

**50 Shades of Yes:**  
**Feminist Re-Conceptualization of Sexual Consent**  
**as Affirmative, Communicative, Enthusiastic**

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## **Abstract**

In response to the systemic problem of sexual coercion and violence from date rape to sexual assault a relatively new development of feminist thought offers as a solution a re-conceptualization of sexual consent as affirmative, communicative and enthusiastic. In my thesis, I provide an analytical framework for understanding of this re-conceptualization which includes a comprehensive model of the re-conceptualized sexual consent and critical assessment of the nuances of its three interconnected aspects. By analyzing the discourse produced by the proponents of this new model, I follow their overt and implied claims to the transformation of the dominant discourse on sexuality and elaborate on the sexual subject that emerges from this discourse, reclaiming and revising sexual citizenship.

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## Introduction

Democratic morality should judge sexual acts by the way partners treat one another, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasures they provide. (Rubin 1984, 283)

Rape makes the news day after day. Teenage girls are raped and assaulted by their peers, to be then publicly shamed and accused of having “consumer’s guilt”, of wanting sex and consenting to it even if they were drunk and unconscious<sup>1</sup>. Influential and rich men are accused of coercing women into sex<sup>2</sup>, only to refute the charges by claiming that the women consented, that they are lying, that they wanted it – even a 13-year-old girl. For each case that makes the news, there are hundreds of those that don’t. There are cases where victims are women, men, heterosexual, gay, transgender, disabled, young, old. There are assaults which are not deemed worthy of trial or even report (Amato 2008); there is coercion which is considered acceptable and even expected in normal relationships (Perry 2008), in romantic courtship (Lloyd 1991), in everyday sexual experience (Brousseau, Hebert and Bergeron 2012). At the same time, the media and political campaign in the US presidential election of 2012 had highlighted the issue of women’s sexual autonomy and the question of what to consider a “real” rape (Walsh 2012).

While each case has its peculiarities, one topic is central to all of them, the discussion of which seems buried under the specifics of each case: sexual consent. While it is brought up in the very definition of rape or sexual assault, in each and every case there is a debate of some sort, a justification of some sort which says that the assaulted person was consenting, whether by being

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<sup>1</sup> Some recent examples are: Steubenville rape case (The Huffington Post 2013); case of Audrey Pott (Castillo 2013); case of Rehtaeh Parson (The Huffington Post 2013).

<sup>2</sup> Some examples are: Roman Polanski accused of raping a 13-year-old girl (BBC News 2009) ; Julian Assange accused of non-consensual sex with two women (The Telegraph 2012); Dominic Strauss-Kahn accused of raping a hotel maid (The Associated Press 2012).

drunk or sleeping, wearing a short skirt or simply being in the room. There is always a doubt, a question, a lack of clarity: what do we consider “real” consent?

As feminist critique of rape culture suggests (Burt 1980, Friedman and Valenti 2008), the fact that it is unclear is part and parcel of the rape culture itself, as it makes easier to justify and ignore sexual violence while at the same time promoting its reoccurrence. There is also a lack of clarity because conceptualizations of consent are in fact diverse and often based on common sense understandings without clear definitions given (Beres 2007). Currently, there are many definitions of non-consent used within US legal system, and they are contradictory and do not grant protection from many variations of sexual abuse (Decker and Baroni 2011). The scholars agree that definition of sexual consent and non-consent has to be revised (Bryden 2000, Chamallas 1988). Discussion and development of such revision is happening in two spheres of theory: one is feminist legal theory (Bryden 2000, Chamallas 1988, Pineau 1989, Wertheimer 2000, Gotell 2008), and the other one is the feminist critique of rape culture (Burt 1980, Bussel 2008, Friedman and Valenti 2008, MacKinnon 1989, Plummer 1995). The two are obviously interconnected, and refer to each other: legal scholars point out the problems that the wide-spread assumptions about gender and sexuality as well as existing inequality in sexual sphere bring into the legal decisions, while the critique of rape culture sees law and policy as one of the grounds for the change.

As an attempt to answer the question of “real consent”, the new re-conceptualization of sexual consent has been developed in these two fields. It appears in different literature under various names which reflect different aspects of its principal logic: “affirmative consent”, “communicative consent” or “enthusiastic consent”. All three define consent as clearly and positively expressed (affirmed and communicated) agreement to a sexual act based on the sincere (enthusiastic) desire. Two strong examples of these approaches are works of Lois Pineau “Date Rape: A Feminist Analysis” (1989)

and “A Response to My Critics“ (1996) in which she addresses the legal side of the problem and offers a new understanding of consent grounded in a new understanding of sexuality – what she calls “communicative model of sexuality”; and a collection of essays by various authors under the title “Yes Means Yes: Visions of Female Sexual Power and a World Without Rape” (Friedman and Valenti 2008) which addresses cultural assumptions about gender and sexuality, again offering the revision of them as well as new understanding of consent based on affirmation, communication and enthusiastic expression of sexual desire.

These works offer sexual consent as a complicated and multi-faceted concept which aims to address a broad spectrum of issues, from specifically legal applications to radical changes to the discourse on sexuality and gender. As this new model is offered and sometimes implemented for law and policy (Gotell 2008, Pineau 1996, Riggs 2008), it is necessary to provide a detailed understanding of what exactly it entails. Furthermore, sexual consent is part of sexual identity (Rubin 1984) and serves as the basis for categorization of subjects in the social order (Foucault 1988, 43-44), and also an instrument of instituting the power relations between them, it is necessary to understand the changes to the discourse and possible implications.

However, while different works address different facets of consent and connections between them, there is no comprehensive analysis of what does affirmative/communicative/enthusiastic consent entails, especially when viewed outside of the legal context. This fragmentation of the conceptualization of sexual consent makes the understanding and further analysis of it difficult. Nevertheless, the works of the proponents of this re-conceptualization of sexual consent produce a discourse in which the revision of sexual consent produces a new sexual subject and sets a number of claims, some of which are overt, and some can be inferred from it. These claims range from

solutions to the law and policy problems with treatment of sexual consent which are stated overtly to the hidden claim to the revision and reclaiming of sexual citizenship.

My goal is to elaborate on the concept of sexual consent as it appears in this new model and to see what kind of sexual subject and sexual discourse it produces. In order to do so, I provide an analytical framework in which this re-conceptualization of sexual consent can be viewed as a whole, and in which the claims emerging from the discourse can be revealed and critically evaluated. In my work, I analyze the discourse of the proponents of this re-conceptualization as it is presented in the works of Lois Pineau and the collection “Yes Means Yes”. For my analysis I draw on several bodies of literature. First of all, my approach is grounded in feminist theory such as works of Gayle Rubin (1975, 1984), Elizabeth Grosz (1998) etc. As significant part of the critique is based on the legal understanding of sexual consent, I turn to the legal scholarship and philosophy of law (Bryden 2000, Decker and Baroni 2011, Gotell 2008, Pineau 1989, Hubin and Haely 1999, Wertheimer 2000, Taslitz 2005). To address the reality of negotiation of sexual consent and problems arising with it, I draw upon sociological studies of sexual consent (Adams-Curtis and Forbes 2004, Crown and Roberts 2000, Hickman and Muehlenhard 1999, Peterson and Muehlenhard 2007, Powell 2008).

Both legal and sociological sources used in my work bring certain limitations to my analysis as they focus on non-consensual interactions between a male perpetrator and female victim, and on more “severe” types of those such as rape and sexual assault. The works on the re-conceptualization of consent which I base my analysis on also have a focus on heterosexual interaction and protection of women from men’s coercion, although they address a larger variety of sexually coercive situations. Additionally, as most of the authors come from the US, and work within the US discourse, their work is focused accordingly on the US social situation and legal system, and reflects a “legal consciousness” where legislation is seen as a key instrument to solving the problems of the society,

including social inequality. My analysis is therefore limited to the same focus although it can be theoretically applied to other situations.

In Chapter 1 I address the legal aspect of sexual consent and, accordingly, the first claim of re-conceptualization of consent – placement of responsibility in cases of sexual assault onto the attacker. Feminist legal scholars have long been critical about the existing standard which puts the burden of proof of non-consent onto the victim, and allows the accused to avoid not even the punishment, but even the analysis of his behavior, his self while the victim's life and choices are evaluated to the most intimate details (Bryden 2000, Burt 1980, Chamallas 1988, Jervis 2008, Plummer 1995). The affirmative consent standard for sexual assault legislation (Bryden 2000, Gotell 2008) is an answer to this critique; but as I show, it does not in itself solves the problem of gender inequality in the approach to sexual assault cases, although it does change the gendered sexual subjects involved in the legislation.

The second claim, elaborated in Chapter 2, is a reaction to the fact that it is not enough to change the legal standard, as it is grounded in the presumptions about the norms of sexual interaction. It is a claim for the change to these norms, and accordingly, to the problematic normative model of sexuality. Instead, an alternative, communicative model of consensual sexuality is offered. As I demonstrate in my analysis, this model does not just presents communication as a way to practice consent but covertly aims to change the discourse and the practice of sexuality and sexual subjectivity while at the same time producing a specific sexual subject capable of communication and, ergo, consent.

The third claim, analyzed in Chapter 3, is to sexual agency, and as women are one of the categories of sexual subjects whose agency is often questioned, the claim is specifically to “female sexual agency”, which is addressed in “a feminist model of enthusiastic consent, in which women are

viewed as autonomous actors empowered to request or decline sex – a model where “no” is respected and “yes” is an equally valid response” (Filipovic 2008, 14). This female sexual agency is presented as based on sexual desire and freedom, and women’s entitlement to the expression of their sexual self: “...say yes to yourself, yes to your desires, and yes to the idea that you have a right to a joyful sex life, free from violence and shame” (Cho 2008). I elaborate on the complexity of sexual desire as grounds for such a claim and on the agentic sexual subject that is produced as a result of it.

