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Consent-Deception: A Feminist Cultural Media Theory of Commonsense Consent

Making Sense of Consent

Oddly it comes down to common sense.

—Mark Speakman, Attorney General New South Wales, 26 May 2021

This article draws on perspectives from cultural studies, media and cultural theory, to argue for a newly invigorated conceptualisation of consent in feminist theory. While I will not be claiming that consent comes down to common sense, I do want to invite speculation on how consent ‘lodges in the everyday’ (Probyn, 1993: 79), including as a commonsense expression of mental and sensible perception.¹ During a recent visit to Australia, I learned about the new communicative standard of consent adopted by the legislature of New South Wales.² For good reason, the reforms have been hailed as a feminist victory.³ Listen to how Greens MP Jenny Leong welcomed the 2021 Bill to parliament: “This reform and the much needed education around it could be the beginning of the end of rape myths [...]. Now today we see the power of movements to change laws, to reshape society and to smash the patriarchy”.⁴ Consent is held out with such feminist promise. This article identifies our changing relation to media as a key cultural condition of the mediation of this promise, or what we could call consent’s ‘structure of feeling’ (Berlant, 2008; Williams, 2077). Rather than advance an existing account—consent has never been a field organising concept for feminist theory—my article invites the reader to attend to consent as a cultural concept, arguing that the mediation of consent across different cultural registers invites new vantage points from which to theorise consent from a feminist perspective.

Consent was a political concept first, before migrating to law (The Age of Consent, 2017). The roots of consent in political philosophy give us cause to familiarise ourselves with the early interventions of feminist political theory. Carol Pateman's 'Women and Consent' (1980), for example, offers an intellectual scaffolding that is ever pertinent to consent as the subject of feminist jurisprudence. Axiomatically, Pateman identifies that women's 'formal legal status is contradicted by social beliefs and practices' (156): the theory of consent too often assumes that institutions are 'actually constituted through the free agreement of equal persons' (162). Consent in its conventional usage 'helps reinforce the beliefs about the "natural" characteristics of the sexes' because '[c]onsent must always be given to something' (164, original emphasis). Consent thus belongs to a 'relationship between the sexes' in which women are 'held to consent to men', rather than to an 'egalitarian sexual relationship' (164). Pateman's analysis also gives us clues to the affective politics of consent that arise out of the relationship between feminist theory's inaugurating political concepts and consent conceived as both an analytical given and as socially and historically embedded. The invention of political consent was a feat of reverse engineering. Missing from Enlightenment philosophers' concept of political consent though was a practicable means of its attainment, resulting in what Pateman calls consent's "standard embarrassment" (150). Consent works best, if at all, within the confines of classical theory, as the purview of political obligation. Taken outside these parameters, tested against 'the realities of power and domination' (163), the concept starts to look a bit silly. It is to avoid the embarrassment of a concept whose terms cannot be instantiated that politico-legal interpretations end up 'reducing the concept of consent to meaninglessness': 'The straightforward assertion that liberal democracies *are* based on consent avoids the "standard embarrassment" that occurs when theorists attempt to show how and when citizens perform this act' (150, original emphasis).⁵ We see this negation of embarrassment in the neoliberal culture of the 'contemptuous classes' (Berlant, 2020: 2), whose imperviousness to shame can be understood as an affective backformation of consent's meaninglessness. As a democratic measure, Pateman argues that consent 'cannot be distinguished from habitual acquiescence, assent, silent dissent, submission, or even enforced submission' (1980: 150). Given how such paucity in meaning is key to the way that consent is availed to power, the terms of consent remain deeply contested in political and feminist theory. Consent is implied in the surreptitious recruitment of our senses to neoliberal forms of governance,

such as in the *dispositifs* designed to manage feminist resistance (e.g. McRobbie, 2020), or the ‘attachments to modes of life’ to which people ‘barely remember consenting’ (Berlant, 2011: 52). The insecurity of consent means that its meting out to the bodily politic requires ongoing justification, inviting accompanying ‘defensive propositional feelings’ (Murphie, 2018: 19) like suspicion, mistrust and paranoia. The flipside to consent’s hermeneutic infidelity is the generative project of redefining consent from a feminist perspective. Feminism has precisely troubled the false equation of consent to acquiescence, assent, dissent and submission through drawing women’s lived, ‘hedonic’ relation to consent into political significance, redefining consent as a concept whose specification has vital implications for women’s ‘happiness or well-being’ (West, 1987: 87).

As recounted by North American feminist legal scholar Roseanna Sommers, the trials of Bill Cosby point to the ongoing complex affective politics that arise through the hermeneutics of consent:

When Bill Cosby stood trial for sexually assaulting his former mentee Andrea Constand, the jury was tasked with deciding whether Constand had given consent. The first jury deadlocked on this question, resulting in a mistrial. The second jury, also flummoxed by the question, submitted an enquiry to the judge asking for the legal definition of consent. The judge replied that the jury had already been given the legal definition of the crime—penetration “without the complainant’s consent”—and that he could supply no further guidance. “[T]he jury will decide what consent means to them,” he instructed.⁶ (Sommers, 2020: 2235)

The discrepancy between the concept of consent enshrined in law and held by people without specialist knowledge, as an expression of normative attitudes and values, is a major theme of feminist legal and political discourse. Sommers advances the concept of “commonsense consent” (2232) to analyse the lack of correspondence between the normative, “lay” perception of consent, and the legal, “canonical” one. As in the Cosby trial example, the divergence of cultural and legal definitions can contribute to consent’s meaninglessness. Unable to deliver its promise and lacking conceptual integrity, consent nonetheless carries the burden of distinguishing between sexual crime and sexual behaviour. The problem of the cultural overburdening of consent related to its unique positioning has been critically assessed by contemporary scholars such as Katherine Angel

(2021) and Joseph K. Fischel (2019).⁷ The judge's claim to consent's hermeneutic openness ("the jury will decide *what consent means to them*") in combination with the representation of consent as semantically tautological and enclosed ("*consent is consent*, as the jury sees fit") underscores consent's conceptual and practicable inconsistency. Striking too is the court's reliance on the jury's commonsense understanding, made possible by the fact that people do, in ways intuitive to them and profoundly social, give the term conceptual and cultural content.

Sommers contends that people's ideas about consent contribute to the unequal distribution of criminal justice.⁸ From a socio-legal perspective, commonsense views of consent are more conservative than legal ones, especially when it comes to the vitiation of consent by deception.⁹ As I'll go on to discuss, the popularity of recent Netflix productions such as *The Tinder Swindler* (2022) reveals the entertainment value of the moral stakes of deception when they are embroiled with the power-laden ambiguities of consent that are particular to norms of intimacy within digital capitalism. It is common for victims of sexual violence to blame themselves in a manner consistent with the "rape myths" that undermine nonconsent as any kind of defence against thoughts and feelings of being responsible (Rape Crisis, 2023). More complexly, not acknowledging rape can redirect critique to heterosexuality—to the problems with "just sex" (Gavey, 2005), as well as mitigate 'feelings of victimisation' (discussing Kahn and Mathie (2000): 181). The fact of not being responsible promised by nonconsent contravenes the more powerful social fact of women's responsabilisation within neoliberalism that taps an even deeper and more longstanding misogynistic belief in women's moral culpability when it comes to matters of sex.¹⁰ Furthermore, despite the privileged position of consent in law, the facts established in relation to consent do not determine judicial outcomes. As New Zealand feminist law scholar Elizabeth McDonald (2020) explains, 'even in cases where complainants clearly communicate absence of consent [e.g. such as when the complainant was asleep or passed out when the sexual assault began] [...] the harm they report is not legally determined to be rape' (223).¹¹ On McDonald's argument, this is because it is 'a culturally produced (and gendered) "set of judgements about sexual wrongdoing" [that] results in the identification of a rape, rather than the actual presence or absence of complainant consent' (208). Patriarchal values press on the meaning(lessness) of consent by confusing consent with

morality. For McDonald, an 'affirmative definition' or 'communicative model' is unlikely to address consent's shortcomings as long as judicial processes are geared to 'enquiry into the existence of consent' guided by 'fact-finding' (208) processes that routinely fail to challenge the defendant's "evidence" that 'she was behaving in a manner consistent with consenting' (220).¹² Such outcomes point to the limits of the law given its obligation to the deep-seated ideal of autonomy. By presupposing that 'women have autonomy, sexual agency and bargaining power' (Nash, 2021), the legal fiction of consent invites power as cultural bias through the backdoor of a supposedly impartial courtroom. Legal proceedings are notoriously subject to and illuminating of 'the layperson's intuitive sense of what consent is' (Sommers, 2020: 2236), while hazarding the social reality of the feminist qualification of the meaning of consent as a legal threshold.

