

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

American Educational Research Association  
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# Outline of Today's Talk

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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*** 

Sexual Assault  
Awareness Month

**#SAAM**

U.S. • HOLLYWOOD

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



The New York Times

PLAY THE CROSS

*California Moves to Outlaw 'Stealthing,' or Removing Condom Without Consent*

CONSENT | OCT. 22, 2014

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

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

The New York Times

*Yale Rape Verdict Shows How 'Yes Means Yes' Can Be Murkier in Court*

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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

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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

Basic Protection	
Use of Force	Incapacitation
Use of violence	Unconscious or passed out
Threat of violence	Policy clearly states if incapacitated, cannot give consent
Intimidation	Physically incapable
Coercion	Asleep
	A minor, below the state's age of consent
	Mentally incapable
Threat of emotional or reputational harm	Showing behavioral signs of incapacitation from alcohol or drugs

# 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

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Current of previous sexual relationship does not, by itself, imply consent	Consent must be ongoing and can be withdrawn	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

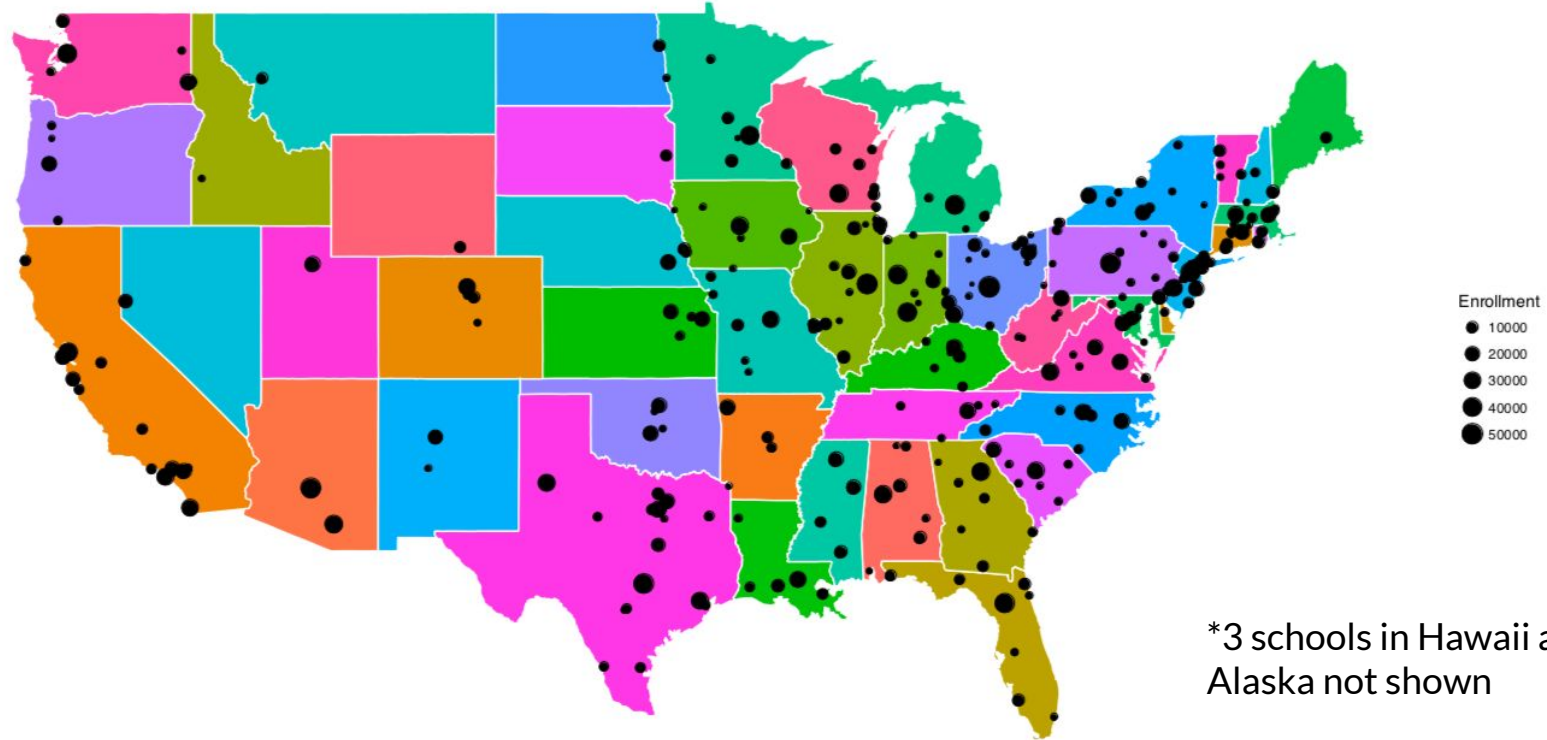


# Above and Beyond

“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

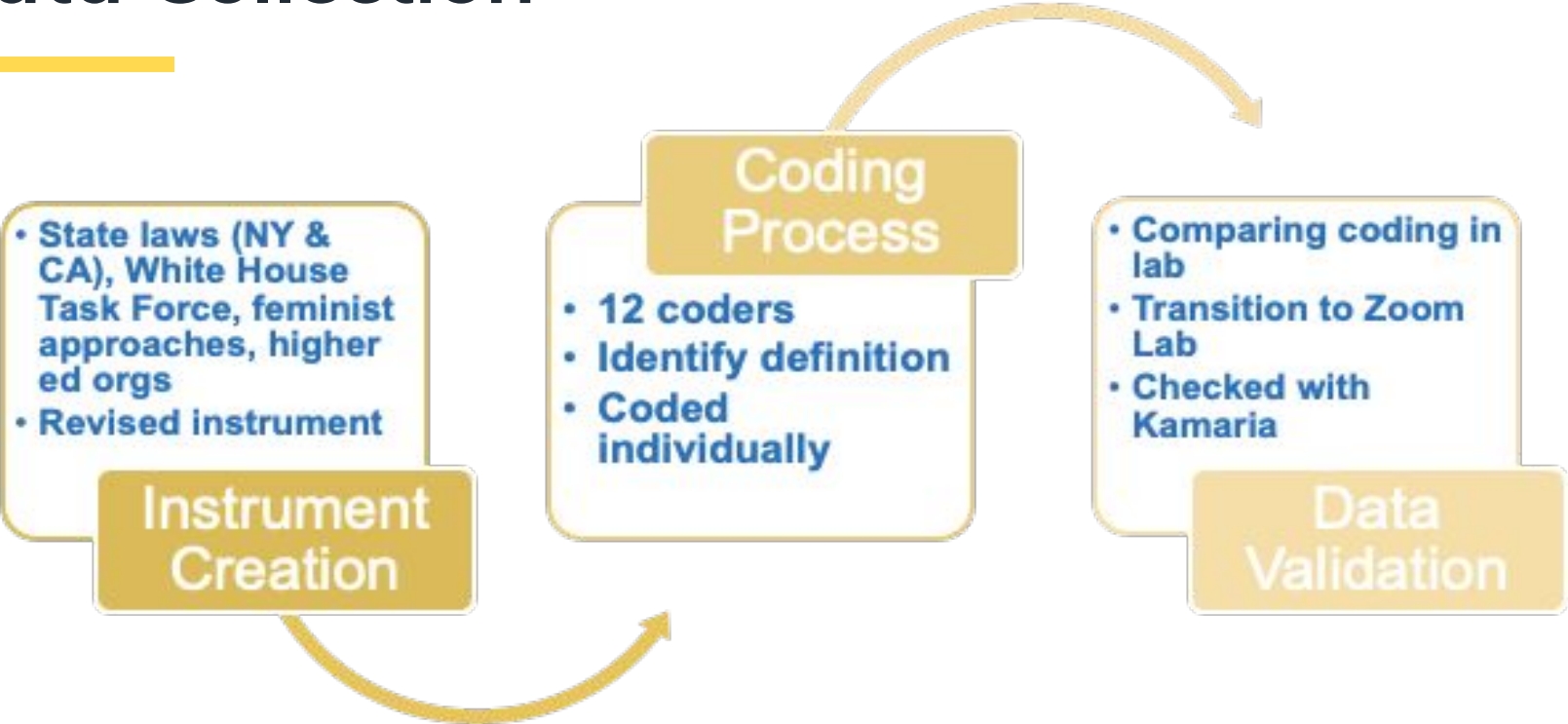
Power Conscious Elements	Predatory Behaviors
Supervision or authority over another may invalidate consent	Taking advantage of someone who is incapacitated
The initiator is responsible for seeking consent	Using drugs or alcohol to induce incapacitation
Consent does not vary by gender identity/sexuality/gender expression	Deception or Manipulation
Sexual history (does not confer consent)	Ignoring non-consent
Appearance or dress (does not confer consent)	Accused level of intoxication

