

WILEY

American Bar Foundation

Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment

Author(s): Anna-Maria Marshall

Source: *Law & Social Inquiry*, Vol. 28, No. 3 (Summer, 2003), pp. 659-689

Published by: Wiley on behalf of the American Bar Foundation

Stable URL: <http://www.jstor.org/stable/1215755>

Accessed: 11-12-2017 19:53 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://about.jstor.org/terms>



JSTOR

American Bar Foundation, Wiley are collaborating with JSTOR to digitize, preserve and extend access to *Law & Social Inquiry*

Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment

Anna-Maria Marshall

This paper examines the frames that women use to understand their experience with sexual harassment. While legal frames do provide crucial guidance to women evaluating the behavior of their colleagues and supervisors, working women deployed a number of other interpretive frames when deciding whether they had been harmed by such behavior. Some of those frames emerge from feminist messages about discrimination and male abuse of power in the workplace; some emerge from management ideology that emphasizes efficiency and productivity; and some emerge from the criticism of sexual harassment policies as an unnecessary limitation on women's sexual freedom. But feeling a sense of harm does not automatically translate into the use of the label sexual harassment. Rather, women also employed an objective standard that compared their experience to some threshold of harassing behaviors. Only when the behaviors met this standard of offensiveness and were perceived as harmful did women consider their experiences sexual harassment.

In 1972 Diane Williams had just graduated from college, and she took her first job. In the Justice Department, she did public relations for the Community Relations Division, a branch whose mission was to bring together racially divided communities. At first, she loved her job and was well respected by her supervisors and colleagues. But soon, she became the object of her supervisor's sexual advances. He asked her out on dates, speculated about what she would be like as a girlfriend, and left her cards and notes proclaiming his affection for her. When she declined his invitations, she

Anna-Maria Marshall is assistant professor, Department of Sociology, University of Illinois—Urbana-Champaign. The author thanks Scott Barclay, Michael Biggs, Jonathan Casper, Dennis Chong, Margaret Hobart, Elizabeth Hoffman, Kathleen Hull, Richard McAdams, Laura Beth Nielsen, and Sandy Welsh for their helpful comments and suggestions.

© 2003 American Bar Foundation.
0897-6546/03/2803-659\$10.00

659

found that his attitude toward her changed. Instead of giving her positive performance evaluations, he found fault with her. He criticized her in meetings and belittled her in front of her colleagues. Her working conditions deteriorated so rapidly that she quit before she was fired. But before she quit, she filed a complaint with the Department of Justice, alleging that she had been a target of sex discrimination. That complaint began a legal proceeding that went on for years but that culminated in the first judicial acknowledgment of the claim for sexual harassment in a federal court (*Williams v. Saxbe*, 413 F. Supp. 654 [D.D.C. 1976]).

Williams's story vividly illustrates the relationship between law and social change in everyday life. Changing structural conditions gave rise to greater numbers of women joining the workforce. These numbers—and the accompanying shift in attitudes about the role of women in the workplace—reshaped women's expectations about how they should be treated by their supervisors and coworkers. Based on these changing expectations, women demanded better treatment from employers, who often resisted such demands. Thus, previously mundane questions, like what kinds of jokes get told in the office, became (and remain) sources of conflict.

Intimate areas of everyday life, like sexual harassment, have become the subject of large-scale social struggles and hold a prominent place on social movement agendas (Melucci 1989; Johnston, Larana, and Gusfield 1994; Taylor and Whittier 1992). These new social movements seek to forge new identities among activists and constituents. Based on these new identities, people redefine their sexuality, family arrangements, working lives, health problems, even the way they dispose of their garbage (Taylor and Whittier 1995; Johnston, Larana, and Gusfield 1994). These redefinitions can take relatively routine matters in everyday life and render them controversial (Taylor and Whittier 1995; Snow et al. 1986). And like many conflicts in the United States, the disputes that emerge from such controversies may be addressed with law and legal concepts.

In this paper, I bring together two theoretical frameworks—legal consciousness and social movement theory—to analyze the political disputes that emerge in everyday life. Social movement theory, particularly the work on framing, reveals the way that movements can organize discontent, leading activists and even the general public to see harm where none existed before and sponsoring action to redress their grievances (Piven and Cloward 1977; Snow et al. 1986; Snow and Benford 1992). Also drawing on the concept of frames, the legal consciousness approach examines the way that legal norms and values shape the meanings, limitations, and opportunities of daily life (Ewick and Silbey 1998; Nielsen 2000). Together, these two perspectives take individuals seriously as legal and political actors whose choices in confronting conflict reflect and enact social change.

I explore this theoretical point in the context of women's experiences with unwanted sexual attention at work. Specifically, I examine the initial

stages of disputes, where women are deciding whether an experience was harmful and whether it was sexual harassment. In making these judgments, the women in this study deploy many interpretive frames—reflecting feminist politics, management philosophies, and social norms surrounding sex—sometimes balancing all three at the same time. Yet women did not automatically label all such experiences as sexual harassment, even when they were offended by the conduct. Instead, they measured the behaviors against an external standard—a standard that resembled the legal definition of sexual harassment. Only when the behaviors met that standard did they conclude they had been sexually harassed.

In the sections that follow, I outline the theories of legal consciousness and social movement framing. After describing the data and methods used in this study, I analyze women's accounts of their experiences with unwanted sexual attention and their evaluation of whether it was sexual harassment.

FRAMING LAW; FRAMING INJUSTICE

Legality and Legal Consciousness

The development of disputes in everyday life is a fluid, subjective process that depends on the perceptions, attitudes, and beliefs of the parties involved (Felstiner, Abel, and Sarat 1980–81; Mather and Yngvesson 1980–81; Merry 1990; Ewick and Silbey 1998). The parties involved and the demands they make on each other can shift depending on new information and experiences. In particular, the decision about whether one has even been injured is especially subjective and depends on the meaning that people give events (Felstiner, Abel, and Sarat 1980–81). But this disputing process does not take place in a vacuum. Instead, disputes develop in a social, cultural, and ideological context where the meaning of events can be hotly contested.

Law provides individuals with a powerful set of interpretive tools in this disputing process. So prevalent in U.S. culture and politics, legal ideas and concepts are an important source of cultural schemas and frames—the interpretive frameworks “that operate to define and pattern social life” (Ewick and Silbey 1998, 43).

Through its organization, society provides us with specific opportunities for thought and action. Through language, society furnishes images of what those opportunities and resources are: how the world works, what is possible and what is not. These schemas . . . include cultural codes, vocabularies of motive, logics, hierarchies of value, and conventions, as well as the binary oppositions that make up a society's “fundamental tools of thought.” (Ewick and Silbey 1998, 39–40, quoting Sewell 1992)

To ordinary people, law is not simply the official texts of judicial opinions and legislative acts that embody formal legal rules, nor is it just the formal legal

institutions of courts, lawyers and police. Instead, the law of everyday life—what Ewick and Silbey call “legality”—embraces “the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends. In this rendering, people may invoke and enact legality in ways neither approved nor acknowledged by law” (Ewick and Silbey 1998, 22). Thus, individuals’ lives are not simply constrained by legality. In fact, in their choices and social practices, people also create their own sets of legal meanings. This interactive process between meaning and practice is legal consciousness (Ewick and Silbey 1998; Nielsen 2000).

Researchers are beginning to explore differences in the kinds of legal consciousness that people deploy to make sense of their experiences (Nielsen 2000; Quinn 2000). For example, Nielsen (2000) argues that gender and racial stratification generate different orientations toward the use of law to regulate street harassment. Quinn (2000) also notes that gendered identities shape the different responses that men and women offer to sexually harassing behaviors in the workplace. In addition, class may affect legal consciousness: Law may mean different things depending on an individual’s location in the various hierarchies of status, prestige, and knowledge associated with membership in a social class (Seron and Munger 1996).

Yet law does not provide the only set of cultural schema and frames for interpreting experience (Sarat and Kearns 1995; Ewick and Silbey 1998; Levine and Mellema 2001; Quinn 2000). In fact, in some situations, legality may be rendered irrelevant by other considerations. For example, Levine and Mellema have argued that women working in the drug economy are less concerned with the illegality of their behavior than they are with survival (Levine and Mellema 2001). In addition, Morgan has argued that women’s gender socialization can trump legal frames. She showed that women were reluctant to press sexual harassment claims when litigation would interfere with their roles as wives and mothers (Morgan 1999; Bumiller 1988). Thus, as Ewick and Silbey have observed, “To recognize the presence of law in everyday life is not, therefore, to claim any necessarily overwhelming power for law” (Ewick and Silbey 1998, 22). Still, law and legality remain the focus of many studies of legal consciousness, thus leaving unfulfilled the promise to decenter the law. Studying the political struggles of everyday life provides a meaningful opportunity to analyze other powerful schema that likewise give meaning to events. Those schema come from social movements and countermovements in addition to the social forces protecting the status quo.