This article proposes that, as seen in the above, the cultural trajectory of consent operates from the view of commonsense, as the subject of an everyday language shared by the many, full of colloquial qualifications. Feminist criminologist Tanya Serisier (2020) notes how in recent years 'affirmative consent' has become less subject to ridicule and more accepted into mainstream media discourse. At the same time, sexual consent has been 'unmoored from its origins in feminist anger' (198). This shift is part of a broader neoliberal discourse that associates ideas about consent with inclusive and sexually positive feminist politics (Angel, 2021; Fischel, 2019; Sikka, 2022). Many of the claims made about the postfeminist era of the 2000s, by authors such as Rosalind Gill (2007) and Angela McRobbie (2007), now reveal themselves to be early accounts of the movement of consent to the centre of the redefinition of women's sexual freedoms. The timing of this underpinning articulation of consent is ripe for examination as new allegations against Russell Brand related to that period are going to press. More to the point, contemporary reconfigurations of consent draw on a cultural concept of consent already made meaningful by these and other discursive moorings: there is no concept of sexual consent that is discrete from consent's more universal meanings. In Raymond Williams' terms, consent is 'ordinary' (2015), articulating the usual state of things and a sense of order. As an object of ordinary life, consent stages the question of whether permission was given, the terms of which are largely assumed by the norms of social life and contested on this basis. Consent is also then

that to which we are subjected, and to which we subject one another, by virtue of getting on with the everyday.

Of course, the notion of common sense as ‘a blunt assertion of the obvious’ was preceded by a ‘more active reference to a *sense* achieved by common process’ (2015: 219, original emphasis). Rarely does the use of consent invoke this originary meaning as *con* [‘together’] *sentire* [‘feel’]: to feel with. Consent originally denoted a sensory as well as mental faculty, embodied and perceptual, as well as representational. In the context of feminist theory’s renewed interest in feeling, this earlier meaning is particularly appealing. The threshold of nonconsent is found in the body, even if feeling alone cannot establish the definition of sexual harm. McDonald posits that new legal recognition of the ‘subjective (gendered) harm’ of rape (and other acts of sexual violence) (2020: 208) is key to moving beyond the limits of consent’s existing paradigm (also see West, 1987). The call to enrich legal understanding of the types of injury caused by gender-based harm echoes throughout feminist discourse as a call to close the gap on abstraction and experience—a gap exploited by defendants when they deny their victims’ experience, helping to produce rock bottom rates of conviction. The feminist promise of consent requires critical interrogation from the point of view of consent’s complexity as a culturally manifold discursive, affective and historical articulation.

Consent’s Advances

To track the contouring of commonsense consent as a sensibility, as ‘physical feeling or sense perception’ (Williams, 2015: 218), we need to analyse how consent is animated by affective structures. Given that such analysis surely extends beyond the scope of one article, my discussion of Laura Kipnis’ *Unwanted Advances: Sexual Paranoia Comes to Campus* (2017) serves to illustrate how this approach throws open consent as a critical object. Finding new approaches to consent is particularly important given how consent is freighted with all kinds of social and legal content (Sikka, 2022). Rather than assume that consent coincides with its own discourse (i.e., that consent is what people say it is), an interest in consent’s affective structures invites new understanding of the intersecting cultural processes that mobilise consent as a cultural concept. In Lauren Berlant’s (2011) terms, the affective intensities of consent are not always consistent with the experience we have of

them. In this regard, Kipnis' analysis of the case of 'sexual paranoia' (1) in the American university provides ample opportunity to enquire into the social construction of the atmospheric and regulatory environment by which consent is encountered. While paranoia has long been key to modern democracies, and has been associated with sexuality particularly, cultural studies such as those aforementioned, tend not to locate consent in relation to paranoid feeling. Tina Sikka's call for a deep revision of encoded consent by 'restorative justice' (2022: 28) seeks to redirect consent away from 'the litigation of subjective mental states before and during sex' (53) that affiliates consent to 'carceral feminism' (2). Kipnis' critique of sexual paranoia provides further evidence of the embeddedness of consent within surveillant culture, revealing the cultivation of suspicion that shapes consent's affective encounter. These accounts can provide new grounds for thinking through the enunciative possibilities of consent, born not of consent's status as a coherent object or discourse, but through 'aesthetically mediated affective responses' that locate consent in 'the historical sensorium' (Berlant, 2008: 3)—that render consent commonsense.

In brief, Kipnis argues that sexual paranoia is a runaway structure of power rooted in the powers of administration and emboldening the vantage point of those with administrative sanction.¹³ True to the tune of neoliberal responsabilisation, she claims, sexual paranoia comes home to university subjects in highly personalised ways, as the very personalisation of power, and by dint of what appears to be an accident or coincidence but is always a mediation of social structure—of prejudice, personality, privilege or simply, standardisation. If, as Kipnis argues, (US) higher education engulfs sexuality in 'officially sanctioned hysteria' (2017: 1), we will do well to examine consent as a key mechanism of its social articulation. In these terms, consent mobilises affective relations as part of a 'climate of accusation' (3). For instance, take the governance circumstances in which Kipnis locates sexual paranoia, such as the university 'policies and codes that bolster traditional femininity' (8) and that do little in the way of women's empowerment. Resting on a deliberation about the presence of consent and its transgression, such codes gain institutional merit through their reference to consent's cultural formation. The regulation of conduct encodes consent as an interpellation device that pivots on the institutionalisation of every (sexual) encounter as a consensual one that might be converted *at any moment* into one that is non-consensual. Conversion

reflects access to a power in relation to which any individual or collective is positioned. The power of conversion, as a corrective technology of disciplinary power, is socially embedded by juridico-political knowledge and its administration (Foucault, 1977). The infantilisation of students that provincializes this power and, as Kipnis stresses, is one such administrative encoding, shores up norms of gender in ways that risk the recuperation of traditional femininity. In this example, consent switches on the signification of gender as identity and as power: consent instantiates the truth effects of power / knowledge. In writing 'I can think of no better way to subjugate someone than to convince us that assault is around every corner' (2017: 12), Kipnis describes sexual paranoia as a tendency to mobilise gendered signification as a binder of subjectivity to power. In this context, consent becomes a template for our conversion to subjects of socio-discursive power. This conversion is not particular to higher education, but characteristic of the litigious culture of state, carceral and governance feminism. Most worryingly, Kipnis avers, is not the encroachment of neoliberalism within university education, but the social form this encroachment takes as a tendency to authoritarianism.¹⁴

As feminists have long argued, disciplinary and regulatory discourses of sex and / or gender sit at the intersection of personal and political life. It is a challenge to untangle the structural from the personal—especially where the structural takes the form of the biographical—the affective from the emotional, the situational from the generic (Berlant, 2008).

Commonsense consent is embroiled in the untangling and entangling of these terms, reflected in how consent shifts register from the situational to the generic, from the eventful to the episodic (Berlant, 2022).¹⁵ Marshalled by judicial process, consent is always distributed across time and space, establishing points of connection across vastly different social contexts, even across different historical moments. As illustrated in Laura Lammasniemi's (2021) *Age of Consent Podcast Series*, consent has perpetually renewed the juxtaposition and intersection of social and legal culture. It is, however, the emphasis given to dilemmas of individual freedom and media prejudice that my own analysis challenges. Consent's socio-historical lineages are a feature of the way that events of misconduct come to light—they are consent's mediation, absorbing or eschewing the impact of experience within cultural paradigms that shift.

