

# APA Newsletters

NEWSLETTER ON FEMINISM AND PHILOSOPHY

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## FROM THE EDITOR

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Dear Readers,

This is my first issue as editor of the *APA Newsletter on Feminism and Philosophy*. I want to thank Christina M. Bellon for her term as editor, and for making the transition so easy for me. Dr. Bellon had already agreed to publish an issue on sexual harassment in academe before I took over the position, and Janet Kourany graciously offered to provide an introduction to the issue. In this issue, we explore the subject of sexual harassment in academe over thirty years after the concept, and law addressing it, were created. The papers included here approach the issue from different perspectives, but all are inspired by the authors' experiences with sexual harassment in their roles as professors. Many of us, perhaps most, have experienced sexual harassment ourselves, as students or faculty, or have counseled students, colleagues, and staff. Since Dr. Kourany is providing an introduction to the main theme of this issue, I shall say no more about it here. However, also included is a first-person report on the experience of graduate school. Like Dr. Bellon, I intend to continue the inclusion of material on the profession, and the piece published here, anonymously, is an important contribution to understanding how our students experience philosophy so that we can make that experience better for them.

Margaret A. Crouch

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## ABOUT THE NEWSLETTER ON FEMINISM AND PHILOSOPHY

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The *Newsletter on Feminism and Philosophy* is sponsored by the APA Committee on the Status of Women (CSW). The *Newsletter* is designed to provide an introduction to recent philosophical work that addresses issues of gender. None of the varied philosophical views presented by authors of *Newsletter* articles necessarily reflect the views of any or all of the members of the Committee on the Status of Women, including the editor(s) of the *Newsletter*, nor does the committee advocate any particular type of feminist philosophy. We advocate only that serious philosophical attention be given to issues of gender and that claims of gender bias in philosophy receive full and fair consideration.

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## SUBMISSION GUIDELINES AND INFORMATION

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**1. Purpose:** The purpose of the *Newsletter* is to publish information about the status of women in philosophy and to make the resources of feminist philosophy more widely available. The *Newsletter* contains discussions of recent developments in feminist philosophy and related work in other disciplines, literature overviews and book reviews, suggestions for eliminating gender bias in the traditional philosophy curriculum, and reflections on feminist pedagogy. It also informs the profession about the work of the APA Committee on the Status of Women. Articles submitted to the *Newsletter* should be limited to ten double-spaced pages and must follow the APA guidelines for gender-neutral language. Please submit essays electronically to the editor or send four copies of essays via regular mail. All manuscripts should be prepared for anonymous review. References should follow *The Chicago Manual of Style*.

**2. Book Reviews and Reviewers:** If you have published a book that is appropriate for review in the *Newsletter*, please have your publisher send us a copy of your book. We are always seeking new book reviewers. To volunteer to review books (or some particular book), please send the editor a CV and letter of interest, including mention of your areas of research and teaching.

**3. Where to Send Things:** Please send all articles, comments, suggestions, books, and other communications to the editor: Dr. Margaret A. Crouch, Department of History and Philosophy, 701 Pray-Harrod, Eastern Michigan University, Ypsilanti, MI 48197, 734-487-0908, [mcrouch@emich.edu](mailto:mcrouch@emich.edu).

**4. Submission Deadlines:** Submissions for Spring issues are due by the preceding September 1st; submissions for Fall issues are due by the preceding February 1st.

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## NEWS FROM THE COMMITTEE ON THE STATUS OF WOMEN

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Members of the APA Committee on the Status of Women (CSW) met during the Eastern Division Meeting of the APA on December 28, 2011. The following summarizes the discussion at this meeting.

**Website:**

The CSW committee members discussed their disappointment in the APA's website and their dismay that all previously

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posted materials on the CSW website have disappeared. The committee understands that the APA has been having more general difficulties with its website and is aware that the APA board is actively working to address these issues, but the committee is also aware that it may take some time to get fully resolved. A subset of the committee agreed to work together to create a new website for the CSW that will link to the APA website. Members discussed possible content for the committee's website and agreed that it should be a clearinghouse for information of relevance to women in philosophy. It should include:

- recent data on women in philosophy (summaries and by department)
- information on what departments are doing to warm the climate for women
- information on programs that emphasize feminist philosophy
- links to implicit bias information
- information on best practices for warming departmental climates for women
- sample syllabi that include women philosophers
- links to workshops and conferences of relevance to women
- links to *APA Newsletters on Feminism and Philosophy*
- descriptions of CSW-sponsored initiatives and programs

#### **Site Visit Program:**

Members agreed that the committee should sponsor a site visit program to help philosophy departments warm their climates for women. This program would be loosely modeled on the site visit team of the American Physical Society's Committee on the Status of Women in Physics (APS CSWP, <http://www.aps.org/programs/women/>). For more information on the site visit program see <http://www.aps.org/programs/women/sitevisits/index.cfm>

#### **Site Visit Program Background and Goals<sup>1</sup>:**

The APA has a clear interest in improving the climate in philosophy departments for women. Evidence for just how cold the climate for women in philosophy is can be seen at <http://beingawomaninphilosophy.wordpress.com/> and the recently published *APA Feminism and Philosophy Newsletter* Fall 2011. One of the best ways to address departmental climates for women is through the establishment of a site visit program. Like the goals of the American Physical Society's site visit program, the goals of a site visit program in philosophy would include:

- Identifying a set of generic problems commonly experienced by women philosophers.
- Intervening to solve many of these generic problems.
- Addressing problems arising in the particular philosophy department and helping improve the climate for women (both students and faculty) in the facility.

#### **During the Site Visit:**

Site visits would be conducted at the request of a department chair. Once a date is agreed upon, a team will be assembled. Prior to the visit, students/employees will be asked to complete a confidential survey, for the team's use only. On the day of the visit, members of the site visit team meet with the philosophy department's chair, groups of philosophy faculty/staff members, women faculty members in philosophy (or related areas), administrators responsible for faculty appointments or hiring, women graduate students, and women undergraduates. The goal of these meetings is to provide the site visit team with the

quantitative and qualitative information they need to assess the climate for women or minorities in the host facility.

#### **After the Site Visit:**

The team will write a report for the department chair, detailing the findings of the visit and offering simple, practical suggestions on improving the climate for women. The chair is encouraged to share the report with the rest of the department. Approximately eighteen months after the visit, the department chair will be asked to respond in writing to the team, describing actions taken to improve the climate.

#### **Site Visits that Assess the Climate for other Underrepresented Groups:**

Once the CSW-sponsored site visit program is successfully established, the CSW hopes to coordinate with other APA inclusiveness committees, so that site visits may assess departmental climates for other underrepresented groups in philosophy.

#### **CSW Next Steps:**

The chair of the committee (DesAutels) agreed to develop a proposal from the committee to the Executive Board of the APA requesting funding for a CSW-sponsored site visit program.

Committee members decided that they should think big about the committee's goals and initiatives in spite of the committee's severe structural and financial limitations. If some of the committee's proposed initiatives are costly, the committee should then attempt to find funding for them. Members agreed that they should see how other professional associations address and fund women's issues. Questions to ask these other associations include: Is there a Committee on the Status of Women? If so, what is its budget? How are members selected and how long are their terms? How much of the data on women is collected by the association and how much by the CSW? Do they conduct climate-related site visits? Do they sponsor workshops?

#### **In Summary:**

Members of the CSW hope to take a leadership role in addressing the serious and persistent problems that are faced by women in philosophy.

#### **Note**

1. Much of what is included in "Site Visit Program Background and Goals," "During the Site Visit," and "After the Site Visit" is only slightly modified text taken from the American Physical Society (APS) Committee on the Status of Women in Physics' (CSWP) website: <http://www.aps.org/programs/women/sitevisits/index.cfm>

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## ARTICLES

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### ***Sexual Harassment in the Academy: Opening the Discussion***

**Janet A. Kourany**  
*University of Notre Dame*

Sexual harassment. In the 1970s it was named, and the name attained prominence within activist women's groups<sup>1</sup> and the writings of feminist political and legal theorists such as Lin Farley and Catharine MacKinnon,<sup>2</sup> all of which encouraged women to initiate lawsuits against their harassers. In the 1980s the Equal Employment Opportunity Commission (EEOC) published the "Guidelines on Discrimination because of Sex"<sup>3</sup> so that

courts and legislators could identify sexual harassment and assess employer liability, and the Supreme Court recognized it as a violation of federal antidiscrimination law. In the 1990s sexual harassment garnered widespread national and even international attention—when University of Oklahoma Law Professor Anita Hill publicly accused Supreme Court Justice nominee Clarence Thomas of sexually harassing her during his tenure as director of the EEOC; when scores of male U.S. Navy and Marine Corps aviation officers sexually assaulted at least eighty-seven women at the Navy’s 1991 Tailhook Convention, and Navy Secretary H. Lawrence Garrett as well as other high-ranking officers failed to fully investigate the scandal (and then resigned because of that); and when 350 Mitsubishi Motors female workers won a \$34 million sexual harassment suit, the largest such settlement that had ever been made against a U.S. corporation. Rapid progress was being made (the Supreme Court was by then handling a record number of sexual harassment cases), and the future looked bright. And yet, the new millennium has just witnessed more of the same: high-profile cases (such as the withdrawal of Herman Cain from the Republican presidential primary race a few months ago after allegations from at least four women that he sexually harassed them when he headed the National Restaurant Association) as well as more ordinary cases (such as the 11,364 charges of sexual harassment filed with the EEOC in 2011<sup>4</sup>).

Academia has not been spared either. Far from it. The latest American Association of University Women (AAUW) data, for example, are jarring, even to savvy, harassment-jaded ears: nearly two-thirds of college students say they have been sexually harassed, but only 7 percent report the incident to college authorities; 41 percent of students admit they have sexually harassed other students; no areas of a college campus (lecture halls, classrooms, dormitories, computer workstations, etc.) are immune, nor is any particular type of institution (e.g., two-year versus four-year, or public versus private, institutions); and so on.<sup>5</sup> And some fields of study are especially hard hit—STEM (science, technology, engineering, and mathematics) fields, for example, and academic medicine.<sup>6</sup> And philosophy. Although we have no formal statistics regarding philosophy, recent reports suggest that philosophy, whose proportion of women matches the most male-dominated of the STEM fields rather than the far-more-female-friendly humanities, may have sexual harassment problems comparable to the STEM fields.<sup>7</sup> This is why it was so important to devote an APA symposium discussion to the topic of sexual harassment and to make its papers widely available. The symposium, “Sexual Harassment in the Academy: The 21<sup>st</sup> Century,” was part of the 2011 APA Pacific Division program, its speakers were Margaret Crouch (Eastern Michigan University), Kathryn Forbes (California State University—Fresno), Janet Slagter (California State University—Fresno), and Jeanine Weekes Schroer (Arkansas State University), and its papers are reprinted below—along with one other paper by Bonnie Mann (University of Oregon). But this has to be just the beginning.

Margaret Crouch’s paper, “Benevolent Sexism, Implicit Bias, and Sexual Harassment in the Academy,” explains the urgency of the current situation: sexual harassment is simply “a means of maintaining women’s status as subordinate in society” (5). As a result, sexual harassment law and policy hold considerable potential for bringing about a gender-equal society. The sad truth, however, is that they are not living up to this transformative potential. Focusing on U.S. higher education, Crouch points out that “most universities and colleges do not seriously challenge the sexist cultures that make sexual harassment possible and prevalent” (5). One problem is that the current corporate culture that has taken over in higher education—the “audit culture”—is more focused on technical compliance with the

law and protecting universities from liability than with protecting the rights of students and employees. Another problem is that sexist bias permeates the understanding and treatment of sexual harassment—in higher education and elsewhere. Crouch distinguishes two forms of this bias. The first, called “benevolent sexism” by social scientists, expects the victim of sexual harassment to be young, female, conventionally attractive, innocent, modest, and appropriately feminine and thereby fails to recognize other—most—victims of sexual harassment, who tend to be faculty, staff, and administrators, and lesbian, gay, and transgendered students rather than traditional, heterosexual, female undergraduates. And the problem is made worse by the second form of bias prevalent in higher education and elsewhere, the unconscious “implicit bias” that preserves gender stereotypes and mars people’s judgments in sexual harassment complaint procedures. All these factors, Crouch argues, limit the transformative potential of sexual harassment law and policy.

Kathryn Forbes and Janet Slagter paint an even gloomier picture. In “Growing Their Profession, Interpreting the Law: Human Resources and the Management of Sexual Harassment Complaints in the University” and “Tracking Audit Culture: Sexual Harassment Policy, Faculty Governance, and ‘Transformation’ in the Corporatized University,” they provide an in-depth account of the sexual harassment policy in effect at California State University at Fresno, their university. Fresno State’s policy is of particular interest because of the high profile sexual harassment cases that have recently been settled there: former senior female Fresno State Athletic Department administrator Diane Milutinovich won an out-of-court settlement of \$3.5 million in 2007, former Fresno State women’s volleyball head coach Lindy Vivas won a \$5.2 million settlement in 2008, and former Fresno State women’s basketball coach Stacey Johnson-Klein agreed to a \$9 million settlement in 2008. Especially significant are the circumstances that surrounded these cases. Milutinovich, Vivas, and Johnson-Klein had all contended with gender discrimination at Fresno State for over a decade, all of them had repeatedly reported this gender discrimination, and in the case of Vivas and Johnson-Klein their gender discrimination had included sexual harassment by members of the Fresno State Athletic Department management team. But the university bureaucracy had repeatedly deflected the charges—at the same time that it was demonstrating compliance with the mandates of anti-discrimination law to its employees. How was that possible? Forbes, an anthropologist at Fresno State, points to a variety of actions on the part of the university bureaucracy, such as its framing of the hostile work environment that pervaded the Fresno State Athletic Department as the adolescent behavior of well-meaning but uninformed men, behavior that called for mentoring rather than disciplinary action, and its insistence on formally resolving all complaints rather than providing resources for informal resolutions. She also points to the fact that the office charged with investigating Title IX complaints at the California State University system level, the Office of General Counsel, was also the office charged with defending California State campuses against lawsuits claiming gender discrimination, which meant that (as Vivas pointed out in testimony) the fox was guarding the hen house.

Even more significant than the circumstances surrounding these cases, however, is the response of the University to them, a point taken up by Slagter, a philosopher at Fresno State. If any university would be expected to adopt a model sexual harassment policy, surely it would be California State University at Fresno after the Milutinovich, Vivas, and Johnson-Klein settlements, settlements that cost the California State system a total of nearly \$18 million. But what Slagter reports is just the opposite. In 2007 and 2008, the university administration

rejected a series of reformulations of the university's sexual harassment policy passed by the Faculty Senate, with no attempt at explanation or administration-faculty collaboration. And the administration has been very slow to enact even the provisions of the policy it put into place instead, and even then has done a very poor job of it. All in all, Fresno State continues to care little about reducing gender discrimination and inequality. But this is just what we would expect, Slagter argues, given the audit culture's increasing hold not only at Fresno State but at other colleges and universities in the U.S.

In "Campus as Community: A Better Approach to Sexual Harassment Policy," Jeanine Schroer further fills out the analysis offered by Crouch, Forbes, and Slagter, taking account especially of the plight of students. A central characteristic of the audit culture, Schroer points out, is that it conceives the various relationships that comprise a university in purely economic terms. In accordance with this way of thinking, students become purchasers of marketable skills, faculty and administrators become service providers, and the university becomes the site of economic exchange. And thus, students are thought of as equal participants in the exchange—even as more powerful participants in the exchange. For "in the context of the audit culture, faculty and administrators are competing for the consumer's commitment and struggling to demonstrate that their product fulfills the contract and is better than that of competitors" (21). Small wonder that universities in the grip of the audit culture take a minimalistic approach to the management of sexual harassment, one in which neither students nor anyone else, faculty or staff or administrators, receive serious concern or training regarding appropriate relationships, aid in dealing with inappropriate relationships, and so on. At Arkansas State University, for example, Schroer's university, faculty members receive training as part of a onetime orientation that focuses on indicating *quid pro quo* harassment. "There is very little by way of efforts to educate about subtler forms of sexual harassment that might contribute to hostile environment. They also receive no training about how to handle students, staff, or faculty making sexual harassment complaints" (22). This exactly matches the experience of Forbes and Slagter at Fresno State. By contrast, Schroer, along with Forbes and Slagter, argue for a far more intensive and ongoing and decentralized approach to sexual harassment.

"Creepers, Flirts, Heroes, and Allies: Four Theses on Men and Sexual Harassment," by Bonnie Mann, was not part of the 2011 APA symposium on sexual harassment. But it adds to the description offered by the other papers of the kind of culture in which sexual harassment flourishes, and thus is a fitting final contribution here. Men, says Mann, play at least four roles in this culture. The first role is the "creeper," whose "dominant intentional mood" when in the presence of a young female colleague or would-be colleague is entitlement to acquisition. The result is a diminution of the woman's agency—rather like what happens when a bindweed plant wraps itself around a host plant, its tendrils getting thicker and stronger over time. "If it were to choose you as its host, you can imagine it wrapping you up while you were napping, and waking up unable to move" (25). The creeper thus sharply contrasts with the "flirt," the second role Mann describes. Here the man makes no assumptions about what the woman will be to him, even though he might hope for a particular outcome. Rather, the woman is allowed to play an active part in the encounter, and the power is "equal enough, taking into consideration the total concrete situation, so that the vulnerability of the two parties stands a chance of being more or less the same, at least at the start" (27).

The "hero" and the "ally" are the third and fourth male roles Mann describes, and they also sharply contrast. Whereas the hero, who protects women from other men, ultimately strips women of their agential powers, requiring them to be passive and vulnerable, the ally creates space for those powers, so that women may define their own situations, set their own agenda, and decide their own strategies for redress. The hero and the creeper are thus as committed to a world in which women's world-shaping capacities are undermined as the flirt and the ally are to a world in which women's world-shaping capacities are engaged. If there is to be change, then, Mann suggests, both women and men must become skilled at recognizing the behaviors of creepers, flirts, heroes, and allies and the kinds of goods and harms they bring.

So, as I see it, the upshot of these papers is that the problem of sexual harassment persists and in many unrecognized forms. Surely we need to do far more to address it. But don't take my word for it. Read on and draw your own conclusions.

#### Endnotes

1. See, e.g., Mary Rowe, "Saturn's Rings," *Graduate and Professional Education of Women* (American Association of University Women, 1974), 1-9, revised and republished as "The Minutiae of Discrimination: The Need for Support," in *Outsiders on the Inside, Women in Organizations*, edited by Barbara Forisha and Barbara Goldman (Englewood Cliffs, NJ: Prentice-Hall, 1981), 155-171; and Susan Brownmiller, *In Our Time: Memoir of a Revolution* (New York: Dell Publishing, 1999).
2. See Lin Farley, *Sexual Shakedown: The Sexual Harassment of Women on the Job* (New York: McGraw-Hill, 1978); and Catharine MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (New Haven, Conn.: Yale University Press, 1979).
3. See the amended version at Equal Employment Opportunity Commission, "Guidelines on Discrimination Because of Sex: Sexual Harassment," Code of Federal Regulations: Title 29, Sec. 1604.11 at <http://www.gpo.gov/fdsys/pkg/CFR-2009-title29-vol4/xml/CFR-2009-title29-vol4-sec1604-11.xml>
4. See "Sexual Harassment Charges—'EEOC & FEPAs Combined: FY 1997 - FY 2011'" at [http://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment.cfm](http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm)
5. See Catherine Hill and Elena Silva, *Drawing the Line: Sexual Harassment on Campus* (Washington, DC: American Association of University Women Educational Foundation, 2006) at <http://www.aauw.org/learn/research/upload/DTLFinal.pdf> and the American Association of University Women's July 2009 report "Title IX and Sexual Harassment" at [http://www.aauw.org/act/issue\\_advocacy/actionpages/upload/sexualharassment11.pdf](http://www.aauw.org/act/issue_advocacy/actionpages/upload/sexualharassment11.pdf)
6. See, e.g., Catherine Hill, Christianne Corbett, and Andresse St. Rose, *Why So Few? Women in Science, Technology, Engineering, and Mathematics* (Washington, DC: American Association of University Women, 2010), at <http://www.aauw.org/learn/research/whysofew.cfm> and Delese Wear and Julie Aultman, "Sexual Harassment in Academic Medicine: Persistence, Non-Reporting, and Institutional Response," *Medical Education Online* 10 (2005) at <http://www.docstoc.com/docs/8972166/Sexual-Harassment-in-Academic-Medicine-Persistence-Non-Reporting>
7. See, e.g., Scott Jaschik, "A Call to Shun," *Inside Higher Ed*, March 30, 2011 (at [http://www.insidehighered.com/news/2011/03/30/philosophers\\_consider\\_what\\_to\\_do\\_about\\_sexual\\_harassment](http://www.insidehighered.com/news/2011/03/30/philosophers_consider_what_to_do_about_sexual_harassment)) as well as the harassment archive of the blog "What Is It Like to Be a Woman in Philosophy?" (at <http://beingawomaninphilosophy.wordpress.com/category/harassment/>)

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## ***Benevolent Sexism, Implicit Bias, and Sexual Harassment in the Academy***

**Margaret A. Crouch**

*Eastern Michigan University*

Since publishing a book on sexual harassment in 2001,<sup>1</sup> I have been examining the conceptualization of sexual harassment in a global context to determine whether sexual harassment legislation and policy is fulfilling its transformative potential.<sup>2</sup> By this I mean the potential of sexual harassment law and policy to effect social change by transforming the sexist cultures that create the conditions that make sexual harassment possible and prevalent.

I conceive of sexual harassment as a form of gendered violence and sex discrimination that is on a continuum from verbal to physical harassment, and that functions to keep women in their place, both literally and figuratively. In my view, sexual harassment is a means of maintaining women's status as subordinate in society; it is also a means of keeping women within certain physical spaces, and outside of others, or, at least, of controlling women's behavior in those spaces. In this way, sexual harassment constrains women's freedom and equality, both in terms of status and place. This view is eloquently articulated by Radhika Coomaraswamy, first United Nations Rapporteur on Violence against Women:

Sexual harassment must be understood to exist on the continuum of sexual violence against women. It is a personal attack on women's minds and bodies, instilling fear and violating a woman's right to bodily integrity, education and freedom of movement. It is utilized as a powerful mechanism of control and intimidation, through which women's subordinate social status is maintained. Sexual harassment frequently occurs on the street, in the workplace, in educational institutions and on public transportation.