Social Movement Theory

Law is present—although not overwhelmingly so—in the everyday disputes that arise from social change. Changing social, cultural, and political values create tension in the everyday decisions of ordinary people who face

unwanted pregnancies, sexual advances from supervisors, and race-based traffic stops. In fact, social movements have devoted considerable resources to making these everyday events controversial (and to seeking legal reforms to ameliorate the problems) (Taylor and Whittier 1995; Johnston, Larana, and Gusfield 1994). Movements rely on collective action frames to generate discontent and to mobilize activists (Snow and Benford 1992; Gamson 1995). According to Snow and Benford (1992), collective action frames are “action-oriented sets of beliefs and meanings that inspire and legitimate social movement activities and campaigns.” Yet frames also circulate beyond the boundaries of the movement and become available to others who may be sympathetic, apathetic, or even hostile to the movement and its goals (Snow and McAdam 2000; Marshall 2001). Thus, ordinary people may rely on these frames to reinterpret their everyday experiences as unjust, even if they are not necessarily motivated to become activists (Snow and McAdam 2000; Katzenstein 1998; Whittier 1995).

To generate this discontent among target audiences, a movement’s collective action frames must perform three functions. First, they punctuate the harmful nature of existing social conditions by taking experiences and events that had previously seemed acceptable and translating them into examples of grave injustice (Piven and Cloward 1977; Gamson 1995; Snow and Benford 1992). Second, they attribute responsibility for that injustice to particular social actors or institutions. Frames that attribute responsibility for injuries to individuals—that blame the victim—can be demobilizing and lead people to “lump” their problems (Gamson 1995; Snow and Benford 1992; Felstiner 1974). Social movements, however, often generate frames that assign blame to external forces. For example, Snow and Benford argue that in the civil rights frame, “blame is externalized in that unjust differences in life circumstances are attributed to encrusted, discriminatory structural arrangements rather than the victims’ imperfections” (Snow and Benford 1992). To inspire action, such attributions should also include concrete social actors or institutions rather than abstract structural forces that are less susceptible to change (Gamson 1995).

Finally, collective action frames prescribe a course of action to ameliorate these unjust social conditions. Generally, this prescription consists of participation in social movement activities. In the social movement literature, participation in collective action is generally restricted to noninstitutional political strategies, such as protests, sit-ins, boycotts, and rioting. Recently, however, researchers in “new” social movement theory have begun to focus on cultural movements where “the personal is political.” These movements do not emphasize changes in existing state and economic structures; “activists” are more likely to be ordinary people who identify with the movement and who pursue social and cultural change through “lifestyle” politics (Taylor and Whittier 1995; Buechler 1995). As Johnston, Larana, and Gusfield have noted,

Movements focusing on gay rights or abortion, health movements such as alternative medicine or antismoking, New Age and self-transformation movements, and the women's movement all include efforts to change sexual and bodily behavior. They extend into arenas of daily life: what we eat, wear, enjoy; how we make love, cope with personal problems, or plan or shun careers. (1994, 8)

The development of injustice in collective action frames resembles the process of disputing outlined in Felstiner, Abel, and Sarat's (1980–81) "naming, blaming, claiming" framework. Both theoretical approaches identify processes in which discontent is developed and redressed. Like injustice frames, the disputing process begins with a perception of injury. Although Felstiner, Abel, and Sarat argued that this was the hardest stage to observe, it becomes more susceptible to analysis when the injury itself is contested. The disputing process also requires attribution of blame to external forces. The two approaches diverge, however, in their specification of the grievants' mode of redress. While collective action frames emphasize participation in collective action, the disputing framework stresses individual claims for relief. Still, disputing can become a social movement strategy when political choices in personal life generate conflict. In such cases, injustice frames and legal frames may both shape these conflicts for the participants.

The relationship between law and injustice frames is well established. Legal norms constitute an important aspect of a movement's symbolic and strategic repertoire (McCann 1994, 1998; Poletta 2000). Movements often invoke legal rights when articulating their demands. This "rights talk" can legitimize grievances by bridging frames and making connections between emerging grievances and long-established legal rules (Saguy 2000a; Polletta 2000). Moreover, rights claims can be an important source of oppositional interpretations and meanings that raise consciousness and mobilize participants into a movement (McCann 1994, 1998; Poletta 2000; Silverstein 1996). In particular, legal frames emphasize harm and articulate a causal theory linked to specific actors, all of which can prompt action. Most research in this area has examined the way that legal norms mobilize movement activists (McCann 1994; Silverstein 1996). This paper, however, demonstrates that those norms also shape the meaning that ordinary individuals give events in their daily lives.

Finally, social movement theorists have observed that collective action frames exist in a competitive environment. Social movements themselves offer competing frames that may offer different theories of harm or attribution (Gamson 1995; Morris 1992). Moreover, collective action frames compete with dominant ideologies that defend the status quo as well as the frames circulated by hostile countermovements. In this competitive environment, social movements cannot retain complete control over the frames they circulate (Snow and McAdam 2000; Marshall 2001). Thus, many com-

peting interpretations may be available to women confronting controversial events, such as unwanted sexual attention at work.

FRAMING SEXUAL HARASSMENT

The concept of sexual harassment is at once culturally significant and deeply contested both in public debates and in women's everyday working lives.¹ Framing such claims as sex discrimination, sexual harassment laws prohibit certain sexual behaviors in the workplace, prescribe policies and procedures to prevent harassment, and define remedies when women face harassment. As a cultural schema, however, the meaning of sexual harassment is a matter of continuing public debate among policymakers, employers, the women's movement, and its ideological opponents (Saguy 2000a, 2000b). On the one hand, the women's movement has generated and circulated a powerful and resonant injustice frame emphasizing the harms of sexual harassment and demanding justice. But that injustice frame competes with other frames that emphasize management logic, freedom of sexual expression, and freedom of speech.

In this section, I briefly outline the legal rules surrounding sexual harassment at work.² I then describe both the injustice frames about sexual harassment that have emerged from the women's movement and the other frames that compete with these oppositional interpretations of sexual harassment. Specifically, I outline each frame's description of the harms of sexual harassment, its attribution of responsibility for that harm, and its prescription for a remedy.

1. Researchers have found that women do not automatically use the label *sexual harassment* to describe all their experiences with sexual attention at work (Fitzgerald, Swan, and Magley 1997; Williams 1997; Welsh 1999; Quinn 2000). Their use of the label is correlated with a variety of factors. First, targets are more likely to describe experiences as sexual harassment when those behaviors are severe, frequent, or pervasive (Stockdale, Vaux, and Cashin 1995). In addition, when sexual behaviors cross boundaries of race, sexual orientation, or organizational power, they are more likely to be characterized as sexual harassment (Giuffre and Williams 1994). Ethnographic studies have also shown that aspects of organizational culture affect the use of label. Thus, sexualized conduct is often a work requirement in bars and restaurants, for example (Williams 1997; Giuffre and Williams 1994), while in some blue-collar jobs, sexual behaviors can constitute a hazing ritual that women endure to fit in with colleagues. In these settings, employees may not perceive the conduct as sexual harassment (Yount 1991; Williams 1997).

2. This summary is, by necessity, only a brief overview of the basic requirements of stating a claim for sexual harassment. First of all, the subjects of this paper—ordinary working women rather than lawyers—cannot be expected to be familiar with the more detailed aspects of the legal rules. Second, I'm not proposing any changes to the legal doctrine; my goal is to show that women have a working familiarity with the rules and apply those rules to their own experiences to label their experiences. For more detailed analyses of the legal doctrine of sexual harassment and critique of that doctrine, see recent articles by Vicki Schultz (1998, 2001), Kathrine Franke (1997), Anita Bernstein (1994, 1997), and Katharine Abrams (1998).

The Legal Domain of Sexual Harassment

In the United States, sexual harassment is conceptualized as a form of sex discrimination (MacKinnon 1979; Schultz 1998; Saguy 2000a, 2000b).³ The Equal Employment Opportunity Commission (EEOC) and the courts have identified two basic types of sexual harassment. The first type, *quid pro quo harassment*, occurs when supervisors make compliance with sexual demands a requirement of the job (MacKinnon 1979; *Williams v. Saxbe*, 413 F. Supp. 654 [D.D.C. 1976]; *Barnes v. Costle*, 561 F.2d 983 [D.C. Cir. 1977]).

