

Coercion, Consent, and the Mechanistic Question*

Hallie Liberto
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Sometimes a coercive strategy is used to secure someone's agreement or compliance. One person threatens to hurt or kill a victim if she does not agree to give him her wallet or to perform a sexual act. The use of coercion in securing these agreements often leads us to think that the agreements are not instances of morally transformative consent – consent that actually changes the world by granting moral permission to another person. In this paper I examine the most prevalent explanation for *why* coercion ever undermines consent, an explanation that I call: moral debilitation. Moral debilitation is the view that the manipulative strategy of coercion can actually disempower an agent from changing the existing moral circumstances – from having the power to grant permission or dissolve another's obligation. I will argue that coercion rarely debilitates, and that there is an alternate method for explaining why coercive strategies fail to produce the type of consent that matters. In the face of certain types of coercive threats, an agent's compliance fails to have the implicit content that is usually responsible for doing the transformative work of consent. However, this failure is not the result of an agent suffering the debilitation of her moral powers.

In Section 1 I explain what I mean by consent and coercion and narrow the scope of my investigation in various ways that are important for discovering the specific undermining relation between a conditional threat and a genuinely permission-giving act. In Section 2, I distinguish two questions that philosophers try to answer when determining how coercion undermines consent. (A) What kind of coercive threat undermines consent? (B) By what mechanism does a threat undermine consent? I explain that the answer to (A) relies heavily on the answer to (B) – the popular and plausible versions of which involve some form of what I call moral debilitation.

In Section 3 I argue that the mechanism of moral debilitation cannot operate alongside a plausible answer to (A). I also present an independent argument against moral debilitation, suggesting that no account involving moral debilitation can account for the difference between two very different types of compliance that might occur when coercion is implemented by a third party. In Section 4 I investigate how it might be that compliance to coercion ever constitutes true consent – given some problems for coercion and consent that I extract from Larry Alexander’s answer to question (B). I go on to argue that compliance to coercion implicitly involves the ranking of a coercer’s potential behaviors. If a potential coercer-behavior (for instance, the content of the threat) morally requires no permission from the coerced agent and is ranked below other options that do require permission from the coerced agent, then the rankings can sometimes expand the range of the coercer’s permission upwards. I argue that this is possible, even when a coerced agent does not believe himself to be giving consent. Finally, in Section 5, I explain how some types of coercive threats prevent compliance from having the features that might otherwise render it permission-giving. This new approach handles the cases that theories involving moral debilitation cannot handle – including cases of third-party coercers and threats with third party targets.

1. Preliminaries: Consent and Coercion

Under normal circumstances, no one is morally permitted to seize, hug, harm, handle, undress, or intimately touch Frederick without his consent. What difference does his consent make? If he consents to Anne having sex with him, then he has removed one important moral impediment to it being permissible for her to do so. Put as you like, Anne would not be

interfering with his autonomy, violating his rights, or trespassing within his domain of authority or discretion.¹ It might still be all-things-considered wrong for Anne to have sex with Frederick. Perhaps it would be the breach of a promise she has made to her spouse or be unhygienic – because they are in the kitchen of a restaurant. However, if no other moral consideration is on the table then, once she has his consent, it is not wrong for Anne to have sex with Frederick.

For the ease of referring to the moral power of permissive consent, I will sometimes say: Frederick waives his moral right against Anne having sex with him. If you do not endorse a rights-theory in the moral realm, then you may read this sort of sentence, wherever it appears here, as: Frederick grants a moral permission to Anne to do what she would otherwise have a duty to refrain from doing – for reasons related to Frederick’s autonomy or to his human interest in maintaining control over a particular domain (like the domain of his body) – whatever moral reasons might ground an entitlement to control a domain.

I have explained what consent is and does, morally speaking. However, I have not explained what sort of action or event, undertaken by an agent, renders consent. This question is often referred to as the ontological question regarding consent. Some think that consent is a purely internal phenomenon; Frederick comes to desire Anne’s intimacy in a particular way, or develops an intention to be intimate with her, or makes an internal choice.² This internal process is not an unfamiliar way of experiencing a change in the moral state of affairs. After all, if Frederick started suffering (e.g. from hunger or chill) internally, this suffering might give rise to an obligation in Anne to alleviate it – especially if she knew that he was suffering.³ She might have this obligation whether or not Frederick ever actively directs her to feed him or provide him with a blanket. However, more sophisticated accounts of internal consent argue that consent is an internal *action* – either the formation of an intention, or an active decision to permit a particular

behavior. If waiving a moral right is a type of moral power, then we must wield that power through an intentional action – even if it is an internal one.

Other popular consent theories stipulate both internal and external requirements on consent – an internal decision combined with a performance or communication of that internal decision, usually through a verbal or non-verbal speech-act. Since the internal requirement on consent is thought to be met before the speech-act is undertaken, the speech-act has the moral power to change the world, and grant a permission, waive a moral right, dissolve a moral duty held by the recipient of the consent. In this way, the speech-act of consent is performative in the sense used in the philosophy of language, it is a way of *doing* things with words.

In the first, critical half of this paper, I am going to remain agnostic as to what exactly constitutes consent. In the second half of the paper, I will argue that features of the relationship between coercion and consent pose some special problems for internalist theories of consent – though perhaps not fatal problems. These concerns aside, my ultimate, positive account can be read in such a way that makes it compatible with an internalist theory.

Consent is the appropriate concept for talking about the permission we can give to others to use or tread upon our property, touch our bodies, and read or access private information. We have authority over these domains. Throughout this paper I will often use cases involving sexual coercion and sexual consent – since so much of the literature on consent is in sexual ethics, and because it is important that a theory of consent get sexual cases right. My cases are never graphic – but still warrant a warning, since any discussion of scenarios involving nonconsensual sex can trigger adverse emotional responses.

Some theorists will differentiate between consent that is morally transformative (or morally valid) and consent that is not. In this paper, I am going to assume that there is no consent

at all if it is not morally transformative – that what consent is, as a moral phenomenon, is a power – and if it does not change the moral world, then there is nothing to call consent. So, when I say “x undermines consent,” what I mean to say is that there was an agreement or compliance that might have otherwise constituted consent, but that, because of the undermining circumstances, did not constitute consent.

For instance, a very intoxicated person may agree to have sex, or comply to sex in an accommodating way such that – were she not drunk – her agreement or compliance might be a communication of consent (or be the outward signs of an internal act of consent, if you prefer). Because of the temporary cognitive disability, the intoxicated person’s compliance to sex does not constitute change to the moral world – it does not give someone else a permission to act towards her as they may not have done before.⁴

Similarly, many philosophers think that coercion sometimes undermines morally transformative consent. For the sake of this paper, let us focus on one type of coercion, which in the literature is sometimes called, “volitional coercion.”⁵ The coercer, A, threatens to do something that the coercee, B, strongly disfavors, unless B instead complies with A’s demands.⁶ B makes a choice, but it is a choice that is severely constrained by the threat. Sometimes the coercion is morally unproblematic – as in the case of legitimate penalties threatened by the state that coerce individuals to refrain from committing crimes. The state threatens us with prison unless we refrain from murder and assault.⁷ However, when coercion is used to secure agreement or compliance to things that require morally transformative consent, like sexual acts, it often results in rights violations.

One way of thinking about coercion is this: coercion takes away a valuable conjunction of good things from a coercee and, in this way, manipulates the coercee into choosing the best

option left – the option of the coercer’s choice. Consider a standard mugging scenario. When A threatens to kill B if B does not hand over her wallet, A takes away a valuable conjunction from B’s array of alternatives: the conjunction of B keeping her money *and* her life.⁸ Without that option, it is best for B to choose her life and no money. This choice does not constitute consent to give up her money – she does not waive her property right. Her agreement does not turn her wallet into a gift.

The way that I have described coercion here is distinct from the strategy involved in making an offer – even an offer that opportunistically takes advantage of a person’s limited options, or circumstances of duress. This is to say, I am here theorizing the relationship between coercion and consent, not exploitation and consent. Also note that I am referring to the manipulative strategy of coercion and not to circumstances that are sometimes called *coercive*. For instance, a landslide might force someone to drive off the road. We might call the scenario *coercive*, much like we might call a circumstance of dire poverty *coercive* – if it forces someone to partake in sweatshop labor or to eat the family pet, etc. However, again, I am referring only to the manipulative strategy of coercion, as I initially described it.⁹

2. The Undermining Mechanism

There are multiple theories of how coercion undermines consent. However, I believe that these theories need to be divided into two parts: answers to the question: (A) what kind of threats can undermine consent? (B) By what mechanism do these threats undermine consent? Answers to (A) are nuanced – usually demanding that the threat be significant, but also designed to rule out cases in which the coercer is entitled to do the thing that she threatens to do – or uses the

threat to achieve something that she is entitled to receive from the coercee. (e.g. An employer says: If you don't stop watching football instead of being productive at work, I'm going to fire you.)¹⁰

Both (A) and (B) are interpretations of the general question: how is a coercee's consent sometimes undermined? My reason for pulling (A) apart from (B) is that answers given to the general question (how does coercion undermine consent?) are often just answers to question (A). For instance, if I ask you why you think that Frederick's giving of money to Anne was non-consensual, you might helpfully answer: she had a gun to his head. You might even offer a general account of what features a threat must manifest in order to undermine consent. However, if I know that he gave the money to Anne under this threat, and ask the same, general question, it is probably because I want to hear an account of how the coercion is working on the action or process that might have otherwise yielded consent. Yet, philosophers have a common practice of answering this question not with an explanation of the undermining process, but by naming the type of threats that undermine consent (e.g. only threats with severely harmful content – but it can be physical or emotional harms).¹¹ However, these broader answers are still only answers to question (A).

The available answers to (A) are determined by the answer to (B). After all, for every proposed mechanism, there are some threats that can trigger it, and some that cannot. For instance, consider an answer to (B) that appeals only to the voluntariness of the action in question: coercion undermines consent because it gives the coercee an unviable alternative, such that the coercee is practically forced to do what the coercer proposes. This is an attractive mechanistic account for how coercion undermines consent, because we typically think that

morally transformative consent must be voluntary. We can call this answer to (B), the *Voluntariness Compromising Mechanism*.

