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Chapter 5

Sexual Ethics and the Erotics of Consent

Moira Carmody

Introduction

The issue of sexual consent remains a controversial one with legal discourses of consent dominating debates about sex and sexual violence. However these discourses operate alongside other bodies of knowledge that also seek to regulate sexual practices. In particular there is evidence of psychological, socio/cultural, feminist and religious discourses present in much of the literature (Baumeister and Tice, 2001, Card, 1991, Cowling, 1998, Krahe et al., 2000, Mappes and Zembaty, 1997, Primoratz, 1999). Other authors in this collection will address some of these areas and their application to different social contexts, groups and settings. My approach will be somewhat different. What I wish to focus on is the role of sexual ethics. While consent is an element here, I will argue that this remains a limited concept without some consideration of how individuals as sexed and gendered bodies constitute themselves as ethical or unethical subjects within the social body and within interpersonal relationships and sexual encounters. My discussion draws on subjective perceptions and reflections based on the Australian experience and while I think the issues have universal resonance, recognition of cultural variations is important.

Some background

This chapter is the continuation of work I have been doing in various ways for the last two decades (Carmody, 2003, 2001, 2000, 1999, 1997, 1992). My original work focused on the multiple ways in which sexual violence against women manifests in Australian society and what can be done to prevent it from continuing to be a daily reality in the lives of thousands of women. From early on, in my direct practice with survivors of sexual violence, policy work, research and education, I have been concerned to interrogate the cultural factors that have both encouraged and condoned violence against women and the discourses of the dominant culture's belief systems about the role of women in society. I, like many others, resisted the personal and institutional systems that privileged men's views

of women as 'fair game' and actively denied the existence of violence to women on individual and systemic levels. Increasingly I believed, like many other feminists, that some hope of change was possible through actively re-writing the social policy agenda of government and key institutions such as health, law, welfare and education.

Since the early 1980s, numerous rounds of legislative reform, revised health, welfare and police procedures and several decades of community education have failed to deliver the much hoped for deterrence in crimes being committed or significant changes in the behaviour of those who continue to perpetrate violence against women (Carmody and Carrington, 2000). This reality has provoked me and others to call for an increased focus on primary prevention, to reflect on the successes and failures of the past and to begin to reconceptualise political goals and strategies and to develop different theoretical ways of understanding violence against women (Carmody and Carrington, 2000).

For me, this has lead to a critique of the effectiveness of social policy in preventing intimate violence and a rejection of a number of dominant feminist discourses that have shaped anti-violence strategies to date. I will begin this chapter by firstly, demonstrating how some essentialist feminist traditions have marginalised women's desire and pleasure by placing an emphasis on avoiding sexual exploitation. Central to these political strategies has been consent or the lack of the woman's consent to sexual activity. While the regulation of sexual consent is codified by laws, I will also argue that the responsibility for managing consent has been placed firmly with women to manage men's desires. My critique of the continuing dominance of these belief systems has led me to an exploration of sexual ethics. It is my contention that all sexual encounters, regardless of the gender of the people involved, invite the possibility of ethical or unethical sexual behaviour. My second aim is to present some preliminary ideas about how to conceptualise sexual ethics. I will argue that sexual consent is a significant part of a broader concern about sexual ethics. Here I will consider how Foucault's ideas about constituting an ethical self can broaden debates about sexual behaviour that is pleasurable, non-exploitative and has the potential for developing an erotics of consent.

Feminist responses to sexuality and violence

The dominance of radical feminist discourse has impacted greatly on constructions of women's desire especially in relation to heterosexuality. Sex and power are interwoven in this belief system that argues they are 'manifested in men's violence towards women through rape, pornography, child sexual abuse and sexual harassment, as well as in the more mundane arena of asymmetries in women's and men's relation to active sexuality' (Hollway, 1996, p. 93). Hollway argues further that radical feminism too often treats all men as sexual villains and the power that they manifest through their sexuality as monolithic in contrast to women's powerlessness and victim status. The universalisation of men as violent and women

