

Consenting to Conflict

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“We need to think about this in terms of harm and harm reduction.”

—Tarana Burke, founder of the MeToo movement¹

We work in a longstanding feminist and majority white department with a history of feminist chairs; a strong profile in women’s writing, feminist theory, and queer theory and writing; and a non-hierarchical ethos that regards students as junior colleagues.² Corrinne has been working in the department for fourteen years and Teresa for twenty-two; we are cisgender, heterosexual, white settlers from working-class backgrounds. We are both committed to feminist scholarship and pedagogy, and we have been grateful to the department for hiring us and supporting those commitments. The department also has a long history of consensual relationships between instructors and students, and our department is not unique in this. The prevalence of faculty-student relationships—and their potential for both happy unions and detrimental effects on individuals and the learning climate—is fairly well established.³ Although neither of us has direct experience with consensual instructor-student relations, we each have experience with a range of specific harms that sex and power create in learning environments, and we are both survivors of sexual abuse.⁴ We have had students disclose violence, assault, and harassment to us, disclosures that recount both individual harms and harm to the learning environment.⁵ One of us also has experience with being sexually harassed in the department, and we both have experienced retaliatory behavior when attempting to address the harm caused by harassment disclosed to us by students. Like many others who receive such disclosures, in our university and elsewhere, we found the institutional process for receiving and dealing with disclosures to be confusing, and we were troubled by the additional harm that a formal complaint and an investigation cause to students who have already been harmed.⁶

In 2017, our university adopted a new sexual violence policy, which defines sexual violence capaciously, is student-centered, is based in affirmative consent, and is designed to make disclosures and complaints less harmful to students.⁷ All units on campus were called upon to educate and organize themselves in order to act on their professional responsibilities regarding the new policy. We proposed the creation of an ad-hoc departmental committee tasked with responding to the policy, given the

following: 1) we teach every student on campus through a required first-year course; 2) we often teach texts that represent sex and sexual violence; and 3) like any university department, we have had our own problems with sexual violence. Our department unanimously endorsed the creation of this committee.

Working on this committee was a positive experience—even a peak academic service experience—because it was collaborative, respectful, non-hierarchical, committed to doing difficult work, and most importantly driven by students.⁸ The committee discussed and undertook a number of initiatives, including education on sexual violence for faculty and students; an investigation of whether such education should be part of our first-year curriculum; workshops on how to receive disclosures; and focus groups on departmental climate. The issue that students felt most strongly about and that we spent the most time on was instructor-student relations. The university's new sexual violence policy permits consensual relations with the understanding that consent must be affirmative and ongoing and that consent cannot be “obtained through the abuse of a position of power, trust or authority.”⁹ Consensual instructor-student relationships are governed by the university's Conflict of Interest (COI) policy, which is meant to manage and reduce the potential harm of the power imbalances inherent when an instructor, supervisor, committee member, or administrator is also a student's sexual partner.¹⁰ However, the university's COI policy only references consensual instructor-student relationships with the phrase “personal benefit,” a vague catch-all that no one except those writing university policy understand to refer to instructor-student relationships.¹¹

The committee realized that allowing consensual relations without a clear COI policy to address them meant that a student's affirmative consent to a sexual relationship was made to bear the larger burdens of any harm in the learning environment, to which they had not consented. While some of us thought a total ban on such relations would be the route to reduce harm, we came to see that such a ban drives the harm of sexual violence underground, nullifies student agency in consenting, and addresses only a limited range of instructors and behaviors.¹² Considering how a COI policy could be designed to predict where potential harms might arise and to manage or reduce their impact brought to light questions like the following: How might the consenting student's academic trajectory be impacted? How is the learning environment affected when the instructor considers it a potential dating pool? How might third parties be affected by the awareness that another student has privileged access to their instructor?¹³ A student cannot be expected to anticipate such potential harms or consent to them. As the committee considered these questions and dynamics, the students turned the tables, making disclosure of conflicts resulting from a sexual or romantic relationship the faculty's responsibilities, not their own. The stu-

dents taught us that our own consent needed, as theirs did, to be affirmative and that disclosure is key to maintaining equitable learning environments. Throughout, student voices and thinking called us to confront the ways in which a student's consent to a sexual relationship does not nullify or will away COIs and to consider the implications of our own consent to the conflicts posed by these relationships. The following sections examine some of the key learning moments these students provided us.

"How is this not already a thing?"

