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# Named or nameless: University ethics, confidentiality and sexual harassment

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## ABSTRACT

This paper focusses on our concerns about revelations about sexual harassment in universities and the inadequate responses whereby some universities seem more concerned about their own reputations than the care and protection of their students. Seldom do cases go to criminal court, instead they mostly fall within employment relations policies where the use of non-disclosure agreements are double edged, such that some perpetrators remain nameless even if the person offended against wants details made public. Of course if the staff member does not resign or take retirement prior to potential dismissal, but remains in the institution, the grapevine still works. Universities too often become complicit in cover-ups at the expense of further potential victims of sexual misconduct. It has been with much dismay that we found that despite extensive training and writing about ethics some senior professors in philosophy fields have been accused and found wanting, disabusing us of the virtue assumption. Despite these recent instances where perpetrators have been named and been publicised in the media, we found that this is not in fact new, so not only does the paper look to the past, but also extensively it uses contemporary accounts, reports and documents from USA, UK, South America, Australia, and New Zealand. These seem to be the tip of the iceberg, so our hope is that all students and staff in universities (and in fact all institutions where there are inherent power imbalances) will not only feel safe, but that they will be safe as universities become genuinely ethical institutions.

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University reputation and income should not take priority over the wellbeing and safety of students, and processes that retraumatise rape victims or deter reporting are only protecting and enabling offenders. As one victim from Wollongong University said: "Make no mistake, I consider the events of my sexual assault and this university's response to be equally despicable. There is a shocking correlation between someone not listening to you say 'stop' and an organisation not listening to you scream 'help'."<sup>1</sup>

Definitions and laws in many countries describe 'sexual harassment as conduct of a sexual nature which is unwanted or unwelcome and which has the purpose or effect of being intimidating, hostile, degrading, humiliating or offensive.'<sup>2</sup> Further, the Australian Human Rights Commission (AHRC) points out that

At an international level, sexual harassment has been recognised and addressed by the International Labour Office, the International Confederation of Free Trade Unions, the European Union and the United Nations Committee on the Elimination of Discrimination Against Women.

However, this does not mean that sexual harassment is no longer a problem. Feminism is experiencing a #MeToo moment that has mobilised women especially and used social media against various forms of sexual assault, rape, and harassment (Mau, 2018, 2020; Peters & Besley, 2019). In one of the world's highest profile cases, on February 24, 2020, Hollywood producer Harvey Weinstein was found guilty of two felony sex crimes and rape, but acquitted of predatory sexual assault, the most serious charge he faced. At least 80 women came forward describing decades of sexual misconduct (BBC; *New York Times*; *The Guardian*).<sup>3</sup> Many other high profile men's careers have ended because of such #MeToo revelations.<sup>4</sup>

However, many women and some men (mostly it is women who have been subject to sexual harassment and assault) have been compelled to sign confidentiality or non-disclosure agreements (NDAs) as legally enforceable contracts that bind both parties or they may be sued for breaches. Exclusions could be information considered common knowledge before the agreement was signed but agreeing to these means that not only do victims remain nameless, so to do the offenders.

Considering these and other recent cases, we ask:

Are philosophers more moral than other human beings?

Are they expected to be, especially if they study ethics and moral philosophy?

How do universities deal with allegations of sexual harassment and assault?

There is a popular belief emanating from ancient Greek times, carried forward in the last century by Kohlberg and others, that philosophers are wiser and more moral than ordinary people. We believe and expect philosophers to be virtuous or at least practiced in ethical reasoning and therefore more inclined to be good, knowing what is at stake in pursuing the good life. Call this the 'virtue assumption'. Philosophers are often also teachers of virtue and we expect teachers to be exemplary role models or meet criteria of being professionals, including codes of ethics. But this belief may be outdated now that teaching and philosophy have become professionalized and academicized as like any other. In the same way as Illich (1977) argued in *Disabling Professions* that we lost faith and trust in priests, politicians, doctors, lawyers, police and others in authority, teachers and philosophers are under scrutiny.