Voluntariness Compromising Mechanism: Coercion undermines consent when it burden's a victim's alternatives in such a way that renders the victim's compliance to the coercer's demand involuntary.

If the *Voluntariness Compromising Mechanism* were the answer to (B), then we would have a very expansive set of threats that could undermine consent. Certainly, a threat that contained a harmful, rights violation could undermine consent. However, many more threats will undermine consent on this theory – any threat that takes away meaningful choice from a victim. Take again the case in which an employer threatens to fire an employee if the employee does not start being productive at work. Now, imagine the threat is given against a backdrop of a terrible job market, and only scant safety nets in place for the unemployed. In this scenario, the threatened alternative to being productive at work is a non-viable option for the employee. However, the employee's consent to his labor relations (which involves doing many things with his body), motivated by the threat of being fired, is not undermined by this coercion.

There is another problem with the *Voluntariness Compromising Mechanism*. If coercion undermines consent by – and exactly by – removing all other viable options besides the one to which a victim complies, then this theory entails that an agreement needs to be made in the context of other viable options in order to count as consent. The mechanism provided by the theory is one that is triggered by cases where there is no coercion, and where there is evident consent. If we need to be able to choose from viable alternatives in order to consent, then a

patient in need of life-saving surgery cannot give consent to his doctor, just because he has no other reasonable option besides the surgery.

There needs to be some explanation within the correct mechanistic account that explains why the *wrongfulness* or *wronging* involved in the use of the threat to secure consent plays an operative role in undermining consent.

The Authority Undermining Mechanistic Account:

The first account of coercion that attempts to answer question (B) is an account that I will refer to as the *Authority-Undermining Mechanism*.

Authority Undermining Mechanism: Coercion undermines consent when the content of the threat prevents the victim's compliance to the coercer's demand from being a true exercise of discretion between those options to which the victim is entitled discretion, in virtue of her authority in some domain.

Multiple philosophers either allude to or articulate accounts like this one.¹² However, I will explain the two versions of this account that include the most comprehensive explanation of how the mechanism operates – those by Japa Palikathayil and an earlier account by Joel Feinberg.

Palikathayil begins her explanation by appealing to Christine Korsgaard's Kantian account of how deception sometimes undermines consent.¹³ In a case of deception, a victim does not have the ability to consent to the deceiver's plans (and the ends that the deceiver means to bring about) because the victim does not know what the deceiver intends. In order to voluntarily

grant a permission, the victim would need to know what he is permitting. Korsgaard describes what the victim is lacking as “power over the proceedings.”¹⁴ If the victim gives his money to the con-man, thinking it is for charity, then he has not consented to the con-man taking his money and using it to buy a gun.

Pallikathayil gives an account of what “power over the proceedings” (or lack thereof) could mean when it comes to coercion. She says, “We might take power over the proceedings to mean something like control over the circumstances in which one has to make a choice.”¹⁵ The circumstances in which one has to make a choice – if they are circumstances that one ought to be able to control – is one’s realm of authority – usually limited to some domain of entitlement – like the body, or one’s property. When coercion undermines consent, on this view, both the content of the threat, as well as the thing to which the coercer wants the victim’s compliance, need both fall within the domain of the victim’s authority. The victim must choose between two different ways in which the coercer might interfere with what the victim is entitled to control. The coercer’s threat, which eliminates any “opt-out” for the victim, suspends the victim’s ability to give meaningful consent because it takes away the control that a consenter ought to have over his own options. Without the requisite control, the victim of coercion is not actually exercising his authority. After all, we cannot exercise our authority without discretion, and our discretionary capacities are cut off when we cannot choose from the options within our realm of authority. So, importantly for Pallikathayil, a coercer who undermines his victim’s consent leaves his victim with no “opt out” from interference.¹⁶ She says of the mugging victim, “Since the victim does not have access to the options she is entitled to with respect to her money, the act of handing the money over to the mugger cannot be an exercise of her discretionary authority with respect to her money.”¹⁷ According to Pallikathayil, the coercer wrongs the coercee in two ways: first, by

doing something that the coercer has not secured meaningful permission to do; second, by rendering a coercee childlike, in the sense that he is disempowered.¹⁸

To the extent that Joel Feinberg discusses the relationship between coercion and rights-waiving, he adopts a mechanistic approach that is simply another variant of the *Undermining Authority* mechanism. He points out that coercion creates a circumstance whereby existing options trigger bad consequences for the victim – which depreciates the nature and value of those very options. Feinberg describes coercion like this, “[The coercer] ...has actively intervened in [the coercee's] option-network, to acquire control of the relevant option-switches.”¹⁹ It removes someone’s access to those things to which they have a right, in order to realign the victim’s preference’s in accordance with the coercer’s – thereby usurping most of the authority and discretion to which the victim is entitled when making a choice over things pertaining to her rights. For this reason, the victim’s choice is not a true rights-exercise.

Take the mugging victim. Her option-switch, usually available to her, and to which she is entitled – to refuse to give over her money, is now an option-switch that triggers her own death. For this reason, she cannot exercise her right to withhold her money and keep her life. Unable to exercise this combination of rights, her agreement to give up her money and keep her life – her second-choice option – is not a true exercise of rights, since it is the mugger who really wielded discretion over the options (between which she was entitled to select). The types of threats that would trigger this undermining process are the same as on Pallikathayil’s account and, except for some difference in the resources available to each theorist, a difference discussed in the next section.

The Agency Undermining Mechanistic Account:

Many philosophers – including Palikathayil – assume a symmetry between the conditions necessary for the undermining of consent and the conditions necessary for the undermining of moral responsibility. However, only Heidi Hurd offers an explanation of this symmetry that also serves as an answer to question (B): By what mechanism does coercion undermine consent?

On Hurd's account, coercion undermines consent because of its effect on a victim's agency regarding that to which she consents – the very same type of agency that grounds moral responsibility. The theory goes: as with those actions for which we are morally responsible, we can be held accountable for those things to which we consent.

Agency Undermining Mechanistic Account: In order for coercion to undermine consent, a threat needs to reduce a person's agency in the same way, and to the same degree as is required to undermine moral responsibility.

Heidi Hurd explains a procedure for determining whether compliance to coercion is consensual. Consider a case wherein B complies to some ϕ because of A's coercive threat X. Take ϕ to be the action to which we are determining whether B gave consent. We can ask: If B did ϕ to someone, C, under A's threat of X, would B be morally responsible for wrong done to C? If so, then X is not the type of threat that could undermine B's consent. Whereas, if not, then X has rendered B unable to exercise the agency required both to incur moral responsibility and to grant a moral permission. For instance, imagine Blanca agrees to have sex with Al because Al threatened to beat her, and we want to know if Blanca's agreement constitutes consent. We simply ask: if Blanca perpetrated nonconsensual sex with Chris because Blanca was under Al's

threat of a beating, would Blanca be morally responsible for the wrong done to Chris? If she would be morally responsible in this circumstance, then her agreement in the initial case counts as consent; that is, if she ought to have withstood Al's beating in this circumstance, then she also should have withstood the beating rather than comply to sex with Al herself.

This view is attractive because it explains why coercion ever undermines consent in a manner much like the way cognitive immaturity and misinformation undermine consent – those circumstances also reduce or eliminate moral responsibility. The mechanism operates in such a way that the threat reduces or removes the moral relevancy from the causal line connecting the a person's choice and the action or outcomes that follow.

Moral debilitation is a feature of the undermining process across both mechanistic accounts that I have described in this section. The mechanisms render the coerced unable to exercise moral powers and zaps the transformative power from the action that might otherwise render consent. Moral debilitation, so characterized, is also a feature of the *Voluntariness Compromising Mechanism*, introduced earlier. If consent *must* be voluntary, meaning that one's choice selected from among more than one truly viable option, then if an agent is left without sufficient alternatives to make a decision voluntarily, she simply cannot give consent. The agent is without the moral power to give consent. From here on out, when I say, "moral debilitation" I refer to this shared feature of all the mechanisms described.

3. Moral Debilitation and the Problem of Third Parties

What type of coercive threats trigger the mechanism by which consent is undermined on the *Undermined Authority* account? A threat *wrongs* a coercee if the content, when carried out, would violate the rights of the coercee or take something from him to which he is entitled. From here on out I will refer to the content of a threat as wrongful, non-wrongful, harmful, etc., without supplementing the expression with “when carried out.” Please assume that when I so refer to the content of the threat, I mean: when/if carried out. I do not mean by this expression that the content of the threat renders the threat itself a wrongdoing or a harm.

This notion of *wronging* is particularly important for conceiving of the role of consent in the moral realm. When Frederick gives Anne morally transformative consent to have sex with him, he makes it the case that she does not wrong him by having sex with him. Recall, this is compatible with its being the case that Anne does something all-things-considered wrongful by having sex with him. At most, Frederick’s consent dissolves a particular wronging of Frederick that would otherwise occur. Similarly, when we consider coercion, and the nature of the threats involved, it is important to consider whether the content of the threat is all-things-considered wrongful, or whether it wrongs the coercee in particular. After all, not all wrongful threats trigger the *Undermining-Authority* mechanism. Pallikkathayil suggests that a threat that incapacitates a victim’s power to consent must be an impermissible constraint of a coercee’s options. The coercer must constrain the coercee’s options in ways that prevent the coercee from choosing something that he is entitled to choose.

When the content of a threat is coercee-wronging, it is easy to see how the *Undermining-Autonomy* mechanism is triggered. If Anne were to threaten Frederick with a gun and tell him that if he did not have sex with her, she would shoot him, then Anne is giving Frederick a choice between being wronged in one way (having his life taken, to which he has a moral right or, at

least, an entitlement), or having sex with Anne. His agreement to have sex with Anne is non-consensual on the *Undermined Authority* account because Frederick's realm of authority is compromised by the threat. He has insufficient discretion over the realm of his authority to be properly described as arbitrating his authority.