Unwanted Advances reveals the shifting location of consent in the professionalisation of sexual harassment that reissues sex discrimination to the language of complaint. In Kipnis' argument, this shift is made possible by the affective structure of paranoia. The professionalisation of consent, the consent industry, consent technologies, and other instrumentalising applications of sexual consent, are recruited to the paranoia that induces 'ideas as threats' (5). While, in these terms, the inflation of harassment has distorted the concept beyond the sensible proportions that once set it up as the touchstone of sex discrimination, we do not yet know how the morphing of sexual harassment from a theory of sex discrimination to an atmosphere of accusation will be transformed by the proliferating testimonial cultures of #MeToo. Books such as Roxanne Gay's *Not That Bad: Dispatches from Rape Culture* (2018) and Jodi Kantor and Megan Twohey's *She Said: The True Story of the Weinstein Scandal* (2019), as well as too many film, television, magazine and podcast programmes to name, are part of the ongoing event of #MeToo, whose affective contours are augmented by expressive forms of social media. The cultural paradigm of #MeToo is has shifted the cultural terms in which consent shows up to the encounter.¹⁶

In the feminist classroom, *Unwanted Advances* invites just such consideration. Many students read Kipnis with outrage at her perceived failure to understand the misogyny and harassment endemic to their life worlds: assault *is* around every corner. So accused, Kipnis' blind spot extends to her own life experience as it appears in the book. Concepts of 'reflexivity' and 'politics of location', central to the feminist curriculum, have little traction in these ways of reading that are steered by attachment.¹⁷ Consent is an interpellation device, calling on women to have a subject position (including knowledge) in relation consent's transgression. That I do not disclose my multiple subject positions in relation to accusation, sexual harassment, and sexual violence, attests to the genre problems that feminist pedagogies of consent invite. Brought to the fore by institutional power, these problems could be viewed as examples of 'genre flailing' (Berlant, 2018: 156), understood as 'the aesthetic and affective problem of trying to tell a story that has never had the room to be one' (Berlant, 2020: 4). One of consent's lessons is that students come to the classroom with a shared expectation of what a feminist media and cultural studies education in

consent should feel like. The feminist cultural media theory of commonsense consent might hope to contribute to the pedagogy of this education.

Feminist Intimacies with Consent

Successive feminist campaigns to define ‘the general parameters of permissible sex’ have variously linked consent to the expression of ‘appropriate, normative and legal sex’ (Sikka, 2022: 6). Debates on the meaning of ‘communicative’ or ‘enthusiastic’ and ‘affirmative’ consent continue in this vein. Media representations in the last ten years have constructed a popular discourse on consent and excised feminism from consent’s meaning. This excising has been read as an effect of ‘the increasing legitimacy of media representations of feminism and sexual consent in contemporary popular culture’ (Serisier, 2020: 197). Moreover, the conjuncture of feminism with neoliberalism oversaturates consent as a site of agency for an individualised, ideally white, woman (e.g., Dubrofsky and Levina, 2020). Much of this discursive transformation yields little in the way of differences in women’s hedonic lives (West, 1987), given the renewed vigour of gender normative *dispositifs* (McRobbie, 2020) and the broader influence misogyny online (Banet-Weiser, 2020). It is sobering to witness the long history of the feminist qualification of consent in the face of unrelenting misogyny, expressed, to choose a pertinent example, in the ‘male sexual drive discourse’ (Gavey, 2005: 114) that positions women as the gatekeepers of sex and that makes ‘receptivity to sex a definitional aspect of female sexuality, *all the while leaving male sexuality intact as a drive*’ (Angel, 2021: 64-5, original emphasis).¹⁸ While there are many routes to observing the transformation and expansion of consent culture according to the influences of liberal, Black, queer, radical, neoliberal and more feminist politics (oftentimes present in composite combinations), and, as Serisier says, the presence of consent in its wider cultural vocabulary, it is more difficult to ascertain whether feminist consent touches the sides of people’s ‘fundamental beliefs about the nature of masculinity’, that, in the words of feminist writer Virginie Despentes, shore up ‘controls on female sexuality’ in pursuit of ‘the masculine character as social, hot-blooded, brutish’ (2020: 49). Missing from Despentes account, published nearly two decades ago, is the visibility of feminist challenges to patriarchal masculinity. Though on Angel’s reading, ‘recent, women-led sex research’ (2021: 41) still espouses the idea that men’s desire is a ‘biological entitlement’ (65). This

dimorphism, Sarah Banet-Weiser argues, is powerfully rearticulated in online culture, in which an instrumentalised, networked misogyny is ‘deeply entwined’ with the ‘many different feminisms that circulate in popular culture in the current moment’ (2020: 1).

Consent is also qualified by the cultural practices of intimacy that institutionalise sexuality. Practices with digital technologies that are reconfiguring public sexuality, from young people’s nude image sharing (Setty, Ringrose and Regehr, 2023) to the “vibrant matter”(!) of networked sex toys (Sundén, 2020), are transforming what is and is not agreed upon in the expression of consent. At stake is the proximity of consent to freedom—a major theme of intimacy despite poor social and judicial outcomes and the well-known critiques of liberal feminism. Such failings are positioned as aberrations of an otherwise functioning national culture that keeps from view its own ‘murderous misogynistic tyranny that produces the conditions of the present—ubiquitous and unrecognised sexual harm’ (Nash, 2021: 21). As national fantasy, the freedom to choose is intimacy’s central motif. Berlant notes the feminist achievement in this regard, that no matter how convivial and freely chosen the intimate relationship at work, ‘sexual harassment law says that it is *always* about the institution’ (Gallop with Berlant, 2001: 258, original emphasis). To claim that dalliances are not an aside to proper conduct, as representations of the workplace affair so often imagine, but expressions of an institutionalised sexuality, is to introduce public accountability to an intimate relation. We can also observe how rape within marriage and allied matrimonial institutions contravenes and thereby takes as its object the conventions such institutions employ, such as serial monogamy, property sharing, and romantic love, that ‘neutralize, at least symbolically, the violence and attraction at play in hierarchical social relations’ (Berlant, 2012: 108). The terms of reference that invoke consent—the conventions of relationship stories, the coordinates of the “good life” (Berlant, 2011)—are themselves not neutral but those that embed social hierarchies within intimacy.

Institutions of intimacy stratify the passivity that consent insinuates in its suggestion that certain actions require permission from their recipient. This is one of the ways that consent insinuates itself into the gendered, raced and classed dynamics of submission and subordination that correspond to unequal access to autonomy. As Sikka notes, liberal and radical theories of consent do not transcend the ‘racist and heteropatriarchal hierarchies that condition how autonomy is expressed’ (2022: 47). Despite Pateman’s observation that

consent both claims and undermines the ‘appearance of equality between men and women’ (1980: 150), popular representations such as of the ‘pure relationship’—a model of serial monogamy in which ‘a social relation is entered into for its own sake’ (Giddens, 1992: 58)—, or ‘pop marriage’ depictions of sex as ‘theatrical and public’ (Berlant, 2022: 54), presuppose political fantasies of consent as a social model of spousal equilibrium in which all parties are choosing the terms of their marriage, as well as one another. Radical feminist claims that desire cannot be extricated from the social conditions it yields, namely those of capitalist colonialist patriarchy, but is ‘marked by male domination and female submission’ (Srinivasan, 2022: 77), question one’s volition in relation to this fantasy. People make choices always within relations of power not of their own choosing or making. Indeed, the opacity of desire attests to the impossibility of consent insofar as desire cannot be known in advance and as a result, ‘everyone is compromised by their consent’ (Berlant, in Gallop with Berlant, 2001: 260). While the opacity of desire and of subjectivity render consent less than transparent, the consenting woman as a post-feminist, popular or neoliberal feminist *dispositif* places a demand on women to become subjects of ‘a sexual desire that is fixed and known in advance’ (Angel, 2021: 39). Consent has limited scope to offer us a feminist sexual ethics because consent’s theory of desire forecloses ‘what makes sex potentially exciting, rich and meaningful’ (39).

