Institutional Variation in University Sexual Consent Definitions: Race, Class, and Institutional Status

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Outline of Today’s Talk

1. Studying Sexual Consent Definitions
2. Institutional Variation in University Sexual Consent Definitions
3. Implications for Practice and Research
APRIL IS
SEXUAL ASSAULT
AWARENESS MONTH

#SAAM
The Aziz Ansari Allegation Has People Talking About 'Affirmative Consent.' What's That?

We Started the Crusade for Affirmative Consent Way Back in the '90s

Hooking Up at an Affirmative-Consent Campus? It’s Complicated

California Moves to Outlaw ‘Stealthing,’ or Removing Condom Without Consent

Yale Rape Verdict Shows How ‘Yes Means Yes’ Can Be Murkier in Court
Sexual Consent is a complex concept, but is often portrayed by the media, and even by educators & feminists, as simple.
The Complexity of Sexual Consent

Sexual Consent Definitions can be used to:

- Guide prevention programming
- Educate students
- Shape the disclosure climate
- Adjudicate complaints
- Establish behavioral norms

In University of Michigan’s new policy, the sexual consent definition contains 1113 words. Many words are needed, because sexual consent is complex and multidimensional.
Basic Elements

“It is not consent when the exchange involves unwanted physical force, coercion, intimidation, and/or threats. If an individual is mentally or physically incapacitated or impaired such that one cannot understand the fact, nature or extent of the sexual situation, and the incapacitation or impairment is known or should be known to a reasonable person, there is no consent. This includes conditions resulting from alcohol or drug consumption, or being asleep or unconscious. Consent is not valid if the person is too young to consent to sexual activity under Maine law.”

- University of Maine

<table>
<thead>
<tr>
<th>Basic Protection</th>
<th>Use of Force</th>
<th>Incapacitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of violence</td>
<td>Unconscious or passed out</td>
<td></td>
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<tr>
<td>Threat of violence</td>
<td>Policy clearly states if incapacitated, cannot give consent</td>
<td></td>
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<tr>
<td>Intimidation</td>
<td>Physically incapable</td>
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<tr>
<td>Coercion</td>
<td>Asleep</td>
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<tr>
<td>Threat of emotional or reputational harm</td>
<td>A minor, below the state’s age of consent</td>
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<tr>
<td>Showing behavioral signs of incapacitation from alcohol or drugs</td>
<td>Mentally incapable</td>
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## Affirmative Elements

“Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity... Affirmative Consent can be withdrawn or revoked. “

- California State University-Long Beach

<table>
<thead>
<tr>
<th>Boundaries of Consent</th>
<th>Affirmative Elements (yes means yes)</th>
<th>External Manifestations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silence does not imply consent</td>
<td>Affirmative decision</td>
<td>Communication None</td>
</tr>
<tr>
<td>Absence of resistance does not imply consent</td>
<td>Mutually agreed-upon</td>
<td>Consent can be communicated by words or actions</td>
</tr>
<tr>
<td>Active, not passive</td>
<td>Voluntary or willing</td>
<td>Preference for verbal</td>
</tr>
<tr>
<td>Consent to one form of sexual consent does not imply consent to other forms</td>
<td>Unambiguous</td>
<td>Verbal only</td>
</tr>
<tr>
<td>Consent to sexual activity on one occasion does not imply future consent</td>
<td>Conscious</td>
<td></td>
</tr>
<tr>
<td>Current of previous sexual relationship does not, by itself, imply consent</td>
<td>Consent must be ongoing and can be withdrawn</td>
<td></td>
</tr>
<tr>
<td>Consent to sex with one person does not imply consent to another person</td>
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Above and Beyond

“When one party has any professional responsibility for another’s academic or job performance or professional future...sexual relationships between faculty (including teaching assistants and laboratory supervisors) and their students or between supervisors and their employees...Because of the asymmetry of these relationships, “consent” may be difficult to assess, may be deemed not possible, and may be construed as coercive.”