# Title IX Project Sample, n = 381

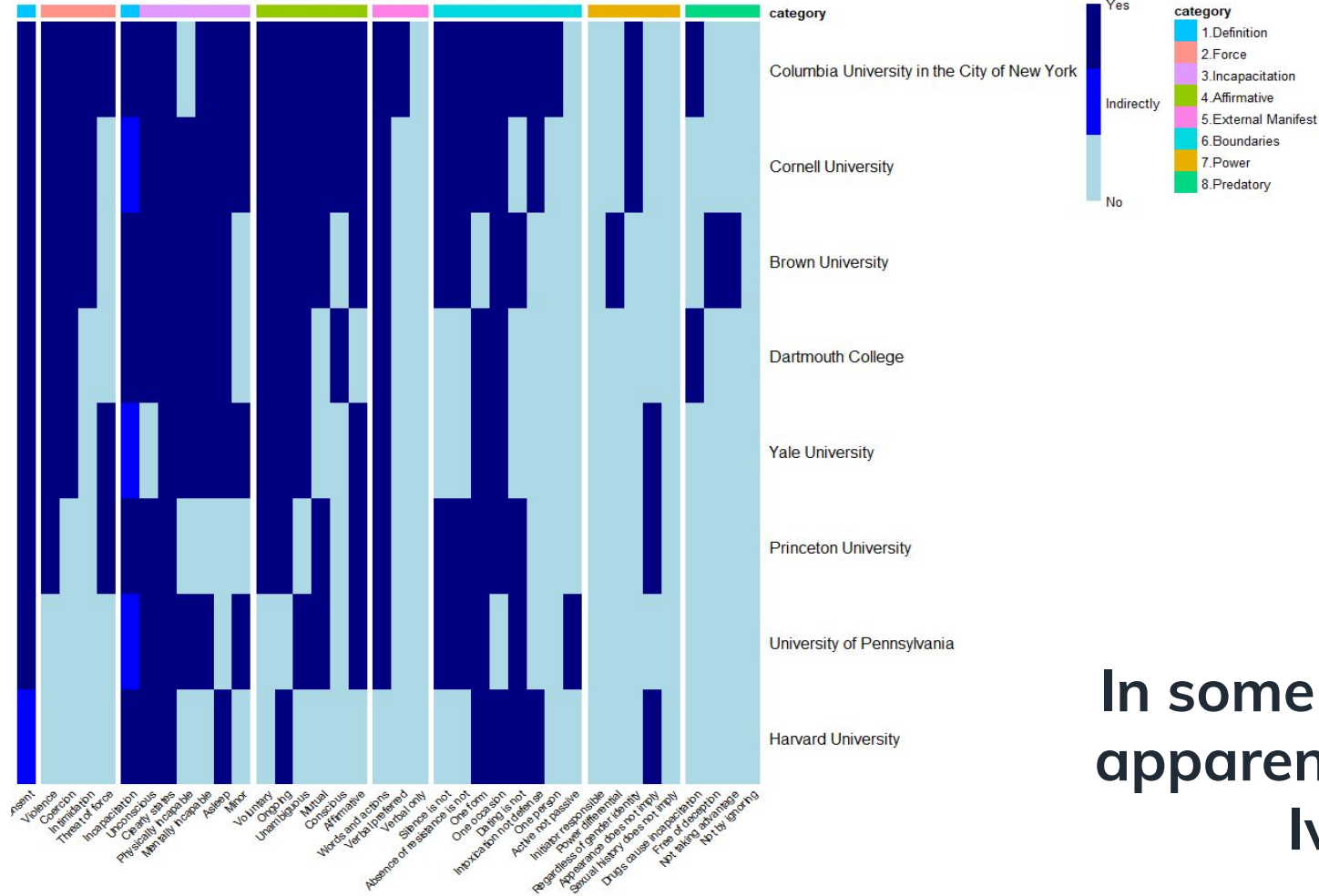


# Data Collection

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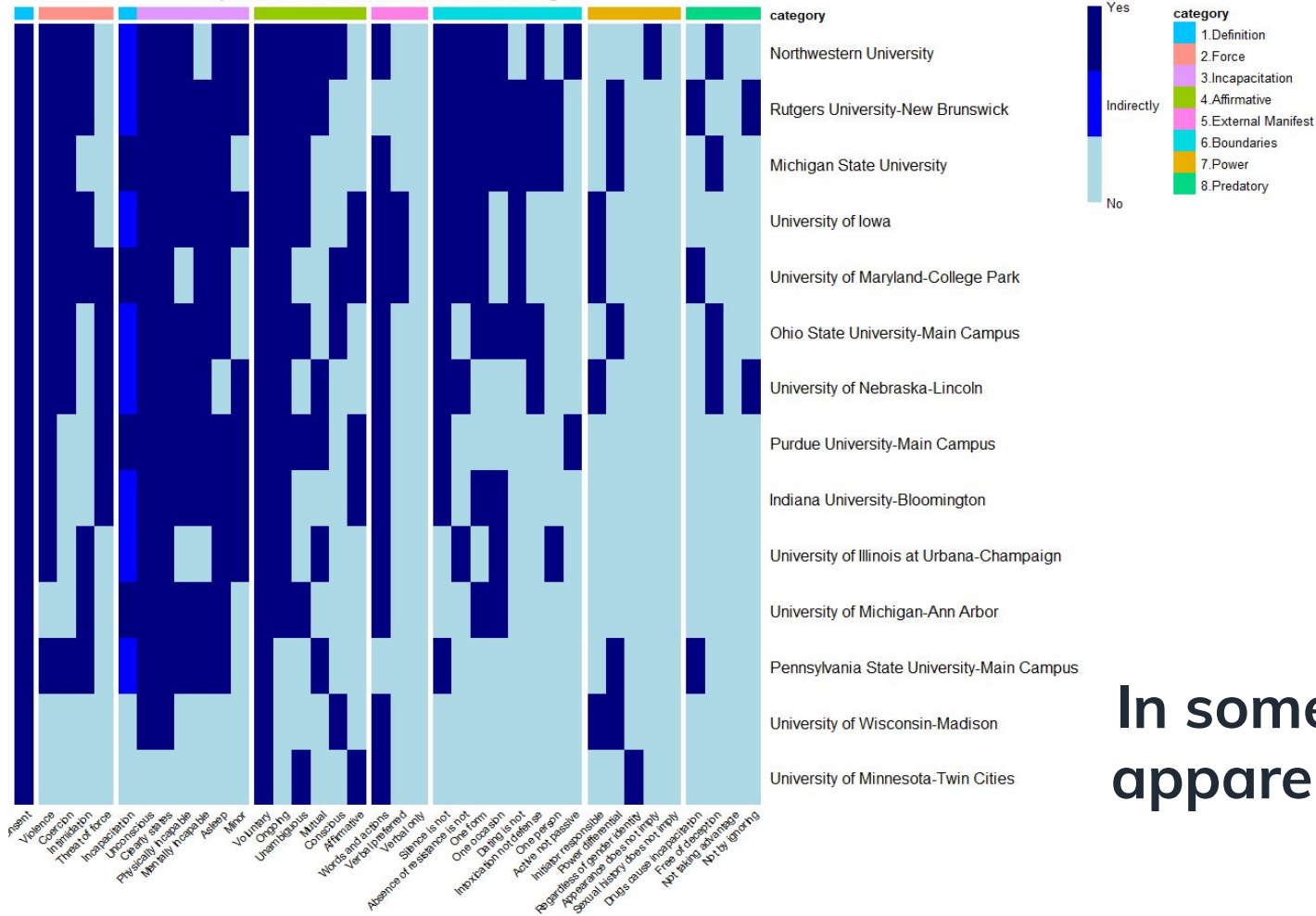


### Aspects of consent included in definition: Ivy League



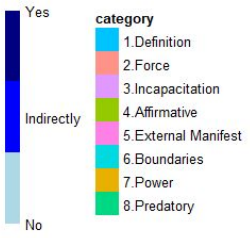
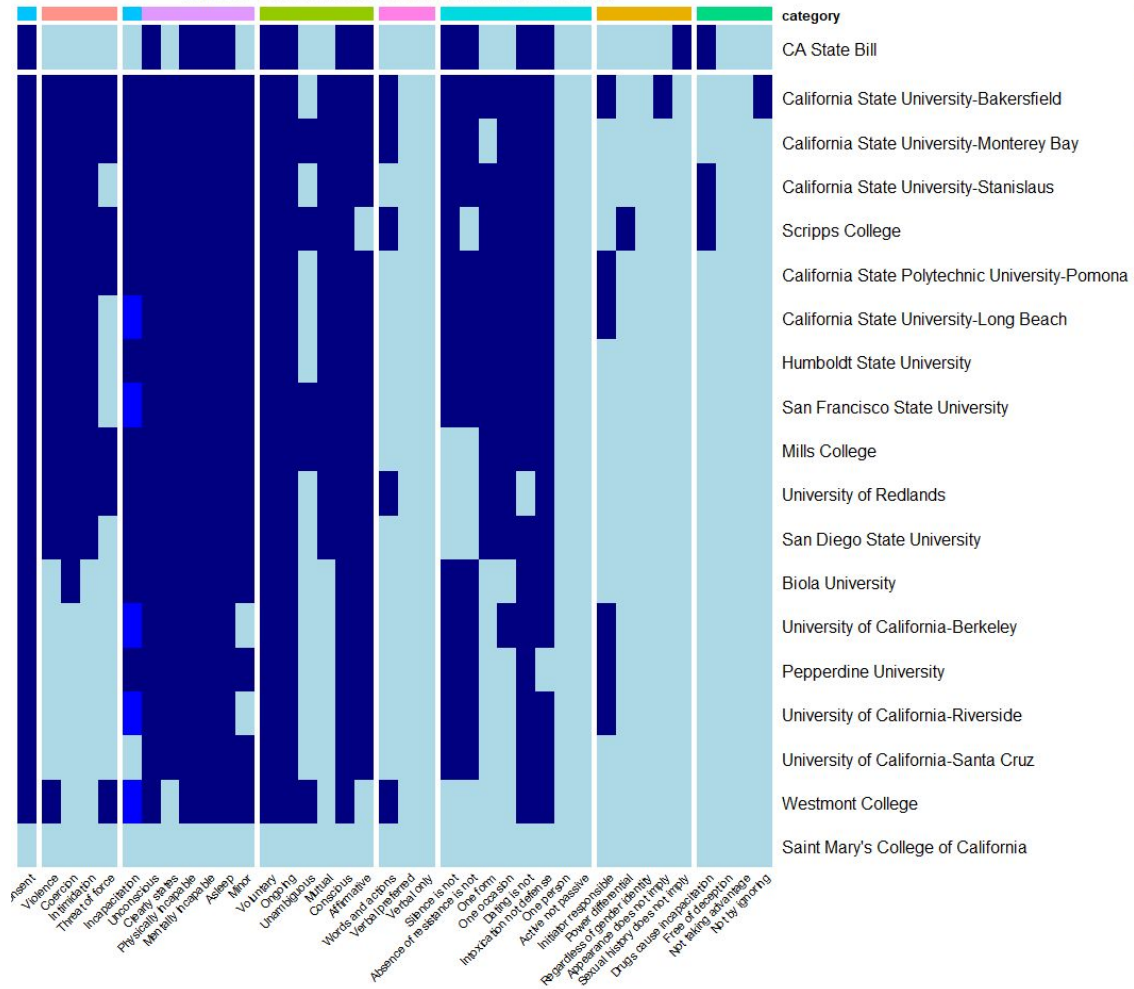
In some cases, no  
apparent pattern:  
Ivy League

