

5-15-2024

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### Recommended Citation

Michal Alberstein and Shira Rosenberg-Lavi, *In the Shadow of the Law: Applying Therapeutic Approaches to Sexual Harassment Conflicts in the Context of #MeToo*, 24 Pepp. Disp. Resol. L.J. 227 (2024)  
Available at: <https://digitalcommons.pepperdine.edu/drlj/vol24/iss1/6>

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# IN THE SHADOW OF THE LAW: APPLYING THERAPEUTIC APPROACHES TO SEXUAL HARASSMENT CONFLICTS IN THE CONTEXT OF #METOO

Michal Alberstein & Shira Rosenberg-Lavi

## ABSTRACT

This article comprises a firsthand account of working as a university Sexual Harassment Commissioner (SHC), a role that manifests a combination of law and advanced conflict resolution practice. It offers a working model grounded in alternative justice principles to address sexual harassment and other, similar types of conflict. The resultant therapeutic and conflict resolution approach may apply to other institutions and other areas of law and society as well. Moreover, it fits in well during the era of #MeToo, where women raised their voices to challenge grave offenses such as rape, as well as attitudes, patterns, and allegedly “small” and sometimes non-litigable incidents of harassment that are part of an organizational culture. Yet, the article’s primary focus is to outline an approach to constructive processing of sexual harassment conflicts in a way that brings healing to the victim while remaining sensitive to the offender, considering the wider circle of employees and characteristics of an academic environment. The working method of the SHC challenges the traditional functions of law and includes the use of alternative justice narratives about the meaning of contemporary law, including responsive regulation and therapeutic jurisprudence. It is, therefore, a hybrid institution that draws from two worlds—law and conflict resolution/therapy—to crystallize a unique worldview tailored to the type of conflict at stake, namely, sexual harassment at universities, with its unique characteristics and severity: power disparities, hierarchies, and diverse communities.

## PROLOGUE

A blocked number called me in the afternoon of the holiday eve. Instead of my private mobile phone, the call derived from the University's phone, which I held separately as the "hotline" for sexual harassment complaints. Its ringing tone—different from the ringing of my regular mobile device—always sounded louder to me; it penetrated the depths of my consciousness and mobilized my body to respond, immediately alert to attend to a new case and prepared to listen. The shaky voice of a young woman emitted from the phone, speaking quietly and anxiously, polite, yet demanding. She spoke about sexual harassment she experienced that morning. A coworker kissed her against her will. She worked as a young lecturer and sounded scared. In the conversation, I tried to convince her to identify herself, to allow me to continue to handle the case, and that no one would hurt her. She explained she just started this job a few months before, while he had a lot of power and many years of familiarity with the system. If he retaliated, she may lose her job. She refused to complain. The conversation ended and, despite my repeated requests, she did not get back to me.

The next day, following my duty to investigate, I located the academic unit associated with the case. I informed University management of the investigation. I contacted the human resources department and tried to target appropriate departments that might fit the profile of the alleged harasser as presented to me on the phone. After a few days, the young lecturer's advisor issued a report on the case. The alleged harasser contacted him, and he reported to me, the Sexual Harassment Commissioner (SHC), as required by University regulations. I contacted her, and following her request, I retained her anonymity throughout the entire process. I met with her on the same day and documented in detail her complaint, which involved her bursts of tears and emotional stress. Immediately afterwards, I met with the alleged harasser. He served as a longtime employee on the verge of retiring from the University. Completely devastated and shaken, he admitted his role in the act at the beginning of our meeting in my office. After a few words, he stated the incident involved a "slip of a kiss" in efforts to minimize the incident. He expressed his deep remorse about his actions, and said the incident shattered his world and that he rather preferred to lose a few years of his life rather than be in this situation. He asked me to express his sincere regret and apology to his coworker.

Due to the complainant's refusal to be disclosed by name, the official University tribunal did not conduct a disciplinary procedure and supervisors reprimanded the employee before transfer to another University unit. After about a month, he retired in heartbreak because he could not adjust. The complainant returned

to routine work and thrived in her department. As one of dozens of cases I handled as a SHC, it illustrated the shock a harassment event creates for the victim, the attacker, and the organization, as well as the need to combine legal and therapeutic sensitivity. The case demonstrates the potential of the SHC to develop a special form of law that incorporates “alternative justice,” a term that represents a meta language of conflict resolution within a creative organizational space.

## I. INTRODUCTION

For three years (2015–2018), one of this article’s authors served as the Sexual Harassment Commissioner (SHC) at a large university campus.<sup>1</sup> The article outlines a theoretical framework for addressing sexual harassment cases via a conflict resolution approach. It demonstrates how reconstructive conflict resolution principles, defined as “alternative justice,”<sup>2</sup> can apply to concrete cases the SHC handles in a position equivalent to a Title IX Officer.<sup>3</sup> This article’s goal is to demonstrate the combination of law and conflict resolution as it manifested in the actual work of the SHC and to conceptualize this hybrid approach—rooted in conflict resolution principles—as a working model for dealing with sexual harassment and other, similar types of conflict. Such a public

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<sup>1</sup> Bar-Ilan University (hereinafter the “University”), located in Ramat Gan, Israel, includes approximately 30,000 students on the Ramat Gan main campus and at the faculty of medicine in Safed, Israel. *See About Us*, BAR-ILAN U., <https://www.biu.ac.il/en/about-bar-ilan/overview/about> (last visited Apr. 21, 2024); *Faculty of Medicine*, AZRIELI FAC. MED.: BAR-ILAN U., <https://medicine.biu.ac.il/en> (last visited Apr. 21, 2024).

<sup>2</sup> *See generally* MICHAL ALBERSTEIN, ALTERNATIVE JUSTICE: MEDIATION, RESTORATION AND THERAPY THROUGH LEGAL MECHANISMS (2015) (in Hebrew); Michal Alberstein, *The “Law of Alternatives”*: Conflict Resolution as the Art of Reconstruction, 70 *STUD. L. POL. & SOC’Y* 149, 149–80 (2016) [hereinafter Alberstein, *The “Law of Alternatives”*].

<sup>3</sup> *See Gender Equity/Title IX*, CAL. DEP’T EDUC. (Feb. 17, 2023), <https://www.cde.ca.gov/re/di/eo/genequitytitleix.asp> (describing role of Title IX coordinator). The SHC role worked together with Ms. Malka Or-Chen, who belonged to the administrative staff of the University, and “SHC” is the abbreviation we apply in reference to cases described in this article.

health,<sup>4</sup> therapeutic,<sup>5</sup> and conflict resolution approach may apply to other institutions and other areas of law and society as well. Moreover, it fits in well during the era of #MeToo, where women raised their voices to challenge grave offenses such as rape, as well as attitudes, patterns, and allegedly “small” and sometimes non-litigable incidents of harassment that are part of an organizational.<sup>6</sup> Yet, the article’s main focus is to discuss the options to constructively engage with conflicts in a more balanced way that brings healing to the victim while remaining sensitive to the offender, considering the wider circle of employees and the characteristics of an academic environment. This approach does not directly implement alternative dispute resolution (ADR) processes into the SHC/Title IX Officer role but uses conflict resolution principles and borrows ADR practices while maintaining the unique framework of resolving conflicts in the shadow of authority.<sup>7</sup>

Many institutions of higher education established the position of SHC or Title IX Officer to create a campus climate that promotes diversity, equity, and inclusion among male and female

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<sup>4</sup> For the principles of public health as corresponding with alternative approaches to law, see Michal Alberstein & Nadav Davidovitch, *Therapeutic Jurisprudence and Public Health: A Broad Perspective on Dialogue*, 30 T. JEFFERSON L. REV. 507, 509 (2008). The public health approach adheres to the following principles, with relevance for sexual harassment treatment as discussed in this paper as well: (1) an upstream focus (primary prevention and health promotion); (2) targeting a range of forces (economic, political, and environmental) that affect populations and cause diseases; and (3) strategically modifying social and environmental variables and promoting public health via active social and political involvement. *Id.*

<sup>5</sup> For elaboration on the notion of Therapeutic Jurisprudence, see Home, INT’L SOC. THERAPEUTIC JURIS., <https://intl.tj.com/> (last visited Apr. 21, 2024). For the relationship between public health and Therapeutic Jurisprudence, see Alberstein & Davidovitch, *supra* note 4, at 509.

<sup>6</sup> Cf. Laura L. Dunn, *Addressing Sexual Violence in Higher Education: Ensuring Compliance with the Clery Act, Title IX and VAWA*, 15 GEO. J. GENDER & L. 563, 565 (2014) (analyzing Title IX case processing through examples of severe violence and campus rapes, and describing sexual violence on university campuses as endemic). The situation is different in Israel, where college undergraduate studies are not the norm, and where most students do not live on campus, usually enroll after a few years’ service in the Israel Defense Forces (IDF) (and are therefore more mature), and many times already work part-time to support themselves during their studies.

<sup>7</sup> Cf. Jennie Kihnley, *Unraveling the Ivory Fabric: Institutional Obstacles to the Handling of Sexual Harassment Complaints*, 25 L. & SOC. INQUIRY 69, 71–73 (2000) (criticizing use of ADR in treating complaints, and discussing inherent tension between goals of eliminating harassment and protecting institution from legal claims).

faculty members, students, and administrators.<sup>8</sup> As many sexual harassment victims prefer to refrain from formal legal proceedings (to protect their future career prospects and avoid labeling), alternative methods of resolution may be more effective in encouraging reporting of sexual harassment.<sup>9</sup> Yet, while the legal track seems inappropriate for encouraging and addressing complaints in a holistic and timely fashion, critics claim the role of the SHC is not neutral, but rather compromised, and presents limited effectiveness.<sup>10</sup> The role of the SHC, as we see it, is beyond fact-finding. The role contains educational and therapeutic potential that can create social transformation via the treatment of small cases.<sup>11</sup> It is our hope that the characterization of the SHC's role based on alternative justice principles, as presented via examples from actual work, will demonstrate the great potential this role offers to redress, empowerment, and a more equitable organizational culture.<sup>12</sup>

The working method of the SHC challenges the traditional functions of law, and includes the use of alternative justice narratives about the meaning of contemporary law.<sup>13</sup> It is, therefore, a hybrid institution that draws from two worlds—law and conflict resolution/therapy—to crystallize a unique worldview tailored to the

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<sup>8</sup> See Dunn, *supra* note 6, at 572.

<sup>9</sup> See Stephanie Riger, *Gender Dilemmas in Sexual Harassment Policies and Procedures*, 46 AM. PSYCH. 497, 501–02 (1991).