Threats with Third-Party Targets:

Now, consider “moral coercion” – a concept explored recently by Saba Bazargan.²⁰ Moral coercion – when it is also a case of volitional coercion – occurs when a coercer threatens to do a wrong to someone else, but not to the coercee, if the coercee does not agree to or comply with the coercer's demands. Bazargan focuses much of his paper on what sort of moral responsibility someone bears for actions they perform under moral coercion – which is part of why he calls it “moral coercion” – because there is a moral reason in favor of complying, rather than just a prudential reason. However, I am interested instead in the question of permissive consent. Surely, agreement and compliance under threats made to third parties is often not morally transformative consent. Because of the different nature of my question, and because I am looking at only a subset of the cases that fall into Bazargan's broader category, I will call these cases: threats with third party targets.

Knowing Frederick to be someone who takes animal welfare seriously, Anne might threaten to painfully torture her own dogs if Frederick does not have sex with her. Now, however wrong it would be for Anne to carry out this threat, it would not be a wronging of Frederick. He is not personally entitled to others refraining from wrongdoing – perhaps he can complain about Anne doing this wrong, but there is no sense in which his own authority over his domain of

entitlement is diminished by her threat. So, he can arbitrate his own moral authority within its full range. When making his decision, there is no option to which he is entitled that he cannot access from his seat of authority. He can opt out of the dealings with Anne completely - leaving the realm under his own moral discretion uncompromised by Anne. For these reasons, it seems that the *Undermining Authority* mechanism is not triggered by threats with third party targets.

Pallikkathiyal does consider a case of a threat with a third-party target:

Consider a kidnapping. Lisa kidnaps Paul and demands a ransom from Joanna, declaring that she will kill Paul if and only if Joanna refuses to pay the ransom. Of course, Paul has standing to legitimately demand that Lisa abandon this intention. But what about Joanna? Perhaps she has some standing simply as a member of the moral community to demand that Lisa not wrong Paul. But whether or not this is so, given Lisa's contingency announcement, it seems that Joanna, like Paul, has some more direct claim against Lisa's intention than a mere bystander (even if she had no prior relationship to Paul). I suggest that by linking her intended wrongdoing to one of Joanna's actions, Lisa gives Joanna the standing to legitimately demand that she abandon her intention.²¹

Pallikathayil suggests in this passage that the content of Lisa's threat – the wronging of Paul – becomes a wronging of Joanna, since the threat is made to her. How this works is somewhat mysterious and is not described in Pallikkathayil's paper. I believe that Pallikathayil's allowance that third party threats can undermine consent is *ad hoc*. She does not explain how Lisa's threat, by itself, turn the killing of Paul into a breach of Joanna's

authority – which is what Pallikathayil requires for a wrongful act to constitute a wronging of Joanna. And if an agent’s entitled discretionary authority is not transgressed by the content of a threat, then there can be no sense in which one’s realm of authority is reduced by the coercion. Pallikkathayil is supplementing her mechanistic account of how coercion undermines consent (i.e. her answer to question B) with an additional threat that undermines consent (i.e. an answer to question A), without offering an explanation of how the new type of threat triggers the mechanism.

Joel Feinberg’s description of coercion as involving the manipulation of an “option network” gives rise to another possible way to handle threats with third party targets on the *Undermining Authority Mechanism* – one that might be available to Pallikathayil’s account as well. Consider, the coercee might have a right to the absence of certain links between his option-switches. Frederick usually does not have any control over whether Anne tortures her dogs. When Anne threatens to torture her dogs if Frederick does not have sex with her, she inserts an option-switch link into his option network (the option that allows him to prevent dog-torture by having sex with Anne or, characterized differently, the option to refuse sex with Anne, which will trigger dog torture). Frederick cannot access the option network (including the absence of this option-link) to which he is entitled. So, his choice to have sex with Anne is not a true exercise of rights.

However, this potential solution faces challenges. To start, it requires that we hold a right against those threats and *only* those threats that undermine consent. But it would be an independent project to discover which threats were themselves rights violations, and not an easy project. For instance, does Frederick have a right against his sexual refusal triggering

Anne to halt her contributions to an important charity? Does Frederick have a right against his sexual refusal triggering her own suicide?

It is possible that there is a theory that could explain what option-links themselves violate our rights and which ones do not – but even a very good theory might not save the *Undermining Authority* view. Consider this question: what if Anne does not inform Frederick of the link that she has created with her intentions, between his sexual refusal and her dog torture? Surely, his consent to sex cannot be undermined by the introduction of a link in his option network of which he is not aware – since it cannot be deliberately significant to him. However, if Frederick has a right against such a link, then surely it does not matter if he knows about it, or if it is deliberately significant to him; Rights violations, unlike certain kinds of harm, can victimize us even if they don't affect our felt experiences.

Third Party Targets of Coercive Demands:

There are other cases involving harms to third parties that pose problems for the *Agency Undermining* mechanistic account of how coercion undermines consent. Consider Heidi Hurd's theory, described in the last section, and the procedure she uses to test whether compliance is consent: B complies to some ϕ because of A's coercive threat, X. B's compliance is consent if and only if B, under threat X, would be morally responsible for doing ϕ to another person, C, without C's consent.

Now, imagine that you are considering whether I have given consent to Bill coming into my house to view my private art collection. Bill threatened to leak something private and embarrassing about me to the press if I did not let him in. The press leak would be a violation of

a contract or a breach of promise – something that makes it clear that the content of his threat is a wronging to me (as opposed to just a harm). Under this threat, it is certainly rational for me to let him in to view my art collection. Because of the wronging content of the threat (or perhaps some other features) I would be warranted in complaining that his entry was a violation of my property rights – that it wronged me in some way (maybe not in a very weighty way) that can be explained in terms of the authority I am entitled to exercise over who comes into my home.

However, imagine that Bill didn't care about my art collection, but only about yours – and he knows that you have entrusted me with a spare key to your house (though, let us stipulate that I am not your close friend or relative). Under threat of him violating my own rights by leaking information to the press, I am still not justified or excused in aiding his entry into your house to see your art collection without your permission. If I did so, then you would be warranted in complaining that both he and I had violated your property rights. On Hurd's theory, this would mean that in the first case, where I complied with his threat, and let him into my own house, I must have given morally transformative consent to his entry – and granted him a real permission to enter.

Note that in the case of letting him into my own house, I was weighing a decision that did not involve a constraint posed by another person's rights. I might rationally and rightly deliberate over a choice that involves my own rights being violated differently than I would or should deliberate over a choice that involves another's rights being violated. The first is a matter of prudence – and Bill's threat certainly changes what is most prudent for me to do – and the second involves both prudence and the moral constraint of your property rights. Some degree and type of threat might justify me letting Bill into your house, without your permission.

However, I think this is a good example of a threat that would both undermine my own consent to his entry of my house, while not justifying me aiding him in trespassing your home.

There are other cases that in themselves manifest the distinct extensions of moral responsibility and permissive consent. Imagine that I park my car, a car that I share with my husband, in an area that is well known for theft and vandalism – and where the shiny, expensive items contained in our car are very likely to spur such vandalism. I am also negligent and fail to lock the doors of the car. I don't just put my own property at risk, but my husband's as well – since we share the car and its contents. When someone breaks into the car in my absence, I am not consenting to their entry. However, my husband can still complain about my behavior. I am morally responsible for taking risks with his property even though my risk-taking behavior was not in any way a form of consent to the thief.

Third Party Coercers:

I will next present a type of case that serves as an objection to moral debilitation as a general account of the relationship between coercion and consent. It not only serves as an objection to the considered mechanistic explanations in this paper, but to any possible explanation of the way coercion operates on consent that involves moral debilitation. Instead of the problem stemming from the nature of the threat or the demand, this problem stems from the role the coercer plays in the scenario.

On moral debilitation views, the agreement and compliance produced through coercion is powerless in the moral realm. With this in mind, consider the following cases:

Third Party Gunpoint: Wanting to cause his victims pain and trauma, Ajay coerces Bea and Carlos into having sex with each other. Ajay knows that Bea and Carlos would never want to have sex with each other, perhaps because both Bea and Carlos are only attracted to members of their own sex, or that Bea and Carlos are close colleagues or platonic friends. Whatever the reason, Ajay knows that it would cause Bea and Carlos great distress to have sex with each other. Ajay takes out a gun and tells Bea and Carlos that he will shoot them if they do not have sex. They both agree to comply and then have sex with each other.

Neither Bea nor Carlos meets the conditions for successful consent on the debilitation views. They are entitled to keep their lives and refrain from having sex with each other. They are both prevented from arbitrating their ends and from exercising their rights. As Pallikkathayil describes the two wrongs of coercion: they are wronged both by the sex in which they are forced to engage by Ajay, and also by being rendered childlike in their moral powers. Though Bea does not violate Carlos' rights – being blameless – she certainly infringes them. After all, disempowered to give consent, Carlos has not exercised a moral power to dissolve Bea's duty toward him, or waived his rights against her. The same is true in the opposite direction. Bea's agreement does not constitute consent.

Perhaps this outcome, on its own, does not look unpalatable. They both infringe each other's rights, but do so blamelessly. This is consistent with the view that Ajay is violating both of their sexual rights. (After all, if I coerce you – using a death threat – into robbing another person's house, then you and I both trespass on that person's property rights, even if you are blameless – the divorce of rights-infringements and blame is analogous here.)

Now, contrast *Third Party, Gunpoint* with a slightly modified case:

*Third Party, Gunpoint**: Bea wants to comply with Ajay's demands, but Carlos would prefer to die than to have sex with Bea under these conditions. Bea is physically stronger than Carlos, which he knows, and proceeds to have sex with him despite his unwillingness to comply with Ajay's demands. He is unable to physically resist, given Bea's strength, but internally maintains and verbally communicates to Bea that he would rather be shot than for her to continue to have sex with him.

Even if one thinks that there is no consent rendered in either case, and even if one thinks that Bea's actions are justified or exculpated in *Third Party, Gunpoint**, it still seems that there is an important difference between the two cases. The difference is not only that Bea is entirely blameless in the first, though possibly blameworthy in second. It seems that Carlos' rights are further trespassed or infringed, his authority further undermined, in the second case than in the first. What Bea does to Carlos in *Third Party, Gunpoint** has some wrong-making feature (above and beyond the greater suffering of Carlos – in fact, we can stipulate that he suffers equally in both cases).