The association of consent with transparent subjectivity predisposes the concept to deception. Sommers (2020) draws attention to the different relation between the terms in articulations of canonical and commonsense consent. In the eyes of the law, which means according to the principle of individual autonomy that consent protects, deception necessarily vitiates consent. If someone has been deceived as to the terms of that to which they have consented, they cannot in any meaningful way be said to have consented. In contrast to this canonical view, while ‘laypeople largely agree that coercion and incapacitation invalidate consent, they believe that deception does not’ (2235). Sommers finds that, in a range of contexts, ‘including sex, surgery, participation in medical research, warrantless searches by police, and contracts’, people believe that ‘victims of intentional fraud, who are tricked into agreeing to an offer they would otherwise refuse, nonetheless grant valid, morally transformative consent’ (2235–2236). The pervasive belief that ‘victims of deception act autonomously and voluntarily in numerous ways’ (2236) reveals consent as

moral leverage for and a circumscription of responsibility. Commonsense consent thus links the fantasy of sovereignty to the accrual of the privileges of social (in)action, and importantly, to the perception and perceivability of what counts as action in relation to which it is possible to take responsibility.¹⁹

Consent as Media Concept, or Consent was Deception All Along

From the view of media power, the consistency of consent with deception looks a lot less strange—less like a contradiction and more like a theory of commonsense consent. Whether via propaganda, advertising, PR, entertainment or gaming, media are in the business of deception. Ever since rumoured reactions to Louis Lumière's (1896) *Train Pulling into a Station* inaugurated the question of how cinema audiences would discern the reality of the moving image, perceptions of media have expressed theories of representation that position deception in the realm of belief.²⁰ For many drawing on psychoanalysis particularly, we are still sitting in Plato's cave. Of concern to media scholars is the power of media to elicit the audience's consent to be deceived, not only by means of representation, but discursively and ideologically, through a play upon sense and the senses. Presently, any kind of attention constitutes a form of deception given how social media's backend contradicts the principles of promised engagement. What social media will do to the suspension of disbelief, a key objective of media genres that has long attested to our social will to deception, remains to be seen. Issues of political economy, production and framing are linked to cultural persuasion and to the power-laden conventions of storytelling, whereas social interplay with the symbolic in stratified worlds reveals our aesthetic interest in more longstanding and wide ranging 'arts of deceit', as I've argued elsewhere (Cefai, 2022). In postmodernity, the centrality of artifice to media culture becomes a subject in and of itself, addressed by a ubiquitous use of irony indulging the audience's desire for reflexive entertainment. The enjoyment we are encouraged to find in the problem of our own persuasion invariably accommodates us to power and might, to invert the argument made by Lilie Chouliaraki, make our inaction towards our own deception into 'a personal failure to take responsibility for such horrors' (2012: 60). The parameters of the cultural concept of manufactured consent popularised by readers of Noam Chomsky are variously emboldened and extended. As feminist media scholar Rachel O'Neill (2018) shows in her analysis of "last

minute resistance”, which is the theory of women’s faux modesty encouraged by the online pickup artist community, consent reaches mythological proportions when it comes to inventing new-but-old ways of exercising patriarchal force through the sexual encounter.

The right-wing sentiment that has accompanied the shift to personalised social media raises further questions, such as how the co-location of consent-deception bears out in the reconstitution of political genres. It seems significant that right-wing discourses move away from the reflexive powers of irony that necessitate and reassure the viewer of an ironic distance from the media source. Surely the new configuration of consent in relation to deception by the medium of social media contributes to the emergence of a post-truth invested position (of identification) that collapses narrative (about truth claims) into (the status of) the “truth” itself. This ontologising of the informational world is based upon its overinterpretation, one that forecloses irony and its seductive accommodations. This makes claims about consent impossible to argue with, if the possibility for conceptual deliberation is foreclosed, whether by mistrust or authoritarianism. The embracing of con artistry by a right-wing peddling political and policy decision-making based on bogus “facts” resonates with the elaboration of the con game as an online genre of misogynistic social agency (Banet-Weiser, 2020). It is in this context that the Netflix productions *Inventing Anna*, *Bad Vegan: Fame. Fraud. Fugitives.*, *The Tinder Swindler*, released in 2022, and *Fyre: The Greatest Party that Never Happened* (2019) and *Dirty Money* (2018), as well as *Dirty John* (2018) first shown on Bravo and Hulu’s *The Drop Out* (2020), advance an enquiry into the broader cultural context to the popularity of political figures notorious for their phoney style (like Boris Johnson [“BoJo”], Scott Morrison [“ScoMo”], Donald Trump [“Don the Con”]). These programmes locate the con artist among *us*, audiences framed as social media users, inviting analysis of con artistry as a conjunctural figuration of cultural, economic and political processes that intersect social media. In much the same way that trial documentaries ‘often make claims that their evidence is more truthful, more compelling, than the evidence that had been relied upon in court’ (Bruzzi, 2016: 804), these dramaturgical figurations appeal to audiences to trust their (televisual) accounts of mistrust. As ‘an ensemble of technology, technique, and techne’ (Villarejo, 2014: 5), the apparatus of television, and its ‘ideology of liveness (the immediate, the direct, the spontaneous, the true)’ (10) has been incorporated into social media. When networked streaming services

address audiences as if their (industry) accounts are their (the audience's) own, they make false claims to having a critical distance on the dominant medium of social media.

It should be clear then that commonsense consent emerges not only via eighteenth century Western political theory and its deep instantiation by the nation-state, but as a media concept, with origins in media power. The derivation of commonsense consent from our historical position as media audiences locates deception alongside consent discursively, as a moral concept or normative social theory of political power, and sensorily, as a power of perception linked to mediatised ways of viewing the world. The belief that individual autonomy is not compromised by deception corresponds to the continuity of consent with deception to which we have been habituated by our socio-political experience of mediation. The commonsense consent upon which jurors draw, in their compensation for the reduction of consent to its meaninglessness, is informed not only by a patriarchal value system, but by this media logic of consent-deception.

Here I want to pick up on Sommers' observation that for a majority of the North American public there is one exception to the continuity of consent with deception—the case of impersonation, long treated 'as a particularly serious form of sexual fraud' (2020: 2290). Sommers reasons, this is because 'one's partner's identity is a highly *essential* feature of a sexual encounter' (2275, original emphasis). That is, the "'identity of the person doing the act is part of the essence" of sexual relations. And because *which person* is an "intrinsic part of the act ... [in the case of impersonation, the victim] is defrauded as to *the act itself*" (2291, Christopher & Christopher, *supra* note 106, at 86 n.60; emphasis added by Sommers). Impersonation relates to the "facts of the matter" rather than collateral. As with all matters relating to commonsense consent, the exception of impersonation does not relate to sex in a discrete way. So called "transgender deception" cases tried in the UK and elsewhere, point to the role of gender normativity in shaping the terms in which impersonation is perceived as a type of deception that vitiates consent. For Fischel, cases in which judges and juries find that a misrepresentation of gender vitiates consent renew attention to how 'sexual deception truly problematizes the consent standard of modern rape law' (2019: 96). At the same time, such cases compel a better criminal, political and sociological account of what happens when 'sex is agreed to under an explicit condition and that condition is then wilfully violated' (96). In relation to the former, Fischel notes that 'deception' has long been

used as an 'idiom through which transgender rights are abrogated and transgender lives are pathologized, demeaned, or cut short' (99).

A further affective structure emerges: betrayal structured by heterosexuality's affective saturation of consent-deception. People's real life experiences of sex-by-deception made public by the news, true crime podcasts, truth-based drama and documentary, academic analysis, and more, are also stories of betrayal. Imagined betrayal haunts consent's media framing, alluding to the intrinsic connection between consent and deception.²¹ The feeling of being betrayed tells us about its conditions of possibility, in this case, what heterosexual gender as social normalisation achieves. Discrepancies in prosecutorial outcomes, between cases involving normative and nonnormative gendered identities, attest to the mediation of consent by deception in this sense, as a heteronormative structure that sensitises us to betrayal.²² That is, how consent lands in the body or might otherwise be encountered owes in part to the affective structuring of consent by betrayal. It is as betrayal that we feel impersonation's break in the consistency of consent with deception. The feeling of having been betrayed is knotted in to the perception of nonconsent because nonconsent is always a betrayal of social agreement, among more culturally specific and interpersonal terms. Betrayal is nonetheless hitherto absent from the feminist theoretical discourse.

