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## ANNUAL REVIEW OF SEX RESEARCH SPECIAL ISSUE

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### **The Complexities of Sexual Consent Among College Students: A Conceptual and Empirical Review**

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*Headlines publicize controversies about sexual assault among college students, and universities face pressure to revise their sexual consent policies. What can the social science literature contribute to this discussion? In this article, we briefly discuss reasons for the recent upsurge in attention to these issues, the prevalence of sexual assault among college students, and aspects of college life that increase the risk of sexual assault and complicate sexual consent. We then review the conceptual challenges of defining sexual consent and the empirical research on how young people navigate sexual consent in their daily lives, focusing primarily on studies of U.S. and Canadian students. Integrating these conceptual issues and research findings, we discuss implications for consent policies, and we present five principles that could be useful for thinking about consent. Finally, we discuss some of the limitations of the existing research and suggest directions for future research.*

- Pop star Lady Gaga and Governor Andrew Cuomo coauthored an essay, published in *Billboard* magazine, urging support for a bill requiring all New York colleges and universities to address sexual assault by adopting affirmative consent policies (Gaga & Cuomo, 2015).
- In a highly publicized protest, Columbia University student Emma Sulkowicz carried a mattress around campus for months until May 2015, when she and the student she accused of raping her both graduated (Bazelon, 2015). In response, the accused student, Paul Nungesser, sued Columbia University for sex

discrimination under Title IX for allowing Sulkowicz to receive course credit for her protest (Kutner, 2015).

- Jameis Winston—Florida State University (FSU) star quarterback, Heisman Trophy winner, and number-one National Football League (NFL) draft pick—is being sued by Erica Kinsman for sexual battery and assault while both were students at FSU (Axon, 2015; Hanzus, 2015).
- *Rolling Stone* published an article about a gang rape at a University of Virginia fraternity house, but later apologized and retracted the article when it became clear that the incident could not have happened the way the article described it (Coronel, Coll, & Kravitz, 2015).
- At Saint Mary's University in Halifax, student orientation leaders led a chant during frosh week celebrating underage, nonconsensual sex and posted it on Instagram: "SMU boys we like them YOUNG! Y is for your sister. O is for

oh so tight. U is for underage. N is for no consent. G is for grab that ass” (National Post Staff, 2013).

These stories, taken from recent headlines, make clear that sexual assault among university students is a hotbed of controversy. In the United States and Canada, universities are under pressure to investigate and address students’ complaints of sexual assault. Often the complaining student and the accused student both acknowledge that sexual contact occurred; the issue of contention—the issue that university investigators need to decide—is whether this sexual contact was consensual. Many sexual assault educational and awareness campaigns stress the importance of getting sexual consent before having sex, without clarifying what counts as consent. What is meant by sex being consensual or nonconsensual?

In this article, we review the literature on sexual consent as it relates to sexual assault. We begin by discussing how the term *sexual assault* and related terms are typically defined. Next, we discuss issues specifically related to sexual assault and sexual consent at colleges and universities in the United States and Canada: the reasons behind the increased media and political attention paid to sexual assault among college students, the prevalence of sexual assault among college students, and aspects of college life associated with risk of sexual assault. We then discuss issues related to conceptualizing sexual consent, including factors that complicate sexual consent and controversial questions about standards of sexual consent. Against this background, we review research on how college students and other young people convey and infer sexual consent. Integrating these conceptual issues and research findings, we discuss implications for consent policies, and we present five principles that could be useful for thinking about consent. Finally, we discuss some of the limitations of existing research and suggest directions for future research.

Some topics related to sexual consent are beyond our scope. We cannot answer nonempirical questions such as “What *is* consent?” or “What *should* count as consent?” We can, however, answer questions about how young people typically express consent and what behaviors they interpret as signaling consent. Because we are focusing on college students, we do not address questions related to the inability to consent because of youth (Oudekerk, Guarnera, & Reppucci, 2014), developmental disabilities (Kennedy, 2003), or dementia (Tarzia, Fetherstonhaugh, & Bauer, 2012). We do, however, address the inability to consent due to alcohol and drug intoxication, which is common among students.

#### DEFINITIONS OF SEXUAL ASSAULT AND RELATED TERMS

There are no universally accepted definitions of the terms *sexual assault*, *rape*, or *sexual battery*. Legal definitions vary across jurisdictions (Eileraas, 2011; Palmer, 2011); researchers’ operational definitions vary across studies

(Muehlenhard, Powch, Phelps, & Giusti, 1992). Generally, these terms refer to sexual acts that are obtained by force or threat of force or without the victim’s consent. *Rape* is typically defined more narrowly than these other terms; it typically includes sexual penetration (vaginal, and in some jurisdictions also anal or oral penetration) that is obtained by force or threat of force or when the victim is incapacitated (Cantor et al., 2015). In many jurisdictions, *sexual battery* includes sexual touching obtained in these ways, and *sexual assault* includes sexual penetration or sexual touching obtained in these ways (Cantor et al., 2015). In 1983 Canadian law “was amended to replace the offences of rape and indecent assault with a three-tier structure of sexual assault” (Sinha, 2013, p. 29). In the United States, these crimes and their definitions vary from state to state (Eileraas, 2011; Palmer, 2011).

In the present article, we use the term *sexual assault* to refer to sexual penetration or sexual touching done without the victim’s consent. What constitutes consent, however, is a contentious issue.

#### THE POLITICAL CONTEXT: WHY NOW?

Sexual assault among college students was documented in the social science literature as early as the 1950s (Kirkpatrick & Kanin, 1957; also see Kanin, 1957, 1967; Koss, Gidycz, & Wisniewski, 1987). Why is it getting increased attention now?

In the United States, the Obama administration decided to make addressing sexual assault a priority. In 2011 Vice President Joe Biden—a longtime activist against violence against women (Biden, 1993)—and Secretary of Education Arne Duncan introduced new guidelines outlining the obligations of colleges and universities for preventing and responding to sexual assault (The White House, 2014). These guidelines, outlined in the “now notorious ‘Dear Colleague’ letter” (Lipka, 2015), stated that sexual violence is a type of sex discrimination prohibited by Title IX and that schools are legally obligated to investigate and resolve complaints of student-on-student sexual violence, even if the incident occurred off campus (Office for Civil Rights [OCR], 2011). The legal basis for this policy, Title IX of the Education Amendments of 1972, says, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” ([www.dol.gov/oasam/regis/statutes/titleix.htm](http://www.dol.gov/oasam/regis/statutes/titleix.htm); also see Lipka, 2015). As a result, schools are now struggling to establish procedures for dealing with complaints of sexual assault (Lipka, 2015; Wilson, 2015). Students who are dissatisfied with a university’s response can file Title IX complaints against the university online or via mail, e-mail, or fax (OCR, 2010). As of January 2016, 161 U.S. schools were under federal investigation for possible sexual assault-related violations of Title IX (for an interactive Web site, see <http://projects>).

chronicle.com/titleix/about/). Some students are protesting, demanding harsher sanctions against anyone found responsible for nonconsensual sex. Students who have been sanctioned have sued universities (Wilson, 2015). Mothers of accused students have founded a group seeking to increase awareness of “the unfair adjudicatory practices used against accused students” (Families Advocating for Campus Equality, n.d.).

In addition, a few states have taken action. In September 2014, Governor Jerry Brown of California signed legislation requiring universities receiving state funds to adopt policies requiring “affirmative consent,” defined as

affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. (California Senate Bill SB-967, 2014)

New York passed a similar law in 2015 (Craig & McKinley, 2015; Kearney, 2015).

In Canada, although sexual assault is a crime under federal law, education falls under the jurisdiction of the provinces, so the political attention to sexual assault in the postsecondary education system is not uniform across the country. Probably because of the increased attention to sexual assault at U.S. universities, the *Toronto Star*, Canada’s largest daily newspaper, conducted a three-month investigation into sexual assault policies on community college and university campuses across Canada. They reported that only nine of more than 100 Canadian colleges and universities contacted had specific sexual assault policies outlining the necessary protocols, procedures, and supports on their campuses (Mathieu & Poisson, 2014). Since that report, numerous universities have independently started developing sexual assault protocols, policies, and procedures; launching sexual assault campaigns; or improving their support centers. Collectively, Colleges Ontario and the Council of Ontario Universities have pledged action (Poisson & Mathieu, 2014), and the Ontario government has pledged a \$41 million plan “to help change attitudes, provide more supports for survivors, and make workplaces and campuses safer and more responsive to complaints about sexual violence and harassment” (Office of the Premier, 2015). In the midst of all of this, the Ontario government released a new sexuality education curriculum for the elementary and secondary public school system that included teaching guidelines specifically addressing sexual consent (Rushowy, 2015). Other provinces took other actions, such as

developing their own sexual violence prevention strategies (e.g., Nova Scotia) and increasing funding of provincial sexual assault services (e.g., Saskatchewan).

### PREVALENCE: HOW COMMON IS SEXUAL ASSAULT AMONG COLLEGE STUDENTS?

If sexual assault is defined as sexual penetration or sexual touching obtained by physical force, threats of force, or incapacitation, studies suggest that roughly 20% of female university students in the United States and Canada experience attempted or completed sexual assault (for a review, see Muehlenhard, Peterson, Humphreys, & Jozkowski, 2015). This one-in-five prevalence rate is not uniform across all campuses, however; a recent study of students at 27 institutions of higher education across the United States ( $N = 150,072$ ), undertaken by the Association of American Universities, found that prevalence rates across campuses varied from 13% to 30% (Cantor et al., 2015, p. 16).

A student’s risk of sexual assault is affected by numerous factors. Women (American College Health Association, 2013; Brener, McMahon, Warren, & Douglas, 1999; Cantor et al., 2015; Krebs, Lindquist, Warner, Fisher, & Martin, 2007) and transgender students (Cantor et al., 2015) are at greater risk than are men (e.g., in the Association of American Universities [AAU] study, the percentages of senior undergraduates who reported having experienced nonconsensual penetration involving physical force or incapacitation since enrolling in college were 13.5% for women; 2.9% for men; and 15.2% for transgender, genderqueer, gender-nonconforming, and questioning students; Cantor et al., 2015, p. 67, Table 3-11). First-year students are at greatest risk; this risk declines in subsequent years, with seniors and graduate students at the lowest risk (Cantor et al., 2015; Cranney, 2015; Krebs, Lindquist, Warner, Fisher, & Martin, 2009). Much—probably most—of the sexual assault that occurs among college students involves alcohol or drugs—usually alcohol (Cantor et al., 2015; Krebs et al., 2009; Testa & Livingston, 2009). In some cases, alcohol impairs victims’ ability to recognize risky situations or to resist effectively (Testa & Livingston, 2009). In other cases, it is the victim’s level of intoxication that makes the act nonconsensual; according to laws in the United States and Canada, sex with someone who is incapacitated because of alcohol or drugs qualifies as rape or sexual assault (Eileraas, 2011).

The risk of sexual assault does not begin in college. For girls and women, the greatest risk of rape occurs during adolescence and young adulthood. Many college women have a history of sexual assault before entering college (Black et al., 2011; Tjaden & Thoennes, 2006). Young women who are not college students are also at risk (Sinozich & Langton, 2014). However, research on sexual consent in noncollege populations is rather limited, and there are particular characteristics of college life that may complicate sexual consent; these issues are reviewed in the section that follows.



The percentage of men who report having sexually assaulted a woman is far smaller than the percentage of women who report having been sexually assaulted by a man. Likely explanations are that some men sexually assault numerous women, some sexually aggressive men intentionally underreport their aggressive behavior because of social desirability or legal concerns, and some sexually aggressive men do not consider their behavior to be coercive (Kolivas & Gross, 2007; Lisak & Miller, 2002; Strang, Peterson, Hill, & Heiman, 2013).

### CHARACTERISTICS OF COLLEGE LIFE THAT INCREASE WOMEN'S RISK OF SEXUAL ASSAULT AND COMPLICATE CONSENT

Many aspects of college life make college students, especially women in their first year of college, vulnerable to sexual assault (Cranney, 2015; Krebs et al., 2009). Many college students are living away from their parents for the first time. This newfound freedom, in conjunction with a social script of college as a "time to experiment" (Kuperberg & Padgett, 2015, p. 518), encourages students to "try on" new personalities and behaviors. From a developmental perspective this is perfectly natural, but when these circumstances are combined with limited knowledge about sex, gendered sexual expectations, male-controlled party culture, and heavy alcohol consumption, many young women are at heightened risk of sexual assault.

#### College Students' Limited Knowledge About Sex

Many students enter college with limited knowledge about sex. Instead of comprehensive sex education, many U.S. high school students have been exposed exclusively to abstinence-only programs, many of which treat gender stereotypes as factual representations and disseminate inaccurate information about contraception and condoms (Kantor, Santelli, Teitler, & Balmer, 2008). These programs do not provide space for students to consider their own criteria for engaging in sex; they do not address topics such as how to give, ask for, or infer sexual consent; the only message is "Don't."

Popular culture exposes students to messages suggesting that sexual communication, negotiation, and equality are unnecessary or impossible in the face of strong passion (Reinholtz, Muehlenhard, Phelps, & Satterfield, 1995). Without accurate information to counter these messages, many students are poorly prepared for the many new situations they face when entering college.

#### College Students' Gendered Sexual Expectations

Young women and men are exposed to different cultural messages about sexuality. In schools, girls typically get messages of risk, disease, and immorality, consistent with traditional gender ideologies of feminine passivity (Fine,

1988; Grose, Grabe, & Kohfeldt, 2014). In popular culture, they get mixed messages: Look "'hot' but not 'slutty'" (Armstrong, Hamilton, & Sweeney, 2006, p. 488); be popular, not prudish; be seductive and responsive but not too sexually available (Wiederman, 2005).

In contrast, boys and young men face pressure to be sexually active. Culturally prescribed sexual scripts portray men as always interested in and ready for sexual activity. According to these scripts, men's sexual performance is evidence of their masculinity; if they do not show strong sexual interest, their masculinity might be questioned (Pascoe, 2005; Sweeney, 2014; Wiederman, 2005). Thus, many men and women enter college with different "sexual agendas" (Armstrong et al., 2006, p. 483).

The sexual double standard (Muehlenhard, Sakaluk, & Esterline, 2015) also complicates women's and men's sexual choices. Many young women want to have fun, to fit in, and to be popular; however, women who engage in sex freely or who "flaunt" their sexuality are sometime labeled "sluts" or "whores" (Armstrong et al., 2006; Sweeney, 2014). In contrast, men gain social status by having numerous sexual partners, gaining labels such as "player" or "stud" (DeSantis, 2007; Sweeney, 2014). Women might feel pressured to refuse sex—even sex that they desire—to avoid negative social repercussions (Hamilton & Armstrong, 2009). If a woman refuses a man's sexual advances, he might assume she is refusing for appearance's sake (Muehlenhard, 2011; Osman, 2007; Osman & Davis, 1999), or he might assume that she will eventually give in, and he might feel justified continuing his advances (Jozkowski & Hunt, 2014). Men might pursue sex—even sex that they do not desire—to appear more masculine (Pascoe, 2005; Sweeney, 2014; Wiederman, 2005).

