

ACSSA aware

AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT

ACSSA

In this issue

Antonia Quadara, ACSSA Co-ordinator | June 2011

Welcome! This edition of *Aware* is a bumper issue. It is also our last. From this point on the Australian Centre for the Study of Sexual Assault will be publishing smaller, more frequent stand-alone resources in place of *Aware*. This wasn't an easy decision—we know how popular *Aware* has been with our stakeholders. At the same time, since ACSSA's inception in 2003, the sexual assault sector has evolved significantly—it is a highly innovative, sophisticated and well-networked sector.

Preventing and responding to sexual assault in our communities increasingly involves partnerships with new agencies and sectors—mental health, housing, drug and alcohol, therapeutic services for sexual offenders, just to name a few. Interagency service delivery and integrated policy development is also prominent. A public health, primary prevention framework has in many ways shifted the “traditional” sexual assault sector well into the domain of mainstream public policy and service provision. More recently, there is the imperative of evidence-informed policy and service provision. We too are evolving along with the sectors working to prevent sexual assault.

In place of *Aware* we aim to provide stakeholders with regular, accessible, and relevant resources to assist you in your work. We will be publishing online Resource Sheets (short, accessible summaries of key issues about sexual assault) and Research Reviews (an accessible synthesis of the current evidence base including findings, implications, and limitations). We will continue to publish both the ACSSA Issues and ACSSA Wrap series.

This final edition of *Aware* includes a summary of recent policy development in various states and territories by ACSSA Research Officer Mary Stathopoulos. We are also pleased to include an article on current research by Bianca Klettke and Sophie Simonis at Deakin University. Their research looked at attitudes individuals hold about adolescent victims of sexual assault and the extent to which they are regarded as responsible for their abuse. Rachel King (formerly ACSSA Research Officer) interviewed Dr Michael Flood and Associate Professor Mary Heath, who each reflect on the concept of “sexual ethics” and the challenges that remain in preventing sexual assault.

I'd like to welcome new research staff to the clearinghouse—Cindy Tarczon, Nicole Bluett-Boyd and Liz Wall join the Institute as ACSSA Research Officers. They each bring expertise, experience, and energy to the work we do and join Mary Stathopoulos and Bianca Fileborn who continue in their roles.

Sadly, we also farewell ACSSA's Senior Research Officers Haley Clark and Deb Parkinson. Both Haley and Deb brought great passion and commitment to their roles and will be sorely missed by the team and the Institute. After 5 years, Haley goes on to complete her PhD, while Deb takes up the role of Director of Research and Advocacy at Women's Health in Goulburn North East. We wish them all the best.

On behalf of the ACSSA team

Antonia Quadara

ACSSA

Reflecting on sexual ethics and sexual assault prevention education

Interviews by Rachel King

Moira Carmody (2003) wrote that many sexual assault prevention strategies were shaped by un-articulated discourses about sexuality that focused primarily on women managing the risk of men's unethical and sometimes violent behaviour. Carmody argued that we needed an alternative conception of sexual ethics in order to consider how desire, acts and pleasure could be understood from an ethical perspective to create a greater possibility of realising what she called an "erotics of consent". Since 2006, the idea of sexual ethics has informed a number of prevention education programs with young people, including "Sex and Ethics" developed by Moira Carmody and Karen

Willis which is currently delivered in NSW schools and funded through the Australian Government's Respectful Relationships initiative.

Former ACSSA research officer, Rachel King caught up with two individuals who have been researching responses to, and prevention of, sexual assault for many years and spoke with them about the concept of sexual ethics. In the first interview Rachel asked Dr Michael Flood what sexual ethics meant for engaging men in prevention. In the second, Associate Professor Mary Heath reflected on the limitations of the criminal law in dealing with ethics.

Interview with Dr Michael Flood

School of Social Sciences, Media & Communication, University of Wollongong.

ACSSA: Recently, there have been calls for education regarding sexual ethics. How do you conceptualise this in terms of sexual consent?

Michael Flood: Framing violence prevention education among young people in terms of "sexual ethics" has obvious advantages. The sexual ethics framework is fundamentally oriented towards skill-building. It engages young people as social and sexual agents, inviting processes of critical reflection and negotiation. And it avoids many of the problems of some other violence prevention approaches, particularly those based in narrow sexual prescriptivism or in ineffective pedagogical approaches. Emphasising sexual ethics is an innovative and valuable part of violence prevention work.

