

CONSENT AND THE POLITICS OF SEXUALITY*

Sheila Jeffreys
Department of Political Science
University of Melbourne

I became interested in the idea of consent whilst reading the promotional and celebratory literature of contemporary lesbian and gay sadomasochists.¹ This literature is problematic for a feminist theory of sexuality. Feminists such as Catharine MacKinnon and myself have argued that it is precisely the construction of sexuality around the eroticised subordination of women and the power of men that maintains and organises the political system of male supremacy.² For such a feminist analysis any suggestion that the practice of sadomasochism is positively linked with freedom and specifically the freedom of women is bound to seem a little suspect. But what really puzzled me was the concentration in this literature on the idea of consent. The fact that the practice was consensual was seen to be its complete justification versus the slings and arrows of outraged feminist critics. Consent seemed to me such a flawed and troubling idea in relation to sexuality that it did not seem to be sufficient foundation for the supposed acceptability of sadomasochistic practice.

The notion that consent should be the reasonable basis of sexual activity and certainly of the law on sexual offences seems fairly well accepted in the conventional wisdom of male supremacy. I would like to suggest that we need to reconceptualise sexuality so that consent will seem a bizarre and outdated notion if we are to construct a politics of sexuality consonant with women's freedom. The notion of consent reifies the idea that sexuality is composed of subject/object relations in which one person, usually a man, can act out sexually for their own satisfaction upon or in the body of another without that other person, usually a woman, being involved or aroused. This is an idea of sexuality predicated upon the oppression of women and one which needs to become unthinkable.

Despite its flaws feminists have found it necessary to use the notion of consent. The notion of consent was used by feminist campaigners against male sexual violence in the nineteenth and early twentieth century. Feminists campaigned to raise the age of consent in order to protect young girls from being used in prostitution.³ Arguments about children's relative inequality which suggested that they were not in a free and equal position to enter into contracts to have their bodies sexually used, could be understood by

* Paper presented at ANZ Society of Criminology Conference, Melbourne, University of Melbourne, Sept–Oct 1992.

1 See Samois (ed), *Coming to Power* (1985). This is an early collection but gave shape to the philosophy of lesbian sadomasochism. See also Califia, P, "Feminism and Sadomasochism" (1981) 12 *Heresies* (Sex Issue).

2 See Jeffreys, S, *Anticlimax: a Feminist Perspective on the Sexual Revolution* (1990); MacKinnon, C A, *Toward a Feminist Theory of the State* (1989).

3 My book, *The Spinster and her Enemies: Feminism and Sexuality 1880–1930* (1985), details feminist campaigns around the age of consent in the UK.

most liberal audiences. But the issue of an age of consent is still fiercely fought over. Organisations of paedophiles and their supporters demanded in the seventies that feminists campaign with them for the removal of age of consent laws.⁴ For sexual libertarians differences of power cannot be recognised. They demand deregulation of the sexual marketplace and believe in the power of all human beings of any age to make free and equal contracts around sexuality. They argue that age of consent laws are insulting to young people's dignity and self-determination. Such laws are seen as patronising and overprotective. The idea of consent has been seen as constructing children's and women's sexuality as passive.

Feminists in the present have found it necessary to use the idea of consent in order to campaign against sexual violence. It is an idea which has some meaning in the conventional wisdom and could be marshalled to establish that women have a right to deny men sexual access to their bodies, a right to withhold consent. Against the literature of pornography and the workings of the judicial process which consistently interpreted women's resistance, fear, repeated denials as consent, feminists sought to get women's nos taken seriously. The emblematic slogan of Reclaim the Night marches was that "No means no and yes means yes, wherever we go and however we dress". Feminists were engaged in a difficult ideological struggle to assert women's right to control the territory of their bodies. This need to stress the importance of women's nos did not allow for too much discussion of how little women's yeses, their consent, could be seen to represent free choices, or how the concept of consent reflected and constructed an approach to sexuality that was founded on the oppression of women.

