

# Rethinking the concept of consent for anti-sexual violence activism and education

**Melanie Ann Beres**

Department of Sociology, Gender and Social Work,  
University of Otago, New Zealand

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## Abstract

Sexual violence prevention has shifted from centering around a message of ‘no means no’ toward a message of ‘get consent.’ This paper explores how young adults conceptualise consent in relation to how they talked about expressing a willingness to participate in sex. The analysis here argues that understandings of consent are disconnected from how young people understand communication about sex. Consent is viewed as a formal minimum requirement for ‘ok’ sex. At the same time, young people were more sophisticated when discussing how they understand and communicate a willingness to have sex. Implications for sexual violence prevention education and research on sexual consent are discussed.

## Keywords

Rape, rape prevention, rape education, ethical erotics

## Introduction

In recent years, there has been a growth in education programmes, social marketing and activism devoted to improving the ways that young people in particular communicate consent with their sexual partners. The ‘no means no’ messages of the 1990s have been replaced with ‘yes means yes’ and ‘consent is sexy’ messages particularly for use in poster campaigns (see Anti-Violence Project, 2006: 1304) and slogans used in “slut walks” (as examples). There is also increased focus on consent in a range of anti-sexual violence education programming. This shift towards a more explicit focus on consent is occurring in a context where there is still little

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## Corresponding author:

Melanie Ann Beres, Department of Sociology, Gender and Social Work, University of Otago, PO Box 56, Dunedin 9054, New Zealand.

Email: melanie.beres@otago.ac.nz

theoretical understanding of the concept of consent and little understanding of how the concept is understood in the populations targeted by such campaigns and educational programming.

Consent is a concept that is often taken for granted. Many scholars use it without defining it explicitly, assuming a shared understanding of the concept (Beres, 2007; Gotell, 2007). At the same time, consent plays a pivotal role in legal and popular understandings about sexual violence because sexual violence is most often defined as sex without consent. In this paper, I explore and contrast how young adults talked about how they communicated willingness to have sex with how they define and understand consent. I argue that the concept of consent does not resonate with the young people engaging in various forms of heterosex and that consent is of limited use in sexual violence prevention.

### *Defining and understanding consent*

Definitions of sexual consent vary considerably, including legal, popular and scholarly definitions. The concept of consent has been used as an example of 'spontaneous sociology' (Beres, 2007), where scholars take up unacknowledged popular understandings of concepts without critically engaging with the concept or providing an explicit definition. The overall consensus between scholarly, popular and legal understandings of consent is that consent is some form of agreement to participate in sexual activity. Definitions vary based on nature of the agreement and who can enter in such an agreement.

Legally, consent has two main components. Firstly, the law specifies who has the capacity to give consent. Legal understandings of capacity to consent vary such that there is no consistent age of consent across jurisdictions. Globally the age of consent ranges from 12 to 20 (Graupner, 2000). In addition to age, capacity to give consent is also contingent on other criteria including having the mental capacity to consent. Within this understanding, some people with developmental disabilities might be considered incapable of giving consent. In some jurisdictions, including Canada and New Zealand, those who are intoxicated, asleep, or passed out do not have the capacity to consent (Crimes Amendment Act, 2005; House of Commons Bill C-49 (1992)).

The second area that the law concerns itself with is the definition of how consent is communicated or "what counts as consent". Again, there is variation based on jurisdictions. Some jurisdictions consider consent to include any agreement to participate in sex (McGregor, 1996; West, 1996). In these cases, consent is present any time someone acquiesces or in any way agrees to sex, even in the presence of coercion. In contrast, in other jurisdictions consent to sex can only be granted in the absence of any coercion or force (again, Canada and New Zealand are examples here). The nature of the communication of consent is also of interest. Here, there is the distinction about whether or not implied consent is considered indicative of consent. For example, in Texas in the mid-1990s a woman begged her "knife-wielding attacker" to use a condom thinking that if she was going to be raped at least she could try to protect herself from HIV. In court, it was determined

that she consented to sex because she asked her attacker to use a condom. In Canada, a landmark case determined that consent cannot be implied and that onus is on the initiator to insure he or she has consent before engaging in sexual activity (Gotell, 2007).