The sexual ethics approach sometimes is described as avoiding "telling young people what they should do", but it does have two normative assumptions. Both are entirely sensible. First, coerced sex and violence are judged to be unacceptable, and ethical reflection and negotiation are seen to make them less likely. Second, there is an implicit assumption that young people should make ethical decisions.

One of the key challenges in violence prevention is working to undermine the discourses of gender and sexuality that feed into violence. The sexual ethics

approach recognises this. But it's not clear that it is any more effective than other violence prevention approaches in enabling people to challenge such discourses through personal reflection or to contribute to wider social change in discourses and power relations.

Finally, a sexual ethics approach may not give us much purchase on unethical or harmful behaviours and relations which are *not* sexual, such as various forms of social and emotional abuse. Still, a focus on sexual coercion and sexual violence is valuable given the neglect of these in some prevention programming.

A sexual ethics approach has real strengths. It focuses on skills development, offering a clear behavioural message, and the evidence is that such programs are more effective than those focused only on attitudes. It gives a language with which to make ethical choices and construct ethical relations. It invites a positive standard of consent, arrived at through reflection and negotiation. And it makes room for young people to arrive at a variety of (ethical) sexual involvements, from intimate monogamy to casual sex to no sex at all. If done well, other approaches focused on "healthy" or "respectful" relationships have similar strengths.

ACSSA: Historically, it has been a woman's responsibility to communicate either her consent or non-consent to sexual activity. Increasingly, a "positive standard"³ of "free agreement"⁴ is being called for, and also the centrality of men's role in managing and negotiating this agreement. What do you think are the key factors in ensuring men are aware of, and active in, negotiating free agreement in their sexual interactions?

Michael Flood: The shift in law towards a positive standard of consent is to be welcomed. To some degree, it holds potential perpetrators of sexual assault to a higher standard, in which they must take reasonable steps to ensure consent. It recognises the power relations within which sexual relations may take place. And it moves the law away from a traditional construction of heterosexuality in which women give in to male "seduction". At the same time, it's clear that in practice, the use of a positive standard of consent in sexual assault cases has not eliminated victim-blaming.

In everyday sexual relations, there are real challenges in establishing a positive standard of consent based on voluntary agreement. Above all, a negative standard of consent, based only on the absence of overt resistance among women to men's sexual advances, remains a powerful social norm. This is wrapped up in wider constructions of gender and sexuality based in notions of uncontrollable male sexuality, female sexual passivity and subservience, a sexual double standard, and male sexual entitlement.

Focusing on young men for a moment, it's obvious that a significant minority—around one in seven—does tolerate or condone sexual violence. From a 2001 survey of 12–20-year-olds, 14% of males (but only 3% of females) agreed that "It's okay for a boy to make a girl have sex with him if she has flirted with him or led him on", and 15% of males (but only 4% of females) agreed that "It is okay to put pressure on a girl to have sex but not to physically force her" (Attorney-General's Department, 2001).

3 A positive standard has been likened to the Canadian "affirmative standard". A positive standard is defined as one in which individuals can demonstrate free and voluntary consent. An example of this change is that passivity is no longer demonstration of consent.

4 Free agreement is when consent is expressed to sexual interaction where no other circumstances or factors have impinged upon the consenter's ability to give informed and free agreement to the sexual interaction they are about to partake in.

Among Australians in general, the recent National Community Attitudes Survey found that over one-third of men (and close to one-third of women) agreed that rape results from men "not being able to control their need for sex" (VicHealth, 2010).

It is vital that we invite men to take on routine practices of positive consent. Many young men rely on problematic indicators such as the absence of resistance, body language, or previous or current sexual activity. Some simply do not care whether or not the woman is consenting, or even find forced sex arousing. We need to teach young men (and young women) not only how to do consent, but why it is important. Among young men most invested in notions of male sexual entitlement, the biggest obstacle to practising consent is not that they don't know how, but they do not feel the need to do so.

Among young men most invested in notions of male sexual entitlement, the biggest obstacle to practising consent is not that they don't know how, but they do not feel the need to do so.

Sexual pressure and coercion are normalised and often invisible. Given this, both men and women participate in sexual relations which are experienced as, at best, uncomfortable and unwanted and, at worst, assaultive. Yet neither party names such interactions as rape or violence. Encouraging a positive model of consent will require a determined effort to deconstruct the wider scaffolding for negative consent and sexual coercion, based in particular in constructions of masculine sexuality and masculinity.