#### College Students and Party Culture

Socializing among college students often involves partying and heavy drinking (Armstrong et al., 2006). Because many residence halls have strict policies forbidding alcohol, students often drink at off-campus residences or fraternities (Armstrong et al., 2006; Wechsler, Lee, Nelson, & Kuo, 2002). Students end up consuming alcohol provided by others, in locations controlled by others, in sexualized environments (Armstrong et al., 2006). Women are expected to be "nice" to the men who host the parties; part of being "nice" may be tolerating some unwanted sexual contact, even when it makes women feel uncomfortable, because they believe that they owe it to the men (Armstrong et al., 2006). Many young women drink to the point of incapacitation; even for women who are not incapacitated, many aspects of this party culture—an environment controlled by men, social expectations to be sexy and to defer to men, alcohol, and "a disproportionate targeting of newly arrived women" (Cranney, 2015, p. 11)—combine to pressure young women into sex.

Armstrong et al. (2006) described party culture in the U.S. fraternity system: “Fraternities control every aspect of parties at their houses: themes, music, transportation, admission, access to alcohol, and movement of guests. Party themes usually require women to wear scant, sexy clothing and place women in subordinate positions to men,” such as “‘Pimps and Hos,’ ‘Victoria’s Secret,’ and ‘Playboy Mansion’” (p. 489). Some fraternities provide women with transportation from dormitories to these parties—but not with transportation back to the dorms. Women “cede control of turf, transportation, and liquor” and are “expected to be grateful for men’s hospitality” (p. 491).

Not all sexual assaults occur at parties. Sometimes similar dynamics occur during a hookup or date. Some sexually aggressive men look for opportunities at bars, seeking out women who seem intoxicated and vulnerable to coercion (Graham et al., 2014). Cranney (2015) found that college women were most likely to be sexually victimized at parties and while “hanging out” (i.e., spending time with a man in an unstructured social situation; p. 6).

### College Students and Alcohol

Many college students drink heavily, especially in the context of parties and bars (McCauley, Ruggiero, Resnick, Conoscenti, & Kilpatrick, 2009; Wechsler et al., 2002). Many students enter college having little experience with alcohol and how it affects them. New students are typically too young to buy alcohol legally; nevertheless, most underage students drink (e.g., Wechsler et al., 2002, found that almost two-thirds of the underage students studied reported having consumed alcohol in the past month). Many underage women are given alcohol by older male students, resulting in a situation where intoxicated young women feel beholden to older, more experienced men (Armstrong et al., 2006). Underage students drink alcohol less often than their older peers, but when they do drink, they are more likely to binge drink (defined as consuming at least four [for women] or five [for men] alcoholic drinks in a row; Wechsler et al., 2002).

Numerous studies of college students and the general population have found that most sexual assaults involve alcohol consumption by the victim, the perpetrator, or both (Abbey, 2002; Abbey, McAuslan, & Ross, 1998; Cantor et al., 2015; Harrington & Leitenberg, 1994; Mohler-Kuo, Dowdall, Koss, & Wechsler, 2004; Tjaden & Thoennes, 2006). Alcohol consumption linked to sexual assaults is usually voluntary, rather than forcefully or covertly administered by a perpetrator (Krebs et al., 2009; Lawyer, Resnick, Bakanic, Burkett, & Kilpatrick, 2010; McCauley et al., 2009).

Alcohol alters the dynamics of sexual consent in several ways. Individuals who are consuming alcohol are perceived as being more sexually interested and available than those who are not consuming alcohol (for reviews, see Farris, Treat, Viken, & McFall, 2008; Lindgren, Parkhill, George, & Hendershot, 2008). Men with strong

alcohol expectancies—that is, men who believe “in alcohol’s disinhibitory and aphrodisiac powers” (George, Cue, Lopez, Crowe, & Norris, 1995, p. 166)—are especially likely to perceive alcohol-drinking female targets as higher in sexual arousal and intent (Abbey, Buck, Zawacki, & Saenz, 2003; George et al., 1995). This is important because men’s ratings of a woman’s sexual arousal are positively related to their ratings of how appropriate it is for a man to repeatedly pressure her to have sex, despite her verbal refusals and physical resistance (Abbey et al., 2003).

To observe the effects of alcohol outside the lab, Graham et al. (2014) observed actual sexually aggressive advances in more than 100 large-capacity bars and nightclubs. About 90% of these incidents were initiated by men toward women. Two observers independently rated the initiators’ and targets’ levels of intoxication ( $r = .66$ ). The level of invasiveness was related to the targets’ level of intoxication but not to the initiators’ level of intoxication—findings consistent with the idea that intoxicated women are specifically, intentionally targeted, perhaps because they are perceived as having greater sexual intent and/or as being less able to resist.

Furthermore, intoxicated men perceive more sexual intent in women than do sober men, attending more to women’s cues of sexual interest and less to their cues of uncertainty or disinterest (Abbey, Zawacki, & Buck, 2005; Farris, Treat, & Viken, 2010). These findings could be examples of alcohol myopia, “a state of shortsightedness in which superficially understood, immediate aspects of experience have a disproportionate influence on behavior and emotion” (Steele & Josephs, 1990, p. 923). The most salient and immediate cues might be noticed, but more subtle cues and long-term consequences are likely to be missed.

Likewise, intoxication can inhibit women’s attention to cues of sexual risk (Davis, Stoner, Norris, George, & Masters, 2009; Fromme, D’Amico, & Katz, 1999; Stoner et al., 2008). Compared with sober women, intoxicated women showed less awareness of, and less discomfort with, sexual assault risk cues in hypothetical dating scenarios, especially more ambiguous risk cues. Even at fairly low doses, alcohol can decrease women’s ability to detect signs that the situation is becoming risky.

In summary, alcohol use among college students increases the risk of sexual assault in numerous ways. The sexual assault of individuals who are intoxicated to the point of incapacitation is prevalent among college students (Cantor et al., 2015). Even if they are not incapacitated, intoxicated women are likely to be perceived as more sexually permissive and available, and they may be less aware of risk cues and early warning signs of sexual aggression. Intoxicated men are likely to focus on women’s positive cues rather than negative cues and on short-term goals rather than long-term consequences. This, in combination with young people’s limited knowledge about sex, gendered sexual expectations, and

participation in party culture, can create a “perfect storm” of risk factors.

## CONCEPTUALIZING SEXUAL CONSENT

So far, we have referred to “consent” but have not explained what we mean when we use the term. As Harvey (1932) noted, “Subtle changes in the meanings of terms used give rise to some of the most serious confusions in scientific thought” (p. 165). This admonition is certainly relevant for consent. There might be a public consensus that sexual activity should not occur unless everyone involved consents, but if there are numerous discrepant understandings of what it means to consent, this apparent consensus would be illusory.

Theorists and researchers have offered multiple opinions and recommendations about how “sexual consent” is or should be conceptualized (Beres, 2007). Our aim here is not to advocate for any particular conceptualization of consent. Instead, our aim is to highlight the varied meanings of the term and to explore the implications of these meanings.

### Three Meanings of Consent: An Internal State of Willingness, an Act of Explicitly Agreeing to Something, and Behavior That Someone Else Interprets as Willingness

It has been noted that the word *consent* can refer to a mental act (i.e., a decision or a feeling of willingness) or to a physical act (i.e., as a verbal or nonverbal expression of willingness; Beres, 2007; Hickman & Muehlenhard, 1999; Muehlenhard, 1995–1996). In this section, we describe three ways that the word *consent* can be used. We discuss the implications of conceptualizing consent as an internal state of willingness, as an act of explicitly agreeing to something, and as behavior that someone else interprets as willingness.

#### Consent as an Internal State of Willingness.

Consent is sometimes conceptualized as an internal state of willingness. This meaning is illustrated by the question “How indicative is this behavior of consent?” This question implies that consent is not directly observable; instead, it is an internal state about which observers can make inferences based on behavior. In this article, to refer to consent in this sense, we refer to someone *being* willing or to someone’s *willingness*.

Consent, in this sense of the word, is important; sex without someone’s willingness is a serious concern. However, it also has important limitations; ultimately, others’ internal states are private and unknowable. Laws or university policies framed solely around consent as an internal state would be unworkable; policies need to be framed around behavior. There are two very different understandings of consent as behavior.

**Consent as an Act of Explicitly Agreeing to Something.** Consent can be conceptualized as an act of agreeing to something, such as when research participants agree to participate in a study. This sense of the word is similar to the legal concept of express consent, which refers to permission “that is directly given, either verbally or in writing, and clearly demonstrates an accession of the will of the individual giving it” (Block, 2004, p. 51); express consent contrasts with implied consent, discussed in the next section.<sup>1</sup>

In sexual situations, consent in this sense would be exemplified by statements such as “I consent to have sex” or “I will have sex with you.” There are communities in which explicit consent is encouraged; for example, in consensual bondage/discipline, dominance/submission, and sadism/masochism (BDSM) relationships, consent is often negotiated explicitly (Beckmann, 2003; Pitagora, 2013). Most individuals do not discuss sexual consent this explicitly, however; instead, they usually rely on more indirect cues and signals, which others might interpret as indicative of willingness.

To avoid confusion, we generally avoid referring to “express consent” because this phrase can have two different—possibly opposite—meanings. When *express* is used as an adjective, “express consent” means clear, explicit agreement (as in the sentence, “Before surgery, the patient gave express written consent”). When *express* is used as a verb, to “express consent” means to signal consent to a partner; these signals could be clear and direct, or they could be vague and indirect, similar to implied consent (as in the statement, “Young people often express consent nonverbally”). Instead, we will refer to consenting in this sense as giving explicit consent.

#### Consent as Behavior That Someone Else Interprets as Willingness.

Consent can be conceptualized as behavior that observers use to infer an individual’s willingness. Consent in this sense is similar to the legal concept of *implied consent*—consent that “is indirectly given and is usually indicated by a sign, an action or inaction, or a silence that creates a reasonable presumption that an acquiescence of the will has been given” (Block, 2004, p. 51). Although consent in this sense is called *implied consent*, it seems more precise to call it *inferred consent* because the individual whose consent is in question does not need to do or say anything (note that, according to Block, it can be “indicated by ... inaction [or] silence”;

<sup>1</sup> Saying “I consent” could be conceptualized as an example of what philosopher John Austin (1962) called “a *performative sentence* or a performative utterance, or, for short, ‘a performative’” (p. 6). Performative speech does more than just describe something; it actually *does something*. Similar to other performatives, such as saying “I bet ...,” “I promise ...,” “I name this ship ...,” or “I give and bequeath ...” (pp. 5, 9), saying “I consent” performs an act; in this case, it performs the act of giving express consent.



p. 51). The presumption occurs entirely in the observer's mind.

To refer to consent in this sense, we refer to the observers as inferring an individual's consent and to behaviors, cues, or signals that are interpreted as indicative of that consent. When these behaviors, cues, or signals are done intentionally, we refer to that person as *communicating* or *signaling* their own consent. Consent in this sense is illustrated by this commonly given advice: "Before you have sex, be sure that your partner has consented." This probably means that one should be sure that one's partner has engaged in behaviors that can reasonably be interpreted to mean that the partner is willing.

This meaning of consent requires that someone else observe and interpret the individual's behavior. The observer needs to make inferences, speculating about the likelihood that the individual feels willing. Different observers are likely to have different standards for how sure they need to be to conclude that the other person feels willing. This process depends on cues, signals, inference, and speculation. It depends on assumptions about how behavior should be interpreted and what should count as consent. Many of these assumptions are contentious—an arena for political activism and changing standards of acceptable behavior.

### Consenting as Distinct From Wanting

Sometimes *wanting to have sex* and *consenting to have sex* are treated as synonymous, such as when rape is described as "unwanted" sex or when assuming that if someone "wants" to have sex, they are consenting (for a review, see Peterson & Muehlenhard, 2007a). It can be useful, however, to understand wanting and consenting as distinct concepts that sometimes correspond to each other but sometimes do not (Muehlenhard & Peterson, 2005; Peterson & Muehlenhard, 2007a; West, 2008). This distinction can apply to both nonsexual and sexual behaviors. Someone might want to do something (e.g., skip work to socialize with friends) but not be willing to do it. Conversely, someone might not want to do something (e.g., housework; sit-ups) but nevertheless be willing to do it. Someone might want to have sex but not be willing (e.g., because they do not have a condom; because it would be cheating on a partner). Conversely, someone might not want to have sex but nevertheless be willing (e.g., if they are not in the mood but want to satisfy their partner; if they are trying to get pregnant; Peterson, 2013).

Discrepancies between wanting to have sex and consenting to have sex are common. West (2008) described numerous reasons why women might consent to unwanted sex, including "to avoid a hassle or a foul mood . . . , to garner their peers' approval, to win the approval of a high status man or boy, to earn a paycheck or a promotion or an undeserved A on a college paper, . . . altruism, friendship or love, or because they have been taught to do so" (p. 24), and for married women, "a sense of religious obligation, fear of their husbands' violence, or from their understanding

of the requirements of their wifely role" (p. 23). Among college women who had experienced consensual sexual intercourse, many reported having had reasons for not wanting those experiences, including worrying about pregnancy and lacking confidence (Peterson & Muehlenhard, 2007a). Conversely, among women who had experienced nonconsensual sexual intercourse—experiences that fit the definition of rape under state law—some reported having had reasons for wanting to have sex (e.g., feeling sexually aroused or finding the other person attractive; Peterson & Muehlenhard, 2007a). "At first glance, it might seem inappropriate or harmful to claim that some rape victims actually wanted to have sex. After all, 'She wanted it' is a rape myth used to blame rape victims or to dismiss claims of rape. . . . We argue that, to the contrary, this concept can actually be helpful. . . . Rape is about the absence of consent, not the absence of desire" (Peterson & Muehlenhard, 2007a, pp. 84–85).

Despite the theoretical arguments and empirical evidence supporting the importance of distinguishing between unwanted sex and nonconsensual sex, behaviors indicative of desire are sometimes interpreted as indicative of consent. This can cause problems, a point we return to later.

### Ambivalence and Uncertainty

Some discussions of wanting and consenting to sex seem predicated on the assumption that sex is either wanted or unwanted. Sometimes, though, individuals have reasons for wanting to engage in sex *and* reasons for not wanting to engage in sex. They feel ambivalent, which has been defined as having both favorable and unfavorable thoughts and feelings toward something (Thompson, Zanna, & Griffin, 1995). Individuals could be ambivalent about sex in multiple ways (Muehlenhard & Peterson, 2005; Peterson & Muehlenhard, 2007a). They could be ambivalent about sex in general, sex with a particular partner, or sex under particular circumstances. They could have positive and negative feelings about the sexual encounter itself (e.g., someone might feel both aroused and self-conscious) or about possible outcomes of the act (e.g., the effect on the relationship and the effect of spending time having sex rather than studying for an exam).