The more pernicious form, however, is sexual harassment in the workplace or in educational institutions. Sexual harassment strikes at the heart of women's economic self-sufficiency, disrupting women's earning capacity by forcing them out of the workplace or school. Women are nine times more likely than are men to leave their job as a result of sexual harassment.<sup>3</sup>

Though this way of understanding sexual harassment might seem obvious, it is not the understanding of sexual harassment that predominates in the law or in much of the scholarship on sexual harassment in the academy. Furthermore, although many countries have laws prohibiting sexual harassment in the workplace and in educational institutions, the justifications for these laws, and their implementation, often has very little to do with gender equality or freedom of movement for women.<sup>4</sup>

In this paper, I will argue that, in spite of sexual harassment laws, and policies developed to comply with the laws, most universities and colleges do not seriously challenge the sexist cultures that make sexual harassment possible and prevalent. This appears to be the case in every country in which laws or policies prohibiting sexual harassment in higher education exist, but I will limit my discussion here to the U.S. I will address several factors that contribute to the failure of the transformative potential of sexual harassment law. First, any discussion of the academy today must be placed in the context of the dramatic changes that are taking place as colleges and universities

embrace the "audit culture." Secondly, I will address two forms of bias that affect the understanding and treatment of sexual harassment in the academy: (1) benevolent sexism, and (2) implicit bias. These related forms of bias are less overt than traditional sexist behavior, but continue to affect the ways in which campuses deal with sexual harassment, undermining the potential of sexual harassment law and policy to transform the places where we learn and work.

According to recent research, sexual harassment in educational institutions is still prevalent in the United States and elsewhere, despite laws prohibiting it. A 2005 American Association of University Women (AAUW) study found that almost 2/3 of college students experienced sexual harassment.<sup>5</sup> A study at a U.S. university found that 40-50 percent of female faculty had experienced some form of sexual harassment in their careers. Another U.S. study found that 77 percent of women in academic medicine had experienced sexual harassment at some point in their careers.<sup>6</sup> Anecdotally, many of us in the academy have stories as students, graduate students, faculty, and administrators.

The impact of sexual harassment is hard to measure, but there is strong evidence that it influences women's careers in the academy. Students in graduate and professional schools change advisors or work groups or disciplines, or drop out altogether, as a result of sexual harassment.<sup>7</sup> Sexual harassment also contributes to women faculty's higher attrition rates.<sup>8</sup>

As you all know, there are laws prohibiting sexual harassment on campus in the U.S. In fact, the feminist activism that led to sexual harassment's conception as a form of illegal sex discrimination started on a campus—Cornell University in Ithaca, New York.<sup>9</sup> In 1986, the U.S. Supreme Court established that sexual harassment was illegal sex discrimination in the workplace under Title VII. In 1992, it established that sexual harassment was illegal sex discrimination in educational institutions under Title IX.<sup>10</sup> There were several Supreme Court decisions on sexual harassment in K-12 educational institutions in the late 1990s, but there has never been a Supreme Court case addressing sexual harassment in a college or university.

I have assumed that the purpose of sexual harassment law is the transformation of academic and work environments. But was discrimination law, or sexual harassment law, ever intended to be transformative? From the beginning, the intended purpose of sexual harassment law has been in dispute. This was evident in the 1986 U.S. Sixth Circuit case *Rabidue v. Osceola Refining Co.*<sup>11</sup> In that decision, the majority argued that "the presence of actionable sexual harassment would be different depending upon the personality of the plaintiff and the prevailing work environment and must be considered and evaluated upon an ad hoc basis." They then quoted a lower court judge approvingly:

Indeed, it cannot seriously be disputed that in some work environments, humor and language are rough hewn and vulgar. Sexual jokes, sexual conversations and girlie magazines may abound. *Title VII was not meant to—or can—change this.* It must never be forgotten that Title VII is the federal court mainstay in the struggle for equal employment opportunity for the female workers of America. But it is quite different to claim that Title VII was designed to bring about a magical transformation in the social mores of American workers. (My emphasis.)

In his dissent, Judge Keith argued against this view:

The majority suggests...that a woman assumes the risk of working in an abusive, anti-female environment. Moreover, the majority contends that such work

environments somehow have an innate right to perpetuation and are not to be addressed under Title VII....

In my view, Title VII's precise purpose is to prevent such behavior and attitudes from poisoning the work environment of classes protected under the Act....

As I believe no woman should be subjected to an environment where her sexual dignity and reasonable sensibilities are visually, verbally or physically assaulted as a matter of prevailing male prerogative, I dissent.

The majority in *Rabidue* seem to think it possible, and desirable, for women simply to be added to already established workplace cultures, with no necessity for change to those cultures. However, this seems neither likely nor desirable.

The issue of whether and how the introduction of more women and members of other culturally subjugated groups into the academy has and should affect the institution is a controversial one. The traditional institutional practices of higher education were created for a particular group of men and, to a great extent, these practices have not changed. Feminist scholars of education show how standards for hiring, tenure, and promotion privilege certain kinds of lives, choices among teaching, service and research, and areas of focus in scholarship. Colleges and universities are the institutions that define knowledge in our culture. If those institutional structures are biased, this has serious implications for everyone in higher education.

If we assume that the aim of sexual harassment law is to change workplace culture, we should ask how it is doing at this task. Joanna Grossman argues convincingly that the way in which sexual harassment law has developed in the U.S. has had no effect on the prevalence of sexual harassment. This is the case in spite of the fact that cases reported to the Equal Employment Opportunity Commission (EEOC) and internally in organizations have increased dramatically. As Grossman persuasively argues, sexual harassment law has not focused employers on the rights of their employees, but on compliance with the law. Two sexual harassment cases heard by the U.S. Supreme Court in 1998 established an affirmative defense for employers to escape liability in cases where a supervisor harasses, but there is no tangible employment action. The court held that employers are off the hook if they can show: "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."<sup>12</sup> As a result, organizations, including universities, have developed and implemented policies and procedures for handling sexual harassment complaints. If a workplace has such policies and procedures, and the complainant does not make use of them, courts have not held employers liable.

However, the existence of these policies and procedures does not seem to have diminished the amount of sexually harassing behavior. Such policies and procedures are not aimed at respecting the rights of employees, or at creating organizational environments that are free of discrimination, but at protecting the organization from liability.<sup>13</sup> This means that policies, and the people charged with implementing them, often do not encourage complaints, and may even discourage them.<sup>14</sup> Since it has long been the case that few sexual harassment targets actually formally report sexually harassing behavior—the estimated figure is around 12 percent—the result is that such policies have very little effect on preventing sexual harassment.<sup>15</sup>

I do not know whose intention we look to when trying to determine whether sexual harassment law, and Title VII and Title IX more generally, were intended to transform workplace and educational cultures so that those previously cast as "outsiders" become fully integrated into those cultures.<sup>16</sup> But I do know that this was and is the hope of many opposed to inequality and oppression. Furthermore, it is only when such transformation occurs that the prevalence of sexual harassment will be reduced.

These have been general remarks about the status of sexual harassment in the U.S. I want now to turn to sexual harassment in higher education to see how these general difficulties with sexual harassment law and policy play out in environments that one might think would be more amenable to changes in culture of the sort envisioned by those who created the concept of sexual harassment. Though I will speak primarily about the U.S., there is plenty of evidence that similar problems exist on campuses elsewhere.<sup>17</sup>

It turns out that what holds for non-academic workplaces holds also for academic workplaces. A good deal of the research on sexual harassment in universities and colleges is prefaced with justifications for being concerned about sexual harassment, most of which have nothing to do with women's equality in the academy. For example, an article on gender and faculty "intentions to quit" in science and engineering begins,

Women faculty members are leaving academic positions in science and engineering fields at higher rates than men (NSF, 2004). This loss of women faculty can have a number of adverse consequences including: fewer role models for young women who are considering careers in these traditional fields; loss of intellectual capital to the universities of these highly trained women; and the increasing expenses of new searches and high start-up packages. One university estimated that it can take ten years for a new faculty member in science or engineering to develop enough of a positive revenue stream from grants and to recoup start-up costs (Hopkins, 2004).<sup>18</sup>

In an article on the impact of sexual harassment on turnover, absenteeism, and job satisfaction, it was reported that "the cost of turnover [is] the largest single component of the overall cost of sexual harassment in the US."<sup>19</sup>

Thus, the "costs" of primary concern are those affecting the employers' "bottom line." This corporate attitude has been growing in the academy as colleges and universities assimilate to what has been called the "audit culture."<sup>20</sup>

Those of us who began teaching in institutions of higher education twenty or so years ago have seen dramatic changes in the conditions of our work and in the conception of the university's role in society. Anthropologists have termed this change the implementation of "the audit culture." Practices and discourses common in financial and commercial areas have been imposed on higher education, with profound, but not yet fully understood, consequences.<sup>21</sup> The role of higher education in society has been shifting from a view of colleges and universities as places where we collectively educate citizens and workers, and pursue knowledge for its own sake, to institutions selling useful skill sets, and information and techniques, in the global marketplace.

The audit culture is based on a corporate model of accountability and aims to "restructure public institutions so that they serve business interests, operate on a business model."<sup>22</sup> This means that in addressing sexual harassment, universities tend to be concerned first and foremost with compliance, just like other businesses. In the academy and other workplaces,

sexual harassment is framed as, “individualized behaviors that result from misunderstandings and lapses in effective management practices.”<sup>23</sup> As Slagter and Forbes point out, “Portraying harassment, and for that matter, discrimination, as an individual act privatizes what is generalized, shared experience. ...[T]his portrayal produces bureaucratic organizations as systematically neutral environments.”<sup>24</sup> However, this “neutrality” is an illusion. It ignores existing power relations and the conditions that make women and other “outsiders” unwelcome on university campuses.

As a result of the audit culture perspective, universities, like other businesses, are primarily concerned with protecting the university from liability.<sup>25</sup> This focus on liability can have a number of consequences that are inconsistent with the understanding of sexual harassment with which I began. For example, many universities, like other workplaces, develop overly broad sexual harassment policies. This was evident in my experience drafting a sexual harassment policy for Eastern Michigan University. The university attorney wanted to ban outright *all* romantic relationships between faculty and students, regardless of whether the faculty member had evaluative authority over the student. Our student population is over 20,000.<sup>26</sup>

The suggestion by our university attorney brings me to another criticism of the way that sexual harassment law is typically understood and implemented in the academy. Too often, the focus is on *sex*, to the exclusion of more common forms of gendered harassment.<sup>27</sup> When our university attorney thinks of sexual harassment, he thinks of young, vulnerable, undergraduate students being preyed upon by lecherous professors. And, while this is certainly a concern, it is not the most common form of harassment, and it plays down the seriousness and effect of many other forms of harassment, other sorts of perpetrators, and other types of victims.

This focus on appropriate sexual behavior also undermines the transformational potential of sexual harassment law and policy. Legal scholars argue that judges presiding over sexual harassment cases have developed an “ideal sexual harassment victim.” This victim is female, young, conventionally attractive, innocent, demure, modest, and exhibits appropriate feminine behavior. For many judges and university employees, a woman must meet the dominant cultural model of sexual virtue and appropriate female behavior to be deemed worthy of protection.<sup>28</sup> Victims of harassment who do not meet these criteria are not deemed worthy of protection, and so are not seen to be victims of actionable sexual harassment or sex discrimination.<sup>29</sup>

I have written elsewhere about this phenomenon in the language of “sexual honor.” However, this “ideal sexual harassment victim” can be characterized in another way. Social scientists have distinguished between hostile and benevolent sexism.<sup>30</sup>

Hostile sexism is an adversarial view of gender relations in which women are perceived as seeking to control men, whether through sexuality or feminist ideology...benevolent sexism...recognizes that some forms of sexism are, for the perpetrator, subjectively benevolent, characterizing women as pure creatures who ought to be protected, supported, and adored and whose love is necessary to make a man complete. This idealization of women simultaneously implies that they are weak and best suited for conventional gender roles; being put on a pedestal is confining, yet the man who places a woman there is likely to interpret this as cherishing, rather than restricting, her (and many women may agree). Despite the

greater social acceptability of benevolent sexism... it serves as a crucial complement to hostile sexism that helps to pacify women’s resistance to societal gender inequality.<sup>31</sup>

These two forms of sexism often co-exist in the same individual, and are triggered by the behaviors of different kinds of women. People who do not recognize themselves as sexist, because they perceive in themselves only positive feelings for women, can be benevolent sexists.

Now, according to what I have said above, the ideal victim for sexual harassment would tend to be a woman who is viewed as “wonderful but weak” and so vulnerable and in need of men’s protection. In the academy, traditional, undergraduate female, heterosexual students best fit this ideal. That this is also the ideal in the social sciences generally is supported by the fact that there is a great deal of research on the sexual harassment of students—and mostly female student—but almost nothing on the sexual harassment of faculty or administrators. In a recent article on sexual harassment in the academy, Billie Wright Dziech, author of the 1986 *The Lecherous Professor*, hardly mentions the harassment of faculty, staff, or administrators. She says that the issues for these groups are the same as in any workplace.<sup>32</sup> However, workplace harassment studies rarely focus on universities or colleges, and there are differences between kinds of workplaces. In addition, the AAUW’s 2005 survey of sexual harassment on campus, *Drawing the Line*, focused exclusively on students.<sup>33</sup>

However, in spite of the focus of judges, attorneys, and much social scientific research on vulnerable college female undergraduates, other research seems to show that it is women who challenge gender roles that are most often sexually harassed, especially in universities.<sup>34</sup> And it is not just women. The AAUW survey showed that lesbian, gay, and transgendered students were more likely to be harassed than heterosexual students, and that male students who were harassed were more likely to be called “gay”—this was the form most of their harassment takes.<sup>35</sup> Furthermore, gender harassment in which no sexual advances take place is more common in many male-dominated professions and has detrimental effects on the way female professionals experience their work lives.<sup>36</sup> But, since none of these people fits the ideal victim model, they are not typically seen as worthy of protection. What this means for the treatment of sexual harassment on college and university campuses is that most of the harassment will not be recognized as harassment, because those who make the decisions about what counts as sexual harassment under policy and law can only perceive certain kinds of people as victims of sexual harassment, and certain actions as sexually harassing actions.

The problem is made worse by the presence of unconscious or implicit bias. Implicit or unconscious bias is bias of which we are not aware, but which can be detected in certain test situations, and can clash with our professed beliefs about members of social groups.<sup>37</sup> These biases can affect our judgments and decisions in every aspect of our academic lives.

Implicit bias is a function of the very way that our minds work. According to psychologists, human beings naturally categorize things, including people. We “create *schemas*, mental frameworks of beliefs, feelings, and assumptions about people, groups, objects. Schemas help us made sense of the world.”<sup>38</sup> We use these schemas to incorporate new information, “so that we do not have to treat all new information as though it is totally unfamiliar, requiring slow, deliberate and thorough examination.”<sup>39</sup> These schemas filter information, helping us determine what should be paid attention to and what can be disregarded. They save us time.

Stereotypes are schemas we use in dealing with people. We may believe that we know what we think about groups of people, or that we can correct for prejudices we know we tend to have toward certain groups, but research suggests that at least some of our prejudices are unconscious, not available to us through introspection. In a fascinating article, Emily Pronin argues that, although most people “recognize the existence, and the impact, of many of the biases that affect human judgment and inference,” they tend not to think that their own judgments and inferences are affected by bias.<sup>40</sup> Furthermore, people who are pressed for time and cognitively overloaded tend to rely on their schemas or stereotypes more automatically.<sup>41</sup> People higher up in hierarchies tend to be people who juggle a lot of tasks and information, and to be pressed for time, and so are not likely to take the time to consider decisions in ways that might avoid their pre-existing schemas.

Now, this is just a gesture at the complex research on implicit bias, but I think that it is clear how it might affect the handling of sexual harassment on campuses. For example, various forms of sexism and implicit bias may enter at every stage of a complaint procedure. Consider the initial complaint. One form our biases can take is in raising or lowering the credibility we give the testimony of a member of a particular group. Women, as a group, tend to be regarded as less credible than a man of the dominant race and class.<sup>42</sup> This is especially true in matters of sex, especially for benevolent sexists. Thus, if the official to whom a complaint of sexual harassment is made tends not to believe women are as credible as men, it is likely that this bias will figure in the official’s decision about whether this is a serious case of sexual harassment.

Research on implicit bias in the law has found that, especially in cases of hostile environment sexual harassment, whether people perceive that sexual harassment has taken place depends on a number of personal characteristics. In research on recent findings of hostile environment sexual harassment by judges in federal courts, Kulik et al. found that, “the age and political affiliation of the district judge significantly affected case outcomes. ...Younger judges and judges appointed by Democratic presidents were more likely to decide cases in favor of the plaintiff than older judges appointed by Republican presidents.”<sup>43</sup> This is relevant to universities and colleges, since, as Kulik et al. point out, “organizational grievance procedures generally parallel legal procedures: when an employee brings a claim of hostile environment harassment, third party decision makers are responsible for determining whether the sexual behavior constitutes a hostile environment and warrants disciplinary action.”<sup>44</sup> Thus, implicit bias and/or benevolent sexism can enter into decisions at every level of a complaint procedure.

Many universities require their faculty and staff to undergo sexual harassment training. This is part of compliance with the law, since it can be brought up as evidence that the institution takes sexual harassment law seriously, in case of a lawsuit. However, implicit bias and the tendency of people to think that they, themselves, are not biased, makes it hard to see how sexual harassment training can have effects beyond telling people what they can be reprimanded for doing.

As I mentioned above, people tend to recognize that bias affects human judgment, but not to recognize that bias affects their own judgments. According to Pronin, there are two main sources of this inability to see the influence of our own biases: (1) we trust introspection in assessing our own bias, and (2) we believe that we perceive reality objectively. The first of these is problematic, because we know that many biases are unconscious, or implicit, and so not available to introspection. The second is coupled with a tendency to attribute bias to

people when they do not agree with us. In fact, “the more people disagree with us, the more we view them as biased.”<sup>45</sup> This means that people who think that certain kinds of behavior are not sexually harassing are unlikely to change their minds even when they are confronted with materials that explain that the behaviors are sexually harassing. They are likely to believe that they are correct in their beliefs, that their beliefs represent objective reality, and that those who claim that the behaviors are sexually harassing are biased. When combined with the research showing implicit bias regarding women, and attempts to change the sexist cultures on college campuses that provide the context for sexual harassment, the results are disheartening. Those who do not see sexual harassment believe that it does not exist, and that those who claim that it does are biased. They have no reason to change their beliefs about sexual harassment, or to try to understand the perspective of their opponents, because they are correct and it is the others who have a distorted vision of the world. This is supported by a study that shows that men who engage with the sexual harassment policy come away with more firmly entrenched biases.<sup>46</sup>

## Conclusion

I have discussed two factors that serve to undermine the transformative potential of sexual harassment law and policy on university campuses: (1) the audit culture and its effects on higher education, and (2) two forms of bias: benevolent sexism and implicit bias. The existence of these phenomena make it very unlikely that the kinds of policies we currently use to address sexual harassment on campus will bring about the cultural shift in the academy that is necessary to eliminate the majority of sexual harassment.

First, women and other groups relatively new to the academy are not likely to benefit from the imposition of the audit culture on higher education. If the bottom line is made better by ignoring the sexual harassing behavior of “star” professors, for example, then the university has every reason to do so. The reputation and recognition brought by such stars far outweighs a few women students or faculty who leave as a result of his actions. This is an effect of an individualized approach to sexual harassment, pitting one employee against another, rather than seeing sexual harassment as a pervasive pattern in campus environments.

Women also stand to lose when sexual harassment is viewed from the perspective of benevolent sexism. In case after case, the harassed woman herself becomes the focus of inquiry—how did she behave—sexually? What did she say—about sex? How was she dressed? Where was she? For example, in *P.J. Herchenroeder v. Johns Hopkins University Applied Physics Laboratory* (171 F.R.D. (1997)), the plaintiff alleged that her supervisor retaliated against her after she refused his sexual advances and that he defamed her in the lab by saying that she had sex with a co-worker.

The issue was brought up...during a deposition, in which the plaintiff refused to answer a question about whether she and the co-worker had ever discussed the possibility of engaging in sexual activity. The defense argued that the answer was relevant to the hostile environment claim because it could have led the supervisor to believe that his conduct was welcomed. The court agreed that the alleged victim’s past sexual behavior was an appropriate inquiry.<sup>47</sup>

Women will not benefit if harassment issues are framed in these terms. Traditionally, women are not supposed to be in laboratories with men, or in classrooms with men, or in departments with men. It is because they are there that they are harassed. It is by means of harassment that they are controlled when they are there, or forced out.

Implicit bias makes attempts to address sexual harassment with policies that comply with the law doomed to failure. Third parties make decisions about the credibility of complaints, the credibility of the alleged harassers, the appropriate action to take, and so on. Implicit bias can affect each one of these judgments in ways that preserve gender stereotypes, even if those making the decisions are completely unaware of unconscious influences on their decisions. Many universities expend few resources on diversity issues, so that the people who are charged with overseeing sexual harassment procedures are often overloaded and pressed for time, creating just the conditions under which people are most likely to go with their gender schemas or stereotypes.

In my view, sexual harassment law and policy will not achieve the ends envisioned by feminists who invented the concept unless issues of equality and access are kept at the forefront. The audit culture of universities, benevolent sexism, and implicit bias undermine efforts to transform universities into places where women and other marginalized groups are welcome and can flourish.

