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ORIGINAL ARTICLE

Consent, mutuality and respect for persons as standards for ethical sex and for sex education

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Abstract

This article examines Lamb, Gable & de Ruyter's critique of consent as the standard by which one can determine if a sexual encounter is ethical in their 'Mutuality in sexual relationships: a standard of ethical sex?'. Their examination of this issue is to be welcomed for a number of reasons, including growing criticism of 'consent' as the gold standard in medical and social science research ethics. The focus of this article is specifically on school sex education (principally, for 11–16-year-olds). Contrary to Lamb et al., I argue that it is difficult to maintain that 'The standard of mutuality should be taught in all schools and the government should indeed demand or support this, even with checks to see if children have learned this standard, at least in attitudes about sexual behavior' for three reasons. First, while there are good arguments in favour of school children being introduced to the ideal of mutuality, it seems too high a bar to require children to 'have learned'—a phrase that can be taken to mean to 'have come to accept' rather than merely to 'understand'—this; consent is a more appropriate requirement and is itself a sufficiently rich term that it merits analysis by students, aided by their teachers. Second, my judgement as a sex educator is that sex education is more effective when students are given the opportunity to explore what is good and what is right, rather than simply being told. Third, if we have to adopt a

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single principle, there is much to be said for 'respect for others' to trump both 'consent' and 'mutuality'.

KEYWORDS
consent, mutuality, respect for persons, RSE, sex education, sexual relationships

CONTEXT

This article arises from a 2021 Conference held jointly by the Philosophy of Education Society of Great Britain and the History of Education Society UK to mark the arrival of statutory school Relationships and Sex Education (RSE) in England from September 2020. As Specialist Advisor to the House of Commons Education Committee Personal, Social and Health Education (PSHE) 2014–15 Inquiry that, to many people's surprise, recommended that RSE be made statutory in schools, I was delighted both at the Committee's recommendation and the fact that it was subsequently enshrined in law and has now been implemented.

As is not untypically the case when it comes to matters of sex education, once it had been determined that schools in England were going to be required to teach RSE, there were then fraught debates about precisely what schools should do (cf. Sell & Reiss, 2021; Ji & Reiss, 2021; Zimmerman, 2015). The resulting guidance (Department for Education, 2019) states that all primary schools must teach Relationships Education, that all secondary schools must teach RSE, and that all state-funded schools must teach Health Education. It considers carefully such contentious questions as what should be taught at different ages, how lesbian, gay, bisexual and transgender issues should be addressed, issues to do with religion, and the right of parents/carers to withdraw their children from RSE lessons.

One of the themes of the 2021 Conference was the place of consent in sexual relationships, and this article examines Sharon Lamb, Sam Gable and Doret de Ruyter's critique of consent as the standard by which one can determine if a sexual encounter is ethical in their article titled 'Mutuality in sexual relationships: a standard of ethical sex?' (Lamb et al., 2021). The key point that these authors make is first to reject the idea that valid consent is the gold standard by which a sexual encounter is deemed ethical and second to argue for the standard of mutuality 'that goes beyond legalistic and contractual foci' (p. 271).

Interestingly, examination of the references to 'consent' in the Department for Education (2019) guidance indicates that consent is not particularly privileged; rather, it is one of a number of interconnected concepts around relationships and sex education that are encouraged. Under the heading of 'Respectful relationships, including friendships', we read:

> Pupils should know
>
> - the characteristics of positive and healthy friendships (in all contexts, including online) including: trust, respect, honesty, kindness, generosity, boundaries, privacy, consent and the management of conflict, reconciliation and ending relationships. This includes different (non-sexual) types of relationship. (p. 27)

and under the heading of 'Intimate and sexual relationships, including sexual health', there is:

> Pupils should know
>
> - how to recognise the characteristics and positive aspects of healthy one-to-one intimate relationships, which include mutual respect, consent, loyalty, trust, shared interests and outlook, sex and friendship. (p. 29)