This difference suggests that Carlos' compliance in *Third Party, Gun Point* is powerful enough to make some real change in the moral realm. He is not debilitated by the coercion – at least not fully. Bea's permission – whether partial or full - to have sex with Carlos in this case is produced, in part, by his selection of the sexual alternative. If Bea is permitted to have sex with Carlos even when he refuses, and chooses death, it is only because of the harms and benefits attached to the outcomes – that the benefits outweigh the rights infringement. However, this is the justification for Bea's behavior that Moral Debilitation views must give in both variants of

the case. Debilitation views cannot account for any moral difference between a compliant and non-compliant coercee in third-party coercer cases.²²

4. Consent under Conditions of Coercion

I have argued that moral debilitation theories of the relationship between coercion and consent are problematic. So, let us turn to a theory of this relationship that works through an alternate means. Larry Alexander proposes a purely internal account of consent, which includes a mechanism by which coercion might undermine consent that does not rely upon moral debilitation. On his view, consent to ϕ just is the formation of the intention to waive one's complaint against the other person doing ϕ .²³ If he is right, then compliance to volitional coercion might not be appropriately described as the undermining or vitiating of consent – since the coercee is not performing the type of act that – but for the coercion – *would be* consent. After all, if the victim does not take the coercer to be acting with permission, then the victim does not take himself to be waiving a complaint. Furthermore, the agent would not be morally debilitated – since he could always, even in the face of a coercive threat, perform the mental act of intending to waive his complaint.²⁴

In the Third Party Coercion cases that I have described above, Alexander could easily explain the moral difference between Bea's actions toward Carlos. In the first case, Carlos performs the internal act that renders consent to Bea and, in the second case, he does not. Carlos is not debilitated from rendering consent in either case. There simply is nothing that Ajay performs internally that is even a candidate for being an act of consent.

Despite being able to handle the distinction that exists between Third Party Gun Point and Third Party Gun Point* - as the moral debilitation theories cannot – Alexander's internalist

account of consent runs into another problem, in relation to Carlos' consent and the status of Bea's action.

Consider the initial *Third Party Gunpoint* case wherein Carlos chooses to comply with Ajay's demand and have sex with Bea. It makes no moral difference whether Carlos believes Bea to be acting with his sexual permission or not. Imagine Carlos chooses sex with Bea over death at the hands of Carlos, communicates this choice to Bea, but all the while thinks to himself, "but this doesn't really count as consent and so – justified or not - Bea is now infringing my sexual rights." On a view like Alexander's, the status of Bea's actions will be very different here than if all else about the situation remained the same, but Carlos thought to himself, "Bea has my permission, though Ajay wrongs us both." Any view that requires consent to be transparent to the consent-giver will have this result.

Sometimes persons render morally transformative consent but, because of the circumstances, they do not themselves believe their own consent to be morally transformative.²⁵ For instance, imagine that Nina tells her husband, Mateo, that she will stop cleaning his office if he refuses to let her enter it after 9 pm. You can imagine that she thinks, "well, I'm busy at any other time of day, so if he wants me to keep doing this favor for him, he'll let me in to clean his office at the time most convenient to me." Mateo is upset with Nina's condition because he likes to be alone, working in his office after 9 pm. He also thinks (incorrectly) that he is entitled to his wife, Nina, cleaning his office, and entitled to her doing so at *his* convenience, not at her own. However, he believes her to be sincere when she says she will stop cleaning his office and would rather give up his uninterrupted evenings than give up the free cleaning. So, he chooses for Nina to clean after 9 pm. However, he views her entrance as a violation – one that he believes that she gained by wrongfully coercive means. He does not view his compliance as consent. He

does not accuse Nina of violating his rights, he just silently complies, and lodges the complaint in his head – maybe to verbalize later. His internal state is directly incompatible with what Alexander calls consent.

Of course, Nina is not violating Mateo's privacy or property rights. She may tell him when she is available to do him this favor. When he tells her that he prefers she come in after 9 pm to clean rather than refrain from cleaning – he gives her permission and so prevents her entry into his office at 9 from being a rights violation.

When Consent is Not Transparent to the Consent-Giver:

Alexander does have a response to this concern. He first notes that he can handle cases in which someone believes they are being threatened (perhaps by the presence of a gun) but are mistaken, and are not actually under threat. In this case, there is no consent even though there is no coercion. However, in the cases like I proposed, the potential consent-giver's mistake is not about the existence of the threat, but about whether the content of the threat wrongs the potential consent-giver. He addresses these such cases as well. He says,

If [Vera] mistakenly believes she has a moral right that Alvin pay for her medical expenses, then she *does* consent to sex with him even when motivated solely by his offer to pay those expenses. Her state of mind can be thus construed: "If I have a right to X, then I am not forgoing objection to the boundary crossing; but if I do not have a right to X, then I am forgoing such objection." Because she does not have the right she believes she has, she is consenting.²⁶

This is quite a lot to imagine that a person complying to a coercive threat has in mind! Surely, Alexander does not mean that individuals, in scenarios like this one, are explicitly thinking something like he has detailed above. However, for even the basic meaning of Alexander's conditionals to be at work in Mateo's internal act, Mateo would need to be thinking something as detailed as this: "if I have a right to Nina cleaning my office at my convenience, then I am not giving her permission; but if I do not have such a right, then I am giving her permission."

Now, Alexander cannot plausibly think that the average person facing coercion (or what they think is coercion) would even *agree* to such a statement, if they were asked, let alone think of it on their own. After all, most people have not read up on coercion theory, and many people (philosophers and non-philosophers alike) probably unknowingly subscribe to a mechanistic view much like the *Voluntariness Compromising Account*, discussed and rejected early in this paper. Further, there may be people who would agree to the first conditional, but ardently believe that the antecedent of the conditional has been met, and so also do not intend (in fact, intend *not* to) waive their complaints, in virtue of this belief – much like Mateo.

The correct theory about the mechanism by which coercion undermines consent needs to allow that consent is not undermined by coercion (or by a conditional offer) just because the potential consent giver believes that his or her consent has been so undermined. In order to allow for this, the theory of consent itself needs to be one that does not depend upon consent being transparent to the consent-giver.²⁷

The nature of this problem reveals a drawback for any theory of consent that requires that someone giving morally transformative consent *believe* that she is granting permission. Note that some performative theories of consent share the drawback. On Tom Dougherty's communication theory of consent, consent requires common belief – a complicated criterion that *includes* the

belief on the part of the consent-giver that he has given consent.²⁸ Indeed, most performative theories of consent that also require an internal component of consent will face this problem.

I have shown that consent can occur even when it is non-transparent to the consent-giver. These cases pose a problem for Alexander and other certain other consent theorists. However, these cases also reveal a procedural error in my investigation into the relationship between coercion and consent. The questions (B) as I have framed it is: By what means does coercion undermine consent? Perhaps the more helpful mechanistic question to ask is: How does compliance under conditions of coercion *ever* amount to consent? Only after we know what it takes for compliance under coercion to ever transform the moral world can we figure out what stymies this transformation.

My own theory of the relationship between coercion and consent has two components. First, I offer an explanation for why and when compliance to a coercive demand (or a conditional offer) is ever consent. Second, I offer an explanation of how such compliance can fail to be consent. It is the second explanation that answers the mechanistic question – question B – into which I have inquired in this paper. However, the second explanation is grounded in the first.

An Explanatory Theory of Consent Under Coercion:

Here is an explanation of how it is the case that Mateo grants transformative consent to Nina such that she may enter and clean his office after 9 pm.²⁹ I do not argue that this process is the only means by which consent can be granted – just that it is the permission-granting operation involved when compliance to coercion (and perhaps compliance to conditional offers) grants consent.³⁰

Mateo deliberately selects a ranking of his options regarding Nina's behavior to communicate to Nina, the potential consent recipient. Importantly, this ranking does not need to reflect his preferences. It needs only reflect his autonomous selection of rankings for the purposes of communicating them to Nina – for her to integrate into her deliberations. There are various reasons why preferred rankings and rankings selected for communication might come apart. It is those he selects for Nina's deliberations that are relevant to what moral permission he might grant her through the act.

In the story above, Mateo's selected ranking is: (i) Nina enters and cleans his office before 9 pm. (ii) Nina enters and cleans his office after 9 pm. (iii) Nina does not enter and clean his office. Because of the context generated by Nina offering him the choice between no cleaning and cleaning after 9 pm, Matteo saying anything like, "after 9 then" intentionally and implicitly communicates the selected ranking, as I have numbered it. (At the end of this section I will explain why it is theoretically unproblematic to allow that the consent-rendering features of his communication are merely implicit.)

Even though Nina's imposed constraints limit his real options, his ranking of both the available and non-available options is an unhindered exercise of his authority. (Only certain types of deception, misinformation, or cognitive inability could compromise the authority exercise of ranking these options – and I am assuming here that he faces none of these impediments.) For this reason, the following is true. I will refer to it as: *Step 1. Nina could not do better in consideration of Mateo's authority over his domain by selecting an option lower on his ranked list than some other, higher option, nor could she do worse in consideration of Mateo's authority over his domain by selecting something ranked higher.* In virtue of Step 1, the following is true. *Step 2: Nina cannot do worse in consideration of Mateo's authority over his*

domain by undertaking (ii) than she would do by undertaking (iii). Further, (Step 3) she is in no danger of wronging Mateo due to authority considerations by undertaking (iii). After all, Mateo has no moral authority over Nina to clean his office in any case. I am assuming that she has made no promise to him to provide continued cleaning services and he is in no such great need of her help that it could ground a duty.

Following from the second and third steps we have, *(Step 4): Nina does not wrong Mateo due to authority considerations by undertaking (ii) – since moving from “not-wronging” to “wronging” Mateo due to authority considerations would involve doing worse in consideration of Mateo’s authority over his domain.* Next, I introduce a what I suspect needs thorough defense.

Consider *(Step 5) Any consent-related violation just is a wronging due to authority considerations.* Though there are numerous accounts in the literature about the central wrong/s involved in non-consensual actions, almost all of these accounts are grounded in the authority that a person is entitled to exercise over some domain – whether it is a physical domain, or some domain that spans a set of decisions that are not physically bounded (e.g. a domain of parental authority). Consent is only possible within moral domains over which someone can wield normative powers. As Feinberg says – consent only can be rendered, and a right waived, when a right is a discretionary right – such that right-holder can choose for it to serve as a moral constraint against another or not.³¹ Consent cannot prevent just any type of wronging. (For instance, it might not prevent ϕ from being an unjustified harming.)