As all three concepts and, accordingly, all three chapters refer to the transformation of the discourse, and consequently, to the claim for citizenship, these two topics I discuss in the concluding Chapter 4. As the normative presumptions and the limitations to women’s self-expression, as well as to the self-expression of other sexual subjects, are produced by the predominant discourse on gender and sexuality, the next claim is to the rethinking of sex and redefining it for each person individually, and for the society in general, as not something pre-defined for everyone by the virtue of their gender and by the morals, but something that everyone figures out individually and has a right to achieve as long as it does not infringe upon the others’ freedom. To do so, it is necessary to make *speakeable* the kind of sexuality normal under the conceptualization of affirmative/communicative/enthusiastic consent– that is, open up the discussion of sexuality to all its variety in a positive way, and develop a language to do so as well as make this language accessible to anyone.

Sexual citizenship in this new discourse is both re-claimed and re-defined by centering sexual desire and pleasure as well as agency, and thus, the rights to sexual self-determination and to sexual gratification. While this claim is not new to the discussion of sexual consent (Rubin 1984), as I demonstrate, the nuances that appear from the re-conceptualization of consent in this model define the full ability to consent *or not* to sexual relations in a way that produces a new variation of sexual citizenship.

## Chapter 1. Affirmative consent standard: re-conceptualization of consent in legal practice

### 1.1. “Silence gives consent”

Sexual consent appears within the legal framework mainly as the core component in differentiating legal sexual activity from illegal, as well as moral from immoral (Wertheimer 2000). Despite sex and sexuality being relegated to a private sphere, “sexual conduct is highly regulated activity” (Chamallas 1988, 777), and this regulation produces values, as it presents to the subjects of the law a vision of appropriate sexual conduct (Chamallas 1988, Rubin 1984). The fields where it is mostly debated are laws on age of consent and the variety of sexual offences (rape, sexual assault etc.). As discussion on age of consent is based upon the definition of sexual consent *per se*, which is mostly developed in relation to sexual offences, I will focus on the conceptualization of consent in sexual offenses for now.

First of all, the American legal system does not define consent so much as *non-consent*. The basic definition of sexual non-consent was adopted from English common law, where rape (as the fundamental nonconsensual act) was defined as “carnal knowledge of a woman forcibly and against her will” (Decker and Baroni 2011, 1083) where the person doing the carnal knowledge was a man but not a husband of a woman in question, the carnal knowledge meant penetration, mostly of penis-in-vagina type, and the fact that it was done “forcibly and against her will” had to be proven by demonstration that she tried to fight him off. This definition in itself holds all core components of the problems with sexual consent as a concept central to sexual rights, and legal scholars continuously discuss and implement the changes in the definition (Bryden 2000) (Decker and Baroni 2011). But even if we widen the discussion to the various forms of sexual violence and coercion

such as sexual assault etc., the problem of the basic definition stands: sexual consent is assumed until proven otherwise, so it is *non-consent* which has to be affirmed, and this affirmation has to be communicated in a specific way which is recognized by the other party and, in legal cases, by the court system and the society at large.

By centering non-consent, this approach presents consent as dichotomous (there is affirmed non-consent, and then there is everything else which is consent), while in practice, it has three gradations: affirmed consent, affirmed non-consent, and absence of any affirmation. In centering non-consent, absence of any affirmation is seen as affirmation of consent, as in the saying *qui tacet consentire* – “silence gives consent”. The main question is, of course, whether this principle is applicable to sexual consent, and what are its implications.

The legal approach of the American legal system brings a set of critical questions about the status of consent in the particular encounter (Bryden 2000, Chamallas 1988, Decker and Baroni 2011, Wertheimer 2000). There is, of course, the question of non-consent: how it is expressed and how to ensure that the non-consent, once expressed, will be heard and obliged – a famous statement “no means no”<sup>3</sup>. But there is also a very important discussion about the situation where neither consent nor non-consent was affirmed, or where the affirmation of non-consent was not recognized by the recipient (Bryden 2000, Pineau 1989, Wertheimer 2000). As “silence gives consent”, and as the recipient can make himself deaf to the communication as many do, consciously or not (Taslitz 2005), this questionable situation in the traditional approach tends to be perceived as consent; but a feminist question is, should it be?

As human desires and motivation are often unclear even to the individual him- or herself (Beres 2007, Peterson and Muehlenhard 2007), the legal system needs some sort of external criterion for

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<sup>3</sup> For the discussion of legal problems with the “no means no” standard see: Bryden, 2000; Wertheimer, 2000.

ascertaining the (non)existence of consent on the part of the victim and the knowledge of it on the part of perpetrator. This criterion has to show the intent of the parties: for the woman – whether she has intended to have sex or not, and for the man – whether he intended to overpower her even if she disagrees or desisted (Bryden 2000). While there are scholars who suggest that intent by itself is enough, from the point of view of legal practice, it is not only difficult to argue but also calls for interrogation of the victim's behavior and views on sex (Beres 2007). Others suggest that consent can be understood as “performative” (Wertheimer 2000) – an act which is a token of consent, a token of intent (Beres 2007). While there are different opinions on how it can be expressed (Bryden 2000, Kittay 1997, Wertheimer 2000), one popular suggestion is the standard of affirmative consent – consent which is clearly and unambiguously communicated.

Communication becomes thus a central issue to the conceptualization of sexual consent. But before I go into the discussion of communication it is necessary to consider the issue of “incapacity to consent”, which is also very important and in many ways lends to the discussion of communication. Incapacity to consent means inability to understand or appraise the situation involving the sexual act (Decker and Baroni 2011, 1083). Interestingly, this is the only aspect of traditional legal framework where consent is presented somewhat positively, and silence does not give consent.

Capacity to consent is in itself a complicated question as it theoretically brings together the issue of cognitive abilities and the issue of access to information. To be able to understand and appraise the situation, a person has to have cognitive abilities for understanding and appraisal, and adequate information to do so. The ways this capacity is treated in legal framework are as various and contradictory as issue of consent in general: it includes such issues as age of consent (which again brings together cognitive abilities and access to information) (Waite 2005), consent of people with

mental disabilities, temporal impairment of judgment by alcohol<sup>4</sup> or drugs, protection from deception<sup>5</sup>, access to the partner's medical history vs. personal privacy, etc.

Incapacity to consent describes one of the two parties in the encounter. But there is also the other party, and the question of the capacity of the perpetrator to recognize affirmation of non-consent which is expressed in the requirement of *mens rea* and its definition in the law or in the specific case, usually raised as “reasonable belief” or “sincere belief” that consent is given (Decker and Baroni 2011, Pineau 1989). It also requires certain factors: adequate information, capacity to understand and appraise the situation, and ability to receive and understand the communication of consent. Paradoxically, while there is a lot of pressure on victims of sexual assault – mostly women - to communicate and affirm their non-consent clearly and assertively, perpetrators – mostly men - have a benefit of the doubt in their supposed incapacity to recognize communication of non-consent (Adams 1996, Pineau 1989) even though they are able to recognize such communication in non-sexual matters (Beres 2007, Kitzinger and Fritz 1999). In fact, expectations of the communication and expectations of reasonable behavior are in practice gendered and either reproduce gender inequality in society or ignore it to the detriment of the injured party.

## 1.2. Affirmative consent

As I have argued above, in the model dominant in the current US law (Decker and Baroni 2011), consent is assumed until non-consent is expressed; in this way, non-consent is active and consent is passive. It also means that consent to sex is seen as the basic state of the individual unless this

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<sup>4</sup> For the discussion of consent under the influence of alcohol see: Wallerstein 2009, Wertheimer 2001, Wertheimer 2000

<sup>5</sup> Interestingly, the current legal definition of incapacity to consent does not include, in most cases, the use of deception by the other party (Decker and Baroni 2011, 1167) even though deception is prohibited in other cases such as theft.

person has reason to withdraw it by expressing non-consent. The implications of this assumption are quite obvious from the feminist point of view: for women specifically, it means that they are seen as available to sex or at least sexual attention (in the form of objectification, harassment etc.) unless they state otherwise, and it is not necessary to ask their permission. The same goes for men (Beres 2007), though it might not happen to them as often, or with such devastating social consequences, as it does to women. Another implication for seeing consent as the basic state is why I have used the turn of phrase “has reasons to withdraw”: as the basic state is also seen as “natural” you actually have to have reasons not to do what is “natural” for you (compare it to the constant pressure on women to give in to their reproductive “nature”, or on gay people to have “natural” sex, or on asexual to behave “naturally”). While with sexual consent this logic is somewhat understated, it comes through in the traditional model of sexuality where it is the basic state of a man to be desiring and thus, consenting, and it is natural for a woman to submit to his desire and thus, also consent.

Re-focusing on consent instead of non-consent makes non-consent a passive basic state, no individual is seen as consenting to sex by default; permission for sexual attention has to be asked and granted in some form or other. Consent has to be communicated, or *affirmed*, which means active communication of it. The standard of affirmative consent is implemented in the Canadian law (Gotell 2008, Pineau 1996), and attempts of implementation are started in some states of the US (Decker and Baroni 2011, Pineau 1996).<sup>6</sup>

What the move of centering affirmative consent and making non-consent a basic state accomplishes is the situation where the goal of sexual communication is to ensure the consent of the other party.

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<sup>6</sup> For the detailed analysis of the meaning of consent and rape/sexual assault/sexual coercion in US law, see Decker & Baroni, 2011. For discussion of possibilities and limitations of implementation of affirmative consent model in the US law see Bryden, 2000; Pineau, 1996; Wertheimer, 2000.

While consent is the basic state and non-consent has to be affirmed, silence<sup>7</sup> is consent, and there is certain logic in escaping communication as some people do. If, on the other hand, consent has to be affirmed, and silence is non-consent, then communication becomes a necessity. Additionally, if an individual cannot understand or appraise the situation involving the sexual act then they cannot consent to it, or if they do, their consent is not valid, meaning they are legally incapable to consent. This is important if we take into account the consequences of failure of ensuring non-consent versus failure of ensuring consent. If one party fails to ensure non-consent of the other, assuming that silence is consent, then the first party can violate the second party sexually. If, on the other hand, the first party fails to ensure consent then the sexual act will not happen; even if an act was desired by both, in a grand scheme of things, it is a lesser loss than sexual coercion or violence. As Wertheimer argues,

The high standard for sexual consent is advantageous for women and men as in the long run, it lessens the possibility for sexual coercion and produces more equal social atmosphere (Wertheimer 2000, 564-566)

### 1.3. The standards of responsibility and reasonability

This revision of the concept of consent is an answer to the first claim: that responsibility for breaking of consent is not on the assaulted person, who didn't put enough effort into communication of their non-consent, but on the assailant who didn't put enough effort in ensuring that consent is given and there is no misunderstanding (Decker and Baroni 2011, Pineau 1989). It is

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<sup>7</sup>Which can entail simple non-expression but also failure to communicate by the second party or failure of the first party to recognize communication which can be, as we have seen, accidental or intentional (Bryden 2000, Taslitz 2005, Wertheimer 2000).

seen as one of “...positive and proactive approaches to curbing rape: holding perpetrators and *their* drinking accountable...” (Friedman and Valenti 2008, 6).