as passive recipients of violence is still a pervasive contemporary feminist theory (Mackinnon, 1987, Lees, 1997). There is nothing positive in such an over-arching negative conception of femininity or masculinity (Jefferson 1997, Carmody and Carrington 2000). It is not only misleading to represent all men as 'dangerous' (see Connell, 1995, Messerschmidt, 1993), but such a totalising conception of masculinity constructs all men as criminal, or potentially so. It fails to take into account the multiple ways in which men can be men, cross-culturally, trans-historically and during different stages of their life cycle (i.e. during adolescence as opposed to adult-hood). It tends to assume that all men are either biologically, socially or culturally prescribed hetero-sexed creatures of patriarchy regardless of the multiple pathways and sexualities associated with masculinity (See Collier, 1998, pp. 6-33).

My colleague Kerry Carrington and I have argued elsewhere that accepting the notion of hegemonic masculinity is deeply problematic in the analysis of men, their gender and sexual crimes (Carmody and Carrington, 2000). The flipside of a totalising concept of masculinity is equally damaging. It is an equally totalising concept of femininity that robs women of any agency or ability to exert power, express desire, take control, resist, prevent or avoid their victimisation in intimate sexual encounters with men. Prevention is a virtual impossibility within this theoretical framework (see also Egger, 1997). Women are 'in waiting' to experience violence and men forever paused to engage in it. It also fails to acknowledge the diversity of women's subjectivities due to age, class, culture, sexuality or dis/ability and how these are inscribed in women's experience of sex. Therefore a central theoretical concern of this chapter will be to build on recent work in masculinity studies, post-structuralist feminism and queer theory which reject the false universalisation of all men as violent and all women as passive (Jefferson, 1997, Connell, 1995; Messerschmidt, 1993, Hollway, 1996, Butler, 1999, Segal, 1994, Rubin, 1993).

Discourses of Sexuality or Guilty Secrets

A key feature of radical left politics of the 1960s was the call for a sexual revolution (Millet, 1969). The much-touted sexual revolution, however, did not deliver liberation for women. Despite the call to sexual liberation as a way to dismantle the edifice of bourgeois order and the middle class suburban norms of the previous generation, women soon recognised that their desires and pleasures were not necessarily being met (Kwok 1997). The 1960s was after all, 'most often arrogantly male: women were "chicks", to be plastered on every page, the younger and "softer", the better' (Segal, 1994, p. 22).

Much of the debate amongst feminists concerned with rejecting sexual violence developed from a particular construction of sexuality. Women whose sexual desire involved sexual encounters or relationships with men were accused of 'sleeping with the enemy' or participating in compulsory heterosexuality (Rich, 1980). Feminist readings of sexological discourses in the 1970s rejected and condemned

sexual 'passivity' as demeaning and degrading to women and promoted the notion of feminine self-assertion through sexual 'activity'. Clitoral stimulation was seen as the key to female happiness and lead to the view that anything to do with penetration was harmful for women. Penetration (read penis or penis substitute) and passivity were banished from correct feminist and female sexuality.

Instead, women were to band together as 'woman identified women' to provide protection from the excesses of patriarchy. Some interpreted this as a call for women to embrace same sex desire and to build a lesbian nation of lovers who it was assumed were more egalitarian and in which women would be safe from sexual exploitation (Daly, 1978). Others saw this as a way of opposing interactions with men at all levels especially the personal. The development of women's culture both inside and outside the bedroom was seen as an antidote to patriarchal oppression. Women's oppression therefore became tied to male sexuality that was seen as violent, exploitative and stamping out all feminine values in the society. Apart from the problems this poses for women who desire to express their sexuality with men, it also created other dilemmas.

Pornography became a key issue for feminist political action - 'Pornography was the theory, rape the practice'. Dworkin (1974) and MacKinnon (1987) argued that pornography led directly to violence against women. Male sexuality and in particular the penis thus became the central means of patriarchal domination and destruction. Increasingly the discourse narrowed to focus on the activities of male sexuality to the exclusion of wider analyses of male social power and its manifestations in the dominant institutions of the society.

