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THE LANGUAGE OF CONSENT

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Abstract

There has been a lot of focus in academic institutions and in the media on what can/cannot constitute consent and how people should go about obtaining consent in a very prescriptive way. They have failed to ask themselves how people are utilizing consent in a colloquial manner, ignoring how people currently understand and utilize language in order to request and give consent. Attempts made to improve this understanding lack direction, because they do not fully understand from where they are trying to improve. This is an empirical study that will compare how males and females understand and use the language of consent, specifically in contrast to the legal language that governs consent, as well as the potential gender difference in how consent is utilized and understood.

This study focused on two different conditions for how participants interpret the language surrounding consent. The first condition included Utah's state laws on the use of consent in courts, and the second did not. Both surveys were comprised of a discourse completion task and a judgment task. In the discourse completion task the subjects were asked to complete a dialog with the goal of either giving or denying consent in each situation. In the judgment task the subjects read a situation and then were tasked with judging whether or not consent had been given based on the dialog they read. The data from all scenarios were run through a chi square test to see if people's gender, age, or if seeing the laws caused a difference in how people interpreted if consent had been given.

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INTRODUCTION

Consent is something that everyone thinks is important to understand, but struggle to explain. Young adults in particular are not certain what exactly constitutes consent, and in response both the media and universities have tried to prescribe particular language to use to ask for and to give consent, with mixed results. This approach ignores how people are currently using language to this end, and is effectively an attempt to solve a problem without first identifying the source of the problem. Without first examining how people use language for consent differently, any prescribed language will struggle to bridge any communication gaps that may exist. The laws that govern consent are not widely known, and they are supposed to provide a framework for what does and does not constitute consent. This study was interested in looking at how people understand the language of consent in particular situations, with the goal of identifying any situations in which people could have different expectations about what constitutes consent.

Universities have been struggling with the issue of consent now for a while, leading many of them to issue guidelines for what does and does not constitute consent. Here is one example created by a university in order to teach high school students about consent: (FLASH 2)

3. Rob and Elena are in the library, working on a school report. At the computer station, Rob begins to give Elena a backrub. "This research is boring," he says. Elena shrugs her shoulders under his hands. Rob puts his arms around her from behind and pulls her close to him. Elena leans forward and hisses, "Cut it out, you're going to get us in trouble." Rob pulls her into the corner. As Elena puts her hands on his chest and tries to push him away, he pulls her to him and kisses her.

- Was there consent in this scenario? What did the person say or do to let you know?
- If you have time, read and discuss Scenario 4.

While these kinds of examples are useful to a limited extent, they have several limitations.

Firstly they rarely focus on situations where consent is given, instead focusing on how a party should deny consent. While this is obviously useful for young adults to see what consent does not look like, it leaves them just as in the dark over what consent does look like. This could lead students to assume that as long as the response looks different it could be consensual. The bigger problem with these kinds of examples, though, is that these situations are usually just not realistic. Many young adults will not find themselves in situations where the question of consent can be answered in such a black-and-white manner.

Other universities have used their freshman orientations to try and prescribe how their students should use language in order to ask for and give consent. At the University of Utah, staff tell students that they should always obtain “enthusiastic consent” before engaging in any sexual acts. This interaction would look something like:

Brian: Hey Sam! Wanna have sex?

Sam: Hey Brian! Of course I would! I’m so excited!

This recommendation also falls into the same trappings of the previous. While not strictly bad advice, it just simply is not practical advice.

This advice has its roots in the way language is frequently used in law. In 1962, when J. L. Austin was describing his taxonomy of the performative uses of language, he described legal language as words that preformed specific legal actions as long as certain situational factors were in place. This has led courts, particularly when people’s language has been involved, to interpret what people say extremely literally. For example, when people have tried to invoke their Miranda Rights, courts have been liable to only consider their rights invoked if suspects used very specific language in order to invoke them (Ainsworth 2008). So universities have looked to this to provide a framework for how consent should be judged. People should be very direct and

clear with their language in order to be sure that the way that they are interpreting the situation is correct and that courts will agree with that interpretation of the situation.