[On rape prevention]: We already know something that doesn’t work: blaming and shaming women. We also know something that does work (although it will take a while): holding rapists responsible. (J. Friedman 2008)

After the implementation of this standard in the Canadian sexual assault law, the rate of convictions in the cases of date rape and other “gray areas” dropped (Gotell 2009). Although it is not the respect for the partner’s consent that drives the affirmative consent standard in law, but the fear of punishment (Gotell 2008), as an outcome, it is still preferable over the situation where there is no incentive to abide the affirmative consent standard whatsoever, and only the encouragement to pursue sexual gratification at any cost. The *responsibility* in this case is closely linked with *reasonability*: as a potential perpetrator of sexual assault, it is a reasonable person who knows about the responsibility for breaking of consent, and thus, aims to protect himself from the risk of criminalization by abiding the law (Gotell 2008, 876).

However, both standards of reasonability and responsibility have always been gendered. In the traditional approach, the expectations for a reasonable man to hear and understand the communication of the non-consent are lowered through the standards of “honest mistake” (Hubin and Haely 1999, Taslitz 2005) and “reasonable belief” (Hubin and Haely 1999, Pineau 1989) which are grounded in the in the popular beliefs about gender relations and sexual behavior such as that men have difficulties understanding sexual communication (Adams 1996, Pineau 1989) or have reasonable expectations that women will agree to sex eventually even if she is “coy” about it in the beginning (Bryden 2000) or have uncontrollable sexual urges (Carmody 2004). The same beliefs have been employed to absolve men of responsibility for sexual coercion (Burt 1980). This vision of

masculine subject is contested by the affirmative consent standard and its demand for rational communication:

Feminists insist that men are not animals. Instead, men are rational human beings fully capable of listening to their partners and understanding that sex is not about pushing someone to do something they don't want to. (Filipovic 2008, 21)

When applied to a woman, however, the standard of reasonability in the traditional approach calls for her responsible behavior and does not give her any leeway at all. On the one hand, her behavior in the situation of sexual assault or coercion is often judged by the same logic as if applied to a man in the same situation, although some argue that what a "reasonable woman" would do is not the same as a "reasonable man" would do in the same situation because of different social and even physical conditions (Hubin and Haely 1999). This approach doesn't take into account the gendered social conditions for men's and women's participation in sex, up to the general atmosphere of fear of sexual violence that women live in even if they never encounter it themselves (Plummer 1995), while often accepting as given other expectations of woman's behavior, such as "coyness" and "token resistance".

At the same time, the very same conditions create a different standard for a woman's "reasonable" and "responsible" behavior, one in which she has to predict and prevent the risks of, basically, being a woman (J. Friedman 2008) in a sexist society. A woman who violates the norms of "respectable" behavior by being in a public place, dressing in a "provocative" manner, flirting and having sex can easily be categorized as "irresponsible" or "not respectable", which somehow justifies violence or coercion against her:

An acquaintance rapist is most likely to escape justice if his victim violated traditional norms of female morality and prudence: for example, by engaging in casual sex, drinking heavily, or hitchhiking. (Bryden 2000)

The affirmative consent standard by itself does not necessarily solve the problem with the woman's "responsibility" and "reasonability". As Gotell (2008) argues, there is a new dichotomy of a "reasonable woman" and "risky woman" (Gotell 2008, 886), which has more similarities than differences with the previous one. The new idealized female subject is not only responsible for risk-prevention by not engaging in "risky" behavior and predicting the possibilities, but also responsible for being assertive and proactive in protection of herself from the attack.

The "risky" sexual subject often coincides with the "promiscuous" sexual subject of the traditional approach: as reasonability of woman's behavior is measured against her "normal" behavior as well as against the responsible ideal, women who are sexually active in non-normative way can be excluded from the protection granted by the affirmative consent standard (Gotell 2008, 887), as the court will ignore the standard in favor of moral judgment of the woman's "irresponsible" behavior which can be anything from having sex in public spaces to spending time with male acquaintances. General problem with those risks is that they basically cover all kinds of behavior which go unpunished for men but are considered "risky" for women (J. Friedman 2008) and thus, make them into "risky" violable subjects. At the same time, women are regularly encouraged to participate in many of them, such as "sexy" dress or drinking at parties and at dates – a well-known double-bind of female existence.

The pressure on women to be assertive and proactive, as well as to protect themselves preemptively from the possible sexual assault by limiting themselves, also is not much different from the same pressures that have been critiqued by feminists for decades (Filipovic 2008, MacKinnon 1989).

Respectable femininity includes strong presumption of male sexual violence (Gotell 2008); it includes not only the fear of men but also woman's responsibility to prevent the attack. At the same time, the systemic nature of sexual violence is erased, and sexual assaults are decontextualized (Gotell 2009), as if they are happening in individual cases, in private situations, not as a part of larger system of power and oppression (Beres 2007). Or, in fact, some context is taken into account, such as the woman's presumed "normal" behavior, or traditional gender scripts, and some is not, such as the systemic nature of gender-based violence and the gendered socialization.

In theory, the affirmative consent model aims to resolve this double-bind by including protections against at least some of the assumptions of "risky" behavior – for example, a demand for verbal consent protects from the assumption of consent in such non-verbal expressions as sexy dress, and the demand for consent at every step aims to protect from the assumption of consent in flirting. By demanding that the consenting party was capable of doing so, rational and informed, the affirmative consent model aims to prevent the usage of intoxicated state or other incapacities of consent such as age or mental disability, and the demand for clear communication protects those unconscious, sleeping or unable to communicate either "yes" or "no".

But it is here, as Gotell (2008) argues, that the implementation of the affirmative consent standard into the law, while solving some problems of the previous doctrine, does not resolve the gap between "law as legislation" and "law as practice" as it does not take into account "the power relations constructing vulnerabilities" (Gotell 2008). In practice, the law continues to internalize the discourses on gender and sexuality as well as structures of power and inequality. The "risky" female subject produced by those discourses – one that somehow violated some of double-binding prescriptions of responsible femininity, or one who was considered ineligible to this kind of femininity at all, being poor (L. Peterson 2008), of color (Mukhopadhyay 2008) or otherwise outside

of the norms of respectability (P'erez 2008) - is stripped of the protection of the affirmative consent standard. In sum, the affirmative consent standard is an effective system of risk management *for men* (as the usual voluntary or involuntary assailants) – a somewhat paradoxical outcome of the strategy developed to protect *women* but in the context of the systemic gender inequality, not surprising.

## Chapter 2. Communicative model of sexuality

### 2.1. The dominant discourse: non-communicative model(s) of sexuality

As the previous chapter shows, the problems with the existing legal conceptualization of consent and its application in practice appear as a result of its connection to the discourses on sexuality and gender which position men and women as unequal subjects and create conditions for coercion and its justification. Affirmative consent as *just* a legal change, while helpful, does not solve the problem fully; there is a need to change the discourse and the practices it produces; change the model of gendered sexuality and sexual interaction between genders.

Before exploring the specifics of the communicative model of sexuality, it is necessary to look at the model it is supposed to be a response to. Although there is a variety of discourses on gender and sexuality, a discourse which is usually referred to as “dominant” (Pineau 1989, Riggs 2008) or “mainstream” (Filipovic 2008) is one which, basically, presents male and female sexuality as different, complementary and adversary (Millar 2008); and limits female sexuality specifically by shaming sexual activity (Filipovic 2008, J. Friedman 2008, Jervis 2008) while at the same time demanding from women access to and control over their bodies (Troost 2008). It also instills heterosexuality as compulsory (Kitzinger and Wilkinson 1996, Rich 1980).

We are all of us taught the subtle, and not so subtle, sex and gender norms require to make us upstanding citizens and eager, compliant consumers. Breaking or even bending the norms means suffering consequences. [...] For all of us [those who do not comply], shame is the first betrayer. (Amato 2008, 223-224)

The models of sexuality corresponding and central to this discourse also vary but have more similarities than differences. As one example, there is a model based on the notions of supposedly natural sexual drives aimed at reproduction: the active, driven-by-his-need male of human species pursues the passive, submissive and mostly-uninterested-in-sex female to achieve the penis-in-vagina intercourse resulting in his orgasm. In this model, men are dominant and active, their sexuality is aggressive and often uncontrollable, and they are always desiring sex and pursuing it (Beres 2007). Women are submissive and passive; their sexuality is supposed to be reactive to male desire as willingness to submit, but at the same time, paradoxically, they are responsible for restricting men's desire by resisting their advances (Filipovic 2008, Decker and Baroni 2011). The concept of sexual consent for both parties is noticeably absent (Hickman and Muehlenhard 1999). This model also presents sexual interaction as a universal “naturally” heteronormative and phallocentric scenario (Davis 1990, Rubin 1975), excluding other sexual preferences and activities, and presenting all sexual activities as logically leading to the man penetrating a woman – an act which is “naturally” desirable, unquestionable and unnecessary to discuss (Beres 2007).

