

‘Spontaneous’ Sexual Consent: An Analysis of Sexual Consent Literature

Sexual consent is an understudied and undertheorized concept despite its importance to feminist researchers and activists interested in sexual violence. Literature on consent, although sparse, has been produced from a variety of disciplines, including law, psychology, and sociology. This article is a critical review of current literature and current understandings of sexual consent. Different conceptualizations of consent are analysed including implicit and explicit definitions from legal theorists and sexual violence and consent researchers. Alternatives, including communicative sexuality, are discussed and feminist understandings of the social context of consent and the social forces that produce understandings of consent are examined. Directions for future research are suggested.

Key Words: coercion, rape, sexual assault, sexuality

On a warm sunny day in a mountain resort town in the Canadian Rockies, I am sitting on a grassy slope interviewing a young transient worker about his experiences with casual sex, including how he and his partners communicated their willingness (and consent) to engage in sex. He sums up by saying, ‘it’s obvious, but it’s really hard to know’ when someone is willing to have sex with me.

This man’s comment highlights the complex and often confusing quality of consent. On the one hand consent is a concept that is taken for granted. Many scholars use it without defining it explicitly, or questioning its use, assuming a shared understanding of the concept (see Hurd, 1996; Jones, 2002–03; Ostler, 2003; Walker, 1997). Additionally, sexual consent plays a pivotal role in discussions and debates about sexual violence because the absence of sexual consent is most often the defining characteristic of sexual violence (sex without consent). The purpose of this work on sexual violence and sexual consent is to prevent continued acts of violence; however, despite decades of feminist research, activism

and legal reform, incidents of sexual violence have not declined (Carmody, 2005; Schulhofer, 1998).

While consent is critical to the understanding of sexual violence, it remains a nebulous concept. We are not privy to the details of the sexual experiences of others, and therefore we cannot learn how to communicate sexually based on others' experiences, and talking about sex with a prospective partner is often considered taboo. This was reflected in lack of literature on sexual consent. I recently conducted a series of literature searches using psychology, sociology, and women's studies academic databases. Searching for the term 'sexual consent' yielded between 30 and 42 results, while searching for 'rape' yielded between 2705 and 8145 results, and 'sexual assault' yielded between 1016 and 2006 results. The paucity of articles on sexual consent reflects the lack of scholarly attention to this critical concept. Even within the literature on sexual consent there is no consensus on what it is, how it should be defined or how it is communicated.

My introduction into discussions about the meaning of sexual consent came while I was coordinating a sexual assault education program in the mid-1990s. At that time I defined consent using the 'I know it when I see it' definition. While finding it difficult to articulate a comprehensive definition of consent, I was confident that given a description of a sexual event I would be able to distinguish a consensual from a non-consensual experience. Since I ended my position as coordinator of the sexual assault education program, I questioned my understanding of sexual consent and started examining a variety of scholarly writing on the topic. I have since abandoned my previous confidence in my own understanding of consent and I am left with more questions than answers. What is sexual consent, and how is it defined? How are these definitions used to enhance (or cloud) understandings of sexual violence?

The purpose of this article is to review existing literature on sexual consent, to identify the conceptual limitations and gaps in this research, and to suggest directions for future research. Specifically, I will review conceptual understandings of consent, including those used in social research and legal theory, research on sexual consent behaviours, and the communicative model of sexuality. I am interested particularly in texts that address consent directly – rather than all texts that are arguably related to consent (writings on sexual violence and sexual assault, for example). Additionally, although legal definitions contribute to understandings of consent, I am not including these in this analysis. I am, however, including work by legal theorists.

I argue that current understandings of consent are underdeveloped and rely largely on assumed and implied definitions. There is a lack of empirical work on the communication of willingness and 'consent' to sexual relations. This empirical work is vital to increase our understandings of sexual consent and sexual violence.

CONCEPTUALIZATIONS AND DEFINITIONS OF CONSENT

Conceptualizations of consent are diverse. Some conceptualizations are implicit while others are carefully defined and articulated. Some authors describe consent as any agreement to participate in sex, while others argue that consent by definition must be given freely. Some focus on consent as either a physical act, or a mental act and others argue that consent is an act of moral transformation – it turns an immoral act into a moral one. Each of these approaches to sexual consent informs an overall understanding of consent and highlights challenges faced by scholars when attempting to define sexual consent.