<sup>10</sup> See *id.*; see also Nancy Chi Cantalupo & William C. Kidder, *A Systematic Look at a Serial Problem: Sexual Harassment of Students by University Faculty*, UTAH L. REV. 671, 685 (2018).

<sup>11</sup> See Nancy Chi Cantalupo & William C. Kidder, *Systematic Prevention of a Serial Problem: Sexual Harassment and Bridging Core Concepts of Bakke in the #MeToo Era*, 52 U.C. DAVIS L. REV. 2349, 2367 (2019).

<sup>12</sup> See *id.* (grappling with modes of responses to sexual harassment in institutions of higher learning, though not written from an SHC perspective); see also Laurie M. Graham et al., *Interpersonal Violence Prevention and Response on College and University Campuses: Opportunities for Faculty Leadership*, 34 J. FAM. VIOLENCE 189, 194 (2018); Sharon Howard, *Organizational Resources for Addressing Sexual Harassment*, 69 J. COUNSELING & DEV. 507, 508–10 (1991); Jennifer Cacchio, *Title IX and the Constitution: Equal Protection Violations and Sexual Harassment*, 86 UMKC L. REV. 627, 651–52 (2018).

<sup>13</sup> For a critical perspective on the possibility of the laws such as Title VII, enacted a decade before the Title IX to progress gender equality and affecting actual compliance with sexual harassment norms by academic institutions, see generally Joanna L. Grossman, *The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law*, 26 HARV. WOMEN'S L.J. 3 (2003). For the possibility of Title IX affecting compliance with sexual harassment norms and campus climate, see R. S. MELNICK, *THE TRANSFORMATION OF TITLE IX: REGULATING GENDER EQUALITY IN EDUCATION* 217 (2018).

type of conflict at stake, namely, sexual harassment at universities, with its unique characteristics and severity: power disparities, hierarchies, and diverse communities.<sup>14</sup> This unique organizational environment both educates students and offers great freedom and autonomy to researchers to produce basic science and cutting-edge, groundbreaking innovations. Incorporating these aspects and addressing this unique environment justifies and requires a holistic solution based on the alternative justice approach that this article develops.

The SHC is essentially an ombudsperson whose role is to process internal complaints related to sexual harassment, which are submitted by any member of the University's communities—students, faculty, or administrative staff.<sup>15</sup> Being both an employee of the organization and a neutral who addresses complaints that may be leveled against peers or superiors may create a conflict of interest.<sup>16</sup> Indeed, the SHC's dual role and internal processing of the conflict at the organization's doorstep leads to the de-politicization of the conflict, its silencing, and its concealment from the public sphere.<sup>17</sup> In practice, institutions, including ours, have safeguards to preserve the independence of the role.<sup>18</sup> First, the commissioners at our University are tenured—sometimes even serving after retirement in accordance with the internal procedures for dealing with sexual harassment, which are adopted and published by institutions of higher education in our country. Second the supplementary nature of this role keeps civil and criminal legal public tracks open for the claimant to pursue.<sup>19</sup> Third, and in reference to the fear of privatization in the absence of legal proceedings,<sup>20</sup> cases brought before the SHC are subject to public scrutiny under the SHC's reporting obligation: SHCs annually

<sup>14</sup> See Kihnley, *supra* note 7, at 86.

<sup>15</sup> See *id.* at 74; CAL. DEP'T EDUC., *supra* note 3.

<sup>16</sup> See Kihnley, *supra* note 7, at 87.

<sup>17</sup> See generally Felicia Mitchell, *Keeping It All in the Family: Sexual Harassment Policies and Informal Resolution in Small Colleges*, 9 NWSA J. 118, 118 (1997).

<sup>18</sup> See also U.S. Department of Education Title IX Final Rule Overview, U.S. DEP'T EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf> (last visited Apr. 21, 2024).

<sup>19</sup> See, e.g., Christian A. Meissner & Adrienne Lyles, *Title IX Investigations: The Importance of Training Investigators in Evidence-Based Approaches to Interviewing*, 8 J. APPLIED RSCH MEMORY & COGNITION 389–90 (2019) (describing option to pursue criminal investigations alongside internal Title IX investigations).

<sup>20</sup> See generally Jessica Oser, *The Unguided Use of Internal ADR Programs to Resolve Sexual Harassment Controversies in the Workplace*, 6 CARDOZO J. CONFLICT RESOL. 283, 283 (2005).

report on the cases with which they deal to University management, the High Council for Education, and the Parliamentary Committee on the Promotion of Women's Status.<sup>21</sup> Reports include an anonymous description of the cases while indicating the relevant communities involved (students, lecturers, or administrative staff).<sup>22</sup> Additionally, most of the cases handled at the University during our term were relatively minor in that they did not exceed the threshold requiring full legal treatment. Most cases—unlike the one described in the Prologue—did not fall within the six specific forbidden behaviors stipulated by law,<sup>23</sup> but rather consisted of relationships gone awry, teasing, or derogatory glances, all of which were context-specific and required nuanced interventions.<sup>24</sup> Internal processing of such cases may be the most responsive approach to offer complainants, and their explicit request reinforces the approach, in most cases, to limit the SHC's treatment to a specific and discreet response. Additionally, rules that apply to formal investigative authorities do not restrict the SHC, and therefore the SHC is eligible to emphasize human dimensions in the process, such as expressing empathy, lack of judgment, and response to the parties' body language; hence, investigating the case becomes less alienating. In severe cases, a disciplinary committee may waive anonymity. The SHC's role is therefore to promote a pro-social organizational culture and alternative justice principles.<sup>25</sup> These principles, as set out here, enable us to capture its location between

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<sup>21</sup> See Kihnley, *supra* note 7, at 81.

<sup>22</sup> See *Hebrew University Regulations for the Prevention of Sexual Harassment*, HEBREW UNIV. JERUSALEM Art. 20 (2016), [https://overseas.huji.ac.il/wp-content/uploads/2016/08/takanon\\_sexual\\_harassment\\_1-2016.pdf](https://overseas.huji.ac.il/wp-content/uploads/2016/08/takanon_sexual_harassment_1-2016.pdf).

<sup>23</sup> See generally Prevention of Sexual Harassment Law, State of Israel Ministry of Justice §5758(3) (1998) (forbidden behaviors including: indecent acts; repeated propositions of a sexual nature to a person who has demonstrated a lack of interest in them; repeated remarks addressed to a person focusing on that person's sexuality, when that person has demonstrated to the harasser a lack of interest; insulting or debasing remarks addressed to a person in relation to that person's gender or sexuality; publishing a photograph or a video of a person focusing on that person's sexuality; and extorting a person to perform an act of a sexual nature).

<sup>24</sup> It is imperative to attend to these breaches of respectful social conduct so that they are not construed as acceptable, leading to larger breaches. See generally Anne E. Tenbrunsel & David M. Messick, *Ethical Fading: The Role of Self-Deception in Unethical Behavior*, 17 SOC. JUSTICE RES. 223 (2004). See also generally Francesca Gino & Max H. Bazerman, *When Misconduct Goes Unnoticed: The Acceptability of Gradual Erosion in Others' Unethical Behavior*, 45 J. EXP. SOC. PSYCHOL. 708 (2009).

<sup>25</sup> See generally Alberstein, *The "Law of Alternatives," supra* note 2.



therapy and law among other relevant alternatives to law such as mediation,<sup>26</sup> therapeutic jurisprudence,<sup>27</sup> restorative justice,<sup>28</sup> and procedural justice.<sup>29</sup> However, the rationale for addressing sexual harassment while considering the alternative justice approach is discussed, we the context in which the SHC acts in the post-#MeToo era should be explored.

On October 15, 2017, actress Alyssa Milano posted on Twitter stating: “If you've been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”<sup>30</sup> Users shared the hashtag #MeToo nearly a million times on Twitter within forty-eight hours, and over twelve million times on Facebook in only twenty-four.<sup>31</sup> Women all over the world shared their sexual harassment stories and testimonies, and reported on sexual assault of various severities, such as sexual harassment, indecent acts, and rape.<sup>32</sup> By sharing their private stories, they intended to achieve healing, generate solidarity, and spur educational discourse.<sup>33</sup> Although the hashtag trend started with famous actresses and media stars sharing their stories, women in other industries started sharing their sexual harassment stories as well.<sup>34</sup> The protests also permeated politics,

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<sup>26</sup> See generally Michal Alberstein, *Forms of Mediation and Law: Cultures of Dispute Resolution*, 22 OHIO ST. J. ON DISP. RESOL. 321, 322 (2007).

<sup>27</sup> See generally David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T. M. COOLEY L. REV. 125, 125 (2000).

<sup>28</sup> See generally DANIEL W. VAN NESS ET AL., *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* (5th ed. 2014).

<sup>29</sup> See generally Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 182–83 (2004).

<sup>30</sup> Alyssa Milano (@Alyssa\_Milano), TWITTER (Oct. 15, 2017).

<sup>31</sup> *More than 12M “Me Too” Facebook Posts, Comments, Reactions in 24 Hours*, CBSNEWS (Oct. 17, 2017), <https://www.cbsnews.com/news/metoo-more-than-12-million-facebook-posts-comments-reactions-24-hours/>.

<sup>32</sup> *Id.*

<sup>33</sup> See Julie Gerstein, *Women Are Using Twitter To Share Their Stories Of Sexual Harassment And They’re Truly Harrowing*, BUZZFEED (Oct. 6, 2017), <https://www.buzzfeed.com/juliegerstein/women-are-sharing-their-first-experiences-with-sexual>.

<sup>34</sup> *Id.* It is important to note that while the hashtag brought these issues into the mainstream, Tarana Burke started the movement in underserved communities years prior. See Ted Gregory, *Tarana Burke discusses her mee too movement, Hollywood’s hashtag co-opting of it*, U. CHI. NEWS (Mar. 29, 2023), <https://news.uchicago.edu/story/tarana-burke-discusses-her-me-too-movement-hollywoods-hashtag-co-opting-it>.

leading to a wave of resignations by politicians suspected of harassment and sexual assault.<sup>35</sup>

Only a few months after the #MeToo movement began, Catharine A. MacKinnon wrote that “[s]exual harassment law prepared the ground, but it is today’s movement that is shifting gender hierarchy’s tectonic plates.”<sup>36</sup> Along the same lines, some argue the #MeToo movement is not only a social movement, but also a legal movement: it has affected the courts’ perception of sexual harassment’s subjective dimensions, has influenced sexual harassment prevention and protection policies structured by employers, and has even shaped confidentiality agreements between employer and employee.<sup>37</sup>

The furor over sexual harassment created by the #MeToo revolution also arrived at the doors of higher education institutions.<sup>38</sup> Many argued the urgency with which various guidelines the Office for Civil Rights under the U.S. Department of Education (OCR) issued created ambiguity among institutional policy-makers at colleges and universities.<sup>39</sup> Various directives created an imbalance between protecting the victim and ensuring adequate due process for the accused in campus adjudications.<sup>40</sup> Furthermore, others argued the OCR policy restricted cross-examinations.<sup>41</sup> Betsy DeVos, U.S. Education Secretary under President Donald J. Trump, characterized the campus adjudication process as “kangaroo courts” that followed arbitrary rules and offered inadequate protection to those involved.<sup>42</sup> In accordance, the U.S. Department of Education issued a final version of its rule in

<sup>35</sup> L. Camille Hébert, *Is “MeToo” Only a Social Movement or a Legal Movement Too?*, 22 EMP. RTS. & EMP. POL’Y J. 321, 322, 335 (2018).