Some reasons for ambivalence are gender specific. Young women might find sex arousing but worry about being labeled negatively because of the sexual double standard (Muehlenhard, Sakaluk, et al., 2015). Conversely, even a woman who finds sex unappealing might want to have sex with her boyfriend because she thinks that men need to have sex and that a good girlfriend should accommodate that need (Yusuf & Muehlenhard, 2016). For young men, the idea that sexual performance is a measure of masculinity might make them want to take advantage of opportunities to have sex, even when they are not in the mood (Sweeney, 2014).

Ambivalence could have implications for sexual consent. Ambivalent individuals might be motivated to "avoid

thinking about sexual activity, or might feel reluctance to acknowledge that they may engage in such activity” (MacDonald & Hynie, 2008, p. 1094). To the extent that consensual sex requires “internal reflection and external communication” (Beckmann, 2003, p. 198), consent could be difficult for individuals who are reluctant to think about or communicate with partners about sexual activity. They might feel conflicted about what they want or are willing to do. They might not want to take responsibility for being sexual or admit to engaging in “premeditated sex,” preferring instead to think of the encounter as unplanned—as something that “just happened”—rather than as something they agreed to in advance.

Some discussions of consent seem predicated on the assumption that individuals know in advance what they will be willing to do during a date or sexual encounter. There is evidence, though, that individuals are often uncertain about this (Beres, Senn, & McCaw, 2014; O’Sullivan & Gaines, 1998). Beres et al. (2014) found evidence that uncertainty is common in sexual situations. They asked students to imagine themselves in a dating situation in which one partner initially refuses sex but sex eventually happens and then to write about what they think happened between those two points. Beres et al. (2014) had anticipated that students would write about miscommunication, but instead most of them wrote about uncertainty; in these stories, “the woman felt some desire for a sexual relationship with the man, but there were also uncertainties or other feelings that prevented her from agreeing to the original physical demand or verbal request” (p. 769). In these accounts the woman’s uncertainty was resolved prior to having sex, usually through conversation, a more gradual increase in physical intimacy, or self-reflection.

Individuals could be uncertain about their sexual intentions for various reasons: They could be ambivalent and thus still uncertain about what they will decide to do. They could want more information before making a decision. Their decision could be contingent on something (e.g., getting an apology from their partner; getting aroused; being able to find a condom). Sometimes individuals begin sexual activity tentatively, evaluating their reactions and making decisions as the encounter unfolds, contingent on how they feel about what has happened to that point. In other words, decision making can be an ongoing, contingent process rather than a discrete a priori event. This raises the issue of consent as a discrete event versus as a process.

### **Consent as a Discrete Event versus a Continuous Process**

Consent can be conceptualized as a discrete event or as an ongoing, continuous process. Consent as a discrete event refers to saying or doing something that is interpreted as consent. It could be an explicit expression of consent (e.g., answering “Yes” when a partner asks, “Will you have sex with me?”), or it could be a behavior interpreted as indicative of consent (e.g., going home with someone). Following such an event, individuals would probably be assumed to be

consenting unless they do something to retract their consent. As a discrete event, consent could occur at the beginning of a sexual encounter and be assumed to apply to the entire encounter, or it could occur before various sexual activities and be assumed to apply to those sexual activities.

In contrast, consent as a process has been described as an ongoing negotiation (Beres, 2014; Humphreys, 2004) or as a continuous process of evaluating a partner’s behavior, making sure that one’s partner is exhibiting signs of what Beres (2010) called “active participation” (p. 8). For example, suppose that someone is unbuttoning a partner’s shirt. From the perspective of consent as a process, they would observe their partner’s facial expressions and bodily movements as they move from one button to the next, looking for evidence of pleasure versus discomfort (Pineau, 1996, cited in Beres, 2007). These behaviors can be observed and processed quickly in an ongoing, continuous way.

### **Affirmative Consent and Default Assumptions About Consent: “Yes Means Yes” versus “No Means No”**

What should be assumed about a partner’s consent? Should consent be assumed until nonconsent is expressed, or should nonconsent be assumed until consent is expressed?

As discussed, recent legislation in California and New York requires universities to use an affirmative consent standard in campus policies (California Senate Bill SB-967, 2014; Kearney, 2015); Canada’s Criminal Code switched to affirmative consent language in 1992. Under an affirmative consent standard, silence or lack of resistance cannot be interpreted as consent; instead, nonconsent must be assumed until consent is actively communicated.

In contrast to an affirmative consent standard, many individuals hold sexual scripts in which consent is assumed until nonconsent is actively communicated. In what is sometimes referred to as the traditional sexual script, the man’s role is to begin sexual activity with the woman; if she is not willing, it is her responsibility to refuse or resist his sexual advances (Wiederman, 2005). This script is problematic in numerous ways. First, it puts the burden for stopping the behavior on the woman. If nonconsensual sex occurs, she might be blamed for not doing enough to stop it. Second, there are many reasons why the woman might not refuse or resist, despite being unwilling: She might be passed out or intoxicated to the point of incapacitation. She might be paralyzed by fear. She might be confused about what is happening, given that most nonconsensual sex does not fit the stereotypic stranger-with-a-weapon rape script. Some sexual behaviors—groping, rubbing, and even genital penetration—can occur quickly, before she has time to refuse. Third, in some versions of this traditional sexual script, men continue their advances even if the woman refuses. They might continue hoping that she is merely acting reluctant so as not to appear “easy,” or hoping that she will get aroused and change her mind, or hoping that she will eventually just stop resisting (Jozkowski & Hunt, 2014).

The fact that some men ignore women's refusals led anti-rape activists to use slogans such as "No Means No" to emphasize that women's refusals should be taken seriously. Certainly, interpreting no to mean no is important, but this standard does not address situations in which the woman is unable to say no. An affirmative consent standard addresses this problem. Under this standard, it is the initiator's responsibility to get consent, not the other person's responsibility to refuse or resist, and the initiator must not interpret the other person's refusal as insincere or fleeting (see Pineau, 1989). Affirmative consent standards are sometimes referred to as "Yes Means Yes" standards because, under these standards, no does not mean yes; silence does not mean yes; only yes means yes.

There is much to like about affirmative consent standards. These standards do raise difficult questions, however: What counts as giving consent? Are there circumstances in which it is reasonable to assume someone's consent? Are there circumstances in which even an explicit "yes" should *not* be interpreted as consent?

**What Counts as Giving Consent?** Under an affirmative consent standard, individuals trying to initiate sexual activity need to get the other person's consent before proceeding—but what is necessary to infer that the other person has consented?

Some affirmative consent standards require verbal consent. Probably the best known of these policies is Antioch College's Sexual Offense Prevention Policy, which, in the 1990s, received attention and ridicule from news media around the world (including being mocked on the comedy sketch show *Saturday Night Live*). This policy states, "All sexual interactions at Antioch College must be consensual. Consent means verbally asking and verbally giving or denying consent for all levels of sexual behavior" (Antioch College, 2014–2015, p. 42). In contrast, other affirmative consent policies, such as those mandated for California universities and in Canada's Criminal Code, do not require that consent be given verbally.

When affirmative consent policies allow for consent to be communicated nonverbally, which nonverbal behaviors should count as consent? There are numerous behaviors that some people interpret as indicative of sexual consent: dressing in revealing clothing, drinking alcohol, going home with someone, flirting, and so on. If nonverbal behaviors can count as expressions of affirmative consent, the affirmative consent standard becomes less distinguishable from the traditional sexual script.

**Are There Circumstances in Which It Is Reasonable to Assume Someone's Consent?** Clearly, there are advantages to affirmative consent standards. Are there some situations, however, in which it is reasonable to assume someone's consent until nonconsent is expressed? That is, are there situations in which assuming consent is reasonable as a default or baseline assumption unless nonconsent is expressed?

As a nonsexual example, it might be reasonable to assume consent for socially normative physical contact. Some types of physical contact are generally considered to be acceptable without first obtaining consent. For example, in the United States and Canada, in many contexts it is customarily acceptable to touch someone briefly on the arm, shoulder, or upper back without first getting consent to do so. Anyone has the right to refuse being touched in these ways, but the default assumption is that this is acceptable; that is, the default is to assume consent.

What about behaviors such as kissing someone, caressing their face, or patting their butt? In the United States and Canada, the norm between strangers is to assume nonconsent unless consent is expressed; the same is true for non-romantic acquaintances. This is often not the case for dating or romantic partners, however. Many people are willing to be kissed, caressed, or patted by their partners without giving consent on each occasion. Most couples probably shift from an initial standard of assuming nonconsent (unless consent is expressed) to a standard of assuming consent (unless nonconsent is expressed). Under a standard of assuming consent, each member of the couple would still have the right to refuse, but in the absence of a refusal, consent could be assumed.

The affirmative consent standard mandated for California universities states: "The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never *by itself* be assumed to be an indicator of consent" (California Senate Bill SB-967, 2014; emphasis added). It seems, though, that if two people agreed to assume consent for certain behaviors, this could fit within the affirmative consent standard. We speculate, however, that most couples do not explicitly discuss this shift from assuming nonconsent to assuming consent.

**Are There Circumstances in Which Even an Explicit "Yes" Should Not Be Interpreted as Consent?** Usually saying yes is interpreted as indicative of consent. This is not always the case, however. As an extreme example, if someone says yes while being threatened at gunpoint, few people would interpret this as indicative of consent. What about other, less extreme, situations?

*Verbal Pressure and Coercion.* Affirmative consent policies require that for consent to be valid it must be given willingly or voluntarily (e.g., California Senate Bill SB-967, 2014; Antioch College, 2014–2015). This suggests that consent is not valid if it occurs in the context of threats, pressure, or other types of coercion. Numerous authors have discussed this principle as important for sexual consent (e.g., Beres, 2007; Muehlenhard, 1995–1996; Pineau, 1989; Tuerkheimer, 2013; West, 2008). In several major surveys of the prevalence of sexual assault and sexual coercion, using threats to obtain sexual activity is classified as sexual coercion (Black et al., 2011; Cantor et al., 2015). There is no consensus, however, about "how much duress is required to render consent only apparent

rather than real” (West, 2008, p. 41). Furthermore, the duress caused by a threat could vary depending on the nature of the threat and the individuals and circumstances involved.

Consider, for example, the National Intimate Partner and Sexual Violence Survey (NISVS; Black et al., 2011) sponsored by the Centers for Disease Control and Prevention (CDC). This survey includes “threatening to end your relationship” as a type of pressure associated with sexual coercion (Black et al., 2011, pp. 17, 106; to clarify, in the NISVS, sex after this type of pressure is not considered rape; it is considered sexual coercion, a broader category). Other studies have also included threatening to end the relationship as a verbally coercive technique for obtaining sex (e.g., Kanin, 1967; Koss et al., 2007; Koss et al., 1987; Livingston, Buddie, Testa, & VanZile-Tamsen, 2004; Struckman-Johnson, Struckman-Johnson, & Anderson, 2003; Zurbriggen, 2000). Opinions vary about whether and when this should be considered coercive. For many people, it depends on the circumstances. For example, if someone threatens divorce unless their spouse has sex with them whenever they demand it, many people would regard this as coercive. In contrast, if someone informs their dating partner that they want a relationship that includes sex, so if the partner is not ready for a sexual relationship, they will seek a partner who also wants a sexual relationship, this probably seems less coercive. Other factors could include the timing and tone of the statement and the individual’s circumstances: “Threats to leave a relationship are more serious if they would result in the partner’s being destitute or being unable to be with his or her children” (Zurbriggen, 2000, p. 577).

Similar questions could be asked about other verbally coercive behaviors. For example, “wearing you down by repeatedly asking for sex, or showing they were unhappy” is another type of coercion included in the NISVS (Black et al., 2011, pp. 17, 106). Other studies have also included repeated requests for sex and continual verbal pressure as coercive techniques for obtaining sex (Koss et al., 2007; Koss et al., 1987; Livingston et al., 2004; Struckman-Johnson et al., 2003). Under an affirmative consent standard, if someone says yes after the initiator repeatedly asks for sex, would this be considered coercive and thus render consent invalid? What counts as “repeatedly” asking? What circumstances might influence such judgments?

*Other Sources of Pressure and Coercion.* The types of pressure and coercion discussed previously involve pressure from within the dyad (Beres, 2007)—that is, pressure from the person attempting to obtain sex. There can also be other, often less visible, sources of pressure that can constrain a person’s ability to freely choose whether to consent to or refuse sex. Individuals’ freedom to choose could be constrained by pressure from other people. For example, some individuals might feel compelled to acquiesce to an unwanted sexual relationship because their family is pressuring them to marry; conversely, some might feel pressured

not to engage in a wanted same-sex sexual encounter if they fear condemnation from their family, their church, or their employer. In other cases, the limits on individuals’ freedom to choose might be constrained by cultural norms and expectations. These norms and expectations can be so strong that no other options seem possible; if individuals perceive no alternative to the status quo, their choices will be constrained, but these constraints might be invisible.

One example of such cultural norms could be compulsory heterosexuality (Rich, 1980), meaning that heterosexuality is considered natural and other sexual orientations are considered deviant (if they are considered at all). West (2008) wrote that “the compulsion in ‘compulsory heterosexuality’ creates constricted identities, and expectations, and certainly social roles, all of which in turn might *elicit* consent to sex” (p. 10). Compared with rape at knifepoint, this type of compulsion is “more pervasive, harder to name and blame, more insidious” (p. 11); yet “the sex that results from compulsory heterosexuality, whatever else it is, is consensual, as we normally use the term and certainly as the law understands it” (p. 10).

Because the norms of one’s own culture can seem natural and inevitable, it can be easier to see how the norms of other cultures constrain individuals’ choices and compel their behavior. Heise, Moore, and Toubia (1995–1996) wrote about the difficulties of defining consent across cultures, given that “all societies have forms of sexual violence that are socially proscribed and others that are tolerated, or in fact encouraged, by social custom and norms” (p. 12), and these distinctions differ across societies. Some cultures, for example, tolerate forced sex on a woman’s wedding night (p. 14). Women immersed in the culture did not label their experiences as rape, but after they were exposed to different cultural norms, they readily used this label (Hegland, 1993, cited in Heise et al., 1995–1996).

In the United States, it can be difficult for a single woman to be economically independent, especially if she has young children. Being in a relationship makes it easier to get by financially—and sex is assumed to be an integral part of adult relationships (Muehlenhard, 1995–1996). Material circumstances can combine with assumptions about “normality” to make the option of refusing sex almost literally unthinkable.

*Insufficient Knowledge About What One Is Consenting To.* In many contexts, consent is not considered meaningful unless it is informed consent. For example, U.S. federal regulations state that, to give informed consent, prospective research participants must be informed about the nature of the research and “any reasonably foreseeable risks or discomforts” (U.S. Department of Health and Human Services, 2009, § 46.116). Some authors (e.g., Muehlenhard, 1995–1996; Tuerkheimer, 2013) have argued that this concept is also important in considering sexual consent. Consistent with this idea, the NISVS (Black et al., 2011, p. 17) and other surveys (Koss et al., 2007, p. 368) include using lies or false promises to obtain sex in



their definitions of sexual coercion. Factors other than a partner's deception could affect the ability to give informed consent. For example, because of inadequate sex education (Kantor et al., 2008), many young people in the United States are uninformed or misinformed about the risks and rewards of engaging in sexual activity.