—undergraduate student committee representatives

The students' initial response to a departmental COI statement—"How is this not already a thing?"—reflected both their understanding of the conditions of power that govern academia and their assumption that professors had professional ethics that would guide their behavior with students. But unlike many other professionals, we do not. This deficiency perhaps results because professors are not explicitly trained to teach nor does the teacher training we are offered "include the ethical issues of professor-student relationships."¹⁴ Our professional organizations have also elected not to prioritize professional ethics in our work with students.¹⁵ Our students were calling out this professional failure to take responsibility for the power, trust, and authority with which we are invested in relation to them.¹⁶

"People, it's simple: just don't have sex with your students."

—undergraduate student committee representative

In our consultations, faculty expressed concern that a departmental statement on COIs would be complicated to manage, but this student saw clearly that it is the instructor who brings complication, conflict, and potential harm into the learning environment when they have a personal relationship with a student. It is therefore incumbent on faculty to consider what it really means to consent to a relationship or a culture in which our own internal conflicts—between our professional roles and responsibilities and our personal relations—are potential impingements on students' access to equitable conditions of learning. For this student, the issue with instructor-student relations is not whether a student can consent but whether an instructor can or should consent to bringing these complications into the learning environment.

"These relationships should not exist if we can't be honest about them."

—survey response from an undergraduate student

Some instructors worry that if consensual relations are permitted as an allowable conflict and as such are disclosed and managed, the private—sexual partners, sexual orientations—will be unnecessarily made public. But

it is the relationship itself, not the disclosure of it, that brings the private into the public space of the learning environment. This student's comment challenges us to see that our desire to keep our private lives separate from our work lives suggests that we know these things are or can be in conflict when they mix and that harm—to the individual student or to third parties—can result.¹⁷ Disclosure does not cause the conflict but rather allows it to be managed to protect all students and the learning environment. A COI policy puts the burden of disclosure on the instructor when a relationship begins rather than on the student when and if they feel coerced, experience harm, and/or revoke their consent and the relationship turns to sexual violence.

"I heard stuff along those lines before . . . and I've heard more since being here, always second-hand via various whisper-networks."

—survey response from a former graduate student
who is now a contract instructor

This remark tells us that graduate students are talking about these issues with each other but not necessarily with faculty members; of all the constituencies in the department, graduate students shared their views least frequently during our consultation about COIs. In light of recent conversations about graduate education and exploitation, paying attention to silence is crucial.¹⁸ The silence itself raises numerous questions: Are the conflicts that consensual relationships present intensified for graduate students, given that they often occupy dual roles as instructors and students? Might their silence indicate a multiple precarity of entering into such a conversation in hierarchical spaces that exploit their labor under the guise of funding while also imagining them as "junior colleagues," despite the gutting of the academic job market? Might speaking out risk opposing and alienating a supervisory committee member or a member of a scholarship committee? In other words, the silences of graduate students may index conflicts to which they have not affirmatively consented yet in which they are nonetheless entangled.

In writing this essay, we have been disclosing our own implicit consent to something by which we have long been troubled: consensual instructor-student relations and the conflicts they create. Our silence has functioned as consent, although not affirmative, and has made us complicit in a climate that, like us, has consented to the conflicts such relations present without addressing the harms they may create. Our committee's statement on COIs attempted to address this question of consent, its conflicts, and

its potential harms head-on, as well as to call on instructors to fulfill their professional accountability for the learning environment and students' equitable access to it. It was developed in close collaboration with those responsible for the university's sexual violence policy and COI policy, was supported by our Dean, and was approved by the department, with support that was unanimous by all constituencies except faculty. It had two notable features: it expanded the realm of our accountability by covering relations between any instructor and any students in our programs or classes; and it redirected attention from university liability or financial interests to protecting students and their learning environments from harm.¹⁹ Our department process inspired the university, just three months later, to update its COI reporting mechanisms; the university now explicitly requires faculty to declare a COI for a sexual or romantic relationship with any student in one's classes, department, or division, which includes more students even than our statement. Yet it still prioritizes institutional reputation and financial concerns, mentioning neither the learning environment nor the learning opportunities of the student in the relationship.²⁰ Hence, much work remains, especially to face and address the conflicts to which we require graduate students to consent (implicitly) as conditions of their studies, conflicts that serve our own individual faculty and wider program interests.