I am assuming that a violation of someone’s discretionary right is a breach of their authority within a domain that they are entitled to control. In virtue of what we are entitled to control the domain is also a grounding feature that can explain the deeper wrongs of some rights violations. For instance, a rape might be dehumanizing due to the very basic human features that

ground the victim's entitlement to control her body, whereas a rights violation in the property realm might not be – though it is still disrespectful to one's standing as a property owner.³² No matter the reason why a person is morally entitled to authority within a domain, it is this authority that suffers a hit, undergoes a deprivation, when the domain is invaded. This characterization of consent is consistent with the accounts considered and contested in this paper.³³

If I have satisfied you with respect to the fifth step of my explanation - *Any consent-related violation just is a wronging due to authority considerations* – then the rest follows easily. (Step 6) *There is no consent-related violation in Nina undertaking (ii)*. I derive this from the fourth and fifth steps above. (Step 7) *Without Mateo's consent, Nina would be violating Mateo's rights by undertaking (ii)*. Of course, I am assuming that Mateo's office is really his own property or private space, and not some domain he shares with Nina. Finally, (Step 8) *Mateo consents to Nina undertaking (ii)*. This is derived from the sixth and seventh steps.

Importantly, Mateo's compliance must involve an active component – since all consent *does* something in the moral world and cannot be achieved passively (something about which even the internalists described in this paper agree). So, when I say, “compliance” I do not mean “failure to resist” Nina's entry, even if Mateo believes that a failure to resist will be interpreted by Nina as Mateo choosing to comply. I mean that Mateo deliberately expresses his choice to Nina. I will say “communicates compliance” to reflect this constraint. However, the internalist should feel free to interpret the feature that renders consent to be the internal choice to communicate compliance.

Here is a summary of my account, as explained in this section:

Consent Under Coercion: When B complies, under conditions of coercion, to “A doing ϕ in B’s domain,” B actually expresses a ranking of some set of A’s potential behaviors. Assuming that B is undeceived and cognitively unimpaired, then this expressed ranking just is a free exercise of B’s authority over his own domain, in relation to A’s behavior. The conveyed ranking authorizes A to do any ϕ in B’s domain ranked higher than something else A could do outside the domain of B’s authority (i.e. some β that A may permissibly undertake without B’s permission).

Of course, the second part of my account is an answer to the question: when does compliance under coercion fail to be consent? In section 5 of this paper, I explain this second part of my account and contrast it with the other theories of coercion and consent.

Before moving to this second part of my account, I want to turn to a potential concern I raised and set aside earlier in this section. Mateo’s compliance “After 9 pm then” implicitly expresses a ranking of Nina’s behaviors in the way I have described. What kind of theoretical problems might I encounter by suggesting that consent is encoded in the implicit part of a speech act or communication?

Implicit Clauses in Consent

When Mateo says, “After 9 pm then” he performs a speech act that includes an implicit ranking of ‘Nina cleaning his office after 9 pm’ over the option of ‘Nina not cleaning his office at all.’ I have referred to Mateo’s compliance, including the implicit ranking he expresses, as

either a speech act or a communication – because – depending on the theory of what renders consent, the speech act might require uptake by Nina in order to be successful (i.e. might need to be fully communicated).³⁴ From here forward, I am going to stay agnostic on that question and so just refer to Mateo’s compliance as a speech act.

First, you might wonder: How can Mateo’s expression of a ranking – implicit or explicit – count as a permissive speech act if Mateo does not *believe* himself to be granting Nina permission to come into his office after 9 pm? In this way, doesn’t my view run into the same problem as does Alexander’s? can a speech-act have implicit content? Second: can a speech-act grant permission by way of its implicit content?

The expression of a selected ranking is a kind of speech act. However, based on the standard taxonomies of illocutions introduced by philosophers of language, it might not constitute a *permissive* speech act. A permissive speech act is one whose illocutionary point (the thing one is trying to do by performing the speech act) is consent. When one communicates a ranking of preferences regarding someone else’s behavior, it is a speech act of *informing* or maybe of *directing*.³⁵ Importantly, speech acts can do the work of granting permission even if they are not permissive speech acts. For instance, I might give consent through a command (e.g. “Kiss my hand!” or “Come into my house and clean up this mess”) without performing a permissive speech act. The illocutionary point of these consent-rendering speech acts is to direct your behavior, and only has a subsidiary or instrumental end that is permissive. I might not have permission-giving among my recognizable objectives at all when I yell, “come in here and clean up this mess!” to the child who I believed threw a ball through my window. So, I might also grant a permission through an expressed ranking of another person’s behaviors, even if it is not specifically a *permissive* speech act.

Speech acts can be verbal or non-verbal, but also have implicit or explicit content. A helpful way of explaining how the implicit ranking is structured in a compliant speech act is to conceive of the implicit content as an “instead of” clause. Mateo explicitly says, “Come after 9 pm then,” and implicitly says, “I choose for you to come after 9 *instead of* not coming at all.” To explain how this “instead of” clause operates in my account of consent under coercion, it is helpful if I first explain how a particular type of implicit clause works in promise-making.

In making a promise, we can tailor the scope of the obligation that we incur explicitly, or else the scope will be tailored in various ways implicitly, by shared background understandings. David Owens points out that, if he promises to do something (e.g. help a friend move house) then there is a certain mutual understanding for what this means. It does not commit him to helping to move house if the friend suddenly decides to conduct the move at 2 in the morning, or during a tornado. After all, we live in a world with a set of shared background conditions for promises, and these are among them. He calls these “exclusionary conditions” on the promise – implicit “unless” clauses that the promisor assumes both parties understand as restricting the scope of the promissory content.³⁶ (The promisor might be wrong about the mutual understanding of the implicit clause – which could lead to various coordination problems, but would not change the fact that the promisor had intended the exclusionary condition, and the scope of the promise was altered by it.)

Similarly, when someone makes a speech-act that is potentially consent-rendering, the context can create mutual understandings – or things that the speaker might reasonably believe to be mutual understandings. Coercive threats are the very kind of thing that can generate a mutual understanding between parties as to what falls into the implicit “instead of” clause, because

threats make the alternative to compliance very salient. If a mugger puts a gun to your head, then your compliance clearly expresses the ranking: you may have the wallet instead of killing me.

Note that a promisor can eliminate an implicit “unless” clause through explicit communication. For instance, he can say, “through hell and high water, I will be there to help you move house.” Now, if he meant this seriously, and his promisee took him seriously, then it *would* be a breach of promissory obligation for him to stay home in the midst of a tornado warning instead of helping with the move (however justifiable the breach). Similarly, a coercee who really does want to consent, and not just comply with a demand, can explicitly remove the implicit part of the communication – something I’ll explain early in the next section.

I want to end this section by pointing out that while I have designed my account of the relationship between coercion and consent within the framework of speech acts, I have not ruled out a private, internal ontology of consent. For instance, the action that counts as consent, under conditions of coercion, might be the expression of the ranking – in which case, consent is a speech act (verbal or non-verbal, implicit or explicit). However, it might also be the selection-for-communication of that ranking – the internal events that would make the speech act sincere and voluntary (and so allow it to be felicitous) might themselves be the events that constitute consent. So, while I will refer to the consent-giving action in what follows as a speech-act, or sometimes for specifically as an expression of a ranking, you may also read what follows and assume that it is the internal selection-for-expression that is the consent-giving event. As my theory relates to the relationship between coercion and consent, it should not make a difference.

5. When Coercion Undermines Consent

Let us begin by recalling my account of when compliance to coercive demands is ever consent:

Consent Under Coercion: When B complies, under conditions of coercion, to “A doing ϕ in B’s domain,” B actually expresses a ranking of some set of A’s potential behaviors. Assuming that B is undeceived and cognitively unimpaired, then this expressed ranking just is a free exercise of B’s authority over his own domain, in relation to A’s behavior. The conveyed ranking authorizes A to do any ϕ in B’s domain ranked higher than something else A could do outside the domain of B’s authority (i.e. some β that A may permissibly undertake without B’s permission).

The second part of my account is an answer to the question: when does compliance under coercion fail to be consent? We have no reason to consider compliance under coercion to be permissive consent when one of the features is missing that explains why such compliance ever *does* count as consent. Here are two ways that an explanatory feature could be missing. These are not meant to be comprehensive of all the ways that compliance to a coercive demand can fail to be consent.

- i. B’s compliance to “A doing ϕ ” under coercion expresses a ranking that – because of cognitive impairment or deception - does not represent a free exercise of B’s authority in his domain. In this case, the speech act has no authorizing power. Of course, the explanation for why compliance is not coercion when an agent is

- cognitively impaired probably does involve moral debilitation (either of the agent's power to change the moral world or of his speech act's power)
- ii. B's compliance to "A doing ϕ " under coercion expresses a ranking that does not include any action A might undertake outside B's domain of authority, or does not rank any such action *under* "A doing ϕ ."

It is this second reason why compliance under conditions of coercion ever fails to be consent that is of interest to me in answering question (b): how does coercion undermine consent?

In the central case of Section 4, Nina threatens to stop cleaning Mateo's office at all if he does not let her clean it after 9 pm. Mateo complies and, in so doing, expresses a ranking of Nina cleaning his office after 9 over Nina carrying out her threat. However, in that case, the content of Nina's threat is something that she can undertake outside of any domain of Mateo's moral authority. She does not need Mateo's permission at all to refrain from cleaning his office. However, what if the content of the threat – the reference of the "instead of" clause implicit in the compliance is within the domain of the coercee's moral authority? Recall when Anne threatened to kill Frederick if he did not have sex with her. His compliance implicitly communicates: Have sex with me rather than killing me. When the content of the threat is something that is a wrongdoing, then the coercee's compliance communicates a ranking of two options that, without consent, are rights violations – and breaches of the coercee's entitled authority. Hence, unlike with Nina – the lower ranked option that Anne might undertake is a wrongdoing and is a wrongdoing in virtue of that authority to which Frederick is morally entitled within the domain of his body. All that Anne acquires with Frederick's compliance is a moral reason – stemming from Frederick's exercise of authority manifest in his expressed ranking – to

have sex with him rather than kill him. She does not have Frederick's moral permission to do either one of these things.

