, in this sense, is to say that no-one has a claim against me not to φ or that I have no duty not to φ. (To forestall confusion: what I call a "liberty" here is sometimes called a "privilege.") The rights I'm concerned with are claims, not liberties, and I'll continue to call them, simply, "rights," except where it is important to distinguish the two.

According to Hart, "the concept of a right belongs to that branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's" (Hart 1955: 177). In other words, claim-rights determine when coercion is permissible or, perhaps, when it is permissible to demand that someone act in a certain way.[3] Though it needs to be clarified, I think there is an important insight here. This insight sets up Hart's main argument, which occupies a single sentence: "It is, I hope, clear that unless it is recognized that interference with another's freedom requires a moral justification the notion of a right could have no place in morals; for to assert a right is to assert that there is such a justification" (Hart 1955: 188-9). That is to say: there can be no rights at all unless there are natural rights against interference.

Hart illustrates his point by considering a promise that creates a claim-right, arguing that the creation of the right must presuppose a network of claim-rights that do not depend on voluntary action. We can unpack this argument as follows:

> (1) If A makes a valid promise to B that he will φ, this gives B a right against A that A will φ and thus a right to make A φ.

So: (2) In the absence of the promise, B would not have these rights.

[3] See Hart 1955: 177-8, note 6.

So: (3) In the absence of the promise, A would have a right against B not to be made to φ.

(4) Anyone can make a valid promise to anyone, even in the state of nature.

So: (5) In the state of nature, everyone has rights against coercion and restraint of the sort described in (3).

Two refinements are crucial. First, we should focus on a case in which B's right against A is not over-determined, so that premise (2) applies. Second, if the conclusion is about claim-rights, B's right to make A φ in premise (1) must be a liberty on which A has no claim against B not to be made to φ.[4] The idea is that, in the absence of the promise, B would not have this liberty, meaning that A would have a claim: the right described in (3).

Even with these refinements, however, I don't think the argument goes through. The problem is that premise (2) is unsupported. It may follow from the fact that B has a right against A that A φ that A has no right against B not to be made to φ, but not that A *would* have that right against B in the absence of the promise. This is what the critic of natural rights denies. In the state of nature, A has no right against coercion and restraint of the sort described in (3) and A continues to lack this right when he makes the promise to B.

One could object to the argument in other ways, too, but I am less interested in arguing for the existence of natural rights than in what the objection I have just made grants to Hart. In effect, it concedes the following principle, which specifies the sense in which rights "determine when one person's freedom may be limited by another's" (Hart 1955: 177).

[4] For the problematic reading, on which B's right is a claim she wouldn't have in the absence of the promise, see Mack 1976 and Gilbert 2018: 248-50.

RECIPROCITY: If B has a right against A that A φ, A has no right against B not to be simply made to φ.

To a first approximation, the point is that when B has a right against A that A φ, A's freedom may be limited by B in that B is permitted to make A φ. But this is too coarse-grained. B may not be permitted to make A φ for reasons that have nothing to do with A. Hence a second approximation: if B has a right against A that A φ, A has no right against B not to be made to φ. But this is still too coarse-grained, since making A φ may have negative side-effects that infringe A's rights. Suppose I have a right against you that you not grab my hand but, in the circumstances, I can make you respect my right only by breaking your arm. In doing so, I would infringe your rights—though the infringement would lie not in the fact that I prevented you from grabbing my hand, as such, but in a consequence of doing so, given the means available to me. Being "simply made" to φ—as in Reciprocity—abstracts from these considerations. It is being made to φ by minimal, direct intervention, without negative side-effects. If you like, imagine a form of mind control or magic spell that intervenes in someone's will to make them φ without further effects on them or anyone else. The device is fanciful but it helps us focus on the relevant question: do the autonomy rights of A against B protect him from having to perform the action we are considering? When B has a right against A that A φ, the answer is no.

I think Reciprocity, or something like it, must be true. The line of argument in the previous paragraph is especially compelling when we focus on negative rights. If I have a right against you that you not grab my hand, am I not within my rights to prevent you from grabbing me, if I can do without ill effects? Here we can speak of "simple prevention": as if I could painlessly inhibit the execution of your will, extinguishing your intention or short-circuiting the wire than connects it with action. Doing so would not infringe your rights. I don't see why things should change when we remove the negation and generalize along the lines of Reciprocity. If a drowning person has a right against me that I save their life, they would not infringe my rights by simply enforcing theirs.