There are tricky questions here. How do we deal with the "grey" areas in and around unwanted sex, for example where women consent to sex because they don't want to be seen as "frigid", they don't have the energy to avoid doing so, or they care for a partner who really wants to? Should explicit verbal negotiation be the standard for every sexual interaction, or can this be relaxed between sexual partners in established relationships? What does it mean to claim that some women are raped and do not know it?

ACSSA: You are a passionate proponent of involving men in preventing and eliminating violence against women. What do you see as the real achievements of organisations such as Men Against Sexual Assault and primary prevention programs that target men and boys?

Michael Flood: There are some real achievements that deserve mention. As I have written elsewhere, such efforts have had some success in raising public and political awareness of the role of men and boys in ending violence against women. For example, the White Ribbon Campaign has achieved substantial institutional presence and support, as well as significant media coverage and community awareness. While early grassroots efforts in Men Against Sexual Assault and other anti-sexist groups in the 1980s and 1990s have died off, there's also been some recent increase in men's grassroots organising.

There is growing sophistication in violence prevention education aimed at boys and young men. Some powerful masculine organisations and workplaces have become involved in violence prevention, including national sporting codes and companies. And new partnerships have been forged between women's and men's networks and organisations.

On the other hand, contemporary efforts involving men and boys in preventing violence against women are also limited. Education programs are scattered and under-developed, and few have been well evaluated. The White Ribbon Campaign has lost some opportunities to produce effective marketing campaigns, and it could do more to engage and train men in sustainable forms of activism. And, more than anything, the problem remains that few men actually take up the cause of preventing violence against women. This is further compounded by the possibility they may be outnumbered by the number of men campaigning *against* feminist-inspired efforts to prevent violence against women.

ACSSA: You have stated that programs and campaigns involving men should be based on feminist principles. In a society that increasingly sees feminism as an "F-word", how do you make these principles palatable for general audiences?

Michael Flood: A feminist framework is vital both because it anchors the political and ethical commitments of our work and because it reflects the best available scholarship and activism on these

issues. But yes, the obvious problem is that there is considerable ignorance of and hostility to feminism in the community. I see a few strategies as relevant here.

First, focusing on efforts engaging men, we can foster men's support for and commitment to gender equality in a whole range of ways: appealing to their love and care for the girls and women in their lives, generating awareness of and empathy for women's experiences, making comparisons with other forms of inequality or unjust power, and so on. It can be useful to approach males as partners in solving the problem, address men as bystanders to other men's sexism or violence, invite men to take responsibility rather than accept blame, create safe spaces for reflection, use male facilitators, and acknowledge men's own victimisation. Of course, there will still be resistance and defensiveness. And if there's none of this, then I'm not sure that we're really doing the work of challenging powerful social norms and inequalities.

In communities in general, we face the challenge that while there is widespread agreement with the principle of gender equality, there is also discomfort with feminism. For example, young women have confident expectations of gender equality, and at the same time many reject the identity or label "feminist". Some have been persuaded by media stereotypes of feminism as anti-male or as about being a victim. Fear of feminism is fuelled too by homophobia, a rejection of and disinterest in the political and reluctance to take on a public political stance, lack of experience of overt discrimination,



© www.istockphoto.com/ArtisticCaptures

fear of complexity and thinking, and reluctance to explore one's own position in multiple systems of domination. Men's discomfort towards feminism is fuelled by many of the same factors, but above all by feminism's challenge to sexism and male power and the unease and defensiveness this can generate.

I'm all for working to make feminist politics and theory relevant and meaningful for men and women alike. I'm all for using accessible language, inspiring

imagery, and smart strategy to educate, energise, and mobilise. I'm nervous though about the idea of making feminism more "palatable", as this could involve dulling its radical edge, its fundamental challenge to gender and sexual inequalities. Still, there are good examples out there—books, blogs, speakers, campaigns, and more—which engage ordinary women and men and which invite them into feminism's worlds of insight and inspiration.

Interview with Associate Professor Mary Heath

Faculty of Education, Humanities and Law, Flinders Law School

ACSSA: Recently, there have been calls for education regarding sexual ethics. How do you conceptualise sexual ethics, in terms of sexual consent?

Mary Heath: Consent is a very impoverished vocabulary for discussing and thinking about sexual ethics. It may be appropriate to focus on consent in the criminal law, where the basic project is to describe conduct so fundamentally inappropriate that it can rightly be called criminal. However, the project of ethics should be wider and deeper than talking about "consent". Consent is too minimal a standard for it to be all that is necessary for ethical engagement in sex.