Again, on the face of it there does not seem like very much is wrong with that advice. However, just as Ainsworth observes in how Miranda Rights are used, in practice many problems start to appear. For starters, people tend to not be familiar with exactly what the laws that cover consent are, or with legal language in general. As Ainsworth observes in her examination of Miranda Rights in Practice: “Legally naive speakers are often unaware that a script exists prescribing the language needed for legal efficacy. When their language fails to track the script, they are unable to achieve their desired legal ends” (Pg. 2). When you restrict what has to be said in order to achieve a desired outcome, there will inevitably be people who think they have effectively communicated something, and, although anyone could see what they were trying to say, they will not have done exactly what they were supposed to do legally. Interpreting consent like this, just like how courts are interpreting whether or not people had invoked their Miranda Rights, fails to allow room for linguistic interpretation. Part of the problem relates to Gricean implicature. H. P. Grice (1989) set up the pragmatic structure that explains how two people can understand what is being communicated, even if what is literally being said would make little to no sense if taken individually. For example:

1: Hey, there's a movie on later?

2: Eh, I have work tomorrow.

3. Okay maybe on Saturday.

If you take each line literally and on its own with no context this would seem nonsensical. One person begins with naming a time for a movie, the second mentions work at an even later time, then the first person mentions an even later time with no context. Through Gricean implicature, however, we can see that what each line implies connects each statement. When the movie is

mentioned it is implied that the second person is invited to go to that movie with the first. The second person then mentions work, which implies that they cannot go to the movie later because of work the next day, a common excuse for not being able to go to an activity with an associate. The first person then mentions Saturday as an attempt to extend the invitation to the movie for Saturday instead of later that day. The context and cultural knowledge of both parties are vital for the conversation to make sense. As Ainsworth puts it, “In order for Gricean implicature to result in successful communication, the parties to the exchange must share frames of cultural meaning” (p. 6). According to the principles of normal conversation that Grice describes, people would frequently give and ask for consent without explicitly verbalizing what they think is going on because they think it is implied by the context of the conversation. This is where many miscommunications can occur, however, because if both parties do not “share frames of cultural meaning” they will have different ideas of what exactly is implied by their actions and/or statements.

There is also the significant question of power imbalances. Sexual situations can create power vacuums that will change the way both parties communicate and how they should be understood. “Someone will express themselves using hedged or indirect language is increased (more frequent) when there is power asymmetry between the parties, with the relatively powerless speaker unlikely to make direct and unhedged demands upon the more powerful party” (Ainsworth 2008 p. 7). Basically, people use various strategies to soften demands upon someone who they perceive to have more power than themselves (O’Barr and Atkins 1980). In addition to this, Stygall (2008) pointed out in relation to interrogation: “Some among them may want to please the interrogator and say what they believe the interrogator wants them to say, while others may believe that it is disrespectful to contradict a police officer” (p. 1). While interrogation is obviously a different kind of situation than a sexual one, many of the same factors would come

into play with a lover as with an interrogator. Everyone wants to their love interest to be pleased and believe what they have to say, and rejection as a negative emotion could be perceived as a slight against someone whose opinion is very important to you. So you can expect many of the more sensitive rejections to be full of hedging, not direct as courts seem to expect. People use this language to soften the blow of rejection as much as they can manage. This clearly shows that a requirement for things like “enthusiastic consent” will only ever be a partial solution, and it will accurately judge all these kinds of situations.

Why then should Linguistics be involved with in issue? Well, this comes at a time when linguists are becoming more involved in courtrooms (Shuy 2007). As experts in the structure of language as well as the cultural factors associated with it, it makes sense that linguists would help to clarify the situation. To this end, I have designed a study to look into how people use the language of consent colloquially. Hopefully this will begin to build a foundation for how this language looks in realistic situations. It will also help identify when different groups of people have different cultural understandings of the same situation, what might explain that difference, and pave the way for bridging those gaps in understanding for future generations. This study will focus primarily on heterosexual relationships, and present participants with eight situations. They judge if they think that consent had been given, and then I will run a chi square test to test for differences.