#### Endnotes

1. Margaret A. Crouch, *Thinking about Sexual Harassment: A Guide for the Perplexed* (New York: Oxford University Press, 2001).
2. Diane Crocker, "Criminalizing Harassment and the Transformative Potential of Law," *CLWL* 20 (2008): 87-110; Michelle A. Travis, "Recapturing the Transformative Potential of Employment Discrimination Law," *Wash. & Lee L. Rev.* 62 (2005): 1-87.
3. Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women*, 1997. <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/043c76f98a706362802566b1005e9219?Opendocument> (March 7, 2010).
4. Janet Trapp Slagter and Kathryn Forbes, "Sexual Harassment Policy, Bureaucratic Audit Culture, and Women's Studies," *NWSA Journal* 21 (2009): 144-170.
5. Catherine Hill and Elena Silva, *Drawing the Line: Sexual Harassment on Campus* (AAUW, 2005).
6. P.L. Carr, A.S. Ash, R.H. Friedman, L. Szalacha, R.C. Barnett, A. Palepu, et al., "Faculty Perceptions of Gender Discrimination and Sexual Harassment in Academic Medicine," *Ann. Intern. Medicine* 132 (2000): 889-96.
7. Susan K. Gardner, "Coming Out of the Sexual Harassment Closet: One Woman's Story of Politics and Change in Higher Education," *NWSA Journal* 21 (2009): 171-195.
8. Louise August and Jean Waltman, "Culture, Climate, and Contribution: Career Satisfaction among Female Faculty," *Research in Higher Education* 45 (2004): 177-192.
9. Carrie Baker, "The Emergence of Organized Feminist Resistance to Sexual Harassment in the United States in the 1970s," *Journal of Women's History* 19 (2007): 161-84.
10. The U.S. Supreme Court first established that sexual harassment constituted sex discrimination prohibited by Title IX in *Franklin v. Winnett County Pub. Sch.*, 503 U.S. (1992).
11. *Rabidue v. Osceola Refining Co., a Div. of Texas-American Petrochemicals, Inc.*, 805 F.2d 611, C.A. 6 (Mich.), 1986. November 13, 1986.
12. *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998) and *Ellerth v. Burlington Indus., Inc.*, 524 U.S., 765 (1998).
13. Joanna L. Grossman, "The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law," *Harvard Women's Law Journal* 26 (2003): 3-75.
14. Grossman, pp. 12-13.
15. Grossman, p. 23.
16. See Anna-Maria Marshall, *Confronting Sexual Harassment: The Law and Politics of Everyday Life* (Burlington, VT: Ashgate, 2005.)
17. Rachel L. Osborne, "Sexual Harassment in Universities: A Critical View of the Institutional Response," *Canadian Journal of Women's Studies/Les Cahiers de la Femme* 12, no. 3 (1992): 72-76. Rachel Osborne writes that Canadian universities had developed sexual harassment policies and procedures, but that "this institutional response is inadequate, shortsighted, and ineffective as it fails to address the more fundamental issue underlying sexual harassment: the sexist, hostile, and misogynist environment women inhabit in universities."
18. Ronda Roberts Callister, "The Impact of Gender and Department Climate on Job Satisfaction and Intentions to Quit for Faculty in Science and Engineering Fields," *Journal of Technology Transfer* 31 (2006): 367.
19. Rebecca S. Merkin, "The Impact of Sexual Harassment on Turnover Intentions, Absenteeism, and Job Satisfaction: Findings from Argentina, Brazil and Chile," *International Journal of Women's Studies* 10 (2008): 74. This is not specifically about academe, but jobs generally.
20. Slagter and Forbes. See also Chris Shore and Susan Wright, "Coercive Accountability: The Rise of Audit Culture in Higher Education," in *Anthropological Studies in Accountability, Ethics and the Academy*, edited by Marilyn Strathern (New York: Routledge, 2000), 57-89.
21. Don Brenneis, Cris Shore and Susan Wright, "Getting the Measure of Academia: Universities and the Politics of Accountability," *Anthropology in Action* 12 (2005): 1-10.
22. *Ibid.*, p. 145. See also Strathern.
23. Marshall, cited in Slagter and Forbes, p. 149.
24. Slagter and Forbes, 149.
25. Grossman.
26. See also Vicki Schulz, "The Sanitized Workplace," *Yale Law Journal* 122 (2003): 2061-2193.
27. Emily A. Leskinen, Lilia M. Cortina, and Dana B. Kabat, "Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work," *Law and Human Behavior* 35 (2011): 25-39.
28. For the "idealized victim," see Theresa M. Beiner, *Gender Myths v. Working Realities: Using Social Science to Reformulate Sexual Harassment Law* (New York: New York University Press, 2005), pp. 12, 62. "[C]ommon perception of the manner in which harassment targets should respond to such behavior reveals that there is an 'idealized' victim out there, a chaste, demure woman who never engages in vulgar talk yet is strong enough to object (indeed, 'resist') when confronted with acts of harassment" (62). For discussion of sexual honor, see my "Sexual Harassment and Women's Sexual Honor," presented at the Feminist Ethics and Social Theory conference, Clearwater, Florida, 2009.
29. Beiner cites studies showing that the decisions of federal judges in sex discrimination cases is correlated with "race, gender, and political party." "In anonymous cases a white male Republican judge voted for a sex discrimination plaintiff only 28% of the time, whereas, for example an African American Democratic judge voted for a sex discrimination plaintiff 93% of the time. White female Republican judges voted for sex discrimination plaintiffs much more often than their white male counterparts—53% of the time. ...White male Democratic judges voted for sex discrimination plaintiffs 76% of the time" (Beiner, 7). Beiner is citing the work of Nancy E. Crowe, "The Effects of Judges' Sex and Race on Judicial Decision Making on the United States Courts of Appeals, 1981-1996 (unpublished Ph.D. dissertation, University of Chicago).
30. Peter Glick and Susan T. Fiske, "An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality," *American Psychologist* 56 (2001): 109-118; Peter Glick and Susan T. Fiske, "The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism," *Journal of Personality and Social Psychology* 70 (1996): 491-512; Peter Glick, et al. "Beyond Prejudice as Simple Antipathy: Hostile and Benevolent Sexism across Cultures," *Journal of Personality and Social Psychology* 79 (2000): 763-775. Glick,

- Peter, et al., "Beyond Prejudice as Simple Antipathy," *Journal of Personality and Social Psychology* 79 (2000): 763-775.
31. Peter Glick and Susan T. Fiske, "An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality," *American Psychologist* 56 (2001): 109. See also Jessica J. Good and Laurie A. Rudman, "When Female Applicants Meet Sexist Interviewers: The Costs of Being a Target of Benevolent Sexism," *Sex Roles* 62 (2010): 482.
  32. Billie Wright Dziech, "Sexual Harassment on College Campuses," in *Academic and Workplace Sexual Harassment: A Handbook of Cultural, Social Science, Management, and Legal Perspectives*, edited by Michele Paludi and Carmen A. Paludi, Jr., 147-171 (Westport, CT: Praeger, 2003).
  33. Hill and Silva, *Drawing the Line*.
  34. Berdahl, Jennifer L. "The Sexual Harassment of Uppity Women," *Journal of Applied Psychology* 92 (2007): 425-437. "The current research suggests that sexual harassment as traditionally defined for women—as consisting of sexual and sexist comments, unwanted sexual attention, and sexual coercion—is primarily targeted at women who step out of place by having masculine characteristics, or 'uppity' women. By implication, this suggests that sexual harassment is driven not out of desire for women who meet feminine ideals but out of a desire to punish those who violate them" (434). This is supported by the work of Cortina and Fiske, among others. See Lilia M. Cortina, "Unseen Injustice: Incivility as Modern Discrimination in Organizations," *Academy of Management Review* 33 (2008): 55-75, and S.T. Fiske, "What We Know Now about Bias and Intergroup Conflict, the Problem of the Century," *Current Directions in Psychological Science* 11 (2002): 123-128. According to Cortina, "the most vulnerable might be professionally and economically successful women and minorities—those who are perceived as highly competent and advancing in ways that threaten the dominant minority" (65).
  35. Hill and Silva, *Drawing the Line*.
  36. Emily A. Leskinen, Lilia M. Cortina, and Dana B. Kabat, "Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work," *Law and Human Behavior* 35 (2011): 25-39.
  37. Samuel R. Bagenstos, "Implicit Bias, 'Science,' and Antidiscrimination Law," *Harvard Law and Policy Review* 1 (2007): 477-493; David L. Faigman, Nilanjana Dasgupta, and Ceelia L. Ridgeway, "A Matter of Fit: The Law of Discrimination and the Science of Implicit Bias," *Hastings Law Journal* 59 (2008): 1388-1434; Anthony G. Greenwald and Linda Hamilton Krieger, "Implicit Bias: Scientific Foundations," *California Law Review* 94 (2006): 945-967; Christine Jolls and Cass R. Sunstein, "The Law of Implicit Bias," *California Law Review* 94 (2006): 969-996; Linda Hamilton Krieger and Susan T. Fiske, "Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment," *California Law Review* 94 (2006): 997-1062; Laurie A. Rudman, "Social Justice in Our Minds, Homes, and Society: The Nature, Causes, and Consequences of Implicit Bias," *Social Justice Research* 17 (2004): 129-142; Ralph Richard Banks and Richard Thompson Ford, "(How) Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality," *Emory Law Journal* 58 (2009): 1053-1122; Adam Benforado, "Frames of Injustice: The Bias We Overlook," *Indiana Law Journal* 85 (2010): 1333-1378; Deborah L. Brake, "Perceiving Subtle Sexism: Mapping the Social-Psychological Forces and Legal Narratives that Obscure Gender Bias," *Columbia Journal of Gender and Law* 16 (2007): 679-723.
  38. Kristin J. Anderson, *Benign Bigotry: The Psychology of Subtle Prejudice* (New York: Cambridge University Press, 2010), 10-11.
  39. *Ibid.*, p. 11.
  40. Emily Pronin, "Perception and Misperception of Bias in Human Judgment," *TRENDS in Cognitive Science* 11 (2006): 37.
  41. Marianne Bertrand, Dolly Chugh, and Sendhil Mullainathan, "Implicit Discrimination," *The American Economic Review* 95 (2005): 94-98.
  42. Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press, 2007).
  43. Carol T. Kulik, Elissa L. Perry, and Molly B. Pepper, "Here Comes the Judge: The Influence of Judge Personal Characteristics on Federal Sexual Harassment Case Outcomes," *Law and Human Behavior* 27 (2003): 81.
  44. Kulik, et al., 71.
  45. *Ibid.*, p. 39.
  46. Justine Eatenson Tinkler, Yan E. Li, and Stefanie Mollborn, "Can Legal Interventions Change Beliefs? The Effect of Exposure to Sexual Harassment Policy on Men's Gender Beliefs," *Social Psychology Quarterly* 70 (2007): 480-494.
  47. Ellen Sekreta, "Sexual Harassment, Misconduct, and the Atmosphere of the Laboratory: The Legal Professional Challenges Faced by Women Physical Science Researchers at Educational Institutions," *Duke Journal of Gender, Law and Policy* 13 (2006): 128.

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## ***Growing Their Profession, Interpreting the Law: Human Resources and the Management of Sexual Harassment Complaints in the University***

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In this essay, I bring together insights gained from three interrelated research projects to think about the ways contemporary approaches to sexual harassment may do more to grow the cadre of human resources professionals and mid-level bureaucrats than it does to address gender inequities. I examine the construction of sexual harassment policy at one university, the managerial interpretation of a specific case of sexual harassment on this same campus, and how the field of human resources presents the management of sexual harassment. I illustrate how practices and organizational structures of human resources personnel centralize control over sexual harassment complaint procedures and narrow the definition of sexual harassment while also communicating legal compliance.

In December 2008, California State University settled with Lindy Vivas for \$5.2 million, after the university had appealed the \$5.8 million jury verdict awarded in July 2007. Her settlement marked the end of a multi-year legal saga involving three high-profile gender discrimination suits in the Fresno State Athletic Department: in addition to Vivas, former senior female athletic department administrator Diane Milutinovich won an out-of-court settlement of \$3.5 million in October 2007, while former women's basketball coach, Stacey Johnson-Klein, who had been awarded a \$19 million verdict by the jury in December 2007 (later reduced to \$6.6 million by the judge) agreed to a \$9 million settlement on June 17, 2008 (Hostetter 2008). All three litigants were fired because of their forthright advocacy of Title IX and because they dared challenge the gender hierarchy long present in the athletic department. For Vivas and Johnson-Klein, their experiences of gender discrimination also included sexual harassment by members of the Athletic Department management team.

In the weeks following each of the verdicts and settlements, local radio talk shows and newspaper editorials were ablaze with condemnations for university officials who, in the opinion

of many community commentators, were worthy of blame but acted as if beyond reproach. Local advocates for women's sports were notably angered by administrators' continued assertions that they had followed both university and legal procedures in handling the complainants' grievances. Many questioned why university administrators did not ameliorate gender inequities in the athletic department, especially as the voluminous trial evidence showed that the litigants had been reporting on gender discrimination for over a decade. Some people speculated that important donors, fed up with the litigants' advocacy for women's sports, threatened to withdraw support if the university continued to employ the women. Others contended that the football coach, whom they believed wielded power over the university president, called for their termination. The less conspiratorial-minded cited professional incompetence and rudderless leadership as the prime causes of the multi-million dollar outcomes.

These multiple explanations signal uneasiness both with the growing influence of private interests on public institutions and with the lack of accountability for privileged leaders. However, they also elide the more fundamental question of *how* the university bureaucracy managed for so long to deflect sexual harassment and other gender discrimination charges while simultaneously demonstrating compliance with the mandates of anti-discrimination law to its employees. Indeed, in each of the cases, administrative personnel established that they had followed internal complaint procedures but had repeatedly found that the women's claims either lacked validity or did not meet the legal threshold of actionable conduct.

In this essay, I examine the organizational structures and complaint procedures that enable university bureaucrats to manage sexual harassment and gender discrimination rather than to resolve deeply divisive employment disputes. I bring together insights gained from three interrelated research projects to think about the ways contemporary approaches to sexual harassment may do more to grow the cadre of human resources professionals and mid-level bureaucrats than to address gender inequities. The first project, completed with my colleague Janet Trapp Slagter, explores the mundane processes of university sexual harassment policy formation to elucidate the social organization of power in our university and map the forces that shape local, bureaucratic understandings of sexual harassment (2008). In a second project, an ethnographic investigation of the workplace disputes that led to the aforementioned gender discrimination lawsuits, I look at both public and institutional reactions to these court cases and examine data pertaining to the litigants' experiences with the internal dispute resolution system afforded to them by university policy. Finally, in a third project, I connect these case studies to a review of how human resources professionals rhetorically construct the financial risks of sexual harassment litigation, despite the lack of evidence from adjudicated awards, and how their interpretations shape the organization of bureaucratized academic workplaces.

Not surprisingly, the findings of these projects suggest that ambiguities in employment law vest university middle managers with the power to interpret sex discrimination in light of university interests rather than civil rights commitments (Edelman, Abraham, and Erlanger 1992). Indeed, shielding the institution from costly litigation motivates how university administrators steer the trajectory of complaint handling; however, university administrators seem equally concerned with using dispute resolution procedures to grow their own professions and fortify their own expertise. Thus, for them, concern for the reproduction of the bureaucracy itself supplants interest in the instrumental use of law to address sexual harassment.

## **Perspectives on the Management of Employee Complaints**

While employee disputes about sexual harassment come under the purview of the law, we usually do not use the courts to find a remedy; instead, we use informal measures and employer-created complaint systems. Legal mobilization studies (e.g., Blackstone, Christopher Uggen, and Heather McLaughlin 2009; Ewick and Sibley 1998; Marshal 2005) and sociological research on work (e.g., Edelman, Erlanger, and Lande 1993; Kihnley 2000) document how structural arrangements of power in the workplace affect dispute dynamics and complaint outcomes. Interconnected insights from this literature inform my discussion of university administrators' instrumental use of the sexual harassment complaint process.

First, internal complaint procedures may intercept grievances headed for the external legal system (Albiston 2005). Ideally, complaint procedures de-escalate workplace conflict by attending to its source early on in the dispute. Employer complaint systems, then, have the potential to take a more expansive view of employee misconduct in assessing employee actions and disciplining errant workers than that operant in the legal environment. Edelman, Uggen, and Erlanger (1999) argue that it is more likely that complaint procedures offer narrower interpretations of workplace grievances than those afforded by the law. In egregious instances, employers use complaint procedures to normalize illegal behavior or to dissuade workers from claiming legal entitlements (Felstiner, Abel, and Sarat 1980-81). In short, even if complaint procedures do not resolve workplace disputes and, instead, function to shield the employer from liability, they still communicate that the employer is striving to comply with the law and to mitigate any harm to the aggrieved.

The power of complaint procedures, then, derives in part from the symbolism it wields. The formality of the procedures, their likeness to that of legal forums, gives an imprimatur of legitimacy. Edelman (1992) found that the closer the organization to the public sphere, the more elaborate the symbolism of the complaint procedures, reflecting heightened expectations for legal compliance among government offices and in businesses that hold government contracts. Organizations that have personnel departments also tend to have more expansive complaint procedures, as these units are the main conveyers of legal compliance within institutions (DiMaggio and Powell 1983). Administrative personnel develop these symbolic structures by drawing on broad trends in human resources management, which adds to the potency of administrative intervention into workplace disputes.

The field of human resources personnel have secured its expert status and control over legal compliance symbolism through the central role their profession has played in the history of increasingly bureaucratized employment structures and practices (Jacoby 2004). Human resources personnel and offices propagate policies and practices that steady relations between management and employees through industry publications, professional associations, and social networks. Thus, norms and practices for complaint procedures and anti-discrimination policies developed in one industry are dispersed to others, sometimes regardless of the relevance of their application or of their effectiveness. For instance, even as employers and the courts have unquestionably framed training as a way to address sexual harassment, the efficacy of training as a means of prevention continues to be hotly disputed among sociologists and organizational psychologists (see Grossman 2003). Bisom-Rapp (2001) and Rhode (2006) argue that the court's recognition of sexual harassment training as proof that managers have taken appropriate steps to address it did not

emerge from valid and reliable data gathered from empirical tests of training programs. Instead, the courts took the mere presence of training programs in the workplace as proof that employers were acting reasonably to protect employees from sexual harassment. The Supreme Court's suggestion in *Meritor Savings Bank v. Vinson* (1986) and later in *Faragher v. Boca Raton* that employer policies could mitigate employer liability for sexual harassment "set off a feeding frenzy among human resource professionals and consultants" (Marshall 2005) who defined themselves through professional publications, workshops, and conferences as the only reliable arbiters of effective policy creation within organizations. These claims to exclusivity of their expertise, in turn, may obfuscate instances in which human resources personnel narrow the interpretation of the law in light of managerial interests.

### **Sexual Harassment Policy Creation and the Centralization of Control**

From August 2005 to November 2006, my Women's Studies colleague, Janet Trapp Slagter, and I worked with the University Personnel Committee, the Academic Senate, and the Vice-President of Academic Affairs to write a new sexual harassment policy for our campus. We hoped that our participation would result in more comprehensive and effective procedures for addressing sexual harassment and in changes to the organizational structures charged with overseeing gender equity issues among faculty, staff, and students. We did not fully meet these goals but our participation did afford us the opportunity to develop an analysis of the bureaucratic thinking and the social organization of power that significantly shapes the interpretation of law within our workplace (Slagter and Forbes 2009).

Two facts from our case study illuminate how human resources personnel position themselves as the *only* institutional experts able safely and effectively to oversee sexual harassment complaints and resolutions. First, administrators and human resources personnel denied our suggestion that additional information be included in the policy about resources available to those who wanted help resolving a particular situation but did not want to make a formal complaint. Anecdotal evidence from female faculty suggested that mandating that supervisors report sexual harassment immediately upon being made aware of the behavior silenced some complainants and stifled productive conversation about how individuals might address harassing behavior without involving administrative personnel. In both the Academic Senate and on the University Personnel Committee, we argued for inclusion, either in the policy or on a website devoted to the policy, of suggestions about how an individual could react to harassing behavior without setting in motion the formal complaint procedure. We reasoned that some complainants would "rather" resolve the situation on their own but would need information about the most effective strategies for stopping the behavior. We also believed that providing such information would help employees confront troubling behavior so that it would not develop into legally prohibited conduct.

Human resources personnel convinced the University Personnel Committee that complainants and (in cases that entered the court system) juries could construe the official sponsorship of such a website as evidence that the university did not intend to respond swiftly and appropriately to instances of sexual harassment. They surmised that while employees should be able to identify specific types of behaviors that count as sexual harassment, prospective complainants should not evaluate whether the actions met the legal threshold of harassment: only human resources personnel should judge this. Thus, the institutional preference for informally resolving employment disputes *excludes* employees working out differences and attending to discriminatory behavior *without*

human resources personnel, who are much more likely to frame discriminatory behaviors as lapses in judgment rather than as evidence of structural discrimination.

Second, the University Personnel Committee and human resources personnel dismissed our request for dispersed college-level reporting sites in favor of the continuation of a centralized university-wide reporting structure. Centralized reporting assumes that employees and students feel comfortable going to administrative offices, in this instance, the Director of Human Resources for employees and the Office of the Vice President for Student Affairs for students. We have found that for many complainants at our university, centralized reporting is unsatisfactory. Centralized reporting diminishes the chances that complainants will find *advocates* for either them, because human resources personnel frame their institutional roles as that of neutral investigators; advocacy for individuals and/or for gender equality in the organization is, by their own definition, outside their charge. Furthermore, as Kihnley (2000) notes, in centralized grievance procedures the "organization retains control over the dispute process and has an interest in the outcome of the dispute as it seeks to avoid expensive litigation and negative publicity" (73).

Our suggestion for a dispersed process was not included in the policy because human resources personnel successfully convinced those writing the policy that having other employees involved in complaint procedures posed a liability risk. Only human resource professionals, they argued, had the expertise to do this work. We drew on examples from other universities to counter these claims and to suggest that the university could train designated faculty to receive complaints. Good training and sound reporting procedures would mitigate potential liability claims. We also pointed out that some campus faculty already had research expertise on gender discrimination in the workplace and could parlay scholarly knowledge into practical applications to facilitate campus sexual harassment complaint procedures. Administrators dismissed both assertions, and the rationale given for dismissal, that of potential legal liability from improper handling of complaints, went uncontested by faculty, signaling at least partial acceptance of human resources' exclusive claims both to expertise on workplace conflict and to institutional neutrality. What is more, the management frame of sexual harassment, which included assertions that the law was so complicated that only human resources personnel should be trusted with all stages of the complaint process, normalized the centralization of control within human resources.

Sexual harassment policy, then, invests human resources personnel with singular authoritative control over sexual harassment complaints. In this capacity, what shapes the manner in which human resources professionals enact policy? Alternatively, to ask a slightly different question, how do complainants fare in the internal complaint process managed by human resources professionals? How do human resource professionals manage the process in such a way that reproduces their organizational power and authority to name discrimination? Data from a second research project informs some preliminary answers.

### **Defusing Claims through Bureaucratic Procedures**

In 2005, I began an ethnographic investigation of the above-described legal disputes at issue in the three gender discrimination suits in our university's athletic department. My study frames university athletic programs and community patronage of them as sites of cultural struggle where people negotiate the meaning of legal entitlements to gender equitable treatment, the contours of gender relations, the allocation of resources, and the place of athletics in community culture. In turn, I examine how these negotiations and meaning-making

processes are affected by the intensely bureaucratic settings that reflect contemporary and historical realities of specific educational institutions and of broader trends in higher education.

As noted earlier, in two of the three gender discrimination lawsuits, the complainants alleged sexual harassment. For simplicity, I focus on the Vivas case, although each lawsuit provides important insights into human resource personnel's management of dissent. Lindy Vivas was head coach of the women's volleyball team at Fresno State from 1990 to 2004. During her fourteen-year tenure, she had an overall win loss record of 263-167; the Western Athletic Conference named her coach of the year three times; and she qualified for post-season tournament play more times than any other coach in Fresno State Athletic Department history.

Throughout her time at Fresno State, Vivas advocated for Title IX. She repeatedly reported incidents of gender discrimination to Athletic Department supervisors, to human resources personnel, and to the Provost. For instance, she entered a formal complaint about gender pay inequity among the coaches: the university awarded the coaches of women's teams with shorter contracts and less pay than coaches of men's teams. She reported to the campus Title IX coordinator and to the Office of Civil Rights that funding and institutional support for the women's volleyball program failed to meet Title IX guidelines. She also reported that her supervisors and her male colleagues in the Athletic Department created a hostile work environment that impaired her ability to do her job. On at least one occasion, an athletic department administrator inappropriately touched her.

Despite her outstanding record, in December of 2004 the university did not renew Vivas' contract because, the Athletic Director contended, she failed to meet performance standards. Three years later, the court found that she was fired for her gender, her marital status, her perceived sexual orientation, and her whistle blowing on gender discrimination within the Athletic Department.