There have been spectacular examples of philosophers behaving badly. Even a passing acquaintance with the history of philosophy reveals that philosophers have no moral pass and that they are just as likely to abuse their position, power and privilege as any other authority or professional. Witness the furore that greeted the rediscovery of Heidegger's Nazism: his letters recently published as the *Black Notebooks* reveal his antisemitism, his admiration for Volk and Führer, as well as a 'world Jewry' and American decadence (Heidegger, trans Rojcewicz, 2016, 2017a, 2017b; Farin & Malpas, 2016; Mitchell & Trawny, 2017). One wonders of the threats to Heidegger's existential hermeneutics of such antisemitism.

Here, Abundez-Guerra and Nobis (2018) provide a provocative and jaundiced reading:

Many historically-influential philosophers had profoundly wrong moral views or behaved very badly. Aristotle thought women were 'deformed men' and that some people were slaves 'by nature'. Descartes had disturbing views about non-human animals. Hume and Kant were racists. Hegel disparaged Africans. Nietzsche despised sick people. Mill condoned colonialism. Fanon was homophobic. Frege was anti-Semitic; Heidegger was a Nazi. Schopenhauer was sexist. Rousseau abandoned his children. Wittgenstein beat his young students. Unfortunately, these examples are just a start.

Despite centuries of expectations that people undertaking rational study of ethics and moral behaviour, in particular ethics professors and philosophers, would act more ethically and morally

than others, it seems that there is not necessarily any consequent or consistent effect on behaviour of such people. Schwitzgebel and Rust (2014) examined

self-reported moral attitudes and moral behavior of 198 ethics professors, 208 non-ethicist philosophers, and 167 professors in departments other than philosophy on eight moral issues: academic society membership, voting, staying in touch with one's mother, vegetarianism, organ and blood donation, responsiveness to student emails, charitable giving, and honesty in responding to survey questionnaires,

and found that ethicists were unlikely to behave more morally than others. This study was in the English-speaking world and recently replicated in German-speaking countries (Germany, Austria, Switzerland) with Schönegger and Wagner (2019) finding similar results. Of 417 professors, 151 ethics professors expressed stricter moral views, but they did not behave more ethically than other professors. Knowing and doing seem to remain compartmentalised; actions are not congruent with knowledge.

These accounts disabuse us of the idea that philosophers are better than average human beings because of their occupation or exposure to moral tradition. And while the profession is carefully policed there is a structural imbalance in gender. Only recently have we considered the possibility that 'wisdom' and 'moral clarity' are not exclusively male virtues. The female philosopher and sage is a notion that has a contemporary ring to it, although we should remember that the Muses were the daughters of Zeus and Mnemosyne, the goddess of memory.

It is as though the 'virtue assumption' has conditioned us into believing there is a relation between intelligence and virtue, or knowledge and virtue. Despite Socrates' claims, it is not clear that virtue is knowledge or that all things seek the good. Xenophon's Socrates in the *Memorabilia* puts the case this way:

If someone doesn't know what is good, he can't do what is good (because he will always aim for what he believes to be good -- and thus rather it is their perceived good at which all living things aim -- and his belief about what is good is contrary to what is good), and (for the same reason) if he knows what is good, he can't fail to do what is good. The principles here are that Virtue is knowledge and that All things seek the good.<sup>5</sup>

It certainly does not appear to be the case that those who are ignorant of the good cannot do what is good, or that those who know the good cannot fail to do what is good. The case of the bad philosopher demonstrates the falsity of the latter. Those who know the good (such as philosophers) can not only fail to do what is good, but they can do so deliberately, repeatedly and with intent and malice, and cause considerable harm and injury.

The *Chronicle of Higher Education* in 2013 broke the story on British philosopher Colin McGinn agreeing to resign from the University of Miami, Florida following allegations of sexual harassment of a female graduate student by text and email. This became public knowledge in 'Philosopher's Downfall, From Star to "Ruin," Divides a Discipline' (Zweifler, 2103). *The New York Times* followed it with 'A Star Philosopher Falls, and a Debate Over Sexism Is Set Off,' beginning with the line: 'Ever since Socrates' wife was painted as a jealous shrew by one of his pupils, women have had it tough in philosophy' Schuessler (2013). She continues:

Thinkers from Aristotle to Kant questioned whether women were fully capable of reason. Today, many in the field say, gender bias and outright sexual harassment are endemic in philosophy, where women make up less than 20 percent of university faculty members, lower than in any other humanities field, and account for a tiny fraction of citations in top scholarly journals...

