Sexuality & Culture
https://doi.org/10.1007/s12119-019-09671-x

ORIGINAL PAPER

Greer's 'Bad Sex' and the Future of Consent

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Abstract

Germaine Greer's polemic 'On Rape' has proved controversial and has served to further divide feminist opinion on the way to move forward from #MeToo in consent reform. Greer's work, along with other second wave feminists, has been rejected by third wave feminist scholarship for simultaneously minimising the harm caused to victims of sexual violence and claiming that rape is not 'catastrophic', with Naomi Wolf being Greer's most vocal and powerful opponent. Yet, I claim that in maintaining this position in opposition to Greer we are missing the real transformative power of Greer's revival of second-wave arguments in relation to reforming our laws on consent post #MeToo. The consent framework and the definition of consent under the Sexual Offences Act 2003 has been readily criticised for its vague definition of 'freedom' and 'capacity' in that such a definition misses the subtler, yet powerful, ways in which victims are coerced and abused—those which are most insidious, since they are embedded within the fabric of our society, and within the 'tissue' of heterosex. Greer's position that rape is 'bad sex' may well hold some truth—since bad sex for women has long been accepted as part of life albeit reduced to sufferance and duty. Inevitably, this leads us to the conclusion that there are many more instances of rape than we thought, and many more women suffering, than we thought. This article examines this position and argues for urgent research on women's sexuality, and radical intervention in the law and academia, in the quest for consent law reform.

Keywords Consent reform · Feminism · Women's sexuality · Sexual offences · Greer

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Published online: 16 November 2019

Introduction

In reading Greer's arguments in her recent polemic essay, *On Rape*, we find a timely revival of second-wave feminist scholarship. Given we are collectively looking for research strategies post #MeToo in order to work towards a law that fits the sexuality of women, we need fresh and radical theoretical perspectives. I claim that if we are to find the potential for reform, among the controversy, we need to ask the following question: how do we translate Greer's second-wave revival into concrete research strategies aimed at consent reform? At the core of sexual offences, is the law of consent. In England and Wales, the Sexual Offences Act 2003 (which succeeded the Sexual Offences Act 1956), outlines three key offences under ss1-3, those being Rape (s1), Sexual Assault by Penetration (s2) and Sexual Assault (s3).[1] As part of each of these offences, consent is an integral element. As part of the *actus reus* (criminal act) and *mens rea* (criminal mind), a lack of consent and a lack of belief in consent must be respectively proven. The Act defines consent under s.74 as 'a person consents if he agrees by choice, and has the freedom and capacity to make that choice', and this will be applicable to all three offences.[2] An offence is committed under ss1-3 where the individual elements of the offence are proven, and where there is an absence of consent, and where the defendant lacks reasonable belief in consent. For example, for s1 Rape to be made out, the following must be proven: intentional penetration by a penis of the anus, vagina or mouth of the victim, without consent and without reasonable belief that the victim was consenting. Accordingly, the offence of Rape under s1 of the Act can only be committed by a man with penis. Penetration with anything else, falls under either s2 or s3 of the Act.[3] Greer refers in her book to the offence of Rape, to which she limits her critique. Greer explicitly takes care to explain that her book is limited to consideration of an offence of non-consensual penetration of the vagina by the penis (Greer 2018: 1).

I argue that Greer's arguments have broader application than s.1, as with other second wave feminism, to the entire conceptual integrity of consent. This is significant since consent is integral to all offences under the Sexual Offences Act 2003, meaning that her arguments, taken to relate specifically to consent, have broad application to nonconsensual sex, no matter what offence might technically be committed. Indeed, Greer has pointed to the problematic aspects of consent more broadly, and the need for research on the 'fit' of consent for women's sexuality, and their continuing struggle for equality before the law. As we can see, consent sits, rightly, at the heart of sexual offences. This is, however, where the complexity begins, and where Greer's arguments illuminate both the veracity and prevalence of sexual offences, and point to the conditions that gave rise to

[1] Sexual Offences Act 2003.

[2] *Supra*. Aaccompanying the s.74 definition of consent are the presumptions which I am not considering in detail here. See ss75-76 of the act. See also CPS legal guidance in relation to prosecutions under the Act: https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-3-consent.

[3] There are significant problems in relation to consent and the s.2 Sexual Assault by Penetration offence (and the use of the evidential and conclusive presumptions, which has been used in relation to transphobic judgments concerning so-called 'gender fraud' (Sharpe 2016).

#MeToo (Greer 2018: 62). Greer's recent publication and audacious revival of second-wave feminism which has restored a second-wave slant to popular debates has met with staunch and vociferous third-wave opposition. This opposition has come most notably from #MeToo survivor and third-wave feminist thinker, Naomi Wolf. Her disappointment in Greer's work was clear, in that Greer did not deliver the philosophical work that she believed to be required of a great feminist thinker in these times (Wolf 2018). Her criticism was that she minimized the suffering and trauma of rape victims, and the lifelong effects of violent sexual assault. Wolf takes issue with Greer's controversial claim that rape is not a 'rare and catastrophic event', but one that takes place everyday (Greer 2018: 3) and that Greer's work fails to deliver in terms of robust research. Yet this claim made by Greer echoes a claim made over 30 years ago by MacKinnon, that the problem with the law is that it sees nonconsensual sex as normal, and rape as deviant, which means the reality is that women do not perceive everyday 'bad' nonconsensual sex as rape:

> …in all these situations, there was not *enough* violence against them to take it beyond the category of "sex"; They were not coerced enough. Maybe they were force-fucked for years and put up with it, maybe they tried to get it over with, maybe they were coerced with something other than battery, something like economics, maybe even something like love. (MacKinnon 1987: 88)

The divisions between second and third wave feminists have never been so pronounced in relation to Greer, yet much of this seems to stem from the fact that she is felt to be saying something entirely new. Second-wave feminists like Mackinnon have been saying this for a long time, and have been asking the law to respond to the daily injustices done to women in the name of fucking; a call which the law has thus far failed to answer satisfactorily. Greer's intervention, even if it is a revival, is needed.

