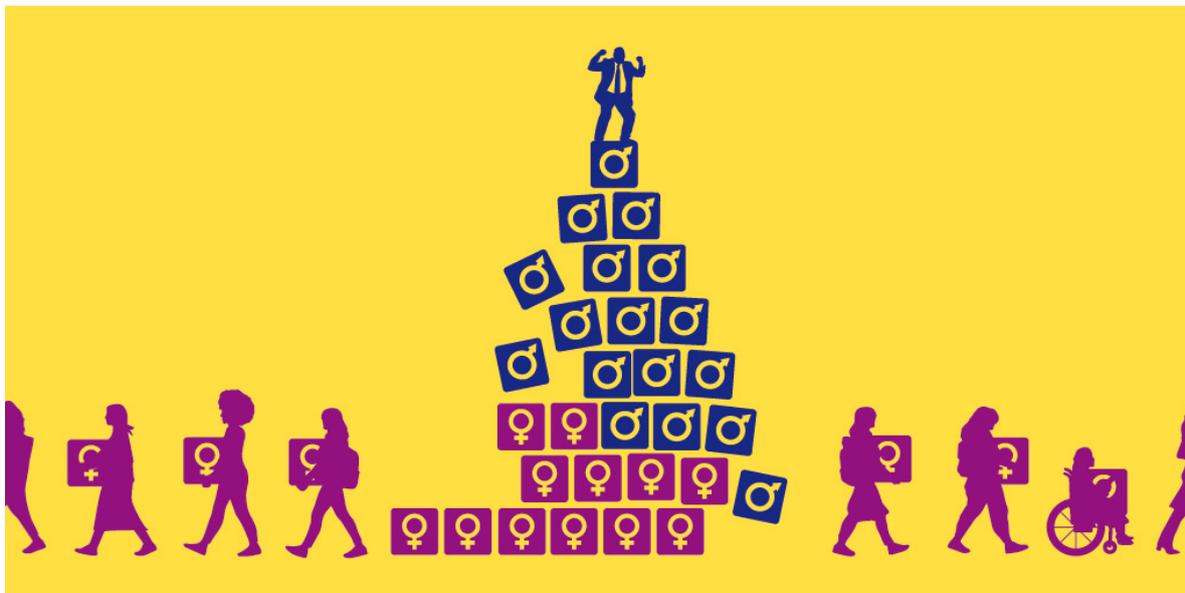


PREVENTION, THE ONGOING TASK

# Consent: Sister, I believe you

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The plaintiff had an intense feeling of isolation and unease, which stupefied her and made her adopt an attitude of submission and passivity, leading her to do what the defendants told her to do, keeping her eyes closed for most of the time. The defendants were aware of it and took advantage of the plaintiff's situation in the small space to which they had taken her. Their intentions were to perform several acts of sexual nature with her with a libidinous intent, and they acted in common agreement among themselves. According to the magistrate point of view, everything happened without the plaintiff expressing that she did not want to do that, either through words or gestures, or in any other way. The five defendants believed at all time that she wanted to be part of the sexual acts they performed with her. Moreover, there is no evidence that the plaintiff was in a situation of anxiety or blockage that would have prevented her from telling the five defendants, if she had wished to do so, that her desire was not to maintain such sexual relations [1]

## Sexual violence

Pamplona, 7 July 2016. A case of rape, one of the thousands that occur around the world every day. Nothing new.

Pamplona, 13 November 2017. The beginning of the trial of the so-called “wolf pack” case. The beginning of another chapter of the story of sexual terror that all women carry in our shared memory. The victim, questioned. The perpetrators and their environment “spat out” justifications. Sexual terror again. Nothing new.

Pamplona, 26 April 2018. Day of the Sentence. The sentence was for sexual abuse; neither intimidation nor violence were acknowledged. Abuse. It was not the beginning of something, but it was surely the end of the blindness [2] of a part of the judiciary, the media and, no doubt, of the bulk of society.

“Sister, I believe you”. “It wasn’t abuse; it was rape”. Outrage in the streets, putting sexual violence on the political and public agenda. This came from community spaces and a sense of sisterhood. A space where we opposed the loneliness and shame that have accompanied sexual violence for a long time now.

The Spanish Penal Code classifies the crime against sexual liberty in two different categories: sexual abuse and sexual assault. The difference between the two categories seemed like a matter of procedural arithmetic, but it wasn’t quite like that.

Madrid, 21 June 2019. Supreme Court. The sentence acknowledged that there had indeed been intimidation; it therefore acknowledged that there had been a sexual assault. It was rape. This was a historical rectification, not because it hadn’t occurred on other occasions, but because of the impact that this sentence had on society. It opened up a new breach in the patriarchal system, which some of us had been prising open for some time in different professional and academic spaces. Now the debate about what “intimidates us” was no longer a private issue. It was public.