Despite the continuing dominance of these phallocentric and essentialist discourses, alternative voices emerged to question the limits of this analysis. For feminists like Gayle Rubin (1993) sexual exploration, expression and liberation continued to be a crucial focus in feminist politics. The debate became polarised around what has been well documented as the sex wars (Kwok 1997). On one side were the supporters of Dworkin and MacKinnon who saw all women as victims of male sexuality. They were viewed by their opponents as anti-sex and detracting from the wider feminist struggles. The pro-sex supporters called for a reinvigorated feminist debate about women and sexuality that did not reduce women to victims of male sexuality.

The impact of these competing discourses was felt widely in many parts of Western urbanised feminist communities in the USA, UK and Australia. Heterosexual women often reported feeling alienated from feminist politics and resented the oppression they experienced in their desires to peruse pleasure in the arms of a man. Hollway (1996, p. 91) argued there had been little space in the political criticism of heterosexuality to develop feminist sexual desire outside of erotic domination by a man. She suggested the relative silence of heterosexual women has perpetuated the absence of such a discourse. It was 'further amplified by a historical lack of any discourse which offered women positions in which we can recognise ourselves as desiring sexual subjects, without moral opprobrium and sanctions'. One friend of mine who identified as a lesbian during this period described to me how she would escape from the city lesbian ghetto on the weekends and return home to have sex with a boyfriend. She did not tell anyone

that her erotic desires involved women *and* men, as bisexuality was frowned on by 'good feminists' as a failure to give up heterosexual privilege and 'Queer Nation' had yet to emerge to challenge the 'fixed' boundaries of sexual desire and practice. Feminist sexual police had a strong influence in regulating what was considered not only acceptable sexual desire but the acts and pleasures of individual women. Feminist lesbians were ostracised in some communities if their behaviour was seen as male identified, for example if our desires included erotic difference through butch-femme pleasure or penetration or s/m. For some of us the message we received was that we must constantly monitor ourselves and our lovers for desires and pleasures that replicated heterosexuality or were male identified. Sally Abrahams (1999, p. 116) speaks of her experience as a 1970s Sydney lesbian:

> It was particularly perilous in the 1970s for a lesbian like me. I tried hard. It was said that feminism was the theory and lesbianism the practice. But mine never quite lined up. I wore overalls and flying boots to all the demonstrations and marches: dragged my lover from the back of the police vans; sprayed the Tempe overpass; danced for Emma Goldman: I earned my stripes. But I had secrets. I lived in fear of any of my comrades discovering the (shamefully unburned) black lace bra under my slogan-emblazoned T-shirt. I covered up my male identified shaved legs, hid my razor – that sharp edged tool of the patriarchy – in my underwear drawer.

Indeed.

The strength of these repressive discourses was underpinned by a belief that women were responsible for avoiding direct sexual exploitation by men. In the case of heterosexual women, as Hollway (1996) suggests, this left no room for women to be desiring heterosexual subjects. 'Bisexual' women often hid part of their erotic desires from public scrutiny and only made visible relations with women that were universally assumed to be non-exploitative. For lesbian women there were two impacts. Feminist lesbians such as Abrahams (1999) and many others resisted the cultural dominant norms of the period but ran the risk of exposure and moral condemnation. I would suggest this also operated to inhibit the full expression of erotic desires and led to some tense moments in the bedroom until the preferences of a new lover could be ascertained. Lesbians who did not identify as feminists often felt alienated from feminist political agendas though they were often sought as lovers because they were not constrained by feminist political codes.

Within these discourses are sets of assumptions concerning consent. Rigid adherence to a universalised femininity, masculinity and consequent sexual practices precludes a flexible and negotiated consent specific to the sexual encounter. If all sexual encounters between women and men are assumed to be exploitative because they occur within patriarchal power relations, no freely given consent is possible for either party. This position assumes women have no agency over their own sexuality and that men are always exploitative. While it has been important historically to make visible the ways in which gender relations have benefited dominant forms of masculinity, assuming all relations are inherently

exploitative is a deterministic view. It fails to acknowledge the multiple ways in which femininities and masculinities are constantly negotiated and performed in different social and cultural contexts.