Sexual communication, such as discussion of sexual preferences or proactive affirmation of consent, is considered unnecessary and sometimes even harmful for the emotional effects of sexual interaction (Beres 2007). The “romantic ideal” which appears in a wide scope of interactions from one-night stand to marriage “includes the beliefs of love at first sight, that love is blind, love conquers all, love entails both pain and ecstasy, and love is passionate” (Waller in Lloyd 1991, 16). These notions appear as contradictory to discussion of consent, as well as the choice of sexual practices and/or safety measures: for example, in a study of condom use negotiation, the ideals of love and passion which include blind trust in your partner are the reasons people don't communicate even under the threat of dangerous disease (Carrillo 2002), as negotiation of condoms is seen as contradictory to the passion/love/romance which people prioritize (Takacs, et al. 2006). The

partners, especially in the established relationships, are also expected to “know each other”, and also, to be “giving” to each other what the other needs, including sexual gratification (which in practice usually means that it is a woman giving in to a man)<sup>8</sup>:

Yeah, ‘cos when you’re in love and everything, you’re supposed to see the other person’s happiness before your own, I mean, whatever it is. (Respondent in Powell 2008, 176)

The traditional notions of how a sexual and/or romantic relationship is established and progresses don’t only give the initiative to a man and expect a woman to submit but romanticize this seizure of power (Lloyd 1991). Even violence in the relationship is considered by many as meaning “love” (Lloyd 1991). These notions often are interconnected with the “sexual contract” (Pateman 1988) which leads to another model of sexual interaction appearing in the dominant discourse – contractual model in which women who have initiated the encounter are obliged to follow through (Beres 2007) <sup>9</sup>:

...women should not behave sexually unless they are prepared to carry through on some fuller course of sexual interaction. [...]At some point she has made an agreement, or formed a contract, and once that is done, her contractor is entitled to demand that she satisfy the terms of that contract. (Pineau 1989, 229)

While the dominant discourse does not describe actual sexual behavior of all people, or even of the majority, it creates conditions conducive to sexual coercion and violence (Burt 1980, Filipovic 2008, Pineau 1989), as shown by sociological studies of sexual assault and coercion. The landmark studies done from the 1950s till the 1980s demonstrated that 50 to 64% of college women have experienced

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<sup>8</sup> For further discussion of romance/passion and problems of consent see: Bussell 2008, Davis 1990, Kimmel 2005, Kittay 1997

<sup>9</sup> For further discussion of the contractual model see: Chamallas 1988, Kittay 1997, Pateman 1988, Fraser 1993, Pineau 1989, Pineau 1996

some kind of coerced sexual activity (touching, kissing, forced petting etc.), with many experiencing it regularly; 15 to 21% had unwanted sexual intercourse or experience that fits the legal definition of rape (Adams-Curtis and Forbes 2004). Studies developed in the 1990s and 2000s demonstrate new trends in sexual behavior and certain changes in interpretation of it, but the statistics of the incidence of sexual coercion remain the same (Adams-Curtis and Forbes 2004, 115).

Adherence to the definitions of aggressive dominant masculinity and passive femininity in adversarial relations to each other, as well as vision of sexual activity as a masculine trait (Taslitz 2005), leads men towards sexual violence and coercion (Adams-Curtis and Forbes 2004) (Cowburn 2005) (Geisinger 2011) (Hall, et al. 2006) The sexually coercive men which constitute a minority of men but victimize the majority of women (Cowburn 2005) do so because of the feeling of entitlement in general and to women's bodies in particular combined with the feeling of being deprived of this entitlement (Kimmel 2005), especially if they are supported in their views by their peers (Adams-Curtis and Forbes 2004).

For women, reproduction of rape myths and traditional gender roles constitute situations of higher risk (Adams-Curtis and Forbes 2004), both for experiencing sexual coercion and/or assault, and for it to be justified later. For example, in both dating and casual hook-ups for sex, both men and women have expectations of male pressure and female resistance/succumbing to it (Powell 2008). Sexual coercion is more likely to happen when a woman is alone with a man, especially on "his" territory, or on dates where the man initiated the date, paid for it and drove the car – all situations where the woman is in the man's power literally and/or symbolically, and also situations which reproduce so-called "traditional sexual script" (Hickman and Muehlenhard 1999). On the other hand, woman's assertiveness such as initiating the date, going to the man's apartment etc. is

interpreted as sexual intent and used for justification of men's sexual coercion (Adams-Curtis and Forbes 2004).

When you are steeped in messages about looking hot at the expense of (or as substitute for) feeling aroused or having sexual desire, it becomes all the easier for you to question your own judgment about what happened to you and believe the cultural forces telling you that your assault was just miscommunication and bad sex. (Jervis 2008, 167)

Communication appears in this discourse only as a failed one – in cases when “no” was not heard, or wasn't said at all, for various reasons. One of them, as Kitzinger and Fritz (1999) show in their analysis of communicative strategies, is that straightforward refusals are dispreferred conversational actions, meaning that the strategy “just say no” is not very feasible in the view of normal pattern of communication, which becomes even stronger in the sexual situations where any direct and verbal communication is discouraged by the discourse. In fact, sex has been for so long considered taboo as a topic outside of certain parameters of medical or legal discourses (Foucault 1988) that even when there is a lexicon of sex outside of those discourses, the talk of sex – as well as sex itself – is seen as shameful and indecent: “sex-negativity teaches us that sex is not to be spoken of” (Riggs 2008, 110). Therefore, communication of sexual desires, especially verbal, including the communication of affirmative consent, has to be difficult, and mostly is done in a language of bodies, gestures and other non-verbal techniques of communication (Powell 2008) which can easily be misinterpreted, or claimed to be unrecognized. This is the situation which communicative model of consent aims to change.

Getting more comfortable talking about sex in and out of the heat of the moment means there'll be fewer of those awkward silences and less chance of one person thinking they had the best sex in the world while the other wishes it had never happened. (Bussell 2008, 47)

## 2.2. Model(s) of consensual sexuality

As the answer to the problems of the dominant discourse and the traditional model of sexuality, the re-conceptualization of sexual consent offers the vision of a “communicative model of sexuality”, and a corresponding technique of communication as a tool of sexual interaction. One of the comprehensive critical models of sexual consent as an affirmative and agentic act was developed by Lois Pineau (1989) as an answer to the many problems of court trials on cases of acquaintance rape and date rape. Her model of “communicative sexuality” (where communication serves as both the metaphor and the tool for achieving successfully consensual encounter) is based on the rebuttal of the dominant model of sexuality and reinterpretation of sexual script with all its assumptions about male and female desires, behavior and sexual interaction.

She, as well as many others (Beres 2007, Carmody 2004, Decker and Baroni 2011, Friedman and Valenti 2008), argues that sex should be based on mutual agreement of the parties expressed in communication of consent from both sides for the purpose of mutual enjoyment. If the goal of sexual interaction is the mutual pleasure – meaning, the pleasure of the partner taken as your own, as “in intimate situations we have an obligation to take the ends of others as our own” (O’Neill in Pineau 1989), that “implies the obligation to know what those ends are, and also the obligation to know how those ends are attained” (Pineau 1989, 234). It is communication of consent, and not communication of non-consent, that should be central to the sexual and social conduct, and to corresponding legislation on sexual consent. In this model, the purpose of sexual activity is *mutual* pleasure of the partners in whatever form they mutually agree, without pressure and coercion.

There are many attempts to build such a model in feminist theory (i.e. Grosz 1998, Davis 1990, Millar 2008), using different metaphors: metaphors for sex are actually one of the aims of critique

and at the same time one of the tools for it. The dominant discourse uses metaphors which present sexual interaction as happening between the active male subject and the passive female object (who at the same time often embodies the sex itself and an obstacle on the way to it which has to be overcome by all means necessary): a hunter gets the prey, a hungry person eats the food, a man gets his prize (Davis 1990, Millar 2008). The metaphors of the new discourse on consensual sexuality are centered on collaboration between two subjects which is achieved through communication: for instance, Thomas Millar (2008) uses the metaphor of performing music together, and Pineau uses a metaphor of mutually pleasing conversation. Both use there metaphors to point out that the goal of interaction is to figure out the desires and preferences of the partner and negotiate mutual satisfaction<sup>10</sup>.

Metaphors can do only so much in terms of explanation, so I will try to go back to sex and present a model of sexuality for which Pineau and others argue. For the sake of simplicity, I will talk about only two people though this model can include any amount of people participating in the act(s). In this model, it is mutual pleasure that is central to the encounter; and the absence of pleasure of one party is felt as unpleasant to the other. There is no “main” sexual act, such as the penis-in-vagina penetration in the current dominant model; indeed, there is no pre-existent classification of sexual acts existing outside of the specific encounter, specific participants and their preferences. There are also no preexistent erogenous zones (Grosz 1998) except for those specific to the participants and to their experiences during the encounter. To figure out each other’s preferences and their compatibility, the parties have to communicate with each other before and during the sexual interaction, to ask each other about desires and feelings and continue or change their behavior accordingly.

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<sup>10</sup> Both metaphors are also open to more than two partners as well as the whole variety of sex/gender combinations and specific sexual acts.

As regards of consent, there are no preconceived notions of what a person would or would not consent to, and consent to one act does not mean consent to another. More so, there is no assumption of consent at all; for each specific act, consent has to be expressed, as otherwise the act would be considered nonconsensual. It is expected that in absence of any expression of consent or non-consent, one party would ask for confirmation or refusal; thus, the parties are supposed to be constantly communicating their desires and preferences, and either expressing their consent to their partner's prompts or refusing them. It is also expected in some of the presentations of such a model of sexuality (Friedman and Valenti 2008) that the parties are not just consenting to another's prompt but express their own desires in this consent, thus discouraging consent to unwanted sexual acts out of reasons not related to its "wantedness"<sup>11</sup>.

### 2.3. Communication as the practice of consent

In communication, there are (at least) two parties both of which give their input. In the dominant discourse, one (male) party is the active initiator, and the other (female) a passive respondent who only has to actively communicate in case of *non*-consent and only as a response to the actions initiated by the first party. The revised model of sexuality described in previous section questions this scenario. While in separate acts, one party can still actively initiate and the other respond, these roles are not fixed throughout the sexual activity and can change from one act to another; they are also not tied to gender. The response also cannot be passive as in "doing nothing"; the requirement of *affirmation* of consent calls for some sort of communication, as silence is *non*-consent.

For the sake of argument, I discuss here two parties involved in one single sexual act<sup>12</sup> where one is an initiator and the other, a respondent. The respondent has to have the capacity to consent as

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<sup>11</sup> For the detailed discussion of desires and wantedness in relation to consent, see Chapter 3.

