

## The Meaning of Consent: On the Uses of Sexual Consent in Contemporary Neoliberal and Securitized Societies

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**ABSTRACT:** This article examines the renewed centrality of consent in contemporary debates on sexuality, freedom, and violence, situating it within both the liberal political tradition and recent feminist struggles. Drawing on the Spanish context following the feminist mobilizations of 2018 and subsequent backlash, it explores how shifting public attitudes, particularly among young men, reflect broader social and political tensions. The article engages critically with internal feminist debates, especially those concerning identity, exclusion, and the fragmentation of collective struggle. It argues for a feminist approach that foregrounds solidarity, class and cross-movement alliances, positioning feminism as a transformative project aimed at reshaping society as a whole. Within this framework, the article interrogates the concept of consent, questioning how it can be mobilized against sexual violence without reproducing neoliberal assumptions. It highlights tensions between contractual individualism and the need for trust, collective responsibility, and more relational understandings of social and sexual life.

**KEYWORDS:** Consent; Feminism; Neoliberalism; Sexual violence; Collective solidarity

### Introduction

In recent decades, consent has become one of the central concepts through which contemporary societies conceptualize sex, freedom, and violence. This is not, however, a new concept. Consent has long occupied a central place within the modern political tradition and within the liberal framework that structures the legal orders of contemporary societies. Nevertheless, in light of the recent reforms of sexual offence legislation that have taken place in both North American and European contexts, consent has acquired renewed prominence. What accounts for this renewed centrality of consent within the sphere of sexuality, and what are its implications?

The research developed in *El sentido de consentir* (Serra 2024)<sup>2</sup> is situated within the debates that emerged in Spain following a major feminist upsurge, as well as the subsequent backlash against it. In recent years — particularly around 2018 — feminism became one of the most significant political movements in Spain, with mass demonstrations that had a profound and lasting social impact. One indication of the extent to which feminism reshaped public discourse is the fact that, in 2020, 54 percent of young men in Spain identified with feminist values (INJUVE, 2020). However, recent data point to a significant decline.

Today, only 26 percent of young men identify as feminists and, more concerningly, around 50 percent believe that gender equality may operate in discriminatory ways against men (Kuric Kardelis et al., 2026). This reaction does not emerge exclusively from conservative or far-right sectors but also manifests itself in more diffuse ways across society, including among some men

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— even within the political left — as well as among some women who now express a greater distance from feminism. Within this context, important debates have emerged inside feminism itself regarding both the achievements and the limitations of recent feminist politics, as well as the need to reconsider some of its assumptions and strategies.

Some of the critiques that many feminists have directed at certain strands of feminism concern their strong emphasis on the construction of a fixed or “authentic” identity. This focus on defining who we are — or who I am — rather than on what we want to build collectively or what we seek to struggle for, can produce exclusionary effects. It is relatively easy to see that the fixation on defining “true women” has often resulted in the marginalization and exclusion of trans women, thereby generating divisions that may weaken the movement as a whole. However, the point is not only to contest this exclusion, but also to question the underlying logic itself. My work is situated within a feminist perspective that emphasizes the need to build alliances between feminism and other social movements, and that regards class as an essential dimension that feminism cannot afford to abandon. From this perspective, feminism should be capable of addressing all women — including working-class women — but also men and society as a whole.

Feminism calls into question the fundamental structures of our political, economic, familial, and cultural systems. For this reason, its task is to contribute to the construction of another society — a better society — for the majority, for the “99%.” This also requires rebuilding forms of solidarity, social bonds, and mutual trust that are continuously eroded within contemporary market societies. From this perspective, important debates have also emerged concerning how violence against women — and particularly sexual violence — ought to be conceptualized and addressed. It is within this framework of debate that it becomes necessary to investigate how the concept of consent can be defended in the struggle against sexual violence without relying on neoliberal frameworks.

I understand neoliberalism in two principal senses. On the one hand, it promotes a contractual conception of social life, according to which social relations are understood as if they could be fully explained through the model of contract. On the other hand, it entails a security-oriented logic in which radical individualism — the dominant ideology of contemporary capitalist societies — fosters a conception of social life grounded in protection and mistrust. In other words, it encourages a view of others primarily as potential threats from whom we must protect ourselves.