The rupturing of essentialist and one dimensional views on sexuality in the wake of the 1980s sex wars has resulted in a reinvigorated debate about sexuality and the development of diverse sexualities, influenced strongly by postmodern critiques of grand narratives such as radical feminism and the growth of queer theory and studies of masculinities. A good deal of this fresh approach to theorising sexuality, power and gender derived from emergent philosophical debates, especially from the work of Michel Foucault. It is by considering these alternative discourses that the space is created to develop a different sense of sexual consent.

Development of the ethical subject

An exploration of ethical sexual behaviour invites a consideration of what philosophers have to say about ethics and sex. According to Primoratz (1999) philosophy has only recently become interested in sex. Foucault (in Rabinow, 1997, p. 253) suggests that even those supposedly sex loving Greeks were much more interested in food than sex. The metaphysical tradition of Plato and Pythagoras extolled the material and the soul not the body, viewing sex as purely physical. A life of reason was incompatible with passions such as anger, fear and sexual desire. To achieve reason passions must be subdued. This had a significant impact on Christian philosophers who confined sex to heterogenital interaction within monogamous marriage for the purpose of procreation. By the middle of the 19th century however philosophers such as Schopenhauer and Nietzsche began to re-assess traditional sexual morality influenced by critiques of bourgeois society. By the middle of the 20th century, philosophers like John-Paul Sartre, Maurice Merleau-Ponty, Simone de Beauvoir and Bertrand Russell were actively contributing to rethinking ideas about sexuality. It was not however until the 1960s when the philosophy of sexuality came into its own due to the new libertinism of the anti-establishment, the rise of feminism and gay liberation leading to changes in sexual mores. At the same time philosophy became more concerned with legal and political norms, morals and values.

In exploring ways of thinking through the role of ethics and sexuality I have found it useful to consider Foucault's ideas on the subject. My argument refers to three areas of his work; governmentality, the development of the ethical subject and power relations. Foucault argued that a new form of power emerged in the sixteenth century, which took as its object the government of the population and sought to strengthen, constitute and regulate government, not through force, repression or coercion but through the institution and dispersion of the norms of good government. This form of power displaced neither sovereign power (judicial or state power), nor more modern forms of disciplinary power (panopticonism). Rather it operated alongside, in a triangular relation with, these two forms of power. It did not emanate from the state – rather it was diffuse and multifarious.

This new form of power he calls governmentality. The concept of governmentality is in part a critique of totalising discourses that conceive the state (whether capitalist or patriarchal) as the centre from which all power emanates. Rather than a singular reliance on repressive power through direct coercion or force to achieve social regulation, mechanisms within the social body enlisted individuals and groups (such as families) to act as instruments of government.

Foucault argued there were three elements to understanding sexual behaviour – acts, pleasure and desire. Greek society, he suggested, placed the emphasis on sexual acts and pleasure and desire are seen as subsidiary to them. He contrasted this with a Chinese approach where acts are put aside through the need to restrain acts to get the maximum duration and intensity of pleasure. The Christian formula puts an accent on desire and tries to eradicate it. Acts have to become neutral; you act only to produce children or to fulfil your conjugal duty. Pleasure therefore is both practically and theoretically excluded (Rabinow, 1997, pp. 268-269). Foucault took this analysis further and argued that the modern formula was desire, acts had become less important and nobody knew what pleasure was.

Foucault invites us to consider that acts are the real behaviour of people in relation to the moral code or prescriptions. The code tells us what is permitted or forbidden and determines the positive or negative value of the different possible behaviours. This is clearly where laws about consent come into play. The ability of laws to impact on regulating people's sexual behaviour is however contested. While many individuals support and follow consent prohibitions, the high incidence of exploitative sexual encounters in most communities suggests that the threat of coercive power over individuals is not enough. Intimate relations between individuals are more complex than this. Even if we accept how governmentality enlists individuals and groups such as families to act as instruments of government, the incidence of sexual violence points to a failure to achieve social regulation or create ethical sexual subjects. We also need to consider that families have been identified as a primary site of sexual exploitation of women and children through domestic violence, sexual assault and child abuse (Fawcett, Fetherstone, Hearn, Toft, 1996).