The second form of sexual harassment is the hostile working environment (Schultz 1998; Franke 1997; Saguy 2000a). A hostile working environment is one where sexual behaviors interfere in a discriminatory way with an employee's ability to perform his or her job (Saguy 2000a; *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 [1998]). The standard for determining whether a working environment is hostile has two components. First, the behaviors must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (*Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 [1986]; *Harris v. Forklift Systems*, 519 U.S. 17 [1993]).⁴ On the other hand, to constitute a hostile working environment, the behaviors must also interfere with the employee's performance of her job duties. As the Supreme Court in *Harris* observed, "If the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation. But Title VII comes into play before the harassing conduct leads to a nervous breakdown" (*Harris v. Forklift Systems* 1993).

Employers are liable for the harassing acts of their supervisors. In cases where the harassment is the result of coworkers, employers are only responsible when they knew of the conduct or when their ignorance was unreasonable (*Faragher v. Boca Raton*, 524 U.S. 775 [1998]; *Burlington Industries v. Ellerth*, 524 U.S. 742 [1998]). The Supreme Court has said that an employer can avoid liability when it has a sexual harassment grievance procedure in place and when an employee unreasonably failed to invoke the procedure. Thus, the legal remedy for sexual harassment requires that employees first

3. Sexual harassment is also a discriminatory educational practice under Title IX. In addition, courts have found that sexual harassment violates the Fair Housing Act (Saguy 2000a). But in the United States, sexual harassment is most often associated with workplace behaviors.

4. The Supreme Court has stated that "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview" (*Harris v. Forklift Systems* 1993, 21). To determine whether the conduct was objectively offensive, some courts rely on a "reasonable woman" standard, which the Ninth Circuit has argued acknowledges that men and women assign different meanings to sexual harassment at work (*Ellison v. Brady*, 924 F.2d 872 [9th Cir. 1991]).

use grievance procedures or have a good reason for not doing so (*Faragher* 1998).

The legal definition of sexual harassment continues to be a subject of debate in the courts and the EEOC, as well as among activists, human resource professionals, and academics. For example, the Supreme Court has recognized that same-sex harassment can be a form of sex discrimination at work. Writing for a unanimous Court, Justice Scalia reasoned, “Harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex. A trier of fact might reasonably find such discrimination, for example, if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace” (*Oncale v. Sundowner Offshore Services*, 523 U.S. 75, 80 [1998]).

In addition, critics have argued that the current law places too much emphasis on sexual behavior and consequently leaves unregulated the most problematic aspects of sexual harassment at work. For example, Schultz argues that the requirement of sexual behaviors ignores many forms of gender harassment that denigrate women’s competence on the job and thus push them away from male-dominated occupations and relegate them to low-status employment. She urges the inclusion of nonsexual gender harassment in the legal prohibition (Schultz 1998). Others have argued that the standard for sexual harassment should be grounded in concepts like respect and workers’ dignity rather than sexual practices (Bernstein 1994, 1997; Cornell 1995).

Injustice Frame

The model of sexual harassment as a form of discrimination is due, in large part, to the work of feminist legal activists and civil rights lawyers who “bridged” the experience of sexual harassment to the civil rights frame of race discrimination (MacKinnon 1979; Saguy 2000a, 2000b; Marshall 1998). In her book, *The Sexual Harassment of Working Women*, Catharine MacKinnon (1979) explained that because women are most often singled out for harassing behaviors and because such behaviors impose burdens on women rather than men, sexual harassment deprives women of “opportunities that are available to male employees without sexual conditions” (MacKinnon 1979, 193; Franke 1997; Saguy 2000a). As a result, the structure of the injustice frame for sexual harassment closely tracks Title VII’s legal prohibition against sex discrimination in the workplace (Saguy 2000b).

In this frame, sexual harassment is harmful because it limits a woman’s ability to participate in the workplace on an equal footing with men (MacKinnon 1979). Activists have identified a wide range of negative effects associated with sexual harassment that take a toll on women’s work-

ing lives, including emotional problems, anger, stress, and anxiety. Women experiencing sexual harassment report that their job performance suffers, they take sick days, and they may transfer or quit rather than endure harassing behaviors (Welsh 1999; MacKinnon 1979).⁵ Injustice frames of sexual harassment generally attribute blame for the harms to male dominance over women's working lives, but also hold harassers responsible for their conduct and its consequences. But the frame also holds employers responsible for maintaining working environments where sexual harassment interferes with women's working lives (Saguy 2000a; MacKinnon 1979; Abrams 1989, 1998; Estrich 1991).

The remedies for sexual harassment according to this injustice frame are lawsuits claiming sex discrimination under Title VII (MacKinnon 1979; Saguy 2000a). The legal rules, in turn, emphasize employment grievance procedures and other informal complaint processes for resolving disputes. In either case, however, the prescription for redressing sexual harassment is for women to lodge complaints against harassers and employers. Notably, this prescription is not an invitation to collective action. Rather, it is an individualistic strategy that requires interactions with institutional arenas, such as grievance procedures and courts (Belton 1978).

Management Frames

Since being recognized as a legal claim, sexual harassment constitutes a risk of legal liability for employers. As a result, the definition and prevention of sexual harassment have become subjects of debate and discussion among human resource managers and professionals (Saguy 2000a, 2000b; Edelman, Uggen, and Erlanger 1999). In this view sexual harassment results in reduced employee productivity and efficiency. Moreover, aggrieved employees often take sick time or quit to avoid their harassers, which requires employers to use resources to train replacements. Thus, emphasizing the risk of liability and increased costs of doing business, the management frame portrays sexual harassment as a harm to the organization. In this frame, then, the interests of employees who want to protect their careers and employers who want to protect their businesses overlap.

In the management frame, sexual harassment is caused by employee and supervisor ignorance rather than systematic discrimination against women. Thus, the solution to sexual harassment does not require dismantling in-

5. Injustice frames identify other noncareer injuries associated with sexual harassment (MacKinnon 1979; Saguy 2000a, 2000b). For example, many of the behaviors that constitute sexual harassment could also be considered crimes, including sexual assault. Thus, sexual harassment is often theorized as a form of sexual violence, injurious in and of itself (MacKinnon 1979, 158–64). This framing is more common in France, where sexual harassment has been explicitly criminalized (Saguy 2000a, 2000b), but these frames still appear in American feminist discourse.

equality at work. Instead, management must simply teach employees the importance of observing norms of professional behavior and having good manners (Saguy 2000b). Employers have responded to the threat of sexual harassment by adopting policies, procedures, and training programs for supervisors and employees. The policies often define a wide range of behaviors as sexual harassment—sometimes a wider range than the legal definition (Saguy 2000b)—and prescribe specific grievance procedures for resolving complaints. Professional consultants develop extensive training materials and courses to educate the workforce about the limits of appropriate workplace conduct (Edelman, Uggen, and Erlanger 1999).

Although employers' sexual harassment procedures offer employees expansive protection on paper, some critics have found that the policies as implemented actually protect employer prerogatives rather than employee rights. For example, employers read management interests into the policies prohibiting employment discrimination, so managers and supervisors re-interpret complaints of discrimination as examples of personality conflicts or lapses in sound management practices. Although they may try to resolve an employee's problem, these managers generally reject the idea that discrimination has occurred (Edelman, Erlanger, and Lande 1993). In addition, managers often adopt an adversarial posture when employees come forward with complaints about sexual harassment, which in turn discourages employees from making complaints (Kihnley 2000). In these environments, employees learn that it is better to tolerate harassing behaviors than to complain (Quinn 2000).

Sexual Freedom Frames

Because sexual harassment consists of sexual behaviors, some frames emphasize sexual expression. These frames reflect debates that feminists have had with each other and with opponents. Within the feminist movement, some question the use of state power to regulate women's sexuality, a recurring controversy in feminist political and legal theory (Schultz 1998, 2001; Cornell 1995; Franke 1997). More conservative critics of sexual harassment claims argue that legal regulation, particularly in the area of hostile working environments, constitutes impermissible limitations on workers' freedom of speech (Volokh 1997). Although they differ in the priority they give to women's equality at work, these frames contain a similar message about defining sexual harassment: some sexual behaviors at work are better ignored—or even enjoyed—than outlawed.⁶

6. Some women in this study talked about sex at work as a form of empowerment. Thus, in this section, I will describe the feminist frames of sexual expression rather than the frames adopted by more conservative critics of sexual harassment laws.