### Aspects of consent included in definition: Big 10



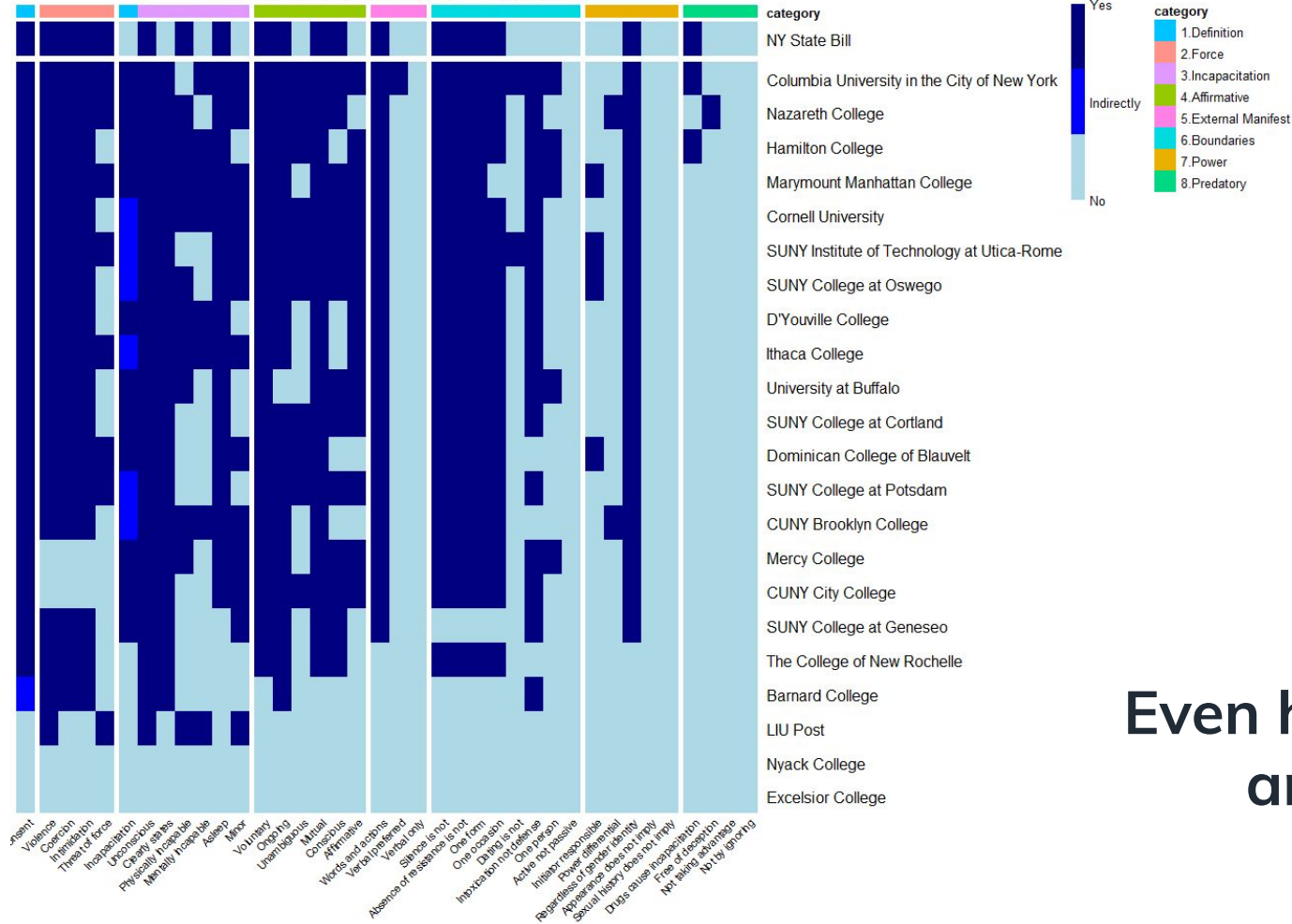
In some cases, no  
apparent pattern:  
Big 10

Aspects of consent included in definition: California



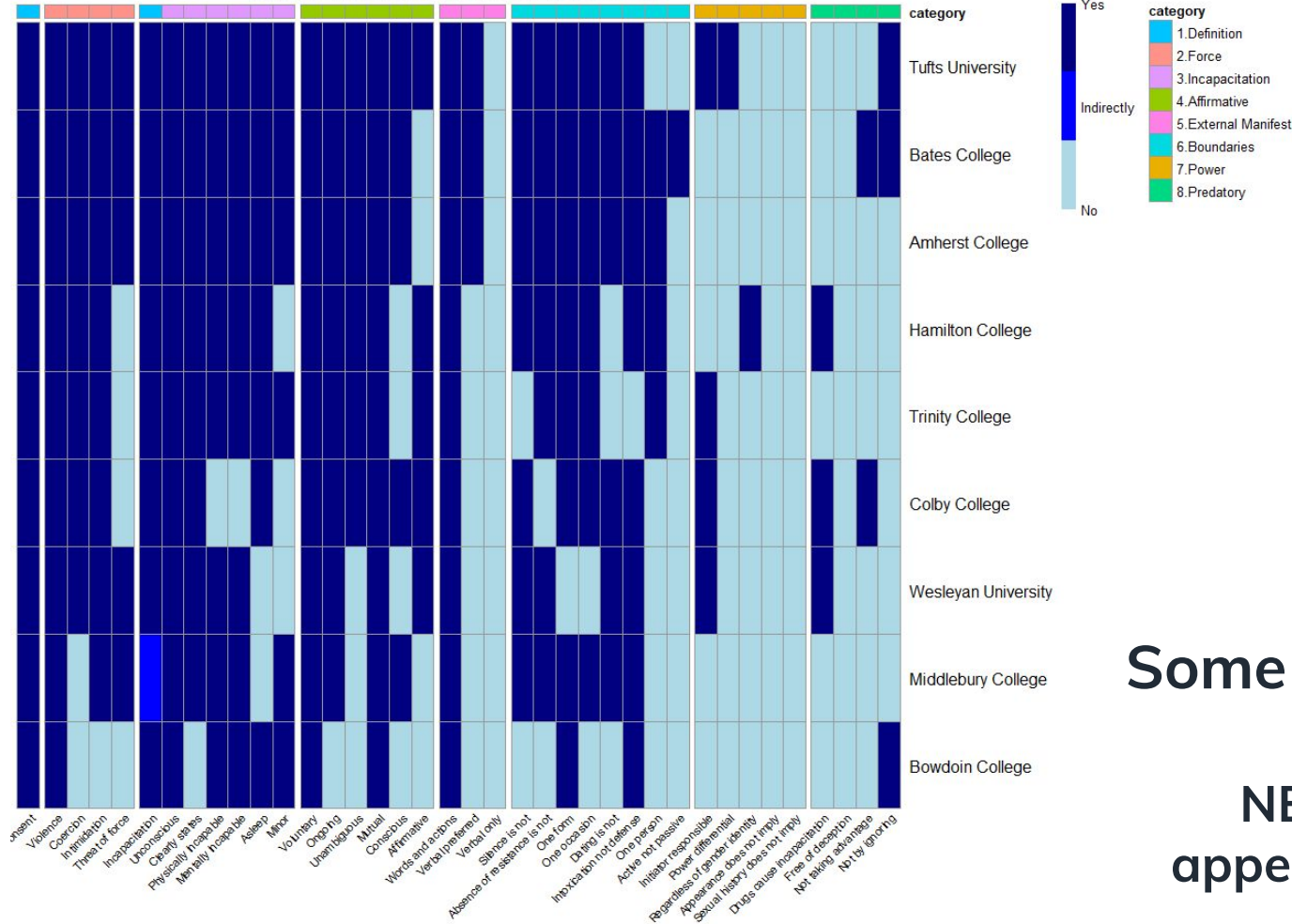
Even here, no two  
are the same:  
California

Aspects of consent included in definition: New York



Even here, no two are the same:  
New York

Aspects of consent included in definition: NESAC



Some patterns do emerge:  
NESAC schools appear to converge



# A quest to better describe variation

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- **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)

Institutional Variation in University

Sexual Consent Definitions: Race,

Class, and Institutional Status

# Title IX, Beyond Adjudication

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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.”