Is Frederick morally debilitated? No – the communicated ranking, which is implicit in his compliance because of the salience of her threat, does not render consent to Anne. However, as I mentioned in the last section when discussing implicit clauses, Frederick can always intentionally and explicitly alter the content of his speech act to Anne and remove or alter the implicit ranking expressed.”³⁷

My answer to question (B) – what is the mechanism by which coercion undermines consent – is different than all of the others accounts we have examined. However, so far, it seems as though the types of coercion that trigger the mechanism – the answer to question (A) – is the same as those that trigger the *Undermining Authority* mechanism. The advantages of my mechanistic approach will become apparent when considering the cases that posed problems for the other views – and reveal a quite unique answer to Question (A) as well.

Handling Cases of Third-Party Coercers:

How does my response to the mechanistic question handle the third-party cases considered in this paper? I will start with the case of the third-party coercer, which was the crux of my more general objection to moral debilitation views. I will then consider cases of third-party targets of threats – the subset of moral coercion cases that I thought posed a particular problem for the *Undermining Authority* mechanistic account.

On my view, in *Third Party Gunpoint*, when Ajay threatens the lives of Bea and Carlos if they do not have sex with each other, and Carlos agrees to have sex with Bea, the result is that

Bea is granted a permission, such that she is not infringing on Carlos' sexual rights by having sex with him (nor is he violating hers). Carlos autonomously ranks sex with Bea above all other options available to Bea – namely, death - and conveys that ranking to Bea. She does *better* by him, in terms of his authority over the realm of his body, to have sex with him than not – given the constraints imposed by Ajay. Because she can – without entering the domain of his authority – undertake something lower on his ranking than sex, she is authorized to have sex with him. So, Carlos ranking sex over the content of Ajay's threat grants Bea sexual consent for the same reasons that Mateo's communicated ranking granted Nina permission to enter and clean Mateo's office after 9 pm.

Notice that, unlike the accounts of moral debilitation, my account does not render Carlos child-like in his moral powers just because he is the victim of coercion. He is still capable of giving morally transformative consent to Bea in light of the circumstances – consent that changes her moral duties with respect to him.

If Bea had the ability to subdue Ajay and take away his weapon with no risk or cost to herself or others, then her scope of available options, as they pertained to Carlos, would be broader. If Carlos' right to body and life entitles him to Bea's rescue when it is easy or costless – and I believe he is so entitled – then Bea would wrong Carlos by both not having sex with him and allowing Ajay to kill him. So, his expressed ranking of sex instead of death would not amount to sexual consent, in this case.

Let us return to the initial case and assume that Bea cannot subdue Ajay. In *Third Party Gunpoint*, Carlos' speech act amounts to consent for Bea, giving Bea permission to have sex with Carlos. This does not mean that Carlos gives Ajay permission to interfere with his sexual decision making. While it might not be correct to say that Ajay rapes Carlos, it might still be

correct to say that Ajay violates Carlos' sexual rights. The fact that Carlos agrees to have sex with Bea instead of being shot by Ajay constitutes consent for Bea, but not consent to Ajay's sexual interference.

My account of the relationship between coercion and consent explains the difference between *Third Party Gunpoint* and *Third Party Gunpoint**. In *Third Party Gunpoint**, Carlos does not give any compliance that is even a candidate for consent. In fact, he selects to die rather than to have sex with Bea – making it somewhat better for Bea to refrain from sex, given considerations arising from his authority over his body. Of course, there are weighty, competing reasons that probably would justify or, at least, excuse Bea if she did infringe his sexual rights in this case. Again, I will not say anything conclusive on that question. However, even if she is justified in having sex with him, he has not given her permission to do so – and that is what makes this case morally different from the first.

Regarding the distinction between *Third Party Gunpoint* and *Third Party Gunpoint**, my own theory does better than the moral debilitation accounts. It is also worth noting the difference between my view and Alexander's here. Recall from Section 4 that I drew another distinction between two possible internal events occurring for Carlos in *Third Party Gunpoint*. In the first, Carlos thinks to himself, "yes, in light of the circumstances and what I have decided, Bea has my permission to have sex with me. I waive my complaint against her." In the second, Carlos thinks, "Bea is violating my sexual rights by having sex with me in these circumstances. Of course, I complied rather than have Ajay kill us. But Bea nonetheless does to me an unspeakable wrong." On Alexander's view, Carlos' internal reckoning alters the moral facts about whether he has given consent. On my view, it does not. The compliance, the autonomously selected ranking of Bea's behavior that it conveys, combined with the features of Bea's real alternatives together do

the work of transforming the moral world. Carlos' perspective on whether he has given consent might affect the degree to which he is harmed by Ajay's violation of his bodily rights. However, it does not by itself stymie his consent to Bea.

Handling Threats with Third-Party Targets:

Consider the case in which Anne threatens to torture her dogs if Frederick does not have sex with her. In this case, Frederick intentionally conveys a ranking of Anne's behaviors; he chooses to have sex with Anne instead of her torturing her dogs. The problem that the *Authority-Undermining* mechanistic account faced was that it could not claim that Frederick's ability to exercise his full range of authority was compromised by the threat. Her threat to torture dogs is deliberately significant to Frederick, but it does not constrain the realm of his entitlements. The wrong Anne threatens to do to her dogs is completely outside the purview of his own domain of authority.

Cases of threats with third-party targets come in many varieties – and I think that there is a three-way distinction that maps onto a set of morally interesting differences in such cases. Here I present three cases (that all deal with human targets):

- *Third-Party Target, A:* The threat, if carried out, wrongs a close third party. Anne threatens to injure or kill someone Frederick knows well, perhaps a friend or family member if he does not have sex with her. There are other things that might bring someone into the realm of “close” – like physical proximity, if the target is a coercee's neighbor, or is standing right in front of them, listening to everything that transpires.

What matters is that there is some significant tie between the victim and the person who stands to be wronged.

- *Third-Party Target, B*: The threat, if carried out, wrongs a distal third party/stranger. Anne threatens to kill someone with no ties (or no significant ties) to Frederick.
- *Third-Party Target, C*: The threat, if carried out, harms without wronging a close third party (close or distal).

The reason that I have distinguished between close and distal third parties is because Larry Alexander does so. He admits that he does not handle threats with third-party targets within his account of consent and coercion. However, he says that whatever is the correct theory of coercion and consent must result in a difference between threats that target close and distal third-parties. In order to so conclude, he must hold that a person does not internally waive his complaint against a coercer who secures his compliance by threatening to wrong/harm a close third party but does so waive his complaint if the third party target is distal. It is not clear what Alexander might say to defend such a position except perhaps a psychological hypothesis.

The distinction between close and distal third parties might provide some theoretical opportunities for both my own view and the *Undermining Authority* account of coercion and consent. Perhaps Frederick has a right against being emotionally harmed in an unjustified way, as he would be if Anne seriously wronged someone he loves (e.g. if she killed or injured his loved one). In fact, if Frederick would be emotionally harmed by Anne killing a stranger as the result of his sexual decision, then threats to wrong distal third parties could also undermine consent.

This explanation might extend our set of real, moral rights beyond the set that most rights-theorists endorse. We do not usually take our rights to be violated (and certainly we do not take our domain or entitled authority to be infringed) whenever a loved one is wronged or harmed in a way that hurts us emotionally – even if the emotional harms that result from such wrongdoing are intended by the wrongdoer. I also worry that threats to third parties can undermine consent even in circumstances where the coercee is motivated to comply because of the threat (i.e. it is deliberately significant) but does not find the prospect of the threat being carried out to be emotionally harmful. You can imagine that Frederick finds himself to be morally motivated by the threat without being emotionally motivated.

Fortunately, I think this proposal is not necessary for explaining how third-party coercion can sometimes undermine consent. My own handling of the cases does not distinguish case A from case B, provided the threat Anne uses in each case is deliberately significant to Frederick.

Let us assume that when Anne threatens to wrong a third party, Charlie, if Frederick does not have sex with Anne. Anne does not threaten to do anything within the domain of things over which Frederick is entitled authority. Frederick has access to all those options to which he is morally entitled. None of his options are now tied to an unjustified emotional harm, because he knows he will not be emotionally harmed if Anne wrongs the third party. If we applied my account of standard cases of coercion straightforwardly to cases of *Third Part Target, B*, it would seem to have the following result. By complying to Anne's threat, Frederick conveys: Regarding your duties to me, I choose that you have sex with me rather than that you do a wrong – and violate the rights of Charlie. This might appear to authorize Anne to have sex with Frederick since the option is ranked higher than something outside the domain of Frederick's authority.

However, it seems to me that the context of coercion involving a threat of wrongdoing to a third-party changes the implicit content of Frederick's speech act of compliance. In every case, Frederick's compliance to coercion conveys an implicit "instead of" clause between at least two of Anne's potential behaviors. For instance, in an earlier example he implicitly conveys "have sex with me instead of killing me." When Frederick's decision to comply under coercion is made in consideration of his own interests and objectives – then it makes sense to interpret his implicit "instead of" clause as ranking of Anne's potential behaviors, their order bestowed as an exercise of his own authorizing discretion. If Anne's potential behaviors on either side of the "instead of" clause are both wrongings of Frederick, then the wrongdoing on the left is better – from the perspective of Frank's authorizing discretion – then the wrongdoing on the right. Whereas, when Frederick decides to comply under coercion for the sake of someone else's interests and objectives, weighed against his own, then the implicit "instead of" clause means something else.

Consider famous stories of self-sacrifice in which a hero asks a villain to take him/her in the place of the villain's intended victim. In the fairy tale, Beauty tells the Beast to lock her up in the place of her father. In the fantasy series by J.K. Rowling, Harry Potter's mother, Lily, tells Voldemort to kill her instead of killing Harry. In real life, ordinary heroes tell villains to "take me instead." We do not understand these as permission-giving trades. They are trades of one's own *victimhood* for another's. This is why Lily is still Voldemort's murder victim, and why Beauty is the Beast's kidnap-victim after her father's release. Similarly, when Frederick complies and selects sex with Anne over Anne wronging of Charlie, Frederick is choosing to convey: Take me instead.