Consent, Greer and the Second Wave Revival

The position that is traditionally associated with second-wave feminism, that the act of sex is that which signifies the subordination of women—translating the traditionally submissive role of women in male pleasure, into the widespread ways in which male dominance is continually reinforced within society (Anderson 2006). Sex, from the second-wave perspective, is also that which symbolizes the male need to possess and own that which he 'fucks'—the deeper he goes, the more intimate his knowledge and the more pervasive and resolute his ownership: 'Being owned and being fucked are or have been virtually synonymous experiences in the lives of women. He owns you; he fucks you' (Pringle in Smits and Bruce 2016: 163). It is thus that the assertion of second-wave feminist scholarship that we cannot have a feminist account of justice, without understanding the 'fuck' (Pringle in Smits and Bruce 2016: 163). Yet for second-wave feminists, this is the real challenge: to hear women, to allow them to speak outside of a language made by men; such language being a mechanism for asserting the hierarchy that causes the suffering of women (Dworkin 2006: 170). Given that this is what #MeToo has asked us to do, it is surely obvious

that the law must respond by making it easier for women to communicate their experiences. Indeed, as MacKinnon has said, if we are to believe these women, or those who have claimed that they are victims of sexual assault, then sexuality itself, the fucking, the act, and its endless array of variations, 'can no longer be regarded as unimplicated' (MacKinnon 1989b: 316). The focus must be astute, robust, unflinching and unafraid to talk about the different ways in which women's subordination through sex is maintained. This is a task, as MacKinnon reminds us, that is beset by traps, those which might cause us to settle for the 'best inequality', rather than true equality, that we can find (MacKinnon 1989b: 344). This, I argue, is where the law is currently at—it is an imperfect framework that is less unequal than it has been, or could be. However, the law can strive toward a far less banal destination, to work towards equality through knowledge about women's pleasure and suffering, rather than accepting sexuality as it is, as an instrument of women's subordination. This would involve treating consent as connected to sexuality, and treating that entwinement as inextricable and as an instrument of male dominance. This would constitute for law reform, as MacKinnon would argue, a feminist method (MacKinnon 1989a: 128).[4] To treat sex as disconnected from our consent frameworks is to treat sex as though it were disconnected from sexuality, and otherwise to treat sexuality as if it were not pervasive to everyday life, or rather in MacKinnon's cutting words, that it 'came from the stork' (MacKinnon 1989a: 130). This crucial step, is toward undoing these sexual inequalities, and this is where the strength of Greer's critique resides, in engaging us all, and provoking law to engage in a real way, in the perennial search for feminist justice. By now we have realized, that this must include creating the legal conditions for sexual assault survivors to speak as themselves, in their own voice (Pringle in Smits and Bruce 2016: 168).

It could also be argued that Greer adds little to that which the formidable body of second-wave feminism has already argued, but what she does do is remind us of what this vast body of controversial and critical feminism has been telling us, and directs a particular demand of the law itself to reflect on its role (if any) in sexual offences. Mackinnon has pointed to the possibility that law must remember its role in fetishizing its own transgression (ensuring dominance retains its essential need for achievement, and does not feel like 'taking candy from a baby'), or rather, preventing the powerless gaining true power (MacKinnon 1989a: 133). It seems that the distance between the second and third wave rests upon a disagreement as to the 'reach' of sexuality and the admission or denial of harm in terms of women's sexual liberation. For Wolf, liberation is shattering the polarization of women's desire as resting at either pole of 'virgin' or 'whore', moving towards wholesale reclamation of desire (Wolf 1997). The problem is that this move toward liberation takes for granted the ease with which the claim that sexuality is 'ideologically bounded' can be escaped (MacKinnon 1989a: 132). For MacKinnon, good sex, or rather, liberation, rests on a 'value judgment' that if women have more sex, natural sex, healthy sex, they will be more free to be the 'sexual aggressors' and thus again women's position of subordination is asserted (MacKinnon 1989a: 134). Therefore, we find

[4] See also in relation to jurisprudence in particular (MacKinnon 1983).

that 'good sex' is constructed as that which will remove the proliferation of offending by reducing the need for men to offend. The usefulness of Greer's essay is that it restores the reality through her 'bad sex' of second-wave arguments of the co-option of sexuality through hierarchies, and reminds us of the commensurate uncomfortable claim that rape is not pursued by a few radically bad, perhaps psychopathic men (MacKinnon 1989a: 145).