In the feminist frame critiquing current sexual harassment law, sexual behavior at work is not harmful in and of itself. Men and women spend a great deal of their daily lives in the workplace. Many people report that they met their spouses and partners while at work. To cordon off working environments and bar sexual behavior creates artificial obstacles to sexual expression (Schultz 1998; Cornell 1995). Moreover, sexual expression at work can be a source of empowerment for women:

Even if all sexual interaction could be eradicated from the work world, this would not necessarily be desirable. Sexuality should not be conceptualized solely as a sphere of gender domination, but also as a potential arena of women's empowerment. If some men use sexual behavior as a weapon of gender struggle at work, one solution is for women to refuse to cede sexuality as a source of male domination and to use it to turn the tables on oppressive men. History provides examples of women who successfully mobilized sexual conduct or expression as a way of undermining authoritarian male control in the workplace. (Schultz 1998, 1794–95)

This feminist critique of current sexual harassment frames comes from skepticism about judges and legislators who are called on to regulate women's sexuality (Schultz 1998; Cornell 1995). "Rather than emphasizing the use of harassment law to promote women's empowerment and equality as workers," Schultz notes, the current standard for sexual harassment, "subtly appeals to judges to protect women's sexual virtue or sensibilities" (1998, 1729). In turn, this paternalism protects only women who conform to conservative sexual norms—that is, those who don't engage in sexual banter, wear tight-fitting clothes, or otherwise "ask for it."

DATA AND METHODS

This analysis is based on women's accounts of their experiences with unwanted sexual attention at work and their decisions to label those experiences sexual harassment.⁷ The women were all staff members in administrative and clerical positions in a single workplace—a large, private university ("University"). Faculty members were excluded from the sample, as were students, unless they held administrative or clerical positions.

I used two methods to compile women's accounts of sexual harassment. First, I conducted in-depth interviews with 25 female employees. I solicited their participation through an e-mail to a listserv sponsored by an organiza-

7. In this study, I restricted my analysis to women's experiences. While it is true that men confront sexual harassment at work (Williams 1997; Franke 1997; *Oncala v. Sundowner*, 523 U.S. 75 [1998]), sexual harassment continues to be a problem faced mostly by women (Merit Systems Protection Board 1995; Welsh 1999).

tion of female employees at the University.⁸ In my e-mail message to the listserv, I asked women to contact me if they had experiences with “unwanted sexual attention in the work place.” I used this phrasing to leave open the question of whether the women had been sexually harassed, a topic of the interviews. Using this method, I identified a group of women who varied in income and occupational status. Five of the women were low-paid workers who administered budgets and performed clerical tasks. The rest were middle-management employees performing a range of administrative tasks, including supervising employees and developing workplace policies. Of course, using a computer-based method of communication limits the type of employees I reached—only women who had access to computers; only women in pink- and white-collar occupations—but my sample does reflect variation across occupations. One of the women interviewed was Latina; the remainder were white.

I conducted the interviews using a semistructured battery of questions. I asked the women about their experiences with unwanted sexual attention at work, including the nature of the conduct, the number and gender of the harassers, the frequency and duration of the conduct, and the interviewees’ response. When I finished asking the questions about their experiences, I asked the women whether they believed they’d been sexually harassed. I departed from the schedule when the subjects wanted to elaborate about a particular topic. Lasting from 45 minutes to an hour and a half, the interviews were tape-recorded and transcribed. The women chose pseudonyms to preserve their confidentiality; they are identified by these pseudonyms in this paper.

The second set of employee accounts come from a survey in the same workplace, targeted at the same group of female employees. I obtained a list of all female support staff at the University from its Women’s Center and drew a random sample of 1,000 subjects from the list. I sent a questionnaire to each respondent along with a cover letter briefly describing the goals of the research and a follow-up letter asking them to complete the questionnaire if they had not already done so.⁹ The questionnaire elicited informa-

8. The organization provided social, cultural, and career programs for its members. The organization arranged outings to museums and concerts and other social gatherings. In addition, the organization sponsored workshops to give women career advice and networking opportunities. Although not an advocacy group or a union, the organization arranged talks and brown-bag discussions on such topics as managing stress, the glass ceiling, and violence in the workplace.

9. The response rate was 35%. This is an acceptable response rate for mail-back questionnaires, particularly on a topic as sensitive as sexual harassment, where response rates can be as low as 20% (Arvey and Cavanaugh 1995, 46). The sample reflects the diversity in occupations in a large university—clerical workers, administrators, research technicians, librarians, law enforcement personnel, and housekeeping staff. Thus, the survey reached a wide array of employees with diverse educational and income levels. The survey sample was also racially diverse: 11.5% of the respondents were African American, 4.4% were of Asian descent, and 4.1% were Latina.

tion about women's experiences with unwanted sexual attention at work and their responses to such conduct. At the end of the questionnaire, women were given space to write "their comments on any of the issues raised by [the] questionnaire." About 20% of the respondents used that space to provide more detail about their experiences and to elaborate on their efforts to respond to their harassers. I have included these comments in this analysis.

I used both deductive and inductive techniques to analyze the transcripts and the written comments on the survey responses. Using the competing frames for sexual harassment described above, I studied the transcripts to find women's use of the different schema to understand their own experiences (Ewick and Silbey 1998; Snow et al. 1986). In addition, I examined the transcripts for recurring patterns in the way that women sought to balance the sometimes competing messages of the different frames. These qualitative methods are most appropriate for analyzing legal consciousness (Ewick and Silbey 1998; Nielsen 2000; Quinn 2000). Analyzing women's narratives of their own experiences allows careful consideration of contextual factors, such as the ambiguity of sexual behavior and the prevalence of management logic in the workplace (Williams 1997).

THE MEANING OF HOSTILE ENVIRONMENTS

The women in this study confronted a variety of experiences with harassing behaviors. They described sexual advances and invitations, sexual joking and banter, and displays of graphic sexual materials in the workplace. While these behaviors may not have been sufficiently severe or pervasive to satisfy the requirements of a legal claim, they fell in the general category of conduct that might constitute a hostile environment.¹⁰ In the sections that follow, I analyze women's legal consciousness in evaluating their experiences. Tracking the initial stages of a dispute—perceiving an injury and naming a harm—I show that law is present in naming sexual harassment, but is certainly not dispositive. The stories of the women in this study reflect both feminist debates about work and sexual freedom, as well as management concerns about sexual harassment.

Seeing the Harm of Sex at Work: Injustice, Efficiency, and Sex

In deciding whether they were harmed by their encounters with unwanted sexual attention, the women in the study offered interpretations that were grounded in the public debate surrounding sexual harassment. On the one hand, many women articulated the injustice frame by identifying their

10. No one in the qualitative study reported an experience with quid pro quo harassment.

experiences as a manifestation of the barriers women face in trying to achieve equality at work. However, not all women adopted this discrimination frame. Rather, they attributed harassing behaviors to the ignorance of individual men. Other women found sexual behaviors in the workplace to be a friendly form of interaction that in certain circumstances could be empowering. And finally, some women balanced several of these frames, trying to reconcile competing explanations for what was happening to them.

Injustice Frames: Discrimination and Inequality

Injustice frames identifying sexual harassment as a form of discrimination appeared in many women's accounts of their experiences with unwanted sexual attention. These women emphasized the way that harassing conduct imposed burdens on their working lives and created obstacles to advancement. In explaining why these incidents occurred, they adopted a power analysis that framed sexual harassment as a product of male dominance in the workplace, where women are rendered vulnerable because of their marginalization. Their analysis made women blame harassers and employers for their injuries rather than themselves.

For example, Rose worked as a secretary in a coaching office, where all the coaches were men, but all the clerical workers were women. Rose described the receptionist in the office, who frequently engaged the coaches in sexual conversations:

Innuendoes flew left and right. She would dress somewhat provocatively: low-cut—not overtly, but—if she wore blouses, which she did often, they were very low, low buttons, she'd unbutton it quite some distance. . . . She would get up, and she would move to where she would stand, literally, in front of my desk with a coach, and have a conversation for 15, 20 minutes, of this patter of sexual innuendo, within the distance you and I are from each other right now. So it was weird. It was just *weird*, and awkward.

Rose's objections to the receptionist's behavior were not based on the offensiveness of the conversations. Rather, she complained that the behavior "affected the work flow of the office, too. I mean, she was never there to answer the phones. *I* answered the phones. She would get into a conversation with a coach, and the phone would be ringing, and she wouldn't pick it up, so I'd pick it up." But more seriously, Rose felt that this sexual banter created expectations that she adopt a "more hostess-like demeanor":

It was a situation where people who were superior to me, who had authority over me in one form or another, were expecting a certain level of behavior that was sexual in nature, that I was uncomfortable with. . . . If this had no impact on the way I was being treated by that

staff, and the expectations that were being put upon me, within the context of the office, I could have cared less. But it clearly became that there was an expectation of a certain flirtatiousness of the female staff within the context of the office environment. And I simply wasn't going to accept that.

To Rose, the level of sexuality expected by her supervisors imposed too high a cost on her working life.