Sexual ethics should extend to talking about what we might want or need to negotiate sex that is actively desired, exciting, pleasurable and satisfying. What skills might be necessary? What circumstances might be required? What should happen if anyone involved is unsure, changes his or her mind about something, and wants to slow down or stop? It should involve consideration of each person's wellbeing and how they can ensure that sex is a valuable part of their own thriving in the world, as well as involving care for sexual partners and how sexuality can contribute to their wellbeing.

I think we need to ask how we can have richer conversations, verbally and nonverbally, about what we *want*, not only about what we don't

want. Conversations about coercive sexuality have suffered due to the absence of rich conversations about mutually desired sexuality. Public debates around young people's sexuality still focus on what they should try to prevent (e.g., STIs, pregnancy) and on what counts as "wrong" sex. Media coverage of research on young people's sexual lives tends to convey a rather horrified tone rather than inquiring into whether young people have the information they need and the skills and resources necessary to organise to have the sex they want and not to have the sex they don't want. Older people are thought to be beyond education, despite the lack of evidence that we have the skills and information that *we* might need.

ACSSA: Your research interests include teaching rape law effectively. How do you think communities could aim to teach sexual ethics effectively?

Mary Heath: These are quite different projects. Other people, such as Moira Carmody, have much more informed places from which to answer this question.

We can all participate in conversations about the diversity of human experience about sexuality and about ethics. We need conversations that inquire into what people currently do to negotiate ethical sex. However, we also need conversations about the skills and knowledge each of us bring to the project of negotiating ethical sex; where those skills and that

knowledge come from; and how we can build them up. There need to be opportunities to acknowledge that this is a process which involves emotion as well as desire and thinking; and where there can be space to talk about the diversity of those emotions—embarrassment, fear and shame, as well as delight and joy.

In classes where I am teaching about rape law and in public settings where sexual violence is being discussed, I have found that people are keen to have these conversations. Given an opportunity, they will engage enthusiastically and thoughtfully. In contrast to public scaremongering about young people's sexual lives, acknowledging that sexual coercion is a reality in our society opens up a space for positive conversations about ethical sex where judgement about other people's sexual choices is no longer the dominant framing of the discussion.

ACSSA: What do you see as the implications from the use of the terms such as “technical rape”?

Mary Heath: The expression “technical rape” surely implies that there are real rapes and rapes in name only. Discussion of issues such as this in the media and online shows that we still have a long way to go to achieve a social consensus that if a woman withdraws her consent to sex, or becomes unable to consent (by becoming unconscious or falling asleep, for example) that withdrawal should be recognised by her sexual partner as well as by the law. I say “woman” because this continues to be an overtly gendered public discussion in which men never want or need to discontinue sex and women indicate sexual interest at their own risk.

We often see prosecutors give insufficient attention to consulting the complainant—prosecuting authorities who are negotiating with the defence struggle to accept that the complainant's interests may not be identical with those of the prosecution. The complainant may have priorities more important to her or him than achieving a conviction.

Research in Australia by Denise Lievore (2003) and in the US by Amanda Konradi (Konradi, 1996, 1997) has already shown that Australia is not alone in struggling to figure out how to address these realities. It also stresses the potential for very poor outcomes when they are not addressed well.

ACSSA: What do you see as the limitations inherent in current sexual assault and sexual consent legislation?

Mary Heath: Their incapacity to make up for the deficiencies of political commitment, funding, policing, prosecution and court processes is an inherent limitation, despite the huge progress that has been made since the 1970s. If certainty and speed of conviction is crucial to crime prevention, we should not be surprised that criminal justice processes have not made an observable difference to rates of reported victimisation.

However, far more significant is legislation's incapacity to eradicate social contexts and attitudes that allow sexual assault to thrive. Sexual coercion flourishes in all the places where some people have power over others, whether because of gender, age, ethnicity, immigration status, disability, institutionalisation or other factors. Rape thrives in environments where any human can be treated without complete respect, particularly where that can happen with impunity.

ACSSA: How do we achieve recognition of ethical sexual conduct in rape law?

Mary Heath: I am not sure this is the task. The criminal law does not try to describe ethical conduct in any area of human behaviour, but to set a line beyond which conduct will be criminally penalised. Most people recognise that behaviour that is unethical will not always be criminal. Few of us depend on the criminal law to tell us what is ethical.