<sup>12</sup>By act, I mean not intercourse or any other sexual activity from the beginning to the end; such an activity can involve hundreds of small acts, and the roles of the parties as well as the status of consent to each of them change from one to another. Here, I mean one action, be it a kiss, a touch or a caress.

discussed earlier, and also the capacity to communicate this consent in a way that is reasonably understandable to the other party. The initiator has to have the capacity to receive and recognize this communication; they also have to be able to communicate them *seeking* consent (capacity absent in the non-consent approach). While there are expectations of reasonability of both participants and their capacities to communicate with each other and receive the communication, what is important here is that in case of non-responsiveness or unclear communication, the initiating party is responsible for ensuring whether there was an expression of consent. If they cannot be sure of it, than it is their responsibility to stop whereas in the traditional model, it is a responsibility of the passive party to ensure their non-consent was expressed and communication received. Again, as I have argued earlier, the question is in the consequences of the failure: the failure to receive and recognize communication in the traditional approach is a justification for continuing the activity which might not be consensual, whereas in the affirmative consent model, it is a clear reason to stop the activity in order not to make it nonconsensual.

While the theoretical aspect of affirmative consent approach is often offered first of all as a standard for policy and legal proceedings, this approach aims at the same time to rearrange the division of responsibility and reorganize the strategies of communication of sexual consent in everyday practice by “breaking the silence”. Popular strategies of communication of consent are based on the assumption of consent in absence of any expression, so “the modal way that (...) women and men reported expressing their consent for sexual intercourse [is] doing nothing” (Peterson and Muehlenhard 2007, 83), with all the implications of it which were discussed earlier, such as accidental or conscious miscommunication and misrecognition of signals.

There is, in fact, a practical example of the use of the communicative strategy described in this chapter, and not just in the (in)famous Antioch College policy (Baya 1993) which sparked the

debates in the 1990es (Beres 2007, Pineau 1989). Communication of affirmative consent is the centerpiece of philosophy and ethics of BDSM practitioners; indeed, it is the strategy that allows them to delineate their practices from sexual, physical and psychological violence and abuse (Leigh 1976, Henkin and Holiday 1996). Any of BDSM philosophies (SSC, RACK etc.<sup>13</sup>) centers consent, together with some form of claim to relative safety and reasonability of the actions, including information and awareness of the proceedings (Henkin and Holiday 1996). Taking into account the dangerous nature and the questionable legality of many BDSM activities, it is not surprising that this “deviant” community has developed a philosophy of sexual interaction which seems more aware of its risks and the need to proactively safeguard against them. Some of the tactics of communication aim to prevent misreading of communication in reactive communication of non-consent, such as safewords (Grey 1995) – words which communicate the desire to stop the activity immediately<sup>14</sup>. There are also tactics of proactive negotiation and affirmation of consent. One of the most formal is checklist – a list of preferences and kinks that both partners fill out and compare to figure out what kind of activities are acceptable to both; but less formal strategies such as simple discussion of desires and fantasies will suffice in many cases (Bussel 2008). It is worth noting that these strategies tend to take into account the ambiguity and situationality of desires, by paying attention to not only what the partners are sure of but what they might be willing to try, what are their preferences at the moment, and with this specific partner.

Kink, in many ways, may be the most responsible form of sex because you *have* to talk about it. You have to articulate exactly what you do and do not want to happen before anything starts happening. (Riggs 2008, 113)

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<sup>13</sup>SSC – Safe, Sane, Consensual (Stein 2000-2002); RACK – Risk Aware Consensual Kink (Switch 2001).

<sup>14</sup> Though a simple “no” or “stop” can be used as well, in many cases, it is acknowledged that those words can stand for the opposite of their meaning, especially in games with power and pain; safewords, on the other hand, are chosen carefully so that they cannot be uttered accidentally in the throes of pain or passion. In cases verbal communication is impossible, a non-verbal signal is chosen. And in any case, it is the responsibility of s partner who is in control to make sure that the other partner is safe and consenting to the proceedings.

One thing that the demand of verbal, or at least clear and unambiguous, communication does is that to be able to affirm consent through verbal communication, it is necessary to make a conscious decision about it while in “consenting by doing nothing” the individual can escape decision making by “going with the flow”. The individual becomes then a rational actor who bears responsibility (see quote above) for giving or receiving consent. What differentiates it from the “no means no” approach is that in communicative model, both participants are considered more or less equally responsible for ensuring consent of each other. But this approach also centers the capacity to consent which was discussed in Chapter 1, building it on the skills of communication.

There is a question, of course, of what constitutes a “communication” of consent or non-consent. Communication can be verbal and non-verbal, direct (straightforward) and indirect (ambiguous), proactive and reactive (Beres 2007). There are debates about which kinds of communication are acceptable, among its proponents as well as between them and the critics of the model (Beres 2007). Some parties consider non-verbal expression of sexual consent acceptable, especially in established relations (Kittay 1997, Pineau 1996) while others express a preference for a verbal communication as more clear (Bussell 2008) and safer from the point of view of possibility of unwanted touch (Troost 2008).

While verbal and direct communication of consent is theoretically a solution of all issues, it is not always practically feasible. Many view it as too formal and thus, uncomfortable for the “passionate” encounters (Beres 2007, Carrillo 2002). It also seems to be too formal for long-term relationships where the participants know each other.

...In an ongoing sexual relationship the parties usually do not regard every sexual encounter as a momentous decision, fraught with dangers that need to be carefully evaluated. With your lover, a greater degree of spontaneity is acceptable. (Bryden 2000, 403)

On the other hand, non-verbal communication such as bodily reactions, sounds or, indeed, silence can be easily misinterpreted. As Adams cites, “men tend to give a uniformly more sexual readings to various behaviors and conversations than women do” (Adams 1996, 36); they also tend to misrecognize the signals of consent, or claim this misrecognition (Taslitz 2005). In the communicative model, men (as well as women) are expected to dispel any doubts about consent of the partner, preferably solicit a verbal non-ambiguous response, and not to rely on their perceptions which might be faulty.

If “actions speak more loudly than words,” then perhaps the action of failing to signify consent affirmatively speaks even more loudly than the action of failing to resist. (Bryden 2000, 400)

Additionally, while some non-verbal signals do require more or less conscious decision to be performed (Pineau (1996) has an example of a woman unbuttoning her blouse), others, such as moans or arousal, happen spontaneously, and don’t always reflect conscious decision of a person to engage in an act. Therefore, their usefulness as token of consent is questionable: it is at least necessary for one partner to be able to ensure that the other partner by this kind of non-verbal reaction actually means consent.

Nothing problematic will follow from construing *any* behavior or act of omission as a token of consent so long as its meaning is clear and so long as B can indicate to the contrary if it is not. As a general proposition, silence is a acceptable token of morally transformative consent in those contexts in which silence can be safely understood to be a token of consent and the background conditions are such as to render the silence-token morally transformative. (Wertheimer 2000, 574)

While theoretically Wertheimer's logic is sound, empirically this kind of safety is hard to achieve.

Participants can indeed develop a set of meanings outside of the affirmative consent model; but as in the current discourse, the meanings already exist and can be intentionally or involuntary misread, a clearly stated "default" language of consent could be of use.

Communication in this model is supposed to express consent to sex. But in the discussion of sexual consent, especially in relation to women, the question always arises as to what this consent is: is it just agreement to have sex, as many women did without feeling any sexual desire, just complying with male desires? Or is it female desire, female want of sex, that constitutes consent? The idea of "enthusiastic consent" serves as an attempt to answer these questions.

## Chapter 3. Enthusiastic consent: claim to sexual agency

### 3.1. Sexual motivation: wantedness vs. consent

While enthusiastic consent has various definitions, and few of them are stated clearly, from the sum of them, it can be understood that it is the kind of consent which expresses, openly and actively, the genuine desires of a person. The concept of enthusiastic consent demands that consent be considered “true” only if sexual encounter is “really” wanted. This demand dissociates “wantedness” of sexual encounter and “consent” to it, two concepts that are often conflated: “wanting” is seen as giving consent, and consenting is considered as a signal of want. As Peterson and Muehlenhard (2007) point out in relation to the sociological studies on the issue of consent, while sex is usually conceptualized unproblematically as either wanted or unwanted, where “wanted” equals “consensual” and “unwanted” equals “non-consensual”, the reality of respondents’ experience is more complicated, although the respondents themselves might conceptually make the same conflation. As Peterson and Muehlenhard define their differentiation,

...To *want* something is to desire it, to wish for it, to feel inclined toward it, or to regard it or aspects of it as positively valenced; in contrast, to *consent* is to be willing or to agree to do something. [...] Individuals can agree or be willing to do things that do not correspond with their wishes or their inclinations... Conversely, individuals can want or wish for something but decide not to consent to it. (Peterson and Muehlenhard 2007, 73)

In other words, wanting is a state of mind, a feeling, a desire; and consent is a result of conscious decision on the basis of what is and is not wanted. The concept of enthusiastic consent suggests that consent to sex has to be based on the desire to have sex, although desire to have sex does not automatically mean consent to it. Enthusiastic sexual consent is, thus, *a conscious decision* made on the

grounds of the desire to have sex which is expressed – presumably, by the means of communicating the affirmative consent.

However, it raises the question of what constitutes the grounds for consent – what is wantedness, and what is desire, and whether they are the same. Desire to have sex does not always equal sexual desire. For example, in (Peterson and Muehlenhard 2007) respondents cite both sexual desire and non-sexual reasons as grounds for wanting sex, and also offer a lot of examples of both wanting and not wanting sex at the same time. On the basis of their responses, Peterson and Muehlenhard add a differentiation between wanting/not wanting the sexual act itself and wanting/not wanting the consequences of it, for example<sup>15</sup>:

A woman [...] wrote that she wanted the sexual act (“I was horny or just didn’t know where to place all my hormonal energy”) but did not want the consequences (“I didn’t want to put my family to shame. I didn’t want to ruin [sic] my relationship with God”). [Another woman] described her reasons for wanting the sexual act (“I liked him, and it felt good”) but not the consequences (“I wasn’t ready and didn’t want to get pregnant, I didn’t love him”).