The application of Reciprocity can be delicate. Suppose you promise to clean my house next week if I clean yours tomorrow. If I do my part, am I then entitled to simply make you clean my house?

There are three complications. First, what you promised was to clean my house sometime next week, not to clean it at a time of my choosing. To simply make you do it *now* would infringe your right to autonomy over the timing. What would not infringe your rights is to install in you the effective intention to clean my house next week, if I could so without negative side-effects. Second, if you fail to clean my house next week, it does not follow from Reciprocity that I can simply make you do so after the fact without infringing your rights: it is too late for that. It is a further question what compensatory rights I have against you. (There are related questions in contract law, though I am concerned with natural not legal or conventional rights.) Third, while you can make a binding promise to clean my house next week, there may be cases in which your right not to be simply made to φ cannot be waived, as perhaps when a would-be promise involves intimate labour such as sex. In that case, Reciprocity predicts that the promise is not binding: it does not generate a claim-right.

A final difficulty: what if B has a right against A that A not φ—for instance, that A not grab her arm—but makes a promise to A that she will not enforce her right? The right does not go away: other things equal, A would wrong B by grabbing her arm. But in light of the promise, A may have a right against B not to be prevented from doing so. Does this conflict with Reciprocity? Not quite. The right B would infringe by preventing A from grabbing her arm is not a right against being *simply* prevented from doing so, since it turns on a negative consequence of intervening, namely B's breaking a promise to A not to enforce her right. The case is thus consistent with Reciprocity.[5]

If Reciprocity holds, as I believe, we face a puzzle in understanding natural rights. This puzzle turns on a further conviction: that Reciprocity should be explained by, or follow from, the nature of such rights. It is not merely a fact about the distribution of rights, but part of what it is for B to have a right against A that A φ that A has no right against B not to be simply made to φ. Hart's insight that rights "determine when one person's freedom may be limited by another's" (Hart 1955: 177) is an insight into what rights are.

[5] Thanks to Jack Spencer for helping me see this and to Daniel Muñoz for raising the problem.

There is no simple litmus test for when a necessary truth about Fs is to be explained by the nature of Fs. But if someone denied Reciprocity outright, rejecting the idea that rights can be legitimately enforced—as opposed to disputing its formulation—I think it would be fair to doubt their grip on what distinguishes rights from other deontic phenomena. A case in point: Adrienne Martin (2021) has recently argued for the existence of directed obligations that do not correspond to claim-rights. She suggests, for instance, that I may owe it to my daughter to attend her recital even though it is within my rights to work late instead (Martin 2021: 65-6). I'm not sure whether we should speak of "obligation" here, but it is true that my daughter is specifically entitled to feel let down if I do not turn up. At the same time, it seems wrong to credit her with a right to right to my attendance. Why? Martin's answer is that "my attendance [is] a *personal matter between me and my child*. With very few exceptions, it is no one else's business whether I attend" (Martin 2021: 81). But I think this misses the mark. As Hart insists, even claim-rights may be no-one else's business. He suggests that this is true of promising: "only *this person* (the promisee) has the moral justification for determining how the promisor shall act," even though she has a right that the promise be kept (Hart 1955: 184). Whether or not he is right about promises in general, Hart indicates a better response to Martin's question, one that draws on Reciprocity. What makes the difference between a claim-right and a mere entitlement to feel let down is that a claim-right is enforceable. If my daughter has no right to my attendance, that is because she has no right to limit my freedom by making me attend the recital: I have a right against her not to be simply made to do so, even if I should.

An old-fashioned philosopher might say that Reciprocity is "analytic." I think the point has to do with metaphysical not conceptual definition: an account of what rights are is inadequate unless it entails the truth of Reciprocity.[6] This is something standard theories fail to do. We can bring the problem into focus by considering schematic formulations of the will and interest theories.

[6] On metaphysical definition, see Dorr 2016.

WILL THEORY: For B to have a right against A that A φ is for A to have a duty to φ that is subject to B's discretion.

Can the Will Theory account for Reciprocity? It's hard to see how. Why should it follow from the fact that A has a duty to φ that is subject to B's discretion that B has no duty not to simply make A φ that is subject to A's discretion? A's duties are one thing; B's duties are another. It's not implausible that discretion over duties patterns in the way required by Reciprocity; but the Will theory offers no account of why it must.

