



SOME FUNDAMENTAL FLAWS IN THE DESIGN OF SEXUAL HARASSMENT POLICIES

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This paper suggests that the current social issue/problem concerning sexual harassment is exacerbated by some theoretical problems found in sexual harassment policies. There are a number of ethical considerations that need to be considered but in particular the distinction between the social and the individual is problematic in the liberal tradition. Practical problems in the application of policies arise from this, both in the matter of public accountability and the actual procedures of resolving instances of sexual harassment. The paper is exploratory in nature rather than prescriptive and does not intend to be comprehensive. Further questions need to be formulated by ethicists, social scientists, administrators, and those responsible for the implementation of such policies before an adequate response to sexual harassment will be possible.

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The intent of this paper is to identify and explicate some of the foundational ethical flaws in sexual harassment policies. As such, the work has both theoretical and applied aspects to it. One of my contentions is that the problem of sexual harassment provides an excellent opportunity to examine the actual state of social ethical awareness and understanding particularly as it, (the problem and the prescribed response), is articulated in specific policies. The primary reason why I undertook this study was based on my observation that sexual harassment policies do not seem to work very well. This was based on my previous experience as a sexual harassment advisor and as a member of a committee responsible for formulating a po-

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licy on sexual harassment for the university I teach at, as well as reports from people involved in applying sexual harassment policies in institutional settings.¹ The amount of statistical data available on the issue of sexual harassment is at best inconclusive, and at its worst is not helpful at all.² It was the perception of a great discrepancy between the ostensible goal of sexual harassment policies and the actual (non)use of the policies that led me to consider the possibility of theoretical problems being partially responsible for this state of affairs. As I currently understand it the actual problem is two-fold; first, non-compatible ethical assumptions are incorporated into the body of the policies which, secondly, negatively affects the positive value in the implementation and use of the policies within the specific institutional or social setting.

The issue of sexual harassment is clearly a problem for applied ethics, but the difficulties inherent in coming to constructive solutions require the theoretical considerations of meta-ethics.³ In a unique way, sexual harassment raises questions about social and cultural assumptions about norms and their applications. In these policies there is an inherent attempt to identify and articulate a general understanding of the common good, and an explicit account of how behaviour is to be sanctioned should these common values be transgressed. The relative novelty of sexual harassment as an area of social concern and its quasi-legal status shows a shift in social consciousness and awareness that remains to be fully articulated and appropriated by society. As is often the case in applied ethics, the immediate and shifting nature of the problem precedes the articulation of a comprehensive framework of understanding. Unlike bioethics, where the questions considered are generated in large part by the developments of technology, in sexual harassment the immediate data is historically conditioned forms of consciousness and behaviour and different levels of awareness about these. The identification of sexual harassment as a social issue challenges some traditional social norms and raises questions about the adequacy and comprehensiveness of the received ethical understanding.⁴

Clearly, there are major changes taking place inasmuch as sexual harassment is identified as a social problem. As a problem in applied ethics there are at least two areas which can be considered: first, the coherence and adequacy of the policies themselves as ethical projects, and second, the efficaciousness and practical value that the policies have in actual application. I would like to briefly examine both of these areas, emphasising those elements and factors which seem to downplay the effectiveness of the policies. The number of variables which affect the overall situation of sexual harassment far exceeds any individual capacity for comprehensive under-

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standing.⁵ Nonetheless, by focussing on sexual harassment policies one has access to an articulated code which attempts to regulate behaviour on the basis of a supposedly coherent ethical position. By identifying discrepancies within the policies and considering the practical value of the policies when applied in institutional and social settings some questions concerning the coherence of the ethical stance are raised. Any inherent ethical discrepancies contribute adversely to the ability of people to adequately identify and respond to behaviours and attitudes which are detrimental to personal and social well-being. It seems to me that theoretical inconsistencies can be much more readily and constructively addressed rather than attempts to address the problem in terms of individual instances of aberrant behaviour. For those concerned with compiling quantitative data, the latter choice is clearly the preferred option. Behaviour is easier to quantify than individual or social states of consciousness. However, sexual harassment is a social phenomenon which raises qualitative moral and ethical considerations whereas quantitative approaches remain relatively superficial in their approach because the symptoms (behaviour), and not the root causes, receive the primary attention. Those charged with promoting the public good (institutional, social, governmental), may quite unintentionally contribute to the maintenance of the conditions that generate sexual harassment by creating policies which identify and censor the more extreme forms of sexually harassing behaviour but which are theoretically and functionally incapable of uncovering the root causes of the issue. It may be suggested that policies do not have as their primary function the solving of moral issues; regulation of morals is sufficient.⁶ Despite the old adage that morality can never be legislated but rather only behaviour can be, the practical problem remains that when policies embody ethical discrepancies they become obstacles to the development of a more comprehensive ethical understanding and they render people incapable of adequately addressing the concrete situations that they purportedly deal with.