Since the vote on the COI statement, graduate students, silent no longer, are actively trying to address our department's climate issues. They have organized a peer support program and have presented a statement to the department identifying harmful elements of our climate that dismiss their voices, even in matters that directly concern them. We continue to work on how we—specifically the provost's office, which oversees COIs—can ensure that such policies are applied equitably, in order to ensure that students and professors who identify as a minority—whether sexual, racial, or gender—are not rendered yet more vulnerable by them. We believe that it is our responsibility as tenured scholars and especially as feminists—and we call upon readers of this journal as well—to take on this work of recognizing and reducing the harm that such conflicts or their management create. This work needs to be taken up in our local contexts, and we also need to advocate for reforms at higher levels within our universities and professional associations.

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NOTES

¹ Tarana Burke, interview by Kendall Ciesmier, *Mic Dispatch* (Los Angeles), 10 October 2018, <https://buff.ly/2ycnk5B>.

² We call attention to these aspects of our department because they may indicate specific affordances and challenges in terms of dealing with consensual relations, including whether a full range of perspectives and experiences is being represented in our conversations and whether our own self-image limits how we perceive the vulnerabilities of students in a deeply hierarchical academic structure.

³ See for example Leila Whitley and Tiffany Page, “Sexism at the Centre: Locating the Problem of Sexual Harassment,” *New Formations: A Journal of Culture/Theory/Politics*, 86 (2015), 34-53; Marcia L. Bellas and Jennifer L. Gossett, “Love Or the Lecherous Professor: Consensual Sexual Relationships Between Professors and Students,” *Sociological Quarterly*, 42, No. 4 (2001), 529-58; Shirley Katz, “Sexual Relations Between Students and Faculty,” *University Affairs*, 1 December 2000 <https://www.universityaffairs.ca/opinion/in-my-opinion/sexual-relations-students-faculty/>; and Elisabeth A. Keller, “Consensual Amorous Relationships Between Faculty and Students: The Constitutional Right to Privacy,” *Journal of College and University Law*, 15, No. 1 (1988), 21-42.

⁴ We include this detail because we think that it impacts the kinds of disclosures that we receive, how we respond to them, and how we understand harm and the potential for harm. Tarana Burke’s observation resonates with us: “There’s a deep, deep, *deep* divide between survivors of sexual violence and those who are not”; see Michael Love Michael, “Tarana Burke On the One Year Anniversary of #MeToo Going Viral,” *Paper*, 14 October 2018, www.papermag.com/tarana-burke-me-too-2611417381.html.

⁵ By “learning environment,” we mean third party students—those not involved in the relationship but who are affected by it. Such harms also impact the reputation of a learning environment—a department and its programs.

⁶ Our university, until this past year, required that the individual experiencing harm use a catch-all grievance procedure to register that harm, which in turn required them to pursue a formal complaint, individual against individual. Such a procedure individualizes what are institutional problems and in doing so, discounts the power asymmetries that make it highly unlikely for students to perceive such a process as accessible, safe, or effective. For more on individualizing complaint procedures that focus on “excis[ing]” the “individual irregularity” and its effects, see Whitley and Page, “Sexism at the Centre,” 49, 48; on the lack of student confidence in such complaint processes, see David Cantor, Bonnie Fisher, Susan

Chibnall, Reanne Townsend, Hyunshik Lee, Carol Bruce, and Gail Thomas, *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, Association of American Universities, 21 September 2015, https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf. This survey reports: “When asked what might happen when a student reports an incident of sexual assault or misconduct to a university official, about half say that it is very or extremely likely that the university will conduct a fair investigation. The percentage is lower for those groups that are most likely to report victimization (i.e., females and those identifying as TGQN [transgender, genderqueer, non-conforming, questioning])” (p. 51).

⁷ See University of Alberta, “Sexual Violence Policy,” 23 June 2017, <https://policiesonline.ualberta.ca/PoliciesProcedures/Policies/Sexual-Violence-Policy.pdf>. In this essay, we use this policy’s definition of sexual violence, disclosure, consent, and complaint.

⁸ The committee was comprised of four tenured professors (two of whom completed their bachelor of arts degrees in our department), one contract instructor (who had been a graduate student in our program), one graduate student, and two undergraduate students. It was somewhat diverse in class background, genders, and sexualities, though not in terms of race. One of the students had volunteered for the sexual assault center on campus, which meant he had more expertise than the rest of us.

⁹ University of Alberta, “Sexual Violence Policy.”