To illustrate the complex reality of Greer's controversial 'bad sex', I write below a fictitious scenario from which to begin understanding a small part of women's sexual experience. As we have seen, the crucial task of a feminist methodology for law reform, is that we identify the ways in which the act of sex translates into subtle, yet real, everyday oppression. The consequence is that this oppression 'folds' back into sex, making it into an act, in Greer's words to be endured, while affirming a male position of dominance, making it impossible to find MacKinnon's 'true' sexual equality and confounding the claim that the feminist method in law reform, is crucial. In identifying these moments, we find that law must discern the utility of its intervention, and the consequences of its denial of the subtle pervasiveness of sexual offences. The scenario is based on two individuals who in which there is a familiar dynamic of power (held by Benjamin) and subordination (of Celine):

> Celine and Benjamin are sitting together at dinner, and both are having a nice time, talking and laughing. Benjamin is married. Celine is Benjamin's long term lover, but not his wife. Benjamin is a powerful and attractive man to Celine, and Celine is also a powerful and attractive woman. Celine and Benjamin have an 'edgy' relationship some of the time though, and Celine lives with a constant fear that Benjamin will leave her and stop seeing her if she does not please him in subtle ways in terms of voicing or not voicing her displeasure, as well as submitting to his sexual desires, and this stops Celine from being entirely 'herself', or talking about things that worry her, or being entirely open and confident with him. Most of the time though, when they see each other, they have a wonderful time, but there are patches of subtle, yet curiously weighty instances where Celine feels depleted and like 'nothing' in his presence. Later during the dinner, Celine accidentally knocks over a bowl of gravy while she is gesticulating wildly as part of a conversation they are having. Some of the gravy falls on to Benjamin's shirt and lap. Celine is horrified, and apologizes immediately, urgently looking around for napkins to wipe up the spillage. Benjamin does not shout at Celine, but goes instantly cold. Benjamin gets up and finds some napkins, goes to the bathroom, and sits back down. He speaks normally to Celine, but in a way that is without affection. There are longer silences than normal. This carries on for over an hour and Celine feels embarrassed. She apologises again, and assures Benjamin that she didn't mean to, that she would hate to hurt him in any way. Benjamin remains cold. Celine feels herself shrink inside, feeling humiliated and embarrassed, lonely and as if she wants to go home. She remembers this feeling from other times with powerful men, and it hurts her. She feels worthless and clumsy, terrified that Benjamin will see that she lacks grace and intelligence, and will leave her. She puts on a brave face, despite the tears rising with increasing force behind her

eyes. She puts on a smile and remembers how empowering it is to be a whore for Benjamin. They continue to talk, Benjamin's anger gradually passes, but he does not apologise nor understand how his reaction might have hurt her and made her feel insecure. She has sex with Benjamin later that evening, she is feeling cold inside, unaroused, and she feels a pain in her chest. She didn't have an orgasm, and she felt this persistent pain in her heart. She cries as he falls asleep. She cries quietly to herself in the morning too and tries to raise the situation with Benjamin – he dismisses it as nothing. Yet another time, when a man has been cruel to her – in a very small way, arguably, but it means everything.

Most would agree that it would be difficult to argue that there was an offence committed by Benjamin against Celine, under the law of consent as it stands. There is also an important question as to whether indeed there *should* be—is this not just everyday harmless ups and downs and arguments to be expected in intimate relationships? There is no violence in the conventional physical sense, no clear pattern of coercive behavior,[5] and no voiced refusal or resistance to sex. In terms of apparent injury, there is the 'harm' suffered by Benjamin in terms of the gravy spillage. There is no commission of a sexual offence under the law, and indeed, if there was an accusation, there would likely be discomfort as to the truth of that accusation. It would be difficult for Celine to explain to someone who had not been in this position as to why she suffered and why what was done to her was so harmful, and does Benjamin have a right to be angry? There is though, for sure, suffering, a lack of pleasure and very clearly, a consequence that Celine feels belittled and small, useless and alienated, and exhausted—this is clearly Greer's *bad sex*, or otherwise MacKinnon's normalized nonconsensual sex. This is the most insidious form and most reminiscent of the oppression against which the second-wave argued, since the law would separate the sex itself from its context, and would tell us, resolutely, that the sex was consensual albeit the circumstances and dynamic within the relationship between Celine and Benjamin was regrettable.

Bad sex, as we shall see from Greer's arguments, often takes the form of coercion. This kind of coercion is not necessarily overt, and what might be considered as mere 'acquiescence', can be just as harmful and violent an experience as explicit coercion (Conroy et al. 2015). In short, simple everyday acquiescence and 'bad sex', covers a multitude of sufferings that amount to something far greater, and point to a far more extensive problem. Heterosex suffers from a paucity of scrutiny into the subtle yet extensive ways in which women are coerced under the veil of the deceptively less harmful appearance of 'acquiescence', male sanctioned 'liberation' or what I shall argue, Greer's 'bad sex':

[5] Coercive Control is now an offence in English criminal law and defined as: 'a purposeful pattern of behaviour which takes place over time in order for one individual to exert power, control or coercion over another.' See the Home Office 'Controlling or Coercive Behaviour in an Intimate or Family Relationship' (2015) retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf (accessed 29 October 2019).

> 'Future studies of sexual acquiescence need to more critically evaluate the normative heterosexist framework of human sexuality that is typically used to understand the complexities of sexual consent, and recognize that… acquiescence and coercion may be intimately linked constructs.' (Conroy et al. 2015: 1844)

We see here the empirical confirmation that indeed fucking is a social and political institution, that we are reluctant to question, for fear of either busting, or seeming to bust, the myth that fucking is the benchmark of women's liberation and becoming the feminist enemy of sex itself (Pringle in Smits and Bruce 2016: 169). It is much easier to remain included, to accede, and to 'acquiesce'. This is the particular kind of coercion, acquiescence, or otherwise unequal sexual encounter that symbolizes with depressing clarity the second-wave's disappointing fuck—the one that does not deliver on its grace-giving, self-knowing, liberating promise, but represents woman's true 'sexual life' in our male dominated social order. It is not a rape scene, but it is a scene where Celine feels no option but to continue her subordination, and the law is perfectly happy for this to be the case.