-Case Western Reserve University

<table>
<thead>
<tr>
<th>Power Conscious Elements</th>
<th>Predatory Behaviors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision or authority over another may invalidate consent</td>
<td>Taking advantage of someone who is incapacitated</td>
</tr>
<tr>
<td>The initiator is responsible for seeking consent</td>
<td>Using drugs or alcohol to induce incapacitation</td>
</tr>
<tr>
<td>Consent does not vary by gender identity/sexuality/gender expression</td>
<td>Deception or Manipulation</td>
</tr>
<tr>
<td>Sexual history (does not confer consent)</td>
<td>Ignoring non-consent</td>
</tr>
<tr>
<td>Appearance or dress (does not confer consent)</td>
<td>Accused level of intoxication</td>
</tr>
</tbody>
</table>
Title IX Project Sample, n = 381

*3 schools in Hawaii and 1 in Alaska not shown
Data Collection

**Instrument Creation**
- State laws (NY & CA), White House Task Force, feminist approaches, higher ed orgs
- Revised instrument

**Coding Process**
- 12 coders
- Identify definition
- Coded individually

**Data Validation**
- Comparing coding in lab
- Transition to Zoom Lab
- Checked with Kamaria
In some cases, no apparent pattern: Ivy League
In some cases, no apparent pattern: Big 10
Even here, no two are the same: California
Even here, no two are the same: New York
Some patterns do emerge: NESCAC schools appear to converge
A quest to better describe variation

- **Factor analysis**: to see which elements of consent hang together and possibly get at "types" of definitions
- **"Distance" measures**: to examine how similar/dissimilar different definitions are
- **Cluster analysis**: to see if there are coherent groups of universities with similar definitions
- To come: **latent class analysis** (with Leanna Papp)
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“Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects”

- DCL (2011), p. 4

“as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent.”

Not All Definitions Created Equal

- Various legal definitions
- Adjudication gets spotlight
- University resources and personnel
- Sexual consent is complex, multi-dimensional, and evolving
We Need to Include Black Women’s Experience in the Movement Against Campus Sexual Assault

The national movement to address the college rape crisis seldom reflects the complexities of gender, race, and class black women face at both predominantly white institutions and historically black colleges.
Research Questions

- How do university consent definitions vary by institutional characteristics?
- Are all students equally protected by school consent definitions?
Descriptive results: HBCUs have less comprehensive definitions
Descriptive results: Universities with the fewest Pell Grant-receiving students
Descriptive results:
Universities with the most Pell Grant-receiving students
Multivariate Analysis

- Ordered logistic regression models
- Dependent variables: consent scales
  - 1) use of force, 2) incapacitation, 3) boundaries of consent, 4) affirmative consent, 5) external manifestations of consent, 6) power-related elements, and 7) predatory-related elements
- Independent variables:
  - Focal predictors: Percent of students with Pell Grants, Percent Black undergraduates
  - Status and resources: Endowment size, Selectivity
  - Institutional characteristics: Urbanicity, Region, Sector (private/public), Total 2016 Enrollment
Results: Pell Grant recipients

- Higher percentage of Pell grant recipients is significantly associated with consent definitions less comprehensive with regard to **use of force** and **external manifestations of consent**.
  - After controlling for status/resources and institutional characteristics
Results: Black undergraduates

- Higher percentage of Black undergraduates is significantly associated with consent definitions less comprehensive with regard to incapacitation, boundaries of consent, affirmative consent, and external manifestations of consent.
  - After controlling for status/resources, institutional characteristics, and percentage of Pell grant recipients
Tentative Conclusions

- Students who are more likely to be victimized are more likely to attend schools with less comprehensive consent definitions.
- Yet most national level attention to the failures of universities to protect students from campus sexual assault has been devoted to high-resource PWIs (e.g., see Sexual Citizens, with a focus on Columbia University).
Tentative Conclusions

- In *Broke* Hamilton and Nielsen demonstrate that schools serving more low-income Black and brown students tend to be under-resourced with respect to mental health services, advising of all kinds, and support for residence life.
- Our results suggest that these schools also offer less protection from sexual assault.
Questions we're left with

● Does the heterogeneity in consent definitions matter, substantively? Or are we splitting hairs?
  ○ Is it important to hypothesize about the mechanisms that contribute to heterogeneity?

● If it does matter, are there other threads we should pull as we go about trying to describe this variation? Other fruitful avenues of analysis?

