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Teaching Note

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TEACHING NOTE

TEACHING ABOUT CONSENT

REFLECTIONS FROM AN UNDERGRADUATE LAW UNIT

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I INTRODUCTION AND BACKGROUND

Since the beginning of 2024, it has been mandatory for schools across Australia to teach consent from pre-primary to Year 10.¹ This is largely in response to research showing that consent is not taught consistently or effectively within schools, as well as activism calling for sexual consent education (including from Australian student Chanel Contos, who runs 'Teach Us Consent').² So what happens to the students who did not have the benefit of the change in curriculum, some of whom are now tertiary students?

While some — myself included — may have thought that undergraduate university students would be more progressive than most when it comes to understanding consent, a recent study in the United Kingdom by the Crown Prosecution Service and Equally Ours found that 58% of young people mistakenly believe consent is assumed in the context of a relationship.³ This is a stark statistic, and one that reflects not only my experience teaching consent to undergraduate students, but also to the importance of teaching those students — many of whom may be entering their first formative intimate relationships — what consent really means. Further, increasing rates of sexual assault amongst teenagers and young people demonstrate why consent education

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¹ Hamish Hastie, 'WA Mandates Consent Education From Pre-Primary', *Sydney Morning Herald* (online, 11 October 2022) <<https://www.smh.com.au/education/wa-mandates-consent-education-from-pre-primary-20221011-p5boy6.html>>; Giselle Natassia Woodley, 'Mandatory Consent Education Is A Huge Win For Australia — But Consent Is Just One Small Part Of Navigating Relationships', *The Conversation* (online, 21 February 2022) <<https://theconversation.com/mandatory-consent-education-is-a-huge-win-for-australia-but-consent-is-just-one-small-part-of-navigating-relationships-177456>>.

² Hannah Margaret Ruth Hayes, Kellie Burns and Suzanne Egan, 'Becoming 'Good Men': Teaching Consent and Masculinity in A Single-Sex Boys' School' (2024) 24(1) *Sex Education* 31, 31–2.

³ Crown Prosecution Service, 'Summary Report: Rape and Serious Sexual Offences: Public Understanding and Attitudes and Reframing Rape: Effective Communication About Rape', *CPS and Equally Ours: Research Into The Public Understanding Of Rape And Serious Sexual Offences (RASSO) And Consent* (Web Page, 24 January 2024) <<https://www.cps.gov.uk/publication/cps-and-equally-ours-research-public-understanding-rape-and-serious-sexual-offences>>.

is so important.⁴ There is, however, little research on how to teach sexual consent to tertiary students as part of the formal curriculum (outside the health context) or the effectiveness of such teaching. In this article, I reflect on my own experiences and perceptions of teaching undergraduate students about consent to sexual activity in the context of a level-one law unit.

II HOW I TAUGHT ABOUT CONSENT

In semester 1 of 2024, I taught into an undergraduate unit which aims to teach students about the law that they need, and will use, in their everyday lives. While the unit is technically part of a sociolegal studies major in a Bachelor of Arts degree, many students take it as a 'broadening' unit.⁵ This means that the cohort includes students from a variety of disciplines who may never have taken a law-related unit (or even a unit in the Bachelor of Arts) before.

I lectured about affirmative consent as part of the weekly topic titled 'Consent, Relationships, Family Violence & the Law'. I approached this by first outlining the current legal position in WA in relation to consent, then explaining the ways in which it differs from positive/affirmative consent. In making decisions about how I taught affirmative consent, I considered the Law Reform Commission of Western Australia's recent report: *Project 113 – Sexual Offences*.⁶ I thought this was a good way to demonstrate how legal and social understandings of consent currently differ, and what might change if the law were to require affirmative consent to sexual activity. The content I taught in the lecture was then reinforced in the associated tutorial, with students asked the following questions:

1. What is positive/affirmative consent?
2. In what way(s) is the concept of positive/affirmative consent different to the current definition of consent in the *Criminal Code*?
3. What might change if the *Code* requires positive consent (in terms of education, social understandings of consent, legal proceedings, what matters are prosecuted etc)?

