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Stop Thinking (So Much) About ‘Sexual Harassment’¹

Abstract

This paper explores two related widespread mistakes in thinking about sexual harassment. One is a mistake made by philosophers doing philosophical work on the topic of sexual harassment: an excessive focus on attempting to define the term ‘sexual harassment’. This is a perfectly legitimate topic for discussion and indeed a necessary one, but its dominance of the literature has tended to prevent philosophers from adequately exploring other topics that are of at least equal importance, particularly that of bystanders’ responsibilities. The other mistake is one made not just by philosophers but by most people attempting to deal with real-world behaviour that is either sexual harassment or closely related to sexual harassment: an excessive focus on whether or not formal charges of sexual harassment are possible or appropriate. (This is clearly related to the first mistake in that a part of deciding whether charges are appropriate is deciding whether the behaviour meets the definition of sexual harassment). I argue that these are not merely unfortunate errors in attempting to conceptualise certain problematic behaviours; they have extremely damaging real world effects.

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We'll begin with some stories, all of which are from What is it Like to be a Woman in Philosophy (www.beingawomaninphilosophy.wordpress.com).

Story 1

"Early in my 1st year there was a department meal out. Towards the end of the meal...I went over to the table all the male lecturers were sitting at to chat to them. We started talking about party tricks and out of the blue... the head of the department told me "a real party trick would be if I could drip hot wax on your nipples"! All the other lecturers at the table laughed loudly. I was absolutely stunned and utterly humiliated. I went bright red and didn't say anything. As soon as I could (without it being obvious why) I went back to my own table. From that point onwards I avoided him as much as I could and would go red and get embarrassed every time I saw him. As a result the two mandatory courses of his I took were my lowest grades... ever."

Story 2

"My department houses a distinguished sexual harasser who is relentless in his retaliation if confronted about his behavior. I have witnessed and experienced his harassment first-hand and have heard numerous female graduate students tell of his hitting on them, even sticking his tongue down one's throat at a party. His inappropriate behavior extends to staff and undergraduate students as well.

There exists a clear university policy stating that such behavior will not be tolerated and there also exist the trappings of procedure for reporting. However, because of the protection that tenure and stature in the field afford him, there is no true recourse and anyone who lodges a complaint becomes a target for a relentless and insidious defamation campaign."

Story 3

"Freedom. After dealing with direct sexual harassment, rumors spread by a male colleague that I slept with him to receive attention at a conference – I was in a deeply committed relationship and rather disgusted by the colleague – then having to deal with the fallout of other male figures making sexual jokes about me at the conference, listening to comments about my breasts, weight, face and 'fuckability', accusations that I received scholarships because I am a woman – not due to any skill on my part – and the general apathy of my graduate adviser as well as the majority of my professors.... I am free. I have left my department and am changing my career (despite having to earn a new bachelors/MA in my new career)."

Philosophy has a sexual harassment problem. It's not a problem unique to philosophy, and we don't even know for sure that it is worse for philosophy than for other fields (such is the difficulty of gathering accurate statistics on the subject). But the stories on the [name of blog omitted] make it abundantly clear that Philosophy has a problem with sexual harassment, and one that is likely to be playing a role in perpetuating the low levels of women in the subject.² Regardless of whether sexual harassment is worse in Philosophy than other subjects, though and regardless of its role in keeping the numbers of women philosophers low, sexual harassment is a serious wrong with serious consequences. And it needs to be addressed.

For the last few years, I have been running What is it Like to be a Woman in Philosophy, at first pseudonymously and more recently with widespread knowledge of my pseudonym. As a result, I know all the stories on the blog as well as many more—those people don't feel comfortable posting but contact me about anyway. As I read the stories, and as I talk to people, a common theme emerges. If, for one reason or another, it's not possible to press a formal sexual harassment complaint, people—genuinely well-motivated decent people³—feel that nothing can be done. Sometimes people think a complaint isn't possible due to false beliefs about the procedures: many people falsely believe that only a victim can file a complaint, but

² For statistics on this, see Beebee and Saul; also see here:

<http://www.apaonlinecsw.org/workshops-and-summer-institutes>.