Spontaneous Consent

Many conceptualizations of sexual consent can be described as an example of what Bourdieu et al. (1991) refer to as ‘spontaneous sociology’: the adoption of the common sense meanings of concepts without critically reflecting on the cultural, historical, and social forces that produced those meanings. Most literature on sexual violence that mentions consent fails to discuss the meaning of sexual consent, to define it explicitly, or to question how certain social discourses are deployed to produce dominant understandings of consent. As a result, the reader is left with the task of figuring out the definition implied by the authors, or assuming their own definition.

For example, some authors use the term sexual consent to imply a boundary or dividing line. In these cases sexual consent is used to distinguish good sex from bad sex (Wertheimer, 2003), pleasurable sex from unpleasurable sex (Jones, 2002–03), morally unproblematic sex from morally problematic sex (Hurd, 1996) or making love from a criminal act (Archard, 1998). If these distinctions represent the boundary created by consent, then we should be able to distinguish consensual from non-consensual sex by examining the resulting sexual activity – i.e. was it pleasurable? Was it good? Was it morally unproblematic? Was it making love? The boundaries created by these arbitrary definitions confuse the understanding of consent. There are likely many people who have participated in sex that was not pleasurable, although they would argue it was consensual, non-violent, and non-coercive. Likewise, although consensual sex may be good, and result in making love, not every instance of consensual sex is by default ‘good’ or ‘love-making’. If we are to use consent as the boundary between good and bad sex, we also need to define what we mean by ‘good’ and ‘bad’ sex.

Other authors fail to articulate a definition of consent in their work. For example, Ostler (2003) does not mention a definition of sexual consent, nor does he review literature on sexual consent in his study on consent and dating behaviours. As a result, he assumes a shared understanding of consent with the reader. He suggests that ‘often times the complainant’s specific behavior, whether it is sexual or not during the date often reflects sexual consent’. He argues women sometimes behave in ways that are indicative of sexual consent, even when they

do not intend to consent to sex. Therefore in rape trials these women's behaviours should be considered probative of sexual consent and juries should use this information to reach a verdict. Ostler's implied version of consent assumes a strictly behavioural account. Thus, regardless of a person's desire or willingness, or the context associated with the sexual activity, she or he could inadvertently consent to sex by behaving in certain ways considered 'typical' indications of consent.

Similarly, Walker (1997) implies an assumed definition of consent in her meta-analysis of women's consent to unwanted sexual intercourse. Walker did not explicitly define consent, nor did she discuss the way consent is defined by the studies she reviews. Instead she assumes a shared understanding. She reported that women consent to unwanted sex for many reasons including because 'a man was so sexually aroused it was useless to try and stop' (p. 158), verbal coercion, and intoxication. Thus, she implied a version of consent that is an agreement to have sex regardless of the presence of direct or indirect coercive tactics.

Sometimes the spontaneous adoption of consent results in conflicting definitions. For example, for the purposes of their study, O'Sullivan and Allgeier (1998) suggested that 'consensual participation in unwanted sexual activity refers to situations in which a person freely consents to sexual activity' (p. 234). However, earlier in their introduction they deploy a different meaning of consent. They said that 'willing participation . . . should not be confused with coercive interactions in which a person *consents* to engage in sexual activity but does so under duress' (p. 234; emphasis added). The first quote suggests that consent could not occur with the presence of force or coercion, while the second quote suggests that it is possible for people to consent while 'under duress'. It is unclear whether O'Sullivan and Allgeier were interested only in certain types of 'consensual' sex, or if they are using multiple meanings of the word.