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Consent also features in the Department for Education guidance in the section on 'The Law', where it states:

> Pupils should be made aware of the relevant legal provisions when relevant topics are being taught, including for example:
>
> - consent, including the age of consent (p. 30)

LAMB, GABLE AND DE RUYTER'S ARGUMENT ABOUT CONSENT AND MUTUALITY

Lamb et al. (2021) note that in recent years consent has been elevated 'to almost a fetish in campus sexual assault prevention campaigns' (p. 272) and go on to write:

> Current college consent campaigns warn students that sex without clearly expressed consent is rape, that consent given while intoxicated, having had any alcohol, is not valid, that consent can be retracted at any moment within an encounter, and, in some campaigns, that it must be conveyed 'enthusiastically,' unambiguously, and be reaffirmed throughout the encounter … (p. 272)

Lamb et al.'s key point is that while consent is a requirement for ethical sex, it is not sufficient. They examine the arguments of others that there needs to be desire for ethical sex or that one's sexual agency needs to be recognised and go on to ask 'what, at bottom, is our responsibility to others whom we approach for or negotiate with about having sex?' (p. 274). Their answer is 'that one should ensure that sex is mutual' (p. 274).

In putting mutuality at the core of their answer, Lamb et al. draw on the work of such major theorists as Carol Gilligan (care ethics), Martha Nussbaum (the argument that love or respect minimises the risks of sex) and Iris Murdoch (the concept of an attitude of 'loving attention') before arguing:

> we do not intend to claim that people have a moral obligation to care *for* the other person they have sex with, but that they have an ethical obligation to ensure that sex is mutual, which is, in a sense, caring *about* the other person. We define 'mutual,' not as expressing loving or caring acts, but use Murdoch's (1970) description of 'a just and loving gaze directed upon an individual reality' (p. 34) as a model for what mutuality in sexual relations might look like. In short, we believe that caring attention to the other is a moral requirement. (p. 274)

In further critiquing the adequacy of sexual consent as a standard, Lamb et al. go on to reference the pressure someone may feel to perform sex acts that they do not want in spite of having given consent. They then argue that mutuality is a 'thick' concept in the sense that the term is used by Bernard Williams (1985) and Clifford Geertz (1973), and consider a number of possible objections to the use of mutuality as a measure of ethical sex: that it may lead to a patronising attitude towards a sexual partner (it's not enough that you consent to have sex with me—I need to check that it will be good for you); that it sets the bar too high; and that it is best thought of as an ideal rather than a standard or principle.

It would be possible to examine these specific counter-arguments (and the responses to them that Lamb et al. provide), but I think it more profitable if I start by examining (in sympathy with Lamb et al.) other criticisms of consent as the ultimate arbiter, then provide three criticisms of mutuality that are in addition to those examined by Lamb et al. (ones that fall within the 'setting the bar too high' category) and end by discussing what school sex educators might best do.

CONSENT AS THE CRITERION FOR ETHICAL SUITABILITY

We all have to make moral decisions daily on matters great or small about what are the right things for us to do. The discipline of ethics tries to probe the reasoning behind our moral life, particularly by critically examining and analysing

the thinking which is or could be used to justify our moral choices and actions in particular situations. It might be supposed that reason is sufficient for one to be confident about an ethical conclusion. However, as has often been pointed out, there are problems in relying on reason when thinking ethically. In particular, there still does not exist a single universally accepted framework within which ethical questions can be decided by reason (cf. O'Neill, 1996; Parfit, 2011). Nor does it seem likely that such a framework will exist in the foreseeable future, if ever. For instance, as is widely agreed, reason cannot decide between an ethical system that looks only at the consequences of actions and one that considers whether certain actions are right or wrong in themselves, whatever their consequences. Much of ethics still boils down to views about right and wrong informed more about what seems 'reasonable' than what follows from formal reasoning (Reiss, 2019).