(Peterson and Muehlenhard 2007, 81)

From their analysis, wanting the sexual act is, basically, sexual desire which is either aimed at a specific person, or the woman doesn’t mind satisfying it with this specific person. The “consequences”, on the other hand, are more complicated. While sexual desire is, of course, also more complicated than that, I will leave this discussion aside for now and look at what are the “consequences” and what role they play in making decisions about sexual consent.

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<sup>15</sup> What they don’t address, however, is the situation where the woman does want consequences, and how this correlates with wanting or not wanting sex itself.

In order to do so, consequences can be reframed in terms of “motives” for sexual activity: “the various sexual motives may be understood in terms of approaching positive, or avoiding negative, consequences that may be internal or external” (Brousseau, Hebert and Bergeron 2012, 534). On the other hand, sexual behaviors may be pursued “to obtain psychological gratification or incentives related to their motives” (Brousseau, Hebert and Bergeron 2012, 534). Approach motives may include sexual pleasure, or gratification coming from expressing power over the partner, or possibly boost to self-worth from obtaining a prestigious partner. Avoidance motives can include attempts to avoid partner’s rejection or displeasure, or avoid physical violence, or social repercussions such as shaming.

Those motives are quite subjective, based on the individual’s circumstances and personal evaluation of them; and so is personal evaluation of wantedness of the encounter. Many of them are the result of women’s positioning in the discourse on sexuality: for example, both feeling of power in sexual act and fear of shaming can be the results of the ambiguous position of women as sexualized subjects. For example, one woman can consider the possibility of slut-shaming as a reason not to have sex while it will not stop another woman. In the feminist analysis, the focus is usually on the negative consequences and the avoidance motives: what is the harm that a woman is trying to avoid by having sex? It ranges from partner’s rejection to physical threat, and while the latter is usually accepted as a serious threat to consider sex coercive, the former is often normalized. But the approach motives can be as ambiguous: what does a woman want to achieve by having sex, if not sexual pleasure, or not only it? The answers range from the feeling of power (Brousseau, Hebert and Bergeron 2012) to financial gain. While some of them are also seen as less problematic than others, it is unclear which can be considered acceptable for “true” wanting.<sup>16</sup>

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<sup>16</sup> The same analysis of motives and ambiguities can be done for men.

While exploration of sexual motives needs more empirical research and goes beyond the scope of my work, this complexity and ambiguity brings up the fact that conceptualization of consent, and enthusiastic consent specifically, poses an ethical question. Even if we take, for the sake of the argument, sexual desire itself as unproblematic, the decision to act on this desire is mitigated by non-sexual motives. Which motives for the decision to consent to sex do we consider acceptable? Which of them we can see as “free” and which as “coercive”? The moral stand some of the scholars take on the issue is that sex should only happen as an expression of sexual desire and attraction:

...moral sex is coming to be identified with sexual conduct in which both parties have as their objective only sexual pleasure or emotional intimacy... (Chamallas 1988, 777)

But in reality, the issue is more complicated, to which at least some of the theorists of enthusiastic consent are open (Corinna 2008, Millar 2008, Sullivan 2007). People do have sex for many reasons, not all of which are related to sexual desire and many if not all produced by the structures of power in society. The question is which of those reasons are ethically compatible with the feminist goal of equality and sexual agency? Unfortunately, deliberation on this question goes beyond the scope of my paper.

### **3.2. Sexual desire: search for the “truth”**

Although I have left it aside until now, sexual desire itself as grounds for consent is also not as simple as it seems. Not all desires have been historically seen as valid grounds for consent. In Gayle Rubin’s analysis of “good sex/bad sex” dichotomy, she points out that only “good sex” is granted the “moral complexity” of being consensual or not; sexual acts and/or preferences which do not fit the current model of “good sex” are considered non-consensual, and participation in them either

makes the participants criminals or serves as a proof of their mental incapacity to consent (Rubin 1984). On the other hand, participation in what is considered “good sex” and fulfilling the expected role in it can serve as a proof of consent even if it was not in fact given; for example, Pineau points out that in court decisions, the reproduction of the scenario of male pursuing/female refusing but then submitting is seen as a woman giving consent (Pineau 1989).

This conflation is based on the dominant discourse on gender and sexuality described in Chapter 2. Both Pineau and the authors of “Yes Means Yes” aim to solve this problem by changing the discourse on what is and is not “normal” sexuality. They claim the freedom of sexual expression of personal preferences and desires, without traditional moral limitations such as obligatory heterosexuality, “chastity” etc. In this, they offer a direct answer to Rubin’s call for “democratic morality of sex”: the new ethics of sex they offer “judge sexual acts by the way partners treat one another, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasures they provide” (Rubin 1984, 283).

However, even if we consider all kinds of desires as valid grounds for consent, there is still a question of what we consider “sexual desire”. While sexual desire is often seen as a “natural truth”, it is far from that. First, its structure is complex. There is the capacity to feel arousal which is usually considered universal, or at least, a universal norm; but this notion is contested by asexual people<sup>17</sup>. Then there is the desire to receive sexual gratification with another person – also not universal, and again, contested by asexual people. And finally, if this desire for another person exists, there is a variety of preferences outlining the object of desire, including, but not limited to sex and gender. Some are usually accepted as part of sexual attraction, such as appearance; others are rarely considered as such openly although often are included in making sexual decisions, such as class,

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<sup>17</sup> A claim of asexual identity can be considered yet another claim to citizenship on the grounds of “true” sexual desire, expressed in its absence.

economic position etc. Some of them constitute modern identities while others are considered as just preferences. These preferences, however, can include desire for power dynamics, not only of BDSM kind, but a wider and less negotiated scope of them: desire for a partner who is more powerful, or less powerful – such as when a woman is looking for an affluent man, or an older and affluent man has a preference for young and poorer women; or desire for a reversal of power structures, such as a black person with a preference for white partners who play a submissive role in a relationship.

Sexual desire, in all its complexity, produced by the discourses and power structures at least as much as by “natural” preferences, and this discursive production calls into question its “freedom” (Beres 2007, MacKinnon 1989, Rich 1980). This is especially true in relation to female sexual desire: one of Pineau’s critics, Adams (1996), raises concerns about the authenticity of women’s desires, echoing Catherine McKinnon’s concerns about the very possibility that women who have been victims of certain well-known types of oppression are capable of consenting based on their genuine and known desires (Pineau 1996, 69-70). In my opinion, this concern can be raised equally about the authenticity of the desires of any sexual subject, as any subject exists in the intersection of power relations, producing and reproducing them, and production of sex and sexuality is part of it (Foucault 1988).

If we take the Foucaultian discourse as the only way of production of desires then there is now authenticity in them in terms of “personal truth”; but then, where do the desires that are different from the discursive “norm” come from? And how are subjects able to act on those desires? It seems that the subjects are able to critically access their desires and change their behavior accordingly:

It has taken me many years of unlearning mainstream power dynamics to understand and accept my own desire for fictional, fetishized ones. (Fowles 2008, 119)

Hanne Blank offers an intriguing example of women resisting the discourse by redefining their virginity: what it means to them, what constitutes them as virgins, and what is the act or the conditions in which they part with it.

This process-oriented virginity is no carefully formulated political action, but a feral descendant of feminist priorities in, if you will, their natural habitat. Sexual pleasure, emotional and physical investment, self-awareness, and plain old know-how on the part of women have been internalized by this women to such an extent, and become so normalized in their thinking, that they are not merely aspirational – they are what is required in order to consider oneself to be having “real” sex. (Blank 2008, 293)

The affirmative/communicative/enthusiastic consent model produces a new discourse in which sexuality is defined not by the experts as in Foucault’s, but by the subjects themselves – though it is, of course, difficult to separate the sexual desires from the discourse on them, and this new discourse exists alongside the old one. There are, therefore, two sets of problem which the model tries to solve. One of them is the question of personal sexual agency in the existing discourses and power structures; the other is the change to the discourse on sexuality and gender. They will be addressed in the next chapter.

### **3.3. Sexual agency and sexual subject**

How do sexual subjects recognize their own subjectivity in itself and in relation to their partner(s)? How do they evaluate their desires within the discourses that produce and/or limit them? And how do they negotiate their sexual subjectivity within all the structures of power, in relation to their partner(s), society, and their own sexual history and personal views? In other words, how can a sexual subject be agentic, how can his/her consent be given “freely”, and what are the limitations of the agency and the freedom?

Pineau claims that the rationale behind the laws on consent, with the implementation of her communicative model, is “in substantive understanding of a truly free individual.” (Pineau 1996, 83). But can an individual be “truly free”, in general and specifically sexually, in the society where, as Foucault argues, power is constantly produced in every relation, and thus, omnipresent and immanent to every relationship (Foucault 1988)?

Foucault’s approach in particular does not allow for free will; Evans in his critique of Foucault offers symbolic interactionism as an approach that balances Foucault’s “bleak view” with an interpretation of subjects as agentic (Evans 1993); and so does Crawley in her concept of sexual embodiment where people are practical actors making agentic responses to their limited choice of options (Crawley 2013)<sup>18</sup>. By offering a discourse on sexuality which allows for the recognition of desires while also calling for questioning of those desires in order to account for inequalities between partners, the affirmative consent approach might bring out this agency, as it attempts to create the circumstances in which the agency can be manifested as “the possession of control over one’s body and sexual choices” and a feeling of “entitlement to say no and to say yes to forms of sexual expression” (Crown and Roberts 2000).

The enthusiastic consent model claims to offer the solution through a set of tools which include: knowledge about sex in all its variety; knowledge about sexual pleasure; knowledge about consent in its affirmative, communicative, enthusiastic definition; and knowledge about the social inequality, the discourses on sexuality which are hurtful, the abusive and coercive behaviors as a warning of danger (Kulwicki 2008, L. Peterson 2008). These tools allow the subjects in sexual interaction to recognize their positioning and to claim their sexual subjectivity by communicating their desires and consent.

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<sup>18</sup> In can be argued that by the same logic, men make agentic choices either to desist sexual coercion or to commit it. See also: Perry, 2008, Taslitz, 2005.