Two open letters posted online in mid-July and signed by more than 100 philosophers, including a majority of Mr. McGinn's colleagues at Miami, criticized some of the posts on his blog as "retaliation" against the student...

The McGinn case is short on undisputed facts, beyond that Mr. McGinn agreed in December 2012 to resign, before the matter was to be put to further inquiry by Miami's faculty senate. (The university declined to comment on the case, citing confidentiality in personnel matters.)

Many academics, worried that the graduate student was not adequately protected by the university procedures, signed an open 'Letter from Concerned Philosophers' noting:

while purportedly retaining anonymity, she may have her scholarship, work performance, or conduct negatively characterized in a public forum by a powerful professor with no response or defense from her university...the student is not in a position to defend herself publicly. We ask that her university discharge its duty to protect its students from acts that amount to *de facto* retaliation from professors about whom they have complained.<sup>6</sup>

Subsequently in 2015, a legal 'Complaint And Demand For Jury Trial (Injunctive Relief Sought)' was made in 'United States District Court Southern District Of Florida Miami Division, Case 1:15-cv-23856-XXXX Document 1 Entered on FLSD Docket 10/15/2015 Page 1 of 66; by Monica Ainhorn Morrison, vs University of Miami, a not-for-profit corporation, Colin McGinn, in his official and individual capacities, and Edward Erwin, in his official and individual capacities.'<sup>7</sup> The suit was settled in 2016, with non-disclosure agreements for all parties in effect. In *Quartz*, McGinn comments, "I've never been found guilty of anything by any institutional proceeding. According to the law in this land, that's the same as innocence." (Goldhill, 2019).

In the same decade, accusations arose against Thomas Pogge, Leitner Professor of Philosophy and Professor of Political Science, a world-renowned ethicist and moral philosopher hired by Yale in 2008 despite them allegedly knowing that in the 1990s at Columbia University he had been disciplined for sexual harassment of a minority student. In October 2015, Fernanda Lopez Aguilar filed a federal civil rights complaint, alleging that Yale violated Title IX (the statute that holds schools responsible for eliminating hostile educational environments caused by sexual harassment) and violated Title VI, which prohibits race discrimination. According to a *Yale Daily News* article in 2019,

The University's adjudicative panel found that Pogge had engaged in "unprofessional conduct" that could have made Aguilar feel "confused, anxious or uncomfortable." Yet, despite these findings, the panel did not find Pogge responsible for sexual harassment. He remains at Yale today (Wanna, 2019).

Subsequently several articles have addressed the allegations against Pogge, and an open letter was signed by some 160 professors, including some from his own philosophy department strongly condemning his behaviour.<sup>8</sup>

It was a shock to many when John Searle, one of the leading philosophers of his generation with his theory of speech acts and brilliant contributions to philosophy across a wide front, hit headlines for the wrong reasons. In 2017, 84-year old Searle, Willis S. and Marion Slusser Professor Emeritus of the Philosophy of Mind and Language at the University of California, Berkeley, was sued for sexual harassment, assault, and retaliation by Joanna Ong, a 24-year old Asian American undergraduate and former student who was engaged as a personal assistant to Searle at the then newly established but now defunct John Searle Center for Social Ontology. The legal case is Joanna Ong, plaintiff v. the Regents of the University of California et al., John Searle, and DOES 1-100, inclusive; case number RG-17-854053, in the Superior Court of the State of California, County of Alameda, claiming five counts for damages:

1. Sexual Harassment – quid pro quo
2. Sexual Harassment – hostile work environment
3. Retaliation in violation of FEHA
4. Wrongful termination against public policy
5. Assault and Battery<sup>9</sup>

Ong's lawyer's case notes summarized the action she took and the reasons for it:

While Ong was employed at U.C. Berkeley, Searle sexually assaulted Ong and then continued to harass her as her employment continued, creating a hostile work environment. Although Ong rejected Searle's

sexual advances and reported the assault and harassment to Hudin and others employed by U.C. Berkeley, no action was taken to address the assault or to protect Ong from further illegal conduct by Searle. Furthermore, U.C. Berkeley was well aware of Searle's prior similar behavior with other young women, including but not limited to his students and research assistants. Instead, Defendants took steps [to] protect and cover up Searle's assault and harassment of Ong, as they have done in Searle's past history of similar conduct to other students and employees of U.C. Berkeley. Ong subsequently retaliated against by Defendants when her salary was cut by 50% or more, without cause, and they took adverse actions against Ong that impacted her work, career and image to others.