Considering the variation in legal definitions of consent, it is perhaps not surprising that popular and scholarly definitions are also varied. Several authors imply that consent is any agreement to participate in sex (for example Archard, 1998; Dripps, 1992). This is particularly the case in literature exploring women's consent to unwanted sex. Walker for instance, suggests that women may consent to unwanted sex for a variety of reasons including coercion (Walker, 1997). Other scholars are careful to define consent as something that can only take place in the absence of coercion or force (for example Hickman and Muehlenhard, 1999; Humphreys, 2000). In their study of sexual consent behaviours, Hickman and Muehlenhard (1999) define consent as the "free verbal or nonverbal communication of a feeling of willingness". The deliberate use of the word "free" is consistent with the few other scholars exploring how people give consent during their sexual interactions (see Beres et al., 2004; Hall, 1998; Humphreys, 2007).

Evidence from studies exploring the concept of consent suggests that consent is communicated in a variety of ways. Results suggest that consent is more frequently communicated non-verbally, rather than verbally (Beres et al., 2004; Hall, 1998; Humphreys, 2007; Jozkowski and Peterson, 2013). Although evidence suggests that in some instances consent may be communicated more frequently verbally than nonverbally (Jozkowski et al., 2013), consent is more often communicated indirectly rather than directly (Hickman and Muehlenhard, 1999; Jozkowski and Peterson, 2013). For example, when using verbal cues people are more likely to say "is this ok" rather than "will you have sex with me". Consent is more likely to be communicated verbally the first time a couple has sex (Humphreys, 2007) and is considered less applicable in long-term relationships, compared with new relationships or casual sex (Humphreys, 2007).

Some gender differences have surfaced regarding perceptions about how consent is communicated. Some evidence suggests that men are more likely than women to see consent as an event, rather than a process (Humphreys, 2004). Men were more likely to use non-verbal cues, and women were more likely to use verbal cues to indicate consent (Jozkowski et al., 2013). When assessing their heterosexual partners' consent, women were more likely to look for verbal cues and men were more likely to look for non-verbal cues (Jozkowski et al., 2013).

While legal understandings of consent refer to capacity and communication of consent, researchers make another important distinction related to consent. That is the distinction between the internal feeling of willingness (or wanting) to have sex, and the external communication of that feeling of willingness. We can see both of these within Hickman and Muehlenhard's (1999) definition above as the "communication of a feeling of willingness". Jozkowski made this explicit in her study by constructing two measures of consent – an internal measure of consent measuring the person's willingness to participate in sex and an external measure of consent that measured the communication of willingness.

### *Consent in education and prevention*

Sexual violence prevention education often focuses on building a greater understanding of the concept of consent (Donat and White, 2000). Forms of education can be divided into two main types. Firstly, educational programmes which are generally facilitated lectures or workshops with small groups and take place over a number of hours. Secondly, educational material designed to increase awareness of issues related to sexual violence. This might include poster campaigns, policy associated with sexual violence in particular contexts (campuses for example) and/or might include messages disseminated at activist events such as "Slut Walk". These different methods of education have varying levels of success in creating change. In general, education programming that takes place across numerous sessions is more effective at creating change than one-off programmes or public poster campaigns (Kirby et al., 2007). Considering that consent is used as a concept across all forms of sexual violence prevention strategies, it is important to consider this range here.

Some education programmes suggest that explicit verbal consent should be given to ensure that everyone is aware that sex is consensual. Other sexual violence prevention campaigns have included posters and/or slogans of "consent is sexy." For example, a University of Victoria, Canada postcard campaign used the slogan "Yes makes sex hot. Get consent" (Anti-Violence Project, 2006). On the back of the postcards, there was a description of the legal definition of consent. A more recent award-winning campaign developed by a group called Sexual Assault Voices of Edmonton included the tag line "Don't be that guy" (Sexual Assault Voices, 2010). It targeted the link between alcohol and sexual assault. All the posters included the message "sex without consent = sexual assault".

The use of the concept of consent for anti-sexual violence campaigns is premised on a number of assumptions related to consent. One is the idea that people should be informed of consent law. Prevention campaigns can also relay messages relating to both capacity to consent and the communication of consent. Yet, the distinction between capacity and communication of consent is rarely mentioned in such programming.