Consent-Deception and Social Media

Social media have massively augmented the cultural space of impersonation. Emboldened by a business model that relies on selling personalised media content or data linked to that content, social media have turned personal identity into a template for media communications more generally. Whether front-ended by platform user profiles or back-ended by more conspicuous means of datafication, user templates are now ubiquitous technologies of individuation. Templates are the basis for privatised, atomised subjectivity; a circumscription of that which must be defended, responded to, or paid for, and at the same time, that which distributes, intensifies or thins out social affects. The navigation of social media via privatised templates predisposes us to feel as if communications are personal to us, a perception consistent with the sense of the immediacy and efficacy of social media as such (Cefai, 2020). Communications can turn personal at any time, and social media have potentiated all media in this regard.²³ The 'special care' assumed by the

entanglement of personal information with the identity of the giver of that information (Fourcade and Klutzz, 2020: 10) is, however, cut through with impersonal affectivity—that by which social media mediate modes of being in relation to collectivity, at least in part because informational traces that we leave online inform what happens next in our social experience (Tucker, 2018). Impersonation, in major and minor forms (e.g. generating an entirely fake identity versus exaggerating something to embellish a persona), reminds us that personal identity is still the cultural language of social media. If, as I have argued, commonsense consent is informed by a media concept of consent-deception, it surely follows that changes to this language are transforming consent’s affective structure. What might this mean, given the exceptional transgressions of impersonation?

Online, impersonation is mediated to us in the space of consent that, as I have discussed, is organised in social terms and undergoing processes of expansion. According to commonsense consent, we “consent” to the con artist, the catfishing, the filters—all the mundane and multifaceted minutiae of digital deception permeating the everyday. Yet, as subjects of communication, we largely have no choice over the encoding of our messages by the corrective values of algorithms, whether exercised within the digital photo or a search engine result, altering the very perceivability of the world and us among it. Social media render us co-presences not only for technological reasons, but for social ones, such as of ephemerality, reputation and material necessity. This might lead us to think that social media deepen our consent to deception in so far as individual actions, feelings and personality traits become intensified as the basis for our relations to media, and to the (messages about) consent-deception mediated to us. However, also augmented is our awareness of the tethering of “consent” to deception. In this sense, personal media generate an affective friction around the twentieth century media concept of consent-deception, explaining in part why radicalising ideologies have such traction at the moment. If impersonation is a type of deception to which media have not *yet* habituated us, is this habituation now underway with the advent of social media?

I want to draw out a number of insights about social media, consent-deception, and impersonation suggested by 2022 Netflix documentary *The Tinder Swindler*. Clocking 166 million viewing hours in its first month, the film is a glossy exposé of con artist “Simon Leviev” (real name Shimon Heyada Hayut). Led by the testimony of its victims, the film

aspires towards *in situ* narration, thanks to a combination of production techniques that are in keeping with the Netflix documentary style; the film's director, Felicity Morris, having produced Netflix's notorious *Don't F**k with Cats: Hunting an Internet Killer* (2019).²⁴ For the opening 20 minutes, Cecilie Fjellhøy speaks to camera, explaining how she became enraptured by "Simon". Simon would be a standard issue Tinder profile, if not for the stand-out trappings of digital capitalism in the form of supreme consumer power. Cecilie describes their text message exchange and first date, at which she was invited on an overnight trip to Bulgaria from London by private plane. In short, Cecilie describes being "love-bombed". The romance advances at such a pace, the audience has little time to question the absence of the usual checks and balances that accompany a new relationship, such as, what family and friends think of this new "Simon", or in what headspace one makes the decision to lend someone outside of their social circle such vast sums of money. The film then introduces a second victim, and it's soon apparent that Cecilie is one of many duped by Hayut, who cumulatively defrauded several women of hundreds of thousands of pounds.

Cecilie narrates the story of her deception as one of interactive traces on social media platforms: "Simon" existed as a Tinder, Instagram and WhatsApp persona. This portrays social media as inter- and para-textual media flows capable of fabricating a whole life—a theme echoed in other streaming programmes. References to life outside social media are kept to a minimum. The 'inherently dramatic quality' of a courtroom drama (Fuhs, 2014: 782) plays out almost entirely online, depicted as a hyper-mediated experience of consent-deception. In so far as social media are composite material entities acting as sensors generating assemblies, this drama is made possible by the 'hyper-aesthetic' way that social media 'synthesise multiple sensations horizontally' (Fuller and Weizman, 2021: 57). In this sense, *The Tinder Swindler* itself acts as a type of social media, whose aesthetics ramify the subjective and affective touchpoints of mediatised consent-deception, locating social experience in these terms, and challenging 'the sense of sense itself' (Murphie, 2014: 188), all the while reifying a perception of the audience as a social media subjectivity.

Key to the touchpoints that locate romantic inclination in social 'technics as a whole' (Murphie, 2014: 190) is the film's conceptualisation of the evidentiary potential of media: media act as evidence and drive the story forward. This 'draws attention to the ambiguity of these [social media] images' role in the world—in terms of the forces they carry with them'

(190). Social media can transform social scenes into fields of evidentiary potential, newly perceivable according to technologised variations in perspective. The ambiguity of the social media image owes in part to the way that the processes and technologies that produce evidence have increasingly become ‘the medium in which the investigation takes place’ (Fuller and Weizman, 2021: 10). The technics of social media are amenable to the genre conventions of true crime due to the longstanding but newly invigorated evidentiary status of the image. The networked image is an investigatory device, assembling material traces that extend in space and time the reach of consent’s diagnostics. Repurposing allows social media to be doubly imagined as the means of deception and an archive of evidence. As one new media image becomes informational, the meaning of another is revised, encouraging a view of media as sites of potential mistrust. In this revisionist imagery of social media as investigative medium, the film can ‘intervene directly into the legal process and / or are instrumental in bringing cases to trial or retrial’ (Bruzzi, 2016: 266). On-camera uses of social media to probe new encounters with Hayut shore up the viewer’s sense of being in pursuit of justice that in turn remediates the hyper-aesthetic con artistry of Hayut’s deception. By keeping the exact criminal nature of Hayut’s activities ambiguous and unsolved, the investigation, the reach of the film, remains open. As a narrative device, the investigation raises the audience’s suspicion and directs caution to new-but-old objects (e.g. “stranger danger”).

A Feminist Cultural Media Theory of Commonsense Consent

Commonsense consent is thus networked, profiled, and socially interactive within the mediatic time and affective structures of social media culture, newly underpinned by sociometric, psychometric and biometric data processes that dis- and re-aggregate informational *whatness* from experiential *whoness*. The ‘recombinant identity’ that results, ‘quasi-artificial but by no means disembodied’ (Ajana, 2010: 248), takes on an evidentiary premise when digital traces ‘are increasingly being taken up as evidence in cases of sexual violence’ (Dodge, 2018: 303). As it ‘refracts the legal trial’s own truth claims’ (Fuhs, 2014: 784), *The Tinder Swindler* instantiates recombinant identities by holding together the slippages between the “what” and the “who” of the story, between “fact” and “experience”. The film acts as an investigative medium while attesting to the role of social media in re-

imagining believability as a technicity belonging to informational circuits, rather than to that which is subjective or political. Such evidentiary aesthetics dovetail with how consent is spoken about in the law, as a metaphysics of presence (“was consent present *at the time?*”). Commonsense consent-deception threatens to collapse the what and who of this metaphysics, but perhaps that was always the threat of power that disciplines.