My concern in this brief study is exploratory rather than prescriptive. The problem of sexual harassment is a symptomatic effect of a number of unresolved root problems so that no one theory or principle can adequately address it. By examining the ethical assumptions and criteria that are used to create sexual harassment policies it becomes possible to recognize some of the features that might possibly be addressed in a constructive fashion.

The issue of sexual harassment is complicated by any number of factors which include the relative novelty of the idea of sexual harassment, conventional social and sexual mores, the

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quasi-legal formula for defining sexual harassment, and the general problems that occur in every instance where there is an attempt to regulate behaviour and values which are exacerbated in a culture which understands values primarily from within a liberal perspective. In some ways the virtues of the liberal perspective are also its vices. The notions of autonomy, pluralism, and toleration highlighted by liberalism all combine to emphasize the prerogatives of the individual.⁷ Inasmuch as the individual must interact with others in social settings, there must occur some means of negotiating between the various rights of individuals and some notion of a common or public good. Even proponents of the liberal value system realize that defending the notion of autonomy requires differentiating between the private and public spheres of life, with corresponding ethical adjustments and allowances leading to a position of neutrality in order to accommodate the variety of values that can be advocated by individuals.⁸ In the case of sexual harassment the problematic ethical distinction between private and public values are exacerbated by the nature of the issue itself. The difference between two conflicting sets of individual agendas is the ethical issue but it is clearly now a matter of public concern. To the extent that moral neutrality is maintained, the difference in personal power that is considered a cause of sexual harassment goes largely unaddressed, focussing instead on the different individual interpretations of what has transpired. The fact that the social order or institution has been negatively affected by the behaviour is also largely neglected by a liberal approach, as the primacy of individual autonomy remains the focal point of interpretation. This approach misses the historical, social and economic factors that all contribute to the issue of sexual harassment, and leads to the unnecessary and mistaken idea that sexual harassment, when it occurs, is a random and isolated incident.⁹

Clearly some concept or framework of ethical goals that maintains both the social good and the integrity of the individual is desirable. From a formal point of view, liberalism has some substantial flaws especially when sexual harassment is the issue at hand. The existence of sexual harassment policies indicates a certain level of social and cultural awareness that is relatively recent. Accordingly, any moral considerations will have to incorporate shifts in consciousness while simultaneously acknowledging the grounding of moral assumptions in history. If, following the biases of western culture in its liberal manifestations, the concept of the integrity of the person is to be central then an acknowledgement of the patriarchal biases that still carry substantial effective and affective weight needs to be made clear. How to do this in a general sense, let

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alone in the specific instances of sexual harassment, remains an open question and problem. Certain strands of feminist scholarship may be of value in this regard. Pragmatically, the lack of effective sexual harassment policies indicates both the ethical flaws and their systematic implications for victims in the social order.¹⁰ The fact that many have strong affective responses to this issue indicates how important it is to identify the discrepancies in policies that leave both proponents and opponents unsatisfied about clarity, fairness, and justice – all of which are values espoused by liberal cultures.

CONFLICTING ETHICAL AGENDAS IN SEXUAL HARASSMENT POLICIES

The primary significance of the values mentioned above in our contemporary cultures is to recognize and highlight the priority of the individual as an inherent recipient and creator of value in his or her own person. This provides the rationale for the development of notions of individual rights in contradistinction to the power of the state, institution, or collectivity, and as such provides the framework of most contemporary western discussions in social sciences and on questions of value.¹¹ Interestingly, it also provides the context for the distinction between the private and the social, a distinction which has many ethical implications that remain unclear, particularly with the problem of sexual harassment.