³ My focus here is exclusively on people of good will who recognize that the behaviours I discuss are wrong and would like to see them stamped out, and who also care about the underrepresentation of women in philosophy. For that reason, I will not be providing any argument for the wrongness of sexual harassment or for caring about the underrepresentation of women in philosophy. Those are projects for another occasion (for the second, see Saul 2013).

witnesses generally may also do so (and indeed sometimes they are legally obligated to do so). More commonly, though, the problems are different: everyone with sufficient knowledge to file a complaint is frightened to speak up; there is not enough corroboration for a complaint to succeed; the behaviour is not a clear enough case of sexual harassment under the institution's regulations; or the behaviour, while problematic, does not seem best dealt with through a formal procedure. Some might maintain that even under these circumstances one should press ahead with a complaint, but I think the worries in these cases are real ones and that it is far from clear that a formal complaint *is* the way to go in all cases (though it surely is in some). The procedures for making such complaints are often onerous, and universities vary greatly with regard to how helpful or obstructive they are. Moreover, fear of retaliation is real and sadly justified. But—and this is the crux of this paper—I think it is a grave mistake to simply ask whether one should file sexual harassment charges, and to give up on acting if a negative answer is forthcoming. This paper explores our responsibilities as bystanders to sexual harassment and related behaviours, with particular attention to responsibilities other than the formal. This is a topic which has been curiously neglected in the literature on sexual harassment, which has focussed largely on how to define 'sexual harassment' and on describing what is wrong with sexual harassment. I think this neglect is an extremely damaging one, which unfortunately fits well with our tendency to neglect non-formal solutions when confronted with real-world cases of this sort.

Importantly, this paper will make a case for more action, not less. When I say that formal measures are not the only thing to consider, this is not because I think we should do less about sexual harassment. We absolutely should take formal action in those cases where it's possible and appropriate. But that's not all: we should also take action in many cases where formal action isn't possible or appropriate. My focus here on the need for informal action also leads to a focus on individual, not institutional action. Institutional action, and institutional change, are obviously extremely important. But they have not been neglected in the literature in the way that informal action has been. My focus here is on rectifying this neglect.

In this paper, I focus on philosophers in part because the blog I have been running is a philosophy blog, and in part because I am very concerned to improve the situation of women in philosophy, who are dramatically underrepresented. But the claims that I argue for apply not just to philosophers, but to others as well.

1 The Current Situation

As things currently stand, an enormous number of women in philosophy are reporting extremely problematic behavior like those described in the quotations with which I began. As a philosopher shocked and horrified by this, one might very much hope to find enlightenment in the philosophical literature on sexual

harassment. And one does. One finds a great deal of thoughtful, excellent work on what exactly sexual harassment is and what (given what it is) is wrong with it. But when we turn to the topic of what one should do about sexual harassment (other than not engaging in it, because it's wrong), there is very little enlightenment. There is a great deal of discussion of legal and institutional remedies for sexual harassment, however, leading one to believe that this is all that one can or should do.

2 Problems with excessive focus on formal measures

The main argument of this paper is that we have focused too much on formal measures against sexual harassment. This sort of focus, I think, prevents us from fighting sexual harassment in the most effective ways. Also, relatedly, the focus on *sexual harassment*—and so, on whether some behavior *is* sexual harassment, has sometimes distracted us from the more important issue of how to create a better environment in philosophy. In this section, I look at shortcomings of an excessive focus on formal measures and on the concept of sexual harassment. Later, I'll turn to what else can be done.⁴

⁴ For other excellent criticisms of the ways in which sexual harassment is dealt with by university bureaucracies, see Crouch 2012, Forbes 2012, Schroer 2012, Slagter 2012. A key theme of these papers is the way that corporate “audit culture” prevents universities from dealing properly with sexual harassment cases. Crouch also discusses the way that implicit bias may prevent universities from taking complaints as seriously as they should. These, then, provide yet more reason for looking beyond simply formal measures.

2.1 Criminalisation of minor or innocent behavior—though not as often as you'd think.

The problem that most people probably think of first, rather unfortunately, is that a legalistic approach to sexual harassment can lead to the criminalization of minor or even totally innocent behavior.⁵ And, of course, this *is* possible and it surely does happen occasionally. However, it is far less common than is popularly believed: many of the widely publicized examples of overreach have turned out to be very poorly and inaccurately reported (Clark 2001, Schultz 1998). And it's extremely common for even horrendous cases not to be considered serious (Schultz 1998; Zalesne 1999)

Nevertheless, I think the fear of committing sexual harassment (or of being seen to be committing sexual harassment) can have a chilling effect. If one is aware of university regulations as broad as those above, and concerned about not falling foul of them, one might well feel very hesitant in one's dealings with female students. And indeed there are many anecdotal reports of men feeling uncomfortable in just this way, and this may play some role (though clearly not all of it) in women's reports of inadequate mentoring.⁶

⁵ It's important to note, of course, that this is never going to be *literally* criminalization, since sexual harassment is not legally a criminal matter.

⁶ Implicit bias is also likely to play a significant role, as suggested by Moss-Racusin 2012.

2.2 Clear cases not dealt with—when retaliation is feared, etc.

All too often, even in the most extreme and clear-cut cases, formal complaints procedures for sexual harassment fail. Very often it's because everyone is afraid to bring charges. Sometimes there are no corroborating witnesses. Sometimes, as in Story 2, it's because the harasser has so much institutional power that all of those in authority positions have an interest in looking the other way. Sometimes, institutions have poor procedures (e.g. institutions I have heard of where a conversation between victim and harasser is an absolutely required first step, or where a non-disclosure agreement must be signed before any investigation can take place).