On McDonald’s (2020) argument, if aggregate data cannot testify to *who* we are, they cannot testify to the type of injury we have; a problem exacerbated by the elevation of digital traces to real-time accounts unlikely to converge seamlessly with subjective recollection (Dodge, 2018). While promising perspective on what happened, informational media pose new threats. Failure to retrieve a mobile phone from a suspect can determine whether the police pass a case to the Crown Prosecution Service. The discovery of new video can lead to dropped charges.²⁵ Where fact-finding does not challenge the defendant’s evidence that ‘she was behaving in a manner consistent with consenting’ (McDonald, 2020: 220), victims are subject to new types of betrayal. The *what* of our experience can testify against *who* we are (Ajana, 2010). Even when in evidence, digital traces still require interpretation (by jurors, witnesses, legal personnel), remaining subject to ‘preconceived stereotypes and myths about sexual violence’ (Dodge, 2018: 312). *The Tinder Swindler* shows not only how the interlinkedness of perceptual information becomes expressive through certain genres, such as true crime, but how social media are mobilising a nebulous media construct of consent-deception as part of a political shift to evidentiary culture.²⁶ The particular privileging of personal identity by social media contributes to the precarity of identity, the stakes of which are agitated by impersonation. Impersonation is a betrayal of that which is ever more precarious, linked in increasingly unpredictable ways to the culture of sexual crime and its prosecutorial outcomes.

Earlier, I suggested we might consider the crucial role of consent in the social articulation of ‘sexual paranoia’ (Kipnis, 2017: 1). This article’s discussion of the cultural concept of consent as a specifically mediatised concept of consent-deception has led to the converse observation: the way social media generate new susceptibilities to consent-deception and associated mistrust and suspicion orients the possibility of consent to paranoia, or at least, to defensiveness. The more deception is likely, the more we have to defend against its possibility: this is the message *The Tinder Swindler* and its ilk mediate to media audiences

within ecologies of networked media, or social media that are hyper-aesthetic, drawing into relation 'all manner of material things that elaborate sensitivities to the things they come into contact with' (Fuller and Weizman, 2020: 31-32). By transmogrifying sensible personalities, social media absorb social affects into the augmented whatness of social encounter. In this way, social media act as a matrix of mistrust affectively attuning us to the (un)known, to the future possibility, encouraging in commonsense consent a more capacious sense of deception.

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References

- The Age of Consent* (2017) [radio] Helena Kennedy QC. UK: BBC Radio 4. Available at:
(Accessed dates.)
- Ajana, Btihaj (2010) 'Recombinant Identities: Biometrics and Narrative Bioethics'. *Bioethical Inquiry*, 7: 237–258.
- Angel, Katherine (2021) *Tomorrow Sex Will Be Good Again*. London: Verso.
- L'Arrivée d'un Train en Gare de La Ciotat [Train Pulling into a Station]* (1896) [film] Directed by Auguste and Louis Lumière. France: Société Lumière.
- Bad Vegan: Fame. Fraud. Fugitives.* (2022) [TV documiniseriseries] Directed by Chris Smith. USA: Netflix.
- Banet-Weiser, Sarah (2020) *Empowered: Popular Feminism and Popular Misogyny*. Durham, NC and London: Duke University Press.
- Berlant, Lauren (2022) *On the Inconvenience of Other People*. Durham, NC and London: Duke University Press.

- Berlant, Lauren (2020) 'The Traumatic: On BoJack Horseman's "Good Damage"'. *Post45*.
Special issue: Leaving Hollywood: Essays after BoJack Horseman, 1–20. Available from
<https://post45.org/2020/11/the-traumatic-on-bojack-horsemans-good-damage/>
(accessed 8 June 2021).
- Berlant, Lauren (2018) 'Genre flailing'. *Capacious: Journal for Emerging Affect Inquiry*, 1(2):
156–162.
- Berlant, Lauren (2012) *Desire/Love*. Brooklyn, NY: Punctum Books.
- Berlant, Lauren (2011) *Cruel Optimism*. Durham, NC and London: Duke University Press.
- Berlant, Lauren (2008) *The Female Complaint: The Unfinished Business of Sentimentality in
American Culture*. Durham, NC and London: Duke University Press.
- Black Mirror* (2011–) [TV series] Created by Charlie Brooker. UK and USA: Channel 4 /
Netflix.
- boyd, danah (2011) 'Social Network Sites as Networked Publics: Affordances, Dynamics and
Implications'. In: Zizi Papacharissi (ed.) *A Networked Self: Identity, Community, and
Culture on Social Network Sites*. New York; London: Routledge, pp. 39–58.
- Bruzzi, Stella (2016) 'Making a Genre: The Case of the Contemporary True Crime
Documentary'. *Law and Humanities*, 10(2): 249–280.
- Cefai, S. (2022) 'Feminist Aesthetics of Resistance'. In: Todd. W. Reeser (ed.) *The Routledge
Companion to Gender and Affect*. London and New York: Routledge, pp. 227– 236.
- Cefai, Sarah (2020) 'Humiliation's Media Cultures: On the Power of the Social to Oblige Us'.
New Media & Society, 22(7): 1287–1304.
- The Code for Crown Prosecutors* (2021) 'Rape and Sexual Offences – Chapter 6: Consent'.
Available at: [https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-
chapter-6-consent](https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent) (Accessed 4 October 2022).
- Chouliaraki, Lilie (2012) *The Ironic Spectator: Solidarity in the Age of Post-Humanitarianism*.
Cambridge and Malden, MA: Polity Press.
- Despentes, Virginie ([2006] 2020) *King Kong Theory*. Translated by Frank Wynne. London:
Fizcarraldo Editions.

- Dirty John* (2018-2019) [TV series] Created by Alexandra Cunningham. USA: Bravo.
- Dirty Money* (2018-2020) [TV documentary series] Created by Josh Adler. Various countries: Netflix.
- Dodge, Alexa (2018) 'The Digital Witness: The Role of Digital Evidence in Criminal Justice Responses to Sexual Violence'. *Feminist Theory*, 19(3): 303–321.
- Don't F**k with Cats: Hunting an Internet Killer* (2019) [TV documiniseries] Directed by Mark Lewis. USA: Raw TV/Netflix.
- Dubrofsky, Rachel E. and Marina Levina (2020) 'The Labour of Consent: Affect, Agency and Whiteness in the Age of #MeToo'. *Critical Studies in Media Communication*, 37(5): 409–423.
- The Drop Out* (2020) [TV drama miniseries] Created by Elizabeth Meriwether. USA: Elizabeth Meriwether Pictures/Hulu.
- Evans, Rob (2022) 'Police chiefs "unaware of undercover officers' sexual relationships with women'. *The Guardian*, 16 May. Available at: <https://www.theguardian.com/uk-news/2022/may/16/spy-cops-police-chiefs-say-they-were-unaware-of-undercover-officers-sexual-relationships-with-women> (accessed 15 October 2022).
- Fischel, Joseph J. (2019) *Screw Consent: A Better Politics of Sexual Justice*. Oakland, California: University of California Press.
- Foucault, Michel (1977) *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. New York: Vintage Books.
- Fourcade, Marion and Daniel N. Kluttz (2020) 'A Maussian Bargain: Accumulation by Gift in the Digital Economy'. *Big Data & Society*, 7(1): 1–16.
- Fuhs, Kristen (2014) 'The Legal Trial and/in Documentary Film'. *Cultural Studies*, 28(5-6): 781–808.
- Fuller, Matthew and Eyal Weizman (2021) *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth*. London: Verso.
- Fyre: The Greatest Party that Never Happened* (2019) [TV documentary] Directed by Chris Smith. USA: Jerry Media/MATTE Projects/Netflix.