Any attempt to regulate or define human behaviour is an exercise in social control. The state, or its representatives, undertake the task of articulating not only the conventional but the appropriate ranges of behaviour that members of the community should exhibit. Without going into the labyrinths of the unconscious and the myriad motivations that all people are subject to, one can safely assume that regulated behaviour corresponds in some fairly direct way to a value that is universally recognized and upheld by the social unit (assuming that coercion is not the only factor at play). There are, of course, serious discrepancies that occur between the recognition and identification of ethical norms and the ability and/or desire to act accordingly. From the claims of psychoanalysis which posit conscious and unconscious motives at work in all human activity to the Apostle Paul whose spirit was willing but whose flesh did not respond appropriately, we find no clear and necessary correspondence between values and lived experience, or between theory and praxis. The is/ought dilemma is a recurring nightmare for philosophers for some few centuries now. The ideal which is promoted in any decent sexual harassment policy is an environment and working/living context free from unwanted and sexually coercive behaviour. The power discrepancies that exist in the social order and that are considered foundational in sexual harassment

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carry a significant affective charge; people are accustomed to recognize and legitimate power and this behaviour is encouraged, shaped and regulated by the established social order. When instances of sexual harassment occur the victim is often confused, frightened, and unsure of what appropriate action is required. To a great extent the negative dimensions of sexual harassment are emotional and affective as the victim can feel shame, helplessness and sometimes anger simultaneously. The working or studying environment can no longer be trusted, and so all habitual expectations and assumptions ranging from self-worth to goals and aspirations are threatened. Due to these factors, the victim of sexual harassment is required to respond to the problem in ways that they are usually incapable of doing, as their emotional and physical well-being is already seriously undermined. Initiating a formal complaint against someone who has a more powerful social position than the person laying the complaint becomes highly improbable, except in the most extreme and dire circumstances. A victim needs to be convinced that in laying complaints against individuals who are harassing them they are not also having to challenge the entire power structure. Most victims, usually women, believe with good reason that in most instances the remedy is as bad as, or worse, than the original problem. This adds to the psychological and emotional burdens that a victim must deal with, and contributes to the low number of cases which are actually dealt with in any formal manner.

Again, sexual harassment seems to pose some interesting questions inasmuch as there still seems to be many factions in the social order who challenge the validity of sexual harassment as a legitimate and general social concern. Hence, the talk about feminist agendas, political correctness, ideological biases, and the like, which depending on your particular point of view strengthens either your belief in the narrowness of social consciousness or, conversely, demonstrates the insidiousness of certain interest groups which will even use the government and the law to impose their own ideological perversities on the (largely) unwitting public. One can safely, but not profitably, use this type of distinction as a general rule of thumb for discerning the conflicting opinions in any contentious social issue and end up with a fairly decent experiential base for recognizing the basic dilemmas in contemporary ethical (non)thinking.

"Thanks very much, but how does this help in discerning the problems with identifying and hopefully of eliminating or (realistically) mitigating sexual harassment?" says the frustrated administrator, equal opportunities officer, victim of sexual harassment, and would-be provider of light and insight to

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the prevailing ethical gloom and murkiness. The answer lies in the policy itself; the first part of the policy invariably provides the rationale for the policy and the good to be achieved thereby, while the second, and more detailed section, provides the actual nuts and bolts of how an issue of sexual harassment is dealt with. The first part of the policy not only identifies the public good that is necessary for the well-being of all the members, particularly those directly and adversely affected by sexual harassment, but also puts the onus for this project (theoretically) on the entire membership of the community. All members are adversely affected by sexual harassment because the lack of well-being of any one member of the community affects the larger unit, through the social relationships that are required in order for the institution or group to meet its own goals. There is a recognized link between the larger goals of the institution (learning, productivity, etc.), and the social relationships necessary for their realization that are disrupted in the event of sexual harassment. The significance of sexual harassment is initially identified as a social problem; the responsibility for the problem is shared by all members of the institution.