Joanne's theories about the harms of unwanted sexual attention developed over many years of such experiences; she claimed that she had faced at least one such incident in every job she had ever had. At one job, the chief financial officer was "really gross—a gross guy." He told sexual jokes and made sexist comments on a daily, sometimes hourly, basis. He would walk by one secretary's desk singing vulgar song lyrics with the secretary's name in it. He told Joanne a joke with the punch line "nice hooters." Given this pattern of behavior, Joanne found it difficult to work with him:

It probably affected my ability to get things out of him that I needed to do my job. I would interact with him; we were doing a lot of grant writing, and we needed his cooperation to create the budget and that sort of thing, and I definitely felt like . . . I couldn't get the cooperation from him that I felt I needed in order to do my job, and I did have to go to my supervisor. And in fact, I was not the only one.

In blaming harassers and employers for the costs of sexual harassment, these women emphasized male control over their working environments. In these accounts, men enjoyed economic power over women, and that power gave them the right to dictate working conditions, which often included sexual harassment. This set of practices unsettled women and made them feel like outsiders, thus undermining their confidence on the job. Characterizing the chief financial officer as a "big power guy" in the organization, Joanne argued that he told sexual jokes and used vulgar language to assert his authority over his female coworkers:

It would certainly stop conversation . . . , and it would be embarrassing. And there was a certain power aspect to it that he would have over not just you but all the women that were present. . . . I was thinking that maybe he didn't want, didn't like being pushed around by women or feel that he was being pushed around by women, and this was a way for him to counter it and say "You can't push me around! Ha! You're a woman."

Rita also found that the executives at one job were indifferent to the needs of the women who worked for them. The sexist comments and remarks that pervaded her day were simply a by-product of rich and powerful men enjoying the perquisites of being rich and powerful.

And there would be a lot of bantering on their side, you know, innuendoes, off-color jokes, that I just ignored. . . . Women for them were playthings. They were of that mentality. . . . Their attitude was that women were possessions, sexual objects, not particularly . . . respectable.

Injustice frames were most readily available to women working in low-status occupations such as clerical work, where they had little hope of career advancement or development. These women were acutely aware of the power arrangements in the workplace. For example, Rose described the coaching office: “The power structure was definitely on the male side, and [support staff] was below that.” Similarly, Rita was an office manager working in a small office of wealthy executives. She described her employers: “They were all relatively young men. The president of the company and the chairman of the board, they were all under 45. And when you make four million dollars a year, that’s young—you know, as salary. So anyway, I always felt that it gave them the sense that they could do no wrong, and everybody was theirs to have however they wanted.” In such positions, where women’s working lives are at the mercy of more powerful people, particularly men, sexual harassment is another set of practices that reinforce obstacles to women’s equality.

Management Frames: Internalizing Employer’s Interests

Several employees’ accounts of their experiences reflected frames that emerged from management principles about sexual harassment. As managers themselves or as employees concerned about advancing their careers, they internalized their employer’s interests in preventing problems with sexual harassment before they ripened into litigation, but they did so by trivializing the harm and by blaming themselves for any discomfort they felt. While they were familiar with their rights, they declined to conceptualize the problem as discrimination. Sexual harassment emerged not from sexist arrangements of power in the workplace but from a crude yet natural tendency of men to be sexually aggressive, particularly in groups. These women’s views of the best remedy was to ignore these behaviors and perform their jobs as though nothing were happening. Indeed, these women may have been simply deflecting the psychological consequences associated with being a “victim” (Bumiller 1988). But notably, they did so by articulating their interests in ways that overlapped with those of the employer.

The women in this study who used management frames did not consider explicit sexual conversation and jokes at work harmful in and of themselves. For example, throughout her career, Megan often experienced unwanted sexual attention. At her first job, an executive cornered her in a hallway and explicitly expressed his sexual interest in her. At later jobs in

sales, her clients frequently exchanged sexual jokes and commented on her physical appearance. Her supervisor at the time of our interview asked her questions about her sex life and made vulgar comments about her body. Megan claimed not to be bothered by such incidents because “my job doesn’t depend on it. I am not threatened. And I just know that he probably is a little sick, and I just kind of laugh at him for it.” Describing the sexual conversations she has had with her supervisor as “our banter,” Megan admitted that it occasionally bothered her, but she did not blame his conduct for her reaction.

There have been a few times where I said “enough.” I have, and that’s been more my mood than his. It’s been more like “you know what? I don’t feel like being messed with today. I’m upset, or I’m tired” or whatever it is. Every now and then, you have a day where he really rubs me the wrong way.

Megan retained complete responsibility for any emotional distress she might have felt in the face of the supervisor’s comments.

To these women, sexual harassment was not a systematic problem but, at most, a lapse of professionalism or a personality conflict. For example, one survey respondent observed that her supervisor and colleagues engaged in fairly frequent sexual joking and banter, but she did not attribute their behavior to discrimination:

It is my opinion that a good number of people are simply unaware of what behaviors are appropriate for work and what behaviors aren’t. I have not felt that coworkers were purposefully causing me discomfort, but they seemed ignorant to the fact that certain topics are inappropriate for a discussion at work. . . . I think that it is a lack of professionalism and no sense of what makes others uncomfortable which often leads to harassing conversations or comments.

To maintain their professional dignity, women drew on a number of strategies. For example, they endorsed employment policies and procedures designed to educate employees, but they also developed their own repertoires of strategies for dealing with such behaviors. For example, Megan saw it this way:

You kind of figure out how to deal with this and grow confidence, and I would change the subject or laugh it off and not give them the satisfaction of letting them see that maybe it affects you or shakes you up at all. And of course, at that point, it really doesn’t shake you up because you think “Pig” and then you just change the topic. And this is a customer—someone I’m going to have to deal with—so you have to approach it a little more tactfully.

Megan also assumed that such working conditions will eventually be abandoned when men finally yield to the presence of increasing numbers of women in the workplace. Admitting that “most men have a bit of pig in them,” Megan also believed that women who know this and are prepared to deal with it are in the best position to advance their careers:

You can't blame the system because that's the way it was, so I think that if men reap the benefits of the system, every year they reap a little less benefits because we're out there working that much harder to say, “Hey, what about me?” because we're just now getting to that.

The women who adopted these frames tended to be managers and supervisors themselves. For example, Megan described herself as “ambitious” and as having “male goals” because she was extremely concerned with career advancement. In fact, she was willing to tolerate sexual attention as the price of fitting into male organizational culture. Moreover, as managers, these women often participated in organizational practices and routines that protected management interests. It is not entirely surprising, then, that they should adopt a management perspective when evaluating their own experiences.

For many of these women, their understanding of equal treatment is guided by a frame that distances sexual harassment from broader structures of inequality in the workplace. By personalizing such conduct or attributing it to men's inherent characteristics, they place the conduct beyond the realm of meaningful regulation. Moreover, they absolve their employers of any significant responsibility for resolving the problem. Women relying on such frames may try to adapt to their surroundings in an effort to prove their mettle, but they run the risk of appearing to consent to behaviors that can, in the long run, create enormous distress.

Sexual Freedom

The women discussed thus far may or may not have felt injured by their experiences with unwanted sexual attention, but they all took a dim view of the conduct. By contrast, several women in the study were actively participated in sexual conversations and behaviors at work, and some even initiated such interactions. In their narratives, women reported feeling comfortable with and enjoying sexual interactions in the workplace. To these women, sexual expression at work could not only be a source of relaxation and bonding among employees, but also an assertion of their power.

For example, Dallas reported that she engaged in frequent sexual banter and joking at most of her jobs. She felt that such conversation contributed to camaraderie in her working environments. She was amused, for example, when a faculty member analogized her conduct to that of Clarence Thomas

rather than Anita Hill: "He said 'No, no, no. It's more like Dallas telling you a dirty joke or telling you the latest porno movie.' And then [the other] said 'Oh, you're right. You're right; that's how she is.' It's sort of like we don't mean anything because, you know, that's how we are. That's how we get pressure off." It was important to Dallas that she be able to draw the line and discourage some forms of this conduct—such as verbal abuse or physical contact. Still, by engaging in sexual joking, Dallas felt she was dismantling some of the barriers between faculty and staff. A survey respondent described her workplace similarly: "Pictures, jokes, e-mails of a crude nature are only passed through a close circle of friends/coworkers. Everyone is a willing participant. We only send material to people who have sent us similar stuff. Overall, it's a friendly atmosphere, and there are no negative feelings associated with it." In this woman's workplace, sexual materials were apparently a channel for friendly communications among colleagues.

Women also identified sexual expression as a way for women to exercise power in the workplace. For example, Abbie claimed to use a male colleague's obsession about sex to her own benefit. She and her colleagues were "very amused" when they noticed that a supervisor stared at her breasts whenever he spoke to her. Abbie claimed not to be bothered by his behavior. Rather, she considered it a "weakness in him that I could take advantage of." Abbie also had a female coworker who often used crude and explicitly sexual language during business meetings. Abbie speculated that her colleague purposely used such language to shock the men in the office with whom she worked:

That's how she identifies her feminism; she thinks she's advancing the cause of women by breaking down all sorts of barriers . . . She's trying to model the old girl's network after the old boy's network, but she makes it worse because the old boy's network isn't that bad anymore. Men don't refer to . . . anatomy.