Another example of the way that consent is 'spontaneously' adopted into scholarly use is the assumption of its gendered nature – that is, women give consent to men. For example, Ostler's (2003) study examines the ways women 'consent' to sex and the way that men perceive women's consent. He did not discuss the potential for men to give their consent to women, women's perception of men's consent, or consent between two women or two men. He also does not problematize this gendered division of heterosex. Cowling (2005) and Archard (1998) used gender-neutral terms when discussing sexual consent policy, but their examples reflected a similar gender division, with men asking for, or trying to decipher, their female partner's consent. Within Archard's chapter on gender, he discusses issues of power that may influence the ability for a woman to freely give consent, but fails to acknowledge his assumption that consent itself is something that women 'give' to men.

The gendered assumption of consent is reflective of the gendered nature of sexual violence – many more women suffer violence at the hands of their male partners than vice versa. A sexual script approach to heterosexual relations suggests that men most often initiate sexual activity while women respond to men

by either refusing or accepting the initiation (Byers, 1996; Morokoff, 2000; O'Sullivan and Byers, 1992). Thus, a purely gender-neutral understanding of consent fails to consider gendered power relations, and is at least one normative way that many women and men engage in heterosex. Absent in these discussions are recognitions of lesbian and gay sex (and sexual violence), sex with multiple partners and heterosex initiated by women.

Consequently, this gendered version of consent assumes that men's consent is never contested and ever-present; deploying what Hollway (1985) referred to as the 'male sexual drive' discourse, in which men are viewed as always desiring sex, and always in pursuit of sex. Through this discourse, men's consent is assumed, so to question it or develop an understanding of it would be superfluous. This places women in a position of responding to men's initiations, setting limits, and deciding if they want to participate in the sexual activity. This assumption leaves little room for woman-desired and initiated heterosex.

Although it is likely that authors deploying this assumption would recognize that women do initiate sex and that men do not always want sex, it is not clear what happens to consent during female-initiated sex, or sex between two men or two women. Is it always assumed that one person asks for consent, while the other gives it? Or are there possibilities for mutually consented-to activities?

These 'spontaneous' understandings of consent are not limited to the few examples described above. By elaborating on these examples I do not mean to suggest that the work of these authors is exceptionally weak; rather, I use them to point to an overall problem within scholarly work that takes up issues related to consent: the general lack of explicitly defining what the authors mean by consent, or questioning popular and assumed understandings of consent.

Consent as Agreement

While many scholars use the term 'consent' spontaneously, producing multiple and varied meanings, there is general consensus that sexual consent represents some form of agreement to engage in sexual activity. However, there is discrepancy regarding the conditions under which this agreement takes place. Some scholars implicitly or explicitly define consent as 'any yes', meaning that someone gives her/his consent to sex any time they express any agreement to have sex, regardless of the presence or absence of force, coercion or threats. Dripps (1992) defines consent explicitly as 'any yes' when he states that 'no matter how much force is used to obtain it, consent can still occur' (p. 1793).¹ Many other scholars define consent more implicitly as 'any yes' when they differentiate between 'valid' consent and 'infelicitous' consent (infelicitous consent is either consent that is incorrectly expressed or consent when the choice to have sex is constrained; Sherwin, 1996), full consent, non-full consent, and coerced consent (Panichas, 2001); real consent and quasi consent (Archard, 1998); or valid and invalid consent (Kazan, 1998). By qualifying consent and distinguishing between different types of consent, these authors imply that any agreement to have sex as

a result of coercion (for example) is still consent. A system of rules and exceptions is required to determine if the consent is 'full' or just 'partial'. Even after this has been decided, it is not clear if 'partial' consent is socially problematic or if it requires any legal recourse.

Not all scholars accept this 'any yes' definition of sexual consent. Several studies have presented definitions that specifically require consent to be given freely. According to these definitions, it is not possible for someone to consent when they are being coerced or threatened (Hall, 1998; Hickman and Muehlenhard, 1999; Humphreys, 2005). Hall defined sexual consent as 'the voluntary approval of what is done or proposed by another; permission; agreement in opinion or sentiment' (p. 6). Hickman and Muehlenhard (1999) defined consent as the 'free verbal or nonverbal communication of a feeling of willingness' to engage in sexual activity (p. 3).