- DCL (2011), p. 14

# Not All Definitions Created Equal

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- Various legal definitions
- Adjudication gets spotlight
- University resources and personnel
- Sexual consent is complex, multi-dimensional, and evolving

New Diversity. Striving for Prestige.  
Limited Money. Meet the 'Broke'  
Research Universities.

By [Lindsay Ellis](#) | FEBRUARY 17, 2021



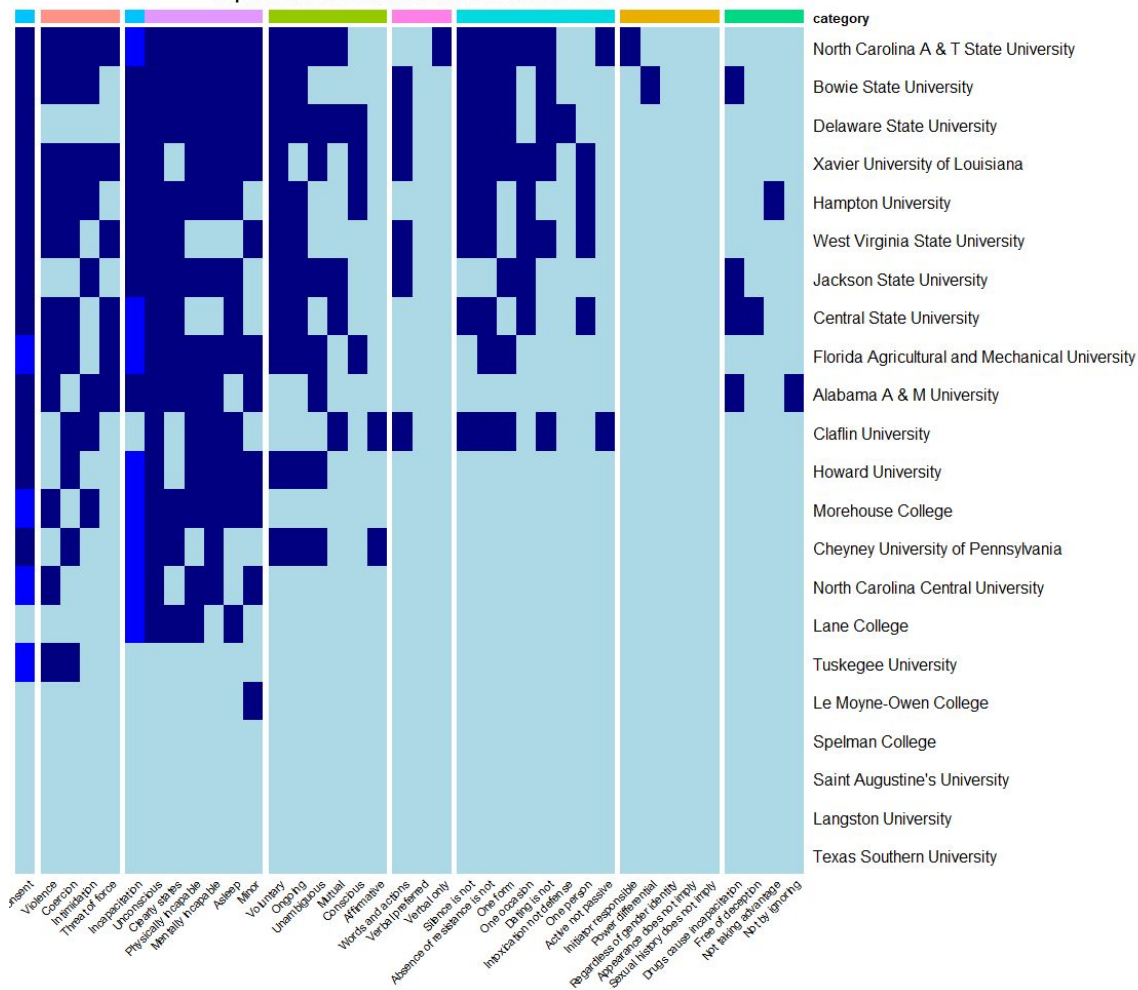
# We Need to Include Black Women's Experience in the Movement Against Campus Sexual Assault

*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

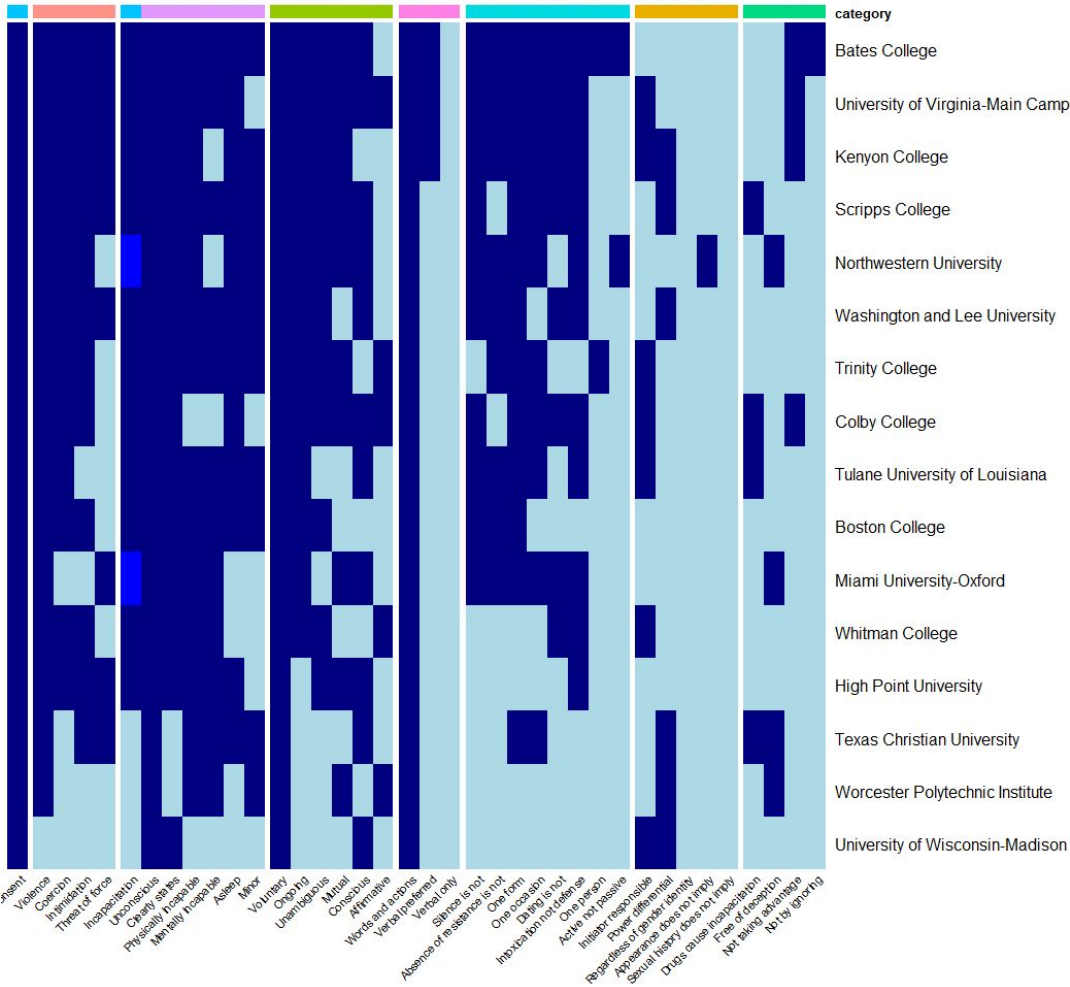
- How do university consent definitions vary by institutional characteristics?
- Are all students equally protected by school consent definitions?