PARTICIPANTS

Participants were recruited using Mechanical Turk, an online survey service operated by Amazon that allows researchers to pay for people to complete their surveys. At a cost of one cent per participant I was able to gather around four hundred responses within 48 hours of putting both surveys online. Each survey had a fairly even gender distribution between males and females, with a small minority identifying as genders other than those two. The age distribution

for both surveys was slightly skewed toward younger participants, but not in a way that had an effect on the resulting data. Many participants only completed part of the survey, so the data on the questions did not always match up with the demographic information, as that was the very first part of the survey. Even so, the demographics represented on the graphs were representative of the age and gender distributions of all the resulting questions. Figure 1 and Figure 2 below show the gender and age distribution of the survey that presented the laws before the situations.

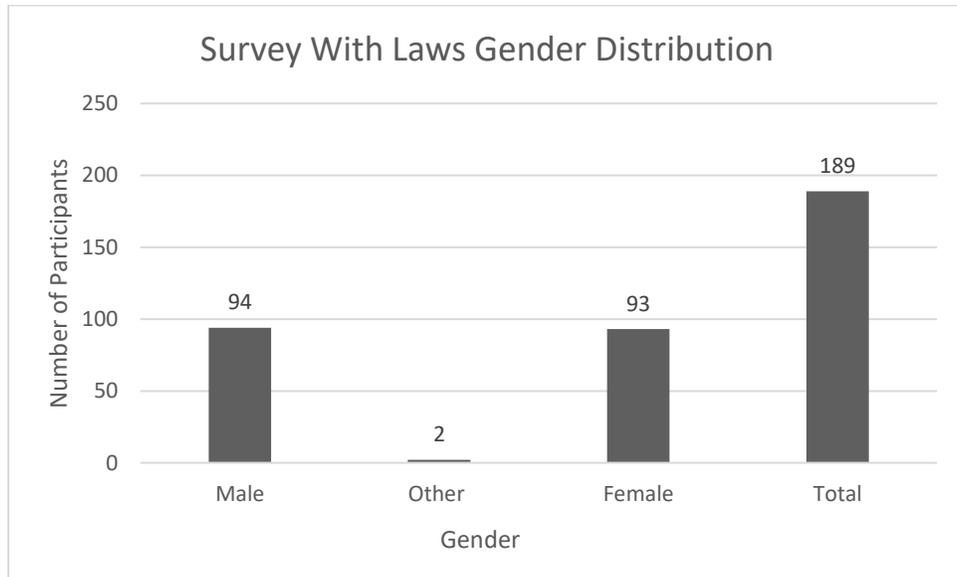


Figure 1

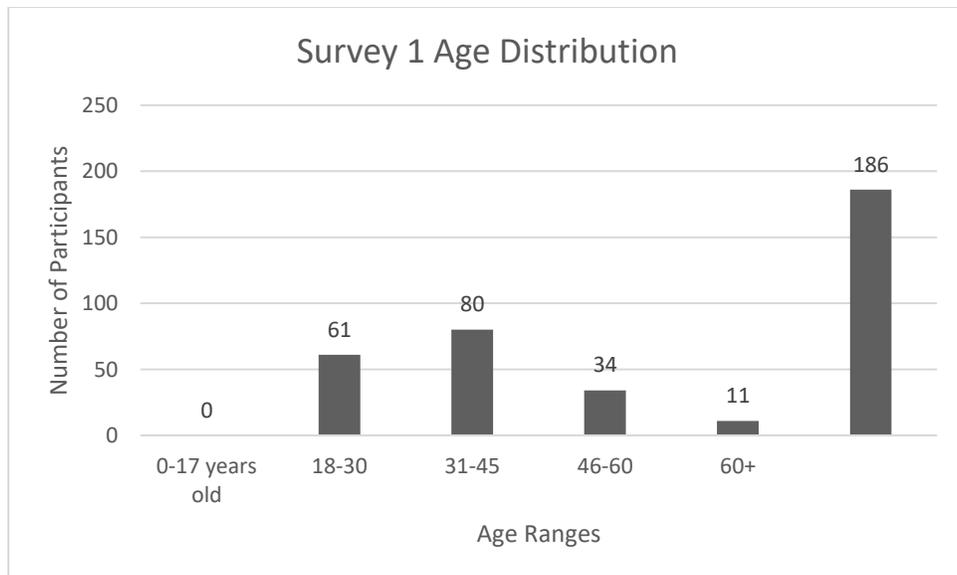


Figure 2

The following graphs show the gender and age distributions of the second survey, which did not include the laws before the scenarios.