Of course, no one can know all the implications of their choices: "Just as in other contexts in which consent must be evaluated, what constitutes being 'informed' is a matter of degree" (Tuerkheimer, 2013). Still, the more informed individuals are, the better able they are to give meaningful, informed consent.

*The Effects of Alcohol and Drugs.* Affirmative consent policies, as well as laws defining rape and sexual assault, specify that individuals cannot give valid consent if they are incapacitated by alcohol or drugs (California Senate Bill SB-967, 2014; Eileraas, 2011). According to campus rape consultant Brett Sokolow, a student "could be stark naked, demanding sex, but if they are incapacitated at the time, and that is known or knowable to the accused, any sexual activity that takes place is misconduct, and any factual consent that may have been expressed is IRRELEVANT" (quoted in Hess, 2015).

There is no consensus, however, about what level of intoxication, assessed by what metric, renders someone incapacitated. Should this judgment be based on number of drinks someone has consumed, on blood alcohol concentration (BAC), on degree of cognitive or physical impairment, or on some other criterion? All of these are problematic. The effects of alcohol depend on numerous factors such as gender (women are more affected than men), body mass, and food and water consumption prior to alcohol consumption (National Highway Traffic Safety Administration [NHTSA], 2005). Drinks vary in strength. Often people do not know how many drinks someone else has had. People seldom know their own or others' BAC, and there are individual differences in how well people function at any given BAC (NHTSA, 2005). Unless someone is extremely impaired, it can be difficult to assess level of impairment, and people disagree about "how drunk is too drunk to have sex" (Hess, 2015).

These questions are further complicated because often both individuals in a sexual encounter have been drinking alcohol (Abbey, 2002; Testa & Livingston, 2009). If both are intoxicated to the point of incapacitation, how should the situation be conceptualized? If they have sex, have they both engaged in nonconsensual sex with each other? Are both perpetrators? Are both victims? In the situation that Sokolow described, in which someone gets intoxicated voluntarily and then initiates sex, if the other person is sober and does not resist but also does not give affirmative consent, is the sober person a victim, a neutral party, or a perpetrator for having sex with someone who is intoxicated?

In cases involving sexual interactions between intoxicated men and women, some university officials hold the men responsible; others hold the initiator responsible,

regardless of gender (Hess, 2015). Both of these stances are based on problematic assumptions, such as the assumption that if a man can get an erection, then he must not have been incapacitated, or the assumption that every sexual encounter is initiated by only one of the individuals (Hess, 2015).

In summary, consent is conceptualized in various ways; all can be problematic. Consent as an internal state is unobservable and unknowable. Consent as an explicit agreement is not frequently used in sexual situations. Consent as behavior that someone else interprets as willingness requires inference and speculation and is open to misinterpretation and to claims of misinterpretation. Affirmative consent seems promising but raises numerous difficult questions.

Given all of these complications, how *do* individuals communicate consent in real-life situations?

## RESEARCH ON SEXUAL CONSENT

In this section, we review empirical research on how college students communicate sexual consent to their partner, how they infer their partner's sexual consent, and what they think about sexual consent. Most studies asked specifically about heterosexual encounters or used samples unscreened for sexual orientation, in which most participants identified as heterosexual; a few studies, however, focused specifically on same-sex sexual encounters. We describe the studies in sufficient detail to allow readers to understand their findings and limitations. At the end of each subsection, we briefly summarize and comment on the studies. More general implications are discussed in the next section.

### Research on Communicating Sexual Consent to a Partner

One approach to studying how students communicate consent has been to create lists of behaviors and then to ask students to rate each as a signal of their consent. Some of these studies asked participants how they communicated consent in one specific sexual encounter (e.g., their most recent encounter); some asked how they generally communicate consent; some asked how they would communicate consent in various situations (e.g., if their partner tried to initiate sex); and some asked about communicating consent more generally.

Hall (1998) asked a sample of U.S. college students to complete a questionnaire about their most recent sexual encounter "wherein they indicated 'yes'" to engaging in the sexual activity. Participants were asked how they had indicated yes: verbally, nonverbally, or both. Most (61%) reported having consented to the sexual encounter both verbally and nonverbally; some (28%) reported having consented only nonverbally; few (11%) reported having consented only verbally. Those who consented nonverbally reported doing so in multiple ways, including getting closer,

kissing, caressing, touching intimately, smiling, and not moving away. There were only a few significant gender differences in ways of showing consent: More women than men reported showing consent by hugging and caressing (72 % versus 64%) and by not moving away (59% versus 48%).

Hall (1998) also asked whether participants had “specifically indicated” consent for various sexual behaviors in which they had engaged. The behaviors most likely to have received specific consent were penile–vaginal intercourse (PVI), receiving oral sex, and anal sex (in contrast, kissing, hugging, and breast and genital touching were less likely to receive specific consent). Consent for specific behaviors was usually given nonverbally. The sexual behavior most likely to have received verbal consent was PVI, although even for PVI, nonverbal consent was more common than verbal consent. Among women, consenting verbally was more common for first-time PVI experiences with a partner than for subsequent experiences; men did not show this pattern. Hall concluded that “much of the sexual activity of college students proceeds without much verbal permission granting,” relying instead on nonverbal permission.

Hickman and Muehlenhard (1999) explored signals that U.S. college students used to communicate consent for sexual intercourse. First, to sample the domain of sexual consent signals, they conducted a pilot study, asking PVI-experienced students open-ended questions about how they and their partners communicated sexual consent. The researchers used these descriptions to create a list of 34 items describing ways that someone could respond to a sexual advance. Most of these items were positive, but a few ambiguous and negative items were included to discourage a response set in which all the items would be rated as signaling consent. In the final study, PVI-experienced students were asked to rate how often they engaged in each of these behaviors to show consent. Based on factor analysis, the items were grouped into subscales, five of which reflected consent: Indirect Nonverbal Consent Signals (e.g., touching their partner sexually); Indirect Verbal Consent Signals (e.g., asking if she or he has a condom); Direct Nonverbal Consent Signals (just starting to have intercourse with her or him); direct verbal consent signals (e.g., saying, “I want to have sex with you”); and No Response (e.g., not resisting, not saying no, letting their partner undress them).

Women and men showed similar patterns; the few gender differences that emerged were small (Hickman & Muehlenhard, 1999). Interestingly, both women and men reported that they most frequently showed their consent by not resisting their partners’ advances. They reported using direct verbal and direct nonverbal expressions of consent least frequently.

Students also were asked how they would interpret these responses in hypothetical but realistic situations (Hickman & Muehlenhard, 1999). First, they were asked to imagine that they attempted to initiate sex with a new partner—someone they had been dating but had not had sex with—

and to rate the extent to which they would interpret each of the 34 behaviors as indicative of their date’s consent. Next, they were asked to imagine that their date tried to initiate sex with them and to rate the extent to which these behaviors would indicate their own consent. Analyses included data only from those who indicated that they could imagine themselves in the situation. The signals rated as most indicative of consent were direct nonverbal and verbal consent signals (e.g., just starting sex, or verbally expressing consent). Next most highly rated were the indirect verbal signals (e.g., mentioning condoms or positive feelings about having sex). Lower still were indirect nonverbal signals (e.g., caressing). Making no response was rated as least indicative of consent. Paradoxically, participants’ interpretations of these behaviors (i.e., the extent to which they rated the behaviors as indicative of their own and their partner’s consent) were *inversely* related to how often they reported using these behaviors to show consent in real-life situations. For example, making no response was rated as the most frequent way of expressing consent but as least indicative of consent. Directly expressing consent either nonverbally or verbally was rated as the least frequent way of expressing consent but as most indicative of consent. We return to this paradox later.

Beres, Herold, and Maitland (2004) explored these consent signals in same-sex sexual encounters. They developed the Same-Sex Sexual Consent Scale (SSSCS) to examine how individuals ask for and give consent for oral sex, manual sex, and penetrative sex with same-sex partners. The SSSCS has two subscales, each with a list of 26 behaviors (adapted from Hickman & Muehlenhard, 1999). The Initiating subscale asks respondents how often they use each behavior to ask for their partners’ consent when they initiate sex; the Responding subscale asks how often respondents use each behavior to signal consent when their partners initiate. Beres et al. (2004) reported results from a sample of 257 female and male university students, almost all from the United States or Canada, recruited from electronic mailing lists; all reported having had at least one same-sex sexual encounter in the past year. Similar to studies of heterosexual encounters, nonverbal behaviors were used more than verbal behaviors to ask for and to show consent. The behaviors used most frequently to communicate consent were behaviors loading on the No Resistance factor: not stopping their partner from kissing or touching them, not resisting their partner’s advances, and not saying no.

Based on the idea (Muehlenhard, 1995–1996) that consent can be conceptualized as an internal feeling of willingness and as an external expression of willingness, Jozkowski, Sanders, Peterson, Dennis, and Reece (2014) developed dual measures of consent. One measure, the Internal Consent Scale (ICS), focused on respondents’ internal feelings related to consent (e.g., feelings of arousal, safety, and readiness). The other measure, the External Consent Scale (ECS), focused on respondents’ external expressions of consent. Jozkowski, Sanders, et al. (2014)

developed these measures using a three-phase process in which they first elicited students' ideas about feelings of willingness and the behavioral cues associated with these feelings, then created an initial pool of items, and finally created subscales based on factor analyses of data from a new sample. The ECS consists of five subscales—Direct Nonverbal Behaviors, Passive Behaviors, Communication/Initiator Behaviors, Borderline Pressure, and No Response Signals—each representing a way that students communicate sexual consent.

Four studies have used the ECS to examine how college students communicate consent. Across all four studies, the behaviors used most frequently were direct nonverbal behaviors (e.g., touching their partner, undressing themselves or their partner, engaging in kissing or “foreplay”) and passive behaviors (e.g., not resisting their partner's attempts, not saying no, reciprocating their partner's advances; Jozkowski, 2013; Jozkowski, Sanders, et al., 2014; Jozkowski & Wiersma, 2015; McLeod, 2015). Consistent with the traditional sexual script (Wiederman, 2005), more men than women reported communicating their consent by actually initiating sexual activity, using communication/initiator behaviors (e.g., initiating sexual activities to see whether their partner reciprocated, verbally expressing interest, or asking their partner) and borderline pressure (e.g., taking their partner somewhere private, closing the door, continuing unless their partner stopped them); and more women than men reported using passive behaviors (Jozkowski, Sanders, et al., 2014; Jozkowski & Wiersma, 2015).

McLeod (2015) modified the ECS by making the items appropriate for partners of either gender and by adding the Explicit Verbal subscale, two items that asked about direct, verbal communication (e.g., “I progressed from one sexual behavior to the next using explicit, verbal permission”). She focused on how participants had communicated consent with a new, first-time sexual partner. Her sampling strategy—beginning with Australian university students and then using snowball sampling—resulted in a sample large enough to analyze consent in both heterosexual ( $n = 907$ ) and same-sex ( $n = 182$ ) sexual encounters. She predicted that “same-gendered couples [would rely] more heavily on verbal consent styles (explicit consent) in the absence of sexual scripts to guide socially sanctioned stereotypical sexual behavior” (p. 17). Consistent with this prediction, she found that “same-gendered partners [had] significantly higher scores for explicit consent than participants with opposite-gendered partners” (p. 32). There were no other significant differences between the two groups.

These questions have also been explored with qualitative methods. Using open-ended questionnaires, Jozkowski, Peterson, Sanders, Dennis, and Reece (2014) asked U.S. college students to “imagine you are with another person and sexual activity may occur. During the encounter, if you were willing to engage in sex with your partner, how would you let your partner know?” (p. 908). Inductive coding was used to identify emerging themes. Men most frequently

reported that they would use nonverbal cues (reported by 48% of the men), followed by verbal cues (32%), verbal and nonverbal cues (12%), and just letting it happen/not saying no (2%). Some men and women regarded men's consent cues as irrelevant, however, because they assumed that men always consent. Surprisingly, women most frequently reported that they would express their willingness using verbal cues (reported by 50% of the women), followed by verbal and nonverbal cues (23%), just letting it happen/not saying no (14%), and nonverbal cues (10%). This reported reliance on verbal cues to express consent differed from the results of other studies. Subsequent analyses (Jozkowski & Peterson, 2013) showed that almost all of the verbal-consent-only women had imagined responding to a verbal request for sex (e.g., “After he asks me, then I would say yes,” Jozkowski & Peterson, 2013, p. 519). These results might not generalize to situations involving other ways of initiating. It is also possible that the women were using language figuratively rather than literally—that is, they might have been imagining saying yes through nonverbal means (similar to Hall's [1998], asking participants if they had said yes verbally, nonverbally, or both).

Jozkowski, Peterson, et al. (2014) also asked students how they would communicate their willingness to engage in specific sexual behaviors. More than half reported that they would give verbal consent for vaginal–penile intercourse and, if applicable, for anal intercourse. In contrast, verbal consent for “fooling around”/intimate touching was reported less frequently.

Participants were also asked how they would let their partner know if they were not willing to engage in sex (Jozkowski, Peterson, et al., 2014). Most women (86%) and men (71%) wrote that they would communicate non-consent verbally (with or without additional nonverbal cues); refusing verbally was reported more often than consenting verbally.

Several studies used focus groups to ask participants how they would refuse sex. Kitinger and Frith (1999) asked English female high school and university students how they would refuse sex. Many of the young women reported that it was difficult to refuse directly because it might seem awkward or rude or might hurt their partner's feelings. Some even went ahead with unwanted sexual activity to avoid refusing. A few stated that a direct verbal no was the easiest and most effective way to refuse, but some also acknowledged that it was awkward and embarrassing. Many reported softening their refusals by offering delayed acceptances (e.g., “I'm not ready yet”) rather than unqualified refusals; by offering palliatives (e.g., “I do like you but ...”); or by offering excuses, especially excuses that involved an inability to have sex (e.g., illness, menstruation) rather than an unwillingness to have sex.

O'Byrne and colleagues (O'Byrne, Hansen, & Rapley, 2008; O'Byrne, Rapley, & Hansen, 2006) found a similar theme in focus groups with nine heterosexually identified college men. When asked how they would refuse sex, many said this was implausible, consistent with gendered



expectations that men are always willing to have sex; but if they *had* to refuse, they would not refuse directly, which could seem insensitive or hurtful. Like the women in Kitzinger and Frith's (1999) study, the men said that they might soften their refusal by using delays (e.g., "I'm not ready for this"; O'Byrne, et al., 2006, p. 140) or inventing excuses.

**Summary.** Across studies, students reported typically communicating consent by using nonverbal behaviors or by not resisting their partners' advances; verbal consent was reported least frequently (Beres et al., 2004; Hall, 1998; Hickman & Muehlenhard, 1999; Jozkowski, 2013; Jozkowski, Sanders, et al., 2014; Jozkowski & Wiersma, 2015; McLeod, 2015). Verbal consent was more likely to be used for PVI than for other behaviors, and it was more likely to be used by same-sex couples than by heterosexual couples. Regardless of sexual orientation, however, participants reported expressing consent nonverbally more frequently than verbally.