Prior to the university discharging her, Vivas had exhausted campus grievance options for her Title IX, gender discrimination, and sexual harassment claims. Like most universities, the campus Title IX coordinator is also the head of the Department of Human Resources. At the CSU system level, the office charged with investigating Title IX complaints, the Office of General Counsel, is also the office charged with defending campuses against lawsuits that claim Title IX violations and other forms of gender discrimination. Vivas testified at a California Assembly hearing convened to investigate Title IX issues at Fresno State that this institutional arrangement "(w)as like having the fox guard the hen house." Commonplace but in no way ideal, this institutional arrangement allows for, if not encourages, institutional liability concerns to prevail over commitments to gender equity. Perhaps this helps explain why the head of human resources at Fresno State failed to find in favor of *any* complainant charging gender discrimination and rarely sided with the aggrieved in sexual harassment complaints during her tenure as an administrator, which stretched more than a decade.

But a commitment to protecting the university from liability claims seems inadequate to explain fully why university investigators failed to find in favor of Vivas in any of her complaints, including that of hostile work environment, especially when one considers the voluminous amount of evidence presented at trial. When coaches of men's teams chose "Ugly Women Athletes" as the theme for a departmental luncheon where "humorous drawings and photos" of male coaches posing in drag adorned the walls, human resources

determined it was in jest. When the baseball coach repeatedly referred to the softball team as "dykes on spikes," human resources told the players to "turn the other cheek." When three coaches went to a local talk radio host to complain about Vivas' and Milutinovich's advocacy of Title IX and remained in the station as the radio host went on a tirade against the women that included homophobic remarks, human resources administered no discipline to the coaches. More striking, however, was the persistently contentious, if not threatening, struggle over the allocation of resources within the athletic department that included yelling matches at department meetings. In addition, the Federal Office of Civil Rights confirmed that the distribution of resources in the Athletic Department violated Title IX. How did a small army of administrators fail to view these acts as creating a hostile working environment?

Bureaucratic understandings of sexual harassment and power in the workplace contributed to administrators' blindness. More specifically, the management framing of sexual harassment neutralized the ability of human resources personnel and administrators to see harassing behavior as connected to and emanating from, structural inequality within the organization. Defined by human resources personnel as "individualized behaviors that are a result of misunderstandings and lapses in effective management practices," sexual harassment is, by this definition, limited to episodic, aberrant behaviors of specific individuals (Slagter and Forbes 2009). The workplace, in this world view, is a level playing field where meritorious employees advance through superior performance and through the accumulation of valued skills and training. Thus, women's stalled professional advancement is the result of not developing the human capital necessary to obtain employment rewards: the onus of failure is on individual women. Universities adhere to this line of thinking, as educational institutions rhetorically position themselves as governed by systems of merit. Ensnared in democratic idealism, universities purport to provide employees with an equality of opportunity: although faculty, coaches, and administrators may come from disparate backgrounds, once on campus, the university rewards talent and performance by giving everyone an equal shot at advancement.

In contrast, feminist frames of sexual harassment view it as a tool of gender discrimination, embedded within work dynamics that are constitutive of the organizational structures that marginalize women. In their review of workplace ethnographies, Lopez et al. (2009) find that sexual harassment is "often motivated by defense of masculine job identity" and of men's "privileged access" to jobs defined as belonging to men (22). From this viewpoint, Vivas was trespassing on decidedly male turf in her job as a Division I coach in an athletic department that was far from fair in its treatment of women's sports. Men in the athletic department responded to her with harassing behavior meant to quell her advocacy for Title IX. At Vivas' trial, witnesses testified that athletic department supervisors had talked about wanting her to leave the university so that they could ignore those forms of gender equity compliance that were perceived as threatening male symbolic and material privilege. Sexual harassment channeled male employees' resistance to the institutional challenges Vivas presented.

In contrast, court testimony from human resources personnel dismissed the discriminatory effect of these actions by defining them as examples of adolescent boy humor that should stop but that did not warrant disciplinary action. In the cases of Vivas and the two other litigants, the male privilege men enjoy in the arena of sports extended to them as employees and workers. Rather than be outraged by the behavior, human resources personnel and other administrators repeatedly

portrayed the offending men as well-meaning, naively brutish employees who could be refined through kindly administrative mentoring. Such a generous interpretation relies on sexual harassment being seen not as a tool of discrimination, used to reproduce male hierarchy, but as discrete instances of bad behavior, and, indeed, literature from the field of human resources encourages such a narrow view of sexual harassment (see review by Marshal 2005).

### Human Resources Professional Literature

In a third research project my colleague from the CSUF Department of Political Science, Yishaiya Abosch, and I compare employer constructions of liability risk of sexual harassment complaints with the financial realities of sexual harassment litigation in order to: 1) examine how the field of human resource professionals interpret sexual harassment law, jury awards, and settlements; 2) analyze how lay constructions of the law influence and are shaped by bureaucratic organizational structures and policies; and 3) ascertain how lay constructions of sexual harassment law affect legal and organizational understandings of other forms of gender discrimination in the workplace. Here I focus on the portion of the project in which we examine how human resources professionals frame the threat of sexual harassment, ascertained by reviewing the content of relevant articles published in professional bulletins, training programs, and ten highly rated human resources professional journals published between 2003 and 2010. We analyze the language used to describe and the evidence used to substantiate the threat sexual harassment poses to employers.

Our review finds that the human resources literature uses the above-described managerial frames of sexual harassment to secure the position of human resources personnel in bureaucratic organizations. In part, overstating the financial risk of employer liability accomplishes this task. Human resource bulletins use unusually large awards as cautionary tales for employers, as evidenced in publications that describe the Stacy Johnson Klein jury verdict of \$19 million in December 2007 as an indicator that plaintiff victories in harassment suits are on the rise. These same publications usually fail to mention that the award was later dramatically reduced to \$6.6 million by the judge and eventually settled for \$9 million inclusive of attorney fees. We believe that, in part, this overstatement stems from the professional interests of human resource personnel, training providers, and legal practitioners, who work to grow their related industries and to maintain their expert status on sexual harassment and other forms of discrimination in the workplace.

Professional journals and training programs regularly state that employees who harass may be held personally responsible for financial damages awarded to a complainant; in fact, court awards of this nature are rare. Of course, this threat may scare people into compliance with employment law, which might not be altogether a negative outcome. At the same time, the literature underscores the important role human resources personnel play in protecting both witnesses to sexual harassment and perpetrators of sexual harassment. The literature also emphasizes that human resources personnel can protect those who might be wrongly accused or those who may make a mistake. Human resources personnel, then, can manage complaints as the literature repeatedly states that human resources personnel should be consulted whenever there is doubt about employee interactions.

Important to my purposes here are the ways that interpretations of sexual harassment travel across workplaces through the field of human resources. The lexicon used to describe and the components considered necessary for valid complaint procedures suggest that the field of human resources encourages bureaucratic relationships and arrangements of

power that are very much alike across industries even when the similarities leave out important differences to the shape and scope of sexual harassment in different fields. Because authors state that the complexity and evolution of sexual harassment law necessitates that only human resources personnel deal directly with sexual harassment reporting and resolution, sexual harassment is more likely to be managed rather than prevented as the literature fails to recognize the systemic roots of sexual harassment.

### Discussion

Together findings from these research projects demonstrate how human resources operate to define sexual harassment narrowly and to maintain control of the complaint process. This bureaucratic unit controls the definition of sexual harassment even as feminist sociological research and feminist legal theorists work for a more expansive and nuanced understanding of sexual harassment and gender discrimination. Linking an analysis of the process of sexual harassment policy formulation to both an examination of a particular case and to the broader constructions of sexual harassment complaint procedures affords an understanding of how an institution can allege compliance with employment law even as the employees fail to observe the regulations or fail to address institutional inequities that give rise to the behavior. Human resources personnel, then, through their management of sexual harassment policy, communicate that the institution is responsive in action and in commitment to anti-discrimination laws and regulations.

Rather than accept administrative bureaucrats' interpretations of the law, Vivas and the two other Fresno State litigants armed themselves with a deep understanding of employment discrimination and extensive evidence that supported their cases. Their experiences in countering the advantage in terms of both authority and personnel held by the university speak to the necessity of having well-informed employees to battle bureaucracies. Their experiences also suggest that employees who report sexual harassment may not be helped by institutional complaint procedures. Institutional remedies to sexual harassment and other forms of discrimination sometimes seem to coddle offending personnel more than penalize them. What is more, the enactment of legal compliance with sexual harassment law reflects not only institutional interests but also the professional interests of human resources to grow their own occupations through their claims of exclusive arbiters of sexual harassment guidelines, reporting procedures, and disciplinary measures for offenders.

### Bibliography

- Albitson, Catherine. "Mobilizing Employment Rights in the Workplace." *Handbook of Employment Discrimination Research*. Netherlands: Springer, 2005.
- Bisom-Rapp, Susan. "Fixing Watches with Sledgehammers: The Questionable Embrace of Employee Sanctioned Sexual Harassment Training by the Legal Profession." *University of Arkansas at Little Rock Law Review* 147 (2001): 156-61.
- Blackstone, Amy, Christopher Uggen, and Heather McLaughlin. "Legal Consciousness and Responses to Sexual Harassment." *Law & Society Review* 43, no. 3 (2009): 631-668.
- DiMaggio, Paul J. and Walter W. Powell. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." *American Sociological Review* 48, no. 2 (1983): 147-160.
- Edelman, Lauren B., Steven Abraham, Howard Erlanger. "Professional Constructions of the Legal Environment: the Inflated Threat of Wrongful Discharge Doctrine." *Law and Society Review* 26, no. 1 (1992): 47-83.
- Edelman, Lauren B., Howard Erlanger, and John Lande. "Internal Dispute Resolution: the Transformation of Civil Rights in the Workplace." *Law & Society Review* 27, no. 3 (1993): 497-534.

- Edelman, Lauren B., Christopher Uggen and Howard Erlanger. "The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth." *American Journal of Sociology* 105, no. 2 (1999): 406-454.
- Ewick, Patricia and Susan S. Sibley. *The Common Place of Law*. Chicago: University of Chicago Press, 1998.
- Felstiner, William L.F., Richard Abel, and Austin Sarat. "The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming." *Law and Society* 15, no. 304 (1980-81): 632-54.
- Grossman, Joanna. "The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law." *Harvard Women's Law Journal* 26 (2003): 3-75. <http://www.law.harvard.edu/students/orgs/jlg/vol26/grossman.pdf>. (December 9, 2006).
- Hostetter, George. "Vivas, CSU Reach Agreement: Former Fresno State Volleyball Coach to Receive Cash Payment, Annuity in Settling Discrimination Suit." *The Fresno Bee*, December 16, 2008. <http://www.proquest.com.htmlproxy.lib.csufresno.edu/>. (April 23, 2009).
- Jacoby, Sanford. *Employing Bureaucracy: Managers, Unions, and the Transformation of Work in the 20<sup>th</sup> Century*. Mahwah, NJ: Lawrence Erlbaum, 2004.
- Kihnley, Jennie. "Unraveling the Ivory Fabric: Institutional Obstacles to the Handling of Sexual Harassment Complaints." *Law and Social Inquiry* 25, no. 1 (2000): 69-90.
- Lopez, Steven H., et al. "Power, Status, and Abuse at Work: General and Sexual Harassment Compared." *The Sociological Quarterly* 50 (2009): 3-27.
- Marshall, Anna-Maria. *Confronting Sexual Harassment: The Law and Politics of Everyday Life*. Burlington, VT: Ashgate Publishing Co, 2005.
- Rhode, Deborah L. "Sexual Harassment Training: Is it effective?" *National Law Journal Online*, January 16, 2006. <http://www.nlj.com>. (December 9, 2006).
- Slagter, Janet Trapp and Kathryn Forbes. "Sexual Harassment Policy, Bureaucratic Audit Culture, and Women's Studies." *NWSA Journal* 21, no. 2 (2009): 144-170.

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## ***Tracking Audit Culture: Sexual Harassment Policy, Faculty Governance, and 'Transformation' in the Corporatized University***

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As a philosopher tenured in women's studies, I have found the suggestion by Kathryn Pyne Addelson—that philosophers become sociologists—personally and professionally instructive (Addelson 1991). Becoming a sociologist and reasoning from the detailed contents of experience within social institutions entails giving up objectivity and the notion of neutral facts and theories. It involves recognizing the subjectivity involved in the selection of questions, methods, topics, and admits the situatedness, as Donna Haraway named it (1988), of the knower/actor. The present study contains the ruminations of an academic worker, a participant/observer, involved in crafting, advocating for, and reflecting on policymaking in the contemporary academy. Grounded in the empirical, it is an attempt at recognizing that "truth is not discovered, it is enacted. The task of both philosophers and sociologists is to explain how" (Addelson 1991, 111).

Analysis presented here grew out of earlier work with my women's studies colleague, anthropologist Kathryn Forbes. Through our efforts on university governance bodies, we wrote an analysis of the functioning of contemporary bureaucracy as we strove to shape a feminist sexual harassment policy on campus and to demonstrate the importance of academic women's studies to the institution (Slagter and Forbes 2009).

The current study updates and analyzes policy formation in its bureaucratic context. I discuss some current trends in university administration, as viewed through the enactment of harassment policy and its implementation, and through the development of other very recent policies that restrict faculty autonomy and limit shared governance. Reasoning that such actions point to the decline of faculty power, I make some suggestions to strengthen faculty governance positions. An earlier version of this paper was presented at the Pacific APA meeting, April 23, 2011.

Anthropological researchers analyzing surveillance systems applied to British higher education have labeled these practices "bureaucratic audit cultures."<sup>1</sup> Central to audit culture's functioning in higher education is the belief that any set of important campus activities can and must be conceptualized and designed so that the "effectiveness" of their results can be assessed through numerical measures. Despite the clearly revealed failure of corporate accountancy practices in the inter/national economic sphere over the last several years, and at the same time because of economic failures connected to these practices, U.S. university administrations are eagerly adopting and assiduously implementing accounting-derived methods as they rush to install regimes that mimic business models and serve business interests. Gaye Tuchman catalogs the components of these changes that universities code as institutional "transformation"<sup>2</sup> in her revealing study of an unidentified, eponymous Wannabe U caught in contemporary external and internal pressures to be more efficient, to provide students with workforce training, and to find outside revenue streams within chains of accountability (Tuchman 2009). Tuchman reminds us (178) that auditing does not have to be tied to accountability; it can be diagnostic. But current schemes use the results of audits to make decisions about universities' programs, curricula, staffing, directions, faculty and course evaluations, and even institutional mission.

While the logic, vocabulary, and practices of managerial rationality is contagious among administrators, the six predominant U.S. accrediting associations that colleges and universities must answer to contribute as well, and enforce the use of accountancy interpreted as accountability by insisting that institutional reviews conform to them.<sup>3</sup>

This article first updates and analyzes sexual harassment academic policy formation in relation to its bureaucratic context in a state university, tracing developments since events described in the article mentioned above (Slagter and Forbes 2009). In discussing new developments in campus sexual harassment policy and then in other policy formation I demonstrate the expansion of audit culture, the weakening of faculty authority in shaping academic campus policies and of faculty governance in general. I point to some of the tools that are reshaping campuses. Convinced that increased corporate-style auditing is a mistaken path, I think that documenting it, monitoring efforts that expand it, and acting to change it can help institute, preserve, and reclaim the goals of a liberal education.

### **Writing Sexual Harassment Policy in a Setting Dominated by the Legal Bottom Line**

Organizational culture does not view institutions as operating within contexts of inequality. Sexual harassment is framed as individual and aberrant behavior that strays from otherwise rational trajectories, that represents "lapses in effective management practices" (Marshall 2005, 79-80). Knowing that institutions are gendered and replicate social patterns of gender discrimination, Kathryn Forbes and I, from our positions on the personnel committee and the academic senate respectively, attempted to craft a policy that would address campus climate holistically.

Sexual harassment does not conveniently fit into the two categories accepted for measuring it. While quid pro quo harassment is relatively straightforward and addresses specific interactions between two persons, hostile environment harassment is not easily reducible to the parameters whose dimensions proceed from case law. Hostile environment harassment, by the university's current and its three former policies on sexual harassment, requires a "pattern of severe or pervasive . . . verbal or physical conduct of a sexual nature that interferes with a reasonable individual's work or educational performance or creates an intimidating, hostile, or offensive working or learning environment."<sup>4</sup> That women, transgendered people, and gay and lesbian and queer people live in a world saturated with subtle and overt challenges to their persons is a reality outside the acknowledged world of rational management regimes. Administratively unrecognized, omnipresent social practices of hostility that some people experience will not be addressed. Adjudicating sexual harassment cases requires that there be identifiable perpetrators who commit sufficiently egregious acts. When no one specific perpetrator can be identified as responsible for a pattern of conduct, complainants are unlikely to be judged to have a case. The administration apparently reasons that the absence of a legal case is tantamount to the absence of harassment, and so the institution's obligation to its members is met. The institutional attitude is "good" because the market values—increasingly the predominant institutional goals—of efficiency and cost-containment are preserved.

As an academic senator working to reformulate the sexual harassment policy, and the successor state-mandated policy that addresses a variety of forms of harassment, I proposed broad-based, face-to-face training for faculty, staff, and students on recognizing and preventing harassment. The student services division ruled that the academic senate had no authority to address student conduct, and the student senate chose not to prioritize considering the policy. In late 2007, the senate passed an amendment I wrote, based on suggestions from women's studies students who researched sexual harassment on campus, that included face-to-face training of faculty and staff. Yet, over the course of the summer of 2008, these training provisions were removed from the policy the president approved. Another provision I authored, requiring inclusion in syllabi of a statement outlining the university's lack of toleration for all listed forms of harassment, passed the senate unanimously<sup>5</sup> but was similarly erased from the approved policy.

The refusal to address sexist, homophobic, racist, classist, ageist, and anti-immigrant campus culture is evidence of administrative reckoning that as long as policy corresponds to the minimum legal requirements, it is sufficient. The policy therefore does not really address concerns specific to college campuses, their sites of open conversation, questioning, and varied forms of social interaction among widely different people. Instead the business-derived, employee relations model on which sexual harassment policy has developed, a model that focuses on reducing institutional liability rather than reducing the problematic climate itself, defines policy content.

Although there is a section of the new policy that concerns students, it is not written to clearly distinguish forms of harassment students are likely to experience that involve differences in institutional hierarchical power from forms of harassment they experience horizontally. The policy repeats the employee section's definitions verbatim, when it could be written with students' realities in mind and offer explanations particular to their lives. The institution has not decentered employee-employer interactions, as represented in adjudicated case law, in its approach.

Moreover, in instituting the new 2008 harassment policy, governance pathways mandated by the university's academic assembly constitution and the CSU Board of Trustees policy<sup>6</sup> were abandoned in the upper level bureaucratic approval process: academic senate was not informed of the presidential decision regarding the policy we had passed, nor was the much-changed policy he approved brought to senate by the president or a vice president for our questions and discussion. When asked about the approved policy that was posted to the university web site, the senate president agreed to find out what transpired, but he reported he could not secure an explanation beyond that there were contributions from the university's legal staff.<sup>7</sup> Lack of administrative explanation reveals the tenuous nature of contemporary faculty power in policy creation as well as management assessment of the (lack of) importance of collaboration with faculty despite the academic policy requirement that "[I]n the event the President does not approve a recommendation of the Academic Assembly, the President shall state reasons in an expeditious manner to the relevant body in writing."<sup>8</sup> My attempts to uncover the trail of the policy's changes resulted only in the retiring vice president for personnel emailing me her archives on this policy the last day she was in office. The four hundred pages she sent contain neither the policy we passed in 2007 nor any reference to it.

Mysteriously, the 2008 policy, too, has been replaced. In September 2010 a new academic senate president brought senate a new interim policy submitted by the administration and asked that we approve it as interim. Just as no administrator brought the much-revised 2008 policy to senate for discussion, no administrator appeared to speak for or about the new 2010 policy. With few members who had been in senate in 2008, the senate passed the policy as interim.

What of the senate-approved educational provisions that might actually improve campus climate? There were no discussions between administrators and senate on this issue. Instead, due to the requirements of a costly sexual harassment legal settlement, the university instituted a biennial, three-hour online training program for those classified as supervisors.<sup>9</sup> The new policy promised that a "proactive program" to "educate the campus" will be instituted. Current policy lists measures that include: reminders of policy and procedures, announcements of available information, distribution of printed material, information to be printed in the catalog and distributed to new employees and students, and the use of employee training as mandated by law.<sup>10</sup> At the time of this article's writing, fourteen months after the senate approval of the interim policy with its minimal training requirements, the first educational step has just been taken. The university has distributed a brochure to faculty, "A Respectful Campus." The colorful brochure repeats whole sections of the legalistic harassment policy with no further explanation or examples that might enrich constituents' understanding.

### **Declining Faculty Power**

The story of the harassment policy that faculty developed and administrators completely changed illustrates the weakness of faculty's role in university governance. Of the many more examples, reconstructions of campus governing structures, the use of task forces, and the turn to outside vendors for student evaluation rubrics (which must now be titled student "ratings"), audit-based pedagogical training, and university reconfiguration plans disclose new administrative goals with respect to the shape of universities and faculty decision-making within them.

### **University Senates**

There is a noticeable move away from academic senates or faculty senates to university senates.<sup>11</sup> In university senates,

two of which now exist among the twenty-three campus CSU system,<sup>12</sup> fewer faculty serve as representatives and represent a greater number of constituents, and “share governance” with top-level administrators who have voting rights, as do a token number of staff and students. While faculty outnumber administrators in these bodies, faculty representatives are placed in positions to directly challenge powerful administrators who are likely to speak with one hierarchically organized voice, who represent the same “department,” share physical space, and regularly meet in sessions outside the senate. By contrast, faculty senators, who are dispersed and unlikely to meet and consult with each other outside senate, respond to a variety of differing disciplinary, departmental, and college interests.

Many academic or faculty senates are products of the 1960s and were tied to movements for academic freedom, for educating a broader range of students than the white middle-class or elites, and for the associated expansions of curricula and rethinking of education and its goals. They ought not to be abandoned. Faculty acceptance of alternatives institutionalizes weakened faculty participation in governance.

### **Proliferation of Administrators and Quality Control Measures**

As Tuchman (2009) indicates, the shrinking of faculty governance in recent years has been accompanied by the growth of the administrative superstructure. At my institution of 21,000 students, there are now 18 vice-presidents of various ranks, the latest appointed this academic year. Growth areas reflect administrative responses to accountability regimes and certainly not perceived needs voiced by the university community. For example, on October 5, 2011, the administration announced the renaming of the Office of Institutional Research, Assessment, and Planning. Now the Office of Institutional Effectiveness, it is headed by a new vice president. The notice of this change<sup>13</sup> claims it is a “conventional institutional term” for the activities the office does, namely, “the production of institutional research and analysis.”