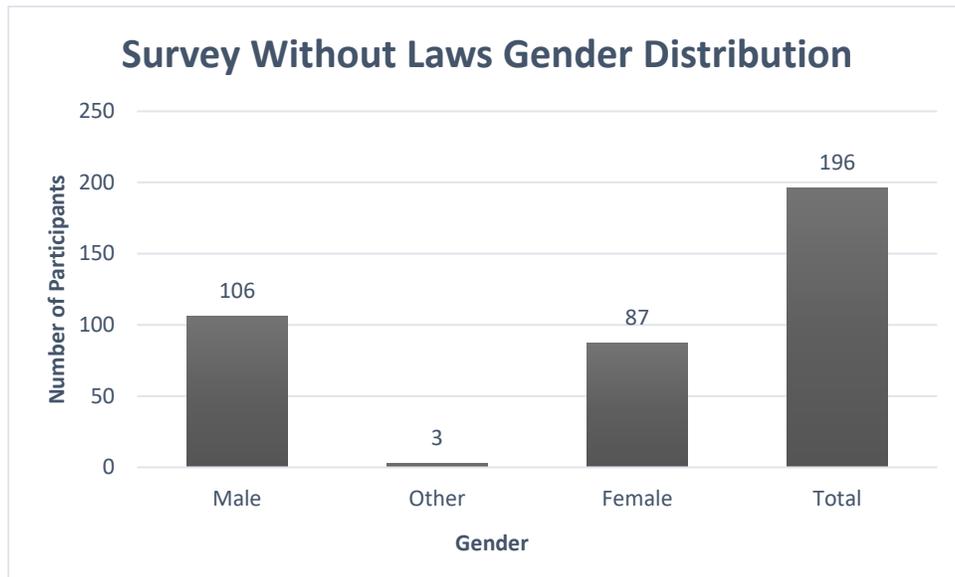


Figure 3

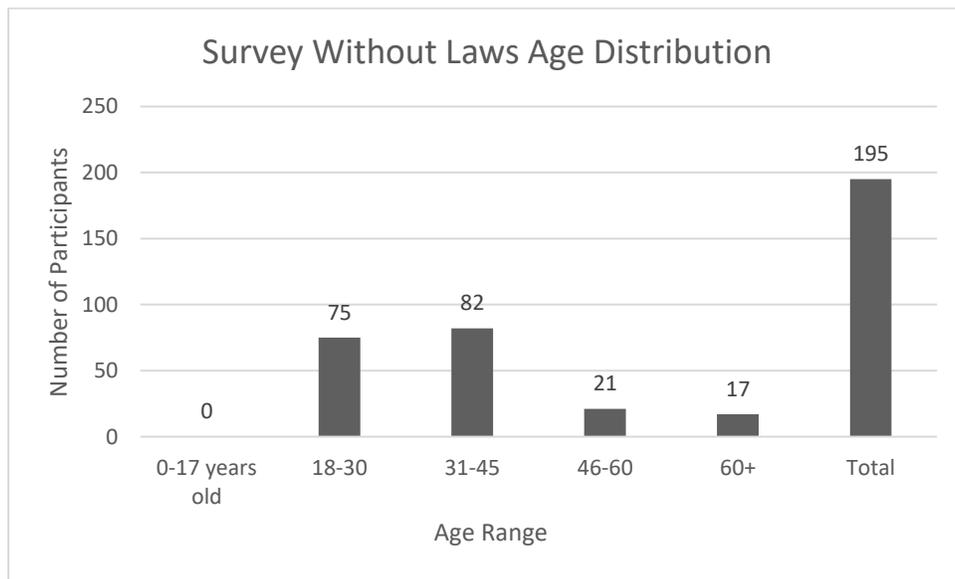


Figure 4

STIMULI

Participants were first asked a series of demographical questions in which they identified their gender, age group, native language, and how long they have lived in the United States.

Then, depending on the survey that they were taking, the participants would either see Utah's

laws governing consent taken from the state's website (shown below) or they would move straight into the scenarios.