There are a number of possible intrinsic ethical principles. Perhaps the most widely discussed are those of autonomy and justice. People act autonomously if they are able to make their own informed decisions and then put them into practice. It is here that consent receives its support. Much of the academic literature on consent includes issues to do with consent in medicine, though issues to do with consent arise in any area of life in which there are interactions between two or more people. The atrocities of medical experimentation under the Nazis in the Second World War gave renewed impetus to the development of an international code of medical ethics. What became known as the Nuremberg Code derives from the judgements of the judges who presided over the Nuremberg Trials in 1945–46. It has ten points to it, of which the first one, about consent, is much the longest:

> The voluntary consent of the human subject is absolutely essential.
>
> This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment.
>
> The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity. (NIH, 2021)

Indeed, it is in research that consent comes closest to trumping all other considerations. Standard treatments of medical ethics run through a number of ethical principles (autonomy, non-maleficence, beneficence and justice being a common quartet; Beauchamp & Childress, 2019), but while beneficence (for example) routinely trumps autonomy in certain circumstances—one does not, for instance, need to give one's consent to be sectioned—when it comes to medical experimentation, there are few circumstances when consent to the procedure is not required either by the individual subject or, if they are too ill or too young, by a competent close relative acting on their behalf.

There is, unsurprisingly, a large literature on the adequacy of informed consent as an ethical criterion for medical research and for medical treatment. Occasional disasters such as the deaths of healthy individuals in medical trials produce responses that tend to:

> result either in a tightening of existing informed consent procedures, or in the introduction of informed consent procedures where hitherto none had existed. The assumption underpinning the implementation of informed consent is that doing so will protect the rights and welfare of individuals by offering

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> them the opportunity to make free and informed choices. In general the informed consent process is depicted as an antidote to counter medical paternalism and as such, a polar opposition has been established with the empowered, informed, autonomous decision-making patient or research participant at one end of the divide and an all-powerful paternalistic authority at the other. (Corrigan, 2003, p. 769)

At the same time, consent in medical research is not the same as consent in social science research (Hoeyer et al., 2005) and consent for medical procedures is not the same as consent in everyday life. For all that consent is not the be all and end all either in medicine or in sexual behaviour, it remains a key criterion in determining the acceptability or not of human behaviour. In the specific context of school sex education, I'll return to consent below, when considering what school educators might best do. Here I simply note that one advantage of consent as a criterion is that it is *relatively* easy to apply whether in medicine, sexual behaviour or any other situation where one has a choice. In most circumstances, any of us, if competent adults, can be pretty sure whether someone else is consenting to what we want to do to or with them—whether it is to do something sexual with them, to vaccinate them or to borrow their house keys. Particularly when educating school students, there is much to be said for teaching a principle that is relatively easy for them to understand.

MUTUALITY AS THE CRITERION FOR ETHICAL SUITABILITY

In this section, I explore possible objections to mutuality as the criterion for ethical suitability in sexual matters. For reasons of space, I do not rehearse those objections to mutuality as the criterion for ethical suitability in sexual matters made by Lamb et al.

One problem with mutuality as the overriding criterion for determining what is ethical sex is that, at least with respect to how the word is used by Lamb et al., it seems to focus only on the (normally two) individuals who might (if the sex passes the criterion of mutuality) engage in joint sexual activity. However, there may be other individuals with relevant interests. Suppose that one (or more) of the parties involved has already made promises (explicitly or even implicitly) to someone else about sexual faithfulness. Imagine that you and I begin a sexual relationship that measures well on a criterion of mutuality; is it not the case that the rightness of our relationship is undermined if one or both of us are already in a sexual relationship? This objection seems to have a special force if one has made a promise to be sexually faithful.