### **Why Consent Continues to be a Necessary Concept in the Sphere of Sexuality**

First, it is important to emphasize that the defense of the concept of consent, and its application to the sphere of sexuality, has constituted a central demand of feminism at least since the 1970s. This demand is linked to a fundamental principle: that sexual relations must be voluntary for women, that sexuality cannot be imposed, and that such imposition — whether or not it involves physical violence — must fall within the scope of criminal law.

Yet if the defense of consent refers to something seemingly so basic and minimal, why has consent become the object of such intense debate today? And why has this concept generated significant disagreements and even profound divisions within feminism itself? The reason, as I will argue, is that consent is not a univocal concept. Rather, it can acquire different meanings and be understood in markedly different ways. In the sense in which many feminists employed the term during the 1970s, consent was closely linked to the notion of will. If consent means that sexual relations must be voluntary, then the issue initially appears relatively straightforward, and few today would openly contest such a principle without defending a profoundly premodern sexual order.

Nevertheless, throughout the nineteenth and twentieth centuries, women were repeatedly compelled to struggle for recognition as legal subjects capable of expressing a valid will — or valid consent — in matters such as divorce, abortion, and sexual freedom. For centuries, sexual criminal law functioned primarily to protect male sexual rights rather than women’s freedom. Until approximately fifty years ago, women were often required to demonstrate their “honesty” in order to receive legal protection.

This implied that women had to prove not only that they had not consented, but also that they had physically resisted, at times in extreme ways, in order to defend what were effectively understood as the sexual rights of husbands or fathers. It was against this legal and cultural background that feminism introduced, in the late 1970s, the slogan “No Means No.” The slogan sought to establish a clear principle: if a woman does not want sexual relations, this alone should suffice, and any violation of this refusal constitutes rape.

Did feminism succeed in achieving these demands? The answer is both yes and no. On a formal level, by the end of the twentieth century many Western legal systems had begun to move away from the traditional conception of sexual offences as “crimes against honour,” introducing reforms that increasingly defined such offences in terms of consent. Many of these legal frameworks have since undergone further reforms, and some still remain insufficient today. However, beyond the law itself lies a more complex and difficult problem: laws are interpreted and applied by human beings, and transforming legal norms is often easier than transforming social attitudes and institutional cultures.

In recent decades, numerous cases have shown that judges, lawyers, and prosecutors may continue to approach women’s testimonies with suspicion, questioning whether women resisted sufficiently, whether their resistance was genuine, or even suggesting that, despite verbal refusal, they “really wanted” sexual relations. Similar dynamics emerge in situations in which consent cannot be freely expressed — for example, in contexts of coercion, intimidation, or abuse of power — where women are reproached for remaining passive, for not reacting, or for staying silent. What, then, can be done in response to this problem?

### **Different Ways of Thinking About Consent**

Feminism has responded to these problems in different ways, thereby giving rise to distinct ways of understanding and conceptualizing consent. One position — the one I defend — approaches the issue by, on the one hand, upholding the concept of consent while simultaneously recognizing that consent, like freedom itself, has conditions of possibility. The law should establish voluntariness as a necessary condition for sexual relations to be considered legitimate, but it should also require judges to examine whether the conditions for freely expressing that will are genuinely present. In this sense, it is essential to recognize that, in certain contexts, women are not fully free to decide whether they want sexual relations or not.

Under such conditions, silence cannot be interpreted as consent. The crucial question, therefore, concerns which contexts ought to be understood in these terms, and which ought not. This position acknowledges both the validity and the limits of consent and thus leads us to ask where those limits lie and how they should be determined.

At the same time, it is necessary to remain aware of the limits of legal and penal frameworks when it comes to transforming society. The prejudices reproduced by judges often reflect the broader prejudices of the society to which they belong — a society that can only be transformed through a wider political struggle for equality between men and women, one that necessarily extends far beyond the reform of legal definitions of sexual offences.

Other strands of feminism have responded differently to this problem. Since judges — and society more broadly — often assume that if a woman does not resist heroically, she has therefore consented, some feminist perspectives have concluded that the concept of consent itself should be rejected as intrinsically patriarchal. A significant strand of American feminism — particularly what came to be known as *dominance feminism* — associated above all with Catharine MacKinnon, developed this position explicitly.