His implicit "instead of" clause is different from those used in normal cases of compliance to coercion. He is not thereby exercising his authority over the domain of his body

by conveying a ranking of Anne's potential behaviors. If he conveys a ranking at all, it involves a set of options for Anne to undertake between which he has no moral authority – since any option that wrongs Charlie must invade some domain over which Charlie has authority.

One thing that makes it clear that the “instead of” clause does not do the same kind of moral work in these cases of self-sacrifice is that the decision of the self-sacrificing person does not change the moral reasons relevant to the coercer or villain's choice, *as pertains to the self-sacrificing person*. When Belle volunteers to be the Beast's victim, the Beast does not do any better with respect to what he owes Belle to imprison her instead of her father.

On my account, compliance in the face of threats that wrong third party targets is not consent. I have explained this by suggesting that the implicit content of compliance to these threats is different than the implicit content involved in compliance in normal cases of coercion. It's moral effects are also different.

Is my theory counterintuitive because it treats distal third party targets in the same way it treats close third party targets? I do not believe so. Consider if Lily said, “take me instead” for a stranger's child whom she did not know or love, but perhaps considered the death of any child to be a worse outcome than her own death. Consider if Beauty exchanged herself as prisoner to take the place of a sick stranger, so that he might go home and get better. We would not think that these sacrifices were better candidates for consent than those in the original stories. Similarly, I do not think that we should find it striking that a Frederick's compliance does not amount to consent if Anne secure his compliance by threatening to kill or injure a third party.

What about *Third-party Target, C*? Imagine that Anne tells Frederick that she will dissuade all of her neighbors from shopping at Charlie's store by criticizing the merchandise if Frederick does not have sex with her. (Her threat is credible because she is a popular celebrity,

let us say.) Let us assume that the content of the threat is permissible (because her poor appraisal of the merchandise is sincere). Even if it is impermissible for a very influential person talk badly about someone's merchandise, let us still assume that it does not infringe rights held by Charlie, and that he is not entitled to Anne refraining from such speech.

This is a hard case, because the third-party target still stands to be a victim, not of a wronging, but of a serious harming that could be deliberately significant in Frederick's considerations about whether to comply. Frederick's compliance communicates, "take me instead" – but what gets traded is not a victimhood to a wronging or a violation of rights, but victimhood to a harming. Of course, if Anne's harming of Charlie is permissible, then it is probably permissible because of her entitlement to talk honestly in the company of her choice, or to advise others of what she believes to be in their interests (e.g. to avoid Charlie's merchandise). These justifications do not apply to her harmful sexual advances on Frederick. So, while she commits no rights violation against him, she might nonetheless commit an unjustified harm, and so act impermissibly.

Conclusions:

In this paper, I set out to answer the question: how does coercion ever undermine consent? I first considered those accounts of the undermining mechanism that include moral debilitation – the process by which some coercive threats take away a coercee's ability to change the moral world through the power of consent. I argued that specific theories involving moral debilitation face problems related to threats that target third parties and to demands that target

third parties. I then argued that all accounts involving moral debilitation face a problem handling cases of third-party coercers.

Next, I considered an internalist account – that of Larry Alexander – which interestingly proposes a theory of coercion’s effect on consent that does not rely upon a debilitating moral mechanism. However, his theory gave rise to an interesting and more basic question about coercion and consent: how is it that compliance to coercion *ever* counts as consent? Though this is never the way that the question is framed when philosophers discuss the relationship between coercion and consent, I think it is the best way to investigate the relationship between coercion and consent – given that the intended meaning of a coercee’s compliance rarely shares the features that most theorists consider central to the act of rendering consent – whether taken to be an internal act, or an act of intentional communication, or both. By starting my own account by answering this question – and supplying an explanation of how compliance to coercion is ever consent – the answers to the mechanistic question (B) of how coercion ever undermines consent were clear.

Consent under coercion is possible when a coercee, B, complies to a coercer’s, A’s, demand in order to avoid A carrying out the content of her threat, which must include only behavior that does not require B’s moral authorization. Importantly, when B selects compliance over the content of A’s threat, this ranking must be a full exercise of the B’s own authority in the domain in which B is entitled discretion. When the ranking is just such an exercise of B’s authority, then A cannot do *worse* by B, with respect to B’s authority, by choosing an option for A’s own behavior that is ranked higher on the list made by B. Since A needs no moral authorization from B to carry out the content of her threat,

Coercion undermines consent when it stymies that explanation by which compliance to coercion is ever consent. I have suggested two routes by which that might occur and, here in my conclusion, I will propose a third. First, threats with coercee-wronging content, where the threat is deliberately significant to the coercee, can prevent a coercee's compliance from being consent. In such cases, B's compliance implicitly includes a ranking A's behaviors – 'behavior A will undertake if B complies' over 'behavior A will undertake to carry out her threat.' B does not rank any behavior A might undertake that does not require B's authorization *under* the behavior A undertakes when B complies. So, even if A cannot do *worse* by B in choosing a higher item on B's list, this fact does not confer consent, since even the lowest item on the ranked list is impermissible for A to undertake without B's consent.

Second, threats to wrong a third party can undermine a coercee's consent. In these cases, I argued that B's compliance does not implicitly include a ranking of A's behaviors, but instead an agreement to substitute one's own victimhood for the third party's – implicitly holding fixed the wrongfulness of A's behavior.

I will end my paper by suggesting one more way that coercion might undermine consent. Sometimes a victim of coercion truly is debilitated from changing the moral world through the power of consent. I raised this prospect at the beginning of Section 5 – explaining that if a coercee is deceived or cognitively impaired then the ranking implicit in his compliance cannot count as an exercise of his moral authority. Of course, deception and cognitive impairment are not effects that *coercion* usually has upon its victim. However, consider an alternative variant to cases used throughout this paper. Imagine that Frederick is so frightened when Anne threatens him that he cannot think clearly – he cannot rationally deliberate about his alternatives. In this case, it hardly matters what is the content of Anne's threat, because she has impaired his

cognitive capacities. Consider a similar variant to *Third Party, Gunpoint*. If Ajay's coercion caused Carlos so much fear and confusion that he cannot, in an unhindered way, select a ranking of options to communicate to Bea (and so, his compliance cannot reflect an autonomous selection) then his compliance does not constitute consent – for reasons related to cognitive inability. Carlos really would be morally debilitated – much as if he were drunk, or cognitively immature.

There is another force besides fear or intimidation that might debilitate a victim of coercion. Sometimes a coercer imposes a threat without meaning to do so – and the coerced person cannot escape the threat unless she complies in such a way that involves communicating agreement unconditional on the circumstance of threat. For instance, imagine an employer sexually propositions an employee. He does not announce a threat, but the employee knows that her career will suffer unjustifiably if she refuses because the employer has a vindictive personality. He does not intend a conditional threat now. However, he will form an intention to do what wrongs her once she spurns him. In this case, part of what the employer is coercing the employee into doing is performing sexual desire. This performance, in turn, allows him to interpret her compliance without any implicit “instead of” clause. She knows that he will interpret her agreement to have sex without any such clause. Now, in this case, the coerced employee is not herself morally debilitated from giving real consent. However, her actual speech act or, whatever signal would normally communicate her decision to comply – is itself constrained in such a way that prevents it from being the conveyance of an autonomously selected ranking. In this way, her speech act is vitiated of moral power.

I think it is worth noting that some circumstances of coercion involve threats so intimidating that they do impair an agent's rational capacities. Sometimes there are punishments

associated with noncompliance that go unacknowledged by the person who imposes them. The cases that I have described in these concluding remarks probably are not true cases of volitional coercion - since they lack either volition, on the part of the coercee, or the intentional strategy of coercion, on the part of the coercer. For these reasons, they are not within the purview of this paper. However, due to these cases, I cannot conclude that coercive threats never undermine consent through a mechanism of moral debilitation. Sometimes they clearly do so.

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Footnotes

1 Many authors characterize the wrong committed by someone who fails to secure consent in one of these various ways. Some favor describing these cases as the interference in autonomy. See, for instance, Zwolinski, Matt. (2007). “Sweatshops, Choice, and Exploitation” *Business Ethics Quarterly*, Volume 17, Issue 4. Some favor describing these as the trespass into a domain of authority or discretion. See: Owens, David. *Shaping the Normative Landscape*. Oxford University Press: 2012; Also, Pallikathayil, Japa. “The Possibility of Choice: Three Accounts of the Problem with Coercion.” Volume 11, No. 16. 2011. Most others describe consent as rights-waiving and so describe the relevant wrongdoing as a violation of rights – however that wrongdoing is otherwise characterized or grounded. (See, for instance, Dougherty, Tom. 2013. “Sex, Lies, and Consent.” *Ethics*. Vol. 123; No. 4. P. 717-744; Hurd, Heidi. “The Magic of Consent.” *Legal Theory* 2 (1996): 121-146; Raz, Joseph. 1981. “Authority and Consent.” *Virginia Law Review* 67: 103–31; Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, MA: Harvard University Press: 1990; McGregor, Joan. *Is It Rape? On Acquaintance Rape and Taking Women’s Consent Seriously*, (Ashgate: Ashgate Publishing Limited) 2005.

2 See Hurd (1995) and Alexander, Larry. “The Moral Magic of Consent II,” *Legal Theory* 2 (1996): 165-174 for views of consent that characterize it as a formed intention.

3 One does not have to be a utilitarian to think this is true. W.D. Ross, for instance, proposes a prima facie duty of benevolence that arises just in virtue of standing in a relation to someone such that you are poised to increase her wellbeing. See Ross. W. D. (1930) *The Right and the Good* (Oxford: Oxford U.P.) Ch. 2.

4 Note that this is different from what we might say about the effects of alcohol on one’s moral responsibility or blameworthiness. If a drunk person, rendered childlike in her capacities, drove her car home from a bar and hurt a pedestrian, then we would think that she was more blameworthy and morally responsible. It is important to distinguish the circumstances that undermine consent from those that exculpate bad behavior – something I will discuss at more length later in the paper.