In the second part of the policy (as a rule), the actual procedures for dealing with an instance of sexual harassment are laid out, usually in painstaking detail. This is because individual rights and privileges are paramount at this stage. The well-being of the victim of sexual harassment has to be balanced by the rights and privileges of anyone accused of being a harasser. In addition, because of the social nature of institutions and the necessity of maintaining a high degree of social credibility (at the same time needing to maintain accountability to the public), the institution which mediates each claim of sexual harassment has its own prerogatives to uphold and maintain. From the initial sense of a social responsibility for maintaining an environment free from harassment the policy has now moved to an explicit consideration of the individual rights and privileges of the victim of sexual harassment and the person accused of sexual harassment, as well as the implicit concerns of the institution itself. This threefold increase in agendas can be further subdivided depending on economic and political considerations, the actual apparatus involved in mediating or adjudicating specific cases of sexual harassment, and the usual convoluted process that occurs whenever any humans try to resolve a problem that admits of more than one set of vested interests.

Without rehashing the nature of the problems that befuddle contemporary ethical theorizing, a few salient points nonetheless come to the fore. There is a distinct shift in the agenda that characterizes the rationale of the sexual harassment

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policy from the initial shared concern for the public well-being to the safeguarding of individual prerogatives as the policy is applied in specific instances. This is an example, perhaps, of the old "one and the many" chestnut. The ideal of an environment free from harassment is projected as the goal and rationale simultaneously in the policy. When the implementation procedures are set out, the pragmatic concern is no longer (if it ever in reality was) the task of the social unit, but rather depends on the initiative and responsibility of the individual who is adversely affected by the harassing behaviour. While this may be a standard feature of all social policies, inasmuch as general concerns can only be negotiated in terms of specific instances, the shift in the applied ethical criteria is worthy of notice.

The practical implications of the shift in ethical focus from a shared notion and goal of social well-being to the liberal emphasis on individual rights and prerogatives can change from instance to instance, but certain features remain constant. First, and most important, is the shift which downplays the initial social proactive approach to the issue of sexual harassment to the reactive response to particular instances. When the existence of a sexual harassment policy is accepted as a sufficient social response to the issue the underlying and systemic sources of the problem remain invisible. Further, this exacerbates the personal dilemmas of victims of sexual harassment who recognize the implicit, but very real, implications of any attempt to make their plight known to the institution where the various conflicting agendas would immediately come into play. This personal anguish is to a lesser extent reflected in the frustration of sexual harassment advisors who recognize that the victim's problems are more likely going to increase rather than decrease in the event that a complaint is lodged. Vested interests which translate into differences in power and the problematic nature of personal interaction with sexual overtones serve to paralyze all but the rarest of victims of sexual harassment. Leaving and quitting the institution seem to be the most usual responses of victims of sexual harassment. Those that remain find their personal freedom to interact normally highly constricted.

PROBLEMS IN APPLICATION

The difficult task of accounting for the relevance and credibility of personal feelings is made even more problematic when this experience must be translated into evidence for the purposes of laying an informal or formal complaint of sexual harassment. Given the adversarial nature of our legal system, which is imitated to a greater or lesser extent by sexual harass-

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sment policies, and the (theoretically) equal weight given to both victim and harasser in specific cases, there is little incentive for victims to pursue their complaints in the institutional setting. The original differential in power that is often at the root of sexual harassment re-occurs at the stage of laying a complaint. While all policies attempt to address and rectify this imbalance, larger social factors and relationships tend to support the status quo which is normally how institutions maintain themselves.

Assuming that the previous factors can be recognized and a victim is still not dissuaded from following up a complaint, there still remains the issue of presenting personal experience in a coherent and persuasive manner. Normally, most victims of sexual harassment are confused and distraught. Often, victims of sexual harassment want to know that they are not losing their minds or imagining the problems they are experiencing; often, they feel guilty for even suggesting that sexual harassment might be occurring. The credibility of their own experience for themselves is usually established as they become less able to function normally in the institution and in their private lives. The question of interpretation becomes the primary theoretical concern at this stage, but one that is rarely addressed adequately given the already operative agendas, ideological biases, and vested interests that define the context of social interaction.

Historical factors, such as patriarchy, socio-religious and psychological factors all play roles in the process of interpretation. And the problems are vast both in identifying and understanding these relationships. Pragmatically, the fact that a victim's experience has to be proven (to a greater or lesser extent), and that there will very likely be a conflicting account of the events in question from the accused, exponentially increases the initial distress of the victim. The adversarial nature of the complaint procedure, with its win/lose framework, only serves to heighten the fear and alienation of the victim of sexual harassment, and may end up further damaging her own sense of self-worth and credibility.