Many campaigns focusing on the communication of consent send the message that clear and explicit communication is required to gain consent. For some the expectation is that consent must be explicit. The most extreme example of this is often mentioned Antioch College Policy related to sexual consent where all members of campus were expected to ask for explicit verbal consent to each new sexual activity each time anyone engages in sex (Antioch College, 2005). This policy has been criticized for being unenforceable and unrealistic (Humphreys, 2004). Some scholars suggest a move to a broader understanding of communicative sexuality. Cowling (2004) builds on Lois Pineau's (1989, 1996) work and suggests a move toward teaching a communicative model of consent. In such a model sexuality and rape prevention educators teach a version of consent with communication at the fulcrum. Cowling makes a distinction between how communicative models of sexuality have been produced previously and uses the Antioch policy as an example. Cowling compares this approach with research interested in how people consent and

argues there is a difference between the evidence presented through research and the explicit consent requirement. Research provides evidence that consent communication occurs most often indirectly and nonverbally. Cowling argues that sexuality education should build on the knowledge and experiences of participants.

Cowling (2004) also observes that prevention strategies focusing on explicit forms of communication grew out of research on miscommunication in heterosexual relationships. Described as the miscommunication hypothesis (McCaw and Senn, 1998), the belief is that there is a lot of miscommunication in heterosexual relationships and that this miscommunication leads to instances of sexual coercion. Some research suggests that men tend to overestimate women's interest in sex (Lindgren et al., 2008), and that women say no when they mean yes (Krahe et al., 2000). This research has been criticized for methodology that captures just a short portion of an interaction between men and women (Beres et al., 2013). There is also a growing body of research that challenges the miscommunication hypothesis, suggesting instead that there is little miscommunication in heterosexual relationships. Current evidence suggests that women say no to sex in ways consistent with conversational norms for refusals generally (Kitzinger and Frith, 1999) and that men report to hear those as sexual refusals (O'Byrne et al., 2008; O'Byrne et al., 2006). Story completion data, where the vignettes are set up to maximise opportunities for miscommunication reveal little to no miscommunication (Beres et al., 2013; McCaw and Senn, 1998). Conversations with young adults about how they communicate during their casual sex experiences also reveal no miscommunication (Beres, 2010).

One of the main assumptions behind sexual violence prevention education is that people do not know how to consent to sex, and thus need to be taught. Indeed rates of sexual violence, particularly the unreported incidents of violence, suggest this might be the case. Yet, it is unclear whether it is indeed the case that people do not know how to consent to sex, or whether the rates of sexual violence can be explained in another way.

One important question to ask is what exactly educators are trying to accomplish when they teach people about consent. In general, this type of prevention teaching is about improving communication during sex. Underlying this education is the assumption that young people do not know how to effectively communicate about sex. This assumption needs to be validated to ensure prevention strategies are appropriate. I am concerned that there is conflation between the concept of consent and the concept of willingness to participate in sex. These two concepts are at times used interchangeably. Consent is often defined as the agreement to have sex. Yet, it is not clear if young adults see the two ideas (consent and willingness) the same way.

In this paper, I question this assumption by comparing the way that young adults who engaged in heterosexual talk about understanding and communicating their own and their partners' willingness to have sex with how they talk about consent. This analysis breaks open ideas about consent and communication about sex and suggests that, prevention programmes could be more effective by changing their use of the language consent.

## Methods

The paper presents two sets of data collected by the author for similar projects. Both projects involved interviews with young adults about how they negotiated their sexual experiences and both projects asked participants how they define sexual consent. Ethics committees from host universities approved the research procedures for each of the projects. The first project specifically discussed heterosexual casual sex experiences and the second involved couples in ongoing heterosexual relationships.

The first project was part of a larger study exploring consent to casual sex. Data collection took place in a small resort community in Western Canada in 2005. This location was chosen because it was known for high rates of casual sex, and to elicit stories of consensual sexual negotiation in what can be a very sexually charged environment. Young people within this community were largely transient and often expressed the sentiment that “what happens here stays here”. Semi-structured interviews were conducted with 21 young adults (11 women and 10 men) between the ages of 18 and 30. All but one participant identified as White, one identified as Black. All participants were single at the time of the interview and the interview focused on their experiences of casual sex. One woman identified as bisexual while all others identified as heterosexual. Not all incidents discussed took place in the resort community. Some participants drew on other experiences prior to their arrival in town.