Since the office already encompassed those tasks and since its old name more clearly reveals its purview, the switch to this convention is puzzling. The term signals to accrediting agencies that the university is a team player on a series of measures on which its accreditation rests. A Google search on “institutional effectiveness” reveals that it means whether the university achieves its stated goals. There are many companies that service this niche, and provide training courses, software, etc., all of which incorporate the other prongs of the culture of accountability. The proliferation of offices of institutional effectiveness evidences the requirements of answerability up the hierarchy.

Tuchman characterizes the audit regime as an assembly line of control that controls not only the product (students) but the workers as well.

Checking to see whether the faculty are processing students properly, student outcomes assessment makes the faculty accountable to the institution and the institution accountable to the accreditation agency and the agency accountable to the National Advisory Committee on Institutional Quality and Integrity, and that committee is accountable to the U.S. Department of Education and its cudgel. (Tuchman 148)

Perusing the accreditation agencies’ web sites, a researcher will discover the grids writ large that, without coincidence, resemble the requirements of student outcomes assessment regimes that faculty have been required to adopt. And, of course, the handprints of the sacred taxonomy of Bloom

(revised) will be familiar to faculty as well. The directive to apply the policies of No Child Left Behind, and here specifically institutional effectiveness, to higher education came during the tenure of Margaret Spellings at the helm of the U.S. Department of Education. Despite her replacement in the Obama administration, these policies have not changed.<sup>14</sup>

### **Task forces and outsourcing**

Through senate actions creating and responding to policy proposals and resolutions, amendments to policies proposed by administrative units, months’ long debates, and referring policies back to committees for revision, faculty representatives challenge bureaucratic managers’ goals. At minimum, a senate can delay policy imposition. To counter such resistance, on my campus administrators have a new strategy: the creation of ad hoc committees and task forces to address policies they are determined to implement. Two examples of this practice are a 2010 task force on developing a campus-wide student ratings instrument, and a 2011 task force on budget cutting in the face of reduced state funding for academic affairs. Characteristic of both task forces is reliance on ideologies, measurements, plans, vocabularies, and products of corporatized understandings of optimal university designs.

### **Outsourcing Student Evaluation: What, an IDEA?**

A struggle contesting faculty governance over academic affairs took place from 2008-2011. In 2007, the provost had called for more standardization in student evaluation design, at least the redesigning of the fifty-plus departmental forms. To that end, representatives of two organizations that market their forms spoke to academic senate on the niceties of their “ratings” devices. In the summer of 2008, along with five other representatives from campus, I attended a three-day training on one of these instruments. Both sets of vendors I heard claim educational psychology as their expert background. Interestingly, when sexual harassment policy was debated in academic senate, a discipline’s expertise (viz., women’s studies) was ruled immaterial to the nature or content of policy deliberations of the whole faculty.<sup>15</sup> But most senators demurred to the expertise of educational psychology when students’ course evaluations were on the table. There is a lot of theorizing to be done here regarding the preeminence of educational psychology in characterizing learning, but I suspect that the scientific emphasis on quantifiability, the co evolution of educational metrics and the accountability society, the epistemological turn to cognitive science in its reductionist form that sees mind as programmed and programmable brain, and the marginality of women’s studies are ingredients.

Faculty senators and faculty in general favored neither of the proprietary designs. The Personnel Committee drafted a policy. Debates and amendments on the senate floor flourished for more than two years. Administration had charged the Personnel Committee and the senate to draft policy independent of any vendor’s offerings, but with the tacit understanding that an outsourced instrument would be used. Important questions were raised both in the vendors’ presentations to senate and in the three-day workshop. Significant to feminist contextual approaches, these included: Are there means to account for the effects of student reactions to the race, sex, gender, gender performance, size, age, class, etc. of their instructor? Are there “controls” for students’ possible negative reactions to dominance-challenging general education so-called “diversity” courses on sexuality, class, economic alternatives, race, immigration, militarism, age, disabilities? These are interesting questions, vendors responded, and we questionnaire designers don’t take these into consideration. The presenters from the companies made mutually exclusive claims: that none of these

demographic factors matter in how students rate professors and courses, that there is insufficient evidence to know the effects of prejudice on student ratings of instructors and courses, and that there is evidence of both bias for and bias against such instructors, their pedagogy, their course content. Databases used for comparison also did not include category codes for women's studies, Africana studies, or Chicano/Latino studies, so it was not clear how or whom we would be normed against (and comparison to national norms for courses was a touted feature of these designs). We were assured that they were "working on it."

Over the course of the debates, the senate developed parameters concerning the use of ratings forms, discussed validity and reliability, and debated the wisdom of one-size fits all. We succeeded in establishing campus policy that any student ratings' scores would count for no more than 30-50 percent of the evaluation of teaching, and that departments are free to draft and use questions that reflect the contents of their curricula, methods, and approaches. But we did not come to any conclusions that would suggest the use of one standard instrument. At the end of the 2010 academic year, the new provost selected a task force to work on student ratings. The only report to the senate, at the beginning of fall 2010, was a chart comparing four vendors' ratings forms. The form that granted faculty the most choices, and which would also have been free to the university, had been ruled out by the task force but with little explanation. The elimination of the no-cost form, in this era of massive budget cuts, reflected the administration's concern that departments would not all use the same questions. The wide variety in department evaluation forms and standards, their seeming incommensurability, and the time it took staff to process them had prompted the effort to change the forms in the first place. Through the deployment of the task force the process had been moved from the academic senate discussion of "better forms" to the use of a single form. Efforts to block that administrative goal were weakened through the task force tactic that truncated faculty debate. Ultimately the single form won. The administration chose the IDEA Center questionnaire, which we debuted in fall 2011.

### **Academic Affairs Budget Advisory Task Force**

In spring 2011 the provost selected and convened another task force as more rounds of deeper budget cuts were forecast for California, to address needed shrinkages for the academic affairs side of the budget for 2012-1013. The task force worked with an assumption of cuts amounting to \$1.7 to \$2 million. The report, again prepared over the summer and without any input from the senate, was released on October 26, 2011. The proposal includes consolidating colleges from eight to six or seven, moving majors among colleges, suspending graduate programs with fewer than fifty students, consolidating or otherwise reconfiguring undergraduate majors with fewer than 160 students, and eliminating low-enrolled courses.<sup>16</sup>

Described as a faculty/administrative body, the task force was administrator heavy, consisting of four deans and a vice president, a former associate dean/interim vice president, and five faculty members, two of whom are the officers of the senate. The three remaining faculty members came from economics, plant science, and biology. Looking for places to cut, the task force reports it interviewed all deans, an odd arrangement, since four of the eight deans were task force members themselves.

There were no representatives from the College of Arts and Humanities, the largest college in terms of FTES, courses, and faculty, and a college recommended for consolidation. The recommended cuts involve a very large university reorganization.

The present college configuration of a College of Arts and Humanities and a College of Social Sciences dates from political upheavals of the early 1970s. When campus activists from English, Economics, and Ethnic Studies asserted academic freedom (the right to discuss marijuana policy openly, to resist the Viet Nam war, to hire a Black Muslim teacher, to advocate for farmworker rights), the campus president decided to split what was then Arts and Sciences into these resulting two colleges in order to weaken its power. Now that courses of study that lend themselves to statistical evaluation hold pride of place in the new university dedicated to job placement, colleagues in these two colleges are working to read the bureaucratic handwriting. We are, some theorize, destined to become the "college of general education," who will educate career-tracked students in business, agriculture, criminology, and the sciences about how to hire from and work with diverse populations. Indeed, the chair of academic senate, who described his role as mediating between the administration and the faculty, averred that diversity programs like women's studies are not destined for elimination because we can be of so much help to the job creators. Women's Studies, Africana Studies, and Chicano/Latin American Studies, on this interpretation, lose their status as fields of study in their own right.

Sociologist Charles Smith (2000, 58) argues that a task force is a typical administrative response to a crisis. It provides evidence of addressing the cost-cutting issue, it protects the administration, and it may not actually result in anything. My concern is with the more likely results including some of the pitfalls such a tactic engenders: 1) Paranoia at the lack of disclosure of the remedies considered when constituents are only informed of the conclusions of the deliberations, not the range of solutions considered, and paranoia from faculty and staff (myself included) in destined to be "reconfigured" departments, and 2) Concern over politics of the committee selection process. As Smith points out, "even when such committees do come to closure, their recommendations tend to reflect political objectives more than either academic or economic objectives" (58-59), as "programs that most often tend to be recommended for elimination or cutbacks are not necessarily, or even normally, academically questionable or economically costly programs, but those with fewer or weaker institutional allies and supporters" (59).

At scheduled discussions with various constituencies in November and December, the provost who had selected and convened the task force was notably silent on the likelihood that the proposal would be adopted as presented. He will decide in March. Meanwhile, members of university constituencies are invited to submit suggestions.

Although the decision process is cloaked, the corporatization of campus affairs is nakedly evident.<sup>17</sup> The current trends in redesigning universities reflect the increasing reliance on consultants and their corporate structures, crypto-lobbyists, highly paid contractors with backgrounds in higher education who are hired, ironically, to direct cost-cutting and define efficiencies. In the past year, the university has contracted with entities including: Tegrity, Red Balloon, ACE Webinar, Goldstein Associates' Information Technology Strategic Plan, IDEA Center, Pearson's My Writing and My Reading Lab, and Digication. Jobs actually teaching are being lost or proletarianized.

### **Hopeful Developments: Defund, Occupy, and Govern**

Budget cuts also affect surveillance bodies. The WASC draft policy for 2012 lists many reductions in its monitoring activities.<sup>18</sup> The economic downturn may allow for a regrowth of faculty power, of creating solutions on campuses and defunding initiatives like those listed above.

Signs of a politically energized professoriate so far are coming mostly from those whose programs have been named as possible targets for changes. As occupations are emptied out of city centers, campuses are becoming occupy sites. As of December 2011, student energy on the issues of campus reorganization and increasing tuition and fees is building, even while tuition continues to be raised, but outside of union organizing on contract issues, there is little comparable faculty response. Can we hope for a newly or re-politicized professoriate to struggle for academic freedom, faculty authority, and rejection of the job training redefinition of public universities? Can democracy be more than mere performance?

### Regenerating Faculty Governance

While traditional faculty shared governance structures are underpowered, faculty can use them to rebuild power. Suggestions for maintaining and working to expand faculty's role in decision making:

- Protect and where possible strengthen faculty governance. Counter proposals that will weaken the faculty's domain through inclusion of administrators in a reconfigured "university senate."
- Learn how to be effective in senate and other policy-making bodies and pass that training on to new representatives. Training needs to focus on the philosophical foundations of faculty governance, and the history of the development and scope of faculty senates in order to protect faculty power. Learning includes understanding the documents that found faculty policy-making on your campus, modifying them to strengthen faculty roles, and using them when appropriate.
- Communicate with senators about policy issues on the agenda, particularly regarding the set of issues traditionally reserved to faculty: curriculum, academic personnel, teaching, academic freedom, pedagogy, and faculty's role in defining, and reviewing academic affairs, as well as students' access issues.
- Elect chairs of senates and committees who believe in faculty governance.
- Challenge administrative initiatives that would circumvent faculty authority, such as task forces and ad hoc committees, and insist that administrators air, explain, and defend their policy proposals in faculty fora. Make sure your campus documents guarantee faculty's power to review.
- Work to get buy-in from different campus constituencies as you develop policy.
- Recognize the extent to which we have been co-opted into bureaucratic auditing regimes. Note when we find ourselves using the language of measurement to justify our academic work, challenge that, and develop or rediscover ways of conceiving and discussing the value of higher education that do not accept the language of corporate accountability.

Budget cuts in public higher education are an inescapable reality until taxation and appropriation are reordered, and these too require our energies. Studying policy formation and its context and becoming policymakers are proper roles for philosophers desirous of enacting different truths.

### Endnotes

1. See references to the work of Marilyn Strathern, Cris Shore, and Cris Shore and Susan Wright for discussions of the origins,

development, and functioning of audit culture in British higher education.

2. "Transformation," Tuchman (2009, 5) finds, is a code word for the forms of managerial restructuring aimed at changing campus culture: its assumptions, behaviors, processes, and products.
3. For example, the WASC (Western Association of Schools and Colleges), one of the big six, Working Draft of its Accreditation Redesign document for 2012 (see references). A table, p. 6, "The Changing Role of Accreditation," contains a column heading, "Accountability/Quality Assurance Centered" specifying that "student learning outcomes" and "student retention/graduation rate" will be part of all reviews they conduct.
4. APM 369, revised July 2010, p. 369-10 (see references for full citation).
5. Instructors are required to include in syllabi statements about plagiarism, the honor code, access for students with disabilities, among others. In drafting a required syllabus statement on non-tolerance of harassment, a women's studies student suggestion, I reasoned that instructors would discuss harassment issues at least once every semester in every class and contribute to their own and student awareness of the phenomenon, what it includes, and avenues for addressing complaints.
6. A Constitution for the Academic Assembly of California State University, Fresno <http://www.csufresno.edu/senate/> Article I Section 7, C and D. This section of the constitution quotes the REPORT OF THE BOARD OF TRUSTEES AD HOC COMMITTEE ON GOVERNANCE, COLLEGIALITY, AND RESPONSIBILITY IN THE CALIFORNIA STATE UNIVERSITY (Adopted by the Board of Trustees of the California State University, September 1985).
7. Personal conversation with the Academic Senate president, September 2008.
8. A Constitution for the Academic Assembly of California State University, Fresno, Article I, Section 7 D.
9. Supplied through a contract with Workplace Answers, it is titled "Sexual Harassment Prevention for Higher ed Staff."
10. APM 369, revised July 2010, p. 369-15.
11. At least two CSUs, Humboldt State and San Diego State, have replaced their faculty or academic senates with university senates.
12. San Diego State was the first CSU to adopt the form and Humboldt State has patterned its senate after that of SDSU.
13. Email to CSU Fresno faculty and staff, October 5, 2011.
14. An amusing discussion of the value of institutional effectiveness can be read at the web site of the Kansas City Kansas Community College: <http://www.kkcc.edu/services/institutionalServices/centerForResearchAndCommunityDevelopment/aModelOfInstitutionalEffectiveness.aspx>.
15. During the harassment policy debates, when it became obvious that policy the Personnel Committee has sent to senate needed major revisions, one senator suggested that women's studies faculty consult with the committee in formulating revisions.
16. <http://www.csufresno.edu/senate/documents/taskforcereport-1.pdf>
17. Paul Fain, "Private Scholarship, Public Funds," Inside Higher Ed, November 29, 2011. <http://www.insidehighered.com/news/2011/11/29/washington-state-creates-public-private-scholarship-fund> The state of Washington has set up a scholarship fund that combines private donations with public matching funds and is administered by a board dominated by corporate donors. It's an alternative to taxation: corporations get to decide when and which public entities they will fund rather than being taxed. Further, as Washington has no personal income tax, executives can direct corporate monies to the fund without having to contribute from their state tax-free incomes. The scholarship fund will fund students who pursue bachelor's degrees "in high-demand fields," a

model characterized as tied to the state's desire to "develop strategies to increase accountability." Accountability includes responsiveness not to students' nor educators' interests but to the whims of ever changing business interests.

18. Western Association of Schools and Colleges, "Working Draft/ Situating WASC Accreditation in the 21st Century: Redesign for 2012 and Beyond," <http://www.wascenior.org/redesign/materials>.

## References

- A Constitution for the Academic Assembly of California State University, Fresno. <http://www.csufresno.edu/senate/>
- "Academic task force offers ideas to address reduced state funding." CSU Fresno, October 27, 2011. [http://www.fresnostatenews.com/2011/10/academic-task-force-offers-ideas-to-address-reduced-state-funding/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+fresnostatenews+\(FresnoStateNews.com\)](http://www.fresnostatenews.com/2011/10/academic-task-force-offers-ideas-to-address-reduced-state-funding/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+fresnostatenews+(FresnoStateNews.com))
- Addelson, Kathryn Pyne. "Why Philosophers Should Become Sociologists and Vice Versa." In *Impure Thoughts: Essays on Philosophy, Feminism, and Ethics*. 108-132. Philadelphia: Temple University Press, 1991.
- California State University, Fresno. 2010. Academic Policy Manual 369. "Interim Policies and Procedures for Addressing Discrimination, Harassment, and Retaliation." Based on EO 927, EO 928, and EO 1045 [http://www.csufresno.edu/aps/forms\\_policies/apm/300.shtml](http://www.csufresno.edu/aps/forms_policies/apm/300.shtml)
- "Collegiality in the California State University System." In *Principles and Policies: papers of the Academic Senate, The California State University*. Long Beach, California, 1985. <http://www.calstate.edu/AcadSen/Records/Reports/SharedGovReport.pdf>.
- Haraway, Donna. "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective." *Feminist Studies* 14, no. 3 (1998): 575-99.
- Shared Governance Reconsidered: Improving Decision-Making in the California State University. March 29, 2001. <http://www.calstate.edu/AcadSen/Records/Reports/SharedGovReport.pdf>.
- Shore, Cris. "Audit Culture and Illiberal Governance: Universities and Politics of Accountability." *Anthropological Theory* 8 (2008): 278-99.
- Shore, Cris and Susan Wright. "Coercive Accountability: the Rise of Audit Culture in Higher Education." In *Audit Cultures: Anthropological Studies in Accountability, Ethics and the Academy*, edited by Marilyn Strathern. 57-89. London: Routledge, 2000.
- Slagter, Janet Trapp and Kathryn Forbes. Sexual Harassment, Bureaucratic Audit Culture, and Women's Studies. *NWSA Journal* 21, no. 2 (2009): 144-70.
- Smith, Charles W. *Market Values in American Higher Education: The Pitfalls and Promises*. Lanham, MD: Rowman & Littlefield, 2000.
- Strathern, Marilyn. "Introduction." In *Audit Cultures: Anthropological Studies in Accountability, Ethics, and the Academy*. 1-18. London: Routledge, 2000.
- Tuchman, Gaye. *Wannabe U: Inside the Corporate University*. Chicago: University of Chicago Press, 2009.
- Western Association of Schools and Colleges, "Working Draft/ Situating WASC Accreditation in the 21st Century: Redesign for 2012 and Beyond." <http://www.wascenior.org/redesign/materials>.

surrounds. How the university conceives of and treats students has reverberating effects on how students understand and treat themselves, their peers, and the university's faculty, staff, and administration. As I examined the difference between the way I approach the management of my students and their needs and the way the university does—the way SU approaches the management of all its role-players—it became clear that particularly in the case of sexual harassment the difference warrants exploration.

My worry is that State University's approach to sexual harassment contributes to (rather than combats) a campus climate that facilitates sexual harassment, assault, and violence. Careful consideration of SU's sexual harassment policy reveals a flaw in the way it conceptualizes students that stymies both efforts to transform student attitudes about sex and sexuality and more general goals to make the campus a safer place for students. My thesis is that while the model by which I conceive of my students may not be ideal for the institutional management of sexual harassment, it spotlights the flaws in the way universities understand and manage their relationships to students.

I'll proceed by providing an overview of the nature, breadth, and depth of the sexual harassment problem at SU by looking at some recent incidents. I will then discuss SU's worrisome approach to managing sexual harassment, namely, one that conforms to its general approach to students as clients and the university as service provider. Next, I will review SU's policies in closer detail and discuss some *prima facie* weaknesses of those policies. I will then discuss the difference in my own management of students, colleagues, and sexual harassment, and my commitment to understanding them as vulnerable members of my community. Next, I will demonstrate the central weaknesses of SU's approach by discussing how it manages its incidents of sexual harassment. Finally, I will discuss general strategies for policies that might better "split the necessary difference" between my response and what is actually possible for a large bureaucracy.

My concerns that university sexual harassment policies fall well short of feminist goals of "cultural" transformation parallel those of Margaret Crouch's essay in this volume.<sup>2</sup> My examination also dovetails with that of Janet Trapp Slagter's and Kathryn Forbes' essays in this volume in its concerns that audit culture shapes policy so that it is highly functional at protecting universities from liability but much less successful at actually protecting students, staff, faculty, and administrators from sexual harassment.<sup>3</sup> Where my analysis diverges in my focus is on the relationship the university assumes to the students and how a re-conception of that relationship will lend itself to the development of policy that better serves the university community as well as the university as an institution.

State University has the usual problems with sexual violence amplified by the fact that in its particular state women 20-24 were statistically most likely to be victims of intimate partner violence and that women *in college* were the largest number of intimate partner violence victims in that group.<sup>4</sup> State University has also been plagued by its fair share of sexual harassment including a particularly unsettling incident involving the alleged drugging and sexual assault of a student by her advisor and his wife who was also on the faculty.<sup>5</sup> Though legally this counts as a sexual harassment, at SU it overshadows other more common incidents of sexual harassment. Here are just a few examples:

2. A black female faculty member overhears a conversation between two male students—one Asian, one black. The Asian student is chastising the black student for failing to introduce the Asian student to a black female student for dating purposes. The Asian

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## Campus as Community: A Better Approach to Sexual Harassment Policy

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### Introduction

While spearheading an initiative to transform student attitudes about sex and sexuality at State University (SU),<sup>1</sup> I became aware that my efforts were focused too narrowly. Transforming students' attitudes would require also transforming their

knows the black student knows black women because he is a football player.

3. In an informal setting that includes a mix of students and faculty, a female student listens to one of her current professors, a male faculty member, discuss his sexual attraction to another female student in her class.
4. A student goes to her professor to request more detailed feedback on an essay that was returned to her with just a grade and no comments. The professor begins their meeting by remarking about video he has seen: While intoxicated at a party, she was followed around by a male peer who aimed a camera at her chest and provided running commentary about the size of her bosom. This male student then emailed the video to a variety of people which included the professor.
5. A female student opens the local newspaper and finds that her professor is in the police blotter. It turns out that a disagreement that he was having with his girlfriend, who it turns out is also a student, required police intervention when it became violent.

It is likely that neither students nor faculty at SU would recognize these cases as sexual harassment; furthermore, even if they did correctly identify them, they would be ill-equipped to pursue remedy for themselves or on behalf of another party.<sup>6</sup> I want to explore the possibility that the “client” conception of students and the “audit” culture reinforce a conception of—and a relationship to—students, faculty, and administrators that allows SU’s to take a self-protective, minimalistic approach to the management of sexual harassment.