There's a similar challenge for the Interest Theory:

INTEREST THEORY: For B to have a right against A that A φ is for A to have a duty to φ that derives from B's interests.

How does it follow from the fact that A has a duty to φ that derives from B's interests that B has no duty not to simply make A φ that derives from A's interests? Again, A's interests are one thing; B's interests are another. And again, the point is not that interests that ground duties wouldn't pattern in the way required by Reciprocity but that the Interest theory offers no account of why they would.

The problem generalizes to other theories of rights, such as one proposed by Margaret Gilbert in a recent book:

DEMAND THEORY: For B to have a right against A that A φ is for B to have the standing to demand that A φ.[7]

How does it follow from the fact that B has standing to demand that A φ that A lacks standing to demand that B not simply make him φ?

[7] See Gilbert 2018: 61.

There is a further problem for the Demand Theory, about the very idea of "standing": how can we make sense of this—as in the standing to make demands—without appeal to rights?[8] If we think of "demanding" as the verbal correlate of simply making someone φ and interpret standing to demand as a liberty—that is, the absence of a claim-right—it follows from Reciprocity that, when B has a right against A that A φ, B has the standing to demand that A φ. This interpretation clarifies the otherwise obscure idea of making a demand: what is at issue here is not the right to a certain form of address but the right to limit another's freedom. In my view, Reciprocity thus subsumes the insight behind the Demand Theory, but it does so in a way that prevents that theory from explaining the nature of rights. What we get instead is the puzzle of Reciprocity: a problem for theories of rights.

We can press this problem further by considering another view, again derived from Gilbert's work.

> JOINT COMMITMENT THEORY: For B to have a right against A that A φ is for A and B to have a joint commitment that A will φ.

Gilbert claims that joint commitment is sufficient for having a "demand-right" and conjectures that it's necessary, too. But this conflicts with Reciprocity. There's nothing to prevent A and B from making a joint commitment that A will φ *and* a joint commitment that B will not simply make A φ.[9]

Finally, what about the view that rights are irreducible or primitive? On this view, we cannot explain what it is to have a right in terms of anything else. If that is true, there is no hope of explaining Reciprocity. There is nothing to prevent B from having a right against A that A φ while A has a right against B not to be simply made to φ. These are independent facts.

[8] For related questions, see Cruft 2019: 34-5.

[9] The Joint Commitment Theory is also extensionally inadequate. What about natural rights against bodily harm? It doesn't help to appeal to "moral rights" of some other kind (see Gilbert 2018: 282-9), since the right against bodily harm is a claim-right that grounds directed duties.

The puzzle of Reciprocity thus calls for a substantive theory of rights. While I have not canvassed every theory of this sort, we've seen that standard theories fail to meet the puzzle. We can generalize further. Take any theory of rights that is otherwise tempting and ask: do its conditions for having a right preclude B's having a right against A that A φ while A has a right against B not to be simply made to φ? If not, the theory conflicts with Reciprocity—and is false.

2. Rights, Reasons, and Consent

Although it rules out standard theories of natural rights, the puzzle of Reciprocity can in principle be solved. At a minimum, the moral is that rights involve a more intricate pattern of duties and their absence than has been assumed. One could build this into the Interest Theory as follows:

> REVISED INTEREST THEORY: For B to have a right against A that A φ is for A to have a duty to φ that derives from B's interests *and* for B to have no duty not to simply make A φ that derives from A's interests.

This makes it impossible for A to have a right against B not to be simply made to φ when B has a right against A that A φ, ensuring Reciprocity.

But I think it would be a mistake to leave things here. In part, this is because I am sceptical about the notion of "pro tanto duty."[10] It is unclear what distinguishes a duty of this kind from a pro tanto practical reason; but if we replace "duty" in the Revised Interest Theory with "pro tanto reason," we face the problem that A's interests will often provide *some* reason not to simply make A φ even when B has a right against A that A φ.

In addition, I would place among the properties of natural rights to be accounted for by their nature not just Reciprocity but the fact that rights can be waived: with rare exceptions, they are subject

[10] I defend this scepticism in Setiya 2022, arguing that, while we can make sense of moral duty, all things considered, we can't make sense of *pro tanto* duty, moral reasons, or moral virtues.

to the will of the rights-holder. We should hope for a theory of rights that explains this fact. But simply amending the Will Theory on the lines of the Revised Interest Theory above would be inadequate, since it would still draw on the obscure notion of pro tanto duty, and since it leaves the sense in which A's duty to φ is subject to B's discretion unexplained.

