He Said, She Said

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Abstract
In recent years popular feminist discourse has increasingly associated feminism with a cultural concept of consent. My reflection in this special section of Cultural Commons: '#(No)SeAcabó / It is (not) over' edited by Sabrina Moro and Catherine Fowler discusses the Rubiales / Hermoso kiss through the lens of consent by enquiring into how the words "he said, she said" attend to particular kinds of gender injustice. I suggest that "he said, she said" acts as a form of representation that has the effect of reifying the cultural experience of nonconsent as an experience of relations of power. By critically assessing "he said, she said" as a narrative device we can further understand the role of representation in obscuring our encounter with and critical enquiry into the event, that I suggest we foreground in our discussions of what "she said".

Keywords
Consent; affect theory; feminism; narrative; mediation

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Unsettled accounts

This brief reflection offers an analysis of "he said, she said" as a way to think through the cultural context of the Rubiales / Hermoso kiss. Besides an entry in Wikitionary, "he said, she said" does not merit a dictionary definition. Grammatically, it's not really an anything—neither metaphor, phrase, nor idiom. Clearly though, "he said, she said" registers something, drawing

on these and other grammatical features. I am curious about how this refrain of ordinary expression attends to accounts of rape, sexual assault and sexual harassment, as well as other kinds of gender injustice. Seen as a narrative device with the power to make sense of a situation, "he said, she said" is revealed as a substantive and damning social gesture. "He said, she said" has the power to silently admit the impunity of the accused, or the shortcomings of justice. Even if well intentioned, its utterance fulfils a range of discursive ambitions: delimiting and giving weight to power-laden perception, admitting defeat and the impossibility of justice, foretelling implications. Justine Triet's *Anatomy of a Fall* (2023) offers an exemplary illustration of how "he said, she said" attends to the political and pedagogical question of how to delimit the event according to the experience of those for whom it has happened. Even after the film formally concludes its investigation into whether what she said was true—an account of what really happened—the audience is left feeling uncertain. This uncertainty is exacerbated by the fact that the audience does not have access to his side of the story.

More specifically, I am interested in how "he said, she said" might be underpinned by a cultural concept of nonconsensuality that gives the refrain its social meaning. Nonconsent is not the absence of consent but a taking of something *without permission* where the need for permission is retroactively structured into that act of taking through its very transgressive properties.[1] At least in the litigious culture of sexual nonconsent, the taking of something without permission—which is how we might understand all kinds of historical, social and interpersonal contact—claims permissibility through the insinuation that the person from whom something was taken was consenting. While the narrative event of "he said, she said" appears to offer foreclosure, acting as a declaration that what happened cannot be further decided, this foreclosure absorbs an important contradiction: the account of what happened is unsettled. The cultural concept of consent itself carries the weight of this indetermination, positioned as

something that must but often cannot be proven. It is thus worth attending to the 'commonsense' (Sommers, 2020: 2232) theory of consent, that positions consent as a cultural concept that is highly mediated, mediatised, and affectively mobilised (Cefai, 2023a). It is this concept of consent that refracts the 'event-space' (Massumi, 2002: 81) of the Rubiales / Hermoso kiss, whose meaning is held open because *violence against women is always subject to contestation.*

Wiktionary (2024) defines "he said, she said" as a noun meaning 'conflicting reports of two or more parties on an issue, prototypically involving a situation between a man and a woman with no other witnesses'. In this definition, consistent with my own understanding, the connotative sexual dimorphism assumes a sexual element. Accordingly, the presence of a witness should prevent the Rubiales / Hermoso kiss from becoming a case of "he said, she said", yet what followed was a contestation over the kiss's meaning vis-à-vis power, pleasure and the legal definition of assault. Here we see how "he said, she said" attends to the situation not as a trope but as cultural logic. The slash in the framing of this special section of Cultural Commons: '#(No)SeAcabó / It is (not) over' points to the instability and indeterminacy of language in relation to the event, as well as to the compositional nature of the event itself. "He said, she said" is a sexual dimorphism that emerges from this instability and indeterminacy, structuring the story of what happened according to a bifurcation of representation, despite the presence of witnesses—in their millions.[2]

Some of the shortcomings of consent relate to the court's requirement to judge the accused's state of mind, given how (in UK law) successful prosecution depends on the defendant having *not reasonably believed* that the victim consented (Sikka, 2022). Hence, reasonable belief that Hermoso did not consent is something Rubiales vehemently denies (Piers Morgan Uncensored,