But at the same time that feminist activists have campaigned to have women's right to deny consent taken seriously, radical feminist theorists have developed a critical analysis. They have stressed the considerable imbalance of social power between men *and* women which can be seen as invalidating any notion of consent which is based upon equality. Feminist theorists such as Catharine MacKinnon and Carol Pateman have done sterling work in the demolition of liberal notions of contract, choice, consent and privacy.⁵ All such notions assume a level playing field and are aimed at preserving the rights of powerful male individuals. They have demonstrated the severe shortcomings of such notions for women and feminist analysis of sexuality.

Catharine MacKinnon has expanded on the fundamental feminist insight that the personal is political and has shown how the notion of privacy in law "reaffirms and reinforces what the feminist critique of sexuality criticises: the public/private split".⁶ She drags the private into the public view in a way that the malestream world of law and state is finding difficult in the US to ignore. She writes:

It is probably not coincidence that the very things feminism regards as central to the subjection of women — the very place, the body; the very relations, heterosexual; the very activities, intercourse and reproduction; and the very feelings, intimate — form the core of

4 See: ch4 of my book *Anticlimax*, section on paedophilia.

5 See: MacKinnon, above n2, ch9: "Rape: Coercion and Consent"; Pateman, C, *The Sexual Contract* (1988). Pateman, C, *The Disorder of Women* (1989).

6 MacKinnon, above n2 at 191.

what is covered by privacy doctrine. From this perspective, the legal concept of privacy can and has shielded the place of battery, marital rape, and women's exploited labour; has preserved the central institutions whereby women are *deprived* of identity, autonomy, control and self-definition; and has protected the primary activity through which male supremacy is expressed and enforced.⁷

It is in this supposedly private but in fact intensely political realm for women that they are supposed to make marriage contracts and most importantly to be able to consent to sexual intercourse.

Carol Pateman in her book *The Sexual Contract* scrutinises the work of seventeenth and eighteenth century contract theorists to demonstrate how, though women did not take part in drawing up the social contract, their subordination is the crucial underpinning of the contract that men made between themselves.⁸ The "contract fiction" based upon consent is necessary to democratic theory to explain how the ruled can be seen to accept government. She shows that early contract theorists left women out of the social contract or considered them as owned by and subordinate to the men who made the contract. She explains that the notions of consent and contract that derive from this body of ideas still fundamentally inform how social and business relations are conducted. It is possible by extension of these ideas into what has usually been seen as the private realm to make a good deal of sense of the situation of women in relation to sexuality. Since women were absent from the original contract they cannot be assumed to be consenting to the current social contract, or, more particularly, to the sexual contract by whose terms men and women marry and engage in prostitution and sexual intercourse.

Until recently rape in marriage was not a crime in western countries. It was only in 1992 as a result of a judge's ruling that rape in marriage was included in the coverage of the rape laws in the UK. Consent is a notion seen as crucial to sexual intercourse but usually only to sexual intercourse in the public world. As Catharine MacKinnon puts it "in private, consent tends to be presumed".⁹ Consent or lack thereof could be seen as necessary in police-blotter, ie street rapist situations. Consent was not seen as relevant to sexual intercourse in marriage or treated as irrelevant in relationships because in both situations a woman was seen as having given consent once and for always in the contract made between the parties. With changes in the law which make marital rape a crime, consent in this area has now become an issue.

In democratic theory consent can be assumed from the submission of the populace. Absence of revolution is seen as evidence of consensus. The force required to prevent revolution is invisible. If we extend this analysis to sexual intercourse in the private sphere, a sphere intensely political for women, then we would expect women's consent to be assumed in any situation short of violent rebellion. The everyday force required to extract women's constant consent in marriage would not be recognised.

Diana Russell's study of rape in marriage gives us some very interesting insights into women's understanding of consent to sexual intercourse. She found in her study of rape in

7 Id at 193.

8 See Pateman, C, *The Sexual Contract* (1988).

9 MacKinnon, C A, *Feminism Unmodified* (1987).

marriage that rape defined as vaginal, oral or anal penetration with the threat or use of force, was reported by 14 per cent of her married women respondents.¹⁰ This might seem a high figure to those who are committed to recognising only rape which fits the police-blotter rapist model and idealise marriage. But more interesting for our present purposes is the existence she reveals of a widespread submission to sexual intercourse which did not fall into her category of rape and would be likely to be seen as consensual in most jurisdictions and probably by most of the men and women involved.