Sexual behavior is not, as is too often assumed, a superimposition of, on the one hand, desires which derive from natural instincts, and, on the other hand, of permissive or restrictive laws which tell us what we should or shouldn't do. Sexual behavior is more than that. It is also the consciousness one has of what one is doing, what one makes of the experience, and the value one attaches to it. (O'Higgins and Foucault 1983, 10-11)

This consciousness is characteristic for the sexual subject in the enthusiastic consent model. The subject has to evaluate him- or herself critically in terms of desires and wants, as well as situations and discourses in which s/he is positioned, and control his or her behavior accordingly.

It does require some vigilance on my part to make sure I don't just go on sexual automatic pilot and let people do whatever. (Cho 2008)

This consciousness, even when developed, can fail. There are stories of women who, even after developing a feminist consciousness and knowledge of enthusiastic consent, found themselves in situations far from equal, those of abuse and violence (Tzintzun 2008, Steiner 2012).

Even self-consciousness does not always free the individual from the coercion s/he is aware of. (Tzintzun 2008)

Nevertheless, enthusiastic consent is viewed as guidance for recognizing the coercion and finding a way out of it, or preventing it. It also is perceived as a way to explore the personal "truth" of the self sexually, to make personal choices from the limited options which is, supposedly, a way for the personal agency and autonomy. Enthusiastic consent becomes then not only a tool to achieve sexual agency, but a moral compass for it, as it is through exercising enthusiastic consent, and not falling into traditional scripts and non-agentic discourses, the sexual subject of this model can claim his or her agency.

## Chapter 4. Sexual subject: changing discourse, changing citizenship

### 4.1. Talking sex: transformation of the discourse

Consent involves both knowledge and freedom. The phrase 'informed, voluntary consent' is a useful reminder of this, but it is, strictly speaking, redundant. There is no consent where the agent does not understand to what she is putatively consenting. (Hubin and Haely 1999, 116)

As I have argued throughout this paper, while consent includes the condition of “being informed”, there is a question of what “informed” means. What is this knowledge that constitutes consent? When a person agrees to have sex with someone, does this person know exactly what kind of sex they are going to have and what implications it has for either of them?

This knowledge can have several aspects and, accordingly, several sources: general knowledge about sex; knowledge about the partner and about the specifics of their planned interaction; personal knowledge of the person about him- or herself; and knowledge about the conditions and implications this kind of sexual interaction has for each partner within the specific social, cultural and legal context. In the “dominant discourse” and “traditional model” of sexuality, this knowledge is shrouded in silence, taboo, shame and sometimes lack of language for it. There is a question, therefore, of how “informed” consent can be in these circumstances, in addition to the question of its “freedom” discussed in the previous chapter and also conditional on the discourse.

The affirmative/communicative/enthusiastic consent model sets two interconnected goals. One is restructuring the interpersonal communication to give the participants the knowledge about each

other and the proceedings. The other is to change the discourse on sexuality and gender by talking about it openly.

...shining the light on all the dark corners of sexual shame and blame projected onto us by American culture... (Friedman and Valenti 2008)

The rhetoric of re-conceptualization of consent has certainly inherited a lot of characteristics of Foucault's discourse on repression that forms a political cause: "the demand for sexual freedom, but also for the knowledge to be gained from sex and the right to speak about it" (Foucault 1988, 6). But it seems that the theorists of consent have moved on from the "revolutionary" stance where just speaking of sex is transgressive and thus, powerful (Foucault 1988) to the position where the specifics of how sex is talked about are understood as the practice of sex; the production of sexuality and sexual subjects is what they attempt to bring to "the light" of discussion. They set the variety of interconnected goals that are supposed to change the discourse in alignment with their vision.

The first is, obviously, the widespread re-conceptualization of consent as affirmative and enthusiastic:

The goal is that enthusiastic-consent models will help to change the thinking from "sex when someone says no and fights back is wrong" to "sex when someone doesn't openly and enthusiastically want it is wrong". (Kulwicki 2008, 309)

...In order to fully eradicate rape culture, we need to start talking about sex. We need to start insisting that people don't proceed with sexual play until their partner expresses yes. We need to give people the language to do that. (Riggs 2008)

By "changing the thinking" about consensual sexuality and "giving the language" for its production, consensual sexuality becomes normalized.

By bringing heterosexuality specifically out of the silences of supposedly common understanding and questioning its practices, while at the same time putting it on the same level as all other practices, the rhetoric of consent aims to dissolve the dichotomy between “good” and “bad” sex (Rubin 1984).

... teaching sex as a normal and healthy part of life that is varied in terms of both preferred partners and preferred acts... sex is more than heterosexual intercourse and should be consensual and *pleasurable* for all participants. (Kulwicki 2008)

The affirmative/communicative/enthusiastic consent model both claims the existing variety of consensual sexual activities as normal *and* produces a new norm of sexuality, one that is defined by the new sexual morality. It also produces sexual subject whose sexual agency is established through knowledge and the claim to the personal authority over his- or her own sexuality.

Knowing that sex is normal, healthy and not uniform also encourages people to learn what is most enjoyable for them, and how to establish sexual boundaries. (Kulwicki 2008, 308).

What if she came to sex already comfortable with her own body and sexual response, and her male partner had the expectation not of being the person who *taught* her about her sexuality, gave it to her, or took it from her, but rather of *learning* about it from her? (Corinna 2008, 187)

The knowledge and the language enable people – especially women – to protect themselves, while at the same time establishing themselves as sexual actors and resisting the pressure of the “dominant discourse”.

Who knows what I wanted. I know that I had a need to assert myself as a sexual person to a world that had tried to erase that part of me that I felt so significantly. I know that I didn't want him, but I did want something. ...If I had grown up in a community that provided

nurturing models for consent and for my attraction to the queer and the taboo, I may have found healthy ways to explore those aspects of myself, instead of accepting the closes approximation of deviant sexuality within my reach. (Riggs 2008, 114)

As a practical means of the change of the discourse, the proponents of the revised model of sexuality and consent list sexual education (Kulwicki 2008, Perry 2008), legal changes (Pineau 1989, L. Peterson 2008) including but not limited to legal concept of consent, etc., as well responsibility of individuals to assert their agency and ensure agency of others through applying principles of affirmative, communicative, enthusiastic consent in their personal lives (Blank 2008, Bussel 2008, Troost 2008).

#### **4.2. Claim to citizenship**

What emerges from the affirmative/communicative/enthusiastic consent model, especially from the discussion of sexual agency, is the claim for citizenship on the grounds of sexual desire, sexual self, sexual subjectivity – for women specifically, as they are the main category discussed, but for other categories of sexual citizens as well. Sexual consent appears here as a marker of access to rights and, accordingly, to citizenship, but redefined on the grounds of “democratic morality of sex” (Rubin 1984), in opposition to the current use of consent in the demarcation of citizenship. This kind of democratic morality should be the ethical basis for formal and informal equality for all kinds of sexual subjects, which gives them access to full citizenship (Rubin 1984, 291) with all its rights and freedoms. While Rubin’s argument that “normal” sexual behaviors are allowed the ethic complexity of being either consensual or non-consensual while “abnormal” are deemed always already non-consensual (Rubin 1984, 304-305) is valid, there is more complexity to consent itself.

The ways consent is distributed – who is and is not able to consent, to whom, in which circumstances etc. – does indeed show that consent is a privilege (Rubin 1984, 305) of those who have the higher social status and are closer to full citizenship, such as heterosexuals; but even among them, there are inequalities which are reflected and even reproduced by the rape laws. As Rubin points out, rape laws contain the distinction between consensual and coercive behavior (1984:304); by her argument, this distinction has to be applied to all kinds of sexual identities and practices, and not just to “higher-status”, “good sex” such as heterosexual activity. But for this distinction to be useful for the “democratic morality of sex”, it has to be drawn in a way that does not reproduce inequality between sexual partners, and takes into account the “structural constraints on sexual choice” (1984:304), although in a way different from what Rubin critiques. The affirmative/communicative/enthusiastic consent model attempts to draw such a distinction in a way compatible and, in fact, based on the “democratic morality”.

Taking a critical stand against the current situation with sexual citizenship, and specifically female sexual citizenship, along with the variety of intersections of oppression, the new consent model centers the question of what is female sexual agency, how can it be defined and how it, in turn, defines sexual citizenship. In the discourse about the model by its proponents there are in fact two subjects. On the one hand, there is an imaginary ideal subject of the future, one who has all the information, all the capacities, and all the freedom necessary for consent. This sexual subject is fully capable of making rational decisions which take into account the information s/he has on sexuality in general, his/her own sexuality, his/her partner(s), and situational circumstances. This subject and his/her choices and actions are judged only by Rubin’s democratic morality of sex.

On the other hand, there is an ambiguous, gendered/raced/classed subject of today, for whom consent is complicated by his/her positioning in the structures of power and within the repressive

discourse on sexual relations. This today's subject can be ignorant of his/her positioning, blindly following gender scripts; or can be conscious of the power dynamics s/he is trapped in, and attempting to negotiate them more or less successfully. His/her access to information can be also limited, and there might be a need for him/her to overcome earlier socialization to access his/her "true desires", although they are still produced by his/her positioning and discourses, albeit not always in a straightforward way. This subject is judged by various, often contradictory morals of today's world, and they are rarely fair, and their judgments again position and re-position him/her in the power structures.

We live in a culture that demands public ownership of the body. We live in the culture where rights to abortion, birth control, sex education, and bearing children [...] are under near-constant attack. [...] though the form and intensity vary, any oppression you care to name works at least in part by controlling or claiming ownership of the bodies of those oppressed... In this sense, rape culture works by restricting a person's control of hir body, limiting hir sense of ownership of it, and granting others a sense of entitlement to it. (Troost 2008, 171)

The affirmative/communicative/enthusiastic consent model is, therefore, both an instrument for the today's subject to exercise his/her agency within the limiting and unequal power structure, and a tool of the transition into the "vision of the future", one of democratic morality of sex and ideal free and agentic subjectivity. This transition is set into the context of other power structures and systems of inequality, specific for the problem of female sexual agency as well as wider contexts of intersectional power dynamics.