In contrast, most participants reported that they would refuse sex verbally (Jozkowski, Peterson, et al., 2014; Kitzinger & Frith, 1999; O'Byrne et al., 2006; O'Byrne et al., 2008). Many young women, however, reported that refusing could be difficult, and many reported softening their refusals to avoid sounding rude or arrogant. Kitzinger and Frith (1999) argued that such softening techniques are culturally normative ways of refusing requests, so even indirect or softened refusals should be readily understood as refusals.

The methods used in these studies reflect researchers' implicit assumptions about sexual consent. Self-report questionnaires are predicated on the assumptions that participants are aware of and can recall their behavior and will respond in a frank and unbiased way. These assumptions seem reasonable, although it is possible that participants exhibit consent signals that are outside of their awareness or that their answers were affected by social desirability responding.

In the sexual consent scales used in these studies, participants rated each behavior independently, with no way to rate combinations or sequences of behaviors, and with little information about context. Implicit in this approach is the assumption that isolated, context-free behaviors can meaningfully convey information about consent. In some cases, participants might have wanted to answer "It depends": It depends on the relationship, the circumstances, and so on. For example, one participant wrote that "a smile does not mean consent in a bar to a guy I hardly know, but it does with my boyfriend" (Hickman & Muehlenhard, 1999, p. 271); however, there was no way for participants to convey such nuances on the 7-point rating scale provided. In addition, as Beres (2007) noted, these methods seem predicated on a sexual script in which one partner initiates and the other either gives or withholds consent; "these studies do not take into consideration mutually initiated

sexual activity, or the possibility that the initiator role may change during sexual activity" (p. 104).

Sometimes seemingly subtle methodological differences between studies can dramatically affect their results (for an excellent review of "how the questions shape the answers" in self-report surveys, see Schwarz, 1999). As an example, when men were asked how they "indicate sexual consent" (Hickman & Muehlenhard, 1999, p. 263), men rated the No Response subscale (not resisting, not saying no) significantly higher than any other subscale. In contrast, when men were asked how they would let their partner know that they were "willing to engage in sex" (Jozkowski, Peterson, et al., 2014, p. 908), only 2% gave answers coded as just letting it happen/not saying no. So, is not resisting the *most* frequent or the *least* frequent way that men signal their consent/willingness to have sex? One possible explanation for this discrepancy is that, because of the connotations of the word *consent*, men who were asked how they would "indicate sexual consent" imagined their partner initiating, whereas men who were asked how they would let their partner know that they were "willing to engage in sex" imagined themselves initiating. In addition, some of the items in Hickman and Muehlenhard's (1999) questionnaire specifically mentioned their partner's advances (e.g., "You do not resist her/his sexual advances"; p. 264). Another possible explanation relates to the format of the questionnaires. In Jozkowski, Peterson, et al.'s (2014) open-ended questionnaire, men might not have mentioned not resisting because it "goes without saying" (Schwarz, 1999, p. 94). In contrast, when specifically asked how often they "do not resist" to show consent, men reported doing this frequently.

Another methodological issue involves how literally participants interpret researchers' questions and how literally researchers interpret participants' answers. As mentioned, in contrast to most studies, the women in Jozkowski, Peterson, et al.'s (2014) study reported relying primarily on verbal consent signals, as in this answer: "After he asks me, then I would say yes" (Jozkowski & Peterson, 2013, p. 519). How literally should researchers interpret the phrase "I would say yes"? Was the participant describing a verbal response, or could she have intended "say yes" to refer to any positive response? Likewise, in Hickman and Muehlenhard's (1999) study, when participants were asked how often they "say, 'Yes'" (p. 264) to show their consent, did they interpret saying "yes" literally or figuratively? Even participants who express consent identically might give widely discrepant answers depending on how literally they interpret the question.

### Research on Interpreting a Partner's Sexual Consent Signals

Researchers have also explored how people make inferences about a prospective partner's consent. Hickman and Muehlenhard (1999), discussed in the previous section, addressed this question and found that students rated direct nonverbal and verbal consent cues as most indicative of



consent for PVI, followed by indirect nonverbal and verbal consent cues. They rated not resisting as less indicative of consent than direct or indirect cues; nevertheless, they rated not resisting above the midpoint of the scale.

Beres (2010) conducted unstructured interviews with 21 young adults from a small Canadian resort town, asking how they made inferences about prospective partners' willingness or unwillingness to participate in casual heterosexual sex. Using thematic analysis, she identified three prominent themes. One was "tacit knowing": "almost all participants responded by saying that it is easy to determine when someone was interested in casual sex—'you just know'" (p. 5). Respondents made inferences based in part on contextual cues, such as whether a prospective partner was willing to move from a bar to a private location. As one respondent explained, "If you're really close to somebody and you whisper in their ear 'do you want to come home' they'll just get it" (p. 6). Explicit verbal consent was deemed unnecessary.

A second theme involved refusal signals. Participants discussed cues—some verbal, some nonverbal—that they used to infer lack of consent. Some of these refusal cues were straightforward (e.g., "No I have a boyfriend"; p. 7); others were more subtle (e.g., "if I put my ... fingertip under his waistband and he ... acts rigid or something"; p. 8).

A third theme was "active participation" (p. 8). Of the 21 respondents, only two said that a lack of resistance was sufficient to infer willingness. The other 19 said that continued active participation was required to infer a partner's willingness:

Pushing into their partner, pulling their partner closer, sighing, breathing and moaning were all discussed by both men and women as ways to tell when their partner is willing to have sex... [Respondents were] able to identify very subtle behavioural changes that indicate [whether] someone is enjoying sex, relaxed and comfortable... Active participation in the sexual activity was expected. (Beres, 2010, p. 8)

Jozkowski and Hunt (2013) conducted semistructured interviews with 30 male and female heterosexual U.S. college students. Respondents were asked how consent is communicated and interpreted during casual sex (i.e., hookups). One theme that emerged was that verbal communication was unnecessary because consent was "obvious" (e.g., "even though it's never said, ... you just know what is meant ... it's obvious" (Jozkowski & Hunt, 2013). They identified nonverbal cues such as flirting, eye contact, men's purchasing alcoholic drinks for women, women's accepting drinks from men, and leaving a social setting to go to a private residence together. This theme parallels the "tacit knowing" theme identified in Beres's (2010) interviews.

Another theme was that men sometimes treated women's refusals as opportunities to continue their sexual advances (Jozkowski & Hunt, 2014). For example, some of the men stated that if a woman's refusal was "soft" (e.g., she said no in a soft voice or used tentative statements such as "Maybe we should wait"), they would continue their attempts to

initiate sex. They mentioned two rationales for not stopping, even if the woman said no: (a) Some regarded women's refusals as merely token; they rationalized that women *have to* refuse initially to appear as though they "have standards" and are not "slutty." (b) Some regarded women's refusals as malleable, as articulated in the following quote:

If it's [i.e., her refusal is] real soft, it's like that's not really clear to me, you know, so I'm going to try again. And if it's still soft, it's like okay, I've got some options here. I could probably convince her, you know. I might try a little something here on the neck or you know, just to kind of wear her down.

These men reported recognizing the woman's refusal but trying to change her mind or erode her resistance. None of them seemed to perceive their behavior as coercive, assaultive, or even problematic. For them, women's refusals—even those that included the word *no*—were perceived as something to be overcome (Jozkowski & Hunt, 2014).

In other studies, focus groups discussed women's sexual refusals. Many participants in these groups said that unless a woman's refusal is clear and direct, miscommunication is likely. For example, Burkett and Hamilton (2012) conducted semistructured interviews with eight Australian university students. The women described a sexual script in which consent is seldom expressed verbally; instead, men assume women's consent; and if a woman feels willing, she does not need to say anything. In this sexual script, "It is a woman's responsibility to ensure that she says 'no' and 'stop' if she does not wish to continue, otherwise it is not a man's fault should he proceed with his sexual advances" (p. 819); consent is conveyed nonverbally and implicitly, but refusals need to be articulated verbally and clearly.

In the focus groups that O'Byrne et al. (2006, 2008) conducted with college men (described previously), the men were asked how women express nonconsent. The men mentioned numerous subtle nonverbal ("getting 'no reaction'"; O'Byrne et al., 2006, p. 148) and verbal ("I just remembered I'm working early in the morning"; p. 144) signals. Based on these findings, O'Byrne et al. (2008) concluded that men are able to "hear" nonconsent from women even if there is no explicit refusal. Interestingly, though, when asked specifically about rape, some men expressed confusion about how to interpret women's signals (e.g., "When does no mean no when does yes mean yes"; O'Byrne et al., 2008, p. 178) and indicated that only an explicit verbal "no" would constitute nonconsent ("If a girl doesn't say 'no' look you in the eye and say 'no' ... anything else can be sort of miscommunicated"; p. 181). The authors concluded that the men in their study—and men in general—do understand subtle verbal and nonverbal expressions of nonconsent; yet, in the context of determining accountability for rape, they may claim ignorance about understanding nonconsent cues, and they seemed to accept the idea that miscommunication is an important contributor to rape. Starfelt, Young, Palk, and

White (2015) found similar results in focus groups with 15 young Australians. When participants were presented with a scenario describing an alcohol-involved rape, more than half attributed it to a misunderstanding or miscommunication between the man and the woman (p. 342).

To investigate the idea of miscommunication between men and women, some researchers asked men and women about women's consent and nonconsent signals and then compared their responses. In an early study, Byers (1980) "examined whether males and females enter the sexual situation with similar understandings of how females communicate consent and nonconsent to sexual intercourse" (p. 13). She presented never-married Canadian undergraduates with a list of sexual behaviors and asked them to select and rank the three most important forms of communication that "a female" uses "during lovemaking to clearly suggest or give clear signals that she is in agreement to sexual intercourse"; Byers also asked them to select and rank the most important signals "that she is *not* in voluntary agreement to sexual intercourse" (pp. 14–15; emphasis in the original). According to both the women and the men, the three most important ways that women show consent for intercourse were fondling the man's genitals, giving clear verbal consent, and not resisting genital fondling. By far, the most highly rated way that women show nonconsent was saying no; next were resisting genital fondling and being unresponsive and passive. Byers (1980) noted that the "substantial agreement between male and female college students" (p. 17) suggests that men's sexual aggression does not result from gender differences in understandings of consent cues.

Like Byers (1980), Burrow, Hannon, and Hall (1998) asked both women and men about women's consent signals. Participants were asked to project themselves into a scenario in which a man and a woman go on a date, and the man makes it clear that he wants to have sexual intercourse; the woman either does or does not want to have intercourse. Women were asked which strategies they would use to communicate consent or nonconsent, and men were asked which strategies they thought the woman would use. For both men and women, the top three strategies for indicating consent were nonverbal—caressing, touching in intimate places, and giving intimate kisses. For both men and women, two of the top three strategies for indicating nonconsent were verbal (saying "I don't want to have sex with you" and "I don't really want to have sex with you") and one was nonverbal (not touching in intimate places). The combined ratings for all of the verbal strategies were significantly higher in the nonconsent condition than in the consent condition, indicating that participants thought that nonconsent was more likely than consent to be communicated verbally.

**Summary.** Students interpreted direct verbal expressions of consent as highly indicative of consent (Hickman & Muehlenhard, 1999). However, such direct verbal expressions were not the norm. Verbal consent was generally regarded as unnecessary because, participants thought, it is easy to tell if a

prospective partner is interested (Beres, 2010; Jozkowski & Hunt, 2013). Both men and women reported that women usually communicate consent nonverbally (Burkett & Hamilton, 2012; Burrow et al., 1998; Byers, 1980).

Expressing nonconsent, however, was a different situation. Both men and women reported that women usually communicate nonconsent verbally (Burrow et al., 1998; Byers, 1980). Many said that for men to understand that women are not consenting, women need to be clear; unless women's refusals are clear and direct, miscommunication is likely (Burkett & Hamilton, 2012; O'Byrne et al., 2006; O'Byrne et al., 2008; Starfelt et al., 2015).

These ideas—that verbal consent is unnecessary because it is obvious, but miscommunication is likely—seem contradictory. However, both are consistent with the traditional sexual script; men's sexual advances are assumed to be consensual as long as the woman does not resist; if she does not consent, it is her responsibility to communicate this, and if sexual assault occurs, she might be blamed for not communicating clearly enough.

Not everyone, however, described women's refusals as hard to interpret or as resistance to be overcome. For example, the young men in Beres's (2010) study reported several cues—some straightforward and some more subtle—signaling women's nonconsent. In addition, almost all of them endorsed a higher standard than mere lack of resistance; they looked for signals that their partner was enjoying the encounter. We return to the idea of gender-based miscommunication later in this article.

In many of the studies reviewed here, researchers focused on *men's* interpretations of *women's* consent and nonconsent signals. This made sense because many of these studies were done to investigate the idea that sexual assaults often result from men's misunderstandings of women cues. Beres (2007), however, noted that in much of the sexual consent literature in psychology, sociology, and the law, the focus is on women's sexual consent. In much of this literature, men's sexual consent is assumed, consistent with 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" (p. 97). This assumption is, of course, untrue and can be harmful to women and men.

### Research on Attitudes and Beliefs About Consent

Researchers have used a variety of methods to assess young people's attitudes and beliefs about sexual consent, including focus groups, hypothetical vignettes, and attitudes scales. These studies provide an understanding of norms and expectations.

Humphreys (2004) conducted focus groups in which female and male Canadian students discussed sexual consent. Most students' conceptualizations of sexual consent "focused on themes of mutual understanding, a willingness between partners to engage in agreed upon sexual behaviours, and a clear state of mind, free from excessive

drugs or alcohol” (p. 217). Some saw consent as active and direct; others, as passive and indirect. Their examples of passive consent were gendered, consistent with the traditional sexual script. For example, one of the women defined consent as “not resisting” (p. 217), and one of the men said, “If ... they aren’t pulling away, then that’s consent for me” (p. 223).

Some of the students defined sexual consent as a process—an ongoing negotiation open to revision. Others saw consent as occurring through one or more discrete events, as expressed by the man who said, “There is one [consent] before it starts, ... and then there is one more just before intercourse occurs, almost like a safety net, like ‘are you sure?’” (p. 218). Some distinguished between communicating consent verbally, which might happen only once or twice, and nonverbally, which they saw as happening throughout the encounter.

Humphreys (2004) then used the comments from the focus groups to create a quantitative questionnaire assessing attitudes and beliefs about sexual consent. In a sample of 514 Canadian university students, he found gender differences and gender similarities. Significantly more men than women agreed that consent for intercourse implies consent for petting and fondling (78% versus 62%) and that consent to begin an encounter implies consent throughout the encounter (35% versus 22%). Nevertheless, most men and most women agreed with the first statement, and most men and most women disagreed with the second.