Women are not free and equal individuals in making marriage or relationship contracts or in giving consent. The force which has operated on them all their lives and continues to operate on them within marriages and relationships is apparently invisible. What is this force? It consists partly of economic constraints. In Shere Hite's survey of male sexuality men share their strategies for forcing an unwilling woman to submit to sexual intercourse, one of which was economic blackmail.¹¹ It consists of simple bad temper as well as physical violence, of all those forces which have worked upon a girl and woman in her life to persuade her that she must be attached to a man to have value and that she has little right to bodily integrity. Such forces include the massive industry of sexology, sex therapy, sex advice literature, all of which make women feel guilty and inadequate for any unwillingness to fulfil a man's sexual desires.¹² They include sexual abuse in childhood which can train girls to have a concept of self worth based simply on the sexual use of their bodies and harassment on the street and at work. They include subtler forms of harassment in the family and at school which simply make a girl feel less important than a male. How else, apart from the use of force, are we to understand why a whole class of people, women, allow access to their bodies which is undesired, painful, even humiliating on a routine basis, often with no consciousness that it would be reasonable or possible to resist.

The following examples are descriptions of submission, resignation, duty which are often seen by the women involved, by the justice system and the conventional wisdom of male supremacy to be the same thing as consent. One reason wives gave for engaging in sex with their husbands when they were unwilling was the need to avoid fights and arguments:

Mrs Downing: I Just didn't want to do it and he did, so we had sex anyway. I said I didn't want to and I didn't help it to happen, but on the other hand, I wasn't forced. That probably happens to a lot of married people. *Did you feel forced?* Yes, I felt forced to do it. Not physically. But you can't just start fighting with your husband. We weren't in good communication. It was our wedding night and I was really, really drunk. *Still conscious?* Just semi-conscious. I was feeling pretty sick.¹³

The force involved here, psychological or emotional battering, would not be significant unless the marriage partners were already unequal. A woman's bad temper would not

10 Russell, D, *Rape in Marriage* (first published 1982).

11 Hite, S, *The Hite Report on Male Sexuality* (1981).

12 For the aims and methods of this sexology industry see my books *The Spinster and Her Enemies* (1985) and *Anticlimax* (1990), and for lesbian sexology see my *The Lesbian Heresy: a Feminist Perspective on the Lesbian Sexual Revolution* (1993).

13 Above n10 at 83.

have so much weight to control her husband's behaviour and indeed she might not dare to show bad temper. Another reason for accepting unwanted sexual intercourse was the threat of a husband's infidelity. This seemed to be of particular concern to women from ethnic minorities who spoke of it being accepted in their cultures that a woman had to agree to avoid this.

Mrs Gibbs: I was tired. I was working very hard. I wanted to sleep. Because he's my husband I couldn't say no. I never said 'I have a headache' like American women, because then he would go someplace else. *Force, physical threat?* No. I didn't say no. I let him have it. It was no pleasure for me at all.¹⁴

Another reason given is "pleasing" the husband. This is a reason that looks reasonable at first until one considers whether this "pleasing" is mutual.

Mrs Albert: Sometimes my husband wants to do things I don't want to do, or that are uncomfortable to me. Certain positions are uncomfortable or exhausting to me, like standing up. It's not forced like rape but sometimes when I say no he doesn't ever force me, but I might do it to please him.¹⁵

It is difficult to imagine the husband in this example feeling he had to do something he found similarly uncomfortable and unwanted to "please" his wife. In the next example the wife simply complies because it does not occur to her that she has a right to say no.

Mrs Keating: He'd want it, I'd be tired. This is a big complaint of wives. *Force?* No, only saying it. Many, many times I lay there, just like a sick person. *Asleep, helpless?* When I'm sick, he won't do it. When I'm asleep he wakes me up tells me to take off my pants. He wants it, I do it.¹⁶

From Russell's survey it would appear that men performing or beginning to perform sexual intercourse whilst their wives are asleep is fairly routine within marriage, and this comes within the legal definition of rape in some jurisdictions such as Victoria. Such practice makes a mockery of woman's ability to control her own body and avoid pregnancy but wives subject to this behaviour still see themselves as consenting. One woman used the word consent specifically in a context that might seem surprising. She said "He would stop if I protested enough. I usually consent even though I'm not in the mood".¹⁷