¹⁰ The issue of consent has generally been foremost in universities’ varied positions on instructor-student relationships, placing them more clearly into sexual violence policies rather than COI policies. Our university’s COI policy, in place since 2008, is astoundingly vague on this question, focusing on the university’s financial interests and legal liability and offering no guidance regarding the ethical responsibilities to students. There is a robust literature on consensual instructor-student relationships in academia and how institutions variously address them, including through COIs. For a recent literature review, see Tara N. Richards, Courtney Crittenden, Tammy S. Garland, and Karen McGuffe, “An Exploration of Policies Governing Faculty-to-Student Consensual Sexual Relationships on University Campuses: Current Strategies and Future Directions,” *Journal of College Student Development*, 55, No. 4 (2014), 337-52; and Marka B. Fleming, Amanda Harmon Cooley, and Gwendolyn McFadden-Wade, “Legal Implications Surrounding University Policies Enacted to Govern the Consensual Professor-Student Relationship,” *Southern Law Journal*, 19 (2009), 121-40. Richards et al. argue that “formal policies concerning consensual relationships . . . may help protect students from being exploited and assist in addressing the disparate power relationship between faculty and students” (p. 340).

¹¹ See the preamble to the “Conflict of Interest and Conflict of Commitment Disclosure Report (Faculty, FSO’s, Librarians and APOs), 2018 Update” form, which is accessible through a link at the end of University of Alberta, “Conflict of Interest and Conflict of Commitment Reporting and Assessment Procedure,” 16 November 2009, <https://policiesonline.ualberta.ca/PoliciesProcedures/Procedures/Conflict-of-Interest-and-Conflict-of-Commitment-Reporting-and-Assessment-Procedure.pdf>. While we are writing here only about COIs presented by consensual relationships between instructors and students, there are a range of other COIs that

can be active in departments, including between spouses, when hiring a student from the program in an instructor role, and when employing students for extracurricular jobs, such as pet and house-sitters, babysitters, and movers. We feel that the arguments we make about conflicts in consensual relations can also be applied to these situations.

¹² The question of whether to ban such relations has been particularly divisive among feminists, with opponents arguing that a ban is paternalistic. See for example Afshan Jafar, "Consent or Coercion? Sexual Relationships Between College Faculty and Students," *Gender Issues*, 21, No. 1 (2003), 43-58; and Sherry Young, "Getting to Yes: The Case against Banning Consensual Relationships in Higher Education," *American University Journal of Gender and the Law*, 4, No. 2 (1996), 269-302. In electing not to ban instructor-student consensual relations but rather to manage them as allowable under a COI policy, our university seems to be going against the trend, at least for United States institutions covered by Title IX; see Colleen Flaherty, "Relationship Restrictions: Academe Sees a New Wave of Faculty-Student Relationship Restrictions in the Era of Me Too," 24 May 2018, <https://www.insidehighered.com/news/2018/05/24/academe-sees-new-wave-faculty-student-relationship-restrictions-era-me-too>. Our university's policy implicitly allows for consensual sexual or romantic relations between instructors and students for several reasons. First, if we are committed to believing those who disclose sexual violence, we must also believe students when they say sex is consensual; the ability to determine consent (in the present, past, and future) must lie with the student. Second, affirmative consent enables students to change their minds. They may in retrospect realize that what they thought was consensual was not, or they might have begun by consenting but then realize that they did not have the ability to revoke their consent due to the asymmetry of power in that relationship. Third, research indicates that when institutions ban such relationships, disclosures of sexual violence are affected; students believe that they cannot disclose because they will be perceived as having done something wrong in entering the relationship willingly in the first place.

¹³ For more information on this issue, see Nancy Leong, "Them Too," *Washington University Law Review* (forthcoming), 3 April 2018, <https://ssrn.com/abstract=3118040> or <http://dx.doi.org/10.2139/ssrn.3118040>.

¹⁴ Belinda Blevins-Knabe, "The Ethics of Dual Relationships in Higher Education," *Ethics and Behavior*, 2, No. 3 (1992), 151.

¹⁵ The Association of Canadian College and University Teachers of English (ACCUTE) is currently at work on a statement of professional standards and ethics. The preamble to the Modern Languages Association's (MLA) "Statement of Professional Ethics" couches potential abuses of power under its injunctions to "freedom of inquiry" and casts ethical treatment of students as a "should" not a must: "Teachers . . . should not exploit them [students] for personal or professional ends"; see Modern Languages Association, "Statement of Professional Ethics," accessed 12 October 2018, <https://www.mla.org/Resources/Research/Surveys-Reports-and-Other-Documents/Staffing-Salaries-and-Other-Professional-Issues/Statement-of-Professional-Ethics/Read-the-Statement-Online>. It concludes by casting "ethical obligations" negatively as "restraints in exercising our responsibilities as scholars, teachers, and students." The American Association of University Professors (AAUP) is similarly vague, emphasizing academic freedom and the pursuit of truth

over protecting students in its professional ethics; see American Association of University Professors, “Statement on Professional Ethics,” accessed 12 October 2018, <https://www.aaup.org/report/statement-professional-ethics>. The association also fails to consider third party harms in its statement on consensual relations, stating only that “steps should be taken to ensure unbiased evaluation or supervision of the student”; see American Association of University Professors, “Consensual Relations Between Faculty and Students,” Policy Documents and Reports, 9th ed. (Washington, DC: American Association of University Professors, 2001), 211.