5 See Pallikkathayil, 1.

6 There is one other type of volitional coercion that I will not discuss here – one wherein a coercer does something that makes the threat imminent and unpreventable, except by a coercee doing what the coercer wants him to do. For instance, Saba Bazargan (3-4) gives a case of a coercer who throws a bomb near thirty school children, forcing the coercee to pick up the bomb

and throw it in the only other available direction, killing one adult. See Bazargan, Saba. (2014) “Moral Coercion” *Philosopher’s Imprint*. Volume 14, No. 11.

7 Not all legal penalties give rise to unproblematic coercion by the state, of course. However, the focus of this paper will be volitional coercion implemented between individuals, not the state.

8 Feinberg, Joel. (1986) *Harm to Self*, New York: Oxford University Press, especially chs. 23–24. This description is also in keeping with Robert Nozick’s account of coercion as a manipulative strategy. Nozick, Robert. 1969. “Coercion,” in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, Sidney Morgenbesser, Patrick Suppes, and Morton White (eds.), New York: St. Martin's Press, 440–472.

9 For this reason, I take the third-party coercion cases that I use in my criticisms of moral debilitation accounts to be distinctly different from the cases Mollie Gerver handles in her excellent paper, “Consent and Third Party Coercion.” *Ethics*, forthcoming.

10 A variant of this example is given by Sarah Conly. See Conly, Sarah. “Seduction, Rape, Coercion.” *Ethics* 115 (October 2004): 96-121.

11 Ibid. 98

12 For instance, see Wertheimer, Alan. “The Moral Magic of Consent II,” *Legal Theory* 2 (1996): 89-112.

13 Pallikkathayil herself believes that, through this mechanism, coercion undermines any normative power, including successful promise-making (2011: 14-15).

14 Korsgaard, Christine. “The Reasons We Can Share: An Attack on the Distinction between Agent-Relative and Agent-Neutral Values”, *Social Philosophy and Policy* 10 (1993): 24–51. Also, “The right to lie: Kant on dealing with evil”, in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press) 1996.

15 Pallikkathayil, 8

16 Pallikkathayil thinks that this is so, unless the removed options truly would have played no role in the coercee’s deliberations, had they not been removed. She suggests that coercion does not undermine consent if the removed options have no deliberative significance. (2011:13-14)

17 Pallikkathayil, 13.

18 Pallikkathayil, (2011: 16-19)

19 Feinberg, Joel (1986) 198.

20 Bazargan, Saba. (2014) “Moral Coercion” *Philosopher’s Imprint*. Volume 14, No. 11.

21 Pallikkathayil: 12.

22 Joseph Millum discusses third party cases of coercion. However, his analysis of consent in third-party coercion cases is not different from in two-party cases. Instead, he introduces an approach for determining the justification conditions for accepting an agreement from someone whose consent has been undermined through a third party's coercive pressure – something that is especially useful for topics that arise in biomedical ethics, a main realm of inquiry for Millum. See Millum, Joseph. “Consent Under Pressure: The Puzzle of Third Party Coercion.” *Ethical Theory and Moral Practice* 17 (1):113-127 (2014). Is there any route available to the moral debilitation theorist for suggesting that – in virtue of some difference related to consent – or the moral features that make consent important – the two cases described in this section are different? In developing his account of “ameliorating consent,” Dougherty suggests that an act of agreement or compliance, even when falling short of being full consent because it does not grant another person a permission to act, might still change the world such that it reduces the wrongfulness of the other person *acting on* agreement or compliance. In this case, they have not committed a full-fledged wrong of nonconsensual behavior. They have committed this second wronging instead.

Second, the agent can wrong the individual by being guided by a choice that the individual makes and expresses because they are not in sufficiently favorable circumstances. This at least causally connects the individual's choice and the agent's behavior, but it fails to satisfy the individual's claim to determine under sufficiently favorable conditions how the agent behaves.

However, Dougherty says that there is some reduction in the favorability of circumstances that really does make a coerced agreement as wrongful as the same act that involved no agreement whatsoever – a threat of murder falls into this category of being completely unfavorable. See Dougherty, Tom. “Sexual Misconduct on a Scale: Gravity, Coercion, and Consent,” forthcoming in *Ethics*. Now, a moral debilitation theorist might take Dougherty’s idea and employ it to point to the difference that *any* agreement makes. They might say that Carlos’s choice makes it *better* for either Bea or Ajay to choose the option of Bea having sex with Carlos than for them to choose the option of Ajay killing Carlos, in *Third Party, Gunpoint*. Zwolinski (691-693) makes an argument like this – pointing out that the exercise of a coerced person’s autonomy makes it the case that – in the view of autonomy considerations – the coercee-selected option is a lesser wronging than going with the option that the coercee selected against. If Carlos chose not to comply then – in view of autonomy considerations (and perhaps only autonomy considerations) – selecting ‘Ajay kills Carlos’ is the lesser wronging. This sounds fair to me – and, indeed – I employ an argument that contains some overlapping features. However, this does not provide a robust solution to a theorist of moral debilitation. After all, in whatever respect the wee bit of autonomy involved in Carlos’s sex-selection improves a horn in Bea’s moral dilemma, it is only the same improvement gained by Ajay from Carlos’ choice – that is, pretty much nothing. For Carlos’ choice to have an effect on Bea’s permissions that is not gained by Ajay, we need to move away from a moral debilitation account of coercion and consent, and consider instead what makes a coerced person’s morally powerful exercise of autonomy unavailable – as consent – to the person imposing a threat.

23 Alexander, 165-174

24 This solution to the question of how coercion undermines consent, when it undermines consent, is available to some but not all theorists who propose internal accounts. For instance, Kim Ferzan, who describes consent as an internal decision that “you may” would be free to adopt it. See Ferzan, Kimberly (2017): 404-411 However, Heidi Hurd, who describes consent as a particular intention schema toward the action itself – one that need not be paired with an internal decision to permit the action – would not be free to adopt this solution.

25 These cases are more readily available outside the coercion literature – as when an individual who wrongfully believes themselves to be underage or intoxicated – believes that their own consent is undermined by these circumstances, though they otherwise render a sincere expression of a decision to consent and mean the other person to believe them to be consenting.

26 Alexander, 173.

27 Is the moral realm of coercion the only place in which we think that consent can be granted in a manner non-transparent to the consent-giver? Perhaps not. Consider a case in which an 18 year old believes herself to be only 14, because of a mistake in her birth documentation passed along when she was adopted. She is not cognitively delayed in any way. However, when she agrees to have sex with a 25 year old partner, she believes that her consent is undermined by her immature age. I think that most of us would agree that her consent, unbeknownst to herself, *is* morally

transformative. I will not analyze this case. I just want to describe it in order to point out that the non-transparency of consent arises in moral realms outside of coercion.

28 Dougherty, Tom. (2015) “Yes Means Yes: Consent as Communication” *Philosophy and Public Affairs*. 43(3): 224-253.

29 You might be uncomfortable calling Nina’s speech act to Mateo a “threat.” If so, then come up with something you do consider to be a threat, but that does not undermine Mateo’s consent to Nina entering his office. Substitute your example throughout. For example, “Nina threatens to regularly wear a perfume Mateo detests if he does not let her clean his office.” All that is important is that Mateo believes that Nina’s threat undermines his consent, but it actually does not. My worry about using any particular example like this myself is that some of my readers *will* think there is an entitlement held by Mateo against Nina’s wearing unpleasant perfume (probably a different set of readers for each potential example of a minor threat).

30 I argue elsewhere that consent can be rendered in many different ways, as long as it is the wielding of a normative power (rather than the forfeiture or circumstantial loss of an entitlement) characterized by the discretionary feature of the entitlement, and has the effect of turning another person’s ϕ from something that would be a breach of the authority conferred by the entitlement into something that would not be such a breach.

31 Feinberg, Joel. “Voluntary Euthanasia and the Inalienable Right to Life,” *Philosophy & Public Affairs* 7 (1978): 93–123.

32 Shafer, Carolyn and Marylyn Frye. "Rape and Respect" in Mary Vetterling-Braggin, Fredrick Elliston & Jane English (eds.), *Feminism and Philosophy*. Totowa, NJ: Rowman & Littlefield. pp. 333-346 (1977)

33 The only consent theorists that might potentially object to my characterization are those that say of particular, non-consensual acts – like rape – that the primary wrong is an experiential harm. However, even Alan Wertheimer, who famously defends a theory like this one, believes that the extreme harmfulness of rape arises from a deep human interest in having control over our sexual and reproductive organs. Of course, the way that human interest is promoted is by persons being recognized and respected as the choice-makers over that important domain. See: *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003). Also see, Franklin G. Miller and Alan Wertheimer, "Preface to a Theory of Consent Transactions: Beyond Valid Consent," in Franklin G. Miller and Alan Wertheimer (eds.) *The Ethics of Consent: Theory and Practice*, (Oxford: Oxford University Press, 2009), pp. 79-106.

34 For instance, Tom Dougherty argues that consent does require successful communication (2015) whereas Victor Tadros argues that it might need to be expressed with the intent to communicate – on the part of the consent-giver, but need not receive uptake by the person who gains permission from the consent. See Tadros, Victor. *Wrongs and Crimes*. Oxford University Press. (Oxford: 2016). See also Dougherty's response, "On Wrongs and Crimes : Does Consent Require Only an Attempt to Communicate?" Tom Dougherty - 2019 - *Criminal Law and Philosophy* 13 (3):409-423.

35 See Austin, John Langshaw. 1962, *How to do things with words* (2nd ed.), Oxford: Oxford University Press. See Bach, Kent, & R.M. Harnish, 1979, *Linguistic communication and speech acts*, Cambridge, Mass.: MIT Press. Searle, John. (1985) *Expression and Meaning: Studies in the Theory of Speech Acts* Cambridge University Press: Cambridge;

36 Owens, 229-230

37 Of course, sometimes these kinds of utterances are part of what is being coerced. If Frederick thought that he *had* to explicitly say this in order to escape death, then it would not be a communication that anymore reflected his autonomously selected ranking of options.