

Introduction

Sexual offenses have moved to the top of the global criminal policy agenda. Long ignored by mainstream criminal law scholarship, violations of sexual autonomy, especially of women, have since the turn of the millennium become the object of vivid debates in criminology, criminal law theory, and legislation. Demands for better protection of vulnerable groups against sexual exploitation and more effective sanctions for sexual assaults beneath the level of forcible rape have led to a flurry of new legislation.

One key point in the debate on sexual offenses is the role of consent. While there clearly is no reason for criminal penalties if two responsible adults agree to have sex with each other, there exist a host of situations in which the presence or the legal validity of consent is doubtful. Consider, for example, two 15-year-olds experimenting with sex – can each of them give valid consent to being touched sexually? If the answer is ‘yes’, does it make a difference if one or both are drunk? Or if one of them is not 15 but 22 years old? Even among adults, a declaration of consent can be influenced by a variety of factors that may raise doubts about its validity. What if an employee agrees to have sex with her boss because she is afraid of getting fired if she refuses? Or if a woman consents to have intercourse with a man wearing a condom but the man secretly removes the condom?

Even a quick glance at these questions shows the massive practical and theoretical difficulties of defining what “consent” means in sexual relations. Yet, delineating the preconditions and limits of valid consent is of great relevance for the criminal law. The existence of consent is likely to make the difference between a mutually pleasurable experience and the commission of a serious crime. Since the issue of consent is bound to arise, in some form or other, in every legal system, the editors sought to collect perspectives and solutions from various jurisdictions, hoping that useful conclusions for policymaking can be drawn from the experiences of different countries.

As a focal point of these efforts, an international conference on the topic was held in September 2021. The Covid19 pandemic regrettably made it necessary to abandon the original plan of meeting in Leipzig. But the online conference nevertheless ignited spirited debates on selected topics, based on previously circulated national reports from twelve jurisdictions on three continents.

The present volume collects eight topical, comparative essays as well as eleven national reports, followed by a synopsis designed to put together the main findings and remaining issues for debate. The chapters of this book are based on the contributions to the 2021 conference, which have been expanded and brought up to date by the authors. We hope that this volume can be of help to scholars as well as to judges and policymakers faced with potentially criminal situations in which consent to sexual acts is at issue.

The editors are most grateful to the contributors to this volume, who have, in a spirit of friendly debate and cooperation, succeeded in providing up-to-date information on the situation in their countries and in furthering international exchange on the multiple issues raised by the law of sexual offenses.

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