<sup>36</sup> Catherine A. MacKinnon, *#MeToo Has Done What the Law Could Not*, N.Y. TIMES (Feb. 4, 2018), <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html>.

<sup>37</sup> See generally Hébert, *supra* note 31, at 322.

<sup>38</sup> See generally Sara O’Toole, *Campus Sexual Assault Adjudication, Student Due Process, and a Bar on Direct Cross-Examination*, 79 U. PITT. L. REV. 511, 511 (2018).

<sup>39</sup> See *id.* at 512.

<sup>40</sup> Tammi Walker, *Fixing What’s Wrong with How Universities Adjudicate Sexual Misconduct Claims: How Procedural Change Can Encourage Cooperation*, 2018 WIS. L. REV. 111, 124 (2018).

<sup>41</sup> Matthew R. Triplett, *Sexual Assault on College Campuses: Seeking the Appropriate Balance Between Due Process and Victim Protection*, 62 DUKE L.J. 487, 509–10 (2012).

<sup>42</sup> Valerie Richardson, *Betsy DeVos Moves to End Obama-Era “Kangaroo Courts” by Protecting Rights of Accused on Campus*, WASH. TIMES (May 6, 2020), <https://www.washingtontimes.com/news/2020/may/6/betsy-devos-moves-end-obama-era-kangaroo-courts-pr/>.

2020, allowing cross-examinations by parties and outlining how schools must respond to allegations.<sup>43</sup> Amending rights in favor of the accused—as is customary in civil and criminal proceedings—frames the conflict as a legitimate matter of law for courts to decide.<sup>44</sup> With serious sexual harassment allegations, it would be reasonable to design the investigation process according to the rules of criminal law, including the right to an attorney, the opportunity to cross-examine the parties, and a preponderance standard of proof.<sup>45</sup> However, in low-level cases, it is possible, and often desirable to adopt alternative dispute resolutions that enable a process of treatment, healing, education, and growth. This article views sexual harassment broadly, to encompass even relatively minor #MeToo allegations, while aspiring to transform institutional culture to promote gender equality and human dignity.

Katharine K. Baker argues that courts' criticism of the procedures for investigating complaints in higher-education institutions is based on the "misplaced assumption" that procedural safeguards inherent in criminal proceedings also apply to the civil proceedings conducted by universities, an assumption that has resulted in the overturning of at least one university tribunal's finding of liability.<sup>46</sup> Moreover, the requirement to meet criminal law standards can reproduce bias against women.<sup>47</sup> In addressing relatively minor cases—as we do here—the functions of evidence gathering and fact finding become secondary to the SHC's need to respond in real time and allow the complainant ventilation and safety on campus. This approach makes discourse less adversarial, reduces blame, and enables open dialogue about relationships, interpersonal boundaries, and vulnerability. Thus, in most small cases that may include gendered jokes, gazing, sexist statements, and unwanted cultivation, the treatment can be much more flexible and responsive. From our experience, these are cases often do not require immediate removal of the offender nor rigid disciplinary procedures. The departure point in such cases should be alternative justice, including problem-solving, boundary setting, and education

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<sup>43</sup> Melissa Korn, *New Campus Sexual-Harassment Rule Aims to Boost Rights for Accused; Trump Administration's Regulation Allows for Cross-Examination and Live Hearings, and Provides Some New Support for Accusers*, WALL ST. J. (May 6, 2020), <https://www.proquest.com/docview/2398900719?accountid=13159&parentSessionId=HwiTdx14l%2B%2F5cyr3c9QzybsB%2BGC5xmXRq393yYHB8GA%3D>.

<sup>44</sup> See Walker, *supra* note 40, at 121–22.

<sup>45</sup> Triplett, *supra* note 41, at 517.

<sup>46</sup> Katharine K. Baker, *Campus Sexual Misconduct as Sexual Harassment: A Defense of the DOE*, 64 U. KAN. L. REV. 861, 878–79 (2016).

<sup>47</sup> *Id.*

to prevent offensive behavior from recurring. The focus in the Israeli legal context is that sexual harassment is not only gender-based discrimination that creates a hostile environment as mentioned in Title IX, but also a violation of the right to human dignity.<sup>48</sup> The SHC's adjudication of sexual harassment cases is directed to address the different—and sometimes amplified—experiences of the harassed individual and those accused of harassment that anti-discrimination laws fail to address (e.g., personal characteristics, needs, and the multiple grounds of sexual harassment that include ethnicity, disability, religion, and age).<sup>49</sup>

Part II of this article frames sexual harassment conflict resolution treatment via alternative justice principles. Alternative justice is based on six internal principles: (1) process emphasis; (2) constructive, future-oriented emphasis; (3) deconstruction and hybridization; (4) focus on the hidden layer; (5) relational emphasis and emotion acknowledgment; and (6) bottom-up emphasis and community development.<sup>50</sup> Part II describes each of the principles in detail and applies them to cases handled by the SHC. Part III sets guidelines to effectively apply the six alternative justice principles in practice. Part IV discusses the SHC's unique role as a therapy practitioner in the shadow of the law. Part V discusses additional contexts in which alternative justice may apply.

## II. CONCEPTUALIZING SEXUAL HARASSMENT VIA ALTERNATIVE JUSTICE PRINCIPLES

Addressing sexual harassment requires a unique set of rules and institutions that differ from the common practice of implementing legal rules.<sup>51</sup> Unlike many forms of law enforcement that use a method of command and control, this area of human conduct requires special tools to bring about the law's intent to affect society in a proactive way and transform cultural norms.<sup>52</sup> In contrast to perspectives that portray this role as applying feminist critique and trading the megaphone for the gavel on university

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<sup>48</sup> See *Regulations for the Prevention of Sexual Harassment*, MINISTRY FOR EQUAL., SOC. EQUAL., <https://medicine.biu.ac.il/sites/medicine/files/shared/sexual%20harassment%20official%20document%201998.jpg> (last visited Apr. 21, 2024).

<sup>49</sup> See generally Alberstein & Davidovitch, *supra* note 4.

<sup>50</sup> See Alberstein, *The "Law of Alternatives," supra* note 2.

<sup>51</sup> See generally NAT'L ACAD. SCI., ENG'G, & MED., *Legal and Policy Mechanisms for Addressing Sexual Harassment*, in *SEXUAL HARASSMENT OF WOMEN: CLIMATE, CULTURE, AND CONSEQUENCES IN ACADEMIC SCIENCES, ENGINEERING AND MEDICINE* ch. 5 (2018).

<sup>52</sup> See *id.*

campuses,<sup>53</sup> we perceive the feminist spirit inspiring this role as an example for a social movement of critique and reconstruction of cultural norms. In the realm of campus sexual harassment, we emphasize general human dignity while promoting a respectful culture that all members of the University community share. Such an effort combines prevention and education mechanisms with care and supervision. In the event of a sexual harassment violation, the law's role is to alter organizational culture and reshape consciousness.<sup>54</sup> By contrast, the SHC role is far-reaching by taking human nature into account more than other legal enforcement mechanisms do.<sup>55</sup> It suggests a more realistic view of the encounter between innovative norms and social reality. The complex system of regulation and rules of conduct within the University seems more delicate than regular law enforcement.<sup>56</sup> The SHC role belongs to the family of alternative legal procedures and based on organizing narratives described as alternative justice: conflict resolution principles aiming to alter social reality while incorporating critical interventional narratives that help reconstruct social reality.<sup>57</sup>

Alternative justice is based on six internal principles that form a common thread among the various alternative legal reform movements (e.g., therapeutic jurisprudence and restorative and transitional justice).<sup>58</sup> These principles encapsulate the reconstructive possibilities of conflict resolution models based on extensive experience in teaching, practicing, and studying alternatives.<sup>59</sup> Below, we outline these principles and explain their

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<sup>53</sup> See generally Janet Halley, *Trading the Megaphone for the Gavel in Title IX Enforcement*, 128 HARV. L. REV. F. 103 (2015). Furthermore, sexual harassment crosses gender boundaries, and some institutions have male SHCs as well. For an empirical overview of sexual harassment Title IX treatment and litigation, see generally Nancy Chi Cantalupo & William C. Kidder, *Mapping the Title IX Iceberg: Sexual Harassment (Mostly) in Graduate School by College Faculty*, 66 J. LEGAL EDUC. 850 (2017).

<sup>54</sup> See generally Sheila Gladstone, *New Era of Sexual Harassment Law*, U.S. DEP'T OF JUST.: OFF. JUST. PROGRAMS (2000), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/new-era-sexual-harassment-law>; Cantalupo & Kidder, *supra* note 53.

<sup>55</sup> See generally Cantalupo & Kidder, *supra* note 53.

<sup>56</sup> See generally Halley, *supra* note 53.

<sup>57</sup> See generally Alberstein, *The "Law of Alternatives," supra* note 2. Twentieth-century critical scholars inspired these changes after finding the traditional legal system lacking in terms of addressing parties' and society's needs.

<sup>58</sup> Michal Alberstein, *ADR and Transitional Justice as Reconstructing the Rule of Law*, 2011 J. DISP. RESOL. 127, 130–42 (2011).

<sup>59</sup> See, e.g., Mariana Hernandez Crespo, *Building the Latin America We Want: Supplementing Representative Democracies with Consensus-Building*, 10 CARDOZO J. CONFLICT RESOL. 425 (2009); Nancy D. Erbe,

relevance to the SHC's role. We include examples from personal experience to demonstrate the ways in which using these principles helps to reconstruct sexual harassment and to promote a new conflict resolution—therapeutic concept of law.