All too often, the reaction to such failures by genuinely caring bystanders is a sad, resigned sigh; a sustained bout of swearing; or a good stiff drink. Now, there's nothing wrong with any of these reactions of course. But there's something deeply wrong with stopping there. And in the next section I'll be discussing what one can do instead of stopping there.

2.3 Problematic but not extreme sexual behavior not dealt with—leering, innuendos, comments.

In fact, many of the behaviours listed in the third example—the story of what made a woman quit philosophy altogether—are of the sort often considered minor—a joke, a crude comment about appearance, a rumour, an accusation of not meriting a

scholarship. Although each of these is very likely to count as potentially harassing under sexual harassment codes, each on its own would probably fail to rise to the level of severity where a complaint would be upheld. Moreover, an individual behaviour of this sort is not the kind of thing most of us would want to file a formal complaint about— either because we think that even though the behaviour is wrong a formal complaint would be inappropriate, or because we don't think it's worth the enormous effort of filing a complaint. But individual behaviours of this sort add up. And in this case they add up to an environment that made a woman decide she had to get out of philosophy. Something, then, should be done.

Now there is in fact plenty of room for making an excellent sexual harassment case out of a collection of behaviours like this: if they all take place within the same department, a strong case can be made that the department is creating a hostile environment for women by letting behaviour like this flourish—hostile environments are often made up of collections of behaviours, each of which on its own may not be that severe. But the collection of behaviours might well be spread across different departments (taking places at conferences, for example), making this sort of complaint unworkable. Moreover, I'd like to argue that we should be thinking about how to take action *before* we get a collection of behaviours that constitutes a formally actionable hostile environment.

One reason for taking action of some sort regarding the individual behaviours that make up the hostile environment in Story 3 is very simple but needs to be stated

nonetheless: these behaviours are wrong, and when behaviour that is wrong is taking place we should *ceteris paribus* do what we can to stop it. Another reason is more speculative, but I have become increasingly convinced of it through my work on sexual harassment: there seem to be some places where harassment of the most serious sort flourishes, and we have case after case like those described in Story 2. These places always turn out to be ones in which sexist comments and jokes, and remarks about students' appearance, also flourish. This has made me suspect that a culture of permissiveness with respect to the more minor sorts of sexual harassment helps to create an environment in which the more major sort of harassment is seen as acceptable. Empirical work by O'Hare and O'Donohue (1998) confirms this suspicion: they find that two key risk factors for sexual harassment are widespread sexist attitudes and an unprofessional atmosphere. A philosophy department that is rife with sexual comments and jokes surely qualifies. If this is right, then there is further reason to strive to eliminate these seemingly minor behaviours.

2.4 Problematic behavior that doesn't meet definition: consensual yet problematic relationships with students

The starting point for this paper was actually a case of just this sort. A friend in another country sought my advice regarding someone in his department who had many apparently consensual affairs with women students and bragged publicly about them. This was not against his university's regulations, but a woman student—not one of those involved in the affairs—had told him that it made her and

others uncomfortable. He could see why they were uncomfortable, and that there was something problematic, but he didn't know what to do. Initially, my response was that there was nothing to be done since no university rules had been violated. But as I talked to him, we both began to realize that our moral repertoire extended beyond the resources offered by university regulations. My friend realized that there were several things he could do, ranging from expressing disapproval when his colleague bragged to actually going to his colleague privately and telling him why his behavior was so problematic. This is the moment that both my friend, and I, realized that asking "is this sexual harassment according to university guidelines?" is not the only question to be asked.

There is no consensus over how to deal with consensual relationships between staff and students. Some universities forbid it completely; some forbid it when the staff member is in a position of direct authority over the student; some allow such relationships but require that they be officially reported and that the staff member should not be involved in e.g. assessing the student's work; others, like my friend's university, have no regulations at all against such relationships.⁷

There is little disagreement, either legally or theoretically, that *nonconsensual* relationships (including but not limited to those between staff and students) are impermissible. And there is a great deal of potential for staff-student relationships to fail to be *genuinely* consensual. There may be, and all too often are, implicit or

⁷ For an argument that staff-student relationships are always morally wrong and constitute a form of discrimination, see Superson 2001.

explicit threats that coerce a student into an appearance of consent. David Archard (1994) has argued that we also need to recognize the category of *exploited* consent, in which the consent is due either wholly or partly to the power relations between the parties. In these cases, Archard argues, students tend to end up worse off because the power imbalance infects the relationship, leading to a lack of control over its terms on the part of the student.