In Abbie's view, sexualized workplaces were not the product of male behavior. Instead, women were using sexual behaviors to disrupt the balance of power.

When women tolerate such working conditions, however, they appear to consent, and for women, consent once given is hard to revoke. Coworkers and supervisors may make increasingly intrusive sexual demands on women working in these environments. In addition, some women reported that aggressive sexual banter transformed into abusive behavior that seriously intruded on their mental and physical well-being. For example, at her previous job, Dallas engaged in this kind of banter with her supervisor and felt that she could hold her own. Given their already combative relationship, however, her former supervisor often exceeded the limits of permissible workplace behavior by verbally abusing Dallas. Dallas tried to tolerate this

behavior, but she found that it was affecting not just her work but also her worldview. She compared her situation to that of other women who had similar complaints about their supervisors:

But it's almost like they're in a situation where they're abused—say a marriage, or a relationship where the husband is constantly verbally abusing you or hitting you. There's no way out. . . . When I came here [to a new job], I waited for them to start swearing at me. And then I realized—see I never realized until I came from there how often [my former boss] would swear at me. And I don't think of myself as a very weak woman, but all of a sudden I found myself in a situation where who was the first one who was going to tell me to go f_____ myself, or say something. I mean, you become accustomed to being abused.

Finally, while some women may welcome opportunities for sexual expression at work, other employees, both male and female, may find such conduct troubling. Rose, for example, found the sexual conversations between the receptionist and the coaching staff annoying and distracting from her work. One survey respondent echoed others by observing that her office mate was the target of frequent sexualized comments about her appearance, but as the survey respondent admitted, "It bothers me more than it does her." Thus, the exercise of sexual freedom in the workplace can impair the working environment if it is not tempered by respect for those who do not choose such arenas for sexual expression (Cornell 1995, 172; Bernstein 1997).

Balancing Competing Frames

The women in this study rarely chose a single frame for understanding what happened to them. Instead, they tried to balance many competing interpretations of unwanted sexual attention. On the one hand, they were familiar with the injustice frames that characterized such experiences as discrimination and were detrimental to their working lives. Yet they also entertained alternative perspectives on such behaviors—perspectives suggesting that they should not take it so seriously or that they themselves were responsible for male sexual conduct. Thus, some women could not decide whether they had even been injured.

Lily, for example, was having a hard time reconciling these competing interpretations when she thought about her own experiences. While her former husband had never physically abused her, her difficult divorce raised her consciousness about power in family relations. One political issue important to her was controlling domestic violence, and she had volunteered her time in shelters for targets of domestic violence, doing everything from leading support groups to helping with housework. Thus, in some areas of her life, Lily had already identified the personal as political.

Lily also applied these insights to her experiences with her colleague, who frequently asked her out on dates and who eventually asked her to sleep with him. She recognized that by making sexual advances, he was trying to control her job performance:

It became about my competence. He told me that maybe he'd recommend me for a job. [He said] "You're doing a good job. I always come to you for information." Did he say that because it's true and he believes it, or did you say that because that would be what works? And now, because that question can't be answered, and if it becomes of value to me, then he's in control.

In this view, her colleague was responsible for making her uncomfortable and for making her question her ability to perform her job.

Yet Lily also believed that she herself was responsible for his sexual attentions, and her explanations for these events were based mostly on her own personality traits. For example, she blamed herself for being unable to tell her colleague she was not interested in a clear and direct manner: "I finally realized that it was because I am unable to address those things, to set those boundaries, and I thought, 'He doesn't even know what's going on with me.'" In addition, she believed that her colleague was simply responding to what she described as her "hero worship" of intelligent and successful men:

While I may not be saying to them "I'm attracted to you; I want more from you," I am saying on some level I think he's admirable or better. And I think that in some part plays into what they might be responding to. And unfortunately, the particular people who will respond are those who are perhaps looking for that.

In this view, Lily brought her colleague's attention on herself. Lily's beliefs were bolstered by her previous experiences: "It had happened to me before, so it couldn't entirely be coincidence, so there must be some part I play. And what might my part be, because I'm feeling so guilty?"

There are many ways to characterize unwanted sexual attention at work. Although the women's movement has had great success in placing sexual harassment on the public agenda, it has hardly been the exclusive source of frames on the issue. Employers protecting themselves from liability have also shaped the understanding. In addition, critics have questioned the impact of law on sexual freedoms. All these frames are reflected in women's accounts of their own experiences. And as I will show in the next section, these frames can either support a woman in naming the experience as sexual harassment or undermine that label.

Naming Sexual Harassment

Even when women were offended or disturbed by sexual behaviors at work, they did not automatically label their experiences sexual harassment. Instead, the women in the study understood sexual harassment to be a legal category that set standards for acceptable behaviors. These standards included such factors as the intrusiveness and frequency of the conduct and its effects on the target's job—factors that closely resemble the legal test for sexual harassment. Indeed, the women did not flawlessly apply this test. In fact, to some, sexual harassment was limited to physical contact or to conduct that devastated her career. Thus, women enacted legality by drawing on a definition of sexual harassment that offered them narrower protection than they were entitled to by law.

Women in the study understood that an experience had to involve *intrusive sexual behaviors* to be considered sexual harassment. In fact, for some women, sexual harassment was confined to physical contact. For example, Dallas distinguished between sexual jokes and comments and unwanted physical contact. She said, "To me, sexual harassment means you're just about to touch me." Similarly, a survey respondent reported that her frequent contact with a colleague bothered her. Still, because it wasn't physical, she declined to characterize the behavior as sexual harassment. She said, "And the man didn't touch me sexually. He just invaded my intimate/personal space and followed me around all the time. So because it wasn't a sexual contact, I didn't regard it as sexual harassment." Limiting sexual harassment to physical contact constitutes a significant restriction on the breadth of legal protection.

For other women, sexual harassment did not require physical contact, but it did require extremely intrusive behaviors, like demands for sexual favors. For example, the executives in Rita's office frequently made sexual jokes, used vulgar language to refer to women's anatomy, and made comments about her personal appearance. Yet Rita did not think she had been sexually harassed because they did not press sexual demands on her:

I didn't feel that it was harassing me because I didn't feel, really, that my job was on the [line]. . . . They never came and asked me to do anything. . . . I think it was more a feeling of belittling. So I don't know if I'm not defining sexual harassment correctly. . . . To me, [sexual harassment] would be if a person of the opposite sex would approach a person, do something physical—touch—or make propositions, whether or not the job depended on it. I was never propositioned.

Similarly, one survey respondent tolerated sexist comments from a female supervisor: "The comments were made by a woman who was degrading me, not coming on to me. I felt that there was no recourse. I *experienced* it as sexual harassment, but I knew legally it wasn't."

Other women described sexual harassment as behaviors that infringed on the intimate details of women's personal lives. For example, Jane resented the tenor of the e-mail messages she received from a professor with whom she worked:

The part that I think is harassment is when he starts telling me what to do with my marriage, and telling me I should go out to lunch with him, and the sexual comments, like he'll use words like "titillate," and it's obvious to me what he's trying to get across, and he actually does mention his sex life, and tells me he's not getting any, and all sorts of things, and I just ignore him. I don't ever say anything like that. I think that's out of line; that's inappropriate.

Such behavior threatened women's desire to be treated as an autonomous professional whose sex life was not a suitable topic for discussion in the workplace.

The *frequency* of a behavior also shaped women's assessment of whether they had an experience with sexual harassment. Conduct that was a daily affront to a person's sensibilities is more likely to be labeled sexual harassment. Rose complained about the receptionist in the coaching office: "There wasn't a day that went by [without] a time period that was spent in flirtation with the coaches." Similarly, Joanne claimed that the chief financial officer made sexual jokes and comments: "Oh god, all the time. *All the time*. Every day. He was the type of personality that whenever you had to interact with him, you could expect to have some sort of sexual innuendo or a joke or something thrown in there." Kay fought off the physical advances of the owner of a restaurant where she worked every night. He would approach her "whenever he had a chance. It would be passing in the hallway. I would be walking out to go sing, and he would rub up against me or something. So really, any chance he had."

On the other hand, when the behavior was less frequent—and easier to ignore—women declined to call it sexual harassment. The joke-telling professors in Nora's department were not bothersome because "over the course of the year, maybe it happened a half-dozen times." For Ann, her coworker's invitation for a date happened only once and was never repeated. One survey respondent reported, "A male coworker made a joke that was a 'double entendre.' It made me feel slightly uncomfortable, and I didn't acknowledge the remark. I also avoided the person except when it was necessary for work purposes. The behavior did not reoccur, and I did not feel that the coworker persisted or harassed me." Thus, women are willing to overlook less disruptive behaviors and do not categorize them as sexual harassment.

