


## Rape and the privileging of ignorance: consensuality vs. mutuality in understandings of sexual assault



Amanda Conroy is a PhD Candidate at the Gender Institute and the Centre for the Study of Human Rights, London School of Economics and Political Science. Her past research has traced the philosophical underpinnings of law that allow for large-scale sexual violence against women. In this post, she argues that as long as the focus is on *consensuality* instead of *mutuality* in sexual encounters, women are going to continue to be subject to sexual assault. Follow her on twitter: [@amanda\\_conroy](https://twitter.com/amanda_conroy)

A lot of people have been expressing a lot of opinions about what constitutes a woman's experience of rape. A lot of these people do not have vaginas. **Todd Akin**, Missouri Senate candidate, claimed that "if it's a legitimate rape, the female body has ways to try to shut that whole thing down". More recently Wisconsin Republican representative Roger Rivard has revealed that **some women just "rape easy"**. (I'm tempted to set Rivard's comments to tune. Gershwin's Summertime comes to mind. Think "summertime and the rapin's easy", in a warbly, whiskey-y Ella Fitzgerald voice). Julian Assange has been **chilling at the Ecuadorian embassy** to avoid being extradited to Sweden to face charges of rape. To top it off, Romney chose a running mate in Paul Ryan. The same **Paul Ryan** who supports outlawing abortion, even ostensibly for pregnancies occurring from rape or incest. More recently Indiana senatorial candidate Richard Mourdock announced that **"even when life begins in that horrible situation of rape, that it is something that God intended to happen"**. In short, there are a lot of bad things going on here—among them dangerously bad science and barely-shrouded attempts to regulate what constitutes "proper conduct" for women.

Am I upset? Yes. But I have to say—  I'm not surprised. **And not just because my friend and colleague Harriet Gray has already written**, in this space, about how the "idea persists, apparently among a frighteningly large proportion of the population, that there is a thing called 'rape-rape' which is truly heinous but that is thankfully very rare, and that separate from this there is a grey area in which women lie, overreact, or just simply misunderstand". I don't see a real change in the near future for one simple reason. People are going to keep attempting to sieve out "real", "legitimate" rape (rape-rape) from "less-rapey-rape" (kinda-sorta-not really rape) because we have a definition of sexual relations based on *consensuality* – not *mutuality*.

Traditionally, laws regarding rape, according to Catherine MacKinnon, **takes a male standpoint and represents male interests**: "the male standpoint dominates civil society in the form of a subjective standard – that standpoint which because it dominates the world, does not appear to function as a standpoint at all" (MacKinnon 1989, 238). And this male standpoint allows for force and consent to co-exist, making a range of bodily and psychic violations justifiable.

Rape has commonly been defined as "intercourse with force or coercion *and* without consent" (MacKinnon 1989, 172) throughout the past few decades. This definition assumes that sexual intercourse *with* force or coercion can be consensual, that consensual intercourse can occur with force and coercion. But the absence of overt force and coercion does not, or should not, necessarily mean that an act was consensual. The traditional definition of rape has only been possible, MacKinnon argues, because rape is defined in male sexual terms. In rape jurisprudence, the accused man must have the appropriate mental state, defined as "what he actually understood at the time or what a reasonable man should have understood under the circumstances" (MacKinnon 1989, 180). The problem with this definition is that the criminality of an act rests on what the act means to the assailant —*not* what it means to the victim.



What is important to remember here, however, is that this goes beyond the realm of the court room. In recent years, the UK, the USA and other countries have amended their definitions of rape and expanded definitions of force to include coercion and abuse of power (see e.g. [the Sexual Offences Act of 2003](#)). And yet, it is clear that we have a long way to go. Will-full ignorance about a woman's state-of-mind and level of desire still isn't a relevant factor in understandings of what rape is. The result is that force and consent when it comes to sexual intercourse are allowed co-exist. Criminal barrister Felicity Gerry, author of the *Sexual Offences Handbook*, says: "[If someone has a reasonable and genuine belief](#) their partner gave consent they shouldn't be convicted." [40 US states require evidence of resistance in order for force to be said to have occurred](#), and submission and genuine consent can (seemingly) exist coterminously in some states. In other words, consent is allowed to be conceived as an appropriate, albeit unsavory, reaction to force. Because 'consent' was achieved, in a forced or coerced form, it doesn't constitute rape, and any charges of rape or sexual violence can be dropped. Therefore, it is still the perpetrator's level of knowledge or ignorance as opposed to the victim's level of consent that is the primary determinant of the occurrence of rape.