There is also very little disagreement that sexually predatory behavior—the sort displayed by the visiting professor who says “Show me a grad student I can fuck” (<http://beingawomaninphilosophy.wordpress.com/2010/12/11/show-me-a-grad-student-i-can-fck/>) is morally bad. Even if we grant—as may nor may not be the case—that these are truly consensual, there does seem to be a problem. A part of the problem is the atmosphere created: women in the department can reasonably, and in fact do reasonably, worry that they will be expected to have sexual relationships with the staff member in question. I have heard many reports of women avoiding the classes of such serial predators because they worry that they will do poorly if they turn down the predator’s advances. And some of the women who consent may do so out of precisely such fear—rendering their consent rather problematic as well, even if it was not deliberately coerced (and even if the person they consent to is not aware that the consent was due to fear). Moreover, environments where sexual predators flourish are ones where women feel that they are not being valued for their minds, but for their bodies.

So there is very good reason to want to do something about predatory behavior. But many university sexual harassment codes struggle to deal with it. Obviously, codes which forbid all sexual relationships between staff and students do forbid it, but many feel that such codes go too far. There are a variety of very different reasons one might think this: Sometimes a staff member and a student *do* simply fall in love, and it seems wrong to forbid their relationship. Some such relationships are in any case inevitable, and the harms that come from forbidden relationships will often be greater due to their underground status. Alternatively, one might simply think that it is excessive regulation of one's private life (though this is tricky to maintain given that the relationship is obviously not *purely* private.) I have yet to see a university (or other) code of behavior that succeeds in drawing a permissibility line between sexually predatory *consensual* relationships and other consensual sexual relationships. It is a very difficult borderline to codify.

The difficulty of codifying this boundary means that it is difficult if not impossible to formally recognize the distinction between predatory and other consensual sexual behavior. And it becomes even more difficult when we realize that even serial relationships with students *might* not be predatory. Take, for example, the case of a young socially unskilled faculty member who is unsuccessful at dating non-philosophers and who (perhaps due to demographics) doesn't meet any single non-student women in philosophy. As he moves from one failed relationship with a student to another, he may be genuinely seeking love rather than exploiting his position of power. It seems right to say that this man's behavior isn't predatory; he's

very different from the man who says “show me a grad student I can fuck”. (Though his behavior may still have seriously problematic unintended effects on the environment for women—since whatever his intentions it may be perceived as predatory and have some of the effects of predatory behavior.) It would be almost impossible to formulate a practical, useable, definition of ‘predator’ that doesn’t include someone like this.

In any institution that does not ban staff-student relationships, then, there will inevitably be the possibility of serial sexual behavior that creates a problematic environment for women students, whether this behavior is of the predatory sort first discussed or the sort engaged in by the socially unskilled man above. And there is little hope of formulating regulations that will distinguish these from each other or from less problematic consensual relationships. But—importantly—it does not follow that one should do nothing. When one recognizes that something like this is happening in one’s department, one acquires an obligation to at least *try* to act. Not everyone will have an effective way of acting. But those who do—such as colleagues or superiors of the predator, or even of the socially unskilled man—can and should act. Possible actions are not confined to formal ones; they span the full range of human behavior, including everything from subtle expressions of disapproval to confrontations with the predator, to conversations with women students involved in the relationships. In the case of the socially unskilled man, obviously a different approach is called for—gently alerting him to the consequences of his behavior, and perhaps some advice on how to meet women outside philosophy. What one should

do will also depend a great deal on who one is. In part this is a matter of one's institutional power, but in part it is also a matter of one's own personal skills. In different ways, conversations with predators, their victims, and the socially unskilled man are all difficult, and all require both careful thought and particular human skills. This is no reason to avoid them, but it is a reason that no general prescription can be given about what one should do.

2.5 Problematic behavior that doesn't meet definitions

2.5.1 Patterns resulting in objectification

Very commonly, I hear about departments in which male graduate students show no interest in discussing philosophy with female graduate students, but great interest in having sex with them. At department social occasions, the men hit on the women a great deal but never show any inclination to discuss their work (while they do discuss work with other men). In at least some cases, none of the individual behaviours are problematic—we'll assume that the sexual invitations are non-coercive, and that they are not repeated after being rebuffed, for example. And there's nothing wrong with choosing not to discuss philosophy with someone at a social event. But the *pattern* created is one in which women end up without a friendly philosophical graduate community. They (quite reasonably) feel objectified and not taken seriously intellectually, and they are likely to be uncomfortable about attending such social events. Yet the behavior violates no rules.

2.5.2 Implicit bias and microinequities

Just as *What is it Like to be a Woman in Philosophy* has alerted the profession to some truly egregious instances of extreme sexual harassment, it has also made clear the power of small things—microbehaviours or microinequities—to create an unwelcoming environment. Some of these behaviours are themselves sexual, some of them not. And individuals will differ in their judgments of how serious the behaviours are. The sorts of sexual behaviours that are generally thought of as relatively small are ones like leering, lecherous comments less extreme than the hot wax example, and innuendos. Such behaviours are, in fact, considered sexual harassment under most institutional codes, but formal complaints are only rarely brought on the basis of them, and they are not terribly likely to succeed.