The central political argument was that under patriarchal conditions women are never situated outside relations of structural inequality, and that this systematic inequality invalidates consent not merely in certain contexts, but in all heterosexual relations. If men structurally hold power and women do not, then the distinction between sexual relations and sexual violence — between consent and submission — becomes fundamentally unstable. In this case, the aim is no longer to identify the conditions of consent. The task of determining where the limits of the capacity to consent should be drawn becomes absurd once one assumes an inherent limitation of the concept itself and its general invalidity.

Critics of these approaches have argued that, by construing heterosexual sex as an inherently dangerous terrain, the political response has frequently taken the form of an ultra-securitarian logic in which the role of the state is conceived less in terms of emancipation than in terms of the protection of women. In this regard, it is not surprising that the administration of Ronald Reagan drew selectively on some of these feminist arguments during the 1980s. Such perspectives were mobilized, for example, in campaigns against pornography as part of a broader conservative and moralistic reconfiguration that ultimately proved compatible with a securitarian form of liberalism.

There is, however, a third approach to consent that has become increasingly influential in recent decades. The doctrine of *affirmative consent* developed in North America during the 1990s and progressively consolidated within European contexts during the 2000s. This way of understanding consent is, nevertheless, closely related to the preceding one. In *The Meaning of Consenting*, I argue that this doctrine cannot be fully understood without first accepting certain premises inherited from dominance feminism, namely the assumption that heterosexual relations are structurally unequal and that women are never entirely free to refuse sex. Under these premises, consent can no longer simply mean accepting or rejecting a sexual relation or authorizing or refusing a sexual interaction. It must come to signify something more. Authors such as Lois Pineau (1989), Michelle Anderson (2005), and Martha Chamallas (2018), drawing on an argument that can also be found in MacKinnon's reasoning (MacKinnon 2016), argue that the normative threshold must be raised: more must be required for sexual relations to be considered legitimate. Consent must also imply desire.

If, for MacKinnon, the problem was that desired or “welcome” sex could not be adequately captured within the concept of consent — making consent an insufficient and ultimately “pathetic” concept that ought to be abandoned — the theorists of affirmative consent instead propose incorporating that aspiration within the concept itself. Rather than rejecting consent, they seek to redefine and expand its boundaries so that it encompasses not only the sex that women accept, but also the sex that women genuinely desire.

This tendency to align consent with desire is not confined to the work of certain influential theorists but has also entered contemporary public discourse through expressions such as “enthusiastic consent,” which are becoming increasingly central to current debates on sexual consent. In recent decades, the idea has increasingly taken hold that affirmative, positive, or enthusiastic consent guarantees not only non-violent sexual relations, but also pleasurable and

satisfying ones — in other words, genuinely good sexual relations. As Joseph Fischel has argued, contemporary discourses of affirmative consent increasingly suggest that “enthusiastic consent, from which we can infer desire, is not only the starting point for sexual pleasure, but virtually guarantees it” (Fischel 2019, 3).

This conception of consent — according to which consent requires not only an act of will but also the presence of authentic desire — seeks to respond to the problem outlined above. By redefining consent in more demanding terms and preventing women from agreeing to undesired sexual relations, it aims to close the door to judicial interpretations perceived as unfair to women. At the same time, however, this qualified conception of consent entails a profound transformation in the very meaning of consent itself. Women are not required to give enthusiastic consent to a medical procedure or to an abortion. In these expressions of our will, we do not consider the state entitled to require an internal adherence on the part of the subject in order to validate our capacity to consent in a legally binding manner. What does this anomalous requirement mean in the field of sexuality? And why does it arise specifically when the subject is a woman? How should we understand this shift toward desire in contemporary understandings of consent, and what does it tell us about what our societies now expect from law and legal regulation?

### **The Limits of Consent: On the Insufficiency of Criminal Law as a Tool for Social Transformation**

What I argue is that, identifying consent with desire risks restricting women’s agency while at the same time extending the reach of criminal law. First of all, if we want women finally to achieve full recognition as legal subjects, they must be recognized as capable of consenting in the same way men are recognized as capable of consenting — even when consent involves decisions that do not necessarily produce enthusiasm, happiness, or pleasure. Human beings frequently consent to things they do not enthusiastically desire. Women can desire things to which they do not consent, and consent to things they do not enthusiastically desire. For the state to be authorized to supervise our inner endorsement in legal acts is, without doubt, troubling.