⁴ Burton et al, 'Teaching Sexual Consent To Young People In Education Settings: A Narrative Systematic Review' (2023) 23(1) *Sex Education* 18, 18–19; Ursula Malone 'Sydney School Students Call For Earlier Education On Sexual Relationships And Consent In Wake Of Petition', *ABC News* (online, 9 March 2021) <<https://www.abc.net.au/news/2021-03-06/students-call-for-earlier-education-consent-sexual-assault/13223620>>; Gavin Fernando, 'Sex, Slut-Shaming And Sydney Schools: Why Chanel Contos Is Calling For Education Reform Across Australia', *SBS News* (online, 8 March 2021) <<https://www.sbs.com.au/news/article/sex-slut-shaming-and-sydney-schools-why-chanel-contos-is-calling-for-education-reform-across-australia/hice51qki>>.

⁵ The unit is titled 'LAWS1112 Adulting: Law for Everyday Lives' and is taught at the University of Western Australia ('UWA'). Students enrolled at UWA are required to complete four 'broadening' units outside of their degree-specific major over the course of their undergraduate degree.

⁶ Western Australia Law Reform Commission, *Project 113 – Sexual Offences* (Report No 113, May 2024).

III PERCEPTIONS OF STUDENT ENGAGEMENT AND UNDERSTANDING

As interaction between the lecturer and students is relatively limited in the lecture itself (especially as most students in our Law School choose to listen to lectures online rather than attend in person),⁷ my perceptions of how students engaged with the consent content derive mainly from my tutorial teaching and exam marking in the unit.

Tutorials

In teaching the relevant tutorial, I found that female students were much more willing to contribute to the discussion than male students were. This did not surprise me given that women — including trans women — and gender diverse people tend to bear the weight of changing social constructs that contribute to sexual violence.⁸ However, it was disappointing that male students were not interested in — or did not feel able, comfortable, or confident enough to contribute to — the conversation.⁹ It is worth noting that this was not the experience of all tutors teaching in the unit, and perhaps the response in my tutorials was shaped by a range of factors (including my own gender, the gender balance in my classes, and the individual experiences of the students themselves). The experience in my tutorials does, however, seem to reflect the experience of expert stakeholders who have worked with cisgender heterosexual men and boys in relationships and sexuality education.¹⁰ In a study of 23 such stakeholders, several participants 'noted hostility, and a lack of identification with potential concepts and ideas concerning men's behaviours, and gendered and sexual violence, thus leading to decreased engagement with program content'.¹¹

More work needs to be done in identifying ways in which male students, and indeed all men, can be encouraged to engage in the consent conversation. Meanwhile, groups like Teach Us Consent are raising awareness about the importance of all genders participating in the consent conversation, eg, by creating resources that explain how patriarchy also negatively impacts men.¹²

Exam

In addition to the tutorial discussion, there was also a short-answer question in the unit's final exam which was closely modelled on the tutorial task:

What is the current definition of consent in s 319(2) of the Criminal Code? Describe two ways in which it is different to the concept of positive/affirmative consent.

⁷ See generally Natalie Skead et al, 'If You Record, They Will Not Come – But Does It Really Matter? Student Attendance And Lecture Recording At An Australian Law School' (2020) 54(3) *The Law Teacher* 349; Meredith Blake et al, 'Student and Staff Experiences of Online Learning: Lessons from Covid-19 in an Australian Law School' (2022) 32(1) *Legal Education Review* 129.

⁸ See, eg, Elisabeth McDonald, 'Gender Neutrality and the Definition of Rape: Challenging the Law's Response to Sexual Violence and Non-Normative Bodies' (2019) 45(2) *University of Western Australia Law Review* 166.

⁹ Burton et al (n 4) 26; Laina Y Bay-Cheng, 'Agency Is Everywhere, but Agency Is Not Enough: A Conceptual Analysis of Young Women's Sexual Agency' (2019) 56(4) *The Journal of Sex Research* 462, 470.

¹⁰ Andrea Waling, Alexandra James and Jackson Fairchild, '"I'm Not Going Anywhere Near That": Expert Stakeholder Challenges In Working With Boys And Young Men Regarding Sex And Sexual Consent' (2023) 43(2) *Critical Social Policy* 234, 234.

