

# Consent

## Signing On to Desire?

MARÍA MORENO

Translated by Paco Brito Núñez

**ABSTRACT** María Moreno begins by examining the limits of our common legal and psychological understandings of consent. She examines how the self who gives consent fluctuates in a way occluded by the liberal notion of the contract and proceeds to consider consent in the broadest sociopolitical context, as a minor part or element of a greater instrument of control: rape itself. Through a consideration of a series of violations committed in Argentina, some by civilians, others by agents of the state during the country's last civico-military dictatorship, Moreno illustrates how the contradictions inherent in the current legal category of consent obscure how rape functions, not only as a major crime on par with murder but also as a weapon in the preservation of the patriarchal symbolic economy and as a key element in the arsenal of war. The author asks whether it's time to seek to think rape politically, and not just morally. She concludes with a powerful reflection on nonconsent and the kind of sovereignty it can afford to victims and their victimizers who are both oppressed by a system that subsumes them.

**KEYWORDS** consent, rape, contract, patriarchal symbolic economy, disappearance, detention

The title “You Can’t Rape Such a Depraved Woman” has the economy of a saying: it takes two to . . . , though the authors of the article by that name that appeared in *Anfibia* magazine cite Virginie Despentes’s *King Kong Theory* as their source.<sup>1</sup> To be clear: that’s where I’m headed. A homemade archive—a teacup on a fine tablecloth—makes its way around the internet. Its name is “Sexual Consent: Some Thoughts on Psychoanalysis and Law,” by Judith Butler.<sup>2</sup> It begins with an example very familiar to residents of Buenos Aires: a psychoanalytic session. Isn’t this the paradigmatic space in which two have consented without knowing in advance to what they have consented? If, as Antonio Gramsci holds, under conditions of hegemony all consent is manufactured or structured by powers to which one has never truly consented and is therefore always an instrument of coercion, and if freedom (which Butler suggests might not even exist) is something completely

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different from consent, how is it that the law tends to reduce the idea of consent to the figure of the *contract* as a way of doing further violence to women and trans people who have been the victims of sexual assault?

When consent was thought in terms of a contract, Butler continues, drawing on the thought of Michel Foucault and Guy Hocquenghem, it became a legal discourse even though contracts have no place in the sexual lives of people, who tend to experiment time and again with what's opaque or not fully knowable about their desire. Because *saying yes* simultaneously signifies desire and fear of experimentation, curiosity and vacillation, cravings to try things out and wishes to stay put, to overcome oneself in hitherto unknown practices and the challenge of facing consequences, the desire to be surprised and to preserve the familiar illusion—over the course of all these fluctuations a *no*, an urgent need to put an immediate end to the situation, frequently arises. “If making oneself available to the unknown is part of sexual probing, sexual exploration, then none of us start as fully self-conscious, deliberate, and autonomous individuals when we consent. How do we understand this not knowing as not only part of any sexual formation, but a continuing risk of sexual encounter, even as part of its allure?”<sup>3</sup> So writes Butler, who centers her discussion on the figure of consent between people of the same sex, on legal ordinances as morality crusades, and on the lowering of the age of consent not out of a libertarian principle of respect for *the desire of children* but rather, in countries like the Philippines, as a way of rendering twelve-year-old girls marriageable. But what I would like to communicate today is how “Sexual Consent: Some Thoughts on Psychoanalysis and Law” can help us think about certain cases of rape and death in Argentina.

In the film *The Accused*, a waitress named Sarah Tobias is raped on a pinball machine by three men who are cheered on by a beer-fueled mob. Later in the film, after the guilty parties receive the reduced charge of “reckless endangerment” thanks to a deal struck by a set of cynical lawyers and Kathryn Murphy (the prosecutor who takes it as a given that she could not find the evidence necessary to prove gang rape, especially given her client's reputation), Sarah shows up at Kathryn's house, interrupting a bourgeois dinner party already on edge over the degree of doneness of the meat, and harangues her: “I'm a drunk, I'm a pothead, a drug addict, I'm a slut that got bounced a little bit in the bar, right? . . . I'm standing there with my pants down and my crotch hung out for the world to see, and three guys are sticking it to me. . . . I don't know what you got for selling me out but I sure as shit hope it's worth it.” At what moment does the yes of Sarah's consent turn into an anguished no? Surely not when she lets herself be kissed by the drunk Danny with the hopes of getting rid of him precisely because he's drunk. Nor when she smokes a joint or tells her friend, a fellow waitress, how hot she thinks Bob is—when he *puts it in her* she's already injured, and the body thrust upon her only

