Project Outline, Nicole Colaianni

**Sexual Harassment Beyond the Dichotomy:**
**The Role of Private Institutions in the Struggle Over Sexual Harassment**

"Wall Street Rule for the #metoo Era: Avoid Women at All Costs"[1]

This headline, published in *Bloomberg News*, is one of many reflecting a sentiment of distrust revolving around the issue of sexual harassment. Male professionals avoiding women, however, was certainly not intended either by those kicking off the #metoo movement in 2017, nor the feminists, who over forty years ago first named and politicized the issue of "sexual harassment".

Both in academia as well as society at large, the issue of sexual harassment is often characterized as a battleground over societally acceptable and desirable gender relationships. This characterization is particularly applicable when one looks at the bitter struggle feminist and social conservative women's groups have engaged in to pin down an acceptable definition. Feminist groups attempted to highlight the wide-spread occurrence, systemic nature and gendered power dynamics of the phenomenon. Speakers of the social conservative pro-family movement, on the other hand, have focused on relativizing the issue, claiming that the high number of cases reported was due to misunderstandings and "malicious allegations". These varied definitions, conceptualizations and understandings of the phenomenon led to drastically different demands regarding legal and political action.[2] Hence, the fight over measures against sexual harassment primarily became one over discursive hegemony, involving not only the aforementioned interest groups but also the media, Congress, the judiciary and the public at large.

Despite the large implications the topic of sexual harassment has in regard to gender relations, workers' rights and the extent of federal jurisdiction, so far surprisingly little scholarly work has been done on the topic by historians. Much of the literature available is of a legal nature, outlining the development of sexual harassment as a legal concept and its association with the Civil Rights Act, 1964.[3] When the topic is approached by historians, it is often done so in the context

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[1] Tan, Gillian & Katia Porzecanski: "Wall Street Rules for the #metoo Era: Avoid Women at All Costs", in: Bloomberg (3rd December 2008), pp. 15f.

[2] E.g. Women Workers United, the feminist group who coined the term in 1975, defined the phenomenon as ranging "from clearly suggestive looks and/or remarks, to mild physical encounters (pinching, kissing, etc.) to outright sexual assault" quoted in: "Sexual Harassment. Working Women's Dilemma," in: Quest, 3/3 (1976), p. 15-24. Further definitions and feminist explorations of the topic were presented in Lin Farley's *Sexual Shakedown* (1978), Leah Cohen and Constance Backhouse's *The Secret Oppression* (1978) and Catharine MacKinnon's *Sexual Harassment of Working Women* (1979). Social conservative groups, not having accepted sexual harassment as a problem, seldomly explicitly spoke about the topic and much less clearly defined it. Phillis Schlafly's remarks before Senate Committee on Labor and Human Resources in 1981, however, are illuminating in this regard.

[3] Cf. Dobbin, Frank: Inventing Equal Opportunity, Princeton, NJ *et al.* 2009; Lareau, Craig R.: 'Because of … Sex.' The Historical Development of Workplace Sexual Harassment Law in the USA, in: Psychological Injury and Law 9/3 (2016), pp. 206-215.

of the broader fields of sexual violence against women or of sex discrimination in the workplace or present it as an issue that only emerged after 1991.[4] Notable exceptions are the historian Katharin Zipple, who elaborates on the conceptualization of sexual harassment within the US, Germany and the European Union, making use of an enticing transatlantic approach, and the historian and political scientist Carrie N. Baker, who conducted extensive research on the feminist movement against sexual harassment from the early 1970s up to the Supreme Court decision in 1986.[5]

Before the backdrop of the growing polarization of US-American politics and society, it is hardly surprising that the issue of sexual harassment continues to be presented as bilaterally charged, highlighting the ideological debate between social conservative and feminist (or on a wider scale progressive) actors. However, this prominent bilateral perception disregards the considerable role employers have taken in defining and shaping the concept of sexual harassment from the 1980s onwards. This oversight may be due to the fact that employers' reactions to the problem of sexual harassment were often driven by a practical, economic motivation and their voice therefore was not prominently situated in an ideological discussion on the issue. Hence, my project aims to shed light on a so far unacknowledged aspect of the discussion on sexual harassment: One that engages with the topic as a matter of employment in which authorities are de facto transferred from the federal government to the private sector, causing a great shift in the power relationship between the federal government, employers and their employees.

I argue that the Equal Employment Opportunity Commission (EEOC) as well as the judiciary, by demanding private organizations employ anti-sexual harassment policies, preventative measures and grievance procedures, inadvertently relinquished much of their authority regarding this topic, transferring it to the organizations in question. This process began when the EEOC published its anti-sexual harassment guidelines in 1980 and was significantly expediated when the Supreme Court in 1998 declared the employer liable, if their company had no grievance procedure in place.[6] Additionally, the Court declined to hear charges which had not first exhausted all internal company grievance procedures.[7]

As long as employers defined sexual harassment more broadly than the federal government, they were not only safe from federal intervention but also gained additional control over their employees. A broad definition of sexual harassment, coupled with the employer's discretion when executing policies and penalizing offenses, had the potential to transform breeches of anti-sexual

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[4] 1991 presents a cesura in public awareness about sexual harassment due to the Senate hearings dealing with Anita Hill's allegations of sexual harassment against the supreme court justice nominee Clarence Thomas.

[5] Zippel, Katharin: The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany, New York *et al.* 2006; Baker, Carrie N.: The Women's Movement Against Sexual Harassment, New York 2008.

[6] Equal Employment Opportunity Commission: "Guidelines on Sexual Harassment," 45 Federal Register 74676, Nov 10, 1980; Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998).

[7] Dobbin: Inventing Equal Opportunity, p. 214.

harassment policies into a powerful pretense for circumventing federal anti-racial discrimination regulations as well as workers' rights. Additionally, such definitions and harsh penalties stoked fears among many male employees of accidentally violating company policy or facing false accusations.

Therefore, throughout this project I intend to explore how employers (or their respective Human Resources departments) became the first port of call for employees filing a complaint; and to what extent they acted in the place of all three branches of government: They defined what constituted "sexual harassment" and settled on the consequences following this behavior (legislative), they held judgement over whether or not an accusation had merit (judicative), and they were the party responsible for executing procedure and policy (executive). In short, the hypothesis for this project shall be that employers found themselves in a position of taking over government authorities within their microcosm of a company, effectively eliminating a system of checks and balances. The extent to which this missing accountability and lack of security generated deep suspicion and distrust among employees, aimed not at the private institution but at those reporting offenses, shall be a core feature of this project.

To explore these questions, this study shall make use of two source areas. At the company level the focus shall be on internal policies, grievance procedures, informational material distributed to employees, and recorded cases of sexual harassment within the institution. This will be supplemented by an analysis of court cases, senate hearings and EEOC documentation, bringing in the public dimension to complement the study of the private sector. Working qualitatively, with a particular focus on the evolution of the concept, a traditional historical critical analysis will be used in order to emphasize the role of the institutions involved. Rather than highlighting the gender of the actors, an approach that has previously dominated both feminist and social conservative studies of the topic, this new framework will allow us to progress beyond the dichotomous, combative studies previously seen.

The emergence of sexual harassment as a political problem became a workplace issue which changed the relationship between governmental and private economic institutions, making it a perfect fit for the first research area laid down by GKAT. In a country which generally allows private institutions many liberties, the question of government jurisdiction concerning the topic is particularly intriguing. As both a gender and a workplace issue, structural yet deeply personal, an interplay between public and private, a study of sexual harassment offers a unique insight into authority and trust in US-American society.