As a feminist I am attracted to a version of consent defined as being 'freely given'. It places emphasis on women's (and men's) desires and willingness to engage in the sexual activity and avoids the confusion of determining if the consent was 'valid' or not. The qualifications of consent into 'valid' or 'invalid' are confusing and can result in miscommunication between researchers. For example, when scholars are talking about consenting to unwanted sexual activity, they may be referring to instances when someone is forced or coerced into having sex, or they may be referring to someone having sex when they do not desire it, but are willing to engage in sex and may even find it pleasurable. These two different versions of 'unwanted sex' due to different understandings of consent can have profound consequences. Scholars who support a definition of consent that requires the freedom to choose would label forced or coerced experiences as non-consensual and would argue that consent was not given for those circumstances.

The scholars discussed above who argue consent is by definition given freely were interested primarily in the dyad involved in the sexual activity. Thus consent must be given free from direct coercion or force from the sexual partner. They do not address larger issues of social forces that impact the free communication of consent. Some feminist scholars move beyond the analysis of the specific situation toward analysis of the social forces that shape and influence the communication of consent and the activities that are consented to. MacKinnon (1989) argued that it is not possible for women to give consent to men due to the current power relations between men and women. Systems of patriarchy are such that men have power over women, thus women do not have the freedom to give consent, because they are not free subjects. Similarly, West (2002) also emphasized social forces that influence decisions to engage in sexual activity. West's focus was on compulsory heterosexuality, rather than exclusively power relations between men and women. For West, hegemonic heteronormative discourses produce situations where someone may have sex for the first time while quite young because 'everyone else is doing it', or have sex with their spouse because it is considered a 'normal' part of married life. Unlike MacKinnon, West suggested that these cases,

where the coercive force is social rather than interpersonal, are consensual and argued that researchers should begin to examine the 'harms of consensual sex'. For West, whether or not sex is consensual hinges on the interpersonal relationship, and not on broader social forces that impact our sexual behaviour.

If we accept a definition of consent that stresses that consent must be free from coercion (similar to Muehlenhard's, 1996) then the scenarios that West (2002) discusses could arguably be labeled non-consensual, although they differ from sex resulting from the direct pressure and coercion from a partner. Gavey (1997) distinguishes between social coercion and interpersonal coercion. Social coercion comes from dominant heteronormative discourses that impact each of us. For example, 'compulsory heterosexuality' may influence (or coerce) a man to have sex with a woman even though he is only attracted to other men. Interpersonal coercion, on the other hand, takes place when one person coerces another into having sex. Both types of sex are coerced, both present issues related to consent, and both create harm; the difference between them is related to whether or not the legal system can deal with punishing the offender.

MacKinnon's (1989) recognition of some of the social forces impacting consent and Gavey's (1997) argument that social forces represent a type of coercion similar to interpersonal coercion (although separate from it) begin to contextualize consent and problematize its boundaries. In so doing, they open space for a more complex understanding of consent. Through these views it is possible to begin questioning why people might consent to particular types of sex, or sex with particular people. Consent becomes something broader than just a 'yes' to sex with a specific person, in a particular place, at a particular time. It becomes a negotiation of social expectations, a way of expressing a social identity, or of fitting in to a certain social world. It creates spaces for sex that are neither consensual nor criminal or violent, although they may be socially problematic.

The Nature of Consent

Not all scholars focusing on sexual consent are concerned with distinguishing consensual sexual experiences from non-consensual ones. Some of the debate around sexual consent was concerned with whether or not consent is a psychological act (where the importance is placed on the individual's thought process and inner desires), or a physical act (where the emphasis is placed on the behavioural act signifying agreement [Muehlenhard, 1996]). Many scholars placed greater emphasis on the behavioural nature of sexual consent. Ostler (2003) implied that consent can be read by a woman's (sic) actions when he suggested that certain behaviours are 'probative' of consent (regardless of a woman's intentions). Archard (1998) suggested that 'consent is an act rather than a state of mind' (p. 4), and Wertheimer (1996) saw consent as 'performative rather than attitudinal' (p. 94). If we accept a behavioural version of sexual consent, we require information or standards about which behaviours indicate consent. Sherwin (1996) argued for an 'objective' definition of consent that 'is a legal