disgusts her. It also cannot be when she hears her favorite song come on the jukebox and she begins to sway in a sexy (and strictly clothed) dance. Surely the initial yesses of Melina Romero<sup>4</sup> and of Lucía Pérez<sup>5</sup> suffered similar atrocious mutations, though the fictional story of *The Accused* has a “happy” ending that I will predictably elide even as I doubt that someone could be interested in a movie about rape as if it were a simple police procedural (or could one?). Butler adduces examples of how desire and love make contracts flimsy, as when a couple attempts to break out of their exclusive zone of marital comfort by deciding—one member of the couple usually proposes it and one consents—to try a form of nonmonogamy that excludes the possibility of romantic love. A certain good-faith enthusiasm can motivate such a plan clearly undertaken to revive the couple’s relationship, but it just so happens that an excess beyond sexual desire is produced with a third and the excluded party tears up the contract while the “co-signatory” has exceeded its terms. Butler writes, “Sometimes we want to be something for the other that we cannot be, and so agree to sex or agree to non-monogamy, as an act of love that overreaches who we are and what we can sustain, only then to concede a greater humility about what we can do, and what is psychically manageable for us.”<sup>6</sup> The model of the contract envisioned by political liberalism—and perhaps reinforced by neoliberalism, with its emphasis on inequality and its return to a politics of the cannibalization of rights that we once thought could not be imposed—supposes a subject who is intentional, willing, and autonomous, and so fully responsible for the entailments to the goods and services rendered—in short, a subject who stands apart from the strange powers of desire. That a house, shortly after it’s rented, might reveal itself to have shoddy piping and ominous stains, even when its lease was signed in good faith, doesn’t mean that the renter is comparable to the victim of a femicide committed in the name of desire. Nor does it make the unscrupulous landlord comparable to the victimizer. Nevertheless, many unjust, even scandalous, verdicts, apply this logic of victims and victimizers: an initial act akin to a signature that marks a voluntary pact becomes *ex post facto* proof: in the first a case of consent; in the second, of innocence of the desire to kill. Melina Romero enters the club, Lucía Pérez agrees to a date: these actions are inextricable from how their deaths unfolded. The fact that Matías Gabriel Farías bought pastries and chocolate milk would make him innocent despite his coercion of a minor—during the trial, the defense *aged her* until she became the archetypal independent woman who can get rid of a harasser how and when she wants, who fucks adults and who *makes choices*, even though we all know that such autonomy is an illusion at any age of human fragility. It would absolve him of giving her an endless number of drugs and of violently fucking her until he killed her. Brian Petrillán, who was sentenced to twelve years for stabbing his wife, Érica Gallegos,<sup>7</sup> leaving her paralyzed, was given a reduced sentence—his charges were reduced from attempted femicide to

assault—because he said, “You’re going to remember me,” and, according to the judges (who applied a kind of reasoning worthy of a perverse Sherlock Holmes), this meant that he probably did not want to kill her since the dead cannot remember. And despite the guilty verdict in the case of Diana Sacayán<sup>8</sup>—a decision that inaugurated the legal concept of “transvesticide”—the discourse both within and around the trial consistently held that in the life of every *travesti* there is a continuity between a form of life and a form of death, a kind of irrevocable contract between the two. The “I” of the consenting person that ends in death and the “I” of the femicide are unstable—even in the precarious notions of premeditation and forethought—but it’s the outcome that establishes a difference so radical that it indicates that the two subjects belong to antipodal economies. Consent does not fit in a contract; desire tends to break it, but crime tends to fall on the same side. As I once wrote (in 1989), “While there is no possible balance between life and death. While Monzón breathes on the accused’s bench, Alice doesn’t live here anymore, Alice doesn’t live here anymore.”<sup>9</sup>

The topic of consent was all over the outpouring of social-media disgust that greeted the cesarean section forced on a girl from Tucumán whose legal abortion had been delayed. Biopolitics today seems to call for the endangerment of two lives and for the survival of one after exposure to a high risk of death. It seems to be on the roster of suffering along with other less visible—or, in progressive circles, less audible—violations. See, for example, those committed against intersex bodies. After joining the condemnation of the torture perpetrated against the girl from Tucumán, Mauro Cabral<sup>10</sup> posted:

By the age of eleven, many intersex girls have already been subjected without their consent to procedures of bodily normalization. Their clitorises have been cut off, they have been sterilized, they have received vaginoplasties and dilations, they have been subjected to endless reviews and examinations, they have been photographed and filmed. All that at age eleven. Or age ten. Or age nine, or eight, or seven, or six, or five, or four, or one, or mere months after birth.