- Gallop, Jane with Lauren Berlant (2001) 'Loose Lips'. In: Lauren Berlant and Lisa Duggan (eds.) *Our Monica Ourselves: The Clinton Affair and the National Interest*. New York and London: New York University Press, pp. 246–267.
- Gavey, Nicola (2005) *Just Sex? The Cultural Scaffolding of Rape*. Second edition. Oxon and New York: Routledge.
- Gay, Roxanne (ed.) (2018) *Not That Bad: Dispatches from Rape Culture*. London: Allen & Unwin.
- Giddens, Anthony (1992) *The Transformation of Intimacy: Sexuality, Love & Eroticism in Modern Societies*. Cambridge: Polity Press.
- Gill, Rosalind (2007) 'Postfeminist Media Culture: Elements of a Sensibility'. *European Journal of Cultural Studies*, 10(2): 147–166.
- Horeck, Tanya (2019) *Justices on Demand: True Crime in the Digital Streaming Era*. Detroit, Michigan: Wayne State University Press.
- Inventing Anna* (2022) [TV miniseries] Directed by Shonda Rhimes. USA: Shondaland/Netflix.
- Jenny Leong on Affirmative Consent for NSW. YouTube. Uploaded 12 November 2021. Available at: <https://www.youtube.com/watch?v=CdTqaNUP0J4> (Accessed 01 July 2022).
- Halliday, J. and H. Pidd (2023) 'Manchester City footballer Benjamin Mendy cleared of six rape charges'. *The Guardian*, 13 January. Available at: <https://www.theguardian.com/uk-news/2023/jan/13/manchester-city-footballer-benjamin-mendy-cleared-of-rape-charges> (Accessed 13 January 2023).
- Kantor, J. and M. Twohey (2019) *She Said: The True Story of the Weinstein Scandal*. London: Bloomsbury.
- Kipnis, Laura (2017) *Unwanted Advances: Sexual Paranoia Comes to Campus*. New York: Harper Collins.
- Lammasniemi, Laura (2021) *Age of Consent Podcast Series*. <https://www.narrativematters.scot/the-age-of-consent-podcast>

- McDonald, Elisabeth (2020) 'Communicating Absence of Consent is not Enough: The Results of an Examination of Contemporary Rape Trials'. *Australian Feminist Law Journal*, 46(2): 205–224.
- McRobbie, Angela (2020) *Feminism and the Politics of Resilience: Essays on Gender, Media and the End of Welfare*. Cambridge and Medford, MA: Polity.
- McRobbie, Angela (2007) 'Top Girls? Young Women and the Post-Feminist Sexual Contract'. *Cultural Studies*, 21(4-5): 718–737.
- Murphie, Andrew (2018) 'On Being Affected: Feeling in the Folding of Multiple Catastrophes'. *Cultural Studies*. Special Issue: Mediating Affect. 32(1): 18–42.
- Murphie, Andrew (2014) 'Making Sense: The Transformation of Documentary by Digital and Networked Media'. *Studies in Documentary Film*, 8(3): 188–204.
- Nash, Jennifer C. (2021) 'On the Beginning of the World: Dominance Feminism, Afropessimism and the Meanings of Gender'. *Feminist Theory*, 1–19. Online first.
- New sexual consent laws in New South Wales announced by the Attorney General | 7NEWS. YouTube. Uploaded 26 May 2021. Available at: <https://www.youtube.com/watch?v=O1w7Z3GNarY&t=45s> (Accessed July 2022).
- New South Wales Law Reform Commission (2020) *Consent in Relation to Sexual Offences*. Sydney: New South Wales Government.
- O'Neill, Rachel (2018) *Seduction: Men, Masculinity and Mediated Intimacy*. Cambridge and Medford, MA: Polity.
- Palmer, Tanya (2022) 'Consensual Relations / Relational Consent'. Paper presented at *Is Consent Good for Women? A Feminist Symposium on Consent Culture*, Goldsmiths and Birkbeck, June 17.
- Palmer, Tanya (2017) 'Distinguishing Sex from Sexual Violation: Consent, Negotiation and Freedom to Negotiate'. In: Alan Reed and Michael Bohlander with Nicola Wake and Emma Smith (eds.) *Consent: Domestic and Comparative Perspectives*. London and New York: Routledge, pp. 9–25.
- Pateman, Carole (1980) 'Women and Consent'. *Political Theory*, 8(2): 149–168.

- Probyn, Elspeth (1993) *Sexing the Self: Gendered Positions in Cultural Studies*. London and New York: Routledge.
- Rape Crisis (2023) 'Myths vs Facts'. Available at: <https://rapecrisis.org.uk/get-informed/about-sexual-violence/myths-vs-realities/> (accessed 17 June 2023).
- Schor, Naomi and Elizabeth Weed (eds.) (1997) *Feminism Meets Queer Theory*. Bloomington and Indianapolis: Indiana University Press.
- Serisier, Tanya (2020) 'From Date Rape Jeopardy to (not) Drinking Tea: Consent Humour, Ridicule and Cultural Change'. *Australian Feminist Law Journal*, 46(2): 189–204.
- Setty, Emily, Ringrose, Jessica and Kaitlyn Regehr (2023) 'Digital Sexual Violence and the Gendered Constraints of Consent in Youth Image Sharing'. In: Minranda A.H. Horvath and Jennifer M. Brown (eds.) *Rape: Challenging Contemporary Thinking – 10 Years On*. Second edition. Oxon and New York: Routledge, pp. 45–61.
- Sikka, Tina (2022) *Sex, Consent and Justice: A New Feminist Framework*. Edinburgh: Edinburgh University Press.
- Skeggs, Beverly (2004) *Class, Self, Culture*. New York and London: Routledge.
- Sommers, Roseanna (2020) 'Commonsense Consent'. *Yale Law Journal*, 129(8): 2232–2324.
- Srinivasan, Amia (2022) *The Right to Sex?* London: Bloomsbury.
- Steinbock, Eliza (2017) 'Framing Stigma in Trans* Mediascapes: How Does it Feel to Be a Problem?' *Spectator*, 37(2): 48–57.
- Sundén, Jenny (2020) 'Play, Secrecy and Consent: Theorizing Privacy Breaches and Sensitive Data in the World of Networked Sex Toys'. *Sexualities*. Online first: 1–15.
- The Tinder Swindler* (2022) [TV documentary] Directed by Felicity Morris. UK: Raw TV/Netflix.
- Tucker, Ian (2018) 'Digitally Mediated Emotion: Simondon, Affectivity and Individuation'. In: Tony D. Sampson, Stephen Maddison and Darre Ellis (eds.) *Affect and Social Media*. London and New York: Rowman & Littlefield, pp. 35–41.
- Villarejo, Amy (2014) *Ethereal Queer: Television, Historicity, Desire*. Durham, NC and London: Duke University Press.

West, Robin L. (1987) 'The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory'. *Wisconsin Women's Law Journal*, 3: 81–146.

Williams, Raymond ([1976] 2015) *Keywords: A Vocabulary of Culture and Society*. New edition. Oxford and New York: Oxford University Press.

Williams, R. (1977) Structures of feeling. In: *Marxism and literature*. Oxford: Oxford University Press, pp. 128–135.

Notes

¹ Drawing on Michele Le Doeuff, Elspeth Probyn uses this turn of phrase to denote a theorisation of the image as 'a point of view into its own work as an articulation of the real and the discursive' (1993: 79).

² The new communicative standard was made law by the Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021.

³ On retrial, Judge Robyn Tupman alone acquitted the person who had been convicted for anally raping Saxon Mullins 11 months prior: 'The judge concluded that the complainant, in her own mind, did not consent to the sexual intercourse that had admittedly taken place' (New South Wales Law Reform Commission, 2020: 41, referencing *R v Lazarus* (Unreported, NSWDC, Tupman DCJ, 4 May 2017): 70). 'However, her Honour found that Mr Lazarus had formed a "genuine belief", on reasonable grounds, that Ms Mullins consented. Her Honour observed that the Ms Mullins "did not say 'stop' or 'no'" and "did not take any physical action to move away from the intercourse or attempted intercourse" (41, citing *R v Lazarus* (Unreported, NSWDC, Tupman DCJ, 4 May 2017): 73). Mullins was the public face of the victim-survivor advocacy campaign that, by media accounts, got the state government to change its law.

⁴ As seen on YouTube (Jenny Leong on Affirmative Consent for NSW).

⁵ In my reading, this interpretation works with both meanings of the term "standard": as a noun (level or quality) and as an adjective (normal, to be expected).

⁶ Sommers clarifies, 'Pennsylvania defines "aggravated indecent assault" as penetration "without the complainant's consent"' (2020: 2235).