A critical element in determining if or how a policy is actually going to be applied is the person responsible for the implementation of the policy at the initial stage.¹² Intangible qualities, such as clear-headedness, compassion, and a certain degree of commitment to the process, need to be balanced with more pragmatic considerations, such as awareness of the subtleties and nuances of the particular policy, the historical background and precedents concerning the issue of sexual harassment at the particular institution, the particular power bases and their operative biases, potentially conflicting institution-

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al agendas (such as public relations, especially as this can focus on economics and public opinion), what support systems and resources are available to the victim, and the legal implications of the issue for all parties involved. While gathering information on sexual harassment policies in England two years ago, I found that most staff and administrators responsible for the implementation of the policies that I interviewed echoed the complaints of their counterparts in Canada. Policies tend to be underutilized, not promoted adequately to the groups that would most benefit from knowledge of the policies' existence and their purpose, and adequate resources and personnel were not provided by the institutions to make the policies effective. In addition, many identified a certain reluctance and/or degree of apathy in institutions at the higher levels of decision-making and power to make sexual harassment a visible issue in a pro-active fashion. This was considered by many to create an atmosphere which further negated the possibilities of the policies being used.¹³ While reporting relatively low numbers of formal sexual harassment claims may be taken as an indication that sexual harassment is declining as a social problem, or that it was never considered to be a serious issue in the first place, many sexual harassment advisors regard the problem as much larger than reported.¹⁴ The fact that many of those responsible for administering and advocating the use of the policies are volunteers, who add this duty to their other full-time employment, is an additional feature which detracts from the possibilities of a pro-active, rather than retributive, approach to the problem. In those institutions that hire people to administer sexual harassment policies these duties are usually not the focal point of their daily work.¹⁵ So, the institutional unevenness in promoting sexual harassment as a social problem has direct and indirect implications for those responsible for its use.

AN EXAMPLE OF SEXUAL HARASSMENT IN THE UNIVERSITY SETTING

In order to make some of the issues dealt with in this paper somewhat clearer the following example is presented. This particular case was one that I encountered some years ago while I was serving as one of my university's two sexual harassment advisors; sufficient time has passed so that neither the student who was harassed or the professor who was responsible have been members of the university community for a number of years.

I was first made aware of the problem when the student came to see me in my office after class. As in most encounters of this sort, the initial visit was to get information about the university's sexual harassment policy and to find out her

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options. More importantly, the student was looking for some validation of her own experience, as victims of sexual harassment are often simultaneously experiencing confusion, fear, guilt and doubt. There are probably other major emotions at play but these four seem to predominate. In this particular instance, the student was already known to me as she had taken a course from me previously. In addition, this woman was a mature student, a positive factor in her seeking information in the first place that is much less likely in younger and less experienced students. After determining what the nature of her complaint was, I encouraged her to describe her experiences after a number of assurances that confidentiality would be maintained throughout the process. After hearing of her experiences with the professor, which included explicit talk of his sexual preferences and practises and his attempt to get the student to respond, and repeated invitations to meet him after class in his office to continue the "discussion", and the student's increasing discomfort and unease, I suggested that this was indeed an instance of sexual harassment. The student expressed relief at this, indicating that knowing that she was not imagining or misinterpreting her own experience would help her gain some control over herself that she had felt she was in danger of losing. I then explained the range of options available to her under the provisions of the university's sexual harassment policy, ranging from informal procedures to formal charges, which would then be dealt with by an appointed body from the university community. She was primarily interested in having the harassing behaviour stop, and not interested in punitive or retributive justice. In my own experience, this has always been the case as victims merely wish for the ability and conditions to resume their normal life patterns and behaviours. I explained that the policy was focussed on the desires and needs of the victim, although when a formal complaint was laid the number of people who were aware of the complaint would necessarily expand. The student expressed concerns about the potential ramifications and negative consequences that would occur to both her and the professor in question were she to make a complaint. At this stage, I went through the whole range of options open to her, emphasized that she would be the person who made whatever decisions she deemed would best meet her needs, and that confidentiality would be maintained. I pointed out that should she consider making a formal complaint of sexual harassment, she would require fairly specific details of the harassment and, if possible, corroboration of her story. As most of the harassment had taken place in the professor's office, this would be difficult, if not impossible, to obtain although

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some of her colleagues had remarked on her level of distress when encountering the professor in class and in common areas. I recommended that she take a copy of the policy home with her and let me know what she wished to do.