Another problem with teaching mutuality in schools is to do with whether mutuality is taught as *the* or *a* criterion for ethical sex. Lamb et al. advocate that 'The standard of mutuality should be taught in all schools and the government should indeed demand or support this, even with checks to see if children have learned this standard, at least in attitudes about sexual behavior' (p. 282). However, sex education is more effective when students are given the opportunity to explore what is good and what is right, rather than simply being told what is. In asserting this, I admit that I need in part to rely on my and others' (e.g., Aggleton & Crewe, 2005) holistic judgements as to what makes for effective sex education. In addition, though, it is widely held in education more generally (i.e., not just with regard to sex education) that teaching about contentious issues is more effective when students are given the opportunity to develop their own views rather than simply being presented with one that they should accept (e.g., Lawton et al., 2004). Here, I take Lamb et al.'s 'have learned' to mean to 'have come to accept' rather than merely to 'understand'; as I'll make clear below, it seems a good idea for teachers to introduce the notion of mutuality to their students.

A third problem, which I will mention only briefly here as Michael Hand deals with it in more detail in his contribution to this issue (Hand, 2022), is that although there is much in favour of mutuality in sexual relationships, requiring it would be controversial and schools should not be in the business of insisting on a particular line being taken about a controversial issue (cf. Hand, 2018; Reiss, 2022).

WHAT MIGHT SCHOOL SEX EDUCATORS BEST DO?

So, given the above discussion of consent and mutuality as standards for ethical sex, what might school educators best do? Let me begin by making a conceptual point; I have already argued that educators should not promote a particular line when that is controversial—the third of the three problems I identify concerning mutuality. However, what *is* worth doing is to get students to think about what both consent and mutuality mean and what might be useful about consent and mutuality as ethical criteria in the context of sexual behaviour. This is particularly important for consent, given its prevalence in legislation and in university and workplace codes of sexual conduct.

Consent

A useful account of sexual consent is given by the organisation 'Rape Crisis England & Wales' (the umbrella body for a network of independent Rape Crisis Centres). They maintain that:

> Consent looks like:
>
> - Enthusiastically saying 'yes!'
> - Talking to your partner about what you do and don't want, and listening to them in return
> - Checking in with your partner—'Is this OK? Do you want to slow down? Do you want to stop?'
> - Respecting someone's choice if they say 'no'—never trying to change their mind or put pressure on them
>
> Consent does **not** look like:
>
> - Feeling like you have to agree to sex because you are worried about your partner's reaction if you say 'no'
> - Someone having sex with you when you are asleep or unconscious
> - Someone carrying on with sexual activity despite your non-verbal cues—for example, if you pull away, freeze, or seem uncomfortable
> - Someone assuming that you want to have sex because of your actions or what you are wearing (for example, flirting, accepting a drink, wearing a short skirt)
> - Someone assuming that because you have had sex with them before, you want to have sex again
> - Someone removing a condom during sex, when you have only agreed to sex when using one. (Rape Crisis England & Wales, 2021)

In quoting this passage, my point is not that school teachers should teach this as *the* definition (or understanding) of sexual consent. Rather, it is that school students should think about and talk about the possible meanings (plural) of abstract terms like 'consent' and 'mutuality' and explore what these mean in the context of sexual relationships as well as in other contexts.

By the time they reach the age of about 15, school students should be aware that countries have an age of consent and associated laws. In England and Wales, the age of consent has been gradually raised over the years (it was first set at 12 in 1275 and only raised to 13 in 1875). Currently, it stands at 16 for sexual activity, i.e., penetrative sex, oral sex and mutual masturbation. There are guidelines that nevertheless mean that, for example, two 15-year-olds would not, other things being equal, be taken to court for engaging in sexual intercourse, let alone be sentenced for this. However, students should know that if someone over the age of 16 engages in sexual activity with someone under the age of 16, they might end up with a criminal conviction, and the sentence they are likely to receive increases the older they are and the younger their partner is. They should also know that there are some specific protections in place for

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16- and 17-year-olds. For example, it is illegal to take a photograph or video of a 16- or 17-year-old engaging in a sexual activity, it is illegal to pay someone aged 16 or 17 for sexual services, and it is illegal to engage in sexual activity with someone under 18 if you are in a position of trust (for instance, you are their teacher, social worker, doctor, care worker or religious minister).