2023). In court, consent becomes that which is difficult to prove beyond doubt without corroborating evidence. This evidence is often related to what the court is able to witness vicariously, whether through the victim herself, the presence of others, or media representation. The Rubiales / Hermoso kiss interpellated audiences into vicariously witnessing the precise nature of Rubiales' behaviour. It is the interpretation of his behaviour that Rubiales then sought to defend as "normal in our country" (Piers Morgan, Uncensored 2023), against Hermoso's account of the kiss as nonconsensual: "I want to clarify that as seen on the footage, I never consented to the kiss he gave me" (Fédération Internationale de Football Association, 2023: para. 14).[3]

The self-evidence of nonconsent

The FIFA (Fédération Internationale de Football Association) were quick to decide that the kiss 'could not be seen as having been consensual' (2023: para. 161). The claimed self-evidence of the event of nonconsent, that thematises and renders intelligible issues of social injustice, hides from view the cultural dynamics that hold open its discursive and affective structure. Seen as a narrative category, self-evidence has pride of place in anti-intellectual culture: that which is self-evident requires no further explanation. Self-evidence is an effective distraction from the discursive work required to sustain what stays in view. Self-evidence is also a form of discursive foreclosure.[4]

Self-evidence enlists us in a complex entanglement of wide-ranging conceptual and political problems whose material conditions do not relate straightforwardly to the production of more or less media visibility. That which is self-evident can be and often is rigorously denied. Denial has been theorised as a matter of political economy, discourse and subjectivity in capitalist, patriarchal, racist and colonial societies. So we might take notice when the media(ted)

appearance of nonconsent is paired with self-evidence in mainstream representations of Rubiales' contact with Hermoso and ask: what does it mean when nonconsent shores up the cultural value of feminism as self-evident? Perhaps this is though too much of an Anglophone reflection. #SeAcabó mobilised the legitimacy of Spanish feminism (Ramírez, 2023), building on the heightened controversy surrounding Spain's new consent law—the Organic Law, known as the 'Only Yes Means Yes Law'—whose introduction followed the highly publicised case of *La Manada* [The Wolf Pack] (Fernández Romero and Núñez Puente, this issue).

In consent culture, the implied self-evidence of feminism performs cultural and institutional literacy in feminist themes. Nonconsent has become linked to 'the authority of self-evidence […] to denote what's right and righteous' (Berlant, 2001: 42). It is also in the space of self-evidence that Rubiales stakes his claim to the comradery and wholesome sexual naiveté of Spanish culture. Rubiales claimed his interview with Piers Morgan as "an opportunity to tell [people] what really happened, to give the truth to the rest of the people", simultaneously apologising for and denying the nature of the contact: "I asked her, *can I give you a quick peck?* Which is normal in our country" (Piers Morgan Uncensored, 2023). For Rubiales, the self-evidence of the nonconsensual kiss raises the demand to manage liability rather than make amends. This seems important. What is subject to contestation is not only what happened but the presuppositions that constitute intelligible social life, on whose basis claims to normalcy and nonconsent can be (un)linked.

Presupposing nonconsent

"He said, she said" presupposes that what happens between two or more people can be recounted in narrative form, that each narration bears equal weight to the other, that the weight of each narration can be viewed from a fair or neutral vantage point, and that the case of what

happened as disclosed by narration cannot be further decided. “He said, she said” reflects the extension of juridical power into spheres of social life and presupposes that we cannot prove nonconsent.

Any case of “he said, she said” distracts from social power in ordinary life. What happens between two is always already more-than-two. In the moment, Hermoso did not have the freedom to recoil. This is the outline of the event: the feeling of being obliged—by the situation, by the fact of the situation happening, by the gesture of his hands around the back of her head, by the ‘trajectory’ of Rubiales’ ‘compulsory power’ (Fowler, this issue), by the disciplinary power of surveillance to curtail the movements of her body without conscious direction. In the flow of experience, she is subject to him. The nonconsensual kiss occurs within her immanent subjection, ‘forced-by-force’ (Fowler, this issue), as a becoming that is ‘forwarded into the social script’ (Puar, 2012: 61).

The perspectival nature of experience and the experiential nature of knowledge have been key tenets of feminist epistemologies of various kinds. “He said, she said” confuses what Donna Haraway (1991) called partial perspective with the presupposition that what happens between two or more people is an effect of differences in narration. The historical drama *The Last Duel* (2021) directed by Ridley Scott tells the same story through the eyes of the three protagonists. The rapist does not see the rape: he does not see his own violence. We see the rape only through the eyes of *her* experience. Each of the three protagonists narrates their experience as if each experienced a different encounter. Another example, this time in the genre of romantic comedy. *He Said, She Said* (1991) directed by Ken Kwapis and Marisa Silver tells the story of a romantic encounter in which each character sees a warped version of the other’s (un)romantic gestures. The claim that ‘only partial perspective offers objective vision’ (Haraway, 1991: 190) does not

mean that two parts make a whole. Narratives do not fit jigsaw like. The full story does not require Rubiales' perspective. These are very liberal ideas of representation. There are no "two sides to every story", as the idiom goes. Stories do not have sides. Neither do events, including events of nonconsent.