Had they consented, or even demanded an operation of “bodily normalization,” wouldn’t they have the right to renege and denounce this act that was imposed on them once and for all and in a contractual manner for their own good? In the Argentinean concentration camps, the torturers also attended the operating rooms or knew what happened within them; they were free to court as if they were looking for consent from women free to agree to go on dates to the bar at Rond Point,<sup>11</sup> to do up their hair and wear miniskirts and to share a hotel room before going back to the *capuchita*.<sup>12</sup> The relationships between prisoners and soldiers at the ESMA, which provoked the moral scandal of Miguel Bonasso’s *Remembrance of Death*<sup>13</sup> and

which were so lucidly answered in Ana Longoni's book, *Betrayals*<sup>14</sup> (which revealed the patriarchal imaginary of the revolutionary groups who called the men who "sang" "traitor" and saved that epithet for women who had sex)—do not fit into the notion of consent. If, for Gramsci, consent is already manufactured, how can it apply when someone has been nullified as an individual and is helpless before another who assumes the power of life and death? I came to Miriam Lewin and Olga Wornat's 2014 book *Whores and Guerrilla Women* late,<sup>15</sup> and it caused me to once again reflect on that figure in a space where it should not be possible: the secret military prison. The book catalogs the rapes committed in the clandestine detention centers, brings to light the ways in which these should be considered crimes against humanity, and engages current debates on the limits and advances in justice. It is clearly informed by Miriam's status as a survivor and Olga's activism, but it is also clearly marked by different forms of knowledge, not the least of which come from the rising feminist tide. Its bibliography and its citations make it stand out among books about the dictatorship: the names of Hannah Arendt and Pilar Calveiro<sup>16</sup> sit side by side with those that suggest a more specific feminism that is at the same time connected to other forms of radical struggle such as anticapitalism and the potential for a Latin American revolution. Radical figures such as Rita Segato are joined by more circumspect thinkers like Inés Hercovich.<sup>17</sup> When we think of these crimes, doesn't our thinking about abuse, rape, and femicide bypass the gringo phenomenon of #MeToo and instead, either somewhat deliberately or through a process of political osmosis, draw on the thinking of this book about the practices of state terrorism?

For Segato, rape is neither a pathology nor a rite of passage on the way to masculine domination. Setting aside time periods and societies that don't criminalize it, it is best understood as an administered and rule-bound collective ritual and as a fundamental element in the reproduction of the patriarchal symbolic economy. At the ESMA, the officer in charge, el Tigre Acosta, ordered his officers to rape, and rewarded his noncommissioned officers with off-the-books exceptions. The *command to rape* to which Segato refers<sup>18</sup> would inspire certain members of the gang to withdraw certain prisoners from the violent collective and to place them under their own tutelage without guaranteeing that they would survive. And through a kind of secret within a secret, the transgressor could evade his boss's commands while still participating in a common economy.

"Subsume" is an antifeminist verb. Its sound, which is as sibilant as *susurrar* (to whisper), hides the inequality women face when they are *subsumed* into humanity, into the advent of socialism, into the poor masses. The authors of *Whores and Guerrilla Women* demonstrate that in the majority of the trials for crimes against humanity—with the exception of the sentence of life imprisonment received by noncommissioned officer Gregorio Rafael Molina for his part in what happened

at the La Cueva camp<sup>19</sup>—rapes were subsumed under the legal figure of torment. “This is an error,” they write, deliberately citing an example of everyday masculinist thought,

because the only way to drop one criminal charge for another is the existence of what is referred to as *apparent concurrence*. That arises when one act encompasses all of the illicit content of another. To give an extreme case, when a bullet kills it also tears a hole in a shirt. There’s damage and there’s also murder. But the crime of homicide absorbs the crime of property damage, as it is far graver. In the case of rape and torment, rape is no less grave than torture.<sup>20</sup>

In the legal sphere, crimes against sexual integrity are understood as starting with private petitions; that is, the victim’s participation is required unless she hasn’t survived. Pablo Parenti, the prosecutor who has rejected the idea that any sexual behavior on the part of the women held in the concentration camps could be consensual, categorizing it instead as rape, argues as follows:

We believe it is important to maintain the requirement of the private petition and to think of how the victims will be affected in practice. We’re aware that these days the administration of justice can be harmful, that it is not yet ready. This is a fact of our reality. Neither the conceptual tools nor the interdisciplinary techniques are currently available. . . . This is why it was prudent to maintain the private petition requirement. Legal arguments and prudence have prompted us to keep it and convinced us of the need to work to change the system so that people can make accusations under adequate conditions.<sup>21</sup>

Without a doubt it is this contradiction—a weak, precarious word for this—between, on the one hand, the demand that rape be considered on its own terms, as something that does not belong under another category but rather as a crime against humanity, and the protection of potential accusers at risk of revictimization on the other, that is at the heart of the current debate between comrades.