### Clients, Policies, and Power

Much has been made of the administrative shift toward understanding the university as a provider serving student-clients—call this the “client model.” Clients are entitled to audit the university and demand evidence, especially quantitative evidence, of the value of the resource purchased—call this the “audit culture.” Though I am not undertaking a full-scale critique of the client model and its attending audit culture, I do want to point to some worrisome consequences attending this way of conceiving the relationships that comprise the university. Three aspects of the client model and audit culture interest me: (a) by focusing on the economic exchange between students and the university, students are for the university’s purposes reduced to the identity of “consumer” and university and its employees are “service providers”; (b) it posits students, professors, and administrators as equals (because they are equal participants in the exchange); (c) and a more “holistic” conception of the duties to or concerns about faculty, staff, administration, and students (of their identities) is ruled out by these models.<sup>7</sup>

The client model of education positions the student as a purchaser and professors and administrators as service providers. The equal exchange—money for services—makes them equals. The audit culture with its focus on quantitative proof has the consequence of placing the burden to maintain equal standing with the service provider. Students are, thus, empowered in this relationship. With this as background, students and professors are equals. If anyone has more power, it is the consumer. In the context of the audit culture, faculty and administrators are competing for the consumer’s commitment and struggling to demonstrate that their product fulfills the contract and is better than that of competitors. My contention here is that this model creates a set of structural interactions in which students are primarily related to as empowered consumers. The focus on their economic relationship disguises

other more primary elements of their social identities (and the social identities of faculty, staff, and administrators as well) and licenses universities to presume that meeting their legal obligations is more than sufficient. State University’s sexual harassment policy reflects exactly and only these commitments.

The official sexual harassment policies each begin with this statement:

[SU is] committed to creating and maintaining a university community that is free from all forms of sexual harassment.

[We] shall not tolerate harassment in relation to the evaluation of employee or student performance, nor shall the university tolerate such behavior on the context of collegial and/or co-worker interaction. Such conduct is an abuse of authority and position. [We] maintain as our official policy that sexual harassment of either employees or students will not be tolerated. The university shall act promptly to investigate all allegations of sexual harassment and to effect appropriate remedy when an allegation is determined to be valid.<sup>8</sup>

The actual policy consists in an almost word by word echoing of the 1980 EEOC guidelines for defining sexual harassment.<sup>9</sup>

Sexual harassment is defined as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to, or toleration of such conduct on or off campus is made a term or condition of instruction, employment or participation in other university activities.
2. Submission to, or rejection of such conduct by an individual is used as a basis for evaluation in making employment or academic decisions affecting the individual; or [the quid pro quo prohibition]
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s academic or employment performance or creating an intimidating, hostile or offensive university environment. [the hostile environment prohibition]<sup>10</sup>

It closes with what might appear to be special attention to the power dynamics of supervisory and professor/student relationships:

Supervisors and faculty members must recognize that their positions necessarily embody unequal power relationships with their subordinates and students, respectively. Because of the inherent power difference in these relationships, the potential exists for the less powerful to perceive a coercive element in suggestions relative to activities outside those appropriate to the professional relationship. It is the responsibility of supervisors and faculty members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.<sup>11</sup>

Despite the universities’ expressed commitment to a harassment-free environment and their intolerance for all types of harassment, the de facto policy suggests otherwise. First, there is no central location for sexual harassment policy (it is buried in Student and Faculty Handbooks and there are two separate listings in the student handbook); there is also no consistent set of policies. (There are possibly distinct policies depending on the standing of both of the accused and the

standing of the accuser. One policy listing explains both how to handle accusations against students and faculty—which are handled by two different offices—the other makes no explicit distinction.)<sup>12</sup>

The three locations in which you can find rules and regulations about the sexual harassment policy each include a complex (but not identical) system of bureaucratic hoops that involve petitioning of a particular official at the university (in one instance the Director of Human Resources, in another the Associate Vice Chancellor of Human Resources, and the other the Assistant Dean of Student Affairs). Two of the levels of problem solving involve attempted resolution of the complaint by the *same* university representative (Informal mediation, for thirty days, and formal grievance, for sixty days, both involve an attempt at resolution by the Associate Vice Chancellor of Human Resources.) In another stated policy the Associate Dean of Student Affairs has free rein to reject the complaint (based upon whether there is sufficient information).<sup>13</sup>

Students do *not* receive any sort of training as to which treatment by and of their faculty, administration, and peers is inappropriate. They receive no training about how to help their peers or others who seem to be suffering from inappropriate treatment. As part of a one-time orientation, faculty receive training that focuses on indicating *quid pro quo* harassment. There is very little by way of efforts to educate about subtler forms of sexual harassment that might contribute to hostile environment. They also receive no training about how to handle students, staff, or faculty making sexual harassment complaints. This sexual harassment policy reflects the *lack of training* and *ill-conceived reporting procedures* identified by Forbes and Slagter<sup>14</sup> in their analysis of the sexual harassment policies at Cal State Fresno.

Finally, there are no explicit policies forbidding relationships between supervisors and their subordinates between professor and their students. There is no policy that prohibits relationships with people under one's direct supervision or people who are one's current students or advisees.

Conceived primarily as consumers—empowered by their purchasing power and the audit culture that identifies them as having fulfilled their responsibilities simply by having their tuition and fees paid—the obligation of the university is just to make sure that there are structures in place for independent citizen-consumers to remedy injuries they identify. The client conception of students—which posits them as equals, as empowered—together with the client/provider conception of their relationship to the university makes some sense of the current strategy.

### **Confidants, Vulnerability, and the Harms of Harassment**

As one of many tasked with the actual provision of the main service that the university provides students, the way I conceptualize my duties and obligations to students, by necessity, strays from conceiving them simply as equal citizen-consumers and reveals some of the flaws of that approach.

In considering the cases above, two plausible scenarios for how a student in these positions would handle it did come to mind: troubled students come speak to me about their experiences. I am relatively “outspoken” as a feminist and teach primarily courses on critical race, gender, and feminist theory, and am also widely known in virtue of my role in teaching general education courses that most of the students have to take. This confirms Forbes and Slagter's analysis of centralized reporting systems, they are both dysfunctional and unrealistic. The injured confide. What is revealed in this practice is the profound sense of vulnerability born out of recognizing that they have been trespassed against. When staff, students, faculty

confide in me, I have frank conversations with them that make clear that I believe they have been wronged, but also that the procedures for trying to report and curb the bad behavior forces them into the open and puts them at risk of retaliation from the accused, their friends, their family, and their peers. I encourage them to carefully weigh the risks and benefits and promise to be of support no matter what their decision.

In analyzing their situations and how to manage them my focus pointedly re-conceives these folks in terms of their vulnerabilities (as opposed to what makes them equals). I relate to them not in terms of equal exchange, but in terms of how I can meet their needs. The question I ask is this: What if our approach to students, faculty, staff, and administrators took them first as vulnerable persons with whom we share community whose aim is to best fulfill the needs of all from the most vulnerable to the least? This is the approach that shapes my engagements both with those who confide in me and with the members of my shared community more generally.

The university has a variety of resources in terms of personnel, materials, and capital, but it is vulnerable, nonetheless.<sup>15</sup> It risks losses of control and resources necessary for the accomplishment of its aims. It relies on various parties to help it fulfill those needs. (The university's tendency to conceive of its students as empowered consumers reflects its self-identified vulnerability as an institution.) Administrators, to a greater degree, faculty, and, to an even greater degree, students and staff, are relatively weak. They have limited personal resources and are reliant on institutional structures for the effectiveness of many of those. (They are embedded in practical relationships where they are dependent upon other role-players in order to accomplish their aims even when their own skills and resources are the major factor in achieving those aims.) Faculty, staff, students, and administrators are also relatively vulnerable (more vulnerable than universities). They have even less control over the various resources necessary for the fulfillment of their aims. They are part-time employees, adjunct instructors, junior faculty, interim deans, and scholarship students. Suggested in both of these statements is the recognition of and commitment to students as persons with needs and vulnerabilities. The primary one in this case being their need for intellectual growth and preparation for life as citizens of a complex world full of persons of varied sorts.

My position as a confidante also forces/allows me to see the members of a university in light of more than just their relationship to the university. They are women; persons of color; disabled; gay, lesbian, transgender, bisexual, veterans, parents, employees. These identities come with a host of additional vulnerabilities and weaknesses. Moreover, they are persons in the world, so also isolated, insecure, anxious, physically ill, and a host of other things at different times that also create certain vulnerabilities.

To clarify my concerns, I want to return to the cases of sexual harassment I discussed earlier. The first and final cases focus on a particular type/instance of sexual harassment — cases that suggest predatory faculty taking advantage of relatively helpless students. While Crouch is rightly critical of the focus on these types of cases, they serve to highlight the importance of conceiving parties as relatively vulnerable members of a shared community. These cases might have been circumvented by a strict prohibition on student-faculty relationships. It is argued, however, that forbidding sexual relationships between students and faculty is problematic in practice—at large institutions and even small ones, for example, one cannot always tell that a person you meet at a bookstore or bar is a student at your university. Some have argued that it is problematic in principle as well. It is patronizing and that it

interferes with basic entitlements to satisfaction and fulfillment through personal relationships.<sup>16</sup>

I want to consider the difference it makes to view principled concern through a lens that begins with conceiving of members of the university as members of a community aimed at meeting each others' needs despite varied vulnerabilities, strengths, and weaknesses. Viewed as relatively empowered citizen-consumers and service-providers—largely stripped as far as the university is concerned of other relevant identity characteristics—it makes sense for the university to ignore romantic relationships until and unless a problem arises. If a problem does arise, that last caveat—recall SU's concluding statement "it is the responsibility of supervisors and faculty members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive"—makes the responsibility for appropriate relationships the special burden of individuals and (as a matter of good fortune) immunizes the university against claims made against them when individuals fail. What might have seemed to reflect a concern about the power dynamics of supervisory and professor/student relationships is clearly revealed as a method of creating or exploiting a vulnerability for faculty, staff, administrators who find themselves in supervisory roles. The caveat places the burden upon them.

Viewed through the lens of community and vulnerability, it becomes easier to directly articulate why faculty/student (and supervisor/subordinate) relationships are so often problematic, and not just for the individuals directly involved. The second, third, and fourth cases I discuss are very different from the first and last and pose a challenges to both traditional legal standards for sexual harassment and subsequently for bureaucracies like universities trying to enforce the hostile environment prohibition. Furthermore, the university, as an element in a complex community, its obligations to its members extend beyond merely satisfying the letter of the law.

In case three—where a female student is subjected to her professor's expression of his feelings of attraction for another student, X, in her class—whether or not he pursues or begins a relationship with X, our female student has been reminded that she is potentially fodder for the sexual imaginations of this professor. Because we live in a sexist society, where she is regularly confronted by the fact that her body leads in the recognition of her identity, she might suddenly be reminded that she could be fodder for the sexual imaginations of other professors. Because she is aware of the realities of the world, she can wonder if other students are having affairs with professors, if those students are treated differently than she is, if they are treated better or worse. She can wonder if her successes are ever attributed to special treatment because of her sex or her relationships. The crisis of confidence will hinder progress, prevent her from meeting her aims, and the aims the community has for her. Similar challenges will face the student in case three: in addition to accepting that any of her professors may have seen a lewd video of her, withdrawal from that particular professor's class jeopardizes her financial aid and delays her progress toward her degree.

Recall case two: a female faculty member listens to two male students sexualize female students in ways that reflect problematic intersections of racism and sexism. Despite her relative privilege (regarding age, education, standing, and power at the university she is less vulnerable than the male students), she is vulnerable with regards to race and gender. She is reminded that she will be less respected because of her race and gender by these students and others like them, she will receive lower evaluations, be regarded as less competent. She will be forced to strike a Faustian bargain between dressing

in ways that are perceived as professional (which includes markers of stereotypical femininity) or fight constant battles to be *as* respected as her peers who are free to wear jeans and short-sleeves if they so choose. The stress will make her less able to do her job, cause it to take more of her time, and again she will be hindered from achieving her goals, goals that serve the interest of the university.

These vulnerabilities are not individual and they are not imagined. Importantly, the quid quo pro scenarios captured in the first and final case serve to buttress these subtler vulnerabilities. Simply banning these student/faculty relationships is not a sufficient response, just in the same way that a policy that serves only to redress harms of sexual harassment is not sufficient. It fails because it does not adequately address the vulnerabilities that contribute to and that are exploited, engaged, or exacerbated by sexual harassment.

### Conclusion: Campus as Community

My contention is that it makes more sense for universities to understand themselves as communities of individuals with varying degrees of strength, weakness, and vulnerability who work together toward goals, some of which are common and some of which belong to the individuals or the bureaucracy alone. Doing this creates a set of moral concerns that requires that the university's preparation for and response to sexual harassment extend beyond the merely legal.

This contention suffers a gaping flaw. It asks a bureaucracy to behave more like a person than it is clearly capable of doing. It is challenging enough for human persons to be sensitive to the vulnerabilities of other persons in ways that allow them to respond adequately. The human strategy of employing increasing layers of intimacy to develop know-how about the vulnerabilities of *specific* others is not readily available to universities because of the number of relevant persons and of the structure of universities. Even with knowledge about the vulnerabilities that impede the success of members of a university community, the university's main tool for response—policy—might be too coarse to successfully shield its members. One of the strengths that the university has, however, is that it can appeal to a variety of resources for the accomplishment of this challenge. It can depend on various parts of its structure to do the work of identifying especially important vulnerabilities.

Conceiving of sexual harassment as a problem that plagues a mixed community of persons blighted by various vulnerabilities—including gender, race, and sexuality discrimination more generally, but also immaturity, challenging work, long work hours, loneliness, insecurity, and isolation—universities can employ their various resources to develop long-term programs designed not only to educate people about the nature and harms of sexual harassment, but to also address the vulnerabilities that contribute to and exacerbate it. Thereby, the student-consumer becomes a person and the service provider becomes a refuge.

### Endnotes

1. While I am using a particular institution—Arkansas State University, where I was a tenured professor and director of the Women and Gender Studies minor—in my examples, I will refer to it throughout this essay as State University or SU in order to highlight my contention that the problem that I am discussing in this essay is one that is plaguing many universities around the United States.
2. See Margaret Crouch's essay in this volume titled "Benevolent Sexism, Implicit Bias, and Sexual Harassment in the Academy."
3. See Forbes' essay in this volume titled "Growing Their Profession, Interpreting the Law: Human Resources and the Management of Sexual Harassment Complaints in the

- University,” Slagter’s essay in this volume titled “Tracking Audit Culture: Sexual Harassment Policy, Faculty Governance, and ‘Transformation’ in the Corporatized University,” as well as Kathryn Forbes and Janet Trapp Slagter, “Sexual Harassment Policy, Bureaucratic Audit Culture, and Women’s Studies,” *NWSA Journal* 21 (2009): 144-170.
4. University of Arkansas, “Legal Services Key to Reducing Domestic Violence.” Daily Headlines, November 22, 2002. <http://www.newswise.com/articles/legal-services-key-to-reducing-domestic-violence> (October 29, 2011); and University of Arkansas, “Study Reveals Impact of Domestic Violence on Workplace.” Daily Headlines, October 5, 2005. <http://newswire.uark.edu/article.aspx?id=11571> (October 29, 2011).
  5. Sarah Rosser. “2 Professors Resign Amid Rape Charges.” *Inside Higher Ed*, June 13, 2007, sec. News. <http://www.insidehighered.com/news/2007/06/13/accused> (October 29, 2011).
  6. My contention is that this is not just a reflection of some sort of willful ignorance with the epistemic purpose of preserving privilege) [even the sexual assault case might be recognized as wrong but be conceived as wrong in a way that is different and separate from the impact it will have on the student as student].
  7. To be clear it is not my contention that this set of relations I want to critique originates with the client model/audit culture, but rather that this set of relations is codified by it.
  8. Cf. ASU-Jonesboro - 2011-2012 Handbook, “Non Discrimination Responsibilities of ASU/Sexual Harassment Policy,” n.d. [http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual Harassment Policy](http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual%20Harassment%20Policy) and “Arkansas State University Faculty Handbook 2006,” March 5, 2010, <http://academicaffairs.astate.edu/facultyhandbook/Final3.5.2010.pdf>.
  9. Cf. U.S. Equal Employment Opportunity Commission, “Sexual Harassment,” Laws, Regulations & Guidelines: Types of Discrimination, n.d., [http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm).
  10. “Arkansas State University Faculty Handbook 2006,” March 5, 2010. <http://academicaffairs.astate.edu/facultyhandbook/Final3.5.2010.pdf>, 34. Also present at ASU-Jonesboro - 2011-2012 Handbook, “Non Discrimination Responsibilities of ASU/Sexual Harassment Policy,” n.d. [http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual Harassment Policy](http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual%20Harassment%20Policy).
  11. *Ibid.*, 35.
  12. Cf. “Arkansas State University Faculty Handbook 2006,” March 5, 2010, <http://academicaffairs.astate.edu/facultyhandbook/Final3.5.2010.pdf>; ASU-Jonesboro - 2011-2012 Handbook, “Non Discrimination Responsibilities of ASU/Sexual Harassment Policy,” n.d. [http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual Harassment Policy](http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot#Sexual%20Harassment%20Policy); and ASU-Jonesboro - 2011-2012 Handbook, “Non-Academic Misconduct Standards of Student Conduct,” ASU-Jonesboro - 2011-2012 Handbook, n.d., <http://www2.astate.edu/a/student-affairs/student-conduct/documents/OSC/2011-2012-handbook.dot>.
  13. *Ibid.*
  14. Kathryn Forbes and Janet Trapp Slagter, Sexual Harassment Policy.”
  15. The concept of vulnerability at work here is informed both by bioethical concerns and autonomy debates. See Joel Anderson and Axel Honneth, “Autonomy, Vulnerability, Recognition, and Justice,” in *Autonomy and the Challenges to Liberalism: New Essays*, 1st ed. (Cambridge University Press, 2009), 127-149; Sigal R. Benporath, “Autonomy and Vulnerability: On Just Relations Between Adults and Children,” *Journal of Philosophy of Education* 37, no. 1 (February 1, 2003): 127-145; Samia A. Hurst, “Vulnerability in Research and Health Care: Describing the Elephant in the Room?” *Bioethics* 22, no. 4 (May 2008): 191-202; and, Florencia Luna, “Elucidating the Concept of Vulnerability:

Layers Not Labels,” *International Journal of Feminist Approaches to Bioethics* 2, no. 1 (2009): 121-139.

16. See Paul R. Abramson, *Romance in the Ivory Tower: The Rights and Liberty of Conscience*, Reprint (The MIT Press, 2011); and Paul R. Abramson, Steven Pinkerton, and Mark Huppert, *Sexual Rights in America: The Ninth Amendment and the Pursuit of Happiness*, large type edition (NYU Press, 2003).

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## ***Creepers, Flirts, Heroes, and Allies: Four Theses on Men and Sexual Harassment***

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### **What does “creepy” mean?**

“Wow! What a creeper!” My sixteen-year-old daughter often says, breezing in the door, referring to some encounter she’s just had taking the city bus home from school, or walking through the park down the street. Her three teenage sisters say it too. When they have occasion to remind each other of the unpleasant experiences they’ve already started to collect walking down the streets, standing at the bus-stop, in the cars of boys they have dated, and with one or two of their male teachers, the reminder starts, as often as not, with “Remember that creeper who....” When I ask, “What do you mean by that?” they just say, “You know, a creeper...as in *creepy*,” and roll their eyes at their philosopher-mother’s efforts to get them to think more about something so self-evident. And the truth is, I *do* know what they mean. In fact, I’ve taken to calling out to them in their very own vernacular, “Watch out for creepers!” as they head out of the house on some teenage errand.

But perhaps they resist my efforts to get them to talk about what they mean in part because it isn’t so easy to *say* what “creeper” means, when you really sit down to do it. Even for me, after years working in organizations for battered women, managing the crisis hotline, training hundreds of volunteers and staff members to work the crisis hotline, advocating for women and training others to advocate for women in the counseling room and in courts of law—I really need my philosophical training in order to say what “creeper” means. After all, a creeper doesn’t necessarily engage in the blatant and (for the most part) more easily defined behavior that we have in mind when we say “battery” or “rape” or “sexual assault,” and the words change if he does. He’s no longer just a “creeper” but something even worse. Whatever he is doing that makes him a creeper seems to carry the threat or possibility of these other forms of abuse,<sup>1</sup> but he needn’t ever cross those lines to earn the name “creeper.” Feminists had to fight long and hard to get the more overt forms of abuse recognized by the police and the courts (and even more importantly to recognize them ourselves), and that battle still isn’t over. But “creepy” is something that doesn’t necessarily rise to the level of more overt abuse.

The behavior of a “creeper” seems to fall, or sometimes only *almost* fall, under what we categorize as “sexual harassment.” But even here, the “classic” form of sexual harassment in which: 1) it happens in an institutional context in which the harasser and the harassee have some professional relationship with one another, usually with the harasser in a position of greater power, and 2) the harasser avails himself of that power, as when he uses grades or job security, promotion or demotion, his control over someone’s professional reputation, etc., to back up his sexual approach to the victim—already goes beyond the

kinds of things that we mean when we say someone is “a real creeper.” (Though, of course, someone who did those things *would be* a creeper, just like those who batter or sexually assault women are creepers; it’s just that what we mean by “creepy” definitely doesn’t require that the test of *quid pro quo* sexual harassment be met.)

“Mere” creepiness is sexual harassment, when it is, of another kind. In policy and law, feminists have tried to codify it with the term “hostile work environment.”<sup>2</sup> At my institution, for example, creepiness becomes harassment of this sort when the behavior in question “interferes with work or academic performance because it has created an intimidating, hostile, or offensive working or academic environment for the individual who is the object of such conduct, and where the conduct would have such an effect on a reasonable person of that person’s gender.”<sup>3</sup> Of course, this means that not all creepy behavior is going to rise to the level of sexual harassment, in policy, though a lot of it will. But for a philosopher, this definition is remarkably unsatisfying. “Hostile, intimidating, or offensive” helps delineate a policy, but it isn’t a very rich, detailed, or subtle analysis of what is creepy about the behavior of creepers. It seems to me that we need a *phenomenology* of the experience of creepiness, if we are to understand the nature of the harms it causes.<sup>4</sup>

My readers may be wondering why I would start an inquiry of this sort with the kind of behavior that is hardest to define. Why not start from the most blatant forms of harassment and analyze them, then try to get at how the supposedly least blatant kinds of harassment are similar? The problem is, they may not be so similar in their basic structures; the operation of power in *quid pro quo* harassment, for example, is different from that exercised by a “mere” creeper, though both result in harm—and the harms themselves are different.<sup>5</sup> *Quid pro quo* sexual harassment is *also* creepy, which is to say it also involves the operation of power and the harm that we find in “mere” creepiness. By starting with “mere” creepiness, we get at the hardest to identify wrongs, those that aren’t necessarily captured in the language of policy and rules.

Another obvious objection to what I’ve written so far is that I am writing as if harassers are always male and the harassed are always female, when we all know that there are times when the situation is reversed, or when men are creepers with other men, or women with other women—and there are times and situations in which the very language of “male” and “female” or “men” and “women” doesn’t adequately speak to the identities or experiences of those who are harmed.<sup>6</sup> I take this objection to heart, and know that anything that I say about those situations in which it is a person who comfortably identifies as a man, harassing a person who comfortably identifies as a woman—which is the sole topic of this essay—will need to be re-thought for situations in which this is not the case. In my daughters’ lives, in my own younger life, and my professional life now, it has almost always been the more stereotypical, and perhaps statistically most common situation that I have been called on to understand, so I limit the scope of this essay accordingly, but with apologies.