An interesting 1993 article based on interviews with women who are "articulate, educated, middle class" about what several saw as "very ordinary" experiences of sex with men show similar pressures in operation and these women too find it hard to resist unwanted sex. One woman explained the controlling power of anger:

Things like actually being called a fucking bitch and having the door slammed. And trying always to explain that it didn't mean that I didn't care because I didn't want to have sex, but never ever succeeding.¹⁸

14 Ibid.

15 Id at 82.

16 Id at 81.

17 Id at 82.

18 Gavey, N, "Technologies and Effects of Heterosexual Coercion", in Wilkinson, S and Kitzinger, C (eds), *Heterosexuality. A Feminism and Psychology Reader* (1993) at 109.

Another talks of giving in simply to get some sleep:

... he kept saying, just, just, let me do this or just let me do that and that will be all. And, and, I mean this could go on for an hour, sort of thing, and, I, I mean I just wanted to go to sleep, really (amused) when I had a busy day the next day ... So we made love, if you can call it that.¹⁹

The women describe a variety of pressures that made it impossible for them to say no. Nicola Gavey concludes from her interviews that women are “sometimes not aware of consent and non-consent as distinct choices”.²⁰

A good example of the level of anguish that unwanted sexual intercourse in marriage can cause comes from an anonymous writer to the *Guardian* newspaper in 1989:

Sometimes I lie in bed and think of all the women who might be crying tonight. Crying because they know they'll have to 'do it' tomorrow, crying because they can 'feel him' coming towards them, crying because he is grunting there on top of them, crying because their bodies aren't their own any more because they promised them away 20 years ago and it doesn't seem possible to get them back.²¹

The paper was deluged with letters thereafter from women who identified with her feelings.

These examples are apparently consensual in that the women generally did not say no or think that that was a possibility, but nonetheless suggest a considerable abuse of women. It has been argued to me in response that men are sometimes under pressure from their female partners to perform sexually when they do not wish to and that they sometimes do engage in sexual intercourse against their will. Without going into the difficulties involved in likening this experience to the rape of women in any detail it should suffice to say that men are not generally being expected at the end of the working day to have the inside of their bodies used for the purposes of someone else's masturbation. Being used as an object, as a spittoon, on a regular basis can only be expected to damage a woman's strength and sense of ability to act in and on her everyday environment. The impact of this “consensual” sex might be to damage a woman's chance of equal opportunities before she leaves the marital bed. There is a considerable feminist literature on the importance of the performance of sexual intercourse in maintaining men's power and women's submission.²²

The model of sexuality implicit here in the idea of consent is that of one person, generally male, using the body of another who is not necessarily sexually interested and possibly generally reluctant or distressed, as a sex aid. It is a dominant/submissive and active/passive model. It is not mutual. It is not about the sexual involvement of both parties. It bespeaks not equality but the absence of it. Consent is a tool for negotiating inequality in heterosexual relations. Women are expected to have their bodies used but the idea of consent manages to make this use and abuse seem fair and justified. In certain situations where this use might seem particularly and obviously unwelcome, such as street

19 Id at 112.

20 Id at 116.

21 Quoted in Wilkinson and Kitinger, above n18 at 307.

22 The most famous feminist analysis of sexual intercourse is Dworkin, A, *Intercourse* (1987).

rape, women are given a limited right to object, but in general the idea of consent allows the sexual use and abuse of women to remain invisible as harm or a contravention of human rights.

Women's consent can be assumed in the most surprising circumstances. The Victor Burnham case has become quite infamous for feminist theorists of sexual violence in the US. Burnham was prosecuted in 1981 for raping his third wife. His two previous wives had been raped and testified against him. The three women said they were "choked, beaten, struck with gun butts, held at gunpoint, and continually threatened".²³ They experienced torture such as sex with the family dog, sex with Burnham's friends. Their testimony was supported by one of the men who went for sex-and-photo sessions with two of the wives. There were two photograph albums of the torture sessions. Burnham was found guilty of rape, bestiality and intent to commit great bodily harm and sentenced to thirteen years in prison.

