*Campaigners in the recent Brexit debate "failed to communicate with the public, did not offer adequate or honest accounts of the alternatives, and did not provide the basic means for voters to judge the real options, the real opportunities or the real risks,” according to Onora O’Neill.*

What sort of knowledge is needed for an individual to give their informed consent?

In order to determine what sort of knowledge is needed to give informed consent, we must first define what we mean by ‘consent’, in comparison to ‘permission’ and ‘agreement’. I will follow Wittgenstein’s approach and ‘look and see whether there is anything common to all’[[1]](#footnote-1) in their usage, so I can create a useful definition of consent for our purposes. Consent at first seems a synonym of ‘permission’ and ‘agreement’, but the words have different denotations. Rather than stating the dictionary definitions of these words, Consent and agreement differ in terms of resulting action. To consent to something requires there to be a resulting action, whereas agreement can be purely cognitive. For example, I could ‘agree’ that there is life on other planets, but this agreement does not entail any action to be carried out. ‘Agreement to’ behaves more like consent in terms of resulting action; I could say I ‘agreed to’ or ‘consent to’ having my ears pierced, for example. However, this still has a different meaning to consent; ‘agreement to’ implies a more equal balance of power between the parties involved. It implies consent between parties who both share the opinion that a given action would be beneficial, which is not always implied in consent – a person can be coerced into consenting to something, but not into agreeing to something. From this discussion, we can establish that ‘consent’ refers more to the official or legal act of expressing consent, rather than the cognitive function associated with ‘agreeing to’ a given procedure.

Consent and permission are more similar, but still have interesting differences in their use. Although they both imply a resulting action, the subject of this action can differ. Consent is much more agent-focused than permission – I can give someone permission to borrow my pen, but I would not give someone ‘consent’ that they can borrow my pen. Consent is more commonly used in relation to actions directly involving myself or someone/something I have significant legal responsibility over. I can consent to having my ears pierced, or my child’s ears pierced, or my house demolished. From the differences between consent, permission, and agreement, we can establish some criteria with which to define consent:

1. Consent involves a shared enterprise between two (or more) parties.
2. Consent is an external expression of a cognitive decision.
3. A resulting action occurs.
4. This resulting action directly involves the consenter and/or someone or something the consenter has significant legal responsibility over.

Onora O’Neill provides a more negative account of consent, which she describes as ‘a way in which we allow others with obligations to us to waive that obligation’[[2]](#footnote-2). Essentially, it is allowing someone to go against a ‘default position’, within limits, because it is in our interests. She uses the example of a person having their appendix taken out by a surgeon; in this case, the default position is that another human cannot cut me. However, as it is in my interests to have my appendix removed, I can allow the surgeon to go against the default position, and waive their obligation not to cut me, in order to remove my appendix.

However, this account is flawed when applied politically. D.D. Raphael mentions that ‘a form of consent is essential for the authority of a particular law’[[3]](#footnote-3), so applied in the EU referendum. With regards to Brexit, it is not clear what the default position. For campaigners on the ‘leave’ side of the debate, the default position would possibly be remaining in the EU; before Brexit, assuming our position within the EU was a result of the collective agreement of the majority of the British public, the government had an obligation not to change this state of affairs, and therefore had to make a case convincing us to allow them to waive that obligation because the outcome would be beneficial to us. However, for the people who consented to remain, what was the default position. In this case, voters were consenting for the state of affairs to remain the same, so the government were not going to waive that particular obligation. It would be more useful to think of consent in terms of going against a given position rather than the ‘default’ position.

‘Default position’ implies either,

1. the current state of affairs, or
2. the more usual state of affairs.

Essentially, for there to be a ‘default’ position, one position must clearly carry more weight than others, which applies more easily to situations in which there are clear ‘right’ and ‘wrong’ positions, such as medical procedures, than it does to more ambiguous situations such as politics. So, in terms of Brexit, remain campaigners ask voters to allow them to waive the *given* position offered by leave campaigners, and vice versa.

A fuller account of consent can be achieved by combining my modified version of O’Neill’s account with the criteria established earlier - using criteria (i) – (iv) and adding the fifth premise that:

1. Consent is when an individual allows someone to subvert a given position.

The notion of informed consent is that in order to allow someone to flout a given position, I must sufficiently understand what it is I am consenting to. What we need to establish is what type of knowledge, and what degree of knowledge, can be considered sufficient to validate consent. In *Knowing What To Do,* Chappell mentions three types of knowledge: ‘for most philosophers today, the paradigm of knowledge is propositional knowledge’[[4]](#footnote-4). Chappell also acknowledges ‘knowledge-how (ability knowledge) and knowledge-what-it’s-like (experiential knowledge)’, but says that contemporary philosophers see these as ‘marginal or secondary cases’. Most would consider propositional knowledge to be most relevant to informed consent. However, the combination of types of knowledge needed in informed consent depends on context.