Other small behaviours include making eye contact with men but not women, not noticing the quality of an idea until it's expressed by a man, not calling on women, and so on.

I have been ignored, talked over, and talked down to on many occasions. When I gave an objection to a view in a philosophy seminar, just ten minutes later, the teacher credited and praised a male student for having come up with the objection. The male student had not even spoken. After conference talks and elsewhere, I have had speakers talk to the other

men in a group, but ignore my comments and questions or give cursory, dumbed-down responses.

(<http://beingawomaninphilosophy.wordpress.com/2012/10/23/the-life-of-a-woman-in-philosophy/>)

These are not sexual behaviours, but they are problematic behaviours and they have serious consequences regarding the climate for women in philosophy. It would be very difficult if not impossible to make formal complaints on the basis of them, however.

3.How to respond: Asking new questions

The overarching point I want to make in this section is that we are making a mistake if we consider the sorts of cases under discussion only by asking whether they are sexual harassment, and whether formal charges can and should be brought. These are indeed questions we must ask. But they are not the only questions, and we mustn't just give up if we get negative answers to them. Instead, we need to also ask *what else we can and should do*. One way of emphasizing this point is to think a bit about how strange it is that so many of have tended to assume that we *should* stop after asking the questions about sexual harassment and formal charges. After all, in other areas of life, when confronted with a problem, we don't just ask about our formal responsibilities.

3. 1 Our responsibilities

3.1.1 Our professional obligations

A point I have emphasized repeatedly is that human beings have a wide range of moral behaviours open to them. Institutional or legal proceedings are only one of many options, and we may be professionally obligated to pursue other options. To see this point more clearly, let's consider some cases of very different sorts where this is obvious.

- Suppose that you're Head of Department and it comes to your attention that a colleague is teaching extremely poorly—mumbling so that he can't be heard, taking far too long to return his students' work, and not allowing students to ask clarificatory questions. There's no question, really that you don't simply sigh with resignation once you learn that no students want to file a formal complaint, or even put this in their written evaluations. Painful and difficult as it is, you go to your colleague and have a chat with him about his teaching. Or you put in place a system of mentoring and observation. Or you send him on a training course. And there's no question that you have an obligation to do this, even if no university or legal regulations are broken.⁸

⁸ One might suggest that a Head of Department *does* have a duty to intervene when someone is teaching poorly, since ensuring a decent quality of teaching is surely a part of the Head of Department's job. But arguably a Head of Department's job also includes a duty of care for the academic well-being of students, and for the professionalism of the way they are treated, which would support intervening in cases of sexually predatory behavior.

- Suppose you come upon a confused looking student in the hallway frantically turning a map round and round. There is clearly a (defeasible, obviously) obligation to offer directions to this student. And this is so even though there is no university regulation stating that you must do so, and no procedure by which a student could file a complaint against you if you fail to do so.

3.1.2 Our more general responsibilities

Just as we don't take our professional obligations to be limited to those laid out in university regulations and complaints procedures, or laws, we don't take our moral obligations to be circumscribed in this way either. There are no laws against deceiving our loved ones on important matters (except in a limited set of cases), but we nonetheless think we have an obligation not to do so. There are no laws requiring us to help close friends through bereavement, but again we have no difficulty recognising the obligation. And so on.

But of course, it is one thing to say this and another to do it, especially when it comes to our responsibilities as *bystanders*. People of goodwill who are witnesses to the bad behavior of others are notoriously reluctant to intervene. I have found particularly illuminating discussions of bystander responsibilities in Howard McGary (2008) and Thomas Hill (2010). Hill uses Kantian theory to argue that bystanders to oppression have the responsibility "to exercise due care in deliberation, to scrutinize one's motives for passivity, and to try to develop

virtue conceived as strength of will to do what is right despite obstacles” (2010: 28). McGary argues that “decent people have a moral responsibility to take just and viable avenues that are available to them to reduce or eliminate acts of racism” (2008: 300). In both cases, the focus is on the systematic mistreatment of a group of people (victims of oppression in Hill’s case, victims of racism in McGary’s case). In the case of sexual harassment, the primary victims who are my focus are women, and women are indeed systematically mistreated via sexual harassment-related behaviours. Indeed, theorists like Catharine MacKinnon (1979) have argued that this is a key way in which women are oppressed. In particular, sexual harassment often functions in male-dominated workplaces as a way of maintaining male dominance—and the anecdotal evidence of women leaving philosophy due to harassment certainly fits well with this idea. It seems quite reasonable, then, to suppose that bystanders have the sort of obligation McGary and Hill discuss when it comes to sexual harassment of women. But what about sexual harassment of those who are not women? In many cases, the sexual harassment of non-women actually functions as a sort of gender-policing—e.g. when it is directed at men who are viewed as insufficiently masculine. This, too, can easily be seen as the sort of systematic mistreatment that Hill is concerned with. Sometimes, however, there may be cases which don’t fit this paradigm either. My view is that there is still a responsibility to intervene in

these cases, as they are cases of mistreatment. But the nature of the responsibility may be somewhat different.