Diana Russell spoke of this case when she visited the Institute for Advanced Study in Sexuality headed by Wardell Pomeroy. A questioner there was determined that Rebecca Burnham was a sadomasochist and did not suffer rape. Another member of the audience told Russell "Dogs don't fuck you unless you want it".²⁴ The attitude of these trainee sex therapists and sexologists to marital rape is chilling but helps us to understand how the science of sexology functions to normalise male sexual aggression and disempower women. But the trainee sexologists had a good understanding of general male supremacist wisdom about the abuse of women. Their viewpoint was to prevail. Burnham was released after three years in prison on the grounds that the judge should have instructed the jury that Rebecca Burnham might have consented to the rapes and torture. In 1989 Burnham was again prosecuted for similar crimes against his live-in lover.

In the midst of overwhelming evidence of abuse it was possible to consider that a woman might have consented. This overwhelming expectation of women's consent to whatever men might sexually desire to do to them is the staple message of pornography as feminist theorists have pointed out.²⁵ It is a message that can be believed in the courts even in very unlikely circumstances. Rebecca Burnham was seen as a sadomasochist by an "enlightened" sex therapist as we have seen. The burgeoning development of sadomasochism as a sexual practice in the eighties has made it even more likely that a woman could be seen as consenting to her abuse. In Melbourne and now Sydney, Hellfire Clubs in which men and women engage in "consensual" public displays of sadomasochism as a form of mass entertainment, have been set up. Sadomasochism is on the way to becoming a variety of heterosexual practice which men are likely to expect as a matter of routine. Sadomasochism presently in Australia seems to be taking on the character of a youth cult. An article in the July 1993 *HQ Magazine* says "Like it or not we are talking about a youth culture trend here, a direction, not some faddist dalliance".²⁶

23 Above n10 at xii.

24 Id at xiii.

25 See Dworkin, A, *Pornography: Men Possessing Women* (1981).

26 For the development of heterosexual sadomasochism in the 1980s see: Ehrenreich, B, *Re-Making Love* (1987). For youth sadomasochism in the 1990s in Australia see: Masterson, A, "A Night at Club Cruel", *HQ Magazine*, July 1993 at 90-95.

Considering the derivation of the notion of consent, not from any situation of equality but from the need to legitimate men's sexual prerogatives in relation to women, it might seem surprising that lesbian and gay sadomasochists have used consent as the basic defence of their practice. Heterosexual sadomasochism does not seem to have produced much theoretical justification. Lesbian sadomasochists, on the other hand, have been involved in producing such justification. This may be because the clash between feminist politics in the lesbian community and the practice of S/M required such articulation whereas in the heterosexual world where the pornography of sadomasochism had a long history and very wide circulation, S/M as a sexual practice did not require a rationale. Sadomasochists have picked up the idea of consent as an important one in liberal male supremacist understandings of sexuality. The proponents of sadomasochism adhere to a rigidly subject/object, active/passive mode of interaction which lends itself to a consent approach in a similar way to traditional male dominant heterosexual intercourse.

But the use of consent as a justification has recently been rejected by the courts in Britain. In February 1992 the idea of consent in relation to S/M became a cause celebre because of the failure of the appeal in the Operation Spanner case. In this case a group of male homosexual sadomasochists who had "willingly and enthusiastically participated in the commission of acts of violence" appealed against prison sentences for assault and aiding and abetting assault. The consent of the victims was the ground for the appeal. It was held that consent was no defence where actual bodily harm was inflicted for no good reason, that sexual pleasure was not a good reason, and where "hurt or injury calculated to interfere with the health or comfort of the other party" was inflicted and the injuries were neither "transient nor trifling". The "assaults" consisted of brandings, genital torture with pins, spiked gloves and stinging nettles, including nailing one penis to a bench, canings and strappings.²⁷