The University of California President, Janet Napolitano, approved a recommendation to revoke Searle's emeritus status on 19 June 2019, after a determination that he violated university policies against sexual harassment following campus disciplinary proceedings by the Berkeley Office for the Prevention of Harassment and Discrimination. On 21 June 2019, *Daily Nous* provided a verbatim copy of the letter a Berkeley spokesperson sent, detailing that this is the most extreme disciplinary action the university can take against an emeritus professor.<sup>10</sup> The situation is similarly noted in the entry for Searle in the *Encyclopedia Britannica*:

In 2019 Searle was stripped of his emeritus status at Berkeley after it was determined that he had violated the University of California's policies regarding sexual harassment and retaliation.<sup>11</sup>

The details of the case against Searle are now well known and he is publicly disgraced. But it appeared that the university only reacted when its hand was forced. At every turn it sought to cover up and protect Searle's reputation and their own even at the ruthless dismissal of Ong. Berkeley's institutional ability to protect female students, despite their institutional ethics, appeared flawed. In relation to its reputation and that of 'star' professors, this reaction seems too common.

It has been under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (hereinafter, "Title IX") that many of these US cases have been pursued. These cases and the history of reporting of sexual harassment (and other ethical issues) demonstrate the complicity of universities in covering up harassment claims and protecting their own reputations using human resource policies, due process, natural justice, confidentiality, and privacy as grounds to withhold information that is in the public interest. The clear issue of unequal power relations between professor and student in such situations seems to be ignored, but the extreme irony is that in many cases they involve male philosophers who had a professional interest in ethics.<sup>12</sup> Such questions require reflection on one's words, deeds, actions and how congruent they are and how they impact others.

In recent years several professors and senior academics in Australia and New Zealand have been removed from their positions, compelled to resign or retire due to sexual harassment of students. Some cases have been hushed up, covered by confidentiality NDA employment arrangements so they must remain nameless, effectively freeing them to engage in ongoing predatory sexual behaviour in other arenas. Others have become public.

In 2018, broadcaster and journalist Alison Mau set up the #MeTooNZ project<sup>13</sup> about workplace sexual misconduct and harassment in New Zealand, detailing these in *Stuff* and Radio NZ. By May 24 2020, a *Stuff* article blew open a dispute where 'Leaders of Australian National University (ANU) in Canberra, and Auckland's AUT, are at loggerheads over whether a formal complaint against decorated scholar and AUT Pro Vice Chancellor Max Abbott CNZM, should be investigated' (Mau, 2020). Many media reports and comments ensued and after Dame Annette King, New Zealand High Commissioner to Australia (former Labour minister) was asked to intervene to break the deadlock, the Auckland University of Technology (AUT) launched a major investigation, the 'Review into harassment and sexual harassment at AUT' by Kate Davenport QC, January 2021. Davenport (2021) covers both bullying (harassment) and sexual harassment and states:

AUT does not have an ongoing problem with sexual harassment. Historically about 8 individuals have been identified as having harassed female staff, but these individuals are no longer employed at AUT. AUT

has one ongoing case where sexual harassment is alleged but this is before the Employment Court and subject to confidentiality orders. AUT should remain vigilant to ensure that any further allegations are dealt with promptly. (Davenport, 2021, p.7)

That there should be 8 staff identified in a university with approximately 30,000 students with 4300 staff and 280 faculties at associate or professor level seems a lot. But of more concern was her damning comment about how complaints about two very high level, high profile professors (Professor B and D in the report, also identified in public media reports) had been poorly handled by the university: "I have therefore concluded that AUT did not properly respond to the issues raised by Dr B and Dr D's past conduct" (p. 45).

It is not just academic and other workplace employment policies that muzzle complaints, leaving perpetrators nameless even if complainants might wish to identify themselves, but in Australia and New Zealand strict defamation laws work opposite to those in US, that affect how and what can be reported. As we became aware (and so consulted legal opinions on our article) and as Mau warns:

...if Harvey Weinstein was going to sue for defamation the women who've come out with allegations about his behaviour, he would have to prove that what the journalists had written and what the women had said was not true.