As a genre of the law, of 'evidence, argument and judgement' (Berlant, 2001: 42), "he said, she said" presupposes a case that cannot be decided. The grammar assumes a (non)relation between narratives that can be figured by analogy and the making of false equivalences. "He said, she said" claims its own self-evidence, giving licence to and presupposing perpetual doubt, worked for by the defendant, and against by the complainant via their 'labour of believability' (Banet-Weiser and Higgins, 2021: 134). Doubt constitutes a tactical dismissal, drawing into question the veracity of the event as an effect of the fact of its narration. "He said, she said" patches over the contradiction between the perceivability and invisibility of sexual injustice. To return to the example of *Anatomy of Fall* (Triet, 2023), the formal conclusion to the enquiry into what happened, undertaken by the court and the film (did the protagonist murder her husband?), fails to resolve the affective residue of doubt that the film has expertly crafted. Doubt is an overriding sensation, lingering beyond a legal decision.

While appearing to constitute opposing aesthetics, to what extent do the self-evident and the fallible work in tandem? What does it take for what she says to be self-evident? Should we look for alternative ways to challenge the foreclosures of accountability, justice, and change that "he said, she said" represents? Given the self-evidence of Rubiales' behaviour, might we regard the self-evidence of nonconsent with suspicion? Might we observe nonconsent itself starting to do the work of shoring up that which is self-evident, and if so what does that mean for its feminist uses?

She said

What "she said" also holds open the event. *She Said* (2022) directed by Maria Schrader and based on the bestselling book of the same title by Jodi Kantor and Megan Twohey (2019), illustrates the power of giving what "she said" a discursively meaningful and socially transformative reality. The book, film and *New York Times* journalism on Harvey Weinstein form part of a broader media contemplation of a world in which what "she said" matters. The BBC TV miniseries, *The Following Events are Based on a Pack of Lies* (2023), imagines the ingenuity and perseverance of women who use their experience of being manipulated and exploited to draw power from the situation in which such manipulation and exploitation has placed them. As the miniseries' *The Staircase* (HBO Max, 2022) and *Unbelievable* (Netflix, 2019) show, the crime scene is apprehended according to socially embedded techniques and technologies that produce evidence that is continually revised. These series take on "he said, she said" as a narrative device by claiming that the production of evidence is an ongoing narrative event rather than a fait accompli. In the genre of "she said", expectations for coherency act on the event as an accountability device: nonconsent can be proven, eventually.[5]

The requirement in the court of law for the presence or absence of consent to be established by means of narration extends to the cultural sphere. All forms of evidence exist within narration, in the context of an argument about what something means, made sensible by the relations between affect and the aesthetic—by genre, defined as 'a loose affectively-invested zone of expectations about the narrative shape a situation will take' (Berlant, 2011: np). Understood as the cultural means by which 'any sensibility or figuration is able to yield power as a sensible object of political, economic, social and cultural change' (Cefai, 2023b: 272), genres matter when it comes to obtaining a sense of being believed, a sense of shared reality. In the genre of

the law, 'the negated must speak *as though* his / her speech has already attained clarity: that is, has already become performative' (Berlant, 2001: 43). "He said, she said" is a declarative performative that gives up on what can be established, that makes no intervention into the sociological fact that violence against women is always subject to contestation. #SeAcabó meets the demand for clarity. Speaking otherwise risks 'genre flailing', 'the aesthetic and affective problem of trying to tell a story that has never had the room to be one' (Berlant, 2020: 4). Is Hermoso's a story that has the room to be one?[6]

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Notes

1. I use 'nonconsensual' rather than 'non-consensual' to signify nonconsent as a positivity in the Foucauldian sense, rather than a negation or dialectical disagreement with an originary or dominant term. This is an analytical intervention designed to challenge some of the normative associations that consent now licences, such as the predominance of consent as a question that defines the existence and therefore nature of sexual violence.
2. Questions of language appear in this reflection in other ways. #SeAcabó ["it's over"] is a Spanish speaking movement and my engagement is limited to English.
3. We hear little from Hermoso herself. Ironically, the pressure she is under to speak, and not to do so, are hard to track without narrative. See Esther Mucientes (2024) as discussed by Diana Fernández Romero and Sonia Núñez Puente (this issue). Mucientes recounts a speech given by Hermoso at a New Year's Eve event broadcast by Spanish television and her interview with the famous journalist Jesús Calleja.

4. Critical perspectives like feminism are not immune to this fate. Indeed, self-evidence might also be viewed as a fiction necessary to a range of critical projects.
5. Drawing on the conceptualisation of genre by Lauren Berlant (Cefai, 2023b).
6. Except in Spanish see Mucientes (2024).

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Biographical note

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