Gay activists in the UK have campaigned unsuccessfully against the convictions on the grounds that consensual sexual behaviour should not be a criminal offence. It is significant that the cases of sadomasochism in which the police have sought prosecutions involve homosexual men or prostitutes rather than heterosexual men practising upon women. There can be little doubt that the police could choose to pursue similar cases on similar evidence, in this case videos made of the men's activities, if they wished. In fact the prosecutions were discriminatory. In the case of heterosexual sadomasochism it is likely that the police could find numerous cases where consent was much more dubious than in the Spanner case, where the women victims were unwilling participants constrained to take part simply for the gratification of their male partners. It was stated at the appeal hearing that "the function of the court is to mark its disapproval of these activities by imposing short terms of immediate imprisonment". It rather looks as if such official disapproval only exists where men are the victims of sadomasochism, and where the accepted rules of sexual engagement are contravened. It seems that the consent of women to just about anything can be presumed or at least considered even in circumstances which would suggest a great deal of force whereas the consent of gay male sadomasochists will be considered immaterial even where consent on all sides is bodily

27 *Weekly Law Reports* 27 March 1992.

trumpeted. Homosexual men were not seen as having the same rights to “privacy” as heterosexual ones, and a homosexual man’s home was not seen as being his castle, immune from the invasion of the state. There are clearly different rules in operation here.

The Spanner case, leaving aside for the moment the question of discrimination, casts considerable doubt on the inviolability of the notion of consent in any situation. It raises the question of what factors any who are not dyed in the wool liberals might consider relevant to the discussion of whether consent was immaterial. We might wish to consider, as did the court, whether the injuries were really lasting or serious. More serious injuries than were sustained in this case can be the result of sadomasochist activities. The piercing magazine, *Piercing Fans International Quarterly*, contains material about penectomies.²⁸ It must surely be questioned whether consent should be seen as immaterial in sexual practices which can lead to death. In the case of lesbians and gay men masochism is often the result of experience of sexual abuse or oppression and this brings the idea of consenting equals into question. We might well feel that the desire of the court to set up moral regulations was hypocritical and misplaced but still see the importance of setting some limits on the indulgence of a masochism which can endanger life.

The Operation Spanner case itself demonstrates one of the problems inherent in the notion of consent as employed by sadomasochists. In one of the assaults considered at the appeal a victim was branded twice, once above the penis and once in the inner thigh. It is stated that “There was some doubt about whether the victim consented to the second branding”. The victim was in bondage and if he protested his protest was unheard or ignored. It may have been deliberately ignored. Sadomasochist literature, even the little theoretical literature which exists, suggests that despite the lauding of consent it has little importance in practice save to make its transgression exciting either for the masochist, the sadist or both.

An American gay sadomasochist, Ian Young, shows how thin consent arguments can look when used to justify his S/M practice. He relies upon consent for the legitimacy of S/M in a traditional way:

I think, first of all, one has to make the absolutely essential point — and then make it over and over again for those who for one reason or another didn’t grasp it the first time — that S&M is by its nature consensual. We are talking about mutually agreed upon activities ... People don’t realize, or they forget, that in S&M, it’s often the submissive partner who in effect controls and structures the scene.²⁹

Young then goes on to apparently contradict himself. Sometimes, he says, the activities may not be mutually agreed upon but decided upon by the S who will only find out later if the M agreed.

On the question of consent, there is this further point: the M may say he wants to go only so far. In fact, he wants his limits pushed a little further. A good S — that is to say, an empathetic and perceptive S — will pick up on how much further the M can in fact be taken without frightening him or freaking him out ... Still, there’s an underlying

28 The idea of penectomy is discussed in my book *Anticlimax* (1990) at 220.

29 Young, I et al, “Forum on Sadomasochism”, in Jay, K and Young, A (eds) *Lavender Culture* (1978) at 97.

agreement, an unspoken understanding of what will have been consented to after the scene is over.³⁰

The problem that in S/M consent once given at the beginning of a scene is in effect considered irrevocable, does seem to parallel the situation of women in marriage or relationship rape who are considered to have given consent to sexual intercourse in perpetuity by virtue of their marriage or implied marriage contract. But here the principle is justified on the grounds of the sexual pleasure of the masochist.