The difficulties for bystanders are heightened when we are talking about bystanders to sexual harassment. In their (2005), social scientists Bowes-Sperry and O'Leary-Kelly provide a helpful taxonomy of the factors that can encourage or discourage bystanders' intervention in cases of sexual harassment. They offer one of the few discussions I have found of intervention strategies beyond the formal ones, including at-the-time confrontation, distraction, and after-the-fact discussion. (They also note that the potential for such interventions has been largely overlooked in the sexual harassment literature.) But they note that such intervention only takes place if observers (a) identify the situation as requiring an intervention; (b) take themselves to have a responsibility to act; and (c) decide on an action (2005: 293). Although it is true that observers of sexual harassment often experience uncertainty about what they are witnessing, my focus in this paper is largely on the tendency of observers to deny (b), and to be confused about (c). My contention is that an excessive focus on formal measures contributes to this by leading those observers without an official responsibility for sexual harassment complaints to conclude that they do not personally have a responsibility to intervene.⁹ This also leads to a problem with (c). As long as it is widely believed that formal measures are the only options, there will in all too many cases seem to be no appropriate action to take.

⁹ This fits well with the findings of Bowes-Sperry and O'Leary-Kelly.

3.2 The Power to Intervene

I have argued thus far for a prima facie duty to do *something* when behaviours like those discussed here are occurring. But how often will one actually be able to act on this prima facie duty? Do many people have the power to do anything? The answer is 'yes' in many if not most cases. First, most straightforwardly, those in positions of authority have a power to intervene. A Head of Department can and should intervene when students are being mistreated, including in the ways discussed here. They can do this through official channels (university complaints procedures), but they can also do this by informing staff members when their behaviour is unacceptable. This can be done this publicly or privately, individually or collectively. Although much of my focus here is on more informal situations, one should not underestimate the power of public declarations regarding acceptable and unacceptable behaviour, from people in positions of authority.

In situations where a university harassment code is violated, it is very important to recognise that many people have the ability, and sometimes obligation, to complain. Anyone who has witnessed behaviour that violates university harassment codes also has the power to intervene by filing a complaint—a fact that is all too little known. Depending on the country, the organisational structures and the nature of

the harassment, certain people in positions of authority (e.g. Head of Department, Director of Graduate Studies) may also have a legal *obligation* to file a complaint.¹⁰

But the power to do something extends very far beyond these people.¹¹ As I've noted above, many people have the power to indicate unacceptability in other ways.¹² Those who know, for example, that a colleague is treating students in an inappropriate way can tell that colleague so explicitly. But they can also convey it non-explicitly. We'll be discussing this option in more detail in the next section.

Non-explicit expressions of disapproval are one of the most interesting avenues to pursue. As we saw above, microbehaviours can do a great deal to create an unwelcoming environment for those who we should be welcoming. Importantly, though, they can also create an unwelcoming environment for behaviours of the sort we'd like to stamp out. This is something that Chris Bennett calls attention to in his paper "Varieties of Retributive Experience" (2002). There he describes in detail the way that human beings can powerfully signal disapproval by a kind of social withdrawal—not greeting, not making eye contact, and so on— noting the transformative effect this can have on wrongdoers as they realise why their friends and colleagues are withdrawing. Bennett describes this form of social withdrawal

¹⁰ It is a very good idea to check on these obligations, which differ enormously from country to country and even sometimes institution to institution.

¹¹ In fact, the formal reporting obligations of those in authority may mean that people are reluctant to bring complaints to them, thus placing more of the burden of responding on those without the formal position of authority.

¹² Many of these methods are discussed in the emerging literature on "active bystander training". See for example here:

<http://web.mit.edu/bystanders/strategies/index.html>.

as a central case of retribution, and defends it against traditional criticisms of retribution, arguing that it is a key way in humans, as social animals, express our disapproval. And being the target of such expressions is an important way that we come to improve ourselves and our behaviour.