In relation to Brexit, O’Neill says campaigners ‘did not provide the basic means for voters to judge…’[[5]](#footnote-5). Judging is an ability, so here O’Neill implies that the public needed a sort of informed ability knowledge in order to give informed consent – a sort of propositional knowledge from which to exercise an ability. Ability knowledge can also be considered in relation to a medical procedure. Although a patient would not need to know how to perform the procedure themselves, there may be some after-procedure tasks they need to know how to undertake. For example, if this patient undertook a procedure after which they are required to take medication for a few weeks, they would have to know not only the propositional details of the medication, but how to self-administer it (orally, with a syringe or pump etc.) in order to give informed consent.

Experiential knowledge is also relevant to a medical procedure. A patient undertaking a procedure will most likely want to know how much pain the procedure will involve, and this can be considered experiential knowledge. If a doctor informs a patient that their procedure will be very painful, this could be considered propositional knowledge, as can presented in the form of a proposition statement (*p* is the case), for example, the phrase ‘a bone marrow transplant is very painful’. However, the only reason the patient has any concept of ‘painful’ is through drawing on a posteriori experience and applying it to their idea of the procedure.

To illustrate the relationship between propositional and experiential knowledge with an example, imagine that person A, person B, and person C have propositional knowledge that ‘guavas are sweet’. However, person A has never tasted a guava (but has tasted other sweet fruit), whereas person B has tasted guava; person B has more knowledge of guavas as she has experiential knowledge. But imagine that person C has never tasted anything sweet. In this case, person A has more knowledge of guavas’ sweetness than person C, who has no concept of sweetness at all. So, telling person A that ‘guavas are sweet’ in a sense provides them with some degree of experiential knowledge, as they can draw on their experiences of ‘sweet’ to form a concept of a guava, although it would not be as accurate as person B’s concept of a guava. This is similar to the medical example – in this context, telling someone that ‘a bone marrow transplant is very painful’ provides them with some degree of experiential knowledge.

The doctor might even explain the pain in terms of experiences the patient may have had – more painful than a broken bone, less painful than childbirth. Thus, experiential knowledge is a sufficient condition for giving informed consent in medical terms.[[6]](#footnote-6) Regarding Brexit, the public may need some experiential knowledge of the effects to give informed consent. Arguments from both campaigns used propositional knowledge to incite pathos in the public, often misrepresenting the outcome of the referendum. A voter considering the idea of being financially ‘better off’ draws on past financial experience; otherwise financial figures put forward by the campaigns are meaningless. Thus experiential knowledge is also sufficient for informed consent with regard to Brexit, as sometimes the public need experience to understand the financial outcome of a referendum.

In summary, propositional, ability, and experiential knowledge are all sufficient conditions for a person to give their informed consent, as defined above. An important question; what degree of knowledge needs to be provided?

As a final addition to my argument, I will consider whether any degree of counterfactual knowledge is required for informed consent. O’Neill also says that the campaigners ‘did not give adequate or honest accounts of the alternatives’[[7]](#footnote-7), implying that counterfactual knowledge is also a part of informed consent. Indeed, a patient with a health issue would need to be presented with different routes they might take in response to the issue, and the pros and cons of these routes. However, in both the political and medical scenarios it would be unrealistic to comprehensively provide the consenter with every single possible alternative. Furthermore, there are legal and ethical boundaries to the alternatives presented; although it would be a possible response to the issue, a doctor could not present the option of euthanasia to a patient with a sprained ankle, because it would be illegal. Having been given appropriate accounts of reasonable and legal alternatives to an action is a necessary condition of giving informed consent. I use the phrase ‘appropriate accounts’ because the detail of information required varies from case to case; a medical patient undergoing serious surgery would need detailed, explicit, often written accounts of alternative routes, whereas an adult sexual partner would perhaps need implicit knowledge that they are free to abstain.

So, consent is the expression of the decision to partake in a shared enterprise with a person, allowing them to subvert a given position, resulting in an action which directly affects you or someone you have substantial legal responsibility over. For this consent to be ‘informed’ it is necessary that you are given appropriate accounts of reasonable alternatives, and it is sufficient that you are given adequate propositional, ability, and experiential knowledge of the consequences of the enterprise. The extent of this knowledge varies contextually – a medical patient will require more experiential knowledge than a voter, whereas a voter will require more propositional knowledge of process and alternatives.

(1996 words)

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1. Wittgenstein, Ludwig. *Philosophical Investigations 1.66* (1953) [↑](#footnote-ref-1)
2. < http://philosophybites.com/2007/10/onora-oneill-on.html> [↑](#footnote-ref-2)
3. Raphael, D.D. *Problems of Political Philosophy* (1990) 3rd edn. [↑](#footnote-ref-3)
4. Chappell, T. *Knowing What to Do* (2014) [↑](#footnote-ref-4)
5. <http://www.bbc.co.uk/programmes/b07l24cr> [↑](#footnote-ref-5)
6. Another example would be the sex scenario, in which someone does not necessarily need propositional knowledge to consent, but would need experiential knowledge of the possible physical, social, and psychological effects of the action in order to give their informed consent; children cannot legally consent to sex because they are not intellectually or experientially mature enough to form a concept of such effects. [↑](#footnote-ref-6)
7. <http://www.bbc.co.uk/programmes/b07l24cr> [↑](#footnote-ref-7)