I begin with the assumption that when my daughter exclaims, “What a creeper!” she says this because she knows something. Behind the declaration is a knowledge claim, in other words. I am witnessing her *assuming epistemic authority* over a situation and an experience. What she claims to know is something about the man or boy in question, something about his motivations, his character, and the way that he sees her. She knows something about the world in which this way-of-seeing claims or tries to claim her, and something about how it harms her, or threatens to. What is it that she knows? My urging her to talk about it more is a way of trying to convince her that experience needs reflection *in order to know what it*

*knows*. The first level of interpretation, expressed in the very exclamation “*What a creeper!*” isn’t enough; it knows *that* it knows without quite knowing *what* it knows.

Let’s start by paying attention to the words: “creepy,” “creeper.” Something that creeps sneaks up on you, threatens to catch you unawares. In the garden, bindweed is the clear example. It is actually a rather pretty plant, even delicate, with triangular leaves and seductive, cone-shaped white flowers. It looks like a morning glory. It camouflages itself against the green leaves of the host plant. Yet bindweed is viciously invasive. If you don’t stop it, it wraps itself around the host plant again and again. Its tendrils get thicker and stronger. If you pull it out of the ground, any bit of root left will bring it back to life, and the roots are actually invigorated by your resistance. If you allow it to seed, the seeds stay viable for 30 years. If it were to choose you as its host, you can imagine it wrapping you up while you were napping, and waking up unable to move.

Keeping the bindweed in mind, let’s consider Sartre’s famous (and creepy) example of a woman on a date, whose bad faith dictates her response to her date’s sexual overtures.

She knows very well the intentions which the man who is speaking to her cherishes regarding her. She knows also that it will be necessary sooner or later for her to make a decision. But she does not want to realize the urgency... She does not apprehend [her date’s] conduct as an attempt to achieve what we call “the first approach”;...she does not wish to read in the phrases which he addresses to her anything other than their explicit meaning. If he says to her, “I find you so attractive!” she disarms this phrase of its sexual background... The man who is speaking to her appears to her sincere and respectful as the table is round or square... This is because she is not quite sure what she wants... she refuses to apprehend the desire for what it is; she does not even give it a name; she recognizes it only to the extent that it transcends itself toward admiration, esteem, respect... But then suppose he takes her hand. This act of her companion risks changing the situation by calling for an immediate decision. To leave the hand there is to consent to flirt, to engage herself... To withdraw it is to break the troubled and unstable harmony which gives the hour its charm... We know what happens next, the young woman leaves her hand there, but she does not notice that she is leaving it... she is at this moment all intellect. She draws her companion up to the most lofty regions of sentimental speculation... the hand rests inert between the warm hands of her companion—neither consenting nor resisting—a thing.<sup>7</sup>

What makes this an example of “bad faith” for Sartre is that the woman “has disarmed the actions of her companion by reducing them to being only what they are,” rather than recognizing that these actions point beyond themselves. When he says, “I find you so attractive!” for example, she recognizes this phrase only in its immanence (only as being what it is), and refuses to “know” that this means he wants to have sex with her. On the other hand, she recognizes his desire only in its mode of transcendence (only as not being what it is), in other words, the brute bodily desire *to fuck* is only apprehended as a kind of admiration or esteem. She doesn’t hold transcendence and immanence together in her responses, but is continually fragmenting them—thus refusing to assume her freedom. When her date presses the moment of decision by taking her hand, Sartre complains, she refuses to be forced into a decision. Leaving her hand alive and animated in his would be to consent. Withdrawing it would be to refuse.

Of course, this scenario might not happen on a date. A feminist consciously misreading this scene as autobiographical (and knowing Sartre's particular history, such a misreading is too tempting to resist) might well wonder whether the young woman—no doubt one of Sartre's philosophy students—even thought she was on a date. Maybe she thought she had been presented with the opportunity to discuss existentialism with one of the great minds of her time because she had impressed the professor with her intelligence in class. Or maybe she had just approached him with a question about Brentano's notion of intentionality; walked boldly up to his table at the café and been asked to sit down. And maybe she was so shocked to find that *for him*, even such student-like behavior was apprehended as "a date," she froze—needing time to formulate a response, but finding that he had already stolen time from her.

And this is one characteristic of creepers. They steal your time. They are already in the mode of "I-regard-you-as-fuckable" by the time you've taken your seat or walked by on the street, before you've even properly introduced yourself. If your sense is that *any* human relation—erotic or not—is an open structure, the very first requirement of which is curiosity, and the very second requirement of which is a certain humility, which in turn demands hesitation, approach, retreat, listening, playfulness, responsiveness, self-protection, self-disclosure, etc.; in other words, if any human relation requires *time*, then one knows one has encountered a creeper when one experiences the sexualized theft of time. The approach of the creeper reduces this whole complex temporality of the encounter by *already* having decided its meaning, by already having framed it exclusively in terms of his own needs and desires, by already knowing who-you-are-for-him before you get your coffee.

But then again, maybe the young woman *did* think it was a date, naively hoping that the old professor's sexual interest in her was an opening toward full-fledged curiosity and fascination, rather than just another effort to get laid. Maybe she was open to the possibility that he would encounter her as a living value in a complex erotic situation, as an end-in-herself (to throw in the relevant Kantian language)—rather than as a mere use value, a means to the old professor's narcissistic, urgent ends. Maybe she discovers, and is disappointed to discover, that he's really just another creeper. Or maybe she's not sure, or not sure yet.

When I imagine one of my daughters sitting in the café with the old professor, though, or even sharing a bottle of wine, I don't interpret the lifeless hand in the same way Sartre (who has a hard time being curious about what women know) does. Instead, I read her lifeless hand as evidence of a kind of knowledge. What this young woman-on-a-date knows, at least what her hand knows, even if she couldn't articulate this to you, is that she is with someone whose epistemic arrogance poses a threat. The creeper has already started to wrap her up in the tendrils of his intentionality—which in phenomenology isn't about conscious intentions. Intentionality is understood as the *of* in consciousness-of, or the *about* in knowing-about, or the *for* in wishing-for. It is a directedness toward an object of consciousness. This directedness is always shaded by a certain mood—one can be *conscious-of* someone in a mood of curiosity, or fear, or love; and one can be *conscious-of* someone in a mood of contempt. The intentional mood saturates the whole interaction. The creeper's dominant intentional mood, when he is in the presence of certain women, is entitlement to acquisition. (Picture the bindweed.) He has already embarked on a kind of *capture*. His *way* of having a world is relentlessly acquisitive, in other words he seeks to seduce or compel certain others into a relation characterized primarily by use.

On the other side of the table, the young woman finds herself reduced to a feature of his having-a-world. This is not

to say that he is merely objectifying her, relating to her as if she were a thing, although feminists have often used this language to try and express the harm of what is happening. It is, more significantly, that the expansiveness of his own agency demands that the agency of certain others be *annexed* to and consumed in his—it is not that her body is put to use as an object, though it well might be, but that the woman as *body-subject* is put to use.<sup>8</sup>

His creepiness is a kind of demand expressed in the mood of entitlement. When a demand is expressed in this mood, the possibility of real refusal or consent is effectively short-circuited, since both will be read through the fog of entitlement. He demands that she employ her agency (through flirtation, or feeling flattered, or expressing outrage) in the project of his sexual self-aggrandizement, but he communicates in the demand his *entitlement* to the demand. She discovers that the use *is already underway* in the demand, since he already confirms his entitlement by acting as one who is in a position to make such demands. His whole approach to her is saturated by a mood of sexual entitlement, so that *before she can even respond*, his enactment of the approach has already confirmed his status as entitled. Her blistering refusal feeds his way of having a world as much as her active acquiescence, since both confirm his authority to compel her subjective capacities to be-in-relation to him in a field whose possibilities he effectively controls.

We now see that leaving one's hand dead and numb on the table is a refusal, though not likely a consciously chosen one.<sup>9</sup> She refuses not just the demand, but the whole *scene* in which the world gets structured as a place where he demands and she responds, in which the possibilities of her agency are reduced to a response to his demand. She resists the creeping vines wrapping round her ankles and her wrists, so that every motion is a confirmation of the creeper's power, by remaining completely still. It may seem as though she will be strangled if she moves. If he is going to grasp her hand, as an expression of his entitlement to annex her agency, then she will refuse to manifest freedom in her hand. In other words, she resists a world in which her own world-shaping capacity is preempted, by refusing to participate.

If the first harm of creepiness is the theft of time, the second harm is the pre-emption of her very way-of-having-a-world. This is why encounters with creepers, especially if they hold positions of respect or power or authority, have the potential to derail a woman's sense of self, to disrupt her ability to act. And indeed, the actions of creepers seem to be designed for this purpose, more than for the purposes of sexual titillation (except insofar as seeing a woman so derailed is titillating.) Susan Bordo describes the retributive response of a professor who had asked her out, and who she had refused, as having begun with her challenge to his power—she had responded to his advances as if to a peer, and simply said she wasn't interested. On one occasion, she reports, he "jovially instructed me that it was 'time for class, dear' and patted me on my rear end at the open doorway of a classroom full of other students, mostly male. My impulse, after I had run down the hall in humiliation, was to tell him how degrading that gesture had been to me, with what economy and precision he had reduced me, in front of my colleagues, from fellow philosopher-in-training to...to what?"<sup>10</sup> While Bordo is not certain what he has reduced her to, she is certain about what she has been reduced from, i.e., from fellow-philosopher-in-training. As a philosopher-in-training, in a philosophy classroom, her *way of having a world* has been compromised.

Of course, it is important to remind ourselves why it is that creepers seem to have such power, before they actually do anything to hurt you in the material sense of the word. Again, if

the creeper starts threatening your grade or your employment or your professional reputation—that's already beyond creepy and, mostly, there are remedies for that. But certainly, not every other who approaches me in a mood of entitlement or acquisition undermines me so effectively as the creeper does, at least sometimes.

What makes creepiness so *effectively* creepy is that the mood of entitlement and acquisition that characterizes creepers is backed up by and taps into a whole world of imagery, language, and material relations that echo and amplify the creeper's demands.<sup>11</sup> A creeper in a context not saturated with images and stories of women as use-values for men, in a language which did not provide terms for referring to women as use-values for men, or in a material context in which women were not systematically disadvantaged, would simply be an annoyance—like a mosquito in a place where the fear of mosquito-borne illnesses has been eliminated. This whole complex is shored up by the fact that men often carry with them “a sense of implicit (and often unconscious) ownership of public space and its definitions and values—a sense of ownership that women typically do not feel.”<sup>12</sup> This sense of ownership is backed up by the structure of material relations as well as the content of dominant cultural narratives. It is the total concrete situation, to use Beauvoir's important phrase, in which the creeper creeps that makes his creepiness so efficacious.

Creepiness, then, is not something teenage girls make up, nor something that a young woman philosophy student just imagines, sitting across from her old professor. Creepers pose an epistemic threat that closes time and pre-empts—with the collusion of an entire culture, with the complicity of social power arrangements—young women's world-making capacities. It is the enactment of a creepy kind of capture; it's already wrapped around your throat before you can start paying attention and threatens to close off your airway entirely if you dare to move.

*Thesis #1: “Creepy” is an entitled and acquisitive mood of intentionality, nourished by broader misogynist social arrangements, through which a narcissistic subject steals your time, annexes your subjective powers, and pre-empts your world-making capacities.*

### **What about flirtation?**

It is important to distinguish creepiness from flirtation, as some will object that my analysis is taking the fun out of everything. Flirtation, of course, has its proper place, though I will say that I think it is best left out of most hierarchical relationships most of the time—especially those characterized by significant imbalances of power—as between professors and their students, or supervisors and their employees, or adults and children. In these relations it is mostly not possible to flirt without being creepy. But it would be a sad mistake to misread all erotically charged interactions as “creepy,” and I am not advocating anything of the sort. One of the crucial preconditions for flirtation will be power that is *equal enough* so that the vulnerability of the two parties stands a chance of being more or less the same, at least at the start.

One of my favorite examples of flirtation is that scene in the old feminist film *Thelma and Louise*, where the cowboy-hitchhiker-robber played by Brad Pitt flirts with Thelma (Geena Davis) in the car, and later in her hotel room. For those who don't know the story, Thelma and Louise are two friends on the lam, after the innocent Thelma (whose long marriage to her high school sweetheart has been a disaster) encounters a real creeper, who turns out to be a rapist, in a bar. Louise (Susan Sarandon) rescues Thelma from rape at gunpoint, then shoots

the would-be rapist in the parking lot. Convinced they will never be believed, the two women head for the border in Thelma's old convertible. On the way they meet J.D. (Brad Pitt), and Thelma is smitten. Even though J.D. turns out to be quite a jerk, stealing Louise's life savings, which was to finance their escape—you couldn't call him a creeper *sexually*. His compliments to and playfulness with Thelma enact a kind of delighted, respectful invitation. When Thelma hesitates, he backs off and waits for her approach, clearly open to the possibility that her hesitation is the final word on the encounter. He waits to see if her *desire* is there to meet his. After hours of playful flirtation infused with intense curiosity in Thelma's hotel room, the two have wildly passionate sex. But even here, when Thelma says “wait” he listens. She emerges from the encounter having experienced herself as a sexual agent for the first time. When they discover their money is gone, she borrows a narrative J.D. recounted to her when he told her about his chosen profession, and robs a convenience store with Louise's gun. The film is, in large part, the story of Thelma's transformation from victim (of her abusive husband, of the rapist) to a woman conscious of her own world-shaping capacities, even in the context of a broader misogyny that she can't completely undo. Her empowerment is symbolized by her handiness with a gun, her ability to make things happen—as in one dramatic scene in which she and Louise blow the oil-tanker truck of another creeper sky high.

What one notices is that the structure of time is different, in flirtation, then in an encounter with a creeper. Her hesitation is met by his giving-space to that hesitation; his urgency is put out of play (by him) if not met by her responding urgency. In other words, a field of possibility is kept wide *open* in flirtation, at least insofar as I must leave open the possibility that you will respond, or you won't, that you will desire, or you won't, or that we will desire differently. Flirtation is acute curiosity about such possibilities, which doesn't, therefore, immediately close them all up; it is intensified attention to the details and particularities of a unique existent with an ability to enjoy surprises. In flirtation time opens, stretches out, luxuriates. Flirtation, especially if it is welcome, is a gift of time.

In flirtation, the mood of intentionality that saturates the encounter implies a way of having a world that has an open structure as well, so that I invite you to curiosity about my way of having a world, to enter in, but I refuse to make any assumptions about who you will be to me, even as my wonder or hope about the question infuses the whole encounter with a kind of intensity. There is no threat of unwilling capture before I've even had time to let myself wonder, so there is no threat of being locked into a world where my-meaning-for-you is already sealed up and decided, without my having played an active part in it. My world-shaping capacities are not pre-empted, but attended to intensively at the very heart of the encounter. This attention is reciprocal if the flirtation is.

The mood of intentionality in flirtation is nearly the opposite of the mood of intentionality in entitled acquisition. It is the animation of curiosity in an intensified, erotically charged field. It is invitation and appeal, not demand. It requires vigilance against acquisitiveness and entitlement. What distinguishes flirtation from creepiness is this open structure of time in an opened-up world, a sensitivity to refusal and consent, a willingness to retreat or approach. Frankly, the world we live in stacks the cards against flirtation, in favor of creepiness—which is why we need to think about the difference.

*Thesis #2: Flirtation is a kind of erotic attention which opens the structure of time and intensifies wonder and curiosity between two subjects, in an opened-up world, in which one appeals to the world-making capacities of the other.*

## Beware of male heroes!

It bothers me a great deal that those same teenage daughters of mine who, I've just argued, take epistemic charge of a situation that is stacked against them by declaring, "What a creeper!" are also addicted to stories of male heroes. It hit me hardest when the older three, a few years ago, passed around the *Twilight* novels, huge, fat, 700-page monsters—and read each of them with a kind of breathless urgency. Wondering what all the fuss was about, I spent a few weeks reading the whole four-volume set myself.<sup>13</sup> I met Bella, the teenaged protagonist, and watched her be rescued—again and again and again. Edward Cullen, the vampire hero of the series, is the main rescuer, and his rival, Jacob, is rescuer number two. Bella's world-shaping capacities are reduced to choosing between them on occasion, though just as often they collaborate to save her despite their animosity to one another, or her half-hearted resistance, passing her back and forth like a rag doll. Though finally, at the end of volume four, she is actually able to effect a major rescue herself, the tone and tenor of the texts is dominated by images of Bella threatened by some really over-the-top creepers, then whisked away, draped over Edward's overly developed forearms as he carries her to safety.

Stephanie Meyer, the author of the series, made her fortune on a wager that girls today would fall for a new damsel-in-distress story, like generations of girls before them. She couldn't have hit it better. In 2009, *USA Today*, reporting on their best seller list, announced that "the *Twilight* books have stayed in the list's top 10 for 52 consecutive weeks. They held the first four spots a total of 13 weeks in the past year."<sup>14</sup>

Meyer spiced her fairy tale up for a new millennium, even being fairly up front about the troubling fact that Bella's blood-sucking-vampire-hero can barely control his urges to kill her, a symbolic allusion, on a feminist reading, to the tendency exhibited by male heroes to strip women of their agential powers. Yet heroes are, it seems, overwhelmingly seductive to the current generation of young women. One teenage girl I know flushes with pride when she reports that her (well-meaning) boyfriend has just told her, for example, that she is "not allowed to walk alone in that area anymore." His urgency to protect her somehow disguises the fact that he takes it upon himself to "allow" or "not allow" certain actions—and this girl, who is not generally fond of people's authority to allow or not allow her things, virtually melts with delight as she recounts the story.

It's not only a problem in the fairy tales or in teenage romance. When the United States invaded Afghanistan in October of 2001, one of the justifications chosen by the Bush administration was that we needed to rescue the women. In fact, Afghan women's organizations had been calling for international aid for decades. The human rights situation for women in Afghanistan was absolutely abysmal, and organizations like the Revolutionary Association of Women of Afghanistan (RAWA) had been resisting the Taliban and paying the price of imprisonment, torture, and execution for years.<sup>15</sup> When the Bush administration decided to invade, suddenly feminist organizers in the U.S. who had been lobbying unsuccessfully for attention to the human rights situation for Afghan women had the ear of the president. Feminist organizers who hadn't been able to get anywhere with the Bush administration before, were invited into the White House as consultants.

In the U.S., the feminist movement split over the issue, with some supporting the invasion as the long overdue opportunity to change things on the ground for Afghan women. Others spoke out against the war, convinced that feminist demands were being opportunistically folded into efforts to justify an unjust,

pre-emptive war of aggression on another sovereign nation, and that the war effort was likely to make things even worse for Afghan women. From Afghanistan, RAWA vehemently opposed the U.S. invasion, while intensifying their efforts to get and keep women's human rights for Afghan women on the international agenda. And when it came time to put together a provisional government in Afghanistan, not surprisingly, the women who had been organizing for years within the country on behalf of women, who had risked everything to resist the Taliban, who had seen their sisters-in-struggle tortured and executed, were not at the table; their voices were systematically excluded from any official efforts to reconstruct the country. While the Bush administration was very comfortable relating to Afghan women as victims, and relating to those U.S. feminist organizations which were willing to define the situation exclusively as a situation of victimization, they aggressively excluded those women who had organized resistance, who demanded a voice in shaping their world, from the negotiating table.

While this example might seem out of place in an essay about sexual harassment, I think it is an important cautionary tale. The problem is, there is a long patriarchal tradition of protectionism that is easily re-animated when women are victimized. The notion that men need to protect women from other men is, after all, an integral part of masculinist thinking. Just as girls grow up with stories and images of Prince Charming, or Edward Cullen, running around kissing them back to life or scooping them, in the nick of time, out of danger—boys grow up with stories and images of such rescues saturating their cultural space. Even cognitive scientists say that the rescue narrative is deeply culturally entrenched.<sup>16</sup> Rescuing women is, in fact, a necessary part of the life-story a manly man imagines for himself in a masculinist culture. It's part of what makes you a manly man, if you think you are one. And in a world in which women really *are* in danger of being victims of sexual violence, and also grow up with the rescue narrative all around them, this kind of chivalry can seem friendly, welcome, even necessary.

But what's going on, upon philosophical reflection, in the relation between the hero and the victim he sets out to rescue? First, as in any encounter, this meeting is characterized by a particular mood. We might call the mood, at first glance, before reflection, hyperbolic responsibility. I mean by this that he feels himself to be responsible for her in the way that a parent necessarily feels herself to be responsible for an infant or young child. This is an extreme existential responsibility, in that the very life or death of the child is in the parent's hands. In fact, a parent who brings a child into the world gives the child both life and *time*, in that the life-story of an individual starts at birth. Similarly, the hero imagines himself to occupy a certain position and to enjoy a certain status in the victim's world. He is the one without whom she ceases to exist. He is the one whom she waits for. He imagines the victim to exist in a state of *temporal suspension* in anticipation of his arrival, and that his arrival will bring her (as with Prince Charming and Snow White) back to life. He is the one who gives her back *time*, in other words. The hero thinks he restarts the life story of the victim at the moment of rescue, which he tends to mistakenly believe actually makes him the *author* of her story.

The problem with this impassioned fantasy is that it actually requires the victim's passivity, the victim's vulnerability, in order to keep itself going. There is only one agent in the rescue narrative, and it's not the victim. The hero can be recognized, in fact, by his tendency toward obsessive and hyperbolic displays of agency. Wherever women are victimized, if male heroes appear, they speak very loudly and flail around a lot. Their form of rescue tends to leave a great deal of destruction in its wake. Sometimes male heroes even appear in the absence

of victims, as when white supremacists set out to save white womanhood from black rapists by lynching, though in the vast majority of lynching cases based on an accusation of insult to or assault on a white woman, no victim had come forward or was even named.<sup>17</sup> When there *are* victims, heroes constantly make the mistake of replacing the victim's agency with their own, violating a central principle of victim advocacy. As stated by the National Organization for Victim Assistance in their crisis intervention protocols, those who work with victims should "respond to the need for nurturing—but be wary of becoming a 'rescuer' on whom the victim becomes dependent. The 'rescuer' who ends up months later making decisions for the victim has subverted the primary goal of crisis intervention; that is, to help the victim restore control over his or her life."<sup>18</sup> Victim advocates at the *Justice Solutions* website agree; under a list of "DON'TS" we find this item: Don't "be 'over-helpful' by making decisions and choices for victims. Since no victim *chooses* to be victimized or has control over a violent act committed against him or her, the ability for victims to *regain control* over their lives, and *make decisions* affecting their lives, becomes very important."<sup>19</sup> The worst hero will capture the entire story of a victim of harassment or abuse to animate his own agenda, whether that agenda consists of simple self-aggrandizement, a destructive war of aggression, or some other passionate mission to which he has linked his identity.