The second project took place in a major city in New Zealand in 2008. Twenty three semi-structured interviews were conducted with members of 19 heterosexual couples, with a total of 34 people interviewed (19 women and 15 men). Ten couples were interviewed together, five couples were interviewed separately and four women were interviewed whose partner were either unwilling or unable to complete the interview. The couples chose whether to be interviewed separately or together, with most couples preferring to be interviewed together. Some couples felt it was better for each of them to have the space to say what they wanted and chose to be interviewed separately. Interviewing participants as a couple is bound to produce different dynamics than individually interviewing the members of a couple. The analysis presented here is at the level of the concept. In other words, I was particularly focused on descriptions of consent. These were not qualitatively different in couple or individual interviews. Analysis of the interactions between members of the couples is not presented in this paper. Of the couples where only the female partner participated, two of the women really wanted to contribute but their partners did not want to, one couple split up before I had an opportunity to interview the male partner and I could not interview the partner of the final couple due to scheduling conflicts. Participants ranged in age between 19 and 30 years old and had been in their current relationship for between 3 months and 6.5 years. Twenty four participants identified as Pakēha,<sup>1</sup> two as Māori<sup>2</sup> and six as Asian. Most participants were either students or had recently graduated.

Interviews in both studies lasted between 30 minutes and 3 hours with the vast majority of interviews lasting between 1 and 2 hours. The interviews followed a

similar trajectory for both studies. Interviewees were asked about how they negotiated their sexual experiences including how they interpreted their partners' willingness to participate in sex and how they communicate their own willingness to participate in sex with their partner(s). Toward the end of the interview, participants were asked how they define sexual consent and how consent played a role (or not) in the relationship(s) we talked about during the interview. There are a number of differences between the datasets including location, recruitment method, and type of relationship. Yet, both datasets share components necessary for the analytical purposes here; all the interviews followed a similar trajectory of discussing the negotiation of sex, followed by a discussion of consent.

This analysis was driven by my observations across the datasets of these two projects. It was particularly striking how participants involved with both projects spoke differently about negotiating sex and consent. Qualitative content analysis was then used to systematically determine the themes present in the data. Analysis of the ways participants spoke about understanding willingness to have sex has been published elsewhere (Beres, 2010). The analysis here focuses on sections of the interviews where participants were responding directly to questions about consent. The analysis looked for both semantic (face-value) and latent (implied) constructions of consent deployed by participants (Braun and Clarke, 2006). Three main themes presented here surfaced as the dominant constructions of consent.

## Results

Participants described the sexual consent in three main ways; as a minimum requirement for acceptable sex, as a discrete event, and as something unrelated to their relationship.

### *Consent as a minimum requirement*

The dominant way consent was constructed through participants' words was as a minimum requirement for sex. This idea of a minimum requirement was communicated in two ways. Firstly, some participants distinguished a willingness to have sex with wanting to have sex.

Joanne: [Consent is] the willingness [to have sex.] The wanting to is an important part. I think you can have consensual sex without wanting to because I don't think prostitutes could be taking every guy they slept with to court saying this man raped me kind of thing, um, I suppose the wanting to is probably more a moral thing than a legal thing. (interviewed with her partner)

Leaving Joanne's assumptions about sex work aside, there are two ideas about consent that she communicates here. Firstly, consent communicates a general willingness to engage in sex and secondly that consent relates to the law and what might be legally permissible. For consent to be present by Joanne's standard, it does not necessarily mean that the partners wanted to have sex. Nor does it mean

that the sex is unproblematic or morally permissible. It may be possible for someone to agree to sex they do not want. This is similar to data presented by Peterson and Muehlenhard (2007) where young women make an analytical decision between having sexual desire and consenting to sex. In their case, women were saying that there are times where people might refuse sex even though they feel desire. Here, Joanne provides an instance where someone might consent, but does not feel desire. In this sense, consent is a minimum standard. The minimum standard is the one that relates to the law and outlines when someone might be held criminally negligent, but is not as high a standard as sex that both people want.

Jacob, makes a similar comment on the connection with consent to the law.