All of us as human beings have the power to engage in these kinds of social withdrawals, in major or minor ways. It is important to note, though, that it's not necessarily *advisable* for all of us to do this. Those who are in particularly precarious positions may feel—quite legitimately and correctly—that it's simply too risky for them to do this. And it's absolutely vital that we recognise the legitimacy of this. People in precarious positions must not be blamed for failing to act in these ways. However, people in secure positions—and this will mean different things for different people—can be blamed for not acting. A resigned sigh is really not enough when there *are* things one can safely do. Moreover, as more people take action, even in small ways, the social cost of taking action is reduced.¹³

43.3 Cases

With all this in mind, let's talk about what to actually do.

3.3.1 Story 1: The department head and the hot wax

First we'll take Story 1 above. It's a shocking anecdote. I've never seen jaws fail to drop when I tell it, especially when I note that it happened in the last few years. And

¹³ For more discussion of the possibility and importance of such interventions, See Scully and Rowe 2009.

yet, it is in the end just a single comment. It's a shocking comment, with witnesses, and it's so obviously inappropriate that I would hope there'd be no question as to whether it's a case of sexual harassment. Presumably a complaint would be upheld quite easily. But as it is just a comment, many people would not file a formal complaint. Moreover, the position (Head of Department) of the person making the appalling comment might well make others hesitate to act. Now of course one way to respond is to insist that a formal response *is* appropriate, and that people should be brave enough to do it. In particular, it's important to note that it doesn't have to be the victim making the formal complaint and there are many witnesses in a position to do so. But what I want to note here is that this isn't the *only* useful or legitimate response.

In thinking about this, I want to think about the bystanders in the pub—all those lecturers who “laughed loudly”. Maybe I'm overly charitable, but my strong suspicion is that some of this (at least) was nervous and appalled laughter by people who were actually shocked. One thing we can all do is to do some thinking about how to react if we find ourselves in a situation like this, starting with the fact that laughing is really one of the worst things to do—it looks to both victim and harasser like endorsement of the harassment. So not laughing would be a good start. Moreover, it's an especially effective way of expressing disapproval and discouraging such jokes in the future. If you doubt this, reflect for a moment on a time when you told a joke and nobody laughed, and recall how it felt.

There are of course other more socially difficult (but perhaps even more effective) options. Clearly, it would be great to simply confront the Head of Department on the spot by saying, for example, “that’s an appalling thing to say”. Not everyone, however, is in a position to do this, either because of their status in a hierarchy or because of their psychological makeup. And it’s not the only useful thing to do. A separate conversation with the head about the incident could also be effective. As could a separate conversation with the victim—it’s clear from my conversations with her that it would have meant a great deal to know that others disapproved. Failing that, even a disapproving glance can be remarkably effective, as research on microaffirmations and microaggressions shows. These are the ways that communities set standards of appropriateness, creating either a permissive or forbidding environment for sexual harassment.

3.3.2 Story 2: The distinguished sexual harasser

This story is of a man whose fame, tenure and vindictiveness seem to protect him against any repercussions for his serially harassing behaviour, which includes “sticking his tongue down the throat” of an unwilling victim at a party.¹⁴ The author of the post claims that nobody can do anything about it. But they are, in fact, wrong. It may well be that this man picks only on those who are too junior to safely take action. But others witness his behaviour or hear about it, and some of them have the protection of tenure and perhaps even their own fame. The first thing such people could do is in fact to file a formal complaint, and it would seem very much

¹⁴ The quotation does not actually specify that the recipient of the tongue was unwilling. I am assuming this, based on context. Even if I am wrong about this case, though, there are plenty of others in which the recipient was unwilling.

warranted in this case. It's vital to remember that the victim need not be the one who complains. Others can also speak up, regularly and loudly—either in public or in private. They can provide support to victims. And so on. Once more, the sense that nobody is in a position to act is mistaken. And the acceptance of this claim is what allows appalling behaviour to continue. If enough bystanders speak up and take action, even a university that wishes to look the other way won't be able to. (It is vital, however, that measures be taken to protect both victims and complainants from retaliation—and important to know that such retaliation is illegal.)

3.3.3 Many small problems force a woman out

In our third story, a woman left philosophy after experiencing for too many insults, sexual comments, rumours and lack of respect. Together all of these undoubtedly add up to a clearly hostile environment, and this sort of environment is recognised as sexual harassment legally. However, she writes of some of these experiences being in her department and others at conferences. It is entirely possible that they are scattered enough that no one institution or individual could be the subject of a formal complaint. But once again, formal complaints are not the only mechanism. Fellow conference-goers who are party to the evaluations of “fuckability”, or who hear the sexual comments, are—at least some of them—perfectly capable of speaking up. Or if not speaking up, at least placing a disapproving expression on their face. Or if not that, at failing to laugh or smile. And they are also capable of showing solidarity in private to the woman who wrote the post. Enough of these

relatively small acts *can* change the environment in significant ways. At a more institutional level, educating both students and staff about acceptable and unacceptable behaviour will also hopefully help to reduce the frequency of this sort of thing. Finally, it may be worthwhile for conference-organisers to lay down guidelines regarding behaviour. This doesn't require conferences to get into the business of bringing formal charges, so it too can be viewed as a (relatively) informal measure.¹⁵

