

# Communicating Consent

by Rebecca Kuida

It is by now a platitude that informed consent is one of the most central and discussed concepts in bioethics. In *Rethinking Informed Consent in Bioethics*, Neil Manson and Onora O'Neill argue that the notion of informed consent has been fundamentally distorted and in various ways overemphasized in bioethical discourse and in medical practice. Drawing on George Lakoff and Mark Johnson's discussion of structuring metaphors, they argue that bioethicists have understood the informed consent process as a kind of abstract transfer of "containers" of information along "conduits" that run between doctors and patients. In contrast, they draw upon pragmatic speech act theory in the philosophy of language to develop an account of informed consent as a *communicative transaction*: a concrete, norm-bound social transaction by way of speech acts.

To take this view of language is to understand communication as being something that agents perform. In contrast, they write, "much contemporary discussion of information, including discussion of informed consent, manifests a 'drift from agency'." Information is viewed as detachable from the action by which the communication is achieved and from the norms that govern action" (p. 49). One of their main points is that, like all communicative transactions, informed consent transactions presuppose and can only be successful against the background of a whole web of implicit and explicit norms: "Unless speakers

and audiences adhere to certain mutually accepted epistemic and ethical norms, and take one another to adhere to these norms, communication cannot succeed. . . . This rich normative context . . . is occluded or downplayed when we think of communication merely as the transmission or flow of information from person to person" (p. 42).

In order to understand the heart of the theoretical shift that Manson and O'Neill propose, it may help to look at a classic philosophers' example of how speech acts are performances situated within webs of norms, and so dependent for their success on these norms being in place. (The book is frustratingly free of such examples.) Many such stock examples come from J.L. Austin's seminal work from 1962, *How to Do Things with Words*. For instance, consider the act of pronouncing two people married ("By the power vested in me by the state of Florida, I now pronounce you husband and wife.") First, notice that this speech act does not merely disclose information; rather, it *accomplishes* what it pronounces, making the couple married rather than just reporting on the marriage. We have to understand this statement as something an agent does, rather than as an abstract container of information. Next, notice that this pronouncement does not count as an act of marrying at all except in the proper context. The speech act must take place during a ritualized marriage ceremony, and the people there must understand themselves to be part of it. The speaker must

have officially sanctioned authority in order for her pronouncement to have, as Austin would put it, its performative force. Also, the people getting married must meet certain requirements—for example, in Florida, they must be of the opposite sex. And so forth. Merely shouting this sentence at people as you run down the street does not marry them. The heart of Manson and O'Neill's proposal is that the speech acts involved in informing and consenting, like pronouncements and vows in marriage ceremonies, accomplish a social transaction and do not just transfer information. Accordingly, like marriage pronouncements, they are effective and comprehensible only when situated within an appropriate web of norms and practices.

Taking this pragmatic perspective, Manson and O'Neill ask just what informed consent transactions accomplish. Their theory is that these transactions should properly be understood not as hallmarks of decisional autonomy, but rather as *setting* prohibitions and obligations that are already in place and form part of the normative background, such as prohibitions against invading another person's body or using her private information. This proposal leads them to at least three key conclusions. First, informed consent deserves a demoted role in medical practice, as it is needed only when otherwise-established norms must be overridden. Second, "since its use always presupposes whichever norms are to be waived, it cannot be basic to ethics, or to bioethics" (p. 149). Third, written consent forms containing information about risks and benefits are only tenuously connected at best to the actual informed consent process since they are detached from any concrete communicative transaction. (Throughout the book, Manson and O'Neill presuppose

*Rethinking Informed Consent in Bioethics*. By Neil C. Manson and Onora O'Neill. Cambridge University Press, 2007. 226 pages. \$34.99. Paperback.

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