The following day she returned to my office and informed me that she would like to consider dealing with the problem informally. I reviewed with her a number of the procedures that were available under the policy, but she still expressed a certain reluctance as she was now considering potential negative consequences for her if she would proceed. She was considering doing graduate work in the field that the professor taught in, and was afraid that negative remarks from him about her would jeopardize her status in the undergraduate degree program. I suggested that there were some ways of dealing with the issue so that anonymity might be maintained, and that no official records were kept of any complaint unless it was a formal case. She decided to think some more on the issue, and returned the next day with her account of the harassment written in fairly specific detail. She requested me to hold this in confidentiality until she decided what course of action to take. Three days later she came to my office and requested her written account back. I gave it to her, and she explained that she had dropped the course she was taking from the professor and was attempting to avoid all contact with him. Some few months later, she switched into another discipline in order to finish her undergraduate degree. No further mention of these incidents were made in her remaining time at the university.

I believe that this is a fairly typical instance of sexual harassment, although the fact that the student was somewhat older than her fellow students, that she already knew me and was aware that I was a sexual harassment advisor, and that she had some academic options open to her that other students often do not, make the results slightly atypical. Using the term "results" is somewhat misleading, as the policy itself was never actually utilized except to provide for the existence of sexual harassment advisors in the first place. The range of behaviours that can be considered sexual harassment is more difficult to define precisely when the behaviour is less extreme, although victims' responses are fairly similar in their characteristics. The recognition that the power imbalance that makes harassment possible in the first place is not adequately compensated for in the process of formal (and for many victims, informal) complaints is something that all victims articulate with a high degree of sophistication. The fact that serious instances of sexual harassment (stalking, physical contact or attacks, explicit threats), can also be dealt with by out-

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side agencies such as the police or the Human Rights Commission doesn't seem to add to the victim's sense of well-being or security. The nebulous legal status of sexual harassment, the problematic elements in defining and identifying sexual harassment, and the lack of a communal and proactive policy tends to leave victims of sexual harassment feeling more isolated. Throughout the process it was clear that this victim (as did all other victims whom I had contact with), was aware that her experience was not the only, or primary, factor to be considered when the policy was utilized.

CONCLUSION

The issue of sexual harassment raises many questions about the current state of ethical awareness, especially as it is manifested in public institutions. While there is clearly an understanding that sexual harassment is a socially damaging condition, it is not clear that there is an adequate ethical or theoretical foundation for addressing the problem. In failing to maintain a consistent social pro-active approach to dealing with the problem, even specific instances of sexual harassment are unlikely to be identified and dealt with for the most part. This is because the victim of sexual harassment instinctively recognizes that their problems are most likely going to be increased by the laying of a complaint, regardless of the best intentions and efforts of sexual harassment advisors. In fact, the original alienation and dis-ease that the victim experiences with the sexual harassment will occur again in the process of laying a complaint due to the adversarial nature of the procedures.

I believe that these suggestions and ideas need to be developed further in order for any practical value to be realized. The analysis is exploratory and suggestive rather than prescriptive, but it is clear to most workers in the field of sexual harassment that a pro-active approach with shared communal responsibility is necessary if there is to be any significant diminishment of sexual harassment. The problematic nature of the identification and process of sexual harassment means that most of the data that exists is misleading, understating both the terms of rates of occurrence and of the negative impact on people's lives.

The contemporary problems of ethical discourse are discerned in the inadequacy of the use and implementation of sexual harassment policies. The problem is not so much one of unwillingness to deal with the problem as much as it is a problem of understanding and analysis. The inherent contradictions in our own understanding of ethics and values are reflected in our policies to the detriment not only of specific

victims of sexual harassment, but also to our own possibilities for development. Morality cannot be legislated; but, it can be enhanced by more coherent articulations of the social good, which in turn can only benefit individuals.

NOTES

¹ Included in this body of data are conversations with colleagues and sexual harassment advisors in New Brunswick for approximately a five year period up until the present, interviews with Equal Opportunity Officers and Union staffpersons at a number of Universities in the south of England in 1996, an interview with a Human Rights field worker in New Brunswick in 1996, and discussions on sexual harassment at a conference on the topic held at the University of Central Lancashire in spring, 1996.

