

Sexual consent: Implications for judicial sentencing practices

Abstract:

Recent debate about sexual assault suggests that we continue to grapple with the meaningfulness of consent in sexual interaction, at what point that interaction becomes criminal and who is responsible for establishing - and negating - free agreement. Neither legal practitioners nor the judiciary are exempt from this challenge, as the assessment of “technical rape” by a judicial officer shows.

Judicial officers have the added challenge of interpreting evidence of consent or non-consent in a way that satisfies the standards of legal culpability. Yet consent is also an experiential, relational and ethical issue. Using the narratives of 33 victim/survivors of sexual assault, this paper discusses the factors these women see as influencing their ability to freely agree to sex. In particular, situational context, relationships, and alcohol use are factors that emerge to impact on the quality of ‘free agreement’. This paper examines the implications these findings might have for judicial sentencing practices, as judges are increasingly expected to incorporate more defined and complex understandings of sexual non-consent into their decision-making processes.