Humphreys and Herold (2003) asked focus groups (the same focus groups as in Humphreys, 2004) to discuss Antioch College’s policy requiring affirmative verbal sexual consent. Most reported that they would not want the policy implemented on their campus for several reasons: They thought it would be impractical to enforce given the private nature of sexual interactions, they did not approve of institutional regulation of their personal freedom, and they thought it would interfere with the natural progression of sexual interactions and thus would result in less sexual enjoyment. The researchers also collected quantitative data. Only 45% of the 514 students indicated that they would support the Antioch policy on their campus. Most thought that the policy would be unrealistic (74%) and unenforceable (80%) and that verbally asking for consent would be awkward (65%). Only about half (51%) reported that they would fully comply with such a policy. Interestingly, however, more than two-thirds thought that the policy would be a good way to promote sexual communication between partners and that it should be used as an educational awareness tool but should not be a university regulation.

Humphreys and Herold (2007) created the Sexual Consent Scale, which assesses attitudes and behaviors related to sexual consent. The attitude items loaded on two factors, reflecting the beliefs (a) that asking for consent prior to sexual activity is important (e.g., “Consent should be asked before ANY kind of sexual behavior,

including necking or petting”) and (b) that relationship commitment reduces the need to obtain consent (e.g., “The necessity of asking for sexual consent DECREASES as the length of an intimate relationship INCREASES,” p. 310). In a sample of Canadian university students, there were gender differences and similarities: Women agreed significantly more than men that asking for consent is important, although both women’s and men’s mean scores (5.07 versus 4.49 on a 1-to-7 scale from *Strongly disagree* to *Strongly agree*) reflected mild to moderate agreement with this idea. Men agreed significantly more than women that commitment reduces the need for consent; both men and women (4.60 versus 4.33) showed mild agreement with this idea. Scores were also related to participants’ sexual histories; compared with less experienced students, those who had had intercourse and those with more sexual partners scored lower on the belief that asking for consent is important, and higher on the belief that commitment reduces the need for consent. Humphreys and Brousseau (2010) created the Sexual Consent Scale–Revised, which includes five subscales, two of which address attitudes toward consent: One assesses the belief that it is important to obtain consent for all sexual activities in all relationship contexts. The other assesses beliefs about consent norms (e.g., whether obtaining consent is more important for sexual intercourse than for other sexual behaviors, and more important in new or casual relationships than in established relationships).

Humphreys (2007) presented Canadian university students with one of three scenarios about “Kevin” and “Lisa.” Sexual precedence was manipulated, with the couple described as being on their first date with no sexual history; as dating three months and having been sexual a few times; or as married two years and having been sexual fairly regularly. After dinner, while watching a movie, Kevin made sexual advances, but Lisa “moved his hand away gently,” “didn’t really feel like starting anything sexual,” and “kissed back, though not very enthusiastically”; Kevin continued to touch and undress her, and they ended up “having sex” (p. 310). Students then rated the situations. Compared with those in the first-date condition, students in the three-month and two-year conditions agreed more with statements such as “Verbally asking for consent would have wrecked the mood,” “Sexual consent is okay to assume in this context,” and “If Lisa really didn’t want to have sexual relations, she would have stopped Kevin” (p. 310). There were also gender differences in which men agreed more than women that it was okay to assume sexual consent, and women agreed more than men that Kevin should have asked for consent. Thus, college students’ attitudes about the need for direct, verbal communication of consent seem to vary according to sexual precedence and according to participant gender.

Beres (2014) analyzed 55 interviews with young women and men from Canada and New Zealand; some were individuals involved in casual sex, and some were

members of couples (21 were from Beres, 2010, and 34 were new). She identified three themes related to how they thought about sexual consent. One theme related to legal issues. Some saw the absence of refusal or resistance as a minimum requirement for avoiding sexual assault; some also mentioned the woman's capacity to consent as important. Some distinguished between consenting to sex (which they characterized as legal consent) and wanting to have sex, asserting that "consensual" sex could still be harmful or distressing.

Second, like Humphreys (2004), Beres (2014) also found that some interviewees described consent as an ongoing process of negotiation, and others described consent as a "discrete event" (p. 382). As an event, consent could take place long before intercourse occurs (e.g., at a bar, when a woman says, "let's go back to my place"; p. 382), or it could take place immediately before intercourse (e.g., at the "moment where the decision about penetration is made," or when the woman does "the butt lift"—that is, she "lifts her butt and allows her partner to remove her underwear"; p. 382).

A third theme was that giving and getting consent was important in casual relationships but not in ongoing relationships (Beres, 2014). However, the couples in ongoing relationships (whether interviewed together or separately) described successfully negotiating situations in which they had discrepant sexual interests. "Using many standard definitions of consent, they were describing how they consent to sex. Yet, ... they did not see these negotiations as part of consent" (p. 384). That is, it seemed to be the word *consent* rather than the process of negotiating consent that they deemed irrelevant in ongoing relationships.

Jozkowski, Peterson, et al. (2014) asked 185 U.S. college students to answer an open-ended survey question about how they define sexual consent. Responses were coded as representing 11 discrete themes. The most frequently mentioned themes by both women and men were (a) an agreement between two people to have sex (mentioned by 40% of the sample), (b) one person giving approval to have sex (mentioned by 21%), and (c) saying yes to sex (mentioned by 16%). The authors observed that, although participants' context-free definitions were consistent with affirmative consent (i.e., actively expressing agreement rather than merely not refusing), their reports of how they communicated consent in real-life interactions (as measured by the ECS) did not meet this criterion.

Lim and Roloff (1999) asked U.S. university students to evaluate 12 scenarios in which "Tom" and "Sue" had sex. The scenarios varied in numerous ways (e.g., Sue was drunk, Tom verbally pressured Sue, Sue was scared of Tom's temper). Participants were randomly assigned to evaluate scenarios depicting verbal or nonverbal consent. When Sue did not give verbal consent (i.e., in the nonverbal consent condition), she was rated as more impaired, and several of the scenarios were rated as less consensual, more coercive, more inappropriate, and more likely to have

been rape. Two other points about this study are notable. One is that several scenarios were rated as "inappropriate" but were not rated as nonconsensual or as rape. Participants seemed to conceptualize a continuum with appropriate sexual behavior at one extreme, nonconsensual sexual behavior or rape at the other extreme, and inappropriate but consensual sexual behavior in between. Another notable point relates to the scenarios rather than to the results. In the nonverbal consent scenario, Tom and Sue "kissed and they proceeded to have sex" (Lim & Roloff, 1999, p. 9). The authors described this by writing that "there was a nonverbal indication of mutual consent (i.e., Tom and Sue kissed each other) but no verbal request or response for sexual intercourse" (p. 9). The fact that kissing was considered to reflect nonverbal consent for intercourse highlights some of the difficulties with nonverbal consent.

To assess attitudes about consent in the context of alcohol consumption, Ward, Matthews, Weiner, Hogan, and Popson (2012) created the Alcohol and Consent Scale. Higher scores reflect beliefs that alcohol does not impair a woman's ability to consent to sex, that individuals are to blame if they are raped while drunk, that drunken sex is harmless, and that men can be excused from rape if they are drunk at the time. In a sample of U.S. university students, scores were positively correlated with acceptance of rape myths, acceptance of sex role stereotypes, and self-reported history of sexual coercion and sexual assault perpetration. The authors regarded these beliefs as possible targets for intervention.

**Summary.** Women's and men's attitudes and beliefs about sexual consent reflected substantial agreement (Humphreys, 2004; Humphreys & Herold, 2007; Jozkowski, Peterson, et al., 2014). Women were somewhat more likely than men to endorse explicitly communicating—rather than assuming or inferring—consent, but in general both women and men agreed that consent was important. The majority of women and men agreed that an Antioch College type of verbal consent policy might be a good way to encourage communication between partners but thought that it was unrealistic.

Almost all participants could provide a definition of consent, when asked to do so. Their context-free definitions of consent seem to be influenced by legal definitions and/or affirmative consent policies, reflecting the idea that consent is mutual agreement made while unimpaired by alcohol or drugs. In real-life situations, however, their expressions of consent did not match their abstract definitions (Beres, 2014; Jozkowski, Peterson, et al., 2014). In fact, some of them said that consent no longer applied to their relationships because they did not explicitly request sex from each other (Beres, 2014, p. 383). If the word *consent* has taken on legal connotations, it might be advisable to use other terms, such as *agree*, in questionnaires.



## INTEGRATING RESEARCH RESULTS, CONCEPTUAL ISSUES, AND POLICY IMPLICATIONS

### Verbal Communication of Consent

Verbal communication of consent is sometimes considered ideal (e.g., Antioch College, 2014–2015). However, numerous studies have found that individuals use verbal consent less often than nonverbal cues to show their own sexual consent and to infer their partner's sexual consent (Beres, 2010, 2014; Beres et al., 2004; Burrow et al., 1998; Byers, 1980; Hall, 1998; Hickman & Muehlenhard, 1999; Jozkowski, Peterson, et al., 2014; Jozkowski, Sanders, et al., 2014). Many young people regard verbal consent as unnecessary (Beres, 2010; Jozkowski & Hunt, 2013), as interfering with spontaneity and the excitement of not knowing what a partner might do next (Humphreys & Herold, 2003), and as ruining the mood (Humphreys, 2007). If universities adopt a verbal consent requirement in their code of conduct, such a requirement would probably be inconsistent with normative student behavior and met with resistance.

Verbal consent is used more often in some situations than in others. It is more likely to be given for PVI and for anal intercourse, and perhaps for oral sex, than for kissing, caressing, and other forms of intimate touching (Hall, 1998; Humphreys, 2007; Jozkowski, Peterson, et al., 2014). Several explanations are possible: Many people equate PVI with “sex” (Peterson & Muehlenhard, 2007b; Sanders & Reinisch, 1999); they might regard verbal consent as important before moving from “foreplay” to “sex.” The prospect of PVI can prompt discussions of contraception; it is possible that discussions of contraception led to expressions of verbal consent, but it is also possible that discussions of contraception *were* the verbal consent that students reported, given that some students regard discussing condoms or birth control as signals of consent (Hickman & Muehlenhard, 1999, p. 264).

Across studies, it seems that verbal expressions of sexual consent are more likely for sexual behaviors that are novel or unscripted. For example, anal intercourse is not part of most individuals' sexual routine; it has been described as a complex behavior with no sexual script (Roye, Tolman, & Snowden, 2013). Verbal consent was reported more often for same-sex encounters than for heterosexual encounters, perhaps because same-sex couples cannot rely on the traditional heterosexual script to guide their behavior (McLeod, 2015). Many individuals in the BDSM community engage in explicit discussions of what they do and do not consent to (Beckmann, 2003; Pitagora, 2013). Students regard verbal consent as more important for first-time sexual encounters than for subsequent encounters (Humphreys, 2007; Humphreys & Herold, 2007). Consistent with this belief, the women in Hall's (1998) study were more likely to report verbal consent for PVI with a new partner than in ongoing relationships. We found no other studies comparing

consent in first-time versus ongoing sexual encounters. This could be an area for future research.

**What Counts as Verbal Consent?** This question is not as simple as it might seem. A popular example of verbal consent is saying yes, but what this means is unclear without knowing the question. Consider the question, “So are you coming back home?” (Beres, 2010, p. 6). If the answer is yes, does that count as verbal consent to sex? Suppose that the questions are these: “Are you as turned on as I am? Should we move to the bedroom?” Does answering yes count as verbal consent? Most initiation attempts are nonverbal (Vannier & O'Sullivan, 2011); the meaning of “yes” in response to a nonverbal initiation attempt is even less clear.

What about other verbal expressions of consent? Consider the items on Hickman and Muehlenhard's (1999) Direct Verbal Signals subscale, which students rated as highly indicative of consent for PVI. Of these, one seems to clearly convey consent: saying “I consent to sexual intercourse” (p. 264). The others seem more ambiguous. Saying “I want to have sex with you” mentions wanting, which does not necessarily correspond with consenting; and it mentions “sex,” which does not necessarily refer to PVI (Sanders & Reinisch, 1999). Saying “I would like to sleep with you” or “I want you” mentions neither willingness nor sex. Do these statements count as verbal consent? If so, consent for what?

**Level of Specificity: Consenting to What?** How specific does verbal consent need to be about what sexual behavior is being consented to? Efforts to promote affirmative consent sometimes encourage students to ask their partner “Is this okay?” (e.g., [teenhealthsource.com/sex/sconsent/](http://teenhealthsource.com/sex/sconsent/); <http://www.supportwithinreach.org/wp-content/uploads/ConsentisHot.pdf>; <http://www.loveisrespect.org/healthy-relationships/what-consent/>). What, however, is “this”? If it refers to sexual activity that is already under way, this question comes too late; the activity is already happening. If it refers to sexual activity that the asker intends to do, this question is unclear; the other person would not know the asker's intentions.

An account from a qualitative study about sexual coercion (Yusuf & Muehlenhard, 2016) illustrates the inadequacy of such vague referents. A young woman described an incident in which she was talking with a boy she liked. While touching her leg, he asked, “Is it okay?” She said yes, thinking that he was referring to what he was already doing, but he proceeded to slip his finger under her shorts and into her vagina. The vagueness of his question might have been intentional; but whether intentional or not, this narrative demonstrates that lack of specificity can be problematic.

On the other hand, specific behavioral referents can also be problematic. In Yusuf and Muehlenhard's (2016) study, another young woman described an abusive boyfriend; he sometimes told her about the sexual things that he wanted to

do to her, which she found offensive. Sometimes the act of describing sexual acts can itself be construed as a sexual act.

Antioch College's Sexual Offense Prevention Policy states that "consent means verbally asking and verbally giving or denying consent for all levels of sexual behavior... Each new level of sexual activity requires consent" (Antioch College, 2014–2015, p. 42). This requirement raises the question of what should count as a level. Is touching over the clothes a different level from touching under the clothes? What about touching above the waist versus below the waist? Touching two inches below the waist versus six inches below the waist? There has been research investigating what people regard as "having sex" (and finding diverse opinions); we know of no research on what people regard as levels of sexual activity.

**Other Difficulties With Verbal Consent.** As discussed earlier, consent can be conceptualized as a discrete event or as an ongoing, continuous process. It seems that, by necessity, consent as a continuous process must rely on nonverbal cues. It seems onerous and unrealistic to continuously ask for or give verbal consent (e.g., to ask for verbal consent each time someone unbuttons another button or moves their hand a few inches).

One could conceptualize a hybrid of verbal and nonverbal communication about consent. Even if someone has obtained a partner's verbal consent before a sexual activity, it seems important to attend to the partner's nonverbal cues during the activity to make sure that the partner continues to feel comfortable. Nonverbal behaviors and metacommunication can serve as guides for whether verbal "check-ins" are needed. This hybrid model, however, would still involve subjectivity as to when these verbal check-ins would be appropriate and would still require interpreting the other person's nonverbal cues.

Finally, the idea that expressing consent verbally is more important than expressing consent nonverbally deserves scrutiny. Imagine two individuals: One does not say anything but participates in the sexual encounter actively and enthusiastically. The other says, "I consent to this level of sexual activity," but does so with a monotonic voice and flat affect. Which individual seems to be demonstrating willingness most convincingly?