² In Canada sexual harassment is covered under the auspices of Human Rights Codes. Both the federal and provincial governments appoint Human Rights Commissions whose job it is to apply the codes and educate the public. The Commissions publish Annual Reports on the work and cases that they have dealt with over the preceding year, usually providing only general numerical information under the various branches of the code that have been invoked. Occasionally specific examples of cases are presented in the report to indicate the nature of the work being carried out. In 1979, the Canadian Human Rights Code was amended to differentiate sexual harassment from the general prohibition of discrimination based on sex in order to assure that the Act have legal validity re sexual harassment. See Canadian Human Rights Commission, *Annual Report 1979*. (Ottawa: Minister of Supply and Services Canada, 1980), p. 8. Reports in the following years start keeping track of formal cases of sexual harassment investigated by the tribunal at the Federal level. In New Brunswick, the provincial Human Rights Act was amended to include protection from sexual harassment in 1987. See New Brunswick Human Rights Commission, *Annual Report 1990-1991*. (Fredericton: Human Rights Commission, 1991), p. 16.

³ The question of where to draw the distinction between theoretical or metaethical concerns and applied ethics is an ongoing debate for ethicists. For an example of this consideration by thinkers in applied ethics see Thomas A. Mappes & Jane S. Zembaty, *Biomedical Ethics*, Third Edition. (New York: McGraw-Hill, Inc., 1991.) pp. 1-4.

⁴ Stephen Morewitz, *Sexual Harassment and Social Change in American Society*. (San Francisco: Austin & Winfield, Publishers, 1996.), especially chapters 1-4.

⁵ Aristotle's dictum, "We must be content, then, in speaking of such subjects and with such premisses to indicate the truth roughly and in outline, and in speaking about things which are only for the most part true, and with premisses of the same kind, to reach conclusions that are no better. In the same spirit, therefore, should each type of statement be received;" emphasis in text. [Aristotle, *The Nicomachean Ethics*. trans. by David Ross (Oxford: Oxford University Press, 1980.) p.3], seems to me to be entirely relevant to the present discussion.

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⁶ Michael Howlett, M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*. (Toronto: Oxford University Press, 1995.), pp. 87-88.

⁷ See Shiraz Dossa "Liberalism and Cultural Difference: The Unconscious Life of Liberation" in *Critical Thinking About Social Issues* (Sackville, New Brunswick: Anchorage Press/Mount Allison University, 1996).

⁸ Stephen A. Gardbaum, "Which Moral Ideals Can A Liberal State Promote?" in *Legal Theory Workshop Series*. (Toronto: Faculty of Law, University of Toronto, 1993), esp. pp. 11-14.

⁹ Arjun P. Aggarwal *Sexual Harassment in the Workplace* Second Edition (Toronto: Butterworths, 1992), esp. pp. 1-6.

¹⁰ A recent incident at a neighbouring university has made the legal and economic implications of the lack of effective sexual harassment policies a serious concern. Students are now charging the university for not providing adequate education concerning sexual harassment, and not following their own procedures as put forth in their sexual harassment policies. The story has been carried in the local newspaper on the front page (*The Daily Gleaner*, Fredericton, New Brunswick, February 7, 1998), as well as in the student newspaper (*The Brunswickan*, University of New Brunswick, Volume 131, Issue 17, February 6, 1998).

¹¹ Among the best known proponents of liberalism is the philosopher John Rawls. For a recent account of his position see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

¹² Among the allegations in the recent claim against the University of New Brunswick are the following: the university a) "developed a policy and procedure on sexual harassment and on professional misconduct, but failed to adequately educate its employees as to such; and b) developed a policy on professional misconduct but outlined no procedure and as such did not employ anyone to implement such policy. *The Brunswickan Student paper*, The University of New Brunswick, Volume 131, Issue 17, February 6, 1998. p. 1.