Commonly, this is more or less unconsciously motivated—and comes with a certain epistemic incapacity; the narcissistically driven personality cannot get enough distance from itself to recognize that it is self-obsessed, after all. While heroes claim to be knowers of women, they enjoy the hero-role to such an extent, and are so committed to their status as heroes, that they end up being aggressively ignorant about women's experiences and perspectives. In fact, that women might *have* perspectives that differ from theirs, might actually interpret or resist abuse rather than merely suffer it, is in itself a threat to the hero's status as the sole agent of the scene. What we first interpreted as an intentional mood of hyperbolic responsibility now shows itself to be something else: obsessive self-aggrandizement disguised as selfless devotion. Just as the devoted parent becomes the weight which holds a maturing child captive, the hero's heroism becomes an obsession which pins the victim to her victimization.

This is why male heroes are unable to accept leadership from women. They are very comfortable with women who are victimized, who are vulnerable—but they get very uncomfortable when women gain power. Just as the Bush administration *had* to exclude those Afghan women who were organized, knowledgeable, and strong from the table, the hero will not ally himself with women who are likely to challenge his version of events, or who are perhaps more qualified for leadership when it comes to redressing the victimization of women than he is. More than this, as in Afghanistan where the Bush administration set out to systematically discredit RAWA as a representative of women's interests, the male hero will need to systematically discredit those feminists who have been doing the work in the trenches all along, in order to present himself as the sole savior of vulnerable women. He will forget to mention the years of work that feminists have done to redress the harm in question. The work that women have done fighting for and writing sexual harassment policies and law, for example, may be entirely erased. The hero takes credit where he can, as if he's done all the work that mattered all by himself—women who are or have been world-shaping agents pose a danger to his ego. He will warn victims to stay away from those women whose self-definition is not heavily focused on victimization, because if the victims who feed his ego cease to see themselves primarily as such, and instead

understand themselves to be capable of world-shaping activity, his status as the savior of vulnerable women will be punctured like an oversized hot-air balloon.

In relation to other men, the hero operates on the principle that the bigger and meaner the dragon-to-be-slayed, the more valiant will be the charming prince. The fact is, *the hero needs the creeper* in order to tell his story. He is as committed to a world in which women are victimized as the creeper is. His wish to exaggerate the differences between himself and other men creates the need to portray men who harass or abuse women as pathological monsters, rather than simply as men whose behavior is "an expression of the norms of the culture, not violations of those norms."<sup>20</sup> Heroes tend to exaggerate stories of abuse in order to add glory to their own heroism. Even men who stand against the abuse of women, but in a quieter, less dramatic way, are in for a slaying. The paradigm of hyperbolic manhood doesn't have room for sissies, whose agency is not obsessively on display. The problem is, of course, that men who harass and abuse women are not, by and large, pathological. They simply take the entitlements offered to them in a misogynist culture quite seriously. Portraying them as monsters lets the culture of masculinity, which includes the very dynamic of protectionism the hero enacts, off the hook. It also lets the hero off the hook—he needn't ever reflect on how he benefits from the arrangements as they are. A focus on individual monsters who need to be slayed distorts the truth of sexual harassment, which is rooted in a total concrete situation that is structured to pre-empt women's world-making capacities, through masculinist violence *and* masculinist protectionism.

And here it becomes clear that heroes and creepers have something in common. Both are epistemically arrogant. Both live their relations to women in a posture of entitlement, in which they relate to the women around them primarily as players-of-parts in their own stories. They are incapable of recognizing women as authors or potential authors of perception and meaning. Their posture toward women is, in other words, acquisitive. They are "creepy" in the way that certain invasive vines are creepy, in that the intentional threads that anchor their actions in the world, which their female interlocutors also inhabit, perform a kind of capture. Both the creeper's and the hero's way of having a world pre-empts women's world-making capacities. These capacities are already siphoned off and harnessed to the hero's grand narrative before she sits down across the table from him, opening a conversation, or looking for help.

*Thesis #3: A hero is a narcissistic subject, whose hero story, nourished by broader misogynist social arrangements, requires victims to rescue; the hero's obsessive displays of agency pre-empt and undermine the world-making capacities of the ones he sets out to save.*

### How to Know an Ally When You See One

Allies are very different sorts of men, and I'm happy to say I've had the opportunity to know and work with a good number of them. They aren't loud or flashy. They don't obsessively display their self-sacrifice, and they don't talk endlessly about their heroic efforts on behalf of women. In fact, on subjects like this one, they do more listening than talking. They are aware that in the world we have inherited, their voices will tend to command some authority, at least in their own communities, just because they are men, and they are circumspect about this—thinking hard about when it is appropriate to deploy that authority strategically, and when it is not. Allies tend to work more than they talk. They are the ones who support women's events by taking over the child-care or volunteering to be on the clean-up team, rather than appointing themselves to be key-note speaker. To put the point more philosophically, an ally

is someone who respects the epistemic authority of women in relation to women's experiences and concerns.

More than this, an ally remains cognizant of the ways that he is implicated in the very culture and structures of power that are the backdrop for and the animating force for individual acts of abuse or harassment. In encounters with an ally one is immediately aware of an intentional mood that might best be described as *circumspect*. He practices epistemic humility in relation to women and women's concerns, without giving up his responsibility to know and to act. He understands that self-reflection, when one holds power, can be both painful and difficult, even as it is necessary. Here, the temporal mood is one of hesitation first, then care. When confronted with a feminist criticism or demand, he will not necessarily accept it, but he will respond first with curiosity, wondering what he might have missed, or what he is not understanding yet.

When women are victimized, allies don't sit on their hands, but neither do they rush to seal up a definition of the situation, the agenda, or the path out—knowing that space needs to be left, and created, for women to do those things. When advocating for victims of male violence or exploitation, they are very careful not to replace the victims' voices with their own. They are very careful not to replace the victims' agendas with their own. Allies are aware of the need to *create space* for women to come to a definition of the situation, to set agendas, and to decide on strategies for redress. They will employ their privilege or institutional power, if they have it, to make such space. In addition to exercising epistemic humility then, allies are space-makers.

One clear difference between a hero and an ally is that while heroes demonize male perpetrators of harassment or abuse in order to exalt themselves, allies challenge the behavior of other men, often forcefully, as *peers*.<sup>21</sup> Allies do not shy away from face-to-face conversations in which they challenge their male peers to behave better. They recognize that exaggerating stories of harassment or abuse by portraying the men who practice these things as "crazed rapists," even if they know that the public at large will have a hard time recognizing the harms in more "subtle" forms of harassment, serves no one's interest but their own. In fact such portrayals serve to distort the reality of sexual harassment and other abuses, including rape, which are enacted most often by men who *comply* with dominant cultural norms, rather than deviating from them. Understanding that portraying certain men (often racially coded) as monsters amounts to engaging in a kind of public relations campaign for masculinism as a whole, allies avoid such portrayals. Instead, they are careful to point out how the most subtle sexist behavior, often unconsciously enacted, plays its part in the whole cultural scene, in which harassment and abuse emerge as intensified moments of the same structure. They will not approach the harasser as an individual monster, then, but as a co-beneficiary of a system that is not of their own, individual, making—knowing that they, too, have to be vigilant against enacting its privileges. While allies will not hesitate to avail themselves of policy and law to assist women who seek redress from particular harms, their sense of responsibility will be much broader, extending most importantly to the constitution of male peer culture. Allies are not princes in shining armor, they are culture critics.

Allies are not threatened by women who have power, though they may not always agree with them. They understand how important it is for women who have been harmed to find and talk with other women who have experienced similar harms. They understand that sexual harassment and other abuses that fall along traditional gender lines nourish themselves on a world that is saturated with messages and

images of women as use-values for men, and that is often structured materially to women's collective disadvantage relative to men of their race and social class. They realize that feminism is the emancipatory movement that has undertaken resistance to these arrangements, and that, consequently, *the promotion of feminism is itself a form of resistance to the harms of sexual harassment or abuse*.

*Thesis #4: An ally is a hard-working and epistemically humble culture critic, who is circumspect about his unwilling or unwitting participation in misogynist social arrangement, without being immobilized by his own circumspection.*

## Conclusion

The real men in our lives are not always so neatly divided up, of course, either creepers or flirts, heroes or allies. One man might be any or all of these characters over the course of a lifetime, and the boundaries between them, even in a single moment, are not always clear cut. Creepiness, flirtation, heroism, and alliance are all, ultimately, modes of intersubjective engagement rather than typologies of character. While some men will so wholeheartedly affirm and so passionately commit themselves to one of these modes that the character of the person becomes dominated and saturated by the mode of engagement, mostly, things will be more confusing than that. All of us know that, often enough, we discover ourselves to be in the grip of a certain intentional mood when already in the midst of an encounter, *before* having made a reflective commitment to it.

By teasing these four modes apart, we see more clearly the possibilities of harm and the potential goods that come with different modes of intentional engagement. For those who are men of good will, reflecting on the intentional structures of the kinds of intersubjective engagement that are enacted by "creepers, flirts, heroes, and allies" might make it possible to change the direction of an encounter, or change the tone of one's dominant mode of engagement with certain women, so that women's world-shaping capacities are engaged rather than undermined. It might also make it possible to challenge male peers on the less overtly coercive forms of sexual harassment, to recognize the harms of those forms of harassment, without having to resort to the slash-and-burn strategies deployed by heroes.

In fact, taking responsibility for male peer culture would entail challenging both creepers and heroes, where creepers invigorate the backdrop of fear and the threat of sexual violence that allows heroes to come to the rescue. The distance provided by critical reflection allows us to recognize that both postures implicitly affirm and rely on a culture in which facing sexual harm and depending on rescue are rigidified as necessary facets of the condition of being female. Both postures pre-empt women's world-making capacities by reifying these conditions. The only way out of this "male protection racket," as feminists called it in the 70s, is for women collectively, in the company of allies, to reshape the social world so that it is not structured in terms of these two possibilities.

For those of us who are women, if we are to live our way through the complex dynamics we encounter in the work place, at the mall, or on the street, we need to be aware of and skilled at recognizing the signs of each of these intentional modes. Naming creepers, flirts, heroes, and allies is part of assuming epistemic authority over a situation. Reflecting on what it is that we know when we use such names is one task of feminist criticism. What is at stake, in the daily gifts and thefts of space and time, in our ability to accept the gifts and resist the thefts in each case, is the status of our world-shaping capacities. What is at stake is our ability to insist on a world in which those capacities might flourish.

Endnotes

1. Especially, but not only in the case of street harassment, many feminists have noted how the threat of sexual violence is evoked by and backgrounds the harassment, so that such harassment, in the words of June Larkin, “contributes to the moulding of young women’s subordinate status...because so much of their energy is geared to securing their own safety. When a young woman is continually reminded of the risks that accompany her developing body, when she is constantly under the scrutiny and surveillance of males, and when she lives in a state of constant vigilance, it’s unlikely that she’ll ever develop a sense of herself as a powerful and autonomous person.” See June Larkin, “Sexual Terrorism on the Streets: The Moulding of Young Women into Subordination,” in *Sexual Harassment: Contemporary Feminist Perspectives*, edited by Alison M. Thomas and Celia Kitzinger (Buckingham and Philadelphia: Open University Press, 1997), 115-130.
2. For a thorough overview of the development of the concept of “hostile work environment sexual harassment,” see Margaret A. Crouch, *Thinking About Sexual Harassment: A Guide for the Perplexed* (New York: Oxford University Press, 2001), 54-69.
3. See *Office of Affirmative Action and Equal Opportunity: An Overview of Services and Complaint-Grievance procedures*, published by the Office of Affirmative Action and Equal Opportunity, University of Oregon, <http://aaeo.uoregon.edu/AAEO%20Booklet%20Color.pdf>, p. 11. (October 31, 2011).
4. Crouch argues that it is, in fact, a philosopher’s job to pose the question of harm in relation to sexual harassment. *Ibid.*, p. 141.
5. Though they may not remain so. Catharine MacKinnon insists that hostile work environment sexual harassment ends up imposing *quid pro quo* conditions on women’s employment. See *Sexual Harassment of Working Women: A Case of Sex Discrimination* (New Haven and London: Yale University Press, 1979), 40-47. My point is not that the harms of hostile work environment harassment never resemble those of *quid pro quo* harassment, i.e., one finds that one’s job is at stake in both, but that there is a harm that is prior to that which arises from the necessity of putting up with the harassment as a condition of keeping one’s job, or other material harms.
6. For a critical survey of the empirical data see Crouch, pp. 101-138.
7. Jean Paul Sartre, *Being and Nothingness: A Phenomenological Essay on Ontology* (New York: Washington Square Press, 1992), 96-97.
8. Beauvoir was the first to understand this structure of acquisition, which she called “inessential otherness” in *The Second Sex*. For a more contemporary exploration, see Ann Cahill, *Overcoming Objectification: A Carnal Ethics* (Hoboken: Taylor and Francis, 2010).
9. Kathleen Cairns wonders, “How can we explain the frequency with which otherwise assertive and self-confident women experience this paralysis of the will that makes it impossible for them to say no to unwanted sexual activity?” “‘Femininity’ and Women’s Silence in Response to Sexual Harassment and Coercion,” in *Sexual Harassment: Contemporary Feminist Perspectives*, op. cit., p. 92. She argues, citing Kaschak, that “Masculine meanings organize social and personal experience, so that women are constantly imbued with meanings, not of their own making,” p. 95.
10. Susan Bordo, “The Sexual Harasser is a Bully, Not a Sex Fiend,” in *Gender Struggles: Practical Approaches to Contemporary Feminism*, edited by Constance L. Mui and Julien S. Murphy (New York: Rowman and Littlefield, 2002), 230.
11. I am accepting, here, what MacKinnon calls the “social” position on sexual harassment, described by Crouch as the idea that “sexual harassment is a manifestation of the basic inequality of men and women as “men” and “women” are constructed in our society. Crouch, p. 10.
12. *Ibid.*, p. 232.
13. An article resulted from this exercise. See my “Vampire Love: The Second Sex Negotiates the 21st Century,” in *Twilight and Philosophy: Vampires, Vegetarians, and the Pursuit of Immortality*, edited by Rebecca Housel and Jeremy Wisniewski (Blackwell Press, 2009). Excerpted in *The Philosopher’s Magazine* 47, 4th Quarter (2009). Reprinted in *Introducing Philosophy through Popular Culture*, edited by William Irwin and David Kyle Johnson (Wiley-Blackwell 2010).
14. “Twilight Series Eclipses Potter Records on Best Selling List.” *USA Today*, [http://www.usatoday.com/life/books/news/2009-08-03-twilight-series\\_N.htm](http://www.usatoday.com/life/books/news/2009-08-03-twilight-series_N.htm) (November 1, 2011).
15. See Ann Brodsky, *With All Our Strength: The Revolutionary Association of Women of Afghanistan* (New York: Routledge, 2003).
16. George Lakoff, George. *The Political Mind: Why You Can’t Understand 21<sup>st</sup> Century Politics with an 18<sup>th</sup> Century Brain*. New York: Viking Press, 2008.
17. Angela Davis, “Rape, Racism and the Myth of the Black Rapist,” in *Women, Race and Class* (New York: Vintage Books, 1983).
18. The National Organization for Victim Assistance, “An Introduction to Crisis Intervention Protocols.” <http://www.trynova.org/victiminfo/readings/CrisisIntervention.pdf>. (November 4, 2011).
19. Justice Solutions: A Website by Crime Victim Professionals for Crime Victim Professionals. [http://www.justicesolutions.org/art\\_pub\\_communicating\\_with\\_victims.pdf](http://www.justicesolutions.org/art_pub_communicating_with_victims.pdf) (November 4, 2011).
20. Jackson Katz, *The Macho Paradox: Why Some Men Hurt Women and How All Men Can Help* (Naperville, Illinois: Sourcebooks, 2006), 149. Jackson Katz gives a convincing account of why both men and women are reassured by images of men who harm women as “crazed rapists” rather than as regular guys, whose behavior is broadly supported by the culture. See his analysis of this phenomenon beginning on p. 149.
21. Katz proposes that men take responsibility for building a male peer culture that is intolerant of the abuse of women generally, rather than dividing men into the “good guys” and the “bad guys” (i.e., the “crazed rapists”), a strategy which means, “men who do not rape can easily distance themselves from the problem” (150).

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**Notes from the Underground: Observations of a First Year Philosophy Graduate Student**

**Anonymous**

Let me state right from the beginning that I am a first year graduate student. Yes. That’s right. I’ve been in a graduate philosophy program for exactly seven months, give or take a few weeks. In addition, I am a member of a cohort of graduate students that seem to have been, from the perspective of some of the other students, “hand-picked” to address the “cold climate problem” within our department and the lack of diversity within the larger field in general. Some of the less charitable students have even gone so far as to call us “The United Nations.” Personally, I am the lesbian and blue-collar working class representative in my cohort. It’s as if my UN name tag would read “Samantha: Blue Collar Lesbian.” Although this may be too simple of an understanding, and a gross misrepresentation, of how each of us was picked to enter the program, the fact remains that my cohort is an unusually diverse entering class within the field of philosophy. As such, I thought that more established scholars within the field might be interested in the experiences of at least one member of this class. I cannot and will not speak for all of my colleagues, but I can at least offer you my own experiences from my particular standpoint. This is the subject of my musings here.

I can identify at least two themes running through my personal experiences of the first few months in the doctoral program. Of course there was the initial shock of being in a new environment and the pressure to perform well but these can be seen as more common graduate school experiences. The two themes that I want to address here are more specific to my entering cohort and I would postulate to other students from a background similar to my own. They are 1) the sense of feeling out of place within the larger department and 2) the almost inarticulate existential feeling of being ground between two conflicting expectations. I struggle even here to find words to explain the second theme; however, I hope that it will become clearer later in this musing. In what follows, I will offer up my experiences in order to illustrate these two themes.

While my department is actively seeking to increase diversity within the student body, I initially found it difficult to find a faculty mentor with a “similar voice” to my own. The papers I was asked to write (and especially the format within which I was asked to write them) felt constricting rather than representative of the work that I want to do. In addition, while my own cohort is diverse, I couldn’t help but get the impression that there was a “boys club” firmly in place within the larger graduate student body. In fact, a more senior graduate student actually praised God when he found out that a pretty member of my cohort was not a lesbian and, therefore, “available.” While this atmosphere is in no way comparable to what early feminist scholars experienced (and something that I can handle), it is sad that such environments still exist. Finally, I felt frustrated by the lack of diverse texts being taught within particular classes and longed for the work of scholars (such as Karen Warren, Adrienne Rich, and Julia Kristeva) that made me fall in love with philosophy in the first place. While I was told by faculty members that now is the time to “pull myself up by my bootstraps” and *do* philosophy, the above issues combined to make this difficult and to form a feeling of “not fitting in” within the department. Even though I was doing well by the standards of the department, I initially felt alone, out of place, and depressed.

Thankfully, however, because of the efforts of more advanced graduate students with similar feelings and a couple faculty members, my program formed a Feminist Reading Group which provides a “safe space” within which woman can talk freely about these issues. (I should add here that this was seen as a hostile move by some male graduate students.) We choose and read texts that are important to each of us, discuss papers and writing styles, and support each other’s work. While this is not specifically “within the department,” it does help to alleviate the alienation caused when navigating the department. In addition, my specific cohort has become a valuable source of strength and support. These two groups have helped me to “handle” my sense of feeling out of place. But it is not all roses, so to speak, even with both of these supports in place. This point brings me to the next theme running through my personal experiences that I wish to muse about here. Specifically, I want to talk about the feeling of being ground between two conflicting expectations.

I will try to explain this feeling here with the help of Moulton and Dotson. Janice Moulton called the enterprise of philosophy “an unimpassioned debate between adversaries who try to defend their own views against counterexamples and produce counterexamples to opposing views” (Moulton 1996, 14). She went on to label this form of philosophy “the adversarial method” before critiquing it harshly and calling for methodological pluralism within philosophy. More recently, Kristie Dotson pointed out that this method has largely been accepted within current philosophy and that it leads to diverse peoples not being able to examine their own questions (Dotson 2010, 6). This, in turn, is one reason why some (particularly

African American women) leave the profession. According to Dotson, many often feel that “philosophy has failed them” (1). Moulton and Dotson’s work has helped me to identify what I have been feeling. While on the one hand, I feel pushed to become more “critical” in my writing and to embrace the adversarial method, on the other hand I find that this more critical stance is often greeted with hostility.

For example, after a particularly harsh class that I was in, one fellow student said that it feels like some of the classroom experiences are a sort of “collective trauma.” Within this class, we (i.e., myself and some of my fellow students) were chided for being too critical of a historical text and for not looking at it within the context within which it was written. We were told to suspend our critique and to just study the material before us. However, when reading a text which tells you that you are inferior because you are a woman and that puts forth ideas which are against everything that you philosophically hold, it is difficult not to critique such work. Several of the students were upset afterwards and one astute member of my cohort pointed out how difficult it is for some professors to handle “aggressive” behavior from female students. She made the point that similar criticism would have been treated differently if it had come from a male student. (Most of the criticism was brought up by female members of the class.) I bring up this experience as an example of the above feeling of being ground between two conflicting expectations.

From my limited experience, it seems that women in philosophy are largely expected to accept the adversarial method but, when we do, we are sometimes viewed as being “overly critical” or “hostile.” This causes, at least for me, a feeling of being “battered” or “ground down.” Also, this contributes to the first theme mentioned above. When the philosophy that you wish to do does not include the adversarial method, then you may feel out of place within a philosophy department that largely embraces this method. This contributed to my initial feeling of not fitting in within the department. Thank goodness I found supportive faculty members that gave me advice on how to get the most out of my classes, utilize what I learn, and specifically apply it to the type of work that I want to write. These acts of support have made all the difference within my early career in philosophy.

Now, to be fair, my department has recognized the fact that it has a “cold climate problem” and it is working to correct this issue. In addition, I have a strong support system because of my cohort, the Feminist Reading Group, and the faculty support mentioned above. For these reasons, I am one of the lucky ones. However, I feel that my experience as a new graduate student within philosophy can still help to shed light on some of the problems within the discipline that lead to a lack of diversity within the field. I can’t tell you how many times I’ve heard a fellow student question whether it’s “worth it” to continue in her studies because of these issues. To date, philosophy is the least diversified discipline within the humanities and this is a continuing problem that needs to be addressed. Perhaps new sets of eyes can help to pinpoint issues which may go under the radar of more established scholars working within the field. For this reason, I offer you the musings of the lesbian and blue-collar working class representative in my cohort. Hopefully, philosophy as a whole will one day look more like my entering class; a class which some of the less charitable students in my department have dubbed “The United Nations.”

#### References

- Dotson, Kristie. “Concrete Flowers: Contemplating the Profession of Philosophy,” *Hypatia* 26 (2011): 403-409.
- Moulton, Janice. “A Paradigm of Philosophy: The Adversary Method.” In *Women, Knowledge, and Reality: Explorations in Feminist Philosophy*, edited by A. Garry and M. Pearsall. New York: Routledge Inc., 1996.

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## CONTRIBUTORS

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