Talking about consent should allow us to talk about social control, patriarchy, identities and dissent

The legislative change was unstoppable and the debates gave rise to yet more debates. The silence was broken. Breaking the silence on what we find intimidating and violent led us to open up the debate on consent.

Scholars and feminist activists had been reflecting for a long time on the topics that needed to be addressed. One of them is, without doubt, *consent*. *Consent* could not be restricted to a theoretical debate. For women it is something that goes through our bodies, through our shared collective memory.

Talking about *consent* should allow us to explain what the bases of the patriarchy that indoctrinate us to stop being ourselves and turn us into a part of its machinery are. It should allow us to talk about the limits of freedom and autonomy. It should allow us to explain what we do not realise: how the invisible power accommodates us. Because talking about consent should allow us to talk about social control, about identities and also about dissent. Because talking about consent challenges us all, regardless of the degree of analysis that we make of such consent. Talking about consent makes us talk about patriarchy. But it also challenges all men. It is precisely for this reason that talking about consent is so essential, and has become an indispensable element to shatter this system.

A few years ago, I wrote some words that placed this debate inside the actual structure:

- *«What places sexual violence at the epicentre is precisely the fact that it is a type of violence which is the foundation and support of the patriarchal system. This statement is not an idle one; on the contrary, it is a statement that seeks to underline the structural nature of this violence. Without sexual violence there would be no patriarchy. It is therefore surely time to reconsider the interconnection between the different forms that make up gender-based violence, and define them as something more complex and organic [3]».*

Sexual consent is one of the most political and social elements, because it talks about acceptable and unacceptable limits, about what is allowed and what is not allowed. It is a political element because it is related to how we take part in society, in this learning that indoctrinates gender norms. It is not restricted to gender. Consent is the predicate of sentences. It is the predicate of sexual violence.

## Consent in the framework of the new legislation

Our Law 17/2020, dated 22 December, modifying Law 5/2008 and concerning the right of women to eradicate gender-based violence [4], defines consent as follows:

- Article 3.j) *Sexual consent*: the express will, framed in sexual freedom and personal dignity, which allows the exercise of sexual practices to take place and endorses them. The act of giving sexual consent must be made from a position of freedom, must remain so during the entire sexual practice and is limited to one person or to several persons, to certain sexual practices and to certain precautionary measures, against both unwanted pregnancy and sexually transmitted diseases. There is no consent if the aggressor creates conditions or takes advantage of a context that, directly or indirectly, impose a sexual practice without the will of the woman.

The judicial doctrine and the academic world have built up an account of the symbolic and material conditions that consent should include. There is a long list of these items, which go beyond the grammatical questions of what is a “no” and what is a “yes”.

Moving from “no means no” to “only yes means yes” is not only a question of grammar, but rather a question with substance in relation to how representations act. This is why the response of the extremist movements, conservatives and other anti-democratic fundamentalist groups is that this debate is “absurd”, and they try to depoliticise the idea of consent.

We are living an exceptional moment in which we can see, for example, that on the most hegemonic virtual platforms (TikTok, YouTube and Instagram) content related to sexual consent is on offer. It seems that they do it without evidencing contradictions (apparently). We find dozens of videos of young men in “wolf packs” in nightclubs or other public spaces putting on performances in which they apparently sign contracts to have sexual relations. The performances do not arise from a liberal framework, in which it would seem that relationships take place in aseptic spaces and power relationships are anecdotal. We negotiate contracts and we dance. They are representations of how the system is afraid.

But truth is more stubborn than social networks, and this neutrality shatters the limits of what we can justify as a market of freedom, the market of how we make our decisions, and how we defend them. We ask ourselves, amidst the music of social networks: How many of us have actually read the Amazon purchase contract before signing it? How many of us are aware that the conditions of a Visa credit card depend on the country where it is issued? How many of us have had to stop renting an apartment and have had to pay the penalty for leaving before the end of the contract? Why is it so difficult to unsubscribe from a telephone service? In short, you can sign a contract, but you have no ability to change the terms of the contract or its conditions. In short, how many of us are familiar with or can transgress the laws of the system (patriarchal, colonialist, capitalist, etc.) that controls our lives? The truth is stubborn and the answers to the questions are few or non-existent. Because these contracts have no life of their own, they are governed by rules beyond the individual will.

The cultural imperialism of freedom understood as an individual fact makes these young men (the ones on social networks, contracts in hand) defend it as if they were the defenders of freedom, when they are actually the “pawns” in the system. Virtuous pawns. It is the same pawns in groups that defend national and identity supremacy. This is no coincidence; they are in fact defending the system of privileges. Privileges build the framework in which sexual violence is justified. Privileges are the key, because they are granted as if they were natural.