Jacob: Consent for me, consent has to a girl, so um her mind has to be stable like, not into drugs or drunk or anything or otherwise it would be illegal. Um, body language, and facial expressions, and also the word of mouth to ask her whether she wants to do the final step of confirmation. (interviewed with his partner)

Jacob also explicitly brings a legal understanding into his definition of consent in another form of minimal requirement for sex. In this case though, he does not make the distinction between willing and wanting, rather it has to do with the woman's state of mind and capacity to give consent (i.e. being sober). Unlike Joanne though, Jacob considers consent to be about wanting to have sex. Jacob also refers to consent as an event that is about the "final step" (presumably intercourse). This idea is discussed further in the next section.

Another way consent was constructed as a minimum requirement was reflected in participants' talk of consent as a lack of resistance. During an interview with Miriam about her relationship with Chris, Miriam said, "there's heaps of times during that night where I could've gone home, and I didn't, so I suppose in some ways that was giving him consent, yeah." Similarly, during an interview Lance said to his partner Hannah, "well, you don't resist".

Both Miriam and Lance are talking about their own experiences. Miriam is talking about her own consent, and Lance is discussing his partner's consent. In both cases, they suggest that the female partner consented because there was no resistance. This contrasts earlier portions of both interviews, and most of the interviews in both studies, because earlier Miriam and Lance described other behaviours both partners used to agree to sex. In the interview with Lance and Hannah, they talked extensively about how they talk openly about what they want. Lance says, "She tells me what she likes or how she wants it." Similarly, Miriam spoke about how she initiated sex the first time she and Chris had sex. She said that she knew he was interested because "he returned the signals". This is in sharp contrast to her declaration later in the interview that she consented to sex by staying, when she could have left.

In another example, throughout his interview about his casual sex experiences, Steve spoke extensively about how he was influenced by his mother, who worked in women's refuge. He talked the importance of respecting women and discussed many different ways that the women he has sex with let him know that they are

interested in sex through demonstrating active interest in sex. I was surprised when I asked him about consent; he said, "I guess consensual sex is just when the girl doesn't say no." A few other men and women gave similar responses. Tim and Colin who were both interviewed about their casual sex experiences suggested that in order to have sex, it is necessary to remove a woman's clothing and it is easy to tell when a woman does not want her clothes removed, so consent is getting her clothes off. Gary, while talking about casual sex said that the absence of a negative behaviour is consent. Several women gave similar representations of consent. Stacey and Anne's quotes below are representative of such statements.

Stacey: Well one way people consent, and I don't know if this is politically correct or not, is by not saying no. You know what I mean? Like you know just stop. . . (interviewed about her casual sex experiences)

Anne: And she didn't know. . .how to say no, kind of like, so it was consensual, but it was still like fucking rape a lot of the time, like it was not, like she didn't want it, but she couldn't, she just didn't know how to say no, like I don't know if she needed to be taught something like that, or you, you probably have to have enough self-worth. (interviewed about her casual sex experiences)

These participants' interviews all suggest that consent is the absence of refusal or resistance, whether it is someone's refusal to get undressed or not saying no. Stacy seemed a little uncomfortable with this version of consent because she suggested that it might not be politically correct. She is aware of counter-constructions that suggest that "not saying no" is not enough to obtain consent.

Anne answered a question about the definition of consent by discussing the experiences of a friend of hers. She suggests that because her friend did not say no she consented, even though she labeled her friend's experiences as rape. Thus, consent becomes a bare minimum standard when it comes to understanding sexual relations: one where the lack of resistance makes it ok to continue.

This theme as it is presented may sound troubling to feminists and others invested in sexual violence prevention. It sounds as though these participants are saying it is ok to have sex with someone who does not say no overtly. However, is important to examine this result in the full context of the interviews. In the first part of the interviews, participants were asked to describe how they communicated willingness to have sex with their partner(s). Participants were able to clearly articulate complex ways of communicated willingness to have sex (Beres, 2010) including awareness of changes in breathing, hesitating, feeling tense and/or actively participating in the activity. This often included lack of resistance signals, but only in conjunction with indications that the partner was enjoying themselves and willing to continue.