4. Objections

4.1 Do witnesses to these behaviours really have a *duty* to act, even if no rules are broken?

It may seem that I have argued for quite a strong claim: that even when no rules are broken, witnesses to the sort of behavior I am discussing have a duty to act. But this is actually not quite right, and in a very important way. What I have argued is that in such cases we have a duty *to consider what actions we can or should take*. We shouldn't simply accept that there's nothing we can or should do because no rules are broken. Nor, however, should we think that we have an obligation to speak up every time that we—for example— see a colleague staring at another colleague's breasts: it might make the situation worse by drawing attention to it; it might put us in an untenable position; it might be better to save our fire for something else; and so on. Then again, it might be a very good idea to speak up, or to speak to one or the other of these colleagues later. In addition to balancing practicalities, we may also

¹⁵ Although such guidelines are rare for academic conferences, they have become widespread in certain other communities. For an example, see here: <<https://www.ucon-gaming.org/convention-details/policies/>>.

have to balance conflicting duties—the *prima facie* duty to take action might well conflict with a duty to protect a student from retaliation.¹⁶ Our obligation is simply to carefully consider what actions are possible and what would be best to do. This seems, perhaps, wholly uncontroversial once stated. But my experience has been that this obligation is one almost completely ignored both in real life and in the literature on sexual harassment.

One important feature of many of the cases I have discussed is that the behaviours may not only be not breaking any rules, but also relatively small. And it may seem strange for me to suggest that we have an obligation even to think about what to do in such cases. However, As Samantha Brennan has argued: “If it turns out that some rather large differences in terms of women’s participation in the discipline of Philosophy can be explained as the accumulated effects of many, many actions with small results, most of which were unintentional harms, then we ought to pay more attention to micro-inequities both in terms of understanding them as a moral phenomena and in terms of practical solutions.”¹⁷

4.2 But aren’t social occasions a very different matter?

Some of the cases that concern us here involve behavior that’s actually *outside* the philosophy department—at a pub, or a party, or a reception at a conference. One worry about the line at I’ve taken here is that people should be free to do as they like in their social lives, as long as they don’t break any laws: what happens in their personal lives is not the business of anyone else.

¹⁶ Depending on where one is, legal duties may be very clearly laid out. But duties to take informal action will be less clear.

¹⁷ Exactly how to handle obligations related to small wrongs is a thorny issue. (For more on this, see Brennan 2012.)

One response to this begins by noting, with several generations of feminist scholars, the fuzziness of the public/private boundary. If networking is an important part of professional success (as nearly everyone takes it to be, for better or for worse), then the departmental party, the pub after the seminar paper and the reception at a conference are not really wholly personal affairs. It is, in fact, a part of professional life. It's not governed by exactly the same rules, and indeed the precise rules may be difficult to state. But a distinct advantage of my approach is that I am not in the business of setting down rules and mandating what to do when they are violated. Instead, my view is that we all need to reflect on how behaviours that we witness or engage in are affecting, for example, women's ability to flourish; and to think about how to improve. So when we see the visiting speaker having one drink too many and starting to grope the female students at the pub, we should realize this may create a problematic environment for them—even if the behavior of a *visiting* speaker doesn't fall under our institution's sexual harassment codes. And we should do something about it— at the very least bundle the speaker out the door into a cab by himself. Because my approach demands only attention to and consideration of these issues, it can accommodate the messiness of the personal/professional boundary.

A nice illustration of this comes from what may seem like one of the trickiest cases: the male graduate students who hit on their female colleagues on social occasions but don't talk philosophy with them. None of this behavior is against the rules, and it takes place at social events. So it might seem that this is a purely personal matter. Yet an important part of what we are teaching our graduate students is how to be professionals in our field. This pretty obviously includes networking, and it should also include how to conduct oneself at the sort of social occasions that are in fact also professional. And this should include calling attention to, and educating about, the destructive effects of patterns like this.

Similarly, this approach is well-suited to addressing concerns about freedom of speech. Sexual harassment regulations are often criticised as restricting freedom of speech. I think this criticism is largely misguided, but I can't and won't argue this here. Nor do I need to: the focus on this paper has emphatically not been on regulations restricting speech, but on how we should respond informally to certain sorts of harmful speech and behaviour. And no advocate of free speech has ever been in the business of suggesting that we shouldn't e.g. tell someone that we don't like what they're saying. (If they did suggest that, they'd be suggesting a restriction on speech.)

In short, then, I am arguing that we need to think a great deal less about the definition of sexual harassment and the formal measures available for combatting it, and a great deal more about how to create environments in which people of all sorts can flourish.

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