¹³ I discovered an interesting exception to this trend in England where I was directed to the Dean of Students by an Equal Opportunities Officer (who are responsible for implementation of sexual harassment policies among their other duties) because this Dean was considered to be successful at obtaining positive outcomes for sexual harassment cases. In my discussion with the Dean I discovered that he used his personal connections with other Deans and Administrators to make sure that harassers were properly sanctioned. I also found out that this person did not think that the university's sexual harassment policy was particularly helpful, and that he had been dealing with similar issues well before any policy was created. His personal contact with students in other contexts seemed to be the source of his awareness of the extent of the issue, and his motivation in helping students with sexual harassment issues was usually based on having helped these particular students with other types of dilemmas. He seemed to consider sexual harassment as a rarely occurring and isolated problem.

¹⁴ An interesting example of just such a claim was made by the chairman of the New Brunswick Human Rights Commission in 1996. In

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Canada, sexual harassment falls under the auspices of the Human Rights Act and the Provincial and Federal Human Rights Commissions are responsible for adjudicating formal complaints. The chairman made his claim based on the fact that 5 less claims were filed in 1994-95 than in 1993-94. Not mentioned in the newspaper article was the fact that the Human Rights Commission makes decisions on which informal complaints should be made formally. The article notes that out of 580 informal complaints, only 10 developed into formal complaints. Regardless of what criteria is used to determine the seriousness of complaints, focussing a claim of improved social conditions and levels of awareness on the basis of formal claims solely is highly misleading. Among other considerations, the length of time taken by the Commission in investigating complaints, the limited amount of resources (both in personnel and finances) of the Commission, the increased amount of stress and anxiety for the person making the complaint as time goes by, and the desire to choose cases that could be successfully negotiated (requiring demonstrable evidence, which is often very difficult to obtain given the nature of sexual harassment), is highly problematic. I consider the number of informal complaints to be indicative of a growing awareness of sexual harassment in the general populace as more than 500 informal claims is a high number in a province with a relatively low population. "Sexual Discrimination Less Frequent" *The Daily Gleaner* Fredericton, New Brunswick, Tuesday, March 5, 1996. p. 3.

¹⁵ The person responsible for overseeing the implementation of the sexual harassment policy at Oxford University had among her other personnel policy chores the administration of the University's day-care system in 1996.

Neki temeljni nedostaci u kreiranju politika sprečavanja seksualnoga uznemiravanja

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Ovaj rad ukazuje na to da je problem seksualnoga uznemiravanja danas zaoštren nekim teorijskim pitanjima u politikama seksualnoga uznemiravanja. Postoje brojni etički razlozi koje valja razmotriti, a posebno je u liberalnoj tradiciji problematična razlika između društvenoga i pojedinačnoga. Iz toga proizlaze praktični problemi u primjeni politika i u smislu javne odgovornosti i stvarnih postupaka rješavanja slučajeva seksualnoga uznemiravanja. Ovaj je rad više istraživačke prirode nego li preskriptivne i ne namjerava biti sveobuhvatan. Pitanja dalje trebaju postavljati etičari, društveni znanstvenici, administratori i odgovorni za provođenje takvih politika. Tek će se tada moći primjereno djelovati u slučajevima seksualnoga uznemiravanja.

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Grundlegende Mängel im Entwurf von Maßnahmen zur Verhinderung sexueller Belästigung

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Die Arbeit verweist auf den Umstand, dass im Rahmen der politischen Bemühungen zur Verhinderung sexueller Belästigung dieses Problem heute in verschärfter Form zutage tritt. Dafür spricht zunächst eine ganze Reihe ethischer Gründe, die beachtet werden müssen; ein besonderes Problem stellt in der liberalen Tradition der Unterschied zwischen Gesellschaft und Individuum dar. Daraus ergeben sich praktische Probleme hinsichtlich der Realisierung besagter Vorbeugungsmaßnahmen, und zwar sowohl im Sinne der öffentlichen Verantwortung als auch der realen Vorgangsweisen zur Lösung von Fällen sexueller Belästigung. Der vorliegende Artikel ist eher eine Forschungsarbeit denn eine Studie mit präskriptivem Charakter, auch liegt dem Verfasser jeglicher Anspruch fern, mit seinem Text die gesamte Problematik umrissen zu haben. Weitere Fragen müssen von Ethikern, Gesellschaftswissenschaftlern, Mitgliedern der staatlichen Administration sowie aktiven Repräsentanten genannter Vorbeugungsmaßnahmen gestellt werden. Erst dann wird es möglich sein, in Fällen sexueller Belästigung auf angemessene Weise zu reagieren.