### A. PROCESS EMPHASIS

The first principle that virtually all alternative movements share is a pragmatic commitment to process as a means of overcoming and evading substantive conflict.<sup>60</sup> In the face of moral difference, alternatives aspire to enable shared decision-making by offering a set of procedural ideals all parties can agree to embrace regardless of their ideological orientation, class position, or any substantive disagreement.<sup>61</sup> This emphasis on process is sometimes described as the “second negotiation.”<sup>62</sup> As Roger Fisher and William Ury explain, negotiating the process by which the parties should decide the case results in a principle-based negotiation that can be framed as a shared problem-solving activity.<sup>63</sup> In fact, for many scholars of alternatives, reaching the correct decision about process—what is commonly called “procedural justice”—often matters more than substantive outcomes do.<sup>64</sup> Parties that

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*Appreciating Mediation's Global Role in Promoting Good Governance*, 11 HARV. NEGOT. L. REV. 355 (2006); Michael Hamilton & Dominic Bryan, *Deepening Democracy? Dispute System Design and the Mediation of Contested Parades in Northern Ireland*, 22 OHIO ST. J. ON DISP. RESOL. 133 (2006); Carrie Menkel-Meadow, *The Lawyer's Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 348–49 (2004); Jeffrey R. Seul, *Settling Significant Cases*, 79 WASH. L. REV. 881 (2004); Lawrence E. Susskind, Keynote Address at the Fordham University School of Law Dispute Resolution Society Symposium: Consensus Building, Public Dispute Resolution, and Social Justice, 35 FORDHAM URB. L.J. 185, 190–91 (2008); Alex Wellington, *Taking Codes of Ethics Seriously: Alternative Dispute Resolution and Reconstitutive Liberalism*, 12 CAN. J. L. & JURIS. 297 (1999).

<sup>60</sup> See ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 10–11 (1983).

<sup>61</sup> *Id.*

<sup>62</sup> See *id.* at 10.

<sup>63</sup> *Id.* (“The second negotiation concerns how you will negotiate the substantive question: by soft positional bargaining, by hard positional bargaining, or by some other method. This second negotiation is a game about a game—a ‘meta game.’”).

<sup>64</sup> For an overview of procedural justice, see generally E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988). For an exploration of the relevance of this notion to mediation and negotiation, see generally Nancy A. Welsh, *Making Deals in Court-Connected Mediation: What's Justice Got to Do with It?*, 79 WASH. U.

participate in conflict resolution processes are therefore encouraged to defer judgment on specific substantive questions.<sup>65</sup> Through the actual experience of participating in a structured process, individuals are more likely to integrate their differences and multiple interests while transforming and reconstructing their conflicts.<sup>66</sup>

The “process emphasis” principle is relevant to the SHC’s work. In our experience, each case requires its own process design, and many times, building the right process is key to constructive change. The SHC’s formal role is to investigate a complaint and decide whether to refer the case to the disciplining committee or dismiss it. In reality, the process—which develops through listening to the claimant and planning the investigation—may provide an answer and treatment for the case without the need for further hearings and without dismissals or pure rejections.

Listening to claimants’ concerns and providing them a safe space to tell their stories is an important function that has its own inherent value in processing cases.<sup>67</sup> For example, a case involving serial harassment would require interviews of several students and faculty—most often using a snowball method<sup>68</sup>—to reach saturation of the factual situation. On the other hand, a case of a personal relationship that took a wrong turn may involve a reluctant complainant interested in preserving her anonymity and thus unwilling to agree to expand the circle of interviewees; in such a case, the investigation would be more limited. Sometimes clarifying the boundaries to the other person suffices. Yet other cases may require utilizing campus security forces to ensure the complainant’s safety; for example, an administrative employee reported that a stranger entered the reception area and touched her body several

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L.Q. 787 (2001); Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 L. & SOC. INQUIRY 473 (2008).

<sup>65</sup> See generally Welsh, *supra* note 64.

<sup>66</sup> *Id.*

<sup>67</sup> See generally Rebecca Campbell et al., *Doing Community Research Without a Community: Creating Safe Space for Rape Survivors*, 33 AM. J. CMTY. PSYCH. 253; Maria Luisa Fernanda Rispa Hoyos, A safe space for everyone? Relationship between the making of judgment errors and Secondary Victimization in interviews with victims of sexual assault in Peru (2022) (M.Sc Thesis, University of Twente), [http://essay.utwente.nl/90804/1/RispaHoyos\\_MA\\_BMS\\_2.pdf](http://essay.utwente.nl/90804/1/RispaHoyos_MA_BMS_2.pdf).

<sup>68</sup> In this method the researcher asks the first few samples if they know anyone with similar life experiences or similar views. For further read on this method, see Mahin Naderifar et al., *Snowball Sampling: A Purposeful Method of Sampling in Qualitative Research*, 14 STRIDES IN DEV. MED. EDU.1, 2 (2017).

times. The employee asked him to leave the place immediately and reported the incident to the security staff. When the security officers arrived, the suspect already left. In such cases, the victim needs both personal therapy and preventive acts to regain her sense of security in the workplace. In this instance, the procedure emphasized the complainant's full participation in formulating the solutions (such as setting emergency buttons, doorbells, security cameras, and a new pathway to the reception to prevent physical contact between receptionists and customers). The employee reported feeling secure and satisfied, likely due to her involvement in the process. The SHC's role is to design the most appropriate solution tailored to the specific dimensions and context of the conflict in question. Often the correct design is also the solution to the problem.

### B. CONSTRUCTIVE, FUTURE-ORIENTED EMPHASIS

The second related principle of alternative justice is constructive, future-oriented intervention. Rather than encourage disputants simply to adjudicate their claims' rightness or wrongness through retrospective application of fixed legal rules, alternatives aim to cultivate open-ended processes that present conflict as an opportunity for growth, creativity, and change—and thus prioritize future-oriented normative arguments.<sup>69</sup> This orientation equally discourages claims that aim to get the truth and nihilism; instead, it asks individuals how they think they ought to arrange their affairs and solve their problems going forward, encouraging them to construct their own desired picture of reality jointly.<sup>70</sup>

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<sup>69</sup> See Hanne W. Oddli, *Future Orientation in Successful Therapies: Expanding the Concept of Goal in the Working Alliance*, 77 J. CLINICAL PSYCHOL. 1307, 1308 (2021) (discussing examples of future-oriented skills and interventions such as investigating client's motivations, goals, and readiness to change).

<sup>70</sup> See, e.g., DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1999) (providing guidelines to transform disputes grounded in facts, emotions, and identities into constructive conversations); CARRIE J. MENKEL-MEADOW, *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* 12–20 (2005) (presenting excerpts on constructive conflict resolution that challenge adversarial win/lose models); Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, 16 OHIO ST. J. ON DISP. RESOL. 1, 6–10 (2000) (presenting constructive and creative notions of conflict as one of the core ideas that inspired the development of the ADR movement); ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* 81–112 (2004) (theorizing conflict as a positive opportunity for new moral growth).



Adhering to this principle, the SHC's activities emphasize empowerment, transformation, and improving the organization. The expectation—according to the law and relevant regulations—is for a restorative response aimed at repairing the injury to the complainant, with the assumption that employees who receive appropriate training will positively internalize the respectful culture underpinning the law.<sup>71</sup> Despite the difficulty of experiencing negative aspects of harassment, it is possible to grow and learn from the conflict created and strive to prevent future similar injuries. This is an overlooked aspect in the traditional legal handling of a case (in which therapeutic aspects are not ingrained).<sup>72</sup> Additionally, the importance of handling even small rumors and minor incidents enables us to learn and prevent more severe cases. Attempting to improve a victim's situation and possibly offer a harasser an educational—or at least preventative—lesson, is different from usual trial proceedings. Following this principle, during the course of a complaint, we aim to empower the complainant, praise her for the referral, and reassure her that—even if it is presently difficult—going through the process can take her to a different and stronger place by helping other, potential victims. While keeping the complainant informed, we consult with her to learn how we can improve her situation. It is of great importance to strengthen the complainant's sense of power, mirror her feelings, and actively listen to her, alongside the essential clarification of the complaint—gathering evidence, documentation, and receiving the complainant's signature on the written complaint.<sup>73</sup>

In addition to attempting to help the complainant, in cases where the parties still care for each other, we encourage and strengthen mutual respect even if mediation or restorative justice is impossible. At the beginning of this article, the respondent denied the injury and stated that he gave a “kiss that slipped,” and thus did not impose physical intimacy on the complainant.<sup>74</sup> He spoke highly of the complainant and described her as a genuine, smart, virtuous woman whom he appreciated, and that his heart was broken because he hurt her. He further asked the SHC to convey his apology. We conveyed this message to the complainant separately and emphasized the constructive nature of this gesture. We perceive

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<sup>71</sup> State of Israel Ministry of Justice, *supra* note 23.

<sup>72</sup> See Nigel Stobbs, *The Nature of Juristic Paradigms: Exploring the Theoretical and Conceptual Relationship Between Adversarialism and Therapeutic Jurisprudence*, 4 WASH. U. JURIS. REV. 97, 98 (2011) (discussing the need to integrate therapeutic practices into juristic techniques).

<sup>73</sup> Cantalupo & Kidder, *supra* note 11, at 2364.

<sup>74</sup> See *supra* Prologue.

this role as enabling us to strengthen humanity in relationships even if—at the moment—the complainant does not forgive the assailant.

In the same case, the complainant stated the harasser hurt her but that she was still worried about his future and did not want him harmed. We take these kinds of claims as a sign of strength and ensure this intention is not self-evasive. Essentially, the complainant could both demand justice and still care for the assailant; in fact, many complainants—while showing courage and inner strength—still care for their assailants. This demonstrates the complexity of these cases. At trial, these complexities are not shown, to simplify the claims involved. However, the SHC's role is to exercise great care in ensuring matters do not get out of hand, and to emphasize the case's positive aspects—like when a victim still cares for her assailant. These considerations are also usually highlighted in a long and detailed summary letter that includes a case analysis with multiple layers and aspects. For example, in a case handled by our institution, an administration employee filed a complaint against another employee for being offensive and harassing to her. A separate inquiry was conducted with each of them, and the complainant expressed an explicit desire not to meet with the offender, but also requested that there be no harm to his career. Sensitive questioning of each party revealed there was an emotionally complex relationship that ended with both parties seeking limited and discreet treatment to restore the harm. Our impression was that both parties expressed sympathy and wanted to do good for one another. Hence, the solution included writing an apology letter, as requested by the complainant, with therapeutic elements of clarifying boundaries for the offender and monitoring the relationship between the parties, to ensure the offender's behavior permanently changed. The summary letter sent to the parties outlined the positions and wishes of both parties, which in this case were similar, and the means to resolve the case.