Individual subjects cannot stand outside the discourses that shape them. Here it is crucial that we understand how gender relations have historically shaped discourses about women and men's sexuality. Inherent in all relationships, as Foucault reminds us, are relations of power. His notion of power as mobile and productive and in a constant state of negotiation contrasts with grand narratives such as radical feminism in which it is always structurally defined by patriarchy. In this latter model ethical behaviour is to be achieved by gender equality or by regulation through laws and sexual conduct codes. The failure of these measures over the last thirty years to prevent exploitative sexual relationships suggests we need to find creative alternatives to the 'art of living'.

Foucault's central argument about ethics involves what he calls *rapport à soi* – the relationship you ought to have with yourself which determines how an individual is supposed to constitute 'himself' (sic) as a moral subject of 'his' (sic) own actions (Rabinow, 1997, p. 263). Foucault argues therefore that the care of the self is intimately linked with ethics and that ethics is the considered form that

freedom takes when it is informed by reflection (Rabinow, 1997, p. 284). Further, 'The care of the self is ethical in itself: but it implies complex relationships with others insofar as this ethos of freedom is also a way of caring for others' (Rabinow, p. 287). The abuse of power manifested in exploitative sexual relations 'exceeds the legitimate exercise of one's own power and imposes one's fantasies, appetites and desires on others'. Therefore 'one has not taken care of the self and has become a slave of one's desires' at the expense of another (Rabinow, 1997, p. 288).

A reconceptualisation of sexual ethics therefore seems very pressing. Building on Foucault's conception of sexual behaviour as involving acts, desire and pleasure raises a number of interesting questions. If desire, acts and pleasure are considered singularly does this limit the possibility of ethical sexual behaviour? Let's first consider acts on their own. There is a long history of both of medical and legal discourses that have focused on regulating or repressing certain sexual acts through laws or cultural sanctions, such as male homosexuality, oral sex, masturbation, public sex and sado-masochism. Despite these attempts to regulate sexual behaviour Foucault provides evidence through his genealogy of sexuality that there has always been a multiplicity of sexualities (Foucault, 1990). This is where his conception of power relations as productive and dispersed is crucial. On one level the powerful discourses of medicine and law aim to work in concert with sovereign power to repress and regulate unacceptable sexual behaviour. However alongside this is governmentality that enlists individuals and groups to act as instruments of government. The family becomes central in imparting norms of sexual behaviour and gender relations. However resistance to these norms creates alternative subjectivities and political movements to challenge the attempts at repression.

The tension between regulation and freedom of sexual expression is evident in several political strategies over the last thirty years. Both Gay Liberation and the Women's Movement have in part tried to make publicly visible aspects of sexual relations that were discriminatory and repressive. While Gay Liberation and its later derivatives have argued that homosexual desire is part of the multiple ways in which sexual identity is experienced and the state has no place interfering in homosexual acts between consenting adults (Flynn, 2001). Despite the relative success of these movements, discrimination and violence towards lesbians and gay men is considered an epidemic by many researchers (Herek and Berrill, 1992, Mason and Tomsen, 1997). Feminist campaigns against violence towards women by men have focused on also making visible the multiple ways sexual exploitation is manifested and its devastating impact on women. As discussed previously much of the strategy has assumed a universalistion of women as victims and men as dangerous both as individuals and systemically. Rape in marriage is one area where freely given consent to sex was not possible as sexual access by the husband to his wife was built into the marriage contract. Legal condemnation of these acts did not occur in Australia until 1981, but despite this few prosecutions have been brought or succeeded in criminal sanctions. It would seem that developing notions of sexual ethics that focus purely on either liberating or repressing certain sexual acts are limited in achieving *rapport à soi.*