One must be careful of falling into a sex-negative and depressing trap here—one that the second-wave is often criticized of doing, along with not incorporating the experiences of women of colour and those experiences of LGBTQ women (Henry in Orr et al. 2012). But if the law, and indeed academic discourse do not attempt to move beyond the construction that is sexuality, how on earth can we expect to understand *any* woman's sexuality? Following from that, how can we hope to work towards consent reform if those of us who are charged with making and criticizing the law, are afraid to talk about the reality of 'bad sex'? Dworkin was optimistic that subordination was not natural and inevitable, and through crazy acts of resistance, we can overcome through a 'rising of objects' this oppressive sexual order (Pringle in Smits and Bruce 2016: 169). For this rising to happen, we need acceptance that there are problems with the current laws, and that our understanding of heterosex fucking is one-sided. If we are to work towards true equality in the non-contingent second-wave sense, we need a brave and radical move to place women's pleasure (and suffering) at its center, and make real efforts to empirically, theoretically and practically understand what women need from the law, since that is what guarantees and builds women's personhood within our social and legal order.

Greer reminds us that the disturbing nature of Celine's experience is that it will be unimaginably common, meaning that rape can be seen as part of the 'tissue of everyday life' and is omnipresent as a risk within the very materiality of sex (Greer 2018: 3). The question we ought to ask ourselves is how many times have I been Celine? How many 'Celines' do I know? What are Celine's desires, and what do they mean for the law? What is Celine's suffering? In the coming sections, I examine some of the criticisms and obstacles to consent reform. I then move on to examine the links between these positions and Greer's arguments, and how Greer's theoretical arguments hold the potential for significant practical impact in the quest for law reform. Finally, I argue for the necessity to take these forward into a meaningful effort for consent law reform, and how we might begin to go about this huge and urgent task.

Feminism and Consent

The juggernaut that is #MeToo has surely now asserted its status as a fully-fledged 'movement' reaching past Hollywood, past only the workplace, reaching into provoke questioning on the very fabric of gender and power relations (Jaffe 2018). We are now in a position where our responsibility, and not only the responsibility of feminism, is to survivors of sexual violence and toward a change in sexuality and norms, and to understand more about the ways in which women suffered and continue to suffer. In doing so, our responsibility is to finally look towards changing the laws and systems that have been failing these people, time and time again (Jaffe 2018: 80–81). One of the problems, not just peculiar to law, is that discussion of sex is divisive, and particularly so in relation to feminism. We saw controversy surrounding Greer's essentialist and highly problematic comments regarding trans women, but the responses to Greer's work on consent are in a different register.[6] In relation to consent, Helen Reece argued that as soon as we start talking in a real way about sex, or we dare to question a liberal position on the matter; we are shut down (Reece 2013). With Greer's 'On Rape', and Naomi Wolf's subsequent withering critique, we are about to see a repetition of the same with her telling us that Greer's *On Rape* is so wrong, in so many ways (Wolf 2018). It is quite a task therefore for us to put aside our differences, and look toward the very building blocks of the concept of consent which forms the architecture of the law's attitude to women's sexuality and sexual agency.

Women's legal personhood, or otherwise that which the requirements of consent are built to protect, has been found to lack the complexities which reflect the real and lived dynamic of consent, a reality that has been reflected empirically and which the law has been asked to respond to (Du Toit in Hunter and Cowen 2007: 58). Patriarchy has brought about a system that is in itself built on nonconsensual gender-power relations since men and women do not inhabit the equal and shared political culture imagined by the law, meaning it does not acknowledge and accommodate women's experiences (McGuinness 1993). In fact, the consent framework has been found to be so entrenched within a system that is structurally unequal for women (a system where at best a 'less unequal' situation can be attained), that one cannot help but think there is a case for doing away with it altogether, albeit Hunter argues that this is a 'practical impossibility'. Instead we should look at doing away with the consent/non-consent binary and change entirely the vocabulary of sexual offences and utilize judgments in relation to behavior as 'occasions of oppression'/'occasions of respect'. Thus, efforts at law reform would be directed towards maximizing the latter and minimizing the former (Hunter in Hunter and Cowen 2007: 160). This would allow us to remain conscious of bias and inequality, whereby liberal notions of women's sexuality (those whores and virgins) can creep into judgments.

[6] See reports of the argument to ban Germaine Greer from speaking due to transphobic views: Lewis (2015). Retrieved from https://www.newstatesman.com/politics/feminism/2015/10/what-row-over-banning-germaine-greer-really-about (accessed on 13 November 2018).

Craig argues that we must not judge encounters on their perceived morality, thereby circumscribing law's limits on women's sexual liberty (Craig 2014: 134). This is a problem that is inevitable in an adversarial system, as McGlynn argues. The law, and those who make the law and are part of it, and indeed popular opinion, are preoccupied with punishment (McGlynn 2011).[7] Focus tends to be on increasing convictions in sexual offences cases, rather than listening to the needs of diverse voices and what survivors of sexual assault actually need and want from the legal process (McGlynn 2011: 841–842). This would certainly hold true in relation to Greer's practical critique of the law as far too focused on punishment and recrimination and would go some way towards extending the legal lens inward, towards the complexities of cases (Greer 2018: 88).

For others, the replacement, or at the very least, the decentering of consent is necessary since 'freedom' and 'choice' are liberal ideals, and ones which have underpinned, and are products of, the legal system which has perpetuated structural inequality towards women: consent, as a framework has a 'darker side' (Drakopoulou in Hunter and Cowen 2007). Such terms as 'freedom' and 'choice' do not account for complex dynamics of oppression and exploitation and go towards setting a bar that is far too low for sexual encounters for women. Surely there ought to be something better to aim for than 'agreement by choice', such as the 'affirmative consent' mechanisms that operate in some BDSM and kink encounters (Tripodi 2017). Novak cautions however that the law must avoid succumbing to its propensity to normalize unhealthy versions of these relationships, since they are founded on a dynamic of domination and subordination (Novak 2017). While such relationships offer a vocalized and explicit culture of consent, which is to be admired, we must be careful to consider the context in which the appearance of even enthusiastic agreement is given, and not indulge the myth of a straight mutually pleasurable Fifty Shades scenario.