Finally, the women in this study also considered the *job consequences* before using the label *sexual harassment*. When they were not threatened with dismissal or when their job performance did not suffer, women were

more reluctant to call the behavior sexual harassment. Nothing happened when Ann turned down her coworker's invitation to go out, so to her, it was not sexual harassment. To Nora, the sexual jokes made by faculty members were not sexual harassment because they caused her mild discomfort and did not affect her interactions with the faculty.

Even if the unwanted sexual attention made women feel uncomfortable, they did not use the label *sexual harassment* unless their jobs were vulnerable to adverse job decisions by the harasser. When Abbie's coworkers used vulgar and sexually explicit language during business meetings, she knew that she was not being sexually harassed, even though she found the behavior offensive, because it was not "behavior that interfered with the job, somehow negatively affects the job." Jane was reluctant to use the label *sexual harassment* because the sexual e-mail messages were coming from a professor she worked with but who was not a direct supervisor: "He's not my supervisor or anything, so he's not threatening me with anything; . . . although being a professor, he does have more pull in the department than I do."

Those women who believed that sexual harassment was a male abuse of power were more likely to adopt the label of sexual harassment when describing their experiences. For example, Rose felt harassed by the sexual conversations involving the male coaching staff but instigated by a female receptionist. She was aware that the involvement of another woman would make a complaint of sexual harassment more difficult, but that did not affect her evaluation of the situation:

Sexual harassment in the workplace is all about the work. If you're in an environment where sexual innuendo, tension, undertone, behaviors between people are taken in a sexual way, that impact your ability to work or your ability to feel comfortable in doing your work, then to me, that's sexual harassment. But it's an environmental kinds of situation. It's not necessarily a specific incident, or a specific element of anything, but if you feel that you've got to justify or give value to your sexuality in one way or another, in order to be able to work in that office, then that's, to me, sexual harassment.

The conduct that Rose described as sexual harassment is notable in that it does not directly target a particular individual with sexual advances or physical contact. Rather, she identified a hostile environment as one where there is innuendo, tension, and undertone. Moreover, her definition did not require serious damage to an employee's career. Creating discomfort in employees was sufficient. Similarly, in explaining why she felt sexually harassed by the chief financial officer, Joanne specifically mentioned his abuse of power over female employees. Whenever he made sexual comments around her, Joanne felt that he was purposely trying to make her feel small and worthless. Based on these feelings, Joanne was willing to describe the experi-

ence as sexual harassment. For Rose and Joanne, their adoption of an injustice frame made it easier to see their experiences as a form of discrimination.

Several women explicitly cited law and legal institutions when evaluating whether or not their experience was sexual harassment. For example, a sexual harassment policy circulated by her employer helped Rose decide that the sexual conversations going on in the department were a form of sexual harassment:

It was about this time that the University came out with its sexual harassment policy. And I remember reading through it. But it wasn't a couple weeks or a month later where I started reflecting on the definitions of sexual harassment, and I said, "This is sexual harassment; I don't have to put up with this in my workplace."

Joanne argued that she knew the chief financial officer's behavior constituted sexual harassment because she had written a paper about state sexual harassment laws for a class she was taking for a master's degree. Other women may not have mentioned the law or legal materials specifically, but they recognized a category for conduct called *sexual harassment* that had legal significance. Severe and pervasive sexual behavior fell in that category, while less intrusive or less frequent behavior did not. This distinction, in addition to their own sense of injury, governed the question of whether they had been harassed.

It is unclear whether women's existing knowledge of law shapes how they evaluate their experiences or whether their experiences prompt them to investigate the possibility of a legal claim. Some women, like Joanne, already knew about the law of sexual harassment when they encountered their harassers. These women used familiar legal concepts and frames to interpret their own experiences while they were happening. Other women, however, found out about the law in response to the experience. For example, Rose had trouble making sense of her working environment until she read the University's sexual harassment policy and then concluded that she was facing sexual harassment. Women like Rose turn to law as a tool after the fact, but they use the legal concepts and frames they acquire to go back and reinterpret their experiences. Thus, whether they acquire information about the law proactively or reactively, it is nevertheless law that helps structure the meaning that women give to experiences.

CONCLUSION

Sexual harassment is both an empowering label that challenges male dominance of the workplace and a legal category that defines the limits of acceptable conduct among employees. Some women in this study drew on both these dimensions when analyzing their experiences with unwanted sex-

ual attention at work. These women interpreted their experiences with unwanted sexual attention as an effort by their supervisors and coworkers to keep them uncomfortable and to make them feel unwelcome. They viewed their harassers as men and women who were abusing their power by creating an unsettling atmosphere.

But the framing of sexual harassment as a form of discrimination and inequality competes with other interpretations of behavior. For example, many women who experience unwanted sexual attention happen to be managers and supervisors for their employers. As such, these women often believe that their employer's interests and their own career interests overlap. In addition, they may have been steeped in human-resource frames for sexual harassment, which portray such conduct as a personality conflict or a management problem rather than a systematic problem facing women in the workplace. Thus, it is not entirely surprising that women in such positions used management logic to reject the label of sexual harassment. Instead, they tried to adapt and looked forward to a future in which harassing conduct simply withered away as women grew more influential in organizations.

Finally, for some women, sexual banter and joking were harmless pursuits that, if anything, challenged workplace hierarchies rather than reinforced them. Actively participating in sexual joking and banter around the office, they were taking advantage of the changing norms governing sexual behavior that liberated women to be sexually assertive without risk of social censure. These women felt free to pursue their sexual interests as broadly as they liked, including in the workplace, and some were even willing to use sex as a strategy to assert power over their male coworkers.

In addition to these oppositional frames for unwanted sexual attention, women also consulted external standards for analyzing whether they had actually been sexually harassed. Although these women were not lawyers and were not familiar with the intricacies of sexual harassment law, they analyzed their situations with a rough form of legal reasoning in which they measured their experience against some external criteria that closely paralleled the legal standards. They understood that to constitute sexual harassment, the conduct had to be serious and frequent, and that it had to have some seriously detrimental impact on their jobs; not every random joke or sexual remark would be considered sexual harassment. Thus, women were able to offer what amounted to a general legal opinion about whether they had been harassed. Indeed, that legal opinion may have been more restrictive than anticipated by courts and other policymakers. Thus, women were constructing their own legality of sexual harassment in the workplace.

This analysis of women's experiences with unwanted sexual attention also demonstrates the usefulness of integrating theories of oppositional consciousness and legal consciousness. The legal consciousness framework needs to account for other types of frames and schemas circulating in the culture

and their relationships with legal frames. Law alone is insufficient for understanding the meaning that women assign to their experiences with sex at work. Legal frames do not really address the question of how women decide whether they have been harmed in the first place. Instead, the question of whether conduct is harmful, funny, flattering, humiliating, or merely annoying is best answered by considering the way sexual harassment has been framed by the women's movement, employers, and others engaged in the public debate surrounding this issue. These frames are more often invoked in women's evaluations of the nature of the conduct and how it affects them and their working lives.

In addition, this analysis also sheds light on the relationship between law and social change from the bottom up. Legal frames and injustice frames overlap in significant ways. First, when social movements problematize previously acceptable social conditions and translate experience into injuries, those injuries often become legally recognized claims. This is particularly true for conditions of social inequality, where the civil rights frame is so prevalent. Injuries like sexual harassment enjoy legitimacy and societal recognition once they acquire a legal imprimatur (Saguy 2000a, 2000b; Weeks et al. 1986). At the same time, however, law can inhibit social change. For example, the injustice frame for sexual harassment is dominated by legal remedies. Those remedies deemphasize collective solutions and instead encourage women to pursue more individualistic strategies, such as confronting harassers, lodging complaints with employers, or filing lawsuits when other options fail. Moreover, interacting with other schema, law can reinforce the status quo and protect the powerful, such as when women adopt management frames to trivialize the sexual behaviors of their employees and to interpret their interests as coinciding with protecting their employers. In this view, law is a complex social force that both enhances and impedes social change on the ground.

REFERENCES

- Abrams, Kathryn. 1989. Gender Discrimination and the Transformation of Workplace Norms. *Vanderbilt Law Review* 42:1183–248.
- . 1998. The New Jurisprudence of Sexual Harassment. *Cornell Law Review* 83: 1169–230.
- Arvey, Richard D., and Marcie A. Cavanaugh. 1995. Using Surveys to Assess the Prevalence of Sexual Harassment: Some Methodological Problems. *Journal of Social Issues* 51:39–52.
- Bernstein, Anita. 1994. Law, Culture, and Harassment. *University of Pennsylvania Law Review* 142:1227–311.
- . 1997. Treating Sexual Harassment With Respect. *Harvard Law Review* 97:2153–176
- Belton, Robert. 1978. A Comparative Review of Public and Private Enforcement of Title VII of the Civil Rights Act of 1964. *Vanderbilt Law Review* 31:905–61.