● Are there questions/comments you have or things you’re curious about?
  ○ We’d love to hear them!
Thank you for coming!
Acknowledgments

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Appendix
No Two Are the Same: Mapping Variation in University Sexual Consent Definitions
Research Questions

- Which aspects of consent do universities include in their definitions?
- How do different universities vary in their consent definitions?
1. Considerable variation: no two are the same
2. Definitions vary in comprehensiveness both overall and across consent aspects.
Describing variation

**Overall:** some schools have no definitions at all, some have many consent elements, most in the middle

Across consent aspects: schools more frequently have "basic" elements, and more rarely have "above and beyond" elements
Describing variation

- Definitions that are comprehensive overall tend to have more elements within different consent aspects
  - Not always true: see predatory scale
- But there's variation within consent aspects
  - Not necessarily uniformly more basic protections than affirmative or "above and beyond" elements
Patterns by institution?

- We expected that we would see patterns that map onto substantive institutional differences
  - e.g. "stratified isomorphism"
- But patterns in consent definitions among institutional peer groups were not as stark as we'd expected!
A quest to explain variation: Factor analysis

- Performed factor analysis to see which elements of consent hang together and possibly get at "types" of definitions

- Preliminary results seem to indicate:
  - Items from the same scales generally load on the same factor
  - Items from the boundaries of consent, force, and incapacitation scales explain the most variance
    - Interpretation may be confounded with comprehensiveness
Table 1. Items loading on factors from rotated 8-factor factor analysis solution on consent scale variables

<table>
<thead>
<tr>
<th>Factor 1 (0.20)</th>
<th>Factor 2 (0.17)</th>
<th>Factor 3 (0.17)</th>
<th>Factor 4 (0.15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Absence of resistance is not consent</td>
<td>● Violence invalidates consent</td>
<td>● Clearly states incapacitated person cannot consent</td>
<td>● Cannot consent if mentally incapable</td>
</tr>
<tr>
<td>● Silence is not consent</td>
<td>● Intimidation invalidates consent</td>
<td>● Definition of incapacitation</td>
<td>● Cannot consent if physically incapable</td>
</tr>
<tr>
<td>● Intoxication not a defense</td>
<td>● Coercion invalidates consent</td>
<td>● Consent is ongoing</td>
<td></td>
</tr>
<tr>
<td>● Dating is not consent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>● Consent to one form only</td>
<td></td>
<td></td>
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<tr>
<td>● Consent is ongoing</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>● Consent to one occasion only</td>
<td></td>
<td></td>
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<tr>
<td>● Minor cannot consent</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Factor 5 (0.11)</th>
<th>Factor 6 (0.09)</th>
<th>Factor 7 (0.08)</th>
<th>Factor 8 (0.06)</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Dating is not consent</td>
<td>● Consent is voluntary</td>
<td>● Definition of consent the same regardless of gender identity</td>
<td>● Consent is free of deception</td>
</tr>
<tr>
<td>● Initiator responsible for seeking consent</td>
<td>● Consent definition</td>
<td>● Consent is mutual</td>
<td>● Consent is not taking advantage of someone</td>
</tr>
<tr>
<td>● External manifestations</td>
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</tbody>
</table>

NOTES: N=353 (excludes 28 schools with no consent definitions). Proportion of variance accounted for in parentheses. Rotation method: orthogonal varimax. Items with loadings above 0.3 listed.
A quest to explain variation: Cluster analysis

● To see if there are groups of universities with similar definitions:
  ○ Constructed measure of "distance" between schools' consent definitions
  ○ Performed cluster analysis using this distance measure

● Preliminary results seem to indicate:
  ○ There are loose "tiers" of universities, possibly reflecting comprehensiveness
  ○ There are a few smaller groups that are more tightly similar

● To come: latent class analysis (with Leanna Papp)
Descriptive results: Universities with the fewest Black students

- Texas A & M International University
- University of Vermont
- George Fox University
- Carroll College
- The University of Montana
- Whitman College
- University of Hawaii at Manoa
- University of Wyoming
- University of Hawaii at Hilo
- College of the Ozarks
- University of Idaho
- University of New Hampshire-Main Campus
- Corban University
- University of Utah
- Colorado School of Mines
Descriptive results:
Universities with the most Black students

- North Carolina A & T State University
- Bowie State University
- Hampton University
- Jackson State University
- Central State University
- Florida Agricultural and Mechanical University
- Alabama A & M University
- Claflin University
- Howard University
- Morehouse College
- Cheyney University of Pennsylvania
- Lane College
- Le Moyne-Owen College
- Spelman College
- Saint Augustine's University