But if, as the authors hold, the silence of certain survivors about the rapes they were subjected to constitutes a renewed victimization, if the reasons for their silence include the memory of dead and disappeared comrades, of contemporaries and relatives, and an understandable shame, is it not incumbent on all of us to think of rape beyond its moral dimension and to think of it politically? To think of it, using Segato’s terms, as an administered, rule-bound collective ritual that is both performative and about cohesion and in which sex is only a mediation—*Whores and Guerrilla Women* is packed with a disquieting number of collective and sequential rapes, of renewed initiations—meant to defeat the enemy by means other than

arms? If this is the case, how do we preserve the specificity of crimes against sexual integrity?

At the same time, how do we stop our imaginations at the gates of the law—be wary of turning life into a legal process, Segato warns us—in order to build stories in which the enemy power is absent or has been defeated precisely where—setting aside fissures and strategies of resistance—it held sway and constantly announced its control over *life and death without limits in time or space*? *Whores and Guerrilla Women* cites a paragraph of the testimony that Graciela Fainstein, a survivor of the Garage Azopardo detention center,<sup>22</sup> gave to a newspaper:

When they took me to the bathroom and once they had opened my handcuffs, I was taken on an endless trip through the halls—my blindfold always on—during which a huge number of hands touched me, groped me, pulled down my panties; they stuck their fingers and penises between my legs and in my vagina, they rubbed themselves against me, breathed in my face, licked me, and . . . they talked to me! Bodies without faces, hands without bodies, penises without identities, without eyes, without faces. What those bodies conveyed to me in that moment was not the same as during my torture; it was something different, something like desperation, like distress, like loneliness, like longing, like a cry for help. They talked to me while they touched me; while they spilled their semen in me, they whispered with voices that seemed like they came from an anguished, lonely, mad world, with a desperation that sought relief in that brief, clumsy, absurd, grotesque moment of contact. . . . It was horrible to feel blind and at the mercy of those hands and bodies, but those moments didn't have the blows or the pain of torture; it was rather the pressure, the disgust that I felt, something that both weighed on me and surprised me—those men are desperate and also plunged in hell! They also seem like they're looking for relief with their clumsy sexual gestures. I felt their own distress pour into me along with their semen.<sup>23</sup>

Lewin and Wornat interpret this text according to the African concept of *Ubuntu*, which holds that both victims and victimizers feel like they're united, that they share a hell and a desire to escape into the light. Graciela would have experienced it in that moment. But for Lewin, the coauthor of a book called *That Hell*, the distance imposed by the pronoun seems to disavow both any notion of a shared hell and the existence of two demons. I'm interested in how this testimony demonstrates the effective fulfillment of the command to rape of which Segato speaks, in which each rapist is always falling short of his patriarchal phantasm; he's robbed of his powers even before a helpless woman. That Graciela Fainstein was able to *read this* to the point of nausea—precisely the act through which the body expulses the other in an inevitable rejection from the bottom of the deepest part of the body, the entrails—that she would choose to affix to the minions of the masters of life and death nouns

like “loneliness,” “distress,” “longing,” “desperation”; that it is they and not she who are plunged into anonymity, that their identities are lost in moments of contact that are judged to be brief, clumsy, absurd, and grotesque—these are all a part of the *arts of darkness*, a darkness in which the word “resistance” is precariously transformed into invention, in which the Other not only *cannot* but *is* not. They already belong to another economy to which the victim has managed to subtract herself. It is though this act of memory, which Graciela Fainstein does not include in her book *Behind the Eyes*,<sup>24</sup> that *nonconsent* achieves, through an extreme personal demolition, a form of sovereignty.