Aspects of consent included in definition: HBCUs



Descriptive results:  
HBCUs have less  
comprehensive  
definitions

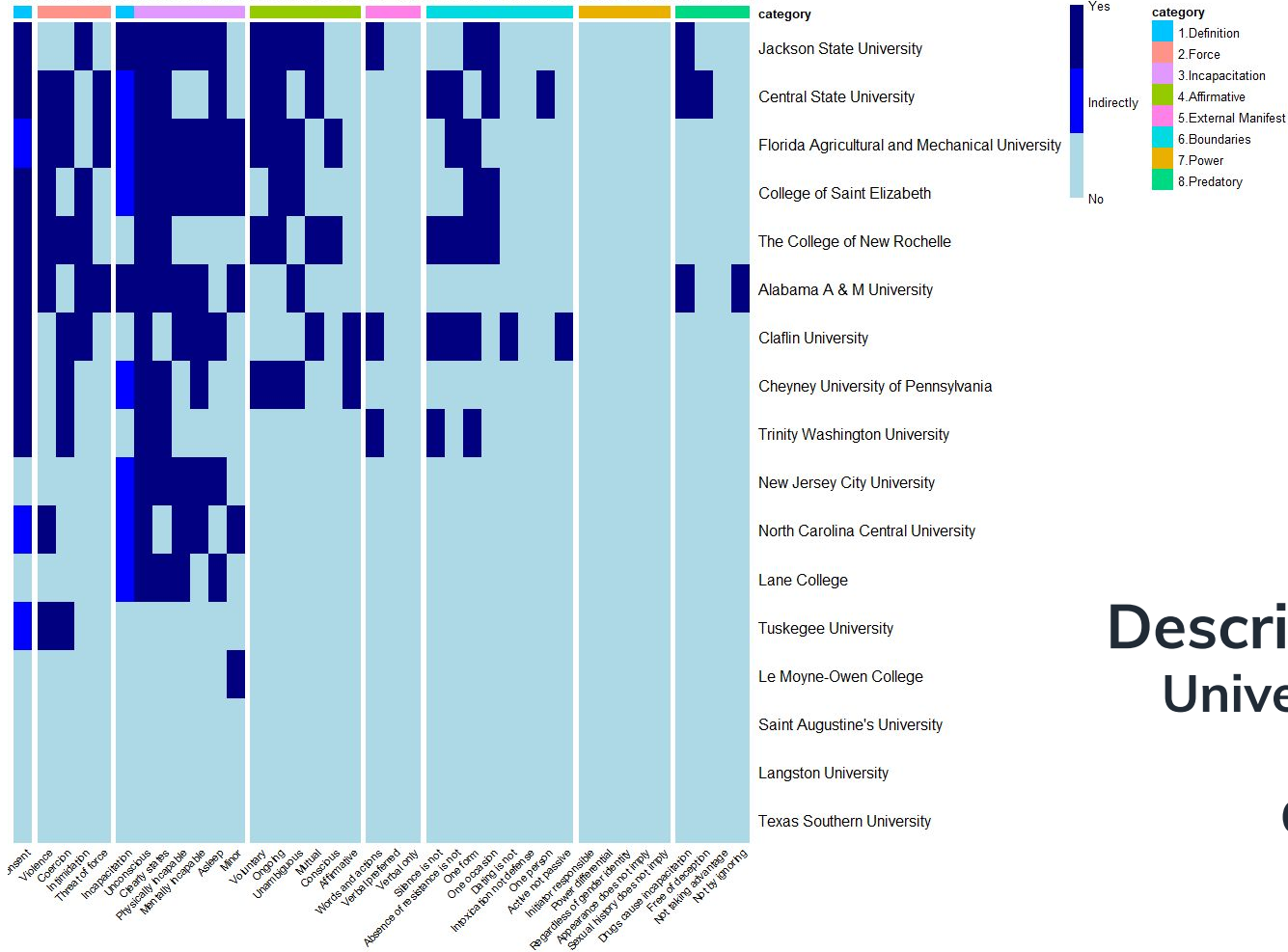
Aspects of consent included in definition: Schools with fewest Pell grant-receiving students (<=12%)



**Descriptive results:  
Universities with the  
fewest Pell  
Grant-receiving  
students**



Aspects of consent included in definition: Schools with most Pell grant-receiving students (>=70%)



**Descriptive results:  
Universities with the  
most Pell  
Grant-receiving  
students**

# Multivariate Analysis

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- 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

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- 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

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- **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

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- 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

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- 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

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- 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

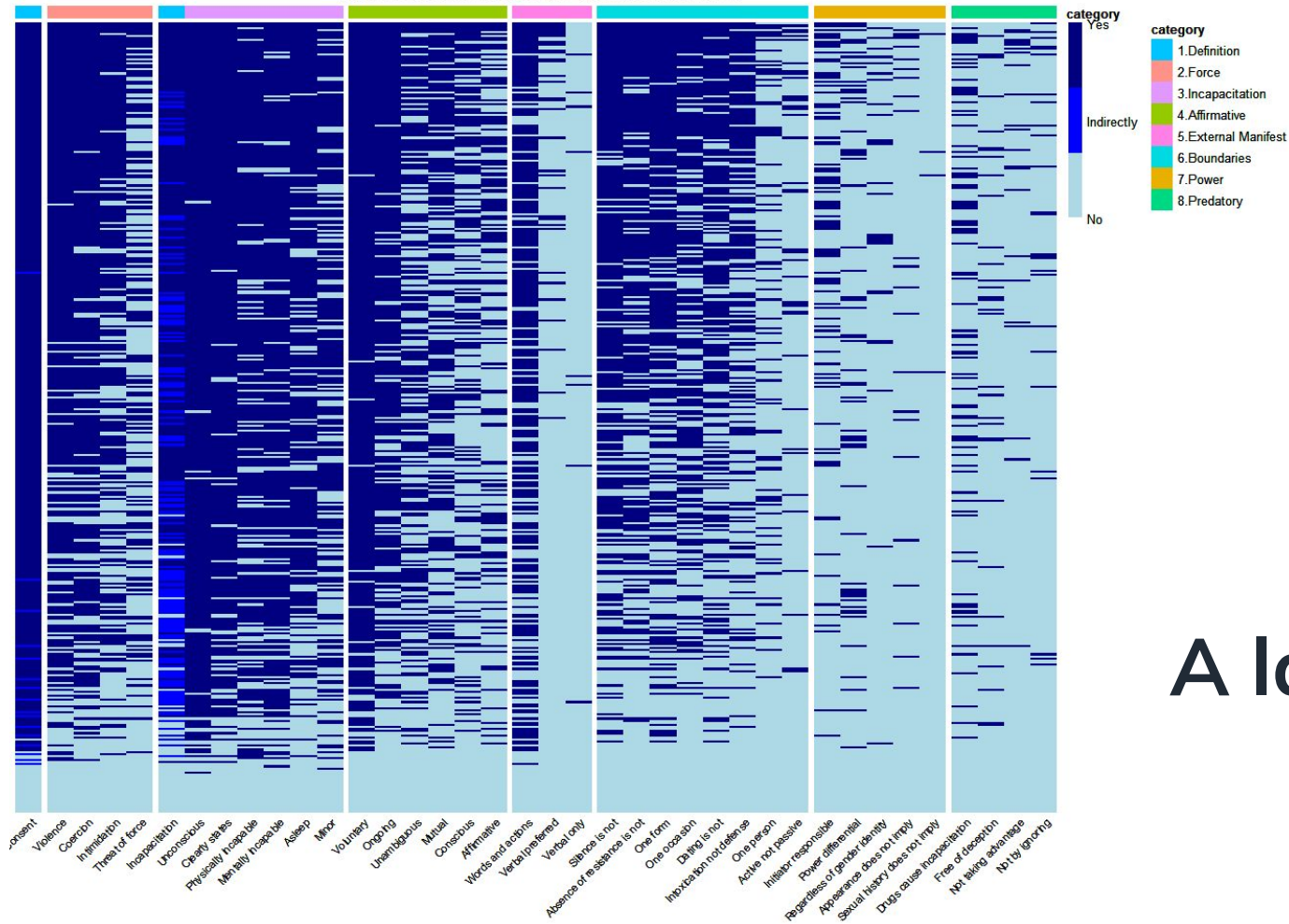
Variation in University Sexual Consent

Definitions

# Research Questions

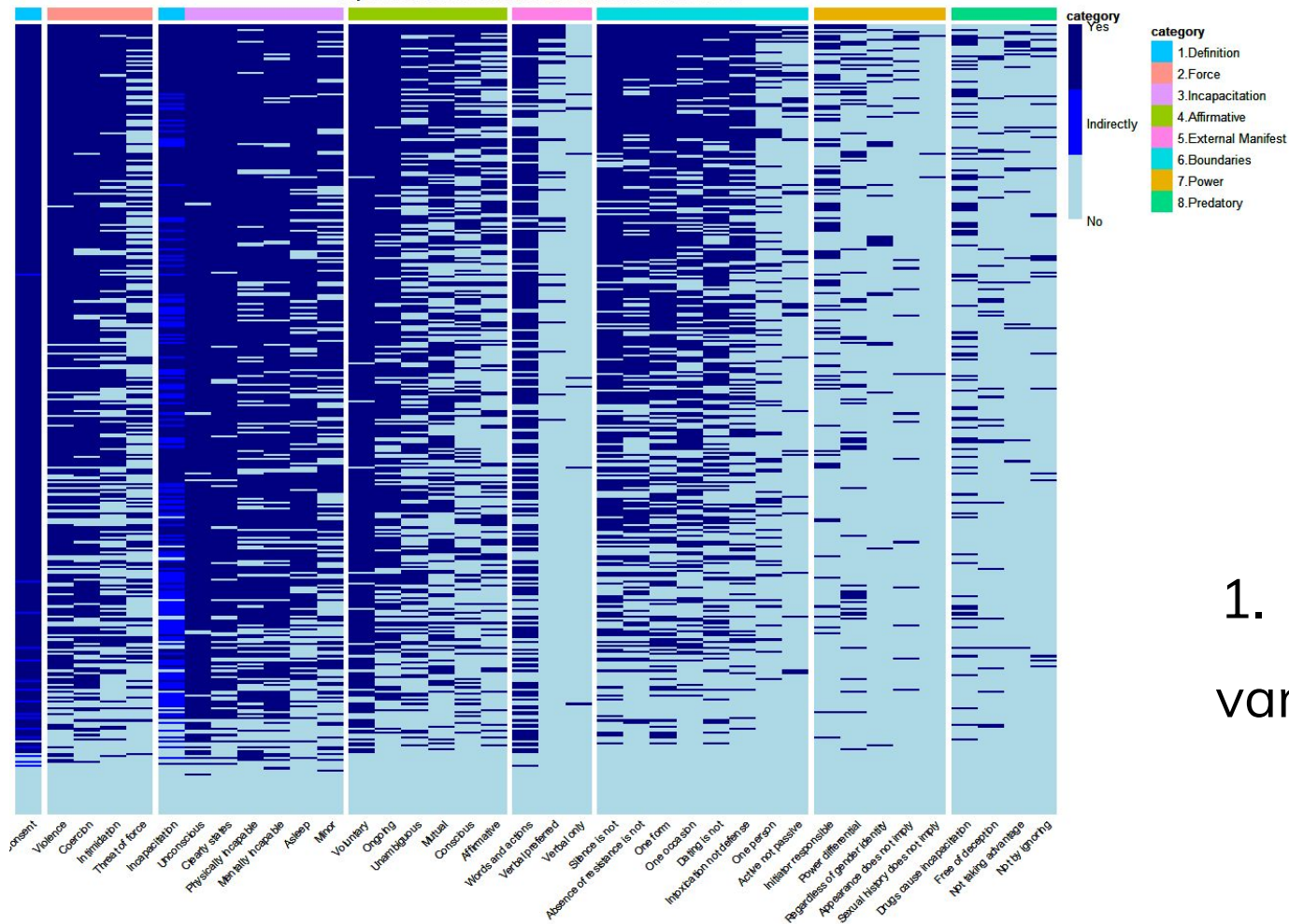
- Which aspects of consent do universities include in their definitions?
- How do different universities vary in their consent definitions?