⁷ Fischel's *Screw Consent: A Better Politics of Sexual Justice* (2019) and Angel's *Tomorrow Sex Will Be Good Again* (2021) are key here. For Fischel, the cultural concept of consent is saturated to the point of nonsense (as highlighted in his analysis of the somewhat baffling idea that "*sex with horses must wrong because horses cannot consent*"). As Fischel points out, consent is a 'human construct' (2019: 25, emphasis in original). Yet consent also compounds some of the most vital questions we can ask about formations of sex and sexuality from a queer and feminist perspective. Fischel demonstrates how contemporary political rhetoric ties consent closely to sexual pleasure, with the effect of overcoding 'nonenthusiastically desired sex as sexual assault' (4) and omitting cause to redress the actual problem of 'bad sex', especially for women, 'not just uninspired, unenthusiastic, or boring, but unwanted, unpleasant, and painful' (4). Fischel notes that the limits of consent pertain both to these normative problems and to 'regulating sex across encounters and intimacies that are nonnormative, atypical, or weird' (4). Angel takes aim at 'consent culture', focusing her analysis on the dispositional offloading that occurs when consent becomes the purview of female subjects by dint of their requirement to know in advance how pleasurable might occur. Angel points out how sexual consent foregrounds a transparent, self-knowing subjectivity, at the expense of desire and autonomy from sexual violence. She writes: 'We must not insist on a sexual desire that is fixed and known in advance, in order to be safe. That would be to hold sexuality hostage to violence' (2021: 39). Such questioning of the consistency of desire and identity has been key to queer theory for some decades (e.g., Schor and Weed, 1997). Both Fischel and Angel identify some of the many and varied confluences of consent with normative conceptions of desire and pleasure that in turn shore up the liberal subject. For this and other reasons, argues feminist law scholar Tanya Palmer (2017), consent cannot helpfully distinguish between sexual activity and sexual violation. While many claims made earlier are immediately recognisable in contemporary consent culture, such as in Nicola Gavey's (2005) interrogation of rape, heterosexuality and "date rape", the shift to consent reflects a wholesale transformation in cultural discourse. It is as yet unclear whether, from the point of view of media visibility, consent supersedes rather than supplements rape's cultural discourse.

⁸ This concern goes more to the underlying presuppositions that colour people's perceptions of what's owed to them, to the criminal nature of the transgression of personal boundaries or injury, rather than the failures of the criminal justice system. For Sommers, the mistaken belief that people have given their consent means that 'victims of fraud may fail to seek recourse, mistakenly believing they have waived their rights' (Sommers, 2020: 2289).

⁹ The theme of deception in relation to consent goes all the way back to early political philosophy, as noted by Pateman in her discussion of Rousseau, for whom women were naturally deceitful (1980: 158).

¹⁰ The fact of not being responsible is determined by the lack of one's consent. The feeling of being responsible should then throw into question the efficacy of consent as a feminist concept. I take responsabilisation from Beverley Skeggs (2004), who links the distribution of responsibility to stratification by class, gender and race within neoliberalism.

¹¹ McDonald's argument draws on analysis of 40 adult rape trials in New Zealand.

¹² Pateman also notes: 'Accused rapists almost invariably offer as a defense that the woman actually consented, or that they believe she did' (1980: 157).

¹³ As a critique of carceral feminism, *Unwanted Advances* can be situated in relation to various strands of radical and queer feminism. Gavey's (2005) contextualisation of what she calls 'media feminists' (64) (such as Camille Paglia, Christina Hoff Summers and Katie Roiphe), reveals parallels in the passionate positioning of and by feminists over two decades of contestation. For me, Virginie Despentes (2020) strikes a compelling balance between mediatised cultural critique and incisive feminist criticism.

¹⁴ Kipnis writes: 'I wonder whether being in school [university] now would have left me feeling less freedom to act on the world, perhaps more beholden to authority' (25).

¹⁵ My references to Berlant here should signal the influence of their overarching approach to affective structures, infrastructures, and attachment. While, to my knowledge, Berlant only once discusses consent as a concept (2022: 39)—almost in passing—the lexicon of their scholarship is particularly convivial to consent precisely because consent is socially, culturally and politically efficacious as a site of attachment.

¹⁶ Rachel Dubrofsky and Marina Levina (2020), for instance, share an account of how #MeToo rearticulates the racial dynamics of consent's affective labour.

¹⁷ Kipnis is included within a class on consent I have taught as part of a feminist module since 2020.

¹⁸ Consent is linked to questions of the human through the socio-legal standing of autonomy. The kinds of sexual double standards that underpin feminist critiques of consent point to the location of consent within the problematic of sexually specific bodily autonomy. This takes questions of consent into the vicinity of the most elementary questions of feminist philosophy and their relationship with other political movements. See in particular Jennifer Nash's (2021) discussion of the disarticulated and intersecting 'political libidos' (4) of dominance feminism and afropessimism, each of which Nash understands to be a search for a language to give life and do justice to a world in which both black people and women have been attributed 'non-human status' (10).

¹⁹ Sovereignty is a contested term. On my reading, the sovereign formation hinges on consent as an interpellative backformation that's produced by the norm of consent and the way that consent is insinuated by normative concepts of autonomy. Elsewhere I would like to explore in more detail the implications of the claim that while seeming forward facing (an agreement made in advance), the integrity of the concept can only come to fruition retrospectively. The consistency of consent with its experience is a coincidence, or what Berlant would call a 'misrecognition' of fantasy (2011: 97), that stands in as evidence of the concept's forward-facing claim. It is when consent appears to fail that its retroactive status becomes apparent. In their last book, *On the Inconvenience of Other People*, Berlant writes: 'the moment an incident changes its associations, its implications change, whether toward clarity or the impact of cruelty' (2022: 39). When 'one is consenting to a thing that's about to happen', one cannot know in advance the affective nature of impact of the encounter. There is a 'lag between incidents and their associated affects' (39). I would argue that it in the duration of this lag the stakes of consent are decided. In contrast, judicial process zones in on the immediacy of consent to the event, including through the delineation of information that is material or immaterial to it.

²⁰ Reportedly, audiences reacted to Louis Lumière's film of a train pulling into a station with great fear and fright, jumping out of their seats to leave the cinema. This has been treated

as a pedagogical opportunity to denaturalise our comfort with media and our ontological and epistemological assumptions about what living a mediated life means.

²¹ See Eliza Steinbock (2017) on the power of media framing in the representation of trans people.

²² I.e. the criminalisation gender deception, in comparison with, say, the decriminalisation of transgressions made by those in secure identities, such as those undercover policemen who formed intimate relationships and fathered children with women unaware of their identities (Palmer, 2022). Much discussed in UK media, the scandal involved numerous police officers. An enquiry still in process at the time of writing heard that ‘the practice of undercover officers deceiving women into relationships was “endemic and common”’ (Evans, 2022, np). On gender deception, see in particular ‘The Trouble with Transgender “Rapists”’ (94–116) in Fischel (2019).

²³ The Channel 4 / Netflix series *Black Mirror* (2011–) offers fantastic commentary in this regard, picking up on the way that the intersection of social media with what were analogue media forms shifts media communications culture towards surveillance, *schadenfreude*, humiliation, morality—the negative affects. See episodes ‘Nosedive’ (2016), ‘Shut Up and Dance’ (2016), ‘Joan is Awful’ (2023), for instance.

²⁴ The episode ‘Loch Henry’ (2023) from *Black Mirror*’s latest series provokes reflection on the *in situ* fascination with true crime promulgated by Netflix’s style of true crime documentary, of which *The Tinder Swindler* constitutes a prime example.

²⁵ Just one example can be found in the criminal proceedings of the case against Benjamin Mendy. As reported in *The Guardian*:

Several weeks into the trial, the judge ordered the jury to find both Mendy and Matturie not guilty of raping a 19-year-old woman, after a video emerged showing her having “enthusiastic and obviously consensual sex” with Matturie. Mendy’s defence team used this dropped charge to plant doubt in the jury’s mind, suggesting that if one woman had lied, could the others not also have made up their allegations? (Halliday and Pidd, 2023)

Cases involving sportsmen continue to receive exceptional media visibility.

²⁶ For more on the networking of the genre, audiences, and feminism in this regard, see Tanya Horeck (2019).