It works the opposite way here in New Zealand and in Australia. If someone brings a case against you for defamation, as the journalist you're the one that has to prove that what you wrote was true.

That makes it much more difficult to publish these kinds of stories, which depend on one person's word against another's, Mau says. (Brett Kelly, 2020)

Not all cases are bound by confidentiality and in the #MeToo era, some students are going public, for example, at Trinity College, Cambridge, 22 February 2020 James Tapper reported in *The Guardian*:

Hundreds of Cambridge students have accused the university of "a complete failure" to deal with complaints of sexual misconduct after an investigation that raised concerns about a conflict of interest among academics.

In a letter signed by more than 500 current and former students, Cambridge University Students' Union Women's Campaign has called for colleges to be stripped of their powers to investigate sexual misconduct complaints against their own members.

It comes after it emerged that Dr William O'Reilly, the don then in charge of student welfare at Trinity Hall, Cambridge's fifth oldest college, appointed a panel to investigate rape allegations against a male student, then gave evidence to the panel in support of the accused.

On Friday night, Trinity Hall announced that both O'Reilly and the college's master, the Rev Canon Dr Jeremy Morris, were stepping back from their duties until a separate panel of Cambridge fellows issues a report on 2 March on what the college should do.

Needless to say, a fairly standard response by the university and the professor in question pointed to confidentiality issues:

A Cambridge University spokesman said: "The faculty takes its safeguarding responsibilities extremely seriously. It regards the welfare of its students as its highest priority. It also has a duty of care to a member of staff who is not under investigation for any offence and who protests his innocence. At the present time, Dr William O'Reilly has voluntarily and temporarily stepped back from his teaching and supervising."

A spokesperson for O'Reilly said: "Dr O'Reilly believes he acted with integrity and followed appropriate safeguarding advice throughout the various internal processes at Trinity Hall. He rejects any suggestion that he behaved improperly and is appalled that what should have been confidential procedures have been made public."

In another public instance, Otago University denied lack of support for sexual assault complainants when a student on a NZTV Sunday programme claimed that the university prioritised its reputation over her wellbeing (McKenzie, 2019). The university subsequently published its



new Sexual Misconduct Policy in April 2019: 'The University of Otago is committed to creating an environment in which no form of sexual misconduct is tolerated and to having processes in place that reduce the likelihood of sexual misconduct.'<sup>14</sup>

A similar situation is seen in Chile, where women academics engaged in a feminist strike across all universities in 2018, against well-known sexual harassment scandals and the lack of protection of victims (Jackson & Muñoz-García, 2019). Again, the universities' response was to introduce new protocols that decrease their liability, before engaging in critical investigations of the structures and practices which enabled multiple scandals to take place across higher education up to this point.

In Australia, since 2015, following 'The Hunting Ground' video about sexual harassment in US college campuses,<sup>15</sup> universities have begun to confront and address issues of the wider situation of sexual assault and harassment on campus. There have been several reports, audits and work by Universities Australia, the Australian Human Rights Commission (AHRC), and End Rape on Campus Australia (2018) and ABC News (2017). These include: The Respect. Now. Always. initiative (2016); The Red Zone Report: An investigation into sexual violence and hazing in Australian university residential colleges (2018); Change the course: National Report on Sexual Assault and Sexual Harassment at Australian Universities (2017); AHRC Audit of University Responses (2017, 2018); University sexual assault and sexual harassment project (2018); Change the course: 18-month milestone (May 2019); and Nicola Henry in The Conversation (2019).<sup>16</sup>

The AHRC reports that as of July 2018, most universities have implemented the following measures, or are committed to doing so:

- establish an advisory body or working group to develop an action plan
- implement training and education for students in relation to sexual assault, sexual harassment and respectful relationships
- take steps to increase the availability and visibility of support services
- implement a review of existing university policies and response pathways
- identify and train staff members and student representatives who are most likely to receive disclosures
- implement practices to ensure information about disclosures and reports is collected and stored confidentially
- express commitment to conduct the national survey on sexual assault and sexual harassment every three years (AHRC, 2019).