Aspects of consent included in definition: All schools



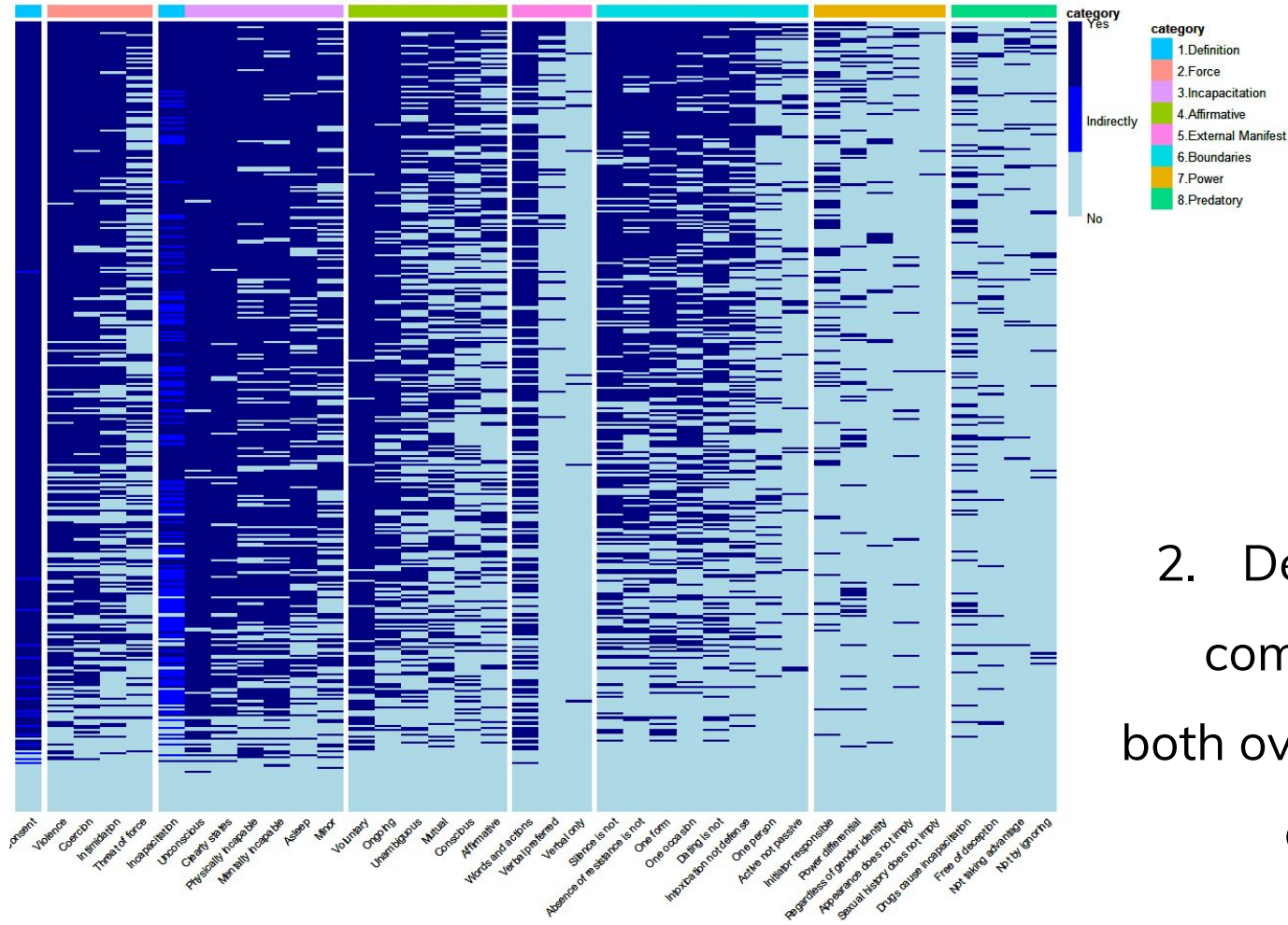
A landscape view

Aspects of consent included in definition: All schools



1. Considerable variation: no two are the same

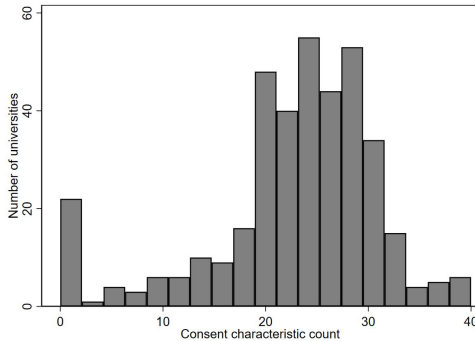
Aspects of consent included in definition: All schools



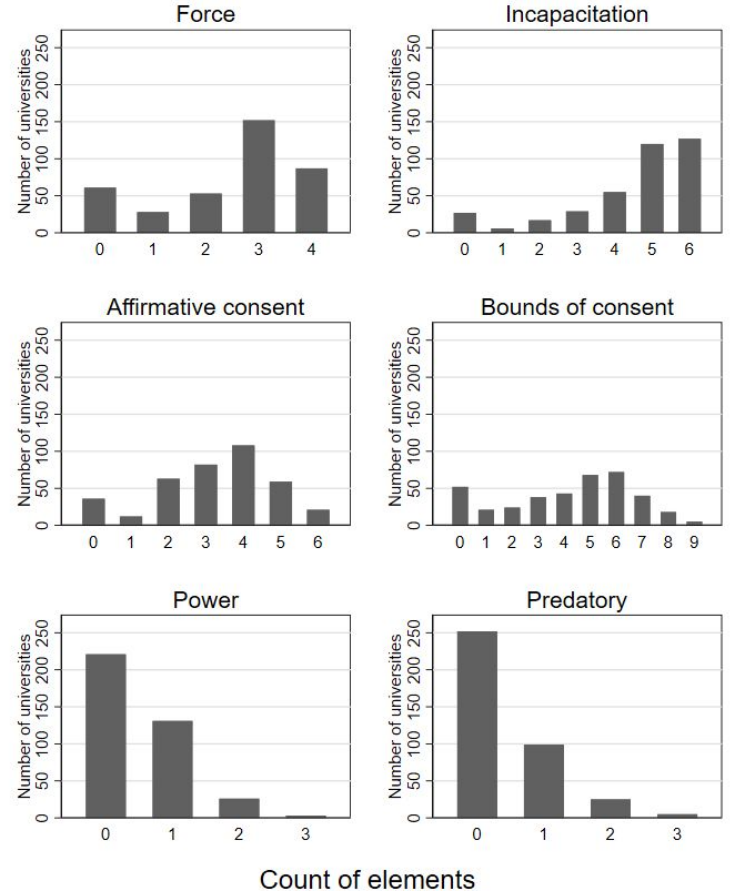
2. Definitions vary in  
comprehensiveness  
both overall and across  
consent aspects