This suggests the development of the ethical self requires consideration of how we can understand desire. In radical feminist discourse, which retains a strong influence in anti-violence work, male sexuality is conceptualised as uncontrollable and women are required to manage it to avoid sexual exploitation. So men are consumed by sexual desire while women's desire disappears or is determined by male desire. The spectre of male violence therefore hangs over the bed in any hetero-sex encounter. Gay men are positioned as constantly desiring and this must be controlled and regulated to ensure public health and 'safety' of non-gay men. The picture is not much better in relation to lesbians. There are several possible subjectivities available; the political lesbian who is defined as asexual in male terms, angry, man –hater, ugly, or the 'special' friend or companion (read asexual). Alternatively, like gay men, women are saturated by sexual desire and any woman is fair game. Another competing discourse operates alongside this – the radical feminist idea of women loving women who are egalitarian and non–coercive. Emerging data on same sex domestic violence and rape has significantly challenged this myth (Elliott, 1996, Herek, 1990). Underpinning these desire discourses is the ever-present influence of romance narratives and how these are shaped by cultural norms of desire, desiring bodies and anticipation… Which leads me to pleasure.

It is the anticipation of sexual pleasure that builds from desire. But while desire and acts may be shaped by memory, fantasy or experience, pleasure requires presence in the moment. So how do desire and acts become pleasure? Is pleasure a singular or mutual experience? Leaving solo masturbation aside, if there is an absence of mutual pleasure does this mean the encounter was unethical? Foucualt is helpful here in reminding us that the care of the self – *raison à soi* - implies complex relationships with others and is also a way of caring for others. This suggests that self-care and reflection requires a consideration of the interrelationship between desires, acts and pleasure, not through a singular focus on one aspect of sexual behaviour alone. I want to suggest therefore that ethical sexual behaviour becomes possible when we pay attention to all three aspects.

Developing an erotics of consent

My discussion so far has rejected universalising discourses that view women as inherently and always potential victims of male desire, acts and violence. I have suggested that a conception of power relations that assumes structurally constituted masculine power is deterministic and creates an impossibility that sexual consent can be freely given. A brief overview of feminist discourses that have shaped anti-violence theory and practice highlighted how women's sexual desire and pleasure have been marginalised in an attempt to avoid and prevent sexual exploitation of women by men. These discourses have placed heterosexual male desire as central and have failed to acknowledge the multiple subjectivities available to both men and women. The responsibility for managing consent and therefore ethical sexual

practice has been placed with women. There has been little change in these approaches when lesbians and gay men are acknowledged as sexual subjects.

Over the last thirty years we have witnessed more and more individuals and groups acknowledging that sexual violence is a reality in their lives. It has been important for the previously submerged voices of people with disability, diverse culture groups and a variety of age groups to be publicly heard and recognised as worthy of concern and the commitment of government resources to support them. Rather than simply adding increasing groups of people whose consent must be acknowledged and improving adherence to sexual consent laws and codes, we need to move beyond a limited conception of sexual ethics.

Foucualt's ideas about the care of the self provides a productive space to explore more fully the complex relationship we have with ourselves in developing our own moral and ethical subjectivity. This approach has potential for heterosexual, same sex and queer sexualities. The failure to achieve non–violent communities through repressive power (via the state), the panoptical gaze or technologies of governmentality, suggest alternative ways of thinking are urgently required. I consider that much of the sexological, legal etc. discourses concerning sexual violence have focused on what is perceived as 'abnormal' and the desires, acts and pleasures of unethical subjects. It seems timely therefore to shift our thinking to consider that many women and men of diverse sexualities do behave as ethical subjects. Ethical subjects, following Foucault, not only reflect on how we constitute ourselves as moral subjects of our own actions, but essential to this subjectivity is caring for others. Therefore, desire, acts and pleasure are performed in an ethical manner in which freely given and constantly negotiated consent is inherent. This suggests that research into sex and sexual violence needs to shift its focus away from unethical subjects to explore ethical subjects. We need to understand how differently sexed and gendered relations are negotiated in casual, short-term and ongoing relationships. If we limit this purely to legal notions of consent we run the risk of failing to consider broader notions of sexual ethics. As such it would deny the complexity and dynamic nature of intimate relationships (Carmody 2003). There is also a need to consider how different cultural groups give meaning to these issues, including the diverse understandings of the individual subject and the role of community. Maybe a critical reflection of all of these issues from a different theoretical standpoint will provide insights into how desire, acts and pleasure are understood from an ethical perspective and create a greater possibility of realising an erotics of consent.

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