What the Julian Assange case shows is that sex with a woman that is not-mutual, and only covertly consensual, is still thought of as a-ok. Sex is still something that is *done to* another person and that's just fine. [According to one victim:](#)

...she had tried a number of times to reach for a condom but Assange had stopped her by holding her arms and pinning her legs...Assange then released her arms and agreed to use a condom...[but] at some stage Assange had "done something" with the condom that resulted in it becoming ripped, and ejaculated without withdrawing.

In bed with another woman, [Assange refused to wear a condom...](#)

...and she moved away because she had not wanted unprotected sex. Assange had then lost interest, she said, and fallen asleep. However, during the night, they had both woken up and had sex at least once when "he agreed unwillingly to use a condom".

The next morning, she awoke "to find him having sex with her, she said, but when she asked whether he was wearing a condom he said no."

Does this sound Assange had any interest in having mutually enjoyable sex with his partner?

[Eve Kosofsky Sedgwick argues that ignorance, not knowledge, is power](#) (Sedgwick 1988, 1991). Ignorance is equated with innocence, and thus responsibility for harms emanating from that ignorance is removed. Ignorance, she says, "can be harnessed, licensed, and regulated on a mass scale for striking enforcements – perhaps especially around sexuality, in modern Western culture the most meaning-intensive of human activities" (Sedgwick 1991, 5). Rape is a means by which ignorance is "harnessed" to enforce gender inequality:

...the epistemological asymmetry of the laws that govern rape, for instance, privileges at the same time men and ignorance, inasmuch as it matters not at all what the raped woman perceives or wants just so long as the man raping her can claim not to have noticed....and the rape machinery that is organized by this epistemological privilege of unknowing in turn keeps disproportionately under discipline, of course, women's larger ambitions to take more control over the terms of our own circulation (Sedgwick 1991, 5).

**Foucault has taught us that knowledge is power.** But Sedgwick reminds us that ignorance is as powerful a weapon as knowledge. By ignorance she, and I, mean not just the accidental fact of not being in a position to know, but rather the willful, albeit unconscious, desire or unwillingness *not* to know. I'm talking about the convenient rendering of some persons, because of our ideas about them, outside of the realm of the kind of moral engagement that would require us to reach out to, and to understand, their experience of the situation. It is this understanding of the parameters of moral engagement with others when it comes to sex that leads to readings of sexual partners like “she was wearing a mini-skirt” or “she was drunk” to emerge as acceptable excuses for having sex with someone against their express and active will.

At the end of her post, Harriet encourages us to “make it sexy to talk about consent”. How exactly do we do that? Well, for starters, let's make it sexy to talk about and experience sex as a mutual, companionate act.

This doesn't mean feminists – or women in general, for that matter – can only have safe, lovely, pro-woman, thumbs-up, you go girl, feminist sex if they're in missionary position, gazing lovingly into their partners eyes and reciting Shakespeare's sonnets. There are plenty of happy and healthy sexual relationships – heterosexual, homosexual, casual, and polyamorous – that involve fantasy and play around dominance, submission and violence *and simultaneously* are based on companionship, respect and mutuality.

But “making it sexy to talk about consent” *does* mean is that, if we were to start from the point of “no matter what you do, sex should be mutually and consciously enjoyable for both parties”, a range of sexual encounters and relationships would be rendered unacceptable and/or criminal. And a range of sexual encounters and relationships would be rendered “Hot damn! Helloooo nurse! Hubba hubba!”

Trust me. I've had mutual, companionate sex. It's pretty hot.

## Author Biography

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