# Describing variation

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



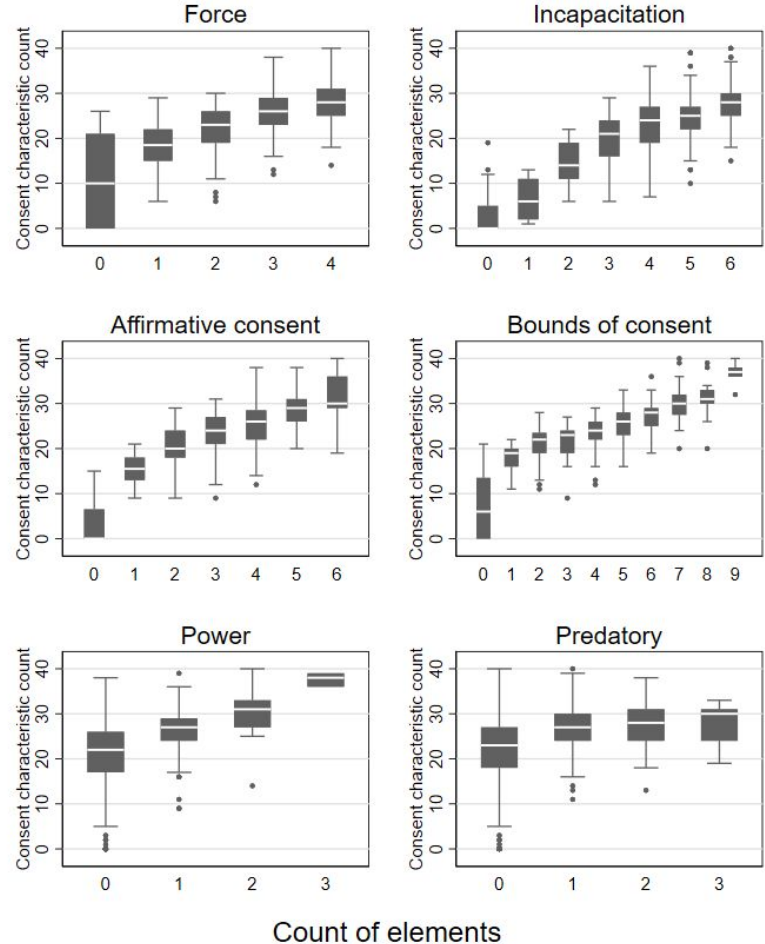
**Across consent aspects:** schools more frequently have "basic" elements, and more rarely have "above and beyond" elements





# 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



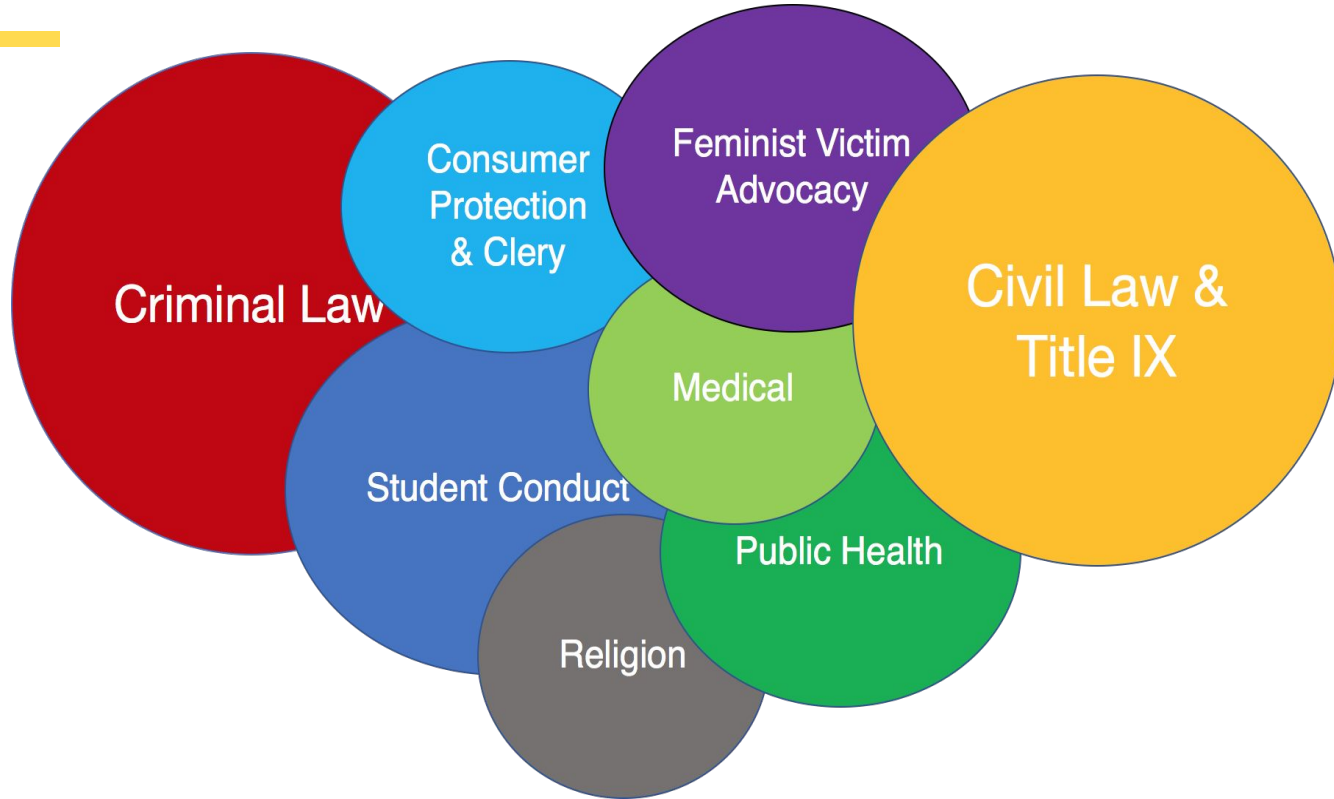
# Patterns by institution?

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- 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!

# Approaches to Sexual Consent

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# A quest to explain variation: Factor analysis

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- 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

Factor 1 (0.20)	Factor 2 (0.17)	Factor 3 (0.17)	Factor 4 (0.15)
<ul style="list-style-type: none"> <li>● Absence of resistance is not consent</li> <li>● Silence is not consent</li> <li>● Intoxication not a defense</li> <li>● Dating is not consent</li> <li>● Consent to one form only</li> <li>● Consent is ongoing</li> <li>● Consent to one occasion only</li> <li>● Minor cannot consent</li> </ul>	<ul style="list-style-type: none"> <li>● Violence invalidates consent</li> <li>● Intimidation invalidates consent</li> <li>● Coercion invalidates consent</li> </ul>	<ul style="list-style-type: none"> <li>● Clearly states incapacitated person cannot consent</li> <li>● Definition of incapacitation</li> <li>● Consent is ongoing</li> <li>● Cannot consent if unconscious</li> <li>● Cannot consent if asleep</li> </ul>	<ul style="list-style-type: none"> <li>● Cannot consent if mentally incapable</li> <li>● Cannot consent if physically incapable</li> </ul>
Factor 5 (0.11)	Factor 6 (0.09)	Factor 7 (0.08)	Factor 8 (0.06)
<ul style="list-style-type: none"> <li>● Dating is not consent</li> <li>● Initiator responsible for seeking consent</li> <li>● External manifestations</li> </ul>	<ul style="list-style-type: none"> <li>● Consent is voluntary</li> <li>● Consent definition</li> </ul>	<ul style="list-style-type: none"> <li>● Definition of consent the same regardless of gender identity</li> <li>● Consent is mutual</li> </ul>	<ul style="list-style-type: none"> <li>● Consent is free of deception</li> <li>● Consent is not taking advantage of someone</li> </ul>

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

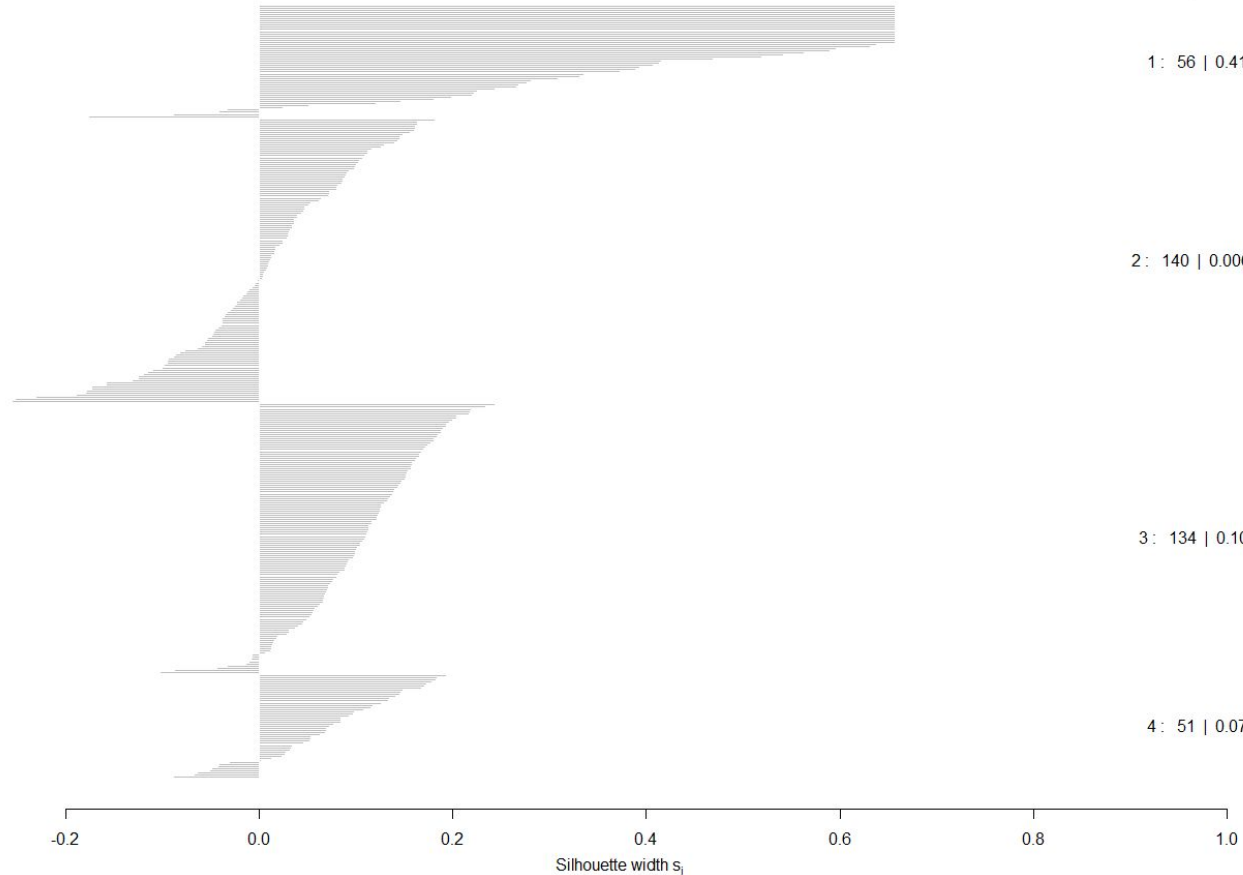
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- To see if there are groups of universities with similar definitions:
  - Constructed measure of "distance" between schools' consent definitions
  - Performed cluster analysis using this distance measure
- Preliminary results seem to indicate:
  - 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)