We can do better on both counts by appealing to consent. In general, when B has a right against A that A φ, A's φ-ing is in B's jurisdiction in that A needs B's consent not to φ and B does not need A's consent to make A φ. At the same time, rights can be waived: in general, when B consents to A's not φ-ing, A can refrain from φ-ing without infringing B's rights. These observations point to a simple theory of natural rights that has the shape required to account for Reciprocity:

> SIMPLE CONSENT THEORY: For B to have a right against A that A φ is for three conditions to hold: (1) B does not consent to A's not φ-ing; (2) if B does not consent to A's not φ-ing, that fact is a pro tanto reason for A to φ; (3) if A does not consent to B's simply making him φ, that fact is not a reason for B not to simply make A φ.

This theory appeals to practical reasons, not pro tanto duties. It explains how the reasons involved are subject to B's discretion but not A's. And it entails Reciprocity. If B has a right against A that A φ, it follows from the Simple Consent Theory that A's not consenting to B's simply making him φ is not a reason for B not to simply make A φ, from which it follows in turn that A has no right against B not to be simply made to φ.

The idea behind the Simple Consent Theory can be illustrated as follows. Suppose B has a right against A that A not give her an injection. Assuming B does not consent to the injection, A ought to be moved not to give it to B by the fact that it will harm her and by the fact that B has not consented to this harm. Both facts are reasons for A not to give the injection to B, so conditions (1) and (2) are met.[11]

[11] Some might say that B's non-consent is an "enabler" not a reason. But as I argue in Setiya 2014: §3, the distinction between reasons and other premises of sound practical reasoning is merely pragmatic; every premise is a reason even if we sometimes focus on the most notable premise as "the reason."

What's more, A's consent—or lack of it—is not a reason for B not to simply prevent him from giving her the injection. There may be reasons for B not to intervene in this way, but the absence of consent on A's behalf is not among them.[12]

This contrasts with a case in which A could benefit B by φ-ing but B has no right to this benefit. Suppose A could share some food with B, which B would like. A ought to be moved to share with B by the fact it will benefit her and by the fact that B has not consented to A's not sharing. Both facts are reasons for A to share, so conditions (1) and (2) are met. But condition (3) is not. If A does not consent to B's simply making him share, that fact is a reason for B not to do so. To this extent, at least, she should respect A's decisions.

My view is that the nature of rights has the shape it is given by the Simple Consent Theory: it has to do with interweaving patterns of reasons that turn on the will of the parties joined together by the right. (This is the insight in the Will Theory, detached from its appeal to duty.) The point is not that rights are created by consent, but that they consist in facts about the reasons that consent provides. The theory does not tell us what these reasons are, or whether there are any: it doesn't settle the existence or extent of natural rights. It merely tells us what such rights would be. Even in that role, the theory meets complications; and I am more confident of the outline than the details.[13]

For instance, whether A has reason to do something may depend on what they are able to do. If it's a condition of having a reason to φ that one be able to refrain from φ-ing, clause (2) will wrongly preclude B's having a right against A that A φ when A cannot help but φ. (Suppose A cannot kick B and thus cannot refrain from *not* kicking her; B still has a right not to be kicked by A.) For similar reasons,

[12] Objection: reasons are cheap; suppose the philosophers' evil demon tells B that he will destroy the world if she prevents A from giving her the injection without consent? Reply: this is not a reason for B not to *simply* prevent A from giving the injection, since it turns on a negative side-effect of prevention.

[13] A complication I will not discuss: arguably, the facts about consent that provide or fail to provide reasons are ones whose rational significance turns on whether we apprehend them by way of "personal acquaintance" with A and B; I address this issue in Setiya 2020 and Setiya 2023.

considerations of ability may interfere with the intended reading of (3). In each case, we should ignore or set aside conditions on having a reason (not) to φ that turn on one's ability (not) to φ.[14]

Because it appeals to the *absence* of consent, not the capacity for it, the Simple Consent Theory may accommodate the rights of those who lack that capacity: non-human animals, newborn infants, and the incapacitated. That they do not consent to certain actions can be a reason not to perform them. There is a potential difficulty, though—as there is for the Will Theory, from which the Simple Consent Theory descends. If individuals who lack the capacity for consent have no reasons of their own, condition (3) is always met. We thus risk losing the distinction between claim-rights and benefits to which one has no right, as in the sharing case above. This problem might be solved by the preceding stipulation, about reasons and abilities. If we ignore or set aside the fact that a newborn infant cannot simply make me act, it may be true that the fact that I don't consent to being simply made to share my food with them is a reason for the infant not to simply make me, while the fact that I don't consent to being simply prevented from kicking them is not a reason for the infant not to simply prevent me from doing so. It would, after all, be good practical reasoning for the infant to be deterred by the first consideration, not the second.