¹¹ Ibid 247.

¹² jack_toohay and teachusconsent (Instagram, 11 June 2024) <<https://www.instagram.com/p/C8El6RbyH1g/>>.

The quality and accuracy of answers to this question varied significantly. Despite my teaching the unit, some students gave concerningly incorrect responses – eg, by stating that consent is to be presumed in intimate relationships. But many students gave a nuanced and detailed response indicating strong engagement with the content. It was hard to tell whether the former category of student simply did not listen to the lecture, or whether my lecture needed to be more specific and make fewer assumptions about the baseline knowledge students had. I think it is also likely, as some have observed, that affirmative consent does not represent the ‘real life practices of young people, with actual consent (such as communication, understandings and social norms) varying widely’.¹³ Put another way, affirmative consent ‘is not (yet) reflective of many young people’s practices of sexual negotiation, where non-verbal cues are often relied upon instead’.¹⁴

IV REFLECTIONS

In future, I would spend more time explaining what affirmative consent is in the lecture, rather than leaving the substantive discussion to the tutorial. This may empower students who would otherwise be hesitant to contribute due to a lack of confidence or understanding. It is important in this context to explain the ‘why?’ by situating consent in a broader conversation that encourages students to question social norms,¹⁵ and ensuring students understand that consent is not just about following the law but *preventing harm*.¹⁶

I would also more actively encourage discussion from male students who may not feel it is their place to contribute. I might, for example, show some of the content created by Teach Us Consent (as discussed in Part III)¹⁷ to situate the discussion in the broader context of challenging gender norms and hetero- and cis-normativity.¹⁸ There is a fine line to tread between specifically targeting inclusion by men without making them feel like they are the problem or ‘already in the wrong’.¹⁹ Ultimately, the hesitation to engage may be rooted in ‘social taboos’, which may be difficult — if not impossible — to tackle in a two-hour lecture in which consent is taught as one of many topics.²⁰ It may be beyond my capabilities alone to address the root cause of this lack of engagement, with some scholars noting the importance of a whole-society approach.²¹ That said, in preparation for teaching this unit next year, I will certainly be guided by the extant research in determining how I can best do my part to encourage men to engage in conversations about consent.²²

¹³ Burton et al (n 4) 19.

¹⁴ Ibid 28.

¹⁵ Ibid 27.

¹⁶ Let’s Talk About X, ‘Teaching Consent In Secondary Schools: 10 Ways To Make Sure We Get Consent Education Right For High School Students’, *Let’s Talk About X* (Blog Post, 14 December 2023) <<https://www.talkaboutx.org/post/teaching-consent-in-secondary-schools#:~:text=Teachers%20can%20use%20every%2Dday,for%20someone%20to%20say%20no.>>.

¹⁷ jack_toohhey and teachusconsent (n 12).

¹⁸ Hayes, Burns and Egan (n 2) 40–1.

¹⁹ Waling, James and Fairchild (n 10) 248–9.

²⁰ Ibid 249.

²¹ Ibid 250.

²² For example, Nicola Gavey et al, ‘Shifting The Line: Boys Talk On Gender, Sexism And Online Ethics’ (Research Monograph, University of Auckland, June 2021).

V CONCLUSION

My experience teaching affirmative consent reflects broader systemic issues noted by expert stakeholders.²³ More research is needed into how men can be encouraged to participate in conversations about consent, not just at a tertiary level but across society. This involves everyone — parents, teachers, lecturers and others involved in care of young adults — taking responsibility for consent education. Students *want* consent education.²⁴ As law teachers we are well-placed to provide spaces for that discussion, which inherently involves the law itself.

²³ See Waling, James and Fairchild (n 10).

²⁴ Australian Institute of Health and Welfare, 'Consent', *Family, Domestic And Sexual Violence* (Web Page, 12 April 2024) <[https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/consent#:~:text=Over%20in%20\(22,sexual%20violence%20\(Heywood%20et%20al.\)](https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/consent#:~:text=Over%20in%20(22,sexual%20violence%20(Heywood%20et%20al.))>.