Directions: Please mark if you think consent was or was not given in each scenario. Consider the following laws before you make your decision.

Under Utah law, sexual offenses "without consent" of the victim arise when:

1. The victim expresses lack of consent through words or conduct;
2. The actor overcomes the victim through the actual application of physical force or violence
3. The actor is able to overcome the victim through concealment or by the element of surprise;
4. The actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
("to retaliate" includes threats of physical force, kidnapping, or extortion)
5. The actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
6. the actor knows that as a result of mental disease or defect, or for any other reason the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;
7. The actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;
8. The actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;
9. The victim is younger than 14 years of age;
10. the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim;
11. the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or
12. the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested. Utah Code Ann. §76-5-406.

The scenarios consisted of 12 situations, four multiple choice tasks and eight fill-in-the-blank tasks. For the multiple choice tasks, participants were asked to read a given situation and then mark if they thought consent had, or had not, been given. For example:

Addison and Alex are best friends and are at a party together. Addison notices that Alex is drinking a lot and starting to slur her words. Ashton, a cute guy at the party, approaches Alex, who is totally drunk. Ashton says “Hey Alex, you wanna go upstairs?” Alex doesn’t really say anything, but she nods. Ashton takes her by the hand and they go upstairs and have sex.

Do you think consent was given?

For the fill-in-the-blank tasks, participants would read a particular scenario, and then be asked to fill in what they would say in that situation in order to give consent, and also what they would say in order to deny consent. There were four scenarios, with two questions each which made for a survey of 12 questions, not including demographical questions. For example:

Jaime and Jayden are best friends and are at a Halloween party together. Jaime notices that Jayden is drinking a lot and starting to slur her words. Jese, a cute guy at the party, approaches Jayden, who is totally drunk. Jese says “Hey Jayden, you wanna go upstairs?”

What would Jayden say to give consent?

What would Jayden say in order to **not** give consent?

PROCEDURE

In order to test if seeing the laws before the scenarios would have any effect on how participants interpreted the different situations, I constructed two surveys. The first included the laws before the different scenarios, and the second did not. Then, after the data was gathered I used a chi square test to test for the effects of gender, age, and seeing the laws.

RESULTS

After running all of the statistical tests, I found two statistically significant results. The first was a statistically significant difference between males and females in their responses to the following situation in the task where participants saw the laws.

Devon walked Dakota home after they saw a movie together Friday night. When they got to Dakota's house, they stood talking for a while. When Devon gave Dakota a hug goodnight, Dakota responded with a quick kiss on the lips. Devon smiled and said, "Can we do that again?" Dakota laughed, and they kissed for a long time. They went inside and kept kissing. "Maybe we can really have some fun now?" asks Devon. Dakota only manages to say "well.." before he starts kissing her again. They then are intimate.

Do you think consent was given?

As can be seen in Figure 5, males (56/75) were more likely than females (50/84) to interpret the scenario above as consensual, with a chi square test yielding a p-value of < 0.05 .