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#### Notes

1. Arduino and Lorenzo, “Imposible”; cf. Despentès, *King Kong Theory*, 27.
2. Butler, “Sexual Consent.”
3. Butler, “Sexual Consent,” 21.
4. Melina Romero, an adolescent from San Martín, just outside of Buenos Aires, disappeared on the evening of August 24, 2014, after leaving a nightclub where she'd been celebrating her seventeenth birthday. Her body was discovered one month later near a landfill. One man—Joel Fernández—was eventually charged with her abduction and murder and sentenced to thirteen years in prison, but Romero's family and many observers maintain that several other men never faced legal consequences for their part in the crime.—Trans.
5. Lucía Pérez, sixteen, was raped and murdered by Matías Gabriel Farías, then twenty-three, in Mar del Plata, Buenos Aires Province, on October 8, 2016. Farías and Juan Pablo Offidani, then forty-one, received a drug charge but were exonerated of homicide and aggravated sexual assault after a successful defense that argued that Pérez must have died from an overdose and that her sexual encounter with Farías was consensual. Pérez's case became a rallying point for Argentinian feminists, including the #NiUnaMenos collective, who launched a nationwide strike denouncing the verdict and demanding “Justice for Lucía!” on December 5, 2018. On August 12, 2020, a court of appeal in Buenos Aires Province overruled the original verdict, holding that it showed evidence of “intolerable prejudices” and “suppositions based on gender stereotypes.” The case remains under appeal.—Trans.
6. Butler, “Sexual Consent,” 23–24.



7. On June 11, 2016, in the town of Puerto Madryn in Patagonia, Brian Petrellán broke into his ex-wife Érika Gallego's house and stabbed her several times. — Trans.
8. Diana Sacayán, an Indigenous trans woman from Tucumán, was one of the leading advocates for trans rights in Argentina. She was brutally murdered by Gabriel David Marino on October 11, 2015. In a landmark case, in 2018 Marino was sentenced to life in prison for her murder. — Trans.
9. Moreno, *El fin del sexo*, 81. [Carlos Roque Monzón was a world champion boxer and actor who murdered his wife, the Uruguayan model and actress Alicia Muñoz, in 1988. During Monzón's trial, he was accused of domestic violence by several other former partners. He was sentenced to eleven years and died in a car accident while on furlough from prison. — Trans.]
10. Mauro Cabral is a noted Argentinian trans and intersex activist. — Trans.
11. Rond Point was a stylish Buenos Aires bar frequented by celebrities and powerful businessmen. It closed in 2018 and its former locale is currently a luxury car dealership. — Trans.
12. *La Capuchita* ("the Little Hood") was the nickname given to the former attic of the Officer's Club at the room at the Escuela Superior de Mecánica de la Armada (ESMA), the naval academy in the Buenos Aires neighborhood of Núñez that became infamous during the Dirty War as the most notorious of the dictatorship's secret detention and torture centers. It was used to house political prisoners in especially crowded and inhumane conditions and was next door to the torture chambers. — Trans.
13. The journalist and politician Miguel Bonasso's controversial 1988 historical novel *Recuerdo de la muerte* was the first book to expose the crimes at the ESMA. — Trans.
14. The scholar Ana Longoni published her study *Traiciones: La figura del traidor en los relatos acerca de los sobrevivientes de la represión (Betrayals or Treasons: The Figure of the Traitor in Stories about the Survivors of the Dictatorship)* in 2007. — Trans.
15. Lewin and Wornat's *Putas y guerrilleras: Crímenes sexuales en los centros clandestinos de detención (Whores and Guerrilla Women: Sexual Crimes in the Secret Detention Centers)* was republished in an expanded edition in 2020. — Trans.
16. The Argentinian political scientist Pilar Calveiro has lived in Mexico since the late 1970s, having fled in in exile after her multiyear detention-disappearance at the ESMA. Her most famous work is *Poder y desaparición: Los campos de concentración en Argentina (Power and Disappearance: The Concentration Camps in Argentina)*, published in 1998. — Trans.
17. Inés Hercovich is a sociologist and social psychologist who specializes in discrimination against women and sexual violence. — Trans.
18. See, for instance, Segato, *La escritura*, 73.
19. "La Cueva" ("The Cave") was one of the dictatorship's secret detention centers in the city of Mar del Plata. — Trans.
20. Lewin and Wornat, *Putas y guerrilleras*, 352–53.
21. Quoted in Lewin and Wornat, *Putas y guerrilleras*, 354.
22. During the dictatorship, Garage Azopardo was a secret detention center in Buenos Aires. — Trans.
23. Quoted in Lewin and Wornat, *Putas y guerrilleras*, 166–67.
24. Fainstein, *Detrás de los ojos*.

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