There is a fracture here. When participants were describing how they understand and communicate willingness to have sex, they were (by many definitions) describing how they understand and communicate consent to sex. Yet, when using the

language of consent, a very different picture emerges – one where consent is but a minimum standard for acceptable or non-criminal sex. This is highlighted in Anne’s quote above where she says, “It was consensual, but it was still like fucking rape a lot of the time”. In other words, her friend’s consent was enough such that the partner could not be held criminally liable, based on her misunderstanding of the law. Yet at the same time, the sex was harmful and problematic.

### *Consent as an event*

A second way that participants described consent is the idea that consent is presented as a discrete event that occurs once during a sexual encounter, generally for intercourse.

Alice: They are kind of together and they are being intimate, there’s a moment of kind of the decision to go into penetration. (interviewed separately from her partner.)

Here consent is a moment where the decision about penetration is made. Another participant discussing his experiences of casual sex said, “consent is the butt lift”. The “butt lift” is when a woman lifts her butt and allows her partner to remove her underwear. This version of consent, one where consent was a discrete event granting permission for a particular activity, was the dominant version of consent presented in the data.

Other participants viewed consent as an event, but one that could take place early in the interaction. When I asked Larry how people consent to casual sex, he said, “Well sometimes we can say it like, let’s go back to my place”. For Larry, consent is still an event. It is something that happens in one discrete moment in an interaction and is about the decision to “go home with someone”. This response was common, many young people suggested that consent to casual sex included agreeing to go home with someone.

The construction of consent as a discrete event connects with one of the debates within some literature on consent: the debate about whether consent is an event or a process (see Beres, 2007). Most feminist theorizing and work with sexual violence prevention views consent as a process that begins with sexual initiation and is ongoing throughout the sexual activity. A study of the perceptions of young men and women suggests the men are more likely to view consent as an event when compared with young women (Humphreys, 2000).

Again, here it is important to contrast the description of consent with other portions of the interviews where participants described how to tell their partner was willing to engage in sex. In the previous analysis (Beres, 2010), participants suggested that sex happens in somewhat of a stepwise, iterative fashion.

Ben: If she seemed to be enjoying one thing and had been enjoying it for a while maybe just try it a little something extra maybe get a little closer to wherever, and then if that was okay stay there for a little while, and then try again and then like that. (interviewed with his partner.)

Participants like Ben above, overwhelmingly described this process, when asked to describe how they know their partner is willing to have sex. When asked about consent, these same participants often deployed a description of consent as an event (consent as the “buttlift” or as “going home with someone”). This is another place where participants descriptions of consent are inconsistent with messages put forward by sexual violence prevention advocates. Sexual violence prevention messages suggest that consent is a process, something that begins with any suggestion of sexual activity and that continues for the duration of the activity, or until someone does not consent to continuing forward. Again, on the surface it is possible to see the words of the participants as inconsistent with these sexual violence prevention messages. Yet, when asking them how they understand their own and their partner’s willingness, their descriptions are in line with an on-going and iterative process, not an event.

### *Consent does not apply to their relationships*

The third theme of this analysis is that participants said that consent does not factor into their own on-going relationships. Penny who was interviewed with her partner said, “you don’t knock at your own house”. Her partner agreed. In the context of this interview, this couple saw consent as an explicit request for sexual activity. For them, an explicit request for sex was not required once people were in a relationship. Earlier in the interview, however, they were able to talk about times when one partner wanted sex, the other did not, and that the ways that these instances were successfully negotiated so that one did not have sex when one was not willing.

Jeff and Kate, who were interviewed together, tell a similar story.

Melanie: Okay now thinking more about your relationship, what role did consent play at the very beginning?

Kate: It didn’t, well in terms of like there was no, there’s no ‘do you want to sleep with me’, it doesn’t happen.

Jeff: mmm, it’s like you know you get naked you’re in bed you’re on top of each other um so I’m going to grab a condom and

Kate: and that’s what happens.

It is clear from the description above, that Kate and Jeff do not see consent as relevant to their relationship. This is consistent with many of the stories told by participants. Yet, similar to the previously described themes this declaration that consent is not present in their relationship is inconsistent with the way they described their sexual encounters in their relationships.