### Nonverbal Communication of Consent

As discussed, individuals rely primarily on nonverbal behavior to communicate consent. Nonverbal communication is important, but it can be open to misinterpretation. For example, some behaviors are regarded as consent cues because they are components of widely shared sexual scripts (e.g., a woman's accepting an alcoholic drink from a man; Jozkowski & Hunt, 2013); such behaviors could be misinterpreted if individuals do not share the same script. Signs of sexual arousal are sometimes interpreted as signs of consent (e.g., accelerated breathing, a man's erection, Beres, 2010), but if wanting to have sex and consenting are

conceptualized as distinct, then sexual arousal does not signify consent. Other behaviors that students report as consent cues (e.g., smiling; Hall, 1998; Hickman & Muehlenhard, 1999) might occur when someone consents but also occur in situations unrelated to sexual consent.

Some individuals report showing their consent to sexual activity by actually engaging in sexual activity. For example, to express consent for sexual intercourse, some students "initiated sexual behavior and checked to see if it was reciprocated" or even "just kept moving forward in sexual behaviors/actions unless my partner stopped me" (Jozkowski, Sanders, et al., 2014, p. 448). These behaviors probably demonstrate the initiator's consent, although expressing consent by proceeding with sexual activity unless a partner objects raises questions about whether the partner had consented.

Some individuals report treating one sexual activity as consent for other sexual activities, such as using caressing or other types of "foreplay" to show consent for intercourse (Hall, 1998; Hickman & Muehlenhard, 1999; Jozkowski, Sanders, et al., 2014). This reasoning is the basis for rape myths such as "If a woman is willing to 'make out' with a guy, then it's no big deal if he goes a little further and has sex" (Payne, Lonsway, & Fitzgerald, 1999, p. 49).

### Consent and Gender: Gender Similarities and Gender Differences

The consent literature shows gender similarities and gender differences. In some areas (e.g., how individuals interpret various consent cues; how they would show consent if their partner initiated), gender differences are small. In other areas (e.g., how likely individuals are to be pressured sexually or to experience nonconsensual sex), gender differences are large.

**Gender-Based Miscommunication: Do Women and Men Understand Each Other's Consent and Refusal Cues?** A large body of literature has demonstrated that, on average, men perceive female targets as displaying more sexual interest and intent than women perceive (for a review, see Farris et al., 2008). Thus, men might misperceive women as expressing sexual interest or willingness when the women intended to express friendliness or politeness. As noted, some circumstances (e.g., men's intoxication; men's expectancies that alcohol increases sexual arousal and decreases inhibitions) are likely to intensify the problem (Abbey et al., 2003; Farris et al., 2008; George et al., 1995; Lindgren et al., 2008).

Some students expressed the idea that miscommunication can result in sexual assault (Burkett & Hamilton, 2012; O'Byrne et al., 2008). Is this plausible? Do men really misunderstand whether women are consenting? If so, can such misunderstandings actually lead to sexual assault?

This idea can be critiqued based on research showing "substantial agreement between male and female college students on the methods most important to sexual communication" (Byers, 1980, p. 17). Even when studies find

statistically significant gender differences in the interpretation of consent cues, these differences tend to be small and more a matter of degree than direction (e.g., Hickman & Muehlenhard, 1999, p. 266). Beres (2010) found that the women and men she interviewed described the same consent and refusal cues; furthermore, their descriptions were “consistent with ways in which communication occurs in a variety of social situations and are not unique to sexual activity. It is thus perhaps not surprising that young adults express such literacy in this form of communication” (pp. 8–9). Nevertheless, the idea persists that “the way men and women understand consent is in almost direct opposition to each other” (Bennett, 2016).

Some women soften their refusals, which some men describe as confusing (e.g., O’Byrne et al., 2008). Several authors, however, have expressed skepticism about the idea that men do not understand women’s refusals. Kitzinger and Frith (1999) argued that, even if women soften their refusals or refuse indirectly, such softening adheres to cultural norms for refusing and is likely to be understood. O’Byrne et al. (2006, 2008) found that men in focus groups were able to give numerous examples of such indirect refusals, but they invoked the idea of miscommunication when rape was mentioned. Kitzinger and Frith (1999) referred to this type of confusion as “men’s self-interested capacity for ‘misunderstanding’” (p. 311); “men who claim not to have understood an indirect refusal (as in, ‘she didn’t actually say no’) are claiming to be cultural dopes” (p. 310). Consistent with this idea, Jozkowski and Hunt (2014) found that in some interactions that might appear to be misunderstandings, the men had heard the women’s refusal but kept pushing for sex, hoping to change their minds or wear them down.

Other critiques of the idea that sexual assault results from miscommunication involve its implications. This idea has been criticized as excusing men’s sexually aggressive behavior and as blaming women for failing to communicate clearly (e.g., Beres, 2010). It also implies that rape-prevention programs need merely to explain how to interpret women’s cues, which may be ineffective (McCaw & Senn, 1998), and which seems inconsistent with the predatory behavior exhibited by some college men (Armstrong et al., 2006; Lisak & Miller, 2002).

Before we entirely dismiss any connection between miscommunication and sexual assault, there are some reasons to consider it. Given the repeated findings of gender differences in perceptions of sexual interest and intent (Farris et al., 2008), it seems likely that misperceptions could occur. Byers (1980) found that 91% of the male and female college students in her sample reported at least one experience in which “the man was surprised when the woman became angry or upset or tried to resist him in a physical or verbal way” (p. 16).

Beliefs about women’s sexuality can also contribute to miscommunication. The belief that many women engage in “token resistance to sex”—intending to have sex but initially saying no to avoid appearing “easy”—could cause some men to wonder if a woman’s apparent lack of interest

is sincere (Osman, 2007; Osman & Davis, 1999; for a review, see Muehlenhard, 2011; Muehlenhard & Rodgers, 1998). The belief that alcohol makes women more aroused and less inhibited can cause men to overestimate women’s willingness, especially if the men themselves are intoxicated (Abbey et al., 2003; George et al., 1995).

In their interviews with undergraduates, Jozkowski and Hunt (2013) found that men and women believed they were *not* miscommunicating and that they had a shared understanding of consent, similar to Beres’s (2010) interviewees’ assumptions of tacit knowledge of their partners’ consent. Analysis of their responses, however, revealed that they had slightly different interpretations, which the authors argued could lead to miscommunication.

In most cases, any misunderstandings can be quickly cleared up, but could misunderstandings ever lead to sexual assault? If so, how could this occur? Most sex is initiated nonverbally; sometimes the initiator begins sexual activity and then asks “Is this okay?” or checks to see if it is reciprocated (Jozkowski, Peterson, et al., 2014). Suppose that a man thinks that a woman is interested in him, and he initiates sexual activity with her (kissing, sexual touching) to see if she reciprocates. Suppose that he is mistaken and that she is not interested in him. Even if the misunderstanding is quickly resolved, he would have already engaged in sexual activity without her consent, which could be regarded as sexual assault. Furthermore, the literature includes a few anecdotal accounts of situations in which miscommunication seems to have led to rape (e.g., Bart & O’Brien, 1985, p. 10; Warsaw, 1994, p. 91).

Most cases of sexual assault, however, are likely not attributable to miscommunication. In most cases of sexual assault, the man knows that the woman has not consented but nevertheless chooses to continue. He could have numerous reasons for continuing. Perhaps he recognizes that she is currently unwilling but thinks that she will eventually get aroused and will actually enjoy it—a theme conveyed in pornography and even in mainstream movies and television programs (Warsaw, 1994). Perhaps he does not care how she feels about it or—given that many abusive relationships involve sexual as well as physical and psychological violence (Sabina & Straus, 2008)—perhaps his intention is to hurt and humiliate her.

**When Gender Differences Are Important.** Women and men often behave similarly when they are in similar situations or roles. Often, however, women and men are in different situations or roles. There are many gender-related differences related to sexuality. The traditional sexual script dictates very different roles for women and men (Wiederman, 2005). Women face a double standard in which they are evaluated more negatively than men for engaging in sexual behavior (Muehlenhard, Sakaluk, et al., 2015). A system in which heterosexual encounters can enhance men’s status as “players” but stigmatize women as “sluts” (Sweeney, 2014) is not a level playing field. Women, especially women who are new to campus, are



disproportionately targeted for sexual victimization (Cranney, 2015). Women are much more likely than men to be sexually assaulted while in college (American College Health Association, 2013; Brener et al., 1999; Cantor et al., 2015; Krebs et al., 2007).

Although this system generally disadvantages women, it can also have negative consequences for some men. Often, women's sexual consent is treated as an open question, but men's consent is assumed (Beres, 2007). Kanga (2015) found that less than 10% of the women and men in her sample thought that men should assume women's sexual consent, but 15% of the women and 33% of the men thought that it would be fine for women to assume men's sexual consent. In their recommendations for preventing sexual assault among college students, Krebs et al. (2007) recommended "informing men that they are ultimately responsible for determining (1) whether or not a women [*sic*] has consented to sexual contact, and (2) whether or not a women [*sic*] is capable of providing consent" (pp. xix, 6-5). They did not, however, make a parallel recommendation in which women are responsible for determining whether a man has consented or is capable of providing consent.

Of course, men do not always consent to sex. Some men are sexually assaulted (for a review, see Peterson, Voller, Polusny, & Murdoch, 2011). Some men agree to unwanted sex because they feel awkward or uncomfortable refusing sex (O'Sullivan & Allgeier, 1998). Some men report engaging in unwanted sexual activity to enhance or maintain their social status (Muehlenhard & Cook, 1988). Vannier and O'Sullivan (2010) noted that men are more likely than women to initiate their own unwanted sexual activity, reflecting external pressure to conform to cultural standards of masculinity.

### FIVE PRINCIPLES TO CONSIDER WHEN THINKING ABOUT CONSENT

In this section, we present five principles that might be useful for thinking about consent, whether for designing a study, interpreting research results, or writing policy guidelines. To illustrate how these principles can be helpful, we illustrate how they might clarify several seemingly puzzling research results:

- Cultural norms for conversations dictate that refusals should generally be conveyed indirectly; to do otherwise could be perceived as rude (Kitzinger & Frith, 1999). Why, then, have numerous studies found that, although consent is most often communicated nonverbally, refusals are more often communicated verbally?
- In numerous studies, participants report frequently communicating consent by not resisting their partners' sexual advances. The idea that students use passivity as a consent cue seems disturbing. How should we interpret these findings?
- The behaviors rated as most indicative of consent are rated as least often used to communicate consent, and vice versa. How can we make sense of these findings?

### Individuals Often Have Multiple Objectives

Individuals' decisions are typically guided by multiple objectives (Keeney & Raiffa, 1976). This principle could influence not only whether individuals choose to have sex but also how they choose to communicate their consent or refusal. For example, when communicating sexual consent, individuals' objectives might include making their consent clear, being socially appropriate, and avoiding an awkward situation in which they convey their consent to someone who—it turns out—has no interest in having sex with them. Likewise, when refusing sex, their objectives might include making their nonconsent clear, avoiding sex, maintaining a good relationship with the other person, being honest, not hurting the other person's feelings, and avoiding appearing presumptuous by refusing sex with someone who has no interest in having sex with them. Individuals are likely to choose the response that best meets their objectives.

It might not be possible to meet all of these objectives. For example, if an individual's reason for being unwilling to have sex is that they find the other person unattractive, being honest might be incompatible with not hurting the other person's feelings. This could lead to making excuses (Kitzinger & Frith, 1999; O'Byrne et al., 2006).

The concept of meeting multiple objectives is likely one reason why statements rated as highly indicative of consent (e.g., "I consent to sexual intercourse") were not rated as the most frequently used. This statement seems likely to achieve the objective of making consent clear, but it might seem socially awkward, especially if it is not yet clear that the other person is interested in having sex. Sometimes a less direct approach might be a better option, at least initially.

### Decisions About How to Communicate Consent/Nonconsent Are Often Sequential and Contingent

Often, individuals initially try one way to reach their objectives; if their first approach does not result in the desired effect, they might try another approach—perhaps one that is costlier in terms of time, effort, or other resources. Communicating sexual consent or nonconsent is likely to follow such a sequential approach. Someone might first try subtle cues; if that is not effective, they might try a more direct approach.

Consider someone who wants to express nonconsent. Although young people report that nonconsent is expressed primarily through verbal cues (Burkett & Hamilton, 2012; Burrow et al., 1998; Byers, 1980; Jozkowski, Peterson, et al., 2014), it seems plausible that verbal refusals are used contingently only when subtle nonverbal cues have not been effective. For example, someone who is not willing to have sex might behave in ways that, they hope, convey their lack of willingness (e.g., they might turn up the lights, refrain from touching the other person, or encourage another activity; McCormick, 1979). If, however, these nonverbal behaviors do not prevent the other person from making an initiation attempt, then a verbal refusal might be necessary.



Even with verbal refusals, someone might first make statements that they hope will meet their objectives of expressing nonconsent while also maintaining a good relationship and not hurting the other person's feelings (e.g., making an excuse). If this is not effective, a more direct statement might be used.

One study (Muehlenhard, Andrews, & Beal, 1996) specifically addressed two goals that women might have when refusing a man's sexual advances: getting him to stop his advances and—at least initially—maintaining a good relationship:

Saying “I really care about you, but I want to wait until the relationship is stronger” stood out as being fairly likely to get the man to stop his advances, while still having a positive effect on the relationship. If a man makes an initial advance that a woman wants to refuse while still maintaining a good relationship with him, this type of response seems promising... . Other responses are even more likely to get a man to stop his advances... . Such responses tend to have a more negative effect on the relationship, but if a man will not take no for an answer, maintaining the relationship should not, we think, be a major concern. (p. 164)

### **Behaviors Are Often Done Concurrently Rather Than One at a Time**

In many studies, participants are given a list of behaviors and asked which they do to show consent or which they interpret as consent. Often, though, individuals engage in multiple behaviors concurrently. Interpreting isolated behaviors can be misleading.

An important example relates to not resisting. In numerous studies, young people reported that they signal sexual consent by not resisting: not resisting their partners' advances; letting their partners kiss, touch, and undress them; not moving away; not saying no (Beres et al., 2004; Burkett & Hamilton, 2012; Hall, 1998; Hickman & Muehlenhard, 1999; Jozkowski, 2013; Jozkowski, Sanders, et al., 2014; Jozkowski & Wiersma, 2015; McLeod, 2015). Similarly, Byers (1980) found that both men and women ranked not resisting genital fondling as one of the most important ways that women signal consent. These results might initially suggest that, for many young people, total passivity is a sign of consent, but several lines of evidence suggest this is not the case.

First, there is evidence that students distinguish between not resisting and being totally passive. In Byers's (1980) study, students ranked offering “no resistance to genital fondling” (p. 14) as one of the top three ways that women show consent to intercourse, but they ranked being “unresponsive and passive” (p. 15) as one of the top three ways that women show nonconsent. In two more recent studies using the ECS, not resisting was one of the most frequently reported ways of showing consent, whereas being totally passive (i.e., not saying or doing anything) was the least frequently reported way of showing consent (Jozkowski,

Sanders, et al., 2014; Jozkowski & Wiersma, 2015).<sup>2</sup> In all these studies, the students distinguished between not resisting, which they associated with consent, and being totally passive, which they associated with nonconsent.