A widely used video to teach school students about sexual consent is *Consent: It's as Simple as Tea* (May & Blue Seat Studios, 2015). By August 2020, it had had over 150 million views across a number of platforms. As Karsen (2020) puts it:

> At just under three minutes, the short, accessible video is a versatile teaching tool, fitting easily into various delivery methods and resonating with diverse audiences. The tea analogy educates viewers about sexual violence in a coded way, making it easier to engage with potentially explicit or distressing content. As a sexual violence prevention educator, I have used the Tea Consent video in numerous post-secondary workshops because it is concise and engaging.

Nevertheless, not all young people like it (Maslowski *et al.*, 2022), and Karsen argues out that 'the video glosses over the complexities of power, privilege, and socialization that constitute sexual conduct' and that:

> by positing a singular initiator of sex, the video reproduces the active-passive binary that structures traditional norms around sexual engagement (which are usually gendered male-female but also hinge upon other social locators such as race, religion, or class). In this view, one person is posited as the active initiator and the other as the relatively passive gatekeeper whose role is to accept or decline the offer. (Karsen, 2020)

My point in mentioning this is not to 'diss' this valuable video on sexual consent; rather, a trope to which I will return, sex education above all is a topic where it is best to give students their voices, to allow them to express (and develop) their opinions and, where possible, to frame debates. Sex educators should, therefore, always be open to criticisms of the approaches they are using.

Respect for persons

Although I am not sure that there is a single ethical criterion or principle that overrides all others when it comes to deciding whether particular instances of sexual behaviour are ethically good or not, there is much to be said for sex educators to get students to think about the criterion of 'respect for persons'. For moral philosophers, this term immediately suggests the writings of Kant, particularly in his groundbreaking *Groundwork of the Metaphysics of Morals* (Kant, 1785/2012), but the language is sufficiently intelligible for school students, even if they do not know of its treatment in philosophy. Of course, precisely what constitutes 'respect' is open to discussion (Dillon, 2018). There are some who would all but equate it with a recognition of someone else's autonomy—but then it would make little sense to respect babies, unless one holds that failing to respect them is wrong because of the harm it does to someone else (e.g., their parents—orphans beware).

In terms of sexual behaviour, the notion of 'respect' can be very helpful when teaching sexual ethics. Debates about sexual consent can sometimes be profitably conducted within an overarching framework of respect, and I suspect the term is more intelligible to most teenagers than 'mutuality' and less likely than 'care' to be rejected by them. Indeed, other educators have argued that the notion of respect for persons is a valuable framework within which to consider liberal sex education (e.g., Heyes, 2019; Steutel & De Ruyter, 2011).

Consider, for example, the issue of sexting (i.e., sending sexually explicit photographs or videos of oneself to others, typically via a mobile phone), which is increasingly prevalent among school-aged students (e.g., Van Ouytsel

et al., 2021). One could discuss with students whether or not it is respectful to forward or show to others a sexually explicit photograph or video that one has been sent and, then, why this is or is not the case (depends on the circumstances—contrast someone choosing to send an unrequested sexually explicit photograph or video of themself with someone who has been pressurised into sending such a photograph or video, thinking that it is a private communication to the recipient). One can also then help students to think about the notion of self-respect, and how this might relate to self-esteem.

The notion of respect for persons is not far from virtue ethics, and students could be helped to consider what it is to be a good person in terms of sexual attitudes and behaviours. There is much to be said for a teacher refraining from laying down the law, for example, about the acceptability of pornography; instead, what can work well is to enable students to talk about the relevant issues. This does not mean, of course, that a teacher has to remain neutral about everything. Encouraging students to consider the acceptability or otherwise of certain behaviours can be educationally valuable even if the teacher is perfectly clear as to whether the behaviour in question is acceptable or not. A teacher might (almost certainly should), for instance, decide to be very clear-cut about the unacceptability of paedophilia or rape. However, even in such cases, there is much to be said, at least with some student groups, for encouraging them to think about and verbalise what is wrong in such cases.