It seems that there is unification in feminist scholarship that the consent framework needs reform, but the question is now about practically how we undertake this endeavor. Defining and understanding the parameters of 'good sex', and sex that is bad sex, or worse, sex that is abusive to women, now rests at the heart of the divisions between feminist thinkers, and between genders. Tripodi has argued that we need to start looking towards sex that is not conventionally considered 'normal', in order to understand the problems with 'vanilla' heterosex. Normal sex can rightly be considered now a hotbed for toxic sexual relations, far more so than, for example, than BDSM sex, which has a culture of 'active consent' (Tripodi 2017). Tripodi argues that there is a real opportunity in empirically examining such scenarios. Talking about and researching such encounters (those which have somewhat spectacularly found themselves on the wrong side of the law in the (albeit extreme) case of *R*

[7] The problem with focusing on punishment and pandering to a perceived public need to increase conviction rates and indeed sentences, has recently been subject to withering and effective critique; and points to the general poor state of insight into the effects of punishment and the criminal justice system's real and practical impact generally, and specifically in relation to sexual offences. See Anonymous (2018) and Langford (2018).

v Brown[8] provides us with a rare opportunity to understand how power operates in a sexual culture of explicitly required active consent (Tripodi 2017, 103). Such a scenario allows us to penetrate beyond populist obscuring narratives of women's sexuality such as *Fifty Shades of Grey*, and to understand the possibilities for both productive (pleasure-giving) and toxic (abusive) communications in heterosex (Tripodi 2017, 103–104). Recent pioneering empirical work has found serious potential in reaching a more embodied and sex-positive ethic of consent that accommodates the 'grey areas', through the examination of BDSM/kink sexual cultures (Fanghanel 2019). Such work allows the overcoming of popular narratives such as Fifty Shades, which have morphed into myths, furthering the law's misunderstanding of sex, where a violent master/slave relationship has manifested in the popular (and therefore jury) imaginary as the myth of heterosexual harmless 'kink' rather than abuse (Gurnham 2016).

It is clear then, that however the critical framing is imagined, whether it be second or third wave feminist, a space must be made within it to incorporate the experiences of women (Oskala 2011). I claim that there is a simple, obvious, yet strangely problematic addition to this—we must focus, as Tripodi suggests in relation to BDSM, on particularly the *sexual* experiences of women. This means talking about sex, which for the law, is going to be an awkward and sticky task, but wholly necessary. Greer's recent intervention is a timely reminder that the fuck is both the root and manifestation of the oppression and subordination of women (Pringle in Smits and Bruce 2016). This intervention also reminds us that the legal system consolidates this through its consent frameworks, and reminds us that a search for equality requires radical (feminist) methodological intervention. This might involve a complete change of the consent framework and its connected legal vocabulary. If the law is concerned with justice, the search must involve proper conversations about fucking: 'understanding 'the fuck' is a central task of a feminist account of justice' (Pringle in Smits and Bruce 2016: 164). The law we have is a 'fucking law', which reinforces the fuck as that which allows men to possess and to know, while at the same time being too squeamish to ask the questions, or listen to the answers, on what turns women on, and what turns them off (Brooks 2019).

Scientific and empirical work ought to be at the centre of our learning on the sexuality of women, that which does away with centuries of assumptions within sex research, of men who talk about what women want.[9] There is work being done in the field of sexology, such as that of Martin, which uses real research to completely revolutionize the way that we understand women's sexual tastes, and which extends, for example, to upending the perceived preference women have for monogamy and intimacy (Martin 2018). We cannot learn enough now about women's pleasure, no matter how much it shakes the foundations of our laws and how nervous it makes the men who hold power—we must know about women's desire in all of its forms, from

[8] [1994] 1 AC 212.

[9] See MacKinnons's critique of Kinsey and his followers, who saw that women's resistance was a restriction on men's sexuality and favoured liberation in the form of 'the more sex the better' (MacKinnon 1989a; 132).

all kinds of women. We must learn from women of colour, queer women, straight women—we must learn as many stories as we can, now the stage has been cleared for us, and it is the task of law to listen and respond. We must ask the question of women that Mackinnon asked, and the law must at last listen:

> 'what do you really want? Do you feel that you have the conditions under which you can ask yourself that question? If you feel you are going to be raped when you say no, how do you know that you really want sex when you say yes? Do you feel responsible for men's sexual feelings about you? What about their responsibility for yours, including your lack of them.'(Mackinnon 1987: 3)

These questions, again written by MacKinnon over 30 years ago, are the ones that the law has *still* not asked, of any women, let alone all women. It is worth noting at this point, that that the 'person' who is the subject of s.74 of the Act, remains explicitly masculine in the letter of the legislation. To work towards creating a space for genuine equality in consent law, researchers must take on the task of answering the questions that MacKinnon asked. Greer's power is in her reminder of this task and in the following section I outline some of the connections between her work and our current law on sexual offences, and how these openings signal where we need to know more about women's sexual experiences.