standard establishing a conventional means for refusing sex' (pp. 230–1). Thus, we would require a list of behaviours that indicate consent, or, as Sherwin suggested, a list of behaviours that demonstrate non-consent. While I can see the attraction to the creation of such a definition from a legal position – a list of definitive consent behaviours (or non-consent behaviours) would make the decisions of judges and juries simpler – this type of list over-simplifies sexual relations. Communicating 'consent' is likely more complex and nuanced than can be adequately captured by a standardized list of behaviours and risks labelling harmful and violent experiences as consensual. For example, in Texas a number of years ago, a woman was attacked in her home by a knife-wielding intruder. She begged her attacker to use a condom to protect herself against HIV. However, because she asked him to use a condom, the jury believed that she consented, and her attacker was acquitted (McGregor, 1996). While asking for a condom may be indicative of consent in certain contexts, it cannot be taken as a universal declaration of consent.

Additionally, this type of list can inhibit the freedom for people to express consent in non-conventional ways. For example, during sadism and masochism (S&M), many activities might take place that appear to be against someone's will. One partner might scream 'no', or even fight back. However, 'consent' to S&M is often quite explicit with the use of a 'safe word' in the event that the activity has gone past one person's comfort level. In this context, screaming 'no' might not be unusual, and might not be an indication that the activity is unwanted. This form of 'consensual' activity may be improperly labelled as rape, with the use of a standardized definition of consent (or non-consent).

Because of the many problems with a behavioural definition of consent, some legal theorists view consent as a primarily mental act or attitude, independent of the expression of that attitude. Hurd (1996) argued that 'to consent to sexual intercourse, a victim must have sexual penetration by the defendant as her conscious object'. She suggested that we abandon the behavioural notion of consent for one that focuses entirely on the respondent's intent to engage in sexual activity with the person who initiated it, under the specified conditions. The problem with a definition based entirely on one's attitude toward the sexual activity is that there appears to be no way for the initiating partner to receive feedback regarding whether or not the sexual activity is consensual (Muehlenhard, 1996). Additionally, Kazan (1998) argued that an attitudinal representation of sexual consent opens up room to scrutinize the behaviour and 'intentions' of the victim during a trial. Determining the victim's attitude toward sex requires that the victim take the stand and answer questions regarding their 'state of mind' and risks inviting scrutiny of their actions and sexual history. Kazan argued this has happened too often and, in order to protect the sexual history of the victim, we must adopt a definition of consent that is at least partially based on behaviour to provide other means of determining the presence or absence of consent.

It is largely for this reason that many researchers who favour the attitudinal representation of sexual consent still add a behavioural component to their con-

ceptualizations. Dripps (1996) argued that sexual consent is not exclusively a psychological state, but that it also includes some conduct that is presumed to provide evidence of a psychological state. Likewise, Hickman and Muehlenhard (1999) defined consent as the 'the communication of a feeling of willingness', and Malm (1996) saw consent as the 'signification of a particular mental state through the performance of a conventionally recognized act'.

Alexander (1996) addressed the problem of attitudinal conceptualizations of consent in a different way. He defined consent as the 'intentional state of the person', and saw the victim's responses to the defendant's threats as good indicators of whether or not consent was present, but not 'what consent consists of'. This conceptualization, while defining consent as a purely mental state, provides a space for the physical behaviours. By keeping these issues separate and recognizing that the physical behaviours and cues that may take place during sexual activity are not consent in and of themselves, but may reflect the inner intentions of the individual, he began to disentangle the complexities of consent. Since consent does not consist of the behaviours, it is not possible to draw up a list of consenting behaviours, and it is recognized that different behaviours can have different meanings in different contexts. Thus, it allows for the victim's subjective experience to be recognized while understanding how the behaviours were indicative of his or her intentions within the context. This does not eliminate Kazan's (1998) concern regarding scrutinizing the victim's intentions, although it allows more space for understanding how context influences consent to sex.