Second, I share with other authors the view that this transformation of the concept of consent entails a redefinition of criminal law and its limits. If criminal law is tasked not merely with ensuring that people choose to engage in sexual relations, but with ensuring that those relations are desired, pleasurable, and satisfying, then we are effectively asking it to guarantee good sex, not just consensual sex. The unfortunate counterpart of this promise is that sex that is not enthusiastically desired may come to be culturally coded as assault. If we do not want to open the door to a punitive drift and an expansion of the powers of criminal law, we must defend the distinction between consent and desire. In the words of Joseph Fischel: “the more we equate consent with desire, pleasure, or enthusiasm, the more students will feel themselves as sexually assaulted when sex does not go well, or when it is not as rock star as they had hoped. Sex that is OK, regretted, unenthusiastic, and not pleasurable will be retroactively experienced as assaultive if non-regret, enthusiasm, pleasure, and better-than-OK are culturally conceptualized as necessary ingredients for consent” (Fischel 2019, 19).

One might ask: why shouldn’t sex be exactly as we expected it to be? If individuals clearly express their desires, nothing should happen that has not already been anticipated. And here we arrive at what is perhaps the most philosophically interesting point. What I have tried to show in my work is that, in contemporary discourses of consent, the attempt to identify consent with desire gives rise to a radically contractualist conception of desire. Subjects are presumed to know what they desire and to be able to communicate it to others with complete clarity. Women, in particular,

are encouraged to express transparently how their desire is constituted and how their pleasure works. Thus, any relation between desire and the unconscious, and with not-knowing, is erased. The exploratory dimension of sex is also eliminated, along with the fact that sex involves a social relation that exposes us to others in ways that are not entirely predictable.

As Katherine Angel writes, “the rhetoric of consent implies that desire is there, waiting, fully formed within us, ready for us to bring it forth. But our desires emerge through interaction; we do not always know what we want, sometimes we discover things we did not know; sometimes we discover what we want only when we do it” (Angel 2021, 55–56). What contemporary discourses of consent tend to obscure, I argue, is precisely the relational character of desire. From a psychoanalytically informed perspective, desire is constituted relationally: my desire is shaped through the desire of the other. The issue is therefore not simply that we cannot know in advance what another person desires, but that our own desire is never fully transparent to us independently of our relations with others.

Desire cannot therefore become the object of a fully transparent agreement between subjects presumed already to possess complete knowledge of what they want. For this reason, desire cannot be reduced to the terms of a contract, nor is it compatible with a radically individualist conception of the subject. No form of consent — and certainly no legal regulation — can anticipate desire, and therefore none can guarantee it. Attempts to neutralize the uncertainty and unpredictability of sexual encounters through contractual forms of regulation ultimately reflect a securitarian and immunitarian logic that seeks to protect subjects from the very vulnerability implied in encountering others.

The problem with conceiving consent in this way is that it forces us to think about freedom—sexual freedom—within the limits of a neoliberal paradigm that ultimately understands freedom only in negative terms. In this view, the subject is already free, already knows what they want, already possesses their desire, and can only lose that freedom in encountering others, never gain it. If we challenge this way of thinking about sex, and instead defend the idea that we do not become free by protecting ourselves from others, but that we depend on others—and that interdependence is a condition of emancipation—then what must be eliminated from sex is violence and aggression, not the opacity of our desire, nor the unpredictability of the sexual encounter. Violence must be eradicated from sex precisely so that women can recover the freedom to enter a terrain marked by risk, uncertainty, and not-knowing. This is precisely what, in the face of a securitarian neoliberal society that would have us fearful of others, we must protect.

Returning to the argument developed throughout this text, I would suggest that feminism can only remain a transformative force if it breaks with the immunitarian logic of neoliberalism, which encourages the subject’s retreat into itself. In the sexual sphere, as in social life more broadly, the task cannot consist merely in defending who we are, what we individually want, or what our personal desires may be. Rather, it requires confronting relations of power and violence while also reconstructing the possibility of desiring with others and through others — of building forms of shared desire capable of binding subjects to one another and carrying them beyond themselves.

Consent remains necessary, but we should also remain attentive to the limits of a concept to which contemporary societies increasingly attribute almost magical powers. As Ariel Ajeno suggests, “any revolutionary world to come cannot be fully consented to before its arrival because it is not fully knowable” (Ajeno 2024). Nothing genuinely unforeseen or radically new can ever be fully anticipated in advance. Only a domesticated form of thought could place in a concept such

as consent, and in the apparatus of criminal law, the emancipatory hopes that properly belong to desire, love, and revolution.

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