Focusing on the future includes targeting prevention efforts, and requires an understanding of the broad context of the problem at hand while addressing other conflicts associated with the incident.<sup>75</sup> This upstream approach illustrates the public-health perspective embedded in this role.<sup>76</sup> In the wider context,

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<sup>75</sup> See Carolyn Winslow et al., *Factors Associated with Sexual Harassment in Academic Institutions of Higher Education: A Technical Report to Inform Prevention Efforts*, INTERDISC CTR FOR HEALTHY WORKPLACES U. CAL., BERKELY 18–23 (2019), [https://care.berkeley.edu/wp-content/uploads/2019/07/Sexual-Harassment-Report-from-ICHW\\_Final.pdf](https://care.berkeley.edu/wp-content/uploads/2019/07/Sexual-Harassment-Report-from-ICHW_Final.pdf).

<sup>76</sup> See generally Scott Burris et al., *Moving from Intersection to Integration: Public Health Law Research and Public Health Systems and Services Research*, 90 MILBANK Q. 375 (2012); Michal Alberstein &

preventing future incidents of harassment in an organization includes information gathering and educational activities, including mandatory learning software for all campus community members, publishing and advising on complaints, and actively investigating rumors and anonymous complaints.<sup>77</sup>

The presumption is that the employer should not wait for the complaint to reach the SHC, but rather the SHC and other University agents should actively investigate anonymous complaints and rumors.<sup>78</sup> The SHC must address inquiries from employees, students, and other stakeholders who bring notice about sexual misconduct allegations.<sup>79</sup> In such cases, the SHC needs to understand the facts behind the rumor.<sup>80</sup> One of the cases that came to us involved a lecturer who reported a rumor that he had allegedly sexually harassed a subordinate. After documenting the course of events from the lecturer and gathering written evidence from his colleagues and students—including the alleged victim—we concluded there was no harassment. As a precautionary measure, however, we saved the materials and investigation report in case a formal complaint was filed, or the rumor circulated again.

In another case, the head of a University unit asked to meet us out of concern regarding a rumor that an intimate relationship was allegedly occurring between a senior professor and a subordinate faculty member. She feared supervisors would exploit the subordinate due to her professional dependence on the senior professor. The rumor circulating among the faculty members regarding the alleged harassment caused the professor to be excluded and treated with hostility. After investigating this case and speaking with the subordinate, we found there was no intimate relationship or exploitation. The subordinate vehemently denied being sexually harassed by the professor and was upset by the rumor that was, in her view, unjust against both her and the professor. We sent notice to the head of the department, clarifying the need to stop the informal sanctions among the faculty against the professor. Processing this case mitigated the risk of resurfacing any claims by the faculty against the professor at a later stage, and likely avoided

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Nadav Davidovitch, *Intersecting Professions: A Public Health Perspective on Law to Address Health Care Conflicts*, 5 INT'L J. CONFLICT ENGAGEMENT & RESOL. 83 (2017) (elaborating on the intersection of public health and law in the field of health care conflicts).

<sup>77</sup> See Jordan T.L. Halgas, *Don't Try This at Home: Using a Multilayered Approach to Teach the Law of Sexual Harassment and Sexual Harassment Investigations*, 23 J. LEGAL STUD. EDUC. 217, 217 (2006) (outlining a multilayered approach for sexual harassment investigations and teaching).

<sup>78</sup> See generally Winslow et al., *supra* note 75.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

future allegations by the professor that his colleagues falsely accused and excluded him.

Employees' duty to report to the SHC if they begin a romantic relationship is a special preventive upstream activity unique to the SHC's role. Employees sign an affidavit before the SHC stating they fully consent to the relationship and it will not interfere with their work.<sup>81</sup> If it is a superior–subordinate relationship, the employer must take extra care to prevent complaints about exploitation of the relationship through favoritism, especially by other employees who may feel discriminated against.<sup>82</sup> In these types of workplace relationships, the SHC conducts a separate and early meeting with the subordinate employee to ensure there is actual consent in the relationship (i.e., that it is not coerced).<sup>83</sup> Without this early, preventive measure, a superior who has not reported a sexual relationship with a subordinate may have difficulty denying any exploitation claims by the subordinate later on. The duty to report is a necessary means to ensure informed consent and the institution's involvement in assessing the risks arising from the connection. While serving as an SHC, a precautionary measure one of the authors took included distributing a letter to all academic, administrative, and student staff introducing the main legal tenets regarding sexual harassment prevention law and explicitly mentioning the obligation to report intimate relationships when they begin. As SHC, she further recommended a change to the University senate regulation on sexual harassment to explicitly acknowledge the suspicious nature of intimate relationships involving subordinates—especially between faculty and students—and requiring reporting to the SHC in advance to obviate any presumed harassment.

### C. DECONSTRUCTION & HYBRIDIZATION

Facilitators of alternatives encourage disputants to deconstruct the “all-or-nothing” or “win–lose” mindset into smaller, more manageable problems, interests, choices, preferences, and desires.<sup>84</sup> These problems, in turn, can be partially resolved through

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<sup>81</sup> See *What Are the Pros and Cons of a “Consensual Relationship” Contract with Employees Who Are Dating?*, SHRM, <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/consensual-dating-contract.aspx> (last visited Apr. 21, 2024).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Robert Axelrod's game-theoretic work on the Prisoner's Dilemma provides the basis for a famous deconstruction of this sort. He assumes a recurring, rather than one-SHC, Prisoner's Dilemma, which enables each player to engage in a series of discrete, small responses to her opponent's

hybridization—that is, a creative strategy for practical bargaining and compromise in which parties agree to make incremental and piecemeal trades across multiple divergent interests and desires.<sup>85</sup> Setting an agenda and prioritizing among the various issues is also crucial for transforming and reconciling conflicts by addressing their polycentric nature.<sup>86</sup> Contrary to legal interventions—which usually simplify complex situations into questions about the applicability of norms and its consequences—a conflict resolution approach embraces hybridity, and in the sexual harassment context, intersectionality.<sup>87</sup>

### 1. INTERSECTIONALITY, DECONSTRUCTION & HYBRIDIZATION OF SEXUAL HARASSMENT CONFLICTS

In recent decades, feminist scholars have dealt with the intersection of marginal positions, or “intersectionality,” a concept coined by Kimberle Crenshaw in the late 1980s.<sup>88</sup> Intersectionality is the multiplicity of dimensions of the social marginal positions in

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choices. Axelrod then proceeds to show how particular kinds of responses can develop rational incentives for collaboration over the course of the longer game. Robert Axelrod & William D. Hamilton, *The Evolution of Cooperation*, 211 *SCIENCE* 1390, 1390–96 (1981). Drawing on Axelrod, theorists of alternatives likewise describe the act of negotiating conflict not as a one-SHC deal but rather as a series of choices or stages where parties can make small decisions to enable a growing sense of trust and collaboration. See, e.g., DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* 160 (1986) (using Axelrod’s research to propose dividing the negotiation “process into a number of small steps”); see also Roger Fisher, *Fractionating Conflict*, 93 *DAEDALUS* 920, 921 (1964) (similarly proposing a number of practical advantages for conflict resolution when major conflicts are treated as “a number of small ones”).<sup>85</sup> For a few examples, see FISHER & URY, *supra* note 60, at 73–79 (describing how to use shared and differing interests to “invent options for mutual gain”); LAX & SEBENIUS, *supra* note 84, at 88–116 (offering lessons in “trading on difference”); ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 12–15, 28–43 (2000) (offering lessons in how to identify the multiple issues comprising a problem and to leverage differing issues into value-creating trades).

<sup>85</sup> MNOOKIN ET AL., *supra* note 85, at 12–15.

<sup>87</sup> *Id.*

<sup>88</sup> Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139, 140 (1989).

which a person exists and how he or she experiences them.<sup>89</sup> Crenshaw argues the experiences of Black women have been largely ignored by the law, the courts, and feminist scholars.<sup>90</sup> She sheds light on the different layers of oppression that intersect and harm Black women either as a result of sex discrimination or race discrimination.<sup>91</sup> In fact, the intersection of marginal positions is used as a category for analyzing the cross-effects of social identities (such as gender, disability, origin, and religion) in different fields of knowledge.<sup>92</sup> Therefore, most people may arguably find themselves victims of oppression at the intersection of their identities.<sup>93</sup> Sexual harassment, as a form of gender discrimination, is a product of oppression that represents a violation of human dignity.

The SHC has a unique opportunity to address sexual harassment complaints from a broad perspective as a violation of human dignity, which not only considers gender issues, but also the unique complexities of human life and identities. Deconstruction and hybridization of campus sexual harassment conflicts further addresses the multiple factors, vulnerabilities, and intersectional identities of the parties that make the sexual harassment more harmful and offensive in a broader sense.<sup>94</sup> Sexual harassment can cause a multitude of harms because it touches multiple vulnerabilities (such as difficult life experiences, trauma, racial identity, disability, and poverty).<sup>95</sup>

For example, Janett Halley was troubled by the way Title IX created a situation of complete acceptance of women's claims while infringing on the right to privacy, autonomy, and due process of men.<sup>96</sup> Black men, Halley argues, also suffer from racial bias and are accordingly at greater risk of being expelled and sanctioned.<sup>97</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 144–46.

<sup>91</sup> *Id.* at 149.

<sup>92</sup> See generally Hadar Dancig-Rosenberg & Noa Yosef, *Crime Victimhood and Intersectionality*, 47 *FORDHAM URB. L.J.* 85 (2019); Julia Campos Climaco, *Constructions of Motherhood in Feminist and Disability Studies*, 28 *REVISTA ESTUDOS FEMINISTAS* 1 (2020); Carl A. Grant & Elisabeth Zwier, *Intersectionality and Student Outcomes: Sharpening the Struggle Against Racism, Sexism, Classism, Ableism, Heterosexism, Nationalism, and Linguistic, Religious, and Geographical Discrimination in Teaching and Learning*, 13 *MULTICULTURAL PERSP.* 181 (2011).

<sup>93</sup> See generally Crenshaw, *supra* note 88.

<sup>94</sup> See generally Nancy Chi Cantalupo, *And Even More of Us Are Brave: Intersectionality & Sexual Harassment of Women Students of Color*, 42 *HARV. J.L. & GENDER* 1, 8 (2019).

<sup>95</sup> *Id.*

<sup>96</sup> Halley, *supra* note 53, at 114.