- Buechler, Steven M. 1995. New Social Movement Theories. *Sociological Quarterly* 36: 441–64.
- Bumiller, Kristin. 1988. *The Civil Rights Society: The Social Construction of Victims*. Baltimore, Md.: Johns Hopkins University Press.
- Cornell, Drucilla. 1995. *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment*. New York: Routledge.
- Edelman, Lauren B., Howard S. Erlanger, and John Lande. 1993. Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace. *Law and Society Review* 27:497–534.
- Edelman, Lauren B., Christopher Uggen, and Howard S. Erlanger. 1999. The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth. *American Journal of Sociology* 105:406–54.
- Estrich, Susan. 1991. Sex at Work. *Stanford Law Review* 43:813–61.
- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Felstiner, William L. F. 1974. Influences of Social Organization on Dispute Processing. *Law and Society Review* 9:63–94.
- Felstiner, William L. F., Richard L. Abel, Austin Sarat. 1980–81. The Emergence and Transformation of Disputes: Naming, Blaming, Claiming. . . . *Law and Society Review* 15:631–54.
- Fitzgerald, Louise F., Suzanne Swan, and Vicki Magley. 1997. But Was It Really Sexual Harassment? Legal, Behavioral, and Psychological Definitions of the Workplace Victimization of Women. In *Sexual Harassment: Theory, Research, and Treatment*, ed. William O'Donohue. New York: Allyn and Bacon.
- Franke, Katherine. 1997. What's Wrong with Sexual Harassment? *Stanford Law Review* 49:691–772.
- Gamson, William A. 1995. Constructing Social Protest. In *Social Movements and Culture*, ed. Hank Johnston and Bert Klendermans. Minneapolis: University of Minnesota Press.
- Giuffre, Patricia A., and Christine L. Williams. 1994. Boundary Lines: Labeling Sexual Harassment in Restaurants. *Gender and Society* 8:378–401.
- Johnston, Hank, Enrique Larana, and Joseph R. Gusfield. 1994. Identities, Grievances, and New Social Movements. In *New Social Movements: From Ideology to Identity*, ed. Enrique Larana, Hank Johnston, and Joseph R. Gusfield. Philadelphia: Temple University Press.
- Katzenstein, Mary F. 1998. *Faithful and Fearless: Moving Feminist Protest Inside the Church and the Military*. Princeton, N.J.: Princeton University Press.
- Kihney, Jennie. 2000. Unraveling the Ivory Fabric: Institutional Obstacles to the Handling of Sexual Harassment Complaints. *Law & Social Inquiry* 25:69–90.
- Levine, Kay, and Virginia Mellema. 2001. Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy. *Law & Social Inquiry* 26: 169–207.
- MacKinnon, Catherine A. 1979. *The Sexual Harassment of Working Women*. New Haven, Conn.: Yale University Press.
- Marshall, Anna-Maria. 1998. Closing the Gaps: Plaintiffs in Pivotal Sexual Harassment Cases. *Law & Social Inquiry* 23:761–93.
- . 2001. A Spectrum in Oppositional Consciousness: Sexual Harassment Plaintiffs and Their Lawyers. In *Oppositional Consciousness: The Subjective Roots of Social Protest*, ed. Jane J. Mansbridge and Aldon Morris. Chicago: University of Chicago Press.
- Mather, Lynn, and Barbara Yngvesson. 1980–81. Language, Audience, and the Transformation of Disputes. *Law and Society Review* 15:775–822.

- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- . 1998. How Does Law Matter for Social Movements? In *How Does Law Matter?* ed. Bryant G. Garth and Austin Sarat. Evanston, Ill.: Northwestern University Press.
- Melucci, Alberto. 1989. *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*. Philadelphia: Temple University Press.
- Merit Systems Protection Board. 1995. *Sexual Harassment in the Federal Workplace: Trends, Progress, and Continuing Challenges*. Washington, D.C.: U.S. Merit Systems Protection Board.
- Merry, Sally Engle. 1990. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago: University of Chicago Press.
- Morgan, Phoebe A. 1999. Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women. *Law and Society Review* 33:67–93.
- Morris, Aldon D. 1992. Political Consciousness and Collective Action. In *Frontiers in Social Movement Theory*, ed. Aldon D. Morris and Carol McClurg Mueller. New Haven, Conn.: Yale University Press.
- Nielsen, Laura Beth. 2000. Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment. *Law and Society Review* 34: 1055–90.
- Piven, Frances Fox, and Richard Cloward. 1977. *Poor People's Movements*. New York: Pantheon.
- Polletta, Francesca. 2000. The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961–1966. *Law and Society Review* 34:367–406.
- Quinn, Beth A. 2000. The Paradox of Complaining: Law, Humor and Harassment in the Everyday Work World. *Law & Social Inquiry* 25:1151–85.
- Saguy, Abigail C. 2000a. Employment Discrimination or Sexual Violence? Defining Sexual Harassment in American and French Law. *Law and Society Review* 34:1091–128.
- . 2000b. Sexual Harassment in France and the United States: Activists and Public Figures Defend Their Definitions. In *Rethinking Comparative Cultural Sociology: Repertoires of Evaluation in France and the United States*, ed. M. Lamont and L. Thevenot. Cambridge, England: Cambridge University Press.
- Sarat, Austin, and Thomas R. Kearns. 1995. Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life. In *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns. Ann Arbor: University of Michigan Press.
- Schultz, Vicki. 1998. Reconceptualizing Sexual Harassment. *Yale Law Journal* 107:1732–805.
- . 2001. Talking about Harassment. *Journal of Law and Policy* 9:417–33.
- Seron, Carroll, and Frank Munger. 1996. Law and Inequality: Race, Gender . . . and of Course, Class. *Annual Review of Sociology* 22:187–212.
- Sewell, William H. 1992. A Theory of Structure: Duality, Agency, and Transformation. *American Journal of Sociology* 98:1–29.
- Silverstein, Helena. 1996. *Unleashing Rights: Law, Meaning, and the Animal Rights Movement*. Ann Arbor: University of Michigan Press.
- Snow, David A., and Robert D. Benford. 1992. Master Frames and Cycles of Protest. In *Frontiers in Social Movement Theory*, ed. Aldon D. Morris and Carol McClurg Mueller. New Haven, Conn.: Yale University Press.
- Snow, David A., and Doug McAdam. 2000. Identity Work Processes in the Context of Social Movements: Clarifying the Identity/Movement Nexus. In *Self, Identity, and Social Movements*, ed. Sheldon Stryker, Timothy J. Owens, and Robert W. White. Minneapolis: University of Minnesota Press.
- Snow, David A., E. Burke Rochford Jr., Steven K. Worden, and Robert Benford. 1986.

- Frame Alignment Processes, Micromobilization, and Movement Participation. *American Sociological Review* 51:464–81.
- Stockdale, Margaret S., A. Vaux, and J. Cashin. 1995. Acknowledging Sexual Harassment: A Test of Alternative Models. *Basic Applied Social Psychology* 17:469–96.
- Taylor, Verta, and Nancy E. Whittier. 1992. Collective Identity in Social Movement Communities: Lesbian Feminist Mobilization. In *Frontiers in Social Movement Theory*, ed. Aldon D. Morris and Carol McClurg Mueller. New Haven, Conn.: Yale University Press.
- . 1995. Analytical Approaches to Social Movement Culture: The Culture of the Women's Movement. In *Social Movements and Culture*, ed. Hank Johnston and Bert Klandermans. Minneapolis: University of Minnesota Press.
- Volokh, Eugene. 1997. What Speech Does "Hostile Work Environment Harassment" Law Restrict? *Georgetown Law Review* 85:627–648.
- Weeks, Elaine Lunsford, Jacqueline M. Boles, Albeno P. Garbin, and John Blount. 1986. The Transformation of Sexual Harassment from a Private Trouble into a Public Issue. *Sociological Inquiry* 56:432–55.
- Welsh, Sandy. 1999. Gender and Sexual Harassment. *Annual Review of Sociology* 25:169–90.
- Whittier, Nancy. 1995. *Feminist Generations: The Persistence of the Radical Women's Movement*. Philadelphia: Temple University Press.
- Williams, Christine. 1997. Sexual Harassment in Organizations: A Critique of Current Research and Policy. *Sexuality and Culture* 1:19–43.
- Yount, K. 1991. Ladies, Flirts, and Tomboys: Strategies for Managing Sexual Harassment in an Underground Coal Mine. *Journal of Contemporary Ethnography* 19:396–422.