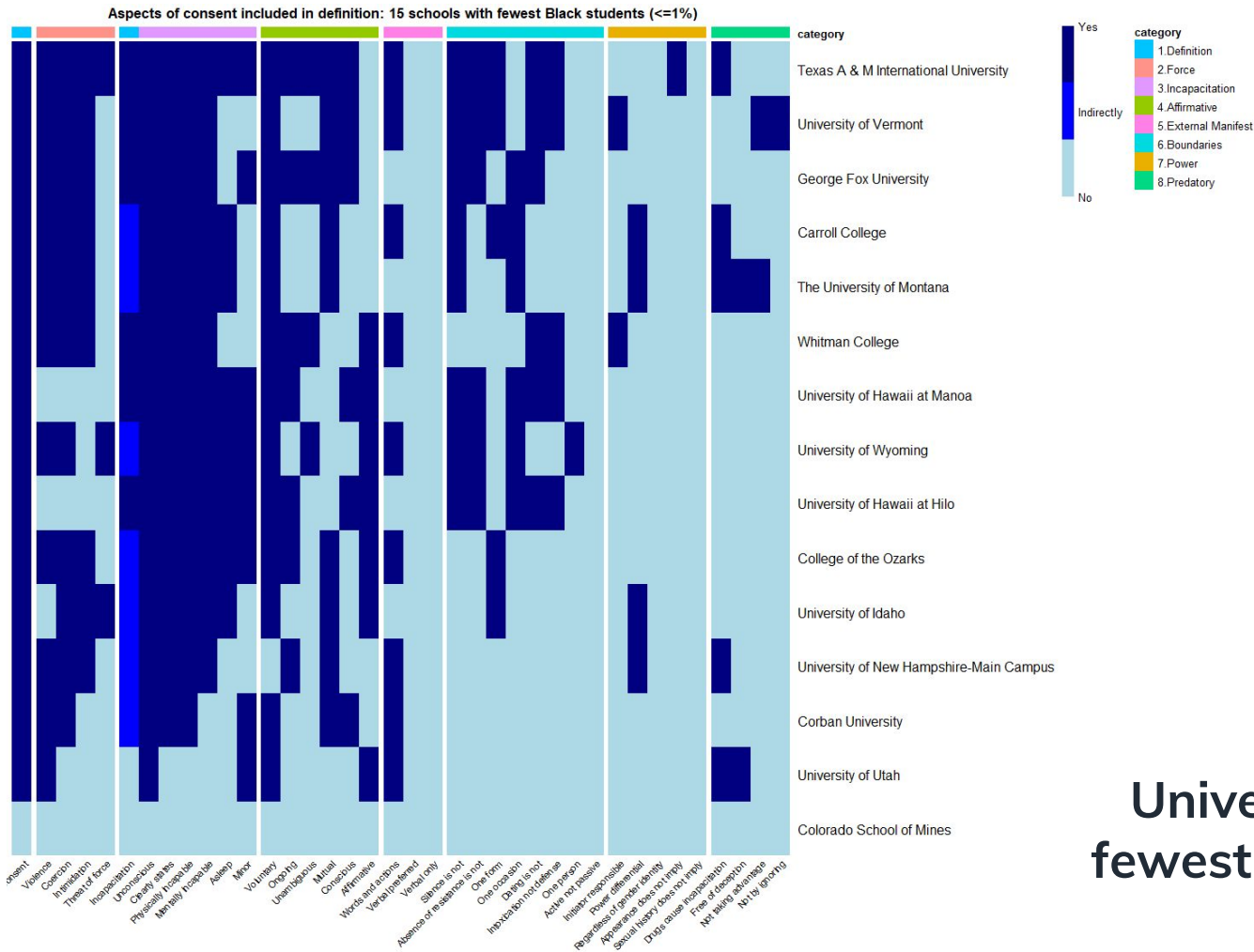
# Cluster analysis silhouette plot

n = 381

4 clusters  $C_j$   
 $j: n_j | \text{ave}_{i \in C_j} s_i$



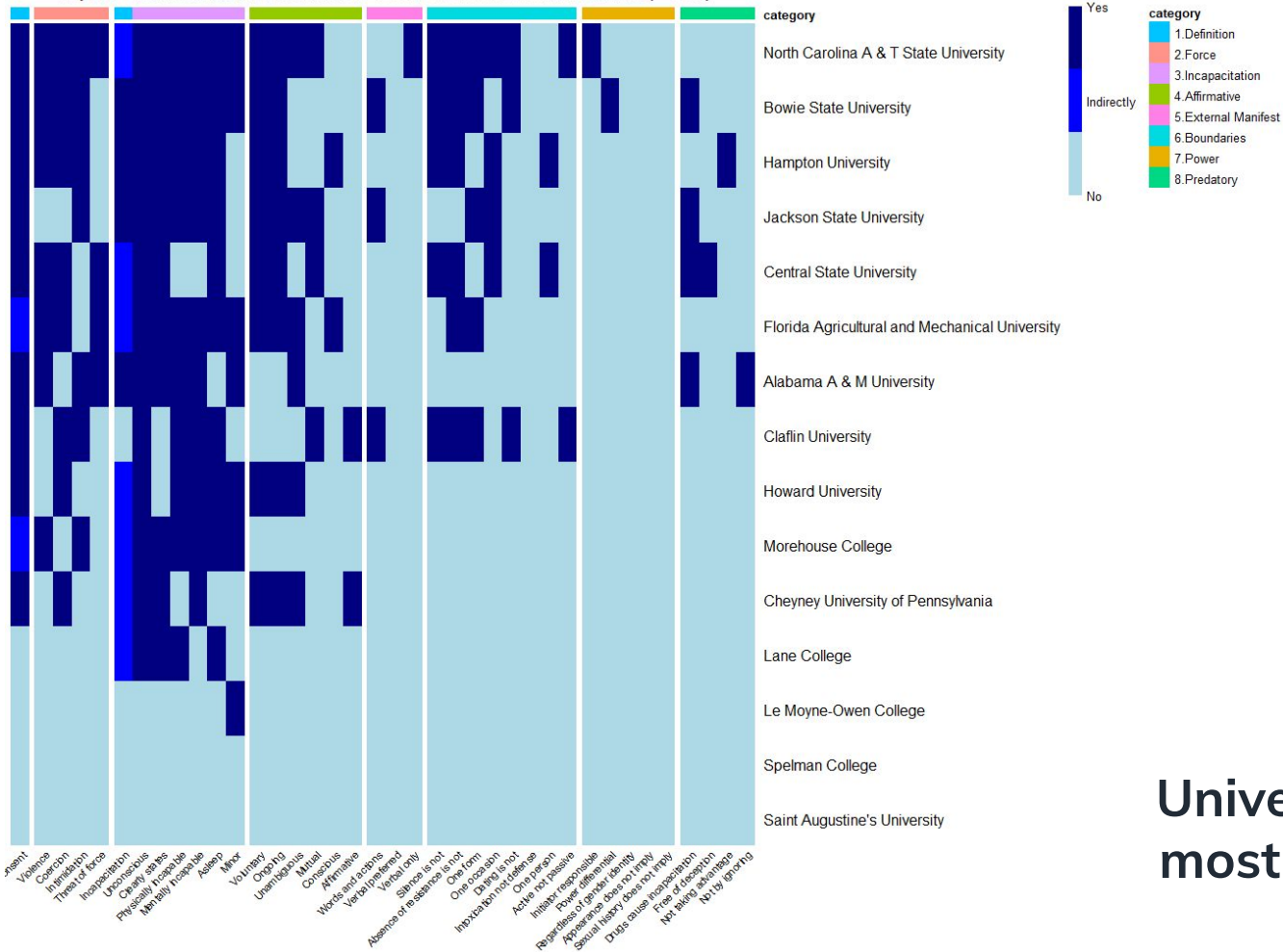
Average silhouette width: 0.11



Descriptive  
results:  
Universities with the  
fewest Black students



Aspects of consent included in definition: 15 schools with most Black students (>=80%)



**Descriptive results: Universities with the most Black students**