It is key to the Simple Consent Theory that we specify the nature of consent without appeal to rights. If consent was defined as the waiving of a right, the Simple Consent Theory would be circular. That consent need not be understood in this way is a substantive commitment, but not, I think, an implausible one. After all, consent can be invalid: not every instance of consent involves the waiving of a right. And we seem to consent to actions that we have no right against, as when I ask if I can sit next to a stranger on a bus, and they consent—even though I have a perfect right to sit there anyway. What we need is a theory of consent—as a type of speech act, mental state, or matter of joint decision—that defines it in or psychological or behavioural terms, not in terms of its effect on someone's rights.

[14] Another possible complication: suppose B does not consent to A's not φ-ing but *would* consent if A were not to φ. Arguably, this does not prevent B from having a right against A that A φ but does prevent B's non-consent from being a reason for A to φ, i.e. a consideration to which A should give weight in deciding whether or not to φ (see Muñoz 2020: §5). If this is right, we should amend clause (2) of the Consent Theory: if A refrains from φ-ing without B's consent, B's non-consent is a reason for A to φ. A parallel amendment would apply to (3).

Once we clarify this commitment, however, it becomes clear that the Simple Consent Theory is too simple: it gives at most a sufficient, not necessary condition for B's having a right against A that A φ. When B consents invalidly to A's not φ-ing, condition (1) is not met, but B has still has a right against A that A φ. This may happen through irrationality on B's part. B may consent to A's inflicting harm on her while she is incapacitated by drugs and so unable to think properly; her consent to this harm is invalid. Assuming A knows that B is incapacitated—to avoid complications about ignorance—he would still infringe B's rights by inflicting the harm, despite the Simple Consent Theory. In a different sort of case, B is not incapacitated but the harm is so great, and any benefit so minor, that it should be obvious to B that she should not consent to A's inflicting the harm. Her practical reasoning is too deeply flawed for her consent to count as valid. Again, assuming A knows this, he would infringe B's rights by inflicting the harm.

In either case, B consents without effecting a change in the rights that protect her. The Simple Consent Theory cannot account for this. Hence the need for a modified view:

> RATIONAL CONSENT THEORY: For B to have a right against A that A φ is for three conditions to hold: (1) B does not rationally consent to A's not φ-ing; (2) if B does not rationally consent to A's not φ-ing, that fact is a pro tanto reason for A to φ; (3) if A does not consent to B's simply making him φ, that fact is not a reason for B not to simply make A φ.

It's not obvious how to frame the standard of rationality invoked by the Rational Consent Theory. In the case of incapacitation, B's capacity for practical reasoning is seriously impaired, and in the case of grave harm, it should be obvious to her that she is making a mistake. Either way, her reasoning is defective. But not every case of defective practical reasoning yields invalid consent. We can successfully waive our rights for dubious reasons. It is a difficult task for the theory of rights to make the distinctions needed here sufficiently sharp and thus to explain why we cannot always waive our rights. I am not sure how to do this, but since the task is not specific to Reciprocity or the Rational Consent

Theory—it is, as they say, everyone's problem—I propose to set it aside, turning instead to a final foundational challenge.

One way in which consent can be invalid is through irrationality. But it is also invalid when it rests on wrongful coercion or deception.[15] Typically, when A threatens or deceives B in order to extract consent to his not φ-ing, B's consent is invalid and she still has a right against A that A φ. What we need is something more like this:

> VALID CONSENT THEORY: For B to have a right against A that A φ is for three conditions to hold: (1) B does not validly consent to A's not φ-ing; (2) if B does not validly consent to A's not φ-ing, that fact is a pro tanto reason for A to φ; (3) if A does not consent to B's simply making him φ, that fact is not a reason for B not to simply make A φ.

But now the threat of circularity returns. What is valid consent but consent that successfully waives a right? In which case, it's explained in terms of rights and cannot be used to explain what rights could be. We seem to have hit a wall.