Greer *On Rape* and the Problems with Consent

First, it is useful to note that Greer is deeply critical of the ability of the law to have a meaningful role in addressing the prevalence of rape, which echoes much of the feminist critique discussed above. She finds that the law is part of what divides us as adversaries, and more harmfully, provides excuses to the perpetrators of rape. As we have seen, the *mens rea* element of offences under the Sexual Offences Act 2003 provide that it must be proven that the defendant lacked reasonable belief in the victim's consent.[10] Greer argues that this, in effect, allows the defendant an excuse (Greer 2018: 28). It is helpful at this point to look at the consultation leading to the Sexual Offences Act 2003. Comments preceding the 2003 Act had pointed to the problems with *mens rea*, in that offenders inevitably possess an innate ambivalence towards consent, meaning that their state of narcissistic sexuality might already cause them to assume that a 'no' means 'yes', on the basis of presuming so-called 'playful' resistance, or some kind of rape fantasy (Temkin 2000: 1169). Of course the assessment of whether this element is satisfied is a question for the jury, but where the very issue of consent in sex, and the complex yet absolute internal reality of consent is not made visible, how can we expect a jury to have confidence in ruling that consent was impossible, while also finding that the defendant's belief was not reasonable? Take Celine's incident: does Benjamin even know or care whether there is something wrong with the sex they are having? Despite clear external

[10] s.1 of the Sexual Offences Act 2003.

evidence that Celine is unlikely to be consenting giving the unresolved anger of their encounter, Benjamin does not follow the implications of this evidence, nor investigate the matter with Celine. Yet, can we be sure that a jury would find that Benjamin had belief in consent and if so, should that belief override the clarity of Celine's non-consent? In defining the *mens rea* as it is under the Act, we allow the Defendant an opportunity to decide whether there were 'objective' signs of consent (Greer 2018: 27). That is not to say that non-consent is not obvious—of course it is, but that nature of non-consent is internal, pervasive, personal, silenced and the language to express it is not present within legal vocabulary. Therefore, non-consent is shrouded within toxic heterosex narratives which obscure the reality of non-consent through mechanisms and myths ranging from *Fifty Shades*, to marriage and duty (Greer 2018: 4–5). These myths presume willingness, often ever-present willingness, where there is clear evidence to the contrary, or when both parties are aware that the presence of willingness will ebb and flow. Celine was not consenting, but what language would she use to express this? Here we find a clear pointer by Greer on the back of the second-wave, that the law has not yet incorporated ways for women to express consent and non-consent. As Dworkin originally claimed, women exist in the eyes of the law to uphold the status of men, as objects for their use, and thereby deprived of a true and vocalized legal subjectivity, to which the objective standard of law, is deaf:

> '…we speak only their language and have none, or none that we remember, of our own; and we do not dare, it seems, invent one, even in signs and gestures. Our bodies speak their language. Our minds think in it. The men are inside us through and through. We hear something, a dim whisper, barely audible, somewhere at the back of the brain; there is some other word, and we think, some of us, sometimes, that once it belonged to us.' (Dworkin 2006: 170–171)

In allowing the Defendant to decide whether there is consent, we continue to assert male control, and his power and right to maintain the fear and threat of rape (Greer 2018: 52). Greer suggests that the genesis of this is from the reality and materiality of sex, the fuck, and the impossibility of the male realization that someone could not feel pleasure from that which he gains so much (Greer 2018: 53–54). The impossibility of this points to the fragility of *mens rea* in such defences to sexual offences. Its fragility comes from the reality that it is prone to appropriation by the inevitable narcissism of toxic male pleasure—that which is blind to the pleasure, or the needs, of the woman. Of course, the man with the penis does not lack belief in consent—*this is impossible, for who could resist!* This point also connects to Greer's controversial reminder that we should not attribute such power to the penis, that it is not a weapon, which invites us to stop fetishising it through law as the only appendage capable of committing the most serious offence under s1 of the Act. Here we are reminded of the problem of the notion of a 'hierarchy of offences' by Greer's reassertion of Mackinnon's claim that penetration by the penis 'is not all there is to what was intrusive or expropriative of a woman's sexual wholeness' (MacKinnon 1987: 87). Thus we find, that through consultation with women, we must understand the true trauma of offences such as those under s.3 that rest at the bottom of the hierarchy, and which may, in some instances be of similar intensity to that suffered

in the course of offences at the top. It is the hierarchy and law's own preoccupation with the penis, that silences the true suffering of women and retains focus on what men define as sexuality, rather than what women define as their own sexual being (MacKinnon 1987: 87).

The further problem is that there is no scope within the current legal framework to imagine a 'lack of consent'. Greer rightly asks the question: what is an objective sign of lack of consent? (Greer 2018: 24) In searching for an alternative to the problematic narrative of punishment that McGlynn identifies above, Greer examines the potential of restorative justice as an alternative (Greer 2018: 79). In England and Wales, such an initiative, where a survivor of a sexual offence can initiate a process where they meet or communicate with the offender and 'take back control', is possible where the survivor wishes to do so.[11] Under the current conditions, where rape is within the tissue of everyday sex, Greer considers restorative justice will not work. This is because the defendant is unlikely to see that he has responsibility for hurting the victim (since he sees no harm) and he frankly does not care if the victim and the community understand and forgive him, so this will have no lasting impact on either party (Greer 2018: 79–80). In fact, Greer sees no point whatsoever in pursuing any punitive measures—whether they are increased sentencing tariffs (she recommends a decrease) (Greer 2018: 28), or the more draconian surgical and chemical castration alternatives used in other jurisdictions (Greer 2018: 79). MacKinnon argued that men in prison for rape find it to be the 'dumbest thing' that ever happened, since they have done very little that is different from many other men—the only difference is that they were not caught (MacKinnon 1987: 88). Punishment, in short, is not addressing the gaps in knowledge that ought to be filled with accounts of the sexual experiences of women, and taken forward into necessary consent reform. Greer's solution is that we stop glorifying the penis, and its potentially destructive power, and instead start doing and talking sex pleasurably—in short, to decrease rape, we must start having good sex, and stop this cycle of bitterness and recrimination (Greer 2018: 88). In terms of further practical steps however, Greer is silent in terms of how we might begin to rethink legal frameworks in order to remove the phallus at its centre.