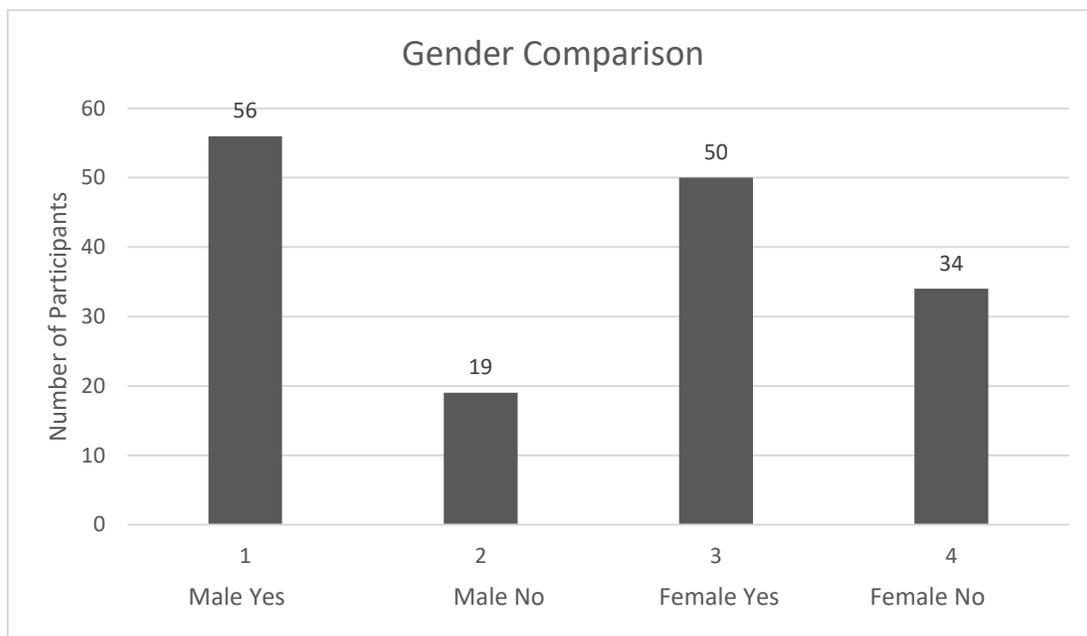


Figure 5

The second statistically significant result was a difference between participants who had seen the laws and those that hadn't. This scenario is shown below:

Cameron and Charlie are in the library, working on a school report. At the computer station, Cameron begins to give Charlie a back rub. "This research is boring," he says. Charlie turns around and grins at him. "Yeah, it is, compared to what we could be doing," she says. Cameron puts his arms around her and pulls her close to him. Charlie puts her arms around his neck and laughs, "Cut it out, you're going to get us in trouble." Cameron pulls her into the corner. Giggling, they kiss.

Do you think consent was given?

As can be seen in Figure 6, participants were more likely to interpret the scenario as consensual if they had seen the laws (139/158) than if they hadn't seen the laws (127/159). This difference yielded a p-value of < 0.05 .

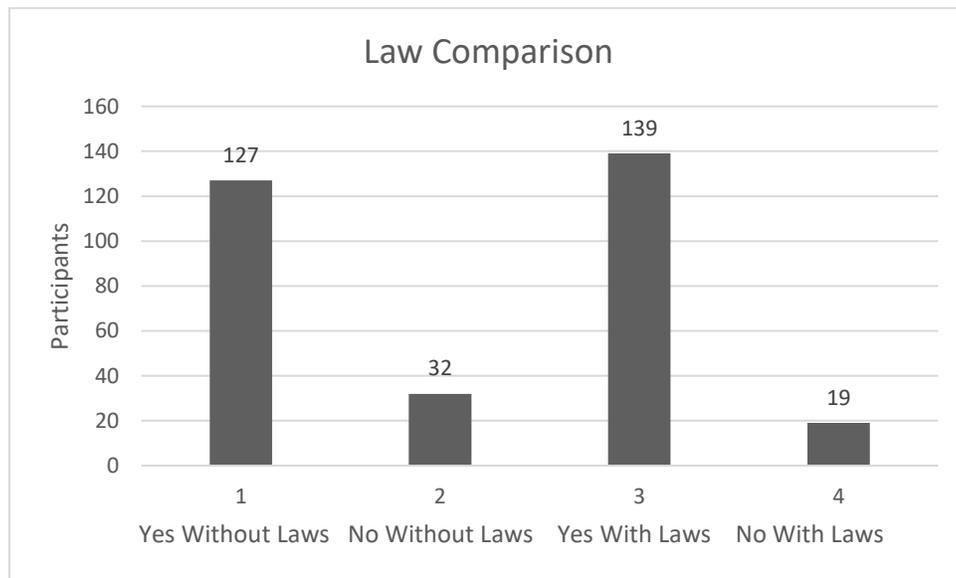


Figure 6

DISCUSSION

I think that the feature that explains the male/female difference shown in Figure 5 can be found in this line:

Dakota only manages to say "well.." before he starts kissing her again.

This sentence comes towards the end of the scenario and seems to indicate hesitation from Dakota. Since males were more likely to interpret this as consensual than females were, males may be more likely to interpret hesitation as consensual than females are.