Amongst lesbians who engage in S/M the problem of sexual assault and nonconsensual abuse in general is now beginning to emerge. It is predictable that it would do so considering that consent is such a problematic notion as the basis for any sexual practice. One practitioner is quoted in a Sydney S/M magazine as saying "If my tops were always consensual with me I'd be bored out of my mind". There is now apparently a new phrase current among practitioners to cover the above principle of consent once given being irrevocable. It is "consensual nonconsensuality", described as "you consent to BE there — you consent to letting them do whatever they want to you. It's still your initial decision".³¹ As in the Ian Young example above consent now becomes something you can only judge the next day when you wake up, according to whether you feel uncomfortable.

Many times in S/M what turns us on or gets us hot is something we have NOT given our consent to, WOULD not if we were asked, but they do it anyway. If you do things that both partners feel OK about the next day, it's a good thing. If they're feeling fucked with, it's NOT OK.³²

This is a concept that the judicial process would have trouble understanding and does create a problem for sadomasochists who do consider the next day that they have been seriously assaulted. The S might well feel he or she had been acting in good faith and according to the rules.

The concept of consent as used in S/M creates some problems for the feminist cause of seeking to get women's nos taken seriously. The rebel sadomasochists who believe in such concepts as consensual nonconsensuality show a not surprising anti-feminist lack of sympathy with women who do get badly hurt in S/M practice. Alix says that "anybody who is stupid enough to run off with someone they don't even know, and let them chain them down and do God knows what all, deserves whatever they get. It's evolution in action".³³ A feminist perspective has always asserted that women do not deserve abuse however they behave, and that the responsibility for abuse lies on the abuser. Alix does not agree: "If you've got the brains God gave a turnip, you can use your common sense and discrimination to keep yourself out of those really bad situations."³⁴ Presently the problem of violence in the S/M community is becoming so serious that the best known US proponent of S/M, sex educator, Pat Califia, is writing about the need for the S/M community to develop a code of ethics.³⁵ She also asserts that lesbian S/M practitioners

30 Id at 98.

31 Fish, "We're Not Knitting Doilies" (1992) 2/4 *Wicked Women* 30.

32 Ibid.

33 Id at 31.

34 Ibid.

community to develop a code of ethics.³⁵ She also asserts that lesbian S/M practitioners should be prepared to call the police to deal with persistent violence that cannot be stopped by any other means. In such a situation the problems deliberately created by sadomasochists for sexual kicks could provide difficulties in the way of their achieving justice in the courts.

The use of the idea of consent by sadomasochists may throw the problems associated with this concept into particularly sharp relief. What it also suggests is the importance of the idea of consent to the construction of sexual desire. In a male supremacist culture where sex is constructed from the eroticisation of the inequality between men and women, the idea of consent serves to smooth over the real barbarity of sexual practice and appears to offer the woman control over access to her body. Consent is the way that in a liberal state the law has chosen to deal with sexual initiation which goes beyond men's conventional wisdom on acceptable force. But where sex is constructed to be eroticised inequality the idea of consent can be an incitement, both to regular men's violence and to sadomasochism. The idea of consent constructs a taboo to be broken. The transgression of consent becomes an exciting possibility. Sadomasochism for its existence depends on a construction of sexuality around consent. The same idea that produces S/M is then used to justify its practice.

The law on sexual offences is constructed around the notion of consent because of the way that sexuality is understood under male supremacy. If the law is to be used by women then we are forced into using the idea of consent to prove that any crime has been committed. But if there is to be any progress towards women's freedom it is necessary to be able to envisage a sexuality which is not so constructed, a sexuality in which violation and sadomasochism would make little sense and create genuine puzzlement instead of providing, as they presently do, much of the excitement of sex. What would such a sexuality look like? It would not be likely to centre upon sexual intercourse, a procedure which has many disadvantages for women, not least of which is the difficulty of overturning the power dynamics of dominance and submission to which this practice lends itself and to which it owes much of its popularity. It would be a sexuality centred upon mutual pleasure and fun in which ideas of shame and capture would have no place. It is a sexuality which could only flourish in a society in which men did not have power over women, one in which individual abuse of power, which might still occur, would not necessarily take place by men against women and not be likely to take a sexual form. In the interim as we construct this new idea of sex the notion of consent can only be used strategically, not as if it tells any truth about sex, but because it is what the law and male supremacist sexuality understands.

35 Calafia, P, "A House Divided: Violence in the S/M Community" (1992) 2/4 *Wicked Women*.