The most jarring part of Greer's work is where she tells us that 'women fantasize about being raped' (Greer 2018: 54). This is a difficult part of the book to read, and resolutely rejected by the #MeToo movement and much of feminist thought. Greer softens this suggestion by reminding us that her statement is not entirely true, since research has found rape fantasies to be those in which the woman remains somehow in control. I argue that it is important to not dismiss sexual fantasy, while also retaining the view that these will not be the fantasies of every woman. Also, given that fantasies are fantasies, by virtue of their lack of physical performance they can remain safe, and can be a healthy form of sexual play. I expect that the number of women that fantasize about violent rape and abuse, meaning for it to be realized and those who fantasize about Celine's situation will be minimal. The point here is that

[11] See Restorative Justice Council, 'Restorative Justice and Sexual Harm' retrieved from https://restorativejustice.org.uk/restorative-justice-and-sexual-harm (accessed on 29 October 2019).

we do not know, and this is symptomatic of our lack of knowledge about the sexual appetite of women, and the lack of talk about what women desire (Greer 2018: 2). Her critique here is clearly reminding us that our desire to shut down discussion of things we find uncomfortable, must not override our desire to understand the conditions that gave rise to #MeToo.

Perhaps the most important aspect of Greer's work is her reverence of men and sex. Greer is misunderstood, I argue, as being someone who is a man hater, and someone who hates women who love sex. This seems a bizarre position to take since her entire thesis asks us to have better sex, and to be moved in this through our love of men (Greer 2018: 87–88). This is particularly so, since it was MacKinnon who said, directed towards men (thought it could so easily be directed towards the law, too):

> 'I think you need to remember that we love you. And that often as a result it is often unclear to us why you are so urgent. It is unclear to us why you are so pressured into seeking sexual access to us. We want you not to denigrate us if we refuse. We want you to support us and to listen to us, and to back off a little.'(MacKinnon 1987: 83)

A particularly useful phrase that Greer uses is where she says that 'rape is a hate crime, not a sex crime' (Greer 2018: 69). This is maybe where we can identify some useful point where the law might intervene. Rape is committed by men that find it impossible to know what consent is, due to their own narcissism and inability to be kind to their partners, and to give them pleasure (Greer 2018: 8). Toxicity is something that the law should punish and remedy, rather than seek out to punish the victim for not achieving the impossible task of communicating her lack of consent. For sure, rape is a crime against sex, against pleasure, and against orgasm, but it is first and foremost the ugliest of hate crimes against a woman's body—whether non-consensual and/or violent. Here we find the possibility of connecting to Hunter's suggestion that we change our vocabulary around consent, where we look at oppression/respect. However, again, it is a reminder given by Greer that to do this, we need to focus on sex, to find out what women's sexuality needs from the law, and what the law needs to know from sex.

As both Greer and Wolf argue in different ways, we need much more research about women's sexual identity, about male sexuality, and what we want and need from sex, without judging each other on moral suppositions borne of assumptions borne of squeamishness. If we take the example of Celine, it is likely that there will be women that identify with this. It is like the situations that Greer mentions, where unwanted sex within a relationship becomes an instrument of alienation and withdrawal, that gradually whittles away the intimacy between partners, causing heartbreaking loneliness and pleasure-less sex, followed by the inevitable blaming that she was the one who destroyed their mutual love (Greer 2018: 3–9). A lack of consideration, a lack of kindness, a lack of willingness to explore mutual sexuality together, a lack of care and listening—a blindness and deafness to the sexuality of women, narcissism and entitlement, and then blame on the one he hurts for the pain he caused. This is a situation that is familiar, all too familiar, yet we know so little about it, and the law knows so little about it. We know about the psychology and

behavior of violent rapists (as indeed we should) but we know less about these everyday toxic men who far outnumber them and who's offending is incalculable. As Greer tells us, 'we can only understand [rape's] prevalence and our inability to deal with it if we position it correctly in the psychopathology of daily life'(Greer 2018: 5). In short, we need to know far more about the pleasures and traumas of heterosex.

I argue that to understand this, we need to focus on what Greer is saying about consent. It is clear that she considers the multitude of instances of rape that happen under the guise of bad sex would not be caught by the law. Given the definition of consent, it is easy to see how the law is blind to these instances, for it all depends on the conception of 'freedom' that we apply. Part of the freedom we have is about having sex with who we want, when we want, with the pleasure that we desire and this, it is submitted, is something the law knows nothing about when it comes to women's sexuality. If we are to take Greer at her word, then the law is useless and has never stopped sanctioning rape. The reforms leading to the 2003 Act are an illusion, and abandoning of the marital rape exception (*R v R*[12]) was an illusion—all we have is a more sophisticated mechanism for sanctioning sex without consent, and a traumatic and humiliating process for victims of the most violent of rape offences.[13]

In the final pages of Greer's work, we find her lament on the demise of honest sex-talk (Greer 2018: 86–88). In fact, it is not a lament only about the lack of talk, but also a lack of apparent ability for women to be honest about what they want—the demise of the erotic in favor of the sexual, particularly in relation to the imagery to which we are daily exposed. Greer advocates slower sex, creative sex, the sex that we want, that is not bad sex, that is not the sex that Celine has, nor the myriad other women who are, or have been in this position.