<sup>97</sup> *Id.* at 107–08.

Nancy Chi Cantalupo's response to Halley makes clear that bias against Black men in sexual harassment claims presents an issue of competing narratives and intersectionality that must be navigated as higher education implements Title IX.<sup>98</sup> Cantalupo argues Halley only addresses Black men's experiences, whereas in Cantalupo's stories, most women that were sexually harassed are women of color.<sup>99</sup> Viewed from an intersectional lens, these women may be more vulnerable due to their social marginality and intersecting identities of gender, race, poverty, and social status.<sup>100</sup>

Halley, who wrote from her experience as an advocate handling sexual harassment complaints at Harvard University in an era before schools were required to protect the campus environment,<sup>101</sup> described a case in which an employee brought repeated complaints of sexual harassment against a male faculty member who bumped into her and made extended eye contact in the hallway.<sup>102</sup> It turned out this woman had been a victim of sexual abuse in her childhood and felt a constant threat to her safety ever since.<sup>103</sup> Another case addressed a student who was ordered to stay away from campus only because he reminded the complainant of a man "who had raped her months before and thousands of miles away."<sup>104</sup> Indeed, people with post-traumatic stress disorder (PTSD) can feel harassed by minor acts or by an environment they perceive as being hostile.<sup>105</sup> This may lead a SHC to make difficult decisions that either protect the harassed or deny their complaint.

These cases demonstrate that both sides should be protected. People may carry different identities—unlike gender, race, and visible disabilities—that are invisible and hard to detect when handling a complaint. An anti-essentialist reading of antidiscrimination law could shift the focus from identities toward ideologies that underlie discriminatory practices (e.g., sexism and racism).<sup>106</sup> To grant the victims protection, the SHC should recognize and address the complexity of human life experience instead of sorting complaints into identity groups. When dealing with smaller cases, a SHC trained to acknowledge cultural sensitivities can dismantle the conflict between the complexity of identities and encourage social transformation. This may be seen in

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<sup>98</sup> Cantalupo, *supra* note 94, at 15–16.

<sup>99</sup> *Id.* at 16.

<sup>100</sup> *Id.* at 26.

<sup>101</sup> Halley, *supra* note 53, at 116.

<sup>102</sup> *Id.* at 115.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 116.

<sup>105</sup> *Id.*

<sup>106</sup> Lihi Yona, *Identity at Work*, 43 BERKELEY J. EMP. & LAB. L. 139, 190 (2021).

a case handled by the SHC at our University in which, during small talk, a male administrative member asked his female colleague an intimate question about her private life. Because of her religious beliefs, the question was extremely offensive and hurtful to the colleague. A deconstructive approach to the conflict addressed parties' identities and vulnerabilities, different perceptions of interpersonal relationships, and past traumatic experiences.<sup>107</sup> These small cases that do not require immediate expulsion or severe punishment make it possible for responsive regulation to build a new narrative that creates social transformation.

This situation is an example of complexity that may be embraced and considered therapeutically by the SHC. The SHC's role assumes complexity within the regulatory framework of sexual harassment treatment. Taking Frank Sander's vision of "fitting the forum to the fuss"<sup>108</sup> to its most individualized form, a tailor-made flexible process must match the relevant circumstances of the case at hand. The SHC handles a variety of situations that require different approaches, including cases in which the complainant withdraws his or her claim or is anonymous, where the threshold of sexual harassment is not met, and those based primarily on rumors without a formal complaint filing. The SHC is authorized to make recommendations even when no sexual harassment has been established in strict legal terms and diversify responses by writing full summary letters to superiors and other customized letters to the complainant and respondent. The SHC works with various stakeholders in the organization and may tailor language to match the audience in question, which judges cannot do. The SHC's role requires flexibility and maneuverability, making it complex.

In most cases, the SHC's activities include working with various University entities and interdisciplinary consultants (including lawyers, criminologists, psychologists, and social workers). They also entail maintaining ongoing communication with security personnel and the administration in risky situations or during an investigation. These types of cases usually require cooperating with campus security officials, issuing immediate restraining orders, closing gates, and repairing and changing entryways to a specific campus area. In all these activities, collaboration and coordination between different stakeholders is required. The organizational flexibility the SHC can utilize and navigate is unique to the role and enables the fast and effective

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<sup>107</sup> See generally Vipanchi Mishra & H. Kristl Davison, *Sexual Harassment Training: A Need to Consider Cultural Differences*, 13 *INDUS. & ORG. PSYCH.* 163 (2020).

<sup>108</sup> See generally Frank E.A. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 *NEGOT. J.* 49 (1994).



problem-solving needed in many harassment cases—something that cannot necessarily be offered by legal institutions or by a discipline committee.

#### D. FOCUS ON THE HIDDEN LAYER

Fulfilling the role of the SHC involves developing a “needs discourse,” such as emotional needs, psychological needs or either financial needs of people or corporates that goes beneath the surface of the official claims brought by the parties.<sup>109</sup> This hidden layer is described by alternative justice theorists and practitioners as interests, needs, or narratives of entitlement.<sup>110</sup> While on the surface, conflict is antagonistic and distributive (focusing on positions), parties who can deconstruct and self-identify the hidden layer underlying their conflict (i.e., their interests) may reframe their disputes in ways that are more constructive.<sup>111</sup> For example, if parties may express putative interests and needs driving their positions, they may both create and expand the benefits of trade while realizing that many interests overlap.<sup>112</sup> Likewise, if parties articulate and critically analyze their own desires and narratives of self-entitlement (i.e., what they want and why they deserve it), they are more likely to explain or modify their positions in ways that make their motivations appear more persuasive and equitable to others.<sup>113</sup> Ideally, via these dialogic exercises of explanation, rationalization, and change, parties can develop common understandings of reason that inform how to resolve their disputes.<sup>114</sup>

For the SHC, learning what the parties want involves listening to what matters to all the relevant stakeholders—especially the complainant—and inquiring as to what will make her feel safe again. Additionally, addressing the needs of the University or other

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<sup>109</sup> JOHN WINSLADE & GERALD MONK, NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION 100 (2000).

<sup>110</sup> *Id.*; Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 795 (1984).

<sup>111</sup> Menkel-Meadow, *supra* note 110, at 799–801.

<sup>112</sup> *Id.* at 804.

<sup>113</sup> *Id.* at 804–09.

<sup>114</sup> *See, e.g.*, FISHER & URY, *supra* note 60, at 41–57; WINSLADE & MONK, *supra* note 109, at 94–115 (chapter on needs and entitlements and “how narrative mediation can be used to deconstruct entitlements in an attempt to assist people to build more equitable relations when conflict is being addressed”); Menkel-Meadow, *supra* note 110, at 801–17 (sections on “identifying the parties’ underlying needs and objectives” and “creating solutions”).

organization is also important. For example, a complainant who does not want to reveal her identity but raises concerns about other possible victims will be required to work—sometimes anonymously—with the harasser and with the harasser’s University department to avoid revealing the complainant’s identity. Avoiding future harassment complaints by known victims and future potential victims requires the SHC to delicately balance the victim’s needs with the University’s. To that end, SHC meetings emphasize all campus members’ shared interest in nurturing a safe and respectful culture on the University’s campus and in its community.

Addressing sexual assault victims’ needs in general—and of sexual harassment in particular—requires very keen listening. Findings from the field indicate many victims do not want revenge or a lawsuit.<sup>115</sup> Victims report their main goal is to be acknowledged by the offender—as well as the University—that they were sexually harassed.<sup>116</sup> The recent #MeToo campaign that flooded the media demonstrates the depth of silenced vulnerability of victims, such as young actresses, young girls harassed by their mother’s spouse, and women who were stalked and threatened when tried to speak; yet the public has commonly ignored all these stories for years.<sup>117</sup>

Yet addressing the needs victims express does not always involve public condemnation, punishment, or collective shame. Victims are often interested in increased security and preventative measures to ensure other individuals are not also injured. Victims seek to understand why the transgression they experienced happened, receive an apology, and heal. The process of handling sexual harassment complaints would ideally address a complainant’s complex needs and prevent any secondary injury that may come from waiving anonymity and exposing oneself to social media or the courts.<sup>118</sup> Many of the complainants one of the authors met expressed two contradictory interests: (1) the need to expose the harm and acknowledge it; and (2) the need to step out of the victim

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<sup>115</sup> Baker, *supra* note 46, at 861, 870–71.

<sup>116</sup> See generally Susan K. Hippensteele, *Mediation Ideology: Navigating Space from Myth to Reality in Sexual Harassment Dispute Resolution*, 15 AM. U. J. GENDER & SOC. POL’Y & L. 43, 59–60 (2006) (analyzing victims’ needs and the way to balance them within the processing of sexual harassment cases).

<sup>117</sup> Samantha Schmidt, *#MeToo: Harvey Weinstein Case Moves Thousands to Tell Their Own Stories of Abuse, Break Silence*, WASH. POST (Oct. 16, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/10/16/me-too-alyssa-milano-urged-assault-victims-to-tweet-in-solidarity-the-response-was-massive>.

<sup>118</sup> See generally Hippensteele, *supra* note 116, at 58–59 (explaining how “[v]ictims of sexual harassment want [and] need to preserve their privacy [by avoiding] the stress of formal, adversarial proceedings”).

position, avoid public labeling, and move on with their lives. Settling sexual harassment cases in institutions of higher education via an alternative method enables a safe response to a complainant's needs without a lengthy, protracted process that may not achieve that same goal. Because of the SHC's needs assessment, the complainant has significant discretion as to how the SHC can meet her needs, whether that entails maintaining anonymity, meeting with the respondent, arranging for the receipt of recognition or of an apology, or working to rehabilitate the complainant–respondent relationship. Of course, she is always free to pursue other, more public expressions and to pursue legal remedies (whether civil or criminal). However, most complainants do not seek legal suit. In most cases the authors worked on jointly or independently—all of which were relatively minor—complainants even avoided initiating the formal disciplinary complaint stage of conducting a confidential hearing before the University tribunal and rather preferred to tell their story in a non-formal procedure or setting, such as a phone call, writing a letter, or by another person who spoke for them with the SHC to maintain anonymity.