Moving from “no means no” to “only yes means yes” is not only a question of grammar, but rather a substantive matter. This is why anti-democratic movements try to depoliticise the idea of consent

A slaveowner (aggressor, businessman) once expressed himself as follows. “If you want to work, let’s have sex; otherwise, you can fuck off”. “If I don’t have sex with anyone, I don’t

give work to anyone either [5]. We may be shocked by this way of expressing the will to abuse, but in fact it is a way of exercising privileges. Why should this slaveowner aggressor think any differently? He has no reason to do so. He knows what his privilege is. He knows that the exercise of power he can impose is part of the way power relations are configured. He is in charge; he has no need to provide excuses. He has no need to explain that his reasons constitute a violation of women's human rights.

## In conclusion

Bringing sexual consent into the individual and domestic sphere—in this case to the labour sphere—is the way patriarchy reaffirms itself, it is the way patriarchy explains itself. To stop trivialising sexual violence—and therefore to stop trivialising the patriarchal system that generates totalitarian (and hegemonic, binary, and dissociated) gender mandates—is one of the issues that we have to address as a public authority. It is a significant moment when institutions take up the discourse that says that hegemonic things should be broken and they create an obligation for themselves through due diligence.

We are still at the stage where institutions need to campaign on sexual consent, to make the discourse hegemonic, but above all to bring “into the public sphere” what they want to be relegated to the private sphere. And here is the key: breaking with the cultural colonisation of sexuality as an individual and private element. Institutions hold the key responsibility.

The discourses on the idea that social and cultural change should not be sought in criminal law but in education, media, and at universities require further analysis. Criminal law is not an innocent instrument of the configuration of the patriarchal system. Clearly, the penal system has to guarantee hegemony, among other things, and the story that oozes from certain sentences explains this. Organic Law 10/2022, concerning the comprehensive guarantee of sexual freedom, is challenged by taking the debate out of the Penal Code. Whether it succeeds or not does not depend on the law itself, it depends rather on the strength that we have as institutions and activists to defend cultural change.

One of the relevant questions is how the learning of sexual terror [6] goes hand in hand with the learning of sexual harassment, and how the configuration of dichotomous and binary-gender mandates conditions how we deal with sexual harassment [7]. Social training on gender is doubtless very much focused on how we act in the face of harassment—how we identify it in a binary way—. But again, the focus seems to be diverted to do so on an individual basis, when the truth is that we need to see what intimidating, harassing, degrading, humiliating, and offensive environments are configured, and how. This environment is mostly defined through the prism of the binomial subjectivity-objectivity, which is in fact false. An intimidating, hostile, degrading, humiliating or offensive environment can only exist if the social structures do not acknowledge the power relations in the educational, labour, political, family, and other institutions.

It is necessary to break with the cultural colonization of sexuality as an individual and private issue to bring it into the public sphere. To do so, institutions have a key responsibility

We have to generate new discourses in which sexual harassment is given the magnitude that it really has in the configuration of gender. We have to focus our efforts on uncovering it as a key element of the patriarchal system. This is why we have to endow sexual and reproductive rights with content, as rights that emerge from the sexual sphere, in order to articulate them in the sphere of political and civil rights. Undoubtedly, and finally, consent is the opportunity to talk about how we have to build up models that differ from the patriarchal system and how sexual freedom is one of the most powerful mechanisms in decoding gender power relations.

#### REFERENCES AND FOOTNOTES

- 1 — Extract from the Judgment of the Second Section at the Navarra Provincial Court [[available online](#)].
- 2 — “I don’t think we did go blind, I think we are blind, blind but seeing, blind people who can see, but do not see”. Saramago, José (1995). *Ensaio sobre a cegueira (Blindness)*.
- 3 — Pineda, Montse (2020). «Què podríem estar fent diferent? L’abordatge de les violències sexuals a Catalunya». In: Freixanet, Maria (coord.). *Violències sexuals. Política pública perseguint-ne l’erradicació. Ciutats i persones*. Barcelona: ICPS, pp. 67-97 [[available online](#)].
- 4 — See the full text of the Law at the Juridic Website of Catalonia [[available online](#)].
- 5 — Extract from the article published on Publico.es on November 3, 2022: “Condenado a 42 años de cárcel por abusar sexualmente de seis jornaleras en Cartagena” (“Sentenced to 42 years in prison for sexually abusing six day laborers in Cartagena”) [[available online](#)].
- 6 — Barjola, Nerea (2018). *Microfísica sexista del poder. El caso Alcàsser y la construcción del terror sexual*. Virus Editorial.
- 7 — Toledo, Patsilí; Pineda Lorenzo Montse (2016). *L’abordatge de les violències sexuals a Catalunya. Violències sexuals un marc conceptual, teòric i ètic* [[available online](#)]. Barcelona.

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