The obvious response would be a theory of validity that spells out, in substantive terms, what is involved in wrongful coercion, deception, and the like. But again, it's hard to see how this can be done without appeal to rights.[16] Isn't a wrongful threat precisely one that deprives you of options to which you have a right.[17] The same might apply to wrongful deception: what makes it wrongful is a rights-infringement. In general, the suggestion runs, consent is invalid when it is irrational or when it is influenced in a way that infringes someone's rights.

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[15] Does ignorance vitiate consent even where it is not a product of wrongful deception? Arguably not, though it may affect the scope of consent, i.e. what exactly one counts as having consented to. For discussion, see Dougherty 2021a.

[16] For a contrasting view, see de Kenessey 2020: 216-7 on "good faith" and joint deliberation.

[17] For relevant discussion, see Pallikkathayil 2011, Kolodny 2017, and Gibert forthcoming.

Despite appearances, however, the Valid Consent Theory need not be circular. What breaks the circle is the fact that, when consent is invalid, its invalidity is captured by the Rational Consent Theory. In other words:

> VALIDITY: For B's consent to be invalid is for it to be irrational or to be influenced in a way that infringes B's rights by the lights of the Rational Consent Theory.[18]

Why does this view work? Because consent always gives out, leaving a rights-infringement to which B does not consent—so that the question of validity does not arise—or actions that are not even potential rights-infringements.

Suppose B rationally consents to A's not φ-ing. We ask: was B's consent influenced in a way that potentially infringes her rights, i.e. in a way that meets conditions (2) and (3) of the Rational Consent Theory? If not, it was not influenced in way that infringes B's rights according to the Rational Consent Theory or the Valid Consent Theory. It is therefore valid.

If B's consent was influenced in a way that potentially infringes her rights, we ask: did B rationally consent to this influence? If not, B's consent was influenced in a way that infringes her rights according to the Rational Consent Theory, i.e. in a way to which B does not rationally consent, such that the absence of rational consent is a reason not to exert that influence on B, and the absence of consent to B's simply preventing the influence from being exerted is not a reason for B not to simply prevent it. In this circumstance, I submit, B's consent is not valid: it rests on an action that oversteps B's jurisdiction. For instance: suppose I rationally consent to your giving me a tattoo. What makes this

[18] The influence that infringes B's rights need not be due to A. If C threatens to harm B unless she consents to being harmed by A, and A is aware of the threat—to avoid complications about ignorance—B's consent does not typically prevent A from infringing her rights by harming her; see Millum 2014, Liberto 2021, §3, and Dougherty 2021b. Liberto and Dougherty both claim that third-party duress only sometimes invalidates consent. Suppose C threatens to harm B severely unless A harms B in some minor way with B's consent, i.e. the threat demands not only B's consent but A's subsequent action. Can't B's consent to A be valid, so that A does not infringe B's rights by harming her? I am sceptical. While it may be true that A should harm B, given B's consent, this is a justified infringement of B's rights. What obscures this fact is that A need not apologize for his action, as in an ordinary rights-infringement, because B has agreed to it in advance.

rational is your express intention to give me the tattoo or take $1000 from my bank account. But I did not consent to this arrangement; or if I did, my consent was itself irrational, perhaps due to incapacitation. The absence of rational consent to your disjunctive intention is a reason for you not to act on it; and the fact that you plan to do so anyway—you don't consent to neither giving me the tattoo nor taking $1000—is not a reason for me not to simply prevent you, if I can. It follows that I did not validly consent to your intention, which means that my consent to the tattoo is equally invalid. You would infringe my rights by going through with it.

The final possibility is that B's consent was influenced in a way that potentially infringes her rights, but to which B rationally consents. (Suppose, for instance, that my consent to your intention in the tattoo case was rational: I rationally agreed to the plan of getting a tattoo or paying you $1000.) In that case, we ask our questions again. Was the latter consent influenced in a way that potentially infringes B's rights, but to which she rationally consents? (In the tattoo case: was our prior agreement influenced in a way that was potentially rights-infringing but to which I gave rational consent?) The question iterates, but chains of rational consent must come to an end: B cannot consent to A's not φ-ing, and to a potential rights-infringement that induced her consent, and to a potential rights-infringement that induced her consent to the potential rights-infringement that induced her initial consent, and to a potential rights-infringement that induced her consent to the potential rights-infringement that induced her consent to the potential rights-infringement that induced her initial consent, ad infinitum. Eventually, we must reach rational consent that is invalidated by a potential rights-infringement to which B does not rationally consent—as in the original tattoo case—or that was not influenced in a way that potentially infringes B's rights and is therefore valid. If the final consent was influenced in a way that infringes B's rights by the lights of the Rational Consent Theory, as on the first disjunct, that invalidates the whole chain of consent; if not, as on the second, that validates the chain.