By 2019, Henry and AHRC noted that despite progress, more needed to be done. Several themes emerged. First, sexual harassment and assault are widespread in the community, so attitudes and behaviours everywhere need to change. Second, the AHRC survey is under-reporting:

The AHRC survey found sexual assault and sexual harassment were rarely reported to universities. The survey found 87% of students who were sexually assaulted, and 94% of those who were sexually harassed, didn't make a formal report or complaint to their university'- i.e. 'the tip of the iceberg'; third, 'domestic students were more likely than international students to report experiencing sexual assault and sexual harassment. But international students were almost two times less likely to seek support from someone in their faculty or school'; fourth, 'only 4% of students thought their university was doing enough to provide clear and accessible information on sexual assault procedures, policies and support services. (Henry, 2019)

We have only presented a few publicly available instances in a few universities in several countries, but we believe these illustrative examples point to show us how widespread the problem is. These cases represent only the tip of the iceberg, a point made in a comprehensive survey by Cantalupo and Kidder (2018). They reviewed

over 300 cases obtained from: (1) media reports; (2) federal civil rights investigations (3) lawsuits by students alleging sexual harassment; and (4) lawsuits by tenure-track faculty fired for sexual harassment.



## Two points emerged from their study:

First, contrary to popular assumptions... most of the cases reviewed for this study (53%) involved faculty alleged to have engaged in unwelcome physical contact dominated by groping, sexual assault, and domestic abuse-like behaviors. Second, more than half (53%) of cases involved professors allegedly engaged in serial sexual harassment.

...The vast majority of cases remain under the waterline (i.e., confidential) and out of public view or only visible in limited ways. Just as confidentiality generally and confidential settlements in particular constrain our public understanding of employment discrimination (including sexual harassment), here too methodological limitations must be worked through and considered in order to know what to make of our findings based on iceberg cases "above the waterline."

...In addition, the empirical research both inside and outside of academia shows rates of sexual harassment and sexual violence that are much higher than the number of reports of such conduct to anyone in an official capacity. Indeed, that sexual harassment is a significantly and consistently underreported problem, whether on a campus or not, is well-established. With respect to workplace sexual harassment overall, estimates indicate that "only 1% of victims participate in litigation".

University institutional ethics often work as an indemnification policy rather than to promote and protect staff and students. The problem with this reputational protection is that it still leaves the said professor free in other contexts, such as participation in learned societies, to continue predatory sexual behaviour (Jackson, 2019). The university is unconcerned. Its priority is to protect itself and everyone is reduced to silence on pain of legal proceedings. The university thereby becomes complicit in the cover-up at the expense of further potential victims of sexual misconduct.

Philosophers of education must also now grapple with the fact that being philosophical about ethics and virtue does not make you a better person, and that academic societies are not sealed off from the rest of the world, of universities and societies where harassment and bullying is not a rarity but is in fact a norm. Confidentiality agreements mean that for learned and academic research societies, if there is an instance of sexual harassment but an NDA so a university cannot disclose or confirm it, perpetrators can remain society members. Unless they admit it, we cannot expel them despite society rules about misconduct. Consequently, the American Educational Research Association, PESA and the Philosophy of Education Society (PES) have started implementing policies to discourage and prevent these experiences. The PESA Executive now has female and male member allies for people to talk with confidentially and is developing strategies to ensure and maintain a safe environment for members and conference attendees.

Academic communities must be more vigilant and consider more reflexively the type of atmosphere they purport to uphold when it comes to junior versus senior scholars. In philosophy of education there have also been concerns about sexual harassment of young women, which may lead to them not attending conferences or activities due to concerns over grooming and predatory behaviour wherein an older professor will encourage them to discuss their work and ideas, and maybe even suggest publication or collaboration, and then talk to them about their looks or touch them in inappropriate ways. That this happens in academic conferences may be shocking to some, but it is a not uncommon experience for younger women academics, especially those from Asian and ethnic minority groups (Jackson, 2019). Recently PES surveyed its members to discover how common experiences of sexual (as well as gendered and ethnic/racial) harassment were, to develop a better understanding of the issues faced at the community level, after it discovered 'troubling behavior towards female PES members and PES members of color' (Jackson & Muñoz-García, 2019).

What can we do to make universities more accountable for institutional ethics that are selectively applied? How can we support and protect students who are subject to sexual harassment? What of the academic who everyone (except the student affected) 'knows' harasses students, or the student who complains or discusses with an advisor, but nothing can or will be done to discipline the academic because the student refuses to testify?