Moral Transformation

In addition to arguments regarding the physical versus mental nature of consent, there is another way that some scholars describe sexual consent: as an agent of moral transformation. In other words, does consent turn an otherwise objectionable and illegal activity into an acceptable and potentially enjoyable activity? Hurd (1996) argued that it does and refers to this as the 'moral magic of consent'. Archard (1998) agreed with Hurd that consent displays a certain 'moral magic in the way that it can suddenly make an otherwise wrong action right' (p. 3). Wertheimer (2003) suggested that it is not a matter of defining what consent 'is', but in determining 'under which conditions consent is *morally transformative* in a relevant way' (p. 119; emphasis in original). Through the use of 'moral transformation', Archard and Wertheimer argued that consent is like a contract where B's consent renders A's actions moral, legal, and permissible. Consent, then, also places obligations on the 'consentee' to fulfill their commitment and follow through with the consented to activity (Archard, 1998). Archard draws a comparison to lending a friend a car. By consenting to my friend using my car I am obligated to take steps to facilitate that agreement by giving her keys and making the car available. Therefore, in a sexual situation, Archard argued that once a person has consented they are under obligation to enable the consented to activity. However, he also pointed out that, if a woman (sic) changes her mind (especially

because the activity is not what she intended on consenting to, or because of pain) then her partner is under a moral obligation to stop the sexual activity.

I argue that the morally transformative conceptualization takes a decisively pessimistic and negative view of sexual relations. Through this perspective, it is assumed that all sexual activities begin as morally problematic, and coercive. To begin with, the assumption that sex is 'bad', unless it is made 'good', is to place everyone in the position of potentially perpetrating a sexual offence and becoming a criminal, when violent sex makes up the minority of sexual activity. Consent, while important, does not transform a morally problematic activity into a morally acceptable one. Between consenting people, it can communicate the willingness to participate in sexual activity with one another at a specific time and place; there is no moral objection to the sexual activity between them.

In addition, it is not clear whose morals are being transformed through consent. Archard (1998) suggested that the common moral view is that 'whatever people do as "consenting adults" should be allowed, even if the rest of us find a particular practice disgusting or shocking' (p. 1). However, there are many adults who believe that the only 'moral' sexual activity is that between a wife and her husband. With this understanding of sexual morals, a wedding ceremony would have to take place before any sex could be 'morally transformed'.

COMMUNICATIVE SEXUALITY

While many scholars argue for various representations of how 'consent' operates in normative (and predominantly heterosexual) relationships, a few theorists advocated for a change in the way consent is conceptualized. Remick (1992–93) argued for a legal definition of sexual consent as a verbal agreement to participate in sexual activity. Pineau (1989) also argued for a deliberate version of consent she referred to as communicative sexuality. Communicative sexuality assumes that people communicate their willingness to participate in sexual activity with one another. Ideally this communication would be verbal, although it does not need to be. Pineau argued that this view of consent moves the responsibility from women, who must show that they adequately resisted the sexual activity, on to men to demonstrate that they obtained women's consent.

Antioch College has adopted a sexual consent policy similar to the model that Pineau (1989) suggested. The consent policy requires members of the campus community to verbally ask permission for each type of sexual activity, and also requires a positive verbal response in order for consent to be given (Antioch College, 2006). This policy is viewed as inconsistent with the progression of sexual activity according to students in Humphreys and Herold's (2003) study. Most students said that they would not endorse a similar policy on their campus because it was unrealistic and hard to implement and enforce. Giving or asking verbally for consent was viewed as incompatible with the way it's believed that sex takes place because it is seen as lacking romance and spontaneity

(Humphreys and Herold, 2003). In addition, Schulhofer (1998) suggested that the social change required to implement this type of communicative sexuality would take too long, and leave women at risk throughout the process of change.

It may be possible that a communicative model of sexuality does not call for a complete metamorphosis of sexual behaviour as perceived by Humphreys and Herold's (2003) respondents. Pineau (1996) made it clear that a verbal negotiation is not required, only that there are cues that communicate consent. These cues and behaviours may be embedded in the ways in which people already engage in sexual behaviour. Pineau gave an example:

If you undo one of my buttons, and I help with the rest, you may presume that I am happy to get undressed. If you undo my button, and I try to do it back up again or clutch at the gap created, then you should presume the opposite. (p. 97)