Second, there is evidence that when the research participants reported communicating consent by not resisting, they meant that they were not resisting in conjunction with using other more active signals of consent. For example, Hall (1998) found that during their most recent sexual encounter more than half the women (59%) reported indicating yes to their partners by not moving away. In addition, well over half the women reported indicating yes by kissing (75%), getting closer (71%), hugging and caressing (72%), and intimately touching their partners (62%). The fact that each of these behaviors was reported by more than half of the women means that many of the women who indicated yes by not moving away also indicated yes in more active ways (i.e., because each of these behaviors was reported by more than half of the women, the women who reported each behavior cannot be distinct, nonoverlapping groups). Likewise, Jozkowski, Sanders, et al. (2014) found that most (59% to 77%) of their participants reported expressing consent for their most recent intercourse by not resisting; in addition, most reported expressing consent by using nonverbal cues, such as touching or removing clothing (82% to 89%) or by nonverbally or verbally initiating sexual behavior (45% to 54%). Similarly, Hickman and Muehlenhard's (1999) participants reported using all five categories of consent behaviors (not resisting and the more active consent behaviors) more than half the time, which means that these consent behaviors were used in conjunction with one another. In addition, Jozkowski, Sanders, et al. (2014) found that the item “I reciprocated my partner's advances” (p. 448) loaded on the same factor as items that mentioned not resisting, meaning that participants who reported not resisting also tended to report reciprocating their partners' advances.

In summary, the interpretation most consistent with the data is that participants did not signal sexual consent by being passive or nonresponsive; they signaled sexual consent by not resisting as part of a constellation of behaviors that, taken together, could be interpreted as signaling consent. This pattern seems to represent what Beres (2010) referred to as “active participation” (p. 8)—engaging in behaviors (e.g., kissing, pulling their partners closer)—that signal ongoing interest and willingness.

<sup>2</sup> Interpreting the results of these studies is complicated because, in the sexual consent scales they used, (a) some subscales have different names but similar content and (b) some subscales have the same name but different content. Three of these scales have subscales that reflect not resisting: the No Response Signals subscale (Hickman & Muehlenhard, 1999); the SSSCS No Resistance subscale (Beres et al., 2004), and the ECS Passive Behavior subscale (Jozkowski, Sanders, et al., 2014). In addition, two of the scales have a No Response subscale, but one (from Hickman & Muehlenhard, 1999) reflects not resisting and the other (from the ECS) reflects being totally passive. Because of these inconsistencies, we refer to the constructs that they reflect—not resisting and being totally passive—rather than to the subscale names.

### Behaviors Used Most Frequently to Show Consent Are Not the Behaviors Most Indicative of Consent

There is another reason why not resisting and other behaviors that participants report using frequently to show consent should not necessarily be interpreted as good indicators of consent: The studies reviewed here were not designed to identify good indicators of consent. This point is illustrated by Hickman and Muehlenhard's (1999) seemingly paradoxical findings. As a reminder, participants were presented with a list of behaviors and asked how frequently they engaged in each to show consent for PVI and how indicative each behavior would be of their consent to PVI.

- Participants rated not resisting their partner's advances as their most frequently used way of showing consent but as the least indicative of their consent.
- Conversely, they rated direct verbal statements of consent as their least frequently used way of showing consent but as the most indicative of their consent.

How can we explain these apparent contradictions?

These two questions assess two different concepts: likelihood of engaging in a behavior and the meaning attributed to that behavior. Given current social norms, it makes sense that these would not correspond. As discussed, literally saying "I consent to sexual intercourse" clearly conveys consent, but saying this could be socially awkward; it makes sense that such a behavior would be used rarely, despite its clarity. (To take this point to the extreme, presenting one's partner with a signed consent form would even more clearly convey consent but would be even more socially awkward.) Conversely, other behaviors (e.g., kissing, smiling, not resisting their partners' advances) are not as clearly indicative of consent; they could be used to show consent (probably in conjunction with other sexual behaviors), but they could also be used in other situations, done for reasons other than expressing consent. They are not specific to showing consent for sexual behavior, which makes them less indicative of consent.

The distinction between these two concepts could be thought of in terms of conditional probability—the probability that  $x$  is true, given  $y$ :  $\text{prob}(x | y)$ . Asking how frequently individuals use a particular behavior to show consent is roughly analogous to asking about the  $\text{prob}(\text{the behavior} | \text{consent})$ .<sup>3</sup>

Asking how likely it is that someone is consenting, given that they are engaging in a particular behavior, is roughly analogous to asking about the  $\text{prob}(\text{consent} | \text{the behavior})$ .

Knowing the latter probability would be useful. Because behavior is observable but internal states of consent are not, it could be useful to know the likelihood that someone is

willing, given their behavior. We could teach this information to young people to help them decide when it is reasonable to conclude that their partners are consenting. We need to remember, however, that

$\text{prob}(\text{consent} | \text{behavior}) \neq \text{prob}(\text{behavior} | \text{consent})$ .

From this perspective, we can reevaluate the findings indicating that not resisting is one of the most frequently used ways of showing consent. When individuals are willing to engage in sexual activity with their partners, they are likely to show this by not resisting in conjunction with other behaviors that show their interest and willingness. However, it does not follow that not resisting is a good indicator of consent. If someone does not resist a partner's sexual advances, this is "necessary but not sufficient"—not at all sufficient—to infer consent.

### Consent Cues Are Indicators of Likelihood, Not Agreements

Sometimes particular behaviors are interpreted as cues signaling one's willingness to have sex. For example, one of Beres's (2010) interviewees described an interaction at a bar: "Well, when I said 'so, are you coming back home?' He understood right away. It wasn't 'so, do you want to come home and play cards' ... he understood, we were kissing when I said that, it was pretty obvious" (p. 6). This statement seems reasonable, but isn't it uncomfortably close to the rape myth that "a woman who goes to the home or apartment of a man on the first date is implying that she wants to have sex" (Payne et al., 1999, p. 50)? How should we think about this? Is going home with someone a consent cue, or is it not? Should we be concerned that Beres's interviewee and others like her have dangerous attitudes conducive to rape? It depends. That is, it depends on how they conceptualize this behavior: as a behavior that suggests the likelihood of consent, or as an agreement.

Anyone familiar with contemporary U.S. or Canadian cultural norms would recognize that meeting someone at a bar and going home with them is likely to be indicative of sexual interest. That is, an individual who is willing to go home with someone they meet at a bar is probably more likely to consent to sex than an individual who is unwilling to go home with that person, all other things being equal. It would seem naive to argue that an individual's willingness to go home with someone is irrelevant to the likelihood that they would be willing to engage in sex. Interpreting willingness to go home with someone as suggesting an increased likelihood of sexual willingness does not seem to be a problem provided that this behavior is treated as an *indicator of likelihood*—as a behavior that the observer uses to make an inference about the other person's willingness—rather than as an agreement to have sex.

If going home with someone is treated as an *agreement* to have sex, this is problematic. Someone who interprets this behavior as an agreement might conclude that unless the other person retracts consent, they can have sex with that person, with the rationale that the other person has

<sup>3</sup> More precisely, such questions are asking the participants about the probability of engaging in these behaviors, given that they are trying to communicate their consent, or  $\text{prob}(\text{the behavior} | \text{trying to communicate consent})$ .

already agreed. Worse still would be treating the willingness to go home with someone as an irrevocable agreement—as an *obligation*—so that even if the other person refuses sex it doesn't matter because they are now obligated.

The same logic would apply to any behavior considered to be a consent cue: flirting, making out, getting out a condom, and so forth. These cues are indicators of likelihood, not agreements. If the behavior is not clear enough to qualify as an explicit agreement, then it is just an indicator of likelihood.

Similar logic can be applied to sexual precedence (Humphreys, 2007). It is reasonable to predict that if two people have willingly had sex with each other previously, they are more likely to consent in the future than two people who have not had sex with each other previously, all other things being equal. Treating sexual precedence as an indicator of likelihood does not seem problematic. It would be problematic, though, to treat a prior sexual encounter as an agreement to have sex again or, worse still, to treat it as an obligation to have sex again.

The distinction between conceptualizing consent cues as indicators of likelihood rather than as agreements is important. Sexual assault prevention programs do not have to tell students that behaviors commonly considered to be consent cues (e.g., making out with someone; going home with someone) are irrelevant to the likelihood that the individual will consent to sex. Such programs can acknowledge that these behaviors suggest an increased likelihood that the individual will consent—but an increased likelihood is not the same as an agreement.

## LIMITATIONS OF EXISTING RESEARCH AND DIRECTIONS FOR FUTURE RESEARCH

### More Complex Conceptualizations of Consent

Existing research has limitations that could be addressed in future research. Much of the existing research has focused on individual consent behaviors, in isolation from one another and with little attention to context. It would be useful for researchers to ask more complex questions, allowing participants to describe combinations of behaviors, sequences of behaviors, and contingent behaviors. It could be useful to ask students which consent or refusal signals they might use initially and which they might use only if their initial approach did not work.

Research could identify situational or interpersonal factors that constrain individuals' options. As discussed, in some situations, individuals' freedom to consent or refuse can be limited by their circumstances (e.g., limited knowledge about sex, concerns about popularity, feeling obligated to a partner, financial problems). Research on individuals' constraints could help understand *why* individuals might feel constrained to consent or refuse, not just *how* they consent or refuse. Research on conditions needed for

individuals to give meaningful consent could, in turn, prompt inquiries into how to promote such conditions.

To identify factors that affect students' thoughts and behaviors related to consent, more qualitative studies and mixed methods studies, combining quantitative questions with open-ended written questions or interviews, could be useful. Even studies that are primarily quantitative could include a qualitative component, such as allowing participants to answer "It depends" and to explain contextual factors that might influence their decisions. Although it is important to attend to contexts and to more complex sequences of behaviors, even 1,000 questionnaires could not address all possible contexts and combinations of behaviors. Thus, it seems important to identify general principles of consent rather than to address specific behaviors or specific situations.

### More Varied Samples

Studying sexual consent in more varied samples could be useful. In existing research, samples have consisted largely of White students. Research with mostly White samples might miss aspects of sexual consent that vary as a function of race or ethnicity. For example, in their discussion of fraternity culture and sexual assault, Armstrong et al. (2006, p. 495) described several differences between African American and White fraternities that might be relevant (e.g., in general, African American fraternities consume less alcohol, have more egalitarian gender relations, and are less likely to have fraternity houses). Likewise, consent norms might vary for students of different ages, social classes, geographic regions, religious beliefs, and so forth.

With a few exceptions (Beres et al., 2004; McLeod, 2015), samples have consisted largely of heterosexual, cisgender students. Research on same-sex relationships could provide insights into sexual consent in situations where the partners are not enacting complementary male and female gender roles or the traditional sexual script. Furthermore, some people might be offended or angry if a same-sex or transgender individual expressed sexual interest in them; research could explore how individuals negotiate consent under these conditions.

Similarly, individuals with any type of stigma, especially a stigma invisible in everyday social interactions, could face challenges regarding whether, when, and how to disclose this to the prospective partner. This could include a physical condition, a medical condition, a family situation, and so on. Such challenges could also apply to someone who enjoys sexual practices outside of most college students' sexual repertoires. In some communities, such as BDSM (Beckmann, 2003; Pitagora, 2013) and polyamorous communities (Barker & Langdridge, 2010), explicit communication about consent, rules, and boundaries is considered normative. Pitagora (2013) suggested that studies of these communities can "highlight the importance of explicit rather than tacit agreements of consent in every type of sexual interaction" (p. 27).



## Policy-Relevant Research

Research could provide information useful for educational programs and university policies about sexual consent. For example, it might be useful to know how students communicate consent verbally: What do they actually say? This information could be useful for educational programs: Rather than giving students general advice about getting their partners' consent, programs could show students examples in which actors or animated characters ask for consent, express consent, and express nonconsent; these characters could also demonstrate contingent responses (e.g., examples of appropriate responses if their partners refuse or express uncertainty). There is a popular cartoon that demonstrates principles of consent by showing one stick figure asking another, "Hey, would you like a cup of tea?" (Carilli, 2015); these principles are good, but negotiating sexual consent is likely to be more complex than this. Examples of what consent can actually look like, and what university hearing boards regard as adequate consent, could provide helpful guidelines for students.

Affirmative consent policies have been criticized because they "criminalize everyone" (e.g., "If a student throws her arms around her boyfriend and kisses him without his permission, ... [she] can, at some later date, be hauled before a campus judiciary on charges of sexual assault") and because they "will inevitably confuse rightful cases of abuse with capricious accusations" (Carle, 2015). Indeed, many students regard getting consent as unnecessary in ongoing relationships (Beres, 2014; Humphreys, 2004, 2007; Humphreys & Herold, 2007). It seems that in many relationships partners shift from a standard of presumed nonconsent (until their partner shows willingness) to a standard of presumed consent (unless their partner refuses). Research with couples could provide insight into whether, when, and how this shift occurs. Does this presumed consent apply to some sexual behaviors or situations but not to others? Is it mutual? Do some couples actually discuss this, or is this shift just assumed? Research with established couples could also investigate how satisfied couples communicate consent, how they communicate refusals, and how they negotiate discrepant sexual desires. Such information might help university officials establish workable consent policies that students find acceptable.

Knowing how students typically communicate consent could be useful, but universities' guidelines need not mirror students' current behavior. Questions about what standards should be included in student conduct codes are not empirical questions. Research could inform these decisions, however, providing information about what situations to consider, which policies students are likely to accept or resist, what factors complicate consent, and so on. Researchers might expand the focus of their studies by asking university Title IX officers, members of student misconduct hearing boards, and students themselves what information they might find useful. Researchers could also provide information about how various consent policies are working. They could gather

information from students at institutions that have either long-standing or newly enacted affirmative consent policies (e.g., Antioch College and schools in California or New York, respectively). Students could be asked how consent actually works under these policies, what they like and dislike about these policies, and what changes they would recommend. It could be useful to compare students' experiences at these institutions with students' experiences at other institutions, or to explore the experiences of students who transfer to or from institutions with and without affirmative consent policies.

## CONCLUSION

Consent can be conceptualized in numerous ways: as a feeling or decision, as an explicit agreement, or as behavior indicative of willingness; as something that can be assumed or as something that must be given explicitly; and as a discrete event or as an ongoing, continuous process. All this is further complicated by numerous factors: Individuals are often ambivalent or uncertain about what they want or are willing to do. Gendered expectations and sexual double standards create unequal environments for women and men. Many college students engage in partying and heavy drinking. Even expressions of agreement can be questioned under certain conditions (e.g., if the individual was intoxicated or was being pressured or threatened); determining whether these conditions exist often involves judgment calls (e.g., how intoxicated is too intoxicated to consent, or what types of pressure or threats are serious enough to preclude meaningful consent).

All this presents challenges to university officials who are trying to create policies that will reduce sexual assault but that are realistic and flexible enough to accommodate consensual sex between willing students. Research can provide data that might inform these policies, feedback about how these policies are working, and ideas for programming aimed at encouraging communication about sexual consent and preventing sexual assault.

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