This theme was present only in interviews in the second dataset about ongoing relationships. It did not surface in interviews about casual sex. This theme is

consistent with previous research findings suggesting that consent becomes less important as relationships progress (Humphreys, 2007). Similar to the previous two themes, there is a disconnection here between the use of the term consent and descriptions of willingness to participate in sex. The couples in these interviews discussed how they communicated about sex and how they successfully negotiated times when they had differing levels of desire, or desired different activities. Using many standard definitions of consent, they were describing how they consent to sex. Yet, considering that they did not see consent as relevant to their relationship, they did not see these negotiations as part of consent.

When couples were interviewed together, there were no disagreements about definitions of consent, including whether or not consent to be applied to their relationship. Where this theme did surface in individual interviews, it was not always possible to know how the partners would have felt about the comment. Yet, it was clear that the discussion of the irrelevance about consent was embedded within the particular language of consent. In all the interviews where this theme arose, all met criteria for consent based on a definition of a free willingness to participate in sex.

## **Discussion**

Participants in the studies presented here described consent in several ways. Firstly, their descriptions of consent portray consent as a minimum standard for ethical sexual relationships. Secondly, they described consent as a discrete event that happens once during a sexual encounter rather than a process that occurs throughout the sexual activity. Finally, they often said that consent did not factor into their relationship.

On the surface, these constructions of consent appear troubling. Many of the ways that participants talk about consent reflects many of the concerns expressed by anti-sexual violence educators and activists. Firstly, the descriptions of consent reported in these studies suggest that young people do not understand the concept of consent. Many of the descriptions of consent in the interviews were not consistent with legal definitions of consent in Canada or New Zealand (as examples). Secondly, if we analyse only their descriptions of consent, the participants seemed to have an overly simplified understanding of communication during sex. Yet, when the results are examined in the full context of the interviews, a different picture emerges. The results presented here clearly indicate that how people describe their practices around negotiating sex is different from how they understand the word consent. In other words, participants' narrow understanding of consent is not consistent with their descriptions of how they understand their own and their partners' willingness to participate in sex. When a participant said that consent is not relevant to their relationship it does not necessarily mean that the sex they are describing was non-consensual or that neither party consented to have sex. The sex as they described it would fit easily with legal definitions of consensual sex. What their comments suggest instead is that the idea of

communicating a willingness to participate in sex is not the same thing as consenting to sex.

The major contribution of this analysis is that it illustrates importance of careful attention to the use of the language of consent when discussing sexual violence prevention. When thinking about the use of the term ‘consent’ as it relates to anti-sexual violence education, to research on sexual violence and consent, and to sexuality generally, it is important to make a clear distinction between the term and concept underlying the word itself.

This analysis questions the assumption that underpins the use of consent in many sexual violence prevention campaigns: that young people do not know how to communicate about sex. The evidence presented here supports previous work that has demonstrated that young people can be quite adept at sexual communication. For example, several researchers have demonstrated that women say ‘no’ to sex in ways consistent with normative ways of refusing social invitations generally (Kitzinger and Frith, 1999). At the same time, O’Byrne and colleagues demonstrated that men also report to hear those refusals as such (O’Byrne et al., 2006, 2008). Elsewhere I have argued that men and women are able to describe in detail how they tell if someone is interested in sex or not (Beres, 2010). Descriptions of communication from these participants are often based on non-verbal behaviours and participants report being attuned to subtle resistance behaviours such as showing discomfort or hesitating “even for a split second” while also looking for active participation and interest from their partners (Beres, 2010; Jozkowski, 2013).

### *Limitations*

It is important to note a couple of limitations related to the data used for this analysis. The two datasets were not collected explicitly for the purposes of comparing how people negotiate sex with how they understand consent, nor were they designed to be used together. The data collected for the casual sex study is reflective of a particular group of people in a highly sexually charged and transient environment. It is likely that their attitude toward casual sex may be different compared to casual sex in other environments. Subsequently, this may impact how they negotiate sex. Similarly, the couple data represent a subset of young heterosexual couples. When interviewing only one person about interactions that include another (such as the interviews about casual sex and where couples were interviewed separately) it is not possible to know how the other partner characterised the interactions discussed during the interviews. Yet the purpose of the analysis here was not to determine whether the interactions were consensual or not, but rather to contrast how the same participants discussed the communication of willingness to have sex and consent. Despite these limitations and the diversity of experience reflected in the data (casual sex versus sex in a long term relationship), it is clear that in both data sets participants described consent to sex differently than how they described their negotiations of sex. This suggests that for these participants, consent and negotiating sex are two different concepts.