¹⁶ For more on the instructor-student professional relationship as based in power, trust, and authority, see for example Margaret H. Mack, “Regulating Sexual Relationships Between Faculty and Students,” *Michigan Journal of Gender and Law*, 6 (1999), 79-112. On labor arbitrators in Canada affirming trust and fiduciary duty as central to faculty-student relations in their rulings on sexual harassment, including harassment stemming from consensual relations in which the student revoked consent, see Cynthia Petersen, “Sexual Harassment Cases on Campus: How Have Labour Arbitrators Ruled?,” in “Policing Relationships on Campus,” special issue, *Academic Matters*, October-November 2011, 15-18.

¹⁷ During our consultations, several people worried about the impact of disclosing a student’s sexuality in reporting a COI and about the potential for these kinds of policies to be inequitably applied to vulnerable—LGBTQ2S+ and people of color—instructors and students. These worries came out of circulating accounts of Title IX cases. We take seriously these concerns for potential harm and the fact that all types of non-consensual sexual experiences on university campuses occur more frequently for women, people of color, and trans, gender non-conforming, and queer students; see Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*. Leong argues that “concern for uneven enforcement, however, does not counsel in favor of no regulation; rather, it militates in favor of stronger measures to ensure that regulation is evenly applied”; see Leong, “Them Too,” 9n30. Mack argues that “faculty-student sex policies must strike a balance between respecting privacy and protecting the interests of students in their education” (p. 101).

¹⁸ See Anna Waymack, “the lower frequencies,” *Medium*, 29 August 2018, <https://medium.com/@annawaymack/the-lower-frequencies-7060c21ce47d>; and Corey Robinson, “The Unsexy Truth About the Avital Ronell Scandal, The Erotic Aspects Obscure the Fundamental Issue: Power,” *The Chronicle of Higher Education*, 20 August 2018, <https://www.chronicle.com/article/The-Unsexy-Truth-About-the/244314>. Waymack calls for attention to the disempowered position of graduate students relative to the protections of tenure, a position that makes it uniquely difficult for graduate students to weigh in on conversations that concern their constituency: “Faculty, please listen to the silences.” Richards et al. document that most institutions view “consensual relationships between supervising professors and their students” as “a ‘gray area’ that has been largely ignored or even tolerated,” leaving what policies they do have ambiguous on whether the power “differentials” recognized pertain “only between faculty and undergraduate students or . . . [are] extended to faculty and graduate students” (p. 344). We would add that often age disparities seem to govern whether consensual relations are regarded by institutions as a “gray area,” leaving graduate students uniquely exposed to power’s asymmetry on campus simply because they are closer in age to their professors than are most

undergraduates. The *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* also reports that “graduate/professional students more often identified the offender” who sexually harassed them “as a faculty member (e.g., 22.4% of female graduate/professional students vs. 5.9% of female undergraduates)” (p. 31).

¹⁹ Most COI policies, including our own university’s, focus only on instructors in a direct and present relation to the consenting student, from grading their work in a course to directly supervising the student. This limitation can be seen as designed to address favoritism benefitting the consenting student and damage to the institution’s reputation but not the potential for broader harms to third parties or the learning environment. Management of COIs in such cases has historically meant removing the consenting student from the course in question or from the supervisory relationship, which limits that student’s equitable and full access to learning opportunities.

²⁰ See the preamble to the “Conflict of Interest and Conflict of Commitment Disclosure Report (Faculty, FSO’s, Librarians and APOs), 2018 Update” form. Contract instructors are required to complete an identical form. The procedure remains unchanged since 2009, and its direction for managing COIs centers the reporting individual—the instructor—in cases of consensual relationships, not the student: “3. When an activity or situation can be managed as an allowed conflict, the reporting officer will: a. Work with the reporting individual to settle on the terms and conditions under which an activity or situation associated with an allowed conflict will be conducted and managed” (p. 2).