Clearly, this is just one part of a much larger struggle - we don't believe that empowering female sexuality is *the* answer to dismantling rape culture, or that it will stop all rape, nor is sexual freedom the only cost of rape. (Friedman and Valenti 2008, 7)

As long as we live in a culture where profitable sales and presumed security are based on shaming our most human parts, we will live in a culture where violence to our beautifully embodied selves is acceptable and expected. The antidotes to shame are affirmation and celebration. (Amato 2008, 225-226)

While the proponents of the model recognize intersectional complexity of inequality and attempts are made to integrate it in the discourse, in this specific approach to tackling the systemic inequalities, sexual desire – female in particular – is presented as the grounds for the demands to rights and citizenship.

When women have the right to open their own checking accounts, to make their own money, to go to school, to have sex without fearing pregnancy, to own property, to have children when they want, to marry whom they want, *they do*. When you extend human rights to women, they act like human beings with individual needs, ambitions, and desires – just like men. A lot of women also have sex “like men” – that is, for pleasure. (Filipovic 2008)

What straight men really need to learn is that women are humans, too, who get to make their own decisions about whether and with whom to have sex; and that nobody owes anyone sex. (Millar 2008, 35)

Freedom of sexual desire and its expression is seen as a human right which is unfairly limited to only the privileged kind of sexual citizens. It is, indeed, present in the discussion of human rights as a set of sexual rights, which include, among others, the right to sexual self-determination and the right to

sexual gratification (Richardson 2000). In both of them, sexual consent is put front and center. The right to sexual self-determination interprets the right to sexual gratification (explored below) in terms of control and safety; the emphasis in the claims to sexual self-determination is “on the right to engage in sex without fear” (Richardson 2000, 114) of unwanted pregnancy, sexually transmitted diseases, coercion, violence and abuse. As those fears are faced most often by women and female-bodied people, they are central to the delineation of male and female sexual citizenship. In many cases, men’s right to sexual gratification is privileged over women’s right to the same as well as their right to consensual sexual practice and bodily autonomy. The right to sexual self-determination brings together questions of sexual autonomy, personal agency, and capacity to consent, including informed consent.

The right to sexual gratification includes the right to sexual activity in general, the right to participate in specific sexual activities, and the right to pleasure and enjoyment received from participation (Richardson 2000)<sup>19</sup>. In all these rights, consent plays a significant role; and in turn, the development of their understanding played an important role in understanding of sexual consent. The right to sexual activity in general is linked historically to what is described in this paper as “traditional model” and “dominant discourse” on sexuality, including the essentialist understanding of sex as “need”. Because of this model, the male (hetero)sexual drive and pleasure are often put front and center of the discussion as “the need” while female drives and pleasures are sidelined, and non-heterosexual or non-heteronormative desires are constantly questioned as either not a “real” need, or as a “perversion” which has to be controlled and not satisfied. The dominant model of sexuality is the basis of understanding not only of what needs are deemed valid, but also *whose* needs are

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<sup>19</sup> Richardson separated the right to pleasure from the first two rights, but I find it more productive to discuss them together as “gratification” is the key concept in all of them, and they are all connected to the conceptualization of sexuality as a need.

necessary to satisfy, and how or who is responsible for their satisfaction: for example, it is male right to have sexual gratification, and female duty to provide it, but not always vice versa.

The affirmative/communicative/enthusiastic consent model centers both the right to sexual self-determination and the right to sexual gratification and claims them for women, contesting the gendered limitations produced by the dominant discourse. For example, Kulwicky (2008) claims that sex education that does not include discussion of pleasure is discriminatory to woman, as men's pleasure is always discussed – penis-in-vagina penetration and male orgasm being necessary for pregnancy – but women's pleasure and organs responsible for it can be never mentioned. This goes against the right to sexual gratification, as well as “a fundamental right to knowledge about [people's] own bodies” (p. 307). Additionally, ignoring that sex is about pleasure more often than about reproduction limits the rights of gay people to their embodied sexual citizenship. “When aware that there is sex beyond heterosexual intercourse, people can make better decisions about sexual gratification.” (Kulwicky 2008, 308)

Putting together production of sexual agency, production of the new discourse on sexuality, and claims for rights and citizenship, the affirmative/communicative/enthusiastic consent model appears as a radical feminist theory and practice. It can be seen as a “radical theory of sex” (Rubin 1984) aimed at sex as a “vector of oppression” from the perspective which cuts across the intersecting inequalities while remaining sensitive to them.

It has to be, as any theory, accessed critically from this point of view for its applicability and potential pitfalls. It is particularly interesting what new categories of subjects this approach produces, as some criteria, such as capacity to consent, will obviously reappear as delineation between full and limited citizenship, although probably conceptualized differently from the current standard. Because of the appeals to the legal system and other categories of experts as conductors of the revised

discourse on sexuality, it is necessary to consider the role of governmentality and relationship of this model with the production of bio-power. As the model is developed and continues to be produced and implemented within the neoliberal discourse, it is necessary to continue the analysis of its possibilities in relation to neoliberal sexual citizenship. Unfortunately, these topics go beyond the scope of my thesis.

## Conclusion

In my thesis, I have produced an analytical framework for the relatively recent feminist re-conceptualization of sexual consent as affirmative, communicative and enthusiastic. From my analysis of the discourse on sexual consent presented in the works of the proponents of this new concept, I have provided a comprehensive model of sexual consent as it is offered under this re-conceptualization. I have also elaborated on the claims that appear overtly in their works, and revealed some of the claims that are implied by them.

In the analysis of the legal aspect of this re-conceptualization expressed in the affirmative consent standard for sexual assault law, I demonstrated how this standard, taken by itself, cannot achieve the goal of protecting women in the legal system, although it does put more pressure on men accused on rape and partially redistributes the responsibility and the burden of proof in more accordance with feminist goals than the previous standards of “silence gives consent” and even “no means no”. There is a need for a radical change to the general discourses on gender and sexuality which

This change is offered by two interconnected aspects of the re-conceptualized model of consent: communicative model of sexuality and the ideal of enthusiastic consent. Communicative model of sexuality aims to restructure the sexual practices by introducing more verbal communication, including communication of consent and non-consent, as well as insisting on negotiation of desires and preferences between partners. The practice of sexual communication is aimed to achieve more equality in relations between partners, but as I show, it it also undermines the silence and shame around discussion of sexuality, normalizing and personalizing this kind of discussion outside of medical and legal discourses.

The concept of enthusiastic consent, a third and final aspect of this re-conceptualization, aims to reach the “truth” of sexual desire which is supposed to be expressed in the act of communication

and affirmation of consent. This strive for truth raises a wide set of questions which I elaborate on, as “true” sexual desire is by itself questionable, and even more so is differentiation between it and the variety of “wants” which express not so sexual desire as socially constituted needs and fears surrounding it. On the other hand, the application of enthusiastic consent presents a person as an agentic sexual subject limited by the structures of power and discourses s/he is situated in but able to make conscious decisions about his/her sexuality.

From this re-conceptualization of sexual consent as affirmative, communicative and enthusiastic the claim emerges to the transformation of discourse on sexuality and gender by presenting people, and most importantly, women as sexual agents capable of negotiation of their own sexuality within the recognized structures of power; and by normalizing the discussion of sexuality, including the discussion of dominant discourse and power structures themselves. The second, less overt claim is a claim to sexual citizenship which is based on consensual sexuality, sexual agency and democratic morality of sex; this claim is made through the right to sexual self-determination and right to sexual gratification which are dependant of concept of consent, and to which the new model of consent gives new grounds.

In my analysis, I have produced an analytical framework for the future research on this re-conceptualization of sexual consent which has broad implications for many fields. Law and policy are the most obvious, as they are central to the changes necessary for the implementation of the new concept, especially sexual assault legislation and sexual education. But the communicative model of sexuality and the concept of enthusiastic consent present an interesting direction for future feminist thought on such topics as sexuality, desire, gendered subjectivity and agency, among others.

First, as an agentic and self-conscious sexual subject appears in this new model of consent there is a need for empirical research on the practical strategies people use to negotiate their sexual

interactions with and without the affirmative/communicative/enthusiastic consent, and on the ways and levels they recognize their positioning in the power structures of society and include it into their sexual negotiation.

Second, as my discussion was limited by heterosexual interactions where men were presumed the perpetrators and women, the victims of sexual coercion, it is necessary to widen the scope of discussion to include the variety of situations and combinations of actors, such as same-sex encounters and female-on-male coercion. Additionally, the future research needs to include other social variables such as race, class etc. as they play an important role in the relative positioning of subjects and negotiation of sexual interactions among them. Taking the discussion of this re-conceptualization outside of the US context also offers a promising direction of research.

Third, this re-conceptualization of sexual consent does not just claim the transformation of discourse but produces a new one, and outlines a new sexual citizen defined by the revised understanding of consent. Along with the new form of sexual citizenship, the limitations to it appear immediately. One of them is capacity to consent; while it exists as a limitation already, it is redefined by the revision of the concept of consent in ways that call for further deliberation. Another is sexual desire, as the core component of enthusiastic consent; the ways it is produced, and the ways it is deployed to produce a subject capable or incapable of consent also need further consideration. Yet another set of questions is raised by the issue of bodily autonomy and body ownership which I haven't touched upon in this paper, but which are quite important for the discussion of sexuality and consent.

Fourth, it is necessary to explore how this model reproduces and/or transforms structures of citizenship, liberal and neoliberal. On the one hand, the consenting sexual subject of today is positioned in the current structures of power, and his/her consent is produced within and

sometimes by these structures, becoming a tool of power as much as it is claimed to be a tool of resistance to it. It is even more supported by the legal consciousness demonstrated by the proponents of the model who look for the changes in law and policy as one of the instruments of change. On the other hand, the consenting subject of the future is nevertheless produced within the thinking formed by the liberal and neoliberal discourses and, therefore, inherits characteristics which have to be examined critically in the continuing research of the topic.

As the list of possible avenues for research offered above shows, the extensive research on sexual consent, sexual subjectivity and sexual citizenship is needed, as their relations are influenced by many factors that are not completely understood. For any of these directions, the analytical framework developed in my thesis will provide a valuable reference point.

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