The task is to raise our expectations about what is possible—enough to be having public (as well as private) conversations about achieving *ethical* sexuality rather than only ever having conversations about avoiding *criminal sexual acts*.

ACSSA: Can amendments in legislation achieve the revolution needed to eliminate sexual violence against women?

Mary Heath: No. Laws should certainly be changed to respond to identifiable deficiencies. However, decades of legislative change in this area clearly show that it is not sufficient to end sexual violence. While useable laws are desirable and law reform can remove profound barriers to responding to violence

against women, children and men, law reform is incapable of eradicating sexual offending.

Laws are not self-activating. A revolution in social attitudes and practices will be necessary, not just a change to the words of statutory pages. Law only comes into the picture when violence has already happened. Even the effective implementation of the laws we now have would require huge changes: people who are sexually coerced would need to be able to recognise their experiences as rape, and as a crime. They would need to be confident that they would be treated as performing a public service by reporting the offence against them rather than being stigmatised and disbelieved. Policing, prosecution, the conduct of defence lawyers and court personnel would all need to change to bring about that outcome. These agencies would need more resources in order to allow continuity of investigation and prosecution, shorter waiting times for trial and better communication. And of course, potential offenders would need to be able to recognise their own intended conduct as inappropriate and criminal. They would then need to be able to make the decision not to persist and to be able to access what resources they would need to stop using violence in this way.

I think moving the public conversation away from the rather barren territory of “consent” and into something that might enable people to envision what sex without coercion could be, how to organise it and to refuse to participate in anything less, would be a good start.

ACSSA: Each Australian state has different sexual assault law. Do you think a particular state’s response is more effective? Which elements of legislation make it most appropriate?

Mary Heath: Every state and territory has better law on this subject than they did 20 years ago. We are now in a period where the precise language of the statute is unlikely to be at the heart of any major hurdle to conviction. We need to squarely face ... that the language of the statute is not the only issue and that implementation and attitudes continue to erode the effectiveness of the laws we currently have. I would rate Victoria the jurisdiction with the greatest demonstrated commitment to continuing review of the operation of the law, involvement of multiple stakeholders in that review process, and repeated action on evaluation that shows that

the law is not producing the outcomes that it was intended to produce.

ACSSA: Recently you stated, “The purpose of the law is to safeguard sexual autonomy and ensure no one but the person involved gets to decide whether or not they have sex”. How do you envision the law achieves safeguarding sexual autonomy in situations where consent is given under duress, or other situations in which agreement is not actually free agreement?

Mary Heath: The law is a blunt instrument. Despite my statement, it cannot safeguard autonomy but only penalise serious violations of that autonomy. Australian laws now recognise a wide range of circumstances which may invalidate any apparent consent to sex, and in this way the law seeks to recognise that sometimes people agree to sex in circumstances that do not amount to “free agreement”. Laws all over the country recognise a range of circumstances in which free agreement (or consent) is not present and treat sex in these circumstances as rape. However, there is already evidence both in Australia and elsewhere that these provisions do not work as well as they could. So the law may aspire to safeguard sexual autonomy. Parliaments across the country have indicated that they share this aspiration, as do those of us who have campaigned for law reform. However, I am not naïve enough to hold out that this goal is being achieved.

References

- Carmody, M. (2003). Sexual ethics and violence prevention. *Social & Legal Studies*, 12(2), 199–216.
- Indermaur, D. (2001). *Young people and domestic violence: National research on young people’s attitudes to and experiences of domestic violence. Full report*. Canberra, ACT: National Crime Prevention.
- Konradi, A. (1996). Preparing to testify: Rape survivors negotiating the criminal justice process. *Gender and Society*, 10(4), 404–432.
- Konradi, A. (1997). Too little, too late: Prosecutors’ pre-court preparation of rape survivors. *Law & Social Inquiry*, 22(1), 1–54.
- Lievore, D. (2003). *Non-reporting and hidden recording of sexual assault: An international literature review*. Canberra: Commonwealth Officer for the Status of Women.
- VicHealth. (2010). *National Survey on Community Attitudes to Violence Against Women 2009: Changing cultures, changing attitudes – preventing violence against women. A summary of findings*. Carlton, Vic: Victorian Health Promotion Foundation.

At the time of writing Dr Rachel King was a Research Officer with ACSSA