The upshot is that the Valid Consent Theory, together with Validity, forms the core of a promising theory of natural rights. The theory is regrettably intricate—regrettable both because I take no special joy in complexity and because it is the kind of theory that is likely subject to

counterexamples; it will need to be refined. What's more, it leaves significant questions open: there is more to be said about the rights of those with limited capacities, about the standard of irrational consent, and about conventional, as opposed to natural, rights. My focus has been the latter, though I suspect conventional rights share a common structure, in which one individual's consent has normative significance for what another can be made to do *without* consent.

In the case of natural rights, I see no alternative to elaborate theory: nothing else could account for Reciprocity while explaining how rights turn on the will of the rights-holder. When B has a right against A that A φ, what gives A reason to φ is the absence of valid consent to his not φ-ing. The Valid Consent Theory builds on this foundation to secure the reciprocity of rights. If B has a right against A that A φ, it follows from the Valid Consent Theory that A's not consenting to B's simply making him φ is not a reason for B not to simply make A φ, from which it follows in turn that A has no right against B not to be simply made to φ. Reciprocity holds.[19]

[19] Special thanks to Rowan Cruft for an extraordinary series of conversations on the topics of this paper, and to Joseph Bowen, Matt Boyle, Garrett Cullity, Bennett Eckert, Benjamin Kiesewetter, Daniel Muñoz, Philip Pettit, Ariel Zylberman, and two anonymous referees for written comments on earlier drafts. Thanks also to Sophie Gibert, Brendan de Kenessey, Anni Raty, Jack Spencer, and Quinn White, and to audiences at SUNY-Albany, ANU, and MIT.

References

Cruft, R. (2019). *Human Rights, Ownership, and the Individual*. Oxford: Oxford University Press.

Dorr, C. (2016). To be F is to be G. *Philosophical Perspectives* 30, 39-134.

Dougherty, T. (2021a). *The Scope of Consent*. Oxford: Oxford University Press.

Dougherty, T. (2021b). Why does duress undermine consent? *Noûs* 55, 317-333.

Gibert, S. (forthcoming). The wrong of wrongful manipulation, *Philosophy and Public Affairs*.

Gilbert, M. (2018). *Rights and Demands: A Foundational Inquiry*. Oxford: Oxford University Press.

Hart, H. L. A. (1955). Are there any natural rights? *Philosophical Review* 64, 175-191.

de Kenessey, B. (2020). Promises as proposals in joint practical deliberation. *Noûs* 54, 204-232.

Kolodny, N. (2017). What makes threats wrong? *Analytic Philosophy* 58, 87-118.

Liberto, H. (2021). Coercion, consent, and the mechanistic question. *Ethics* 131, 210-245.

Mack, E. (1976). Hart on natural and contractual rights. *Philosophical Studies* 29, 283-5.

Martin, A. (2021). Personal bonds: directed obligations without rights, *Philosophy and Phenomenological Research* 102, 65-86.

Millum, J. (2014). Consent under pressure: the puzzle of third party coercion. *Ethical Theory and Moral Practice* 17: 113-127.

Muñoz, D. (2020). The paradox of duties to oneself. *Australasian Journal of Philosophy* 98, 691-702.

Pallikkathayil, J. (2011). The possibility of choice: three accounts of the problem with coercion. *Philosophers' Imprint* 11, 1-20.

Raz, J. (1986). *The Morality of Freedom*. Oxford: Oxford University Press.

Setiya, K. (2014). What is a reason to act? *Philosophical Studies* 167, 221-235.

Setiya, K. (2020). Ignorance, beneficence, and rights. *Journal of Moral Philosophy* 17, 56-74.

Setiya, K. (2022). What is morality? *Philosophical Studies* 179, 1113-1133.

Setiya, K. (2023). Other people. In S. Buss and N. Theunissen, eds., *Rethinking the Value of Humanity*. Oxford: Oxford University Press, 314-336.

Steiner, H. (1994). *An Essay on Rights*. Oxford: Blackwell.

Thomson, J. J. (1990). *The Realm of Rights*. Cambridge, MA: Harvard University Press.