Thought experiments

Sex education needs to be relevant to the current and/or future lives of students. This means that while certain elements are likely to be common the world over, it is important that sex education is culturally sensitive (Vanwesenbeeck et al., 2019). At the same time, too rapid an adoption of the argument that sex education must be culturally sensitive can sometimes lead, problematically, to those in charge of sex education determining that certain issues need not be covered as 'they do not occur here'.

Teaching about sexual behaviour is different from teaching about most school topics in at least two ways. First of all, to many people, their sexual behaviour is a private matter, to a greater extent than perhaps anything else about themselves. Accordingly, and unsurprisingly, many people, including many school students, find it embarrassing or simply very difficult to talk about sexual matters. Second, it is manifestly inappropriate for students to engage in much practical activity, nor are simulations of practical activity always feasible. Most schools teach about the different types of contraception but few in England have students put a male condom on a model of a penis and I am not aware of any that get students to practise inserting a female condom.

Partly for such reasons, thought experiments can play a valuable role in RSE and can be used to explore notions of consent, mutuality and respect. Students can role-play good ways (and can think about what 'good' means) of asking someone to go out with them—and for teachers who do not feel comfortable orchestrating role-plays, the students can simply talk in small groups about what might be a good way and what might not be a good way. If even such discussion is felt by a teacher to be too risky, students can always write about this.

Thought experiments can be a valuable way of getting students to imagine what it would be like to be someone who they are not. At its simplest, this can entail getting students who identify as male to role-play being female and vice versa. I admit that when I used to do this as an exercise, transgender issues were not considered. One would need now to envisage the possibility that some parents might deem such role-play unacceptable. (My advice to early career teachers is always carefully to check the school policy for RSE and to consult with one or more experienced teachers before undertaking a new teaching approach.) For a thought experiment that is unlikely to raise any problems, and will get school students to think about a way of living that few of them may have considered, one could get them to envisage being asexual. Asexuality is thought to make up between 1% and 6% of the population; asexual individuals are not sexually attracted to others, though some have sex and some have romantic relationships without sex. As Brunning and McKeever (2021) put it, 'Asexuality is overlooked in the philosophical literature and in wider society. Such neglect produces incomplete or inaccurate accounts of romantic life and harms asexual people' (p. 497).

A final thought experiment that I have found to work well as a way of helping young people to think about and put into words what if anything is distinctive about sexual relationships as opposed to other kinds of relationships is to get them to think about similarities and differences between changing sexual partners and partners in tennis (other sports are available). Although some may initially fail to see the worth of the comparison, most soon start exploring issues to do with faithfulness, making and breaking promises, letting someone down and looking after oneself.

CONCLUSIONS

Many students are disappointed with the school sex education they receive (e.g., Advocates for Youth, 2022; Karp, 2021; York et al., 2021). At the same time, there remains an urgent need for school sex education (e.g., Ofsted, 2021; Ringrose *et al.*, 2021; Srinivasan, 2021). Given this, and the long-running debates as to what should be included within sex education (e.g., Moulin-Stozek, 2021) and to how it should deal with values (Halstead & Reiss, 2003), it may seem akin to debating about the number of angels that can dance on the head of a pin to be discussing whether consent, mutuality or respect for persons is the principle most appropriate for deciding what is acceptable sexual behaviour. Nevertheless, there are important differences between the three. While we may want mutuality in sexual relationships, the argument advanced here is that it would be a mistake to make mutuality the standard for ethical sex and to privilege it in sex education.

While there are good arguments in favour of school students being introduced to the ideal of mutuality, mutuality should not be presented as *the* standard by which to judge whether any particular instantiation of sexual behaviour is morally acceptable. Furthermore, sex education is more effective when students are given the opportunity to explore what is good and what is right, rather than simply being told. There is, therefore, much to be said for students being introduced to terms such as mutuality, consent and respect and for examining what these each mean in general and in the context of sexual relationships.

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