

B's needs or what is necessary for B's flourishing, particularly if A is in a position to provide for those needs. Sample suggests that if I enter into a transaction with a bank teller, I treat her with disrespect if I 'tolerate wages upon which she cannot decently live' (p. 69). Now it is not clear why the mere fact that A enters into an arguably limited transaction with B requires A to be quite so responsive to B's life needs. Indeed, it is not clear to me that employers exploit their workers when they fail to provide them with an adequate income. This issue needs much more theoretical work, but I would simply note that the earned income tax credit reflects a different and arguably more attractive principle, namely, that it is *society's* responsibility to provide an adequate income for those who work, but that it is not necessarily the responsibility of a particular employer to do so, particularly when an employee may not be sufficiently productive to make it profitable to pay her a 'living wage'.

Second, Sample argues that A exploits B when A gains advantage from an interaction that arises from an injustice. I disagree. Suppose that B needs A's help as a carpenter because someone has maliciously destroyed B's home. Although A takes advantage of this injustice, I can't see that A acts wrongly if A is charging a fair price for his services. He takes advantage of unfairness, to be sure, but he does not take unfair advantage of unfairness. Sample says that my account of exploitation allows us to say that non-exploitative interactions can occur in the context of injustice, but not that those interactions are themselves exploitative (p. 61). Not quite. I argue that interactions that occur under unjust background conditions are not *necessarily* exploitative simply because the background conditions are unjust, and that we should often focus on the injustice of the background conditions and not displace our moral concern onto the interaction itself. Sample regards this as a defect of my account. I regard it as a virtue.

I have focused on the theoretical structure of Sample's views rather than the application of those views to the family and globalization. My reservations notwithstanding, this book raises many important questions and should be read by anyone interested in the concept of exploitation.

ALAN WERTHEIMER

University of Vermont

doi:10.1017/S0953820807002518

Alan Wertheimer, *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003), pp. xv + 293.

Those interested in sexual ethics or the nature and moral significance of consent would benefit from a careful reading of Alan Wertheimer's *Consent to Sexual Relations*. The fundamental question of the book is this: when does a woman give valid consent to sex? This question is notable for its gender-specific character and its emphasis on *valid* consent rather than consent as such. Both features are deliberate and may identify what is most controversial in Wertheimer's book.

Wertheimer opens with a review of legal controversies meant to highlight the need for a general theory of consent to sex. He then examines the psychology of sex, arguing in support of the conventional notion that 'women have what men want', and that it is therefore *women's* consent that is the key issue. He seeks to explain these gender dynamics in terms of evolutionary psychology, offering a standard socio-biological account of sexuality. Wertheimer then uses this framework to critique some common views on rape (e.g., the view that perpetrators desire domination, not sex) and to argue that because women potentially invest so much of their reproductive future when they have sex, we would expect evolution to favour in women a psychology that places a high stake in avoiding non-consensual sex. Thus, the psychological distress of non-consensual sex should be especially significant for women.

Much here warrants critical challenge, but these chapters are only preliminary. It is when he turns to the moral and conceptual analysis of consent that Wertheimer is at his best, displaying formidable analytic skills and apt use of hypothetical cases. His focus on valid consent is grounded in two observations. The first is that consent can be morally or legally transformative: What would be impermissible for A to do to B in the absence of consent becomes permissible when B consents (bracketing, as Wertheimer does, effects on third parties). Wertheimer notes that many think consent alone is insufficient to render sex permissible, calling this the 'consent plus' view, but rejects it in favour of 'consensual minimalism', which holds that 'a suitably but not excessively robust consent is sufficient to legitimize sexual relations' (p. 140). He favours this view largely to give moral space for a plurality of motives for engaging in sex.

His preference for consensual minimalism forces him to confront a second observation: although consent can be morally or legally transformative, not every unambiguous *token* of consent has this effect. This observation admits of two explanations: (1) not all tokens of consent indicate the presence of *actual* consent; (2) even though an unambiguous token of consent is real consent, not all consent is *valid*. Wertheimer endorses (2), favouring a purely performative rather than a psychological or hybrid conception of consent.

His reasoning in favour of this conception is suspect. To support it, he must refute Patricia Kazan's view that, although consent does not require a positive psychological attitude towards its object, it does require a positive attitude towards the act of consenting. He challenges this view using a case in which a woman is told that, unless she appears eager to consent to sex, she will be killed. Wertheimer rightly notes that in this case the woman presumably 'wants to perform the relevant token of consent' (p. 152). But Wertheimer cannot move to the conclusion that the victim has a positive attitude towards the act of consenting without begging the question at hand – namely, whether consent can be reduced to a clear token of consent.

In any event, on Wertheimer's account it is not consent *as such* that does the transformative work, but rather *valid* consent. The focus thus turns to the 'principles of valid consent', or PVC. Distinguishing moral and legal contexts, we have two questions: What are the principles of valid consent from the

standpoint of morality (PVC_M)? And what should we take to be the principles of valid consent for the sake of the law (PVC_L)?

Wertheimer addresses each by considering the conditions that tend to *invalidate* consent – coercion, deception and the lack of competence – devoting a chapter to each plus one to intoxication (a particularly controversial threat to competence). In each area, Wertheimer is more effective at defining issues and ruling out unacceptable accounts of PVC than he is at offering a positive account. Nevertheless, he reaches some positive conclusions. One obvious principle of valid consent is that it not be coerced. The difficulty lies in defining coercion. Wertheimer notes that a coercive proposal involves a threat to make others worse off relative to some baseline. But what is the proper baseline? Wertheimer favours a ‘moralized’ baseline: coercion exists when one threatens to make others worse off than they have a *right* to be.

As an account of coercion, this is problematic. If an armed man walks in on the rape of his wife and responds by threatening to shoot the rapist unless he desists, it is natural to say the husband coerces the rapist. It is less obvious that the rapist’s rights are violated. This problem aside, Wertheimer probably has identified a principle of valid consent: consent to sex is invalid when tokened in response to a threat to make one worse off than one has a right to be. While this principle cannot take us far without an account of relevant moral and legal rights, that may be a virtue. It shows that the validity of consent cannot be judged outside the context of a moral or legal framework.

Throughout, Wertheimer’s analysis is motivated by commitment to respecting both negative and positive autonomy. ‘Negative autonomy’ is our freedom to refrain from participating in activities to which we do not consent. ‘Positive autonomy’ is our freedom to participate in activities to which we consent. Wertheimer worries that if we become too zealous in defending negative autonomy, especially in PVC_L, we will truncate positive autonomy.

For example, Wertheimer is unsympathetic to those who would construe sexual coercion to extend generally to cases in which consent is tokened in a context of patriarchal oppression. His worry here is that doing so restricts women’s positive autonomy. On the issue of intoxication, Wertheimer offers reasons why women might favour drunken sex and argues that an overly restrictive account of PVC (especially PVC_L) would undermine women’s autonomy to act on such reasons. He also argues that while children’s consent should be treated as invalid, the consent of adults with the cognitive capacities of children should not be so uniformly dismissed, since treating their consent as invalid constitutes a *lifelong* truncation of positive autonomy.

Wertheimer concludes with a discussion of when women *should* consent to sex in intimate relationships, framing this as a question of justice. Many will likely find this chapter problematic. There is good reason to think that negotiations of sexual intimacy should be guided by something like the ethics of care, not by principles of justice – a concern that Wertheimer does not sufficiently address. Overall, however, Wertheimer offers a thoughtful and provocative treatment of his subject that deserves careful reading.

ERIC REITAN

Oklahoma State University