Conclusion: Strategies Towards Reform

Having considered Greer's recent work, it is apparent that the author is not simply writing to shock us, nor in an attempt to write the philosophical treatise that Wolf criticizes her for not producing. Greer's work is an attempt to remind us, at a crucial point, of the significance of feminist thought in focusing in on the acts, or the facts, that the law on sexual offences attempts to judge when it is invoked. Greer is reminding us that two things are needed: (1) we need to take a close look at the very materiality of women's subordination and suffering. In doing so, we need to seek out, beyond masculine understandings of pleasure, the secret moments of Dworkin's radical rebellion, and (2) to do so, we as researchers, law-influencers and makers, we must take forward MacKinnon's feminist method. These two abstract points mean that we must focus on women, for a change—that is, the *sexuality* of women. The question for us as researchers then is how, empirically, methodologically, and practically, do we reach women, in order to bring this evidence to the law and undertake the complex and yet sadly still necessary task, of reasserting our demands? Focusing

[12] *R v R* [1991] UKHL 12.

[13] See Smith and Skinner (2012) and Ellison (2000).

on the act of sex, or the fuck, as Dworkin would say, as an object of scrutiny in the current academic and legal context is a challenge. To achieve the task that was set by the second-wave, we need nothing less than radical intervention: we need 'Joan of Arcs', to subvert deeply entrenched inequality. I claim that there are two key areas that we need to collectively target to reach a position whereby we can firstly ask the right questions, and crucially, to gain the answers in terms of research, and finally to create the conditions whereby law is able to listen.

Although law has taken both a critical and interdisciplinary turn, as a discipline it remains conventional relative to, say, politics, philosophy and sociology, particularly methodologically.[14] Yet the advantage of law is that, by its very nature, it can incorporate a multitude of disciplines, ranging from geography (Holder and Harrison 2003) to drugs and childhood (Flacks 2018) and to psychology and psychoanalysis (Aristodemou 2015). Feminist legal studies has also asserted itself as a formidable critique of the inequalities within the legal system (Fineman 2013). Yet when it comes to method, and in translating this disciplinary variety and experiment toward jurisprudence, a conservatism and reticence by formal consultation mechanisms and law reform to take account of and listen to radical scholarship. This may be because law's critical and arguably radical turn, has been recent. The old pale male and stale philosophical guard of Ronald Dworkin, Raz, Kelsen, Hobbes, Bentham and Kant retain their expected presence in any jurisprudence syllabus, with feminist jurisprudence being, at best, an add-on. Even in philosophy and theory, it is the case that the authority of mostly male philosophy retains its grip, meaning that even our philosophical voice in relation to the law, is that of men. This indicates again the importance of Greer's intervention, which reminds us of the strength, power and importance of the second-wave feminist voice, and that woman philosophers have been making these arguments for a while, with little in the way of meaningful response from jurisprudence. Even though we have seen a critical turn in the law, even with radical theory we see evidence of the legacy of ancient philosophy, with Queer Theory being criticized for invisibilising the experiences of women (Beresford 2014). Further, philosophy can have the effect of teaching us false lessons about our desires. We must be cautious of imbuing philosophy which has been written over the centuries by men, with authority to judge women's sexuality and desire (Brooks 2019). Law in discipline, practice and reform process must open, or otherwise be forced to open, to the feminist method, which MacKinnon argued for in the first place, and of which Greer reminds us. When the Law Commission are considering and taking forward a paper that is feminist, critical and includes empirical evidence of women's views and experiences of sexuality, we might consider the task to be at least underway.

[14] See for example in terms of the wide ranging theoretical disciplinary openness of law (Philippopoulos-Mihalopoulos in Sellers and Kirste 2017) and in relation to law, criminology, theoretical experimentation and second wave feminism in particular (Dymock 2018). For the expansion of diverse methods in socio-legal work, see McConville and Chui (2017) and in relation to sexuality work (Creutzfeldt et al. 2019). However, the allying of radical methods and critical legal scholarship in sexuality has proven problematic from and institutional and ethical perspective, see Brooks (2018).

Methodologically speaking, there is also a problem to bringing forward radical sex research and women's sexual experiences to the law. Radical methods have indeed started to creep into the study of law, in relation to for example, environmental law, human rights, criminal law and law and identity, but less so in relation to sexuality, where cultural anxiety in response to such methods within academia remains (Irvine 2014). If we are going to expect the law to listen to our concerns about consent, and to work towards meaningful reform, then it is obvious that we need an academic space that allows the necessary work. In terms of allowing such work, the institutional priorities of academia need to give the same weight and institutional support and respect to radical sexuality work, as it does to conventional scientific and 'authoritative' quantitative work that typically yields research income. Research ethics processes within academic institutions are also instrumentalised to silence what might be deemed as 'risky' sexuality work that might yield uncomfortable findings (Brooks 2018; Hedgecoe 2016). This institutional reticence to hear about sexuality, particularly women's sexuality, resonates across both law and academia. This indicates the practical reality of Dworkin's pessimistic optimism, that although subordination and inequality are not inevitable, we require radical and confrontational intervention to fuck with a system that is structurally inclined to silence women's sexuality. Greer's work is an attempt to do just that, and to provide a momentum for feminist thinkers and researchers, radical socio-legal scholars and theorists, to finally provoke law into responding to our overdue understanding of women's sexuality, with meaningful consent law reform.

Compliance with ethical standards

Conflict of interest Author A declares that he/she has no conflict of interest.

Human and animal rights This article does not contain any studies with human participants or animals performed by any of the authors.

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