

Anthropology News



The Prominence of Consent

Let's Talk Gender

M. Gabriela Torres

Is understanding consent as [“simple as tea?”](#) Increasingly, we have begun to think that it is common sense to see rape and other forms of sexual assault almost exclusively through the lens of consent. The lack of a freely given agreement by a competent person—commonly known as consent—is essential to U.S. [legal definitions of rape and sexual assault](#).

But does our focus on consent – or the lack thereof – allow us to fully recognize the violations inherent in sexual violence? Does consent accounting enable us to grasp what it means to suffer and survive a rape? How does the lens of consent shape our understanding of the gendered nature of sexual violence?

These are particularly crucial questions as we skew our responses to the [high levels of sexual assault](#) in our midst. [Affirmative consent standards for sexual assault are now being considered in states across the U.S.](#), and thousands of colleges have already [framed their sexual assault policies](#) on such criteria. The booming business of [consent education](#) has become [the prime tool to teach about healthy relationships](#). Today, mobile phone users can [select between different apps to download](#) and pin down the moment of consent should proof ever be required. In law, in the computer code of mobile apps and in the practice of educational institutions, a violation of consent is a stand-in for the full range of violations that experiencing a rape entails.

Consent-based frameworks narrow the lens of sexual violence to individuals and their interactions. This problematically excludes the social contexts that enable sexual violence. Consent, rape, and sexual assault all take place in cultural contexts and are mediated through the workings of states, educational institutions, and medical systems.



Consent. Photo courtesy M. Gabriela Torres

Drawing us to focus on lived experiences, anthropology shows that sexual violence unleashes other forms of social suffering, surveillance, and exclusion that are not interpersonal but rather routinely enabled by institutions. One of the most difficult ethnographies I've read—Cathy Winkler's [One Night](#)—presents the experience of rape as enmeshed in broader gendered inequalities in the ways that rapes are processed in courts and in medical examination rooms. A meticulously detailed participant observer account of a stranger rape, [One Night](#) shows through painstaking detail that rape forces the survivor to live through multiple, repeated, and socially sanctioned forms of social erasure and exclusion.

For Winkler, rape cannot be simplified into consent because of the weight of the other forms of violation she encounters as she seeks justice. Using the terms *social rape* and *legal rape*, Winkler draws attention to the connectedness of seemingly interpersonal acts of sexual violation

and the social space within which they occur and are judged. Winkler's ethnography is not alone in pointing to this. Sameena Mulla's [Violence of Care](#) outlines the ways that hospitals, compelled by the critical thinking of the law, deal with survivors of sexual assaults – and inadvertently amplify the sexual violence they experienced.

The impact of the social supports for rape is very much a current issue in the recent public outcry over the short sentence received by [a former Stanford swimmer caught in flagrante delicto](#). The survivor in this case presented [a twelve-page impact statement](#) outlining some of the aspects of her life that have been impacted by the rape and the legal process that ensued. [Social commentary](#) has rightfully pointed to the role that our society plays in sustaining a “rape culture” that enables most rapes to go unpunished.

Anthropology pushes us to focus on the social context within which rape is suffered and assess the role of institutions, state, and society in the sustenance of rape. Looking across cultures, anthropologists further trouble the notion of consent noting that it is [neither a simple nor a universal concept](#). The idea of consent itself assumes the existence of an independent individual subject which is not a given in all societies. What this means—whether we like it or not—is that the degree to which women and men view themselves as unique social beings with a full ability to make choices and suffer consequences varies by culture. Even in U.S. law and society, as Estelle [Freedman's Redefining Rape](#) shows, the presence of consent has not always been the determinant of non-violative sex.

Our focus on consent stems, in all likelihood, from the fact that today, in rape law, consent needs to be paramount. In society and its institutions, policy and practice can move beyond consent to understand and address the contexts within which sexual violence occurs. Such an approach may enable the development of sexual assault prevention programs that address the full ramifications of sexual violence.

As it is, when we circumscribe the violation of sexual violence to questions of whether consent was enthusiastically sought or whether the presence or absence of consent can be evidenced, we run the risk of overlooking the crux of the matter.

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Karen L. Davis says:

July 5, 2016 at 5:57 pm

Is the crux of the matter asking what sustains our Culture of Rape? (I am legitimately asking, not telling.) For survivors, that 12-page impact statement, read out loud in court was a moment to rejoice, and the conversations around consent might well be a major step forward. They are indications that give rise to hope — hope that people are at least hearing about and perhaps listening to the stories of "... multiple, repeated, and socially sanctioned forms of social erasure and exclusion" that rape forces on survivors. We have such a long way to go. The situation remains not quite as simple as "... most rapes go unpunished." The vast majority of rapes go unreported. And, there's a long history that feeds failure to report: Before VAWA, being raped was assumed to be the "survivor's" fault, plain and simple. Rape on campus pre-VAWA? You knew not to speak up or you would be the one sent home, not the perpetrator. You toughed it out — or not. Nothing like a rape crisis center existed to offer help and hope. Consent was never part of the conversation. There was no conversation. There was only fear.

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