

Consenting to Sex

Making Sense of Bioethics

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Recent news articles exploring the post-#MeToo world of romance have noted the phenomenon of cell phone “consent apps,” allowing millennials to sign digital contracts before they have sex with their peers, sometimes strangers they have just met. Many of these apps are being refined to include a panic button that can be pressed at any time to withdraw any consent given. Lawyers reviewing the practice, as might be anticipated, have urged caution, noting that consent apps are not able to provide definitive proof of consent, because feelings may “change throughout an evening, and even in the moments before an act.”

When we look at modern views about sex, it’s not a stretch to sum them up this way: *as long as two consenting adults are involved, the bases are covered.* When it comes to “sex in the moment,” consent is touted as key, allowing for almost all mutually-agreed upon behaviors or practices.

Yet this approach to sex is fundamentally flawed, and it’s often the woman who is the first to notice. Even when consenting unmarried couples scrupulously use contraception, there remains an awareness, particularly on the part of the woman, that a pregnancy could follow, and a concern about who will be left holding the bag if that were to happen. Sex between men and women involves real asymmetries and vulnerabilities, with men oftentimes being, in the words of sociologist Mark Regnerus, “less discriminating” in their sex drives than women, eager to forge ahead as long as there appears to be some semblance of consent. Women often sense, rightly, that consent for a particular sexual act ought to be part of something bigger, a wider scope of commitment.

Consenting to sex, of course, signifies the surrendering of our self to another. Sex

ultimately speaks of giving our self, and receiving another, in a total, rather than a fragmentary way. This is part of the reason why this unique human activity holds a perennial fascination for us; it goes far beyond other forms of communication, exchange, and bonding. To give our self fully to another, and to receive that person fully, forms a bond with them that extends beyond the morning dawn. Human sexual union is not a mere joining of bodies, but is preeminently a joining of human hearts. It is, at its core, consenting to share one of the deepest parts of our self with another. As Dr. Angela Franks has perceptively noted:

Sexuality is not simply a matter of something that I have, as though my body is another possession just like my wallet or my car. If, as Gabriel Marcel said, I *am* my body, then sexuality has to do with my very person, which has a deep value. To use the language of Pope John Paul II, when a person is reduced to being merely an object for another’s desire, then the experience violates the core of one’s sense of self.

In casual sexual encounters, the consent we give each other may seem sincere and genuine, expressing our desires within the moment, but this kind of consent is largely transactional and temporary. By consenting to pre-marital or extra-marital sex, we declare, in effect, that we are giving ourselves, our bodies and our hearts to each other, although in truth, our giving remains partial and conditional, and we may be out the door the next morning or the next month. Our consent, limited and qualified as it is, amounts to little more than an agreement to use each other as long as it’s convenient, and when the break up occurs, we are hurt, because we thought we had something special, even though we didn’t really want to commit to anything special.

In the final analysis, human sexual activity calls for something much deeper and more abiding than mere transactional consent, namely, the irrevocable and permanent consent of spouses. Professor William May describes it this way:

In and through his act of marital consent... the man, forswearing all others, has given himself irrevocably the identity of this particular woman’s husband, while the

woman, in and through her self-determining act of marital consent, has given herself irrevocably the identity of this particular man's wife, and together they have given themselves the identity of spouses. ...Husbands and wives, precisely because they have given themselves irrevocably to each other in marriage, have established each other as irreplaceable, non-substitutable, non-disposable persons and by doing so have capacitated themselves to do things that non-married individuals simply cannot do, among them to 'give' themselves to one another in the act proper and exclusive to spouses—the marital act—and to receive the gift of life.

Through the enduring commitment of marital consent, a man and a woman establish the foundation for personal sexual consent. In the absence of that larger marital commitment, all other consents, even with legalized authorization or electronic notarization, ring hollow.

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