Pineau (1996) referred to the switch to a communicative model of sexuality as a paradigm shift. She assumed that this shift requires not only a radical shift in the way we think about consent, but also a shift in the way that we engage in sex. I am not convinced that a move towards communicative sexuality requires such a large shift. In order to determine consent, attention is often placed on whether or not, or to what degree, a woman resisted, or demonstrated her lack of consent. A shift to communicative sexuality changes the questions – it does not require that a woman prove she did not consent, but instead asks what happened to show and demonstrate consent. This opens spaces to interrogate the ways that women and men are already communicating a willingness to participate in sexual relations. Rather than assuming that this communication does not already take place (so we must legislate it), we can start by assuming that there is some communication there and begin interrogating it. Thus, I urge researchers to begin interrogating normative and conventional ways in which women and men agree to have sex and communicate this willingness – not to develop a list of 'acceptable' consent behaviours, or to begin labelling certain sexual events as 'consensual' (or not), but to begin developing theory on the ways that willing partners understand their partner's willingness. It is only by developing an understanding of 'consensual' experiences that we can really begin to examine what 'is absent' in non-consensual experiences.

Kitzinger and Frith (1999) examined sexual refusals in this way. They argued that men and women have demonstrated competency at communicating refusals for a variety of social invitations, and therefore 'for men to lay claim that they do not "understand" [sexual] refusals is to lay claim to an astounding and implausible ignorance of normative conversational patterns' (p. 310). O'Byrne et al. (2006) built on Kitzinger and Frith's argument and demonstrated that the men in their study understood normative refusal mechanisms and 'articulated to "hear" women's refusals' (p. 149). This work is an important beginning towards understanding normative communication patterns during sexual activity. However, we must focus on not only how women and men refuse sex, but also how they 'say yes' to sexual relations.

CONSENT ATTITUDES AND BEHAVIOURS

A few researchers have examined sexual consent behaviours and attempted to identify ways that consent is communicated. There have been four reported studies on sexual consent behaviours (Beres et al., 2004; Hall, 1998; Hickman and Muehlenhard, 1999; Humphreys, 2005). All four studies suggested that non-verbal behaviours are used more frequently than verbal behaviours to communicate consent. Hall's findings suggest that consent for heterosexual sex is implicit for many types of sexual activities, but is more likely to be communicated explicitly for oral sex, sexual intercourse and the initiating sexual behaviour (e.g. kissing). Hickman and Muehlenhard (1999), and Beres et al. (2004) used data-reduction techniques (principle components analysis and factor analysis, respectively) to determine the different types of behaviours used to indicate consent. Both groups asked participants to rate certain behaviours on the frequency that they use them to ask for and indicate consent to their partner. The types of behaviours used to indicate sexual consent (as defined by the studies) included direct and indirect verbal and non-verbal cues, no response, the removal of clothing and intoxication.

These studies are an important first step in understanding how consent is communicated. They are also useful for confirming that consent is often negotiated non-verbally and indirectly. However, the findings from the existing studies were void of context. It is not understood when during sexual activity consent to sex is communicated (or if it is a continual process), or in what order behaviours are used. Nor is there any information on the number of behaviours required to perceive that consent has been communicated. Other contextual information, such as the nature and status of the relationship, and time and place of the sexual activity, also likely play a role in the communication of consent, and have not been addressed by the current literature.

In addition to the lack of contextual information, the studies presume that consent is separated into initiating and responding behaviours (Beres et al. 2004; Hickman and Muehlenhard, 1999). Both studies asked questions separately for behaviours used when participants initiated sex, and for times when they responded to a partner's initiation. This division is reminiscent of the gender roles in the normative sexual script and constructs a version of consent whereby one partner requests consent from the other partner who 'gives' consent. These studies do not take into consideration mutually initiated sexual activity, or the possibility that the initiator role may change during sexual activity. For example, one person may initiate kissing, then the other initiates genital touching, or the removal of clothing. In this way, both partners are giving consent to participate in the sexual activity and both are involved in beginning new types of activities.

In order to begin tapping into the complexities of sexual negotiations and consent, qualitative researchers need to begin interrogating the concepts of consent and willingness to participate in sexual activity. Qualitative research allows for

the integration of context with the findings and can present a more complex picture of sexual consent.