At the same time, the SHC should address the respondent's needs, first by protecting their right to answer claims and to refute them. False accusations—even if rare—may be very harmful and destroy an individual's reputation, including his chances for a future career. The SHC's role is to clarify the facts and—in relevant cases—refute false rumors, as in the cases discussed above.<sup>119</sup> In other cases, the structured nature of the SHC's findings—as well as the SHC's concrete conclusions and recommendations—help provide the respondent with clarity and closure. Many respondents often perceive the process as harmful and are upset about enduring what they may perceive as an interrogation. This is typically because it is their first time in this kind of situation. When this happens, one of the authors explains respondents have a strong interest in processing the complaint and clearing their name if a baseless rumor comprises the accusation. The employer may be legally obligated to protect a respondent's reputation via a duty to investigate sexual harassment allegations and clear rumors that may affect the respondent's career prospects in other workplaces.<sup>120</sup> Even in low-level harassment, clarifying and delineating what has happened—including responding and tracking future behavior—helps prevent more serious incidents and allows the respondent to

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<sup>119</sup> See discussion *supra* Part II(B).

<sup>120</sup> *Anonymous v. Transportation Holdings Ltd.*, (2017) 42650-06-14 (Tel Aviv-Jaffa Regional Labor Court).

deal with self-injurious behavior patterns.<sup>121</sup> Thus, the respondents may avoid more serious future injuries or the escalation of the current case—such as by transferring to social media—in a way that can have devastating consequences for all parties involved.<sup>122</sup>

Other relevant needs of the respondent are associated with injury and mental breakdown that the procedure may cause. Many respondents are normal people who perceive themselves as law-abiding and moral citizens of the University and of their respective communities. The notes on the complaints many times shake their lives. Some describe lack of sleep after receiving the call, and a shattered reality. There is a concern they may harm themselves, and a social worker may be called upon to help, or they may be referred to treatment to cope with the process. Thus, our first call was almost always conducted within the same day we offered to meet, and we strove to demonstrate empathy and respect during the meeting, providing room for them to express their pain. During this meeting, we would also clarify boundaries between victim and offender, emphasizing a clear expectation that the offender accept accountability and take responsibility to express empathy and begin relationship-building. Mirroring and validating respondents' personal emotions and needs may go hand in hand with condemning the act of harassment. Another aspect of acknowledging potential respondents' interests is identifying and naming feelings of persecution by male professors and students who may be concerned they will be framed and falsely accused by female colleagues or classmates. Such concerns were expressed in public seminars and lectures and were acknowledged while attempting to set boundaries and demonstrating a shared interest in transforming the University's organizational culture.

#### **E. RELATIONAL EMPHASIS & EMOTION ACKNOWLEDGMENT**

The fifth principle of alternative justice is the acknowledgment of emotions and simultaneous emphasis on relationships. Alternative justice offers a reconstructed vision of the juridical subject that emphasizes relational aspects of disputes.<sup>123</sup>

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<sup>121</sup> Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 625 (1986).

<sup>122</sup> *Id.* at 643.

<sup>123</sup> See, e.g., Deborah M. Kolb, *The Love for Three Oranges Or: What Did We Miss About Ms. Follett in the Library?*, 11 NEGOT. J. 339, 344 (1995) (arguing “a significant component of the negotiation process is the creation of a frame of connectedness within which negotiations can take place”).

This is in large part facilitated by acknowledging emotions.<sup>124</sup> The idea is that emotions have a logic of their own; when they are acknowledged and expressed, disputants understand their conflict differently and become better able to jointly focus their energy on the problem, not the people.<sup>125</sup> By acknowledging emotions as a significant element in human disputes, parties are taught to understand themselves as less individualistic, separated, or rule-bound, and instead as more caring and empathic.<sup>126</sup>

After identifying their emotions and being encouraged to reframe legal disputes as reflections of the complex affective dynamics and feelings that occur in the interstices of social relations, disputants are simultaneously—if somewhat paradoxically—encouraged to depersonalize their differences, to “[s]eparate the people from the problem,” as Fisher and Ury define it.<sup>127</sup> Disputants are encouraged to transform themselves from agonistic individuals to joint problem-solving units tasked with generating common proposals for conflict resolution.<sup>128</sup> Conflict resulting from sexual harassment is not a common “problem” of the parties, since unlike civil mediation proceedings, with sexual harassment there is one party who has committed an offensive act and another party who has

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<sup>124</sup> *Id.*

<sup>125</sup> FISHER & URY, *supra* note 60, at 37–39; *see* ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* 15 (2006); *see also* STONE ET AL., *supra* note 7, at 85–108 (chapter emphasizing critical nature of expressing emotions). *See generally* Daniel L. Shapiro, *Emotions in Negotiation: Peril or Promise?*, 87 MARQ. L. REV. 737, 742 (2004) (“By expressing your emotion, you provide . . . important information about how you want to be treated.”); Daniel L. Shapiro, *Negotiating Emotions*, 20 CONFLICT RESOL. Q. 67, 67 (2002) (“Even if parties manage to suppress emotional expression, their negative emotional experience remains; their attempt to suppress emotions consumes extra cognitive energy . . .”).

<sup>126</sup> Kolb, *supra* note 123, at 343 (containing Mary Parker-Follet’s, one of the founders of the ADR movement, suggestion that: “The conception of circular behavior throws much light on conflict, for I now realize I can never fight you, I am always fighting you plus me. I have put it this way: that response is always to a relation. I respond, not only to you, but to the relation between you and me . . . I never react to you, but to you-plus-me; or to be more accurate, it is I-plus-you reacting to you-plus-me . . . That is in the very process of meeting we become something different . . . Through circular response we are creating each other all the time.”).

<sup>127</sup> FISHER & URY, *supra* note 60, at 12 (quote) (emphasis omitted); *id.* at 19–41 (concept).

<sup>128</sup> *Id.* at 84–98 (suggesting that parties jointly adopt principled problem-solving criteria as a depersonalized choice-making procedure to achieve this end).

been harmed by it.<sup>129</sup> It is therefore possible to frame the mode of treatment as one that separates the offender from harm—marking boundaries and condemning the specific acts, while respecting the offender as a person. The relational perspective further expands this idea of mutual respect and interdependence into a self-in-representation perspective in which response-ability is formulated via being connected to the other as a foundational experience.<sup>130</sup> Response-ability is differentiated from “responsibility” and involves the capacity to respond to someone from a socio-ecological environment as they are embedded not from legal obligation, but from relations with others that make people feel the need to care about and for others.<sup>131</sup>

Focusing on relationships places the SHC in her most challenging task. The role of the SHC is to improve relationships, and many times, while dealing with a case, she exposes an offensive pattern. The SHC’s role in a complaint for harassment is far broader than a Judge’s role. The judge can hear parties, examine prohibited conduct displayed, diagnose the situation, and apply the law to it. They can ignore the relationship and reduce the claim to concrete, legally assessable events. Relationship analysis may help as a background to those decisions, yet its role is marginal. In contrast, the SHC focuses on relationships, and although the work entails examination and evaluation of concrete behaviors, a central focus is diagnosing the problematic patterns of relationships and how to improve them to avoid further offenses. Without this comprehensive intervention, a solution cannot be found, and more cases may occur. First, the SHC should ask the respondent how they feel in the work environment and if they understand why they were summoned. Sometimes the hypotheses the respondent provides will offer new information about the complaint. Many times, it helps reform the pattern of relationships the respondent tends to develop. For example, a lecturer who received anonymous complaints in student evaluations for abusive and blunt behavior, may enter the SHC’s office angry and screaming. In this scenario, the SHC would explicitly address the demonstrated pattern of behavior in the summary letter. Sometimes addressing such a pattern requires micro-teaching through a coach, which means the University should hire a trained professional to accompany the harasser and provide

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<sup>129</sup> *Sexual Harassment*, RAPE, ABUSE & INCEST NAT’L NETWORK, <https://www.rainn.org/articles/sexual-harassment> (last visited Apr. 21, 2024).

<sup>130</sup> CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT 1, 4–5 (1982).

<sup>131</sup> Angela Moriggi et al., *A Care-Based Approach to Transformative Change: Ethically-Informed Practices, Relational Response-Ability & Emotional Awareness*, 23 ETHICS, POL’Y & ENV’T 281, 288 (2020).

him with behavioral guidance and feedback. This may be required even if the legal threshold for sexual harassment is not met.

The handling of the complaint should lead to a significant improvement in workplace relationships. After each complaint, the complainant and respondent will have a follow-up where the parties can examine and ascertain their healing and rehabilitation. Full reconciliation through direct encounters is usually not possible—and often not desirable—because the injury is still imminent and painful. Nevertheless, part of the SHC's goals, as we perceive them, includes improving the pattern of future relationships to help avoid risks.

Despite the focus on relationships, a direct meeting with an SHC between the complainant and the respondent is not desirable. The complaint often reflects a violation of interpersonal boundaries that must be redrawn and clarified on behalf of the institution. A subordinate may submit a complaint because communicating directly with the respondent to alter the offensive communication pattern would be impracticable. The respondent may desire to simply set boundaries in these situations. As noted above,<sup>132</sup> the SHC may offer complainants restorative practices (such as transmitting an offender's message of regret), and referrals to external restorative justice facilitators when parties were interested in the full process.<sup>133</sup> Yet, at our University, no complainant has ever selected this channel. A confrontation with the offender—often imperative in a criminal trial—is not necessary when administratively processing a sexual harassment allegation, and it may in fact re-traumatize the victim. In this respect, the SHC's role differs from mediation, restorative justice, and the traditional legal process.

Therefore, the role of the SHC is mainly to separate and protect the complainant in situations where the delicate tissue of a relationship has been torn. The administrative nature of the role and the low threshold for cases—including the relatively simple facts that usually characterize University sexual harassment claims—allows flexibility and contributes to the speedy handling of complaints.

This focus on relationship patterns allows us to address cases that may not fall under any legally recognizable category of sexual harassment. Even so, these cases may still involve a violation that poses a threat to the campus community. For example, one of the

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<sup>132</sup> See *supra* Part II(B) for a further discussion on this topic.

<sup>133</sup> For an overview of the regulative foundation of implementing restorative justice in campus sexual harassment cases, see generally Mary P. Koss et al., *Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance with Title IX Guidance*, 15 TRAUMA, VIOLENCE & ABUSE 242, 249–54 (2014).

authors was asked to inquire into a rumor that an unidentified professor had an offensive attitude toward students. Through conversations, we were able to identify the professor and conclude that although his behavior did not fall within the formal boundaries of sexual harassment, his behavior was rude toward academic staff and students. His attitude toward female students and his comments in the classroom were gender-biased or offensive. We summoned the professor and informed him of his problematic pattern of relationships with colleagues, and especially with students. Following the intervention, heads of departments and deans were notified of the need to carefully read student evaluations and trace allegations of sexual harassment or disrespectful behavior by lecturers. This approach helps trace behaviors that may develop into harassment, while preventing and deterring other offensive behavior.