The feature that could explain the difference between participants who saw the laws first and those who did not see them at all can be found in this excerpt from the laws provided:

1. The victim expresses lack of consent through words or conduct;

Many universities now prescribe what they refer to as ‘enthusiastic consent’, where both participants are asked if they consent to a particular answer, and their answers should be something like “Yes!” The law, however, does not necessarily require that same moment, and this first rule indicates that consent can be given non-verbally. The situation in question does not include a moment of ‘enthusiastic consent’, but both participants’ behavior (conduct) seems to indicate consent for both parties. This explains why subjects were more likely to mark that scenario as consensual after they had read the laws than if they had not read the laws.

As this was an online survey, there were a number of factors that I could not control for. One of the biggest factors was whether or not subjects of the first survey actually read the laws provided before clicking next or if they just skipped over it. With the benefit of hindsight and after talking to several people about my project, there were a couple of ways that I could have better controlled for the later situation. Within Qualtrics, which was the tool I used to build my surveys, there is a function to make it so that subjects would have to spend a certain amount of time on a particular page before moving on. This way I could have been more sure that the subjects had actually spent some time looking at the laws before they moved on. Alternatively, I could have had some comprehension questions after the laws in order to test subjects on how well they had absorbed what they had read. Unfortunately I thought of neither of those things until long after I had gathered all of my data.

Secondly, I had a big problem with people only completing parts of the survey instead of the whole thing, including an large number of subjects who simply filled out the demographical information and answered none of the other questions, which meant that not all of the questions had the same population answering them, which could have skewed the data on any of the given questions.

And, lastly, I have no real way of controlling for participants who simply clicked through my survey as fast as they could, and did not actually complete all of the tasks thoroughly. I had a small control for this in the form of the last eight questions, which asked the subjects to fill in the blank for several scenarios, which highlighted the most uncooperative subjects because they would input answers like “;afjdkl” or “ “ which clearly showed that they were not taking the survey seriously. Ultimately, even with this, it is difficult to say how engaged my subjects actually were with the tasks.

To solve some of these problems I think that the next step in this research would be to replicate this study on a smaller scale, but in a more controlled environment to see if the differences found here persist when these variables are controlled. Subjects being monitored in labs as they took the survey on the computer would ensure that the survey was taken more seriously, although the population represented would be more constrained as most likely such a study would draw mostly college-aged participants, where this study had a much broader population.

Further research should also be done to examine how consent is communicated and understood in other kinds of relationships. This study focuses on heteronormative relationships, and other kinds of relationships warrant their own studies. When I was setting up the surveys to distribute for this study, I considered trying to include more kinds of relationships in my scenarios, but this would have been assuming that heterosexual relationships are exactly the same as homosexual and other kinds of relationships. Since I had no evidence that they were the exact same, I would have had to have many more questions in the survey in order to still adequately cover all types of relationships, so I decided to focus on a particular kind of relationship in order to allow me to put out a smaller survey. Additionally, and it may just be male bias coming through me as the writer, but most of my scenarios had male ‘aggressors’ if

either participant could be seen as one. It would be interesting to do another study with female ‘aggressors’ to see if that affects how people interpret the same kinds of situations. More studies in these areas are clearly required, as well as studies that focus more on court cases and how their rulings differ from how experts and the public would interpret the situation, like Ainsworth did in her 2008 study. In addition, a study into how power dynamics affect how people use language in sexual situations, similar to the study run by Stygall (2008) would be very beneficial. It would be important to identify common power dynamics in different relationships and how those couples communicate.

Furthermore, I think it is very important that linguists continue to try to answer this very tough question. So many young people are still very confused about what does and does not constitute consent, and when people have different ideas about what consent could look like, the results can be terrible. Research by linguists can show what gaps there are in what different people think is consent, which then could make it possible to design more effective programs to teach people about consent. We need to know what differences are real and why they occur in order to solve this very real problem. Like Ainsworth’s 2008 study that showed the issues many people were having with the language courts used to decide if someone had invoked their Miranda Rights, this study was trying to identify differences between how consent is judged in court and how it is judged in everyday life.

Finally, below are links to one of the surveys, so you can go through all the questions and see what this survey was like. Also feel free to use them in any future research.

https://qtrial2018q4az1.az1.qualtrics.com/jfe/form/SV_cU98BIVShYczJaZ

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