CONCLUDING THOUGHTS AND LOOKING AHEAD

In this article, I reviewed and analysed many different conceptualizations of consent. Consent is a concept that is often taken up 'spontaneously' by researchers and scholars. Unfortunately, many scholars fail to define consent explicitly through their work (Ostler, 2003), forcing the readers to rely on assumed definitions. Others define consent, but there are many varied definitions. Some describe consent (implicitly or explicitly) using a version of the 'any yes' definition – that consent is present even when someone acquiesces as a result of coercion or force (Dripps, 1992; Sherwin, 1996). Other scholars suggest that consent by definition can only be given free from coercive forces (Hall, 1998; Hickman and Muehlenhard, 1999). However, even if an agreement were to be reached regarding whether or not coercive forces negate consent, it is not clear which types of coercive forces 'count'. West (2002) and MacKinnon (1989) call attention to social forces that influence and arguably 'coerce' people into engaging in sex they may not want.

Some scholars attempt to disentangle consent as either a physical action (Archard, 1998; Ostler, 2003) or a mental action (Hurd, 1996), with many suggesting that consent is a combination of both (Dripps, 1996; Hickman and Muehlenhard, 1999; Malm, 1996), or a physical manifestation of a mental willingness (Alexander, 1996). Yet others view consent as an agent of moral transformation (Archard, 1998; Wertheimer, 2003), an act that turns an illegal and morally objectionable activity into a potentially pleasurable and morally permissible activity. Pineau (1989, 1996) argued that current understandings of consent are not working and thus we should adopt a communicative model of sexuality so that consent becomes explicit and more easily identifiable. Finally, a few researchers have begun to examine the ways that people consent to sex by investigating the types of behaviours considered indicative of consent.

Much of this work lacks an understanding of how dominant heterosexual discourses impact the understanding and communication of consent. This is one area that requires further attention in order to extend our understanding of sexual consent. In addition, researchers should probe further into the ways that people express (or do not express) their willingness to engage in sexual activity, and how they interpret their partner's willingness.

Through the examination of 'consensual' sex, we will be able to further our understanding of sexual violence. Researchers need to begin their interrogation of consent with the assumption that it may be possible to find out ways that consent is communicated and that a communicative model of sex may already exist. The vast majority of sex is probably 'consensual'. This is likely not accidental and indicates that sexual partners are communicating at least some of their

desires and feelings about sex with their partners. It is researchers' responsibility to try and find out how they create this communication, and how broader social contexts shape the communications between partners.

Researchers must also articulate a meaning of consent – or at least discuss the issue of consent in order to inform readers about their perspective. It is not enough to define sexual violence as 'sex without consent'; it becomes necessary to define simultaneously and explicitly what is meant by consent.

Future research should focus on understanding sexual consent in its contextualized environment. This means a shift from quantitative survey-based studies to open-ended qualitative studies. There is not enough theory in the area that can be used to build comprehensive quantitative data collection tools, not to mention the difficulty in contextualizing quantitative data. Qualitative research that is focused not only on the interpersonal communication of consent, but also on the context surrounding the sexual activity can begin to answer many of the questions suggested by theorists.

This research will help inform policy makers and educators about 'consensual' as well as 'non-consensual' sexual activities in a way that research on sexual violence has not been able to thus far. It is difficult to discuss issues of consent and healthy relationships when most of the research on consent is related to violent sexual activity.

My ongoing discussions about casual sex with transient workers often begin with comments reflecting that consent is both obvious and hard to figure out, as the opening quote suggests. However, many people have been willing to explore this contradiction with me and have shared rich descriptions of communications that takes place through breathing, closeness of partners, eye contact and other subtle behavioural cues. The depth of awareness about their partner's comfort and willingness for sex that some people demonstrate surprises me. This suggests to me that it is possible to untangle some of the subtle ways that consent is communicated and reinforces my conviction regarding the importance of this type of research.

NOTES

1. Driggs argues that this is the problem with using consent (or lack thereof) as an indication of sexual violence. He argues that we should do away with the legal concept of consent, and insert other criteria instead.

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