Another important limitation to acknowledge is that the data here represent a relatively narrow subset of the range of sexual and intimate relationships within which people engage in sexual activity. Same-sex relationships are not represented in this data, nor are polyamorous relationships. To gain a better understanding of consent the study of a wide range of relationships is paramount. Sado-masochistic relationships would also be of interest in relation to the study of consent as power dynamics are often explicitly negotiated.

### *Implications for sexual violence prevention*

The current analysis suggests several implications for research on sexual consent, and for anti-sexual violence education and activism. Researchers need to consider how participants interpret measures of consent. When people answer questions about consent they may not be thinking about a version of consent consistent with the researcher's stated definition. Interpretations of the findings from research on consent should attend to the possibility that the way that people respond to a question about consent might not reflect how that same person communicates about willingness to have sex with their partners. For example, Humphreys (2004) found that men were more likely to view consent as an event in comparison to women. A finding such as this can be interpreted to suggest that these men think that once consent has been granted they do not need to think about whether or not their partners wants to have sex or is still consenting. The results presented here suggest that perceptions about communication and consent may be more complex. It is possible for someone to think that consent is an event that takes place once during an interaction and think that determining someone's willingness is an ongoing process. The difference between the underlying concept of consent that researchers use should be disentangled from the preconceived ideas of participants if we want to develop a better understanding of how sex is negotiated.

Activists involved in developing social marketing campaigns or developing slogans promoting consensual sex may want to reconsider the use of the language of consent. Carmody's (2009) findings illustrate that many young people do not know the legal definition of consent in their jurisdiction. Considering this lack of knowledge of a legal definition of consent in conjunction with evidence presented here that young people construct consent as a minimum standard for acceptable interaction, consent may not be the most effective way to frame anti-sexual violence messages in this context. Slogans such as "get consent" might be lost on such young people, and a move away from the word consent might be warranted. Perhaps it would be more effective to talk more directly about a specific behaviour. The organization "Sexual Assault Voices of Edmonton" do this in their poster campaigns by using phrases such as "Just because she isn't saying no... doesn't mean she is saying yes". This type of phrase is more direct and straightforward with less room for multiple interpretations. It does not rely on the people seeing it to have knowledge or understanding of the concept of consent or consent law.

Rethinking how consent can be useful for anti-sexual violence education programming is more complex. There is likely a difference here between short one-off

sessions and longer multi-session educational programming. For education work, it is helpful to think about two possible components of consent (particularly as it relates to law), that is, the capacity to consent and the communication of consent.

Discussion about consent may be particularly beneficial when specifically addressing the capacity to consent. It is important for people to know the legal details about age of consent, sobriety and any other components of the capacity to consent. If someone is under the legal age of consent, for example, it does not matter if they are expressing a willingness to have sex, an over-age partner can still be found criminally negligent. Knowing the legal limits of capacity to consent is important information and can likely be communicated in short and long education programs.

Addressing the communication of consent is more complex and perhaps best left for longer programmes where there is time for participants to think about and incorporate new information into their own understandings of sex. In this way, educators can begin to bridge the gap between how people think about communicating willingness to have sex and how they think about consent. Educators could build on the knowledge that participants already have about how to negotiate sex and broaden that out to encourage more explicit and verbal forms of communication. They can then begin to see that the negotiation process is a part of giving and receiving consent for sex. Some education programmes have already taken a move beyond only talking about consent toward an understanding of ethical sexual relations (Carmody, 2005, 2009; Carmody and Ovenden, 2013). This type of programming should be further developed to support young people and foster ethical and pleasurable sexual relations.

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## Notes

1. Pakēha is the term used to describe New Zealanders of European descent.
2. Māori is the term used to describe the indigenous population of New Zealand.

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## Author Biography

**Melanie Ann Beres** is a Senior Lecturer in the Department of Sociology, Gender and Social Work at the University of Otago. Her programme of research explores how consent is conceptualised and practiced in a variety of sexual relationships.