As Jackson and Muñoz-García (2019) argue, efforts to decrease sexual harassment in universities depend crucially on how they conceive of harassment and respond to it. For one, ambiguity regarding what constitutes misconduct or harassment enables it to take place. As they note, in surveys of students, '78 percent of students experienced professor behaviors that could be characterized as sexual harassment,' yet only 3 percent asserted that they had been harassed.' This is due to stringent definitional requirements for identifying harassment. These requirements stem from a genealogy of the concept rooted in employment law, while in higher education relationships are not bound by such rigid enforced hierarchies.

On the contrary, students and teachers in universities, and particularly star professors, are applauded for blurring such lines, making it in some cases difficult to defend that a case is sexual harassment. Academics with a long history of experience in university life know this terrain far better than younger initiates, and may take careful steps to induce complicity, first to borderline and vague boundary-crossing behaviour, before moving into more threatening and harmful terrain. By the time a new and impressionable student realises a line has been crossed, they may already see themselves as compromised, and be worried that a burden of proof will be put upon them in deciding a case, to prove they did not comply with behaviour all along. Those who have been accused before or are engaged in such grooming techniques understand and take advantage of the ambiguity of legal definitions, and the challenges identifying harassment creates for victims, and their actions are informed by understanding this terrain better than students.

In this context, tactics oriented toward prevention are more useful than reaction after the fact:

a focus on prevention requires making harassment visible and speakable, foregrounding the institutional, and communal, over the individual. Policies that do not emphasize prevention, in contrast, fail to recognize sexual harassment as embedded and normalized in a social and cultural context, and also how institutions reproduce injustices and inequalities through mechanisms that enable and naturalize unjust practices. Instead, the problem and responsibility is put on the individual to know and act against harassment. (Jackson & Muñoz-García, 2019)

When universities react rather than work to prevent harassment, they reduce a structured and patterned phenomenon into multiple singular cases of 'he said, she said'. This puts a burden of proof on the accuser, as the accused is treated as innocent until proven guilty. However, the accuser is usually far less powerful and adept at accessing social and institutional resources and knowledges than the accused, who can use their social and cultural resources to discredit the accuser. Indeed, some high-profile professors, such as Gabriel Salazar, a Chilean National Prize of History, defend accused professors against victims, stating:

I didn't see them [the complainants] so destroyed psychologically. Those who are destroyed are the two accused professors. They are screwed. I do not know if a stupid harassment is enough for the loss that was produced by this situation [the dismissal of both professors]. (Jackson & Muñoz-García, 2019)

It is in the interest of institutions to work to protect themselves before individuals and communities, and to treat harassment as a matter of individuals that has nothing to do with the institution. But by individualising the experiences to singular cases, and putting in place protocols for reaction, universities evade questions about their own ethics and complicity. And they exacerbate inequities and vulnerabilities given the unequal power of complainants and the accused in most cases.

High-profile ethicists are hardly more virtuous than their students in such cases. For this reason, we appeal to universities to enact a more virtuous treatment of different members of its community when it comes to harassment (Jackson & Muñoz-García, 2019). Those that seek the cultivation of academic superstars over safety are to blame for enabling harms to students, as a neglect of their education. Universities must consider themselves ethical actors in this case, as they provide the foundation for creating environments of harm and unease among students, or environments where learning and opportunities can be assured in a more fair manner.

We conclude with the words of Professor Catherine Lumby in *The Red Zone Report* (Lumby 2018):

As an academic, my first responsibility is always to my students and a primary part of that is ensuring they feel safe on their campus. Like the vast majority of my colleagues I care deeply about equity for all students. Yet how can there be educational equity for women, members of the LGBTI community or any male regarded as not appropriately masculine if they have to face harassment and assault on campus and in their residences?

...As the #MeToo movement has shown, those who fail to act immediately and transparently on the systemic problem of sexual harassment, sexual assault and bullying detailed in this report will be called out. All organisations across every sector are now on notice about these issues. Calling in a public relations firm no longer works. The only solution is to confront the truth and act on it by researching the culture and implementing evidence based education programs.

No one can learn if they live under the shadow of violence or abuse.

## Notes

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