In another case, a student alleged a professor made abusive gender-biased statements during class. We concluded the statements were indeed gender-biased but were not prohibited by sexual harassment law. Nevertheless, following the approval of the Rector (the highest academic head of the University), we told the unit head to inform the lecturer that he was required to keep a proper distance between himself and students, avoid physical contact with his pupils, avoid comments invading their private space, and cease all offensive jokes in the classroom. The lecturer was mandated to maintain a respectful professional attitude while cultivating equality and respect for all genders and backgrounds. Finally, in another case, the head of the department reprimanded a lecturer after consulting the Rector, determining the lecturer committed borderline sexual harassment when he lodged profane statements against a former student. Setting clear boundaries for respectful relationships helps transform organizational culture and clarify behavioral norms while nourishing an environment that is safer for both students and employees.

However, sometimes relationships are not reparable. For example, immediate intervention and removal of a foreign student at our University was required when he followed a female student, waited for her near her dormitory, forcibly grabbed her hand, called her parents' home abroad, and refused to cease his behavior despite her pleas. The foreign student argued that in his culture, intense courtship is a legitimate method of obtaining a woman's attention. We could not accept this claim, and perceived our role as opposing the patriarchy universally.<sup>134</sup> In this context, we agree with Baker

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<sup>134</sup> For background on the concept of “patriarchy” in the context of feminism and the #MeToo movement, see Charlotte Higgins, *The Age of Patriarchy: How an Unfashionable Idea Became a Rallying Cry for*



that the abusive and threatening atmosphere women experience on campus is a result of the gender social order that encourages sexual desires of men and enables them to demand what they want.<sup>135</sup> The alternative justice approach in this regard is advantageous because it promotes the internalization of new norms of dignity and equality while developing critical consciousness within academic culture.<sup>136</sup> Indeed, sexual harassment is often rooted in a hierarchical relationship and may occur in various settings on campus, including in class, the library, or dorms.<sup>137</sup> MacKinnon offers an alternative legal discourse of sexual assault that highlights hierarchical forms of force including those related to psychological, economic, age, sex, gender, race, and class identities that, “when deployed as forms of coercion[,]” would have to be specifically identified in a legal context as coercive.<sup>138</sup> We find that addressing hierarchy with a relational emphasis “in the shadow” of clear protective law<sup>139</sup> has more potential for transformation and empowerment than using the common “command and control” version of legal intervention.<sup>140</sup>

#### F. BOTTOM-UP EMPHASIS & COMMUNITY DEVELOPMENT

The sixth and final principle of alternative justice is bottom-up emphasis and community development. Dispute resolution movements generally work from the bottom up and do not chart out the complete plan or preferred outcome until later in the process. These movements are united by their emphasis on empowerment through encouraging pluralistic perceptions and attempting to integrate diverse perspectives into a more effective practice which differentiates them from top-down projects of reform and

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*Feminism Today*, GUARDIAN (June 22, 201), <https://www.theguardian.com/news/2018/jun/22/the-age-of-patriarchy-how-an-unfashionable-idea-became-a-rallying-cry-for-feminism-today>.

<sup>135</sup> See Baker, *supra* note 46, at 865–66.

<sup>136</sup> See *id.* at 866, 884–85.

<sup>137</sup> *Id.*

<sup>138</sup> Catharine A. MacKinnon, *Rape Redefined*, 10 HARV. L. & POL’Y REV. 431, 474 (2016) (emphasis omitted).

<sup>139</sup> Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 968 (1979).

<sup>140</sup> There is a growing understanding today that existing institutions applying law fail to achieve compliance by command and control regimes, which are considered coercive. See JOHN W. BARTON, VIOLENCE EXPLAINED: THE SOURCES OF VIOLENCE, VIOLENCE AND CRIME AND THEIR PREVENTION (1997); Michal Alberstein, *Judicial Conflict Resolution (JCR): A New Jurisprudence for an Emerging Judicial Practice*, 16 CARDOZO J. CONFLICT RESOL. 879 (2014).

transformation.<sup>141</sup> The non-authoritative quality of conflict resolution models is related to the development of a regime without rigid rules, based instead on relationships and mutual respect.<sup>142</sup> Formal prescriptions—including legal rules—become marginal in the common search for understanding, and working guidelines can be revised when needed. Accordingly, all types of organizations can benefit from this process. Mediators work with parties to help them design and craft their own rules and dispute resolution systems focus entirely on the interests of various stakeholders in an organization.<sup>143</sup>

In addressing sexual harassment, one of the highlights of the SHC's work is bottom-up empowerment: giving voice to the complainant's distress, listening, examining needs, involving the individual in the process as much as possible in information on the harasser's response, respecting preferences, and addressing concerns. The complainant comes with a feeling of helplessness, seeking a remedy and a response, and the SHC strengthens them throughout the appeal to regain a sense of control over the situation. We always perceive the complainant as the one who knows best what happened and what will help them recover. The complainant—rather than the respondent or a third party—will define their injuries, hopefully enabling the complainant to free themselves from perceiving themselves as a victim and help return to routine professional functioning at the University. Accordingly,

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<sup>141</sup> Lon Fuller, a famous “father” of modern mediation, explains mediation's anti-authoritarian nature as follows:

The central quality of mediation [is] its capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another. This quality of mediation becomes most visible when the proper function of the mediator turns out to be, not that of inducing the parties to accept formal rules for the governance of their future relations but of helping them to free themselves from the encumbrance of rules and of accepting, instead, a relationship of mutual respect, trust and understanding that will enable them to meet shared contingencies without the aid of formal prescriptions.

Lon L. Fuller, *Mediation—Its Forms and Functions*, 44 S. CAL. L. REV. 305, 325–26 (1971).

<sup>142</sup> *Id.*

<sup>143</sup> Stephanie Smith & Janet Martinez, *An Analytic Framework for Dispute Systems Design*, 14 HARV. NEGOT. L. REV. 123, 131 (2009).

when we realized that an abusive or jealous husband claimed sexual assault allegations to use the institution to control his wife, we dismissed the claim as unfounded. This came after the female employee made clear to this author in a separate and honest conversation that she had not experienced any harassment. It is important to draw the line between promoting a respectful organizational culture and fostering puritan or conservative morality prohibiting any friendly physical contact whatsoever—especially when there is a conservative nature to the institution, such as at our University. The author considered strengthening the sense of agency of the organization’s members while giving effect to their choices and preferences a primary goal in processing claims.

In situations involving supervisor–subordinate relationships—among and between faculty and students—the law presumes lack of consent and states it may be considered harassment even if no objection is expressed by the complainant in real time.<sup>144</sup> This determination acknowledges the inherent weakness of the subordinate position and empowers the victim to reverse the power dynamics at play. Accordingly, when this author learned in retrospect of a romantic relationship developing between a unit director and a subordinate administrator, and the latter described the relationship as fully consensual, we informed her she could contact the SHC at any time if her perception of the relationship changed. She had the power in that regard. However, because the relationship was not reported from the outset, the unit director was exposed to a potential sexual harassment complaint if the subordinate decided to pursue this course of action, and the unit director would be responsible for the relationship. Following the notification, according to the subordinate’s claim, the unit director withheld his recommendation that she receive a scholarship that was important for her promotion and the development of her academic career. Apart from her request for documentation of this situation, the complainant refused to disclose the identity of the alleged harasser or to file a formal complaint. She did not disclose her own name or department, and insisted the faculty conduct no investigation into this case. Her description made it clear the alleged harasser did not make physical contact or an attempt for sexual contact with her. Finding a way to protect her and other potential subordinates while respecting her request not to be exposed was a challenge. We choose to instruct her on clarifying boundaries in case the courtship continued and ensure she insisted on receiving a professional attitude from her counterpart. Following this case, we circulated a letter to all the academic communities on campus clarifying the

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<sup>144</sup> See State of Israel Ministry of Justice, *supra* note 23.

proper boundaries in relationships with subordinates (which are very common at the University).

Another bottom-up aspect of the SHC's work includes collaboration with various University entities in conducting investigations. The inquiry process begins at the ground level, and often follows referrals from various sources other than the victim themselves. These include deans and heads of departments who have a duty to report, anonymous complaints, student organizations, or word-of-mouth rumors. Professional experts related to harassment cases assist the SHC, which include social workers, campus security, mental health professionals, criminologists, risk experts, and lawyers. The work of a SHC sometimes requires issuing restraining orders, obtaining professional opinions, and balancing conflicting legal considerations.

After the investigation, the SHC forwards findings and recommendations to the “superior in charge” of the respondent (the Rector when the complaint is filed against a faculty member, the Dean of Students when it concerns a student, or the Vice President of Human Resources when it concerns an administrator). The immediate access we have at Bar-Ilan University from the field investigation to the organization’s most powerful leaders provides an effective mechanism for addressing sexual harassment and for conveying a firm message to the organization’s various actors. We forward any minor complaint against a faculty member directly to the Rector after a rapid inquiry process. The same is true for students and administrators and their respective corresponding body. If necessary, we transfer the case for review by a special disciplinary committee after the investigation is complete. This combination of on-the-spot dialogue with the parties while bypassing bureaucracy to communicate quickly with those individuals at the top is a unique benefit of the SHC capacity as compared to the legal process.

The SHC’s advantages also lie in the short time needed to clarify and handle complaints via the administrative channel as opposed to the lengthy legal process.<sup>145</sup> According to research conducted by the Knesset (the Israeli parliament), the administrative procedure lasts only one month in more than 60% of cases in institutions of higher education, and in the context of the SHC’s treatment of cases at Bar-Ilan University, the treatment most often ended with the approval of recommendations within one week.<sup>146</sup>

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<sup>145</sup> Sari Luz Kanner et al., *Managerial Judicial Conflict Resolution (JCR) Of Plea Bargaining: Shadow Of Law and Conflict Resolution*, 22 NEW CRIM. L. REV. 494, 513–514 (2019).

<sup>146</sup> The Knesset (The Israeli Parliament) provided this data to commissioners during an annual gathering of the Parliamentary Committee for Advancement of Women to assess and compare on the

The SHC's activities involve bottom-up thinking that enable interdisciplinary exchange, the generation of creative solutions, and the formulation of norms based on experimentation and dialogue.

Lastly, another element relevant to bottom-up development is cultural sensitivity, which each institution should cultivate. The organizational culture in our University requires responsive regulation—a concept that points to the importance of adapting sexual harassment prevention measures and practices to the relevant community while developing self-regulation and considering the local culture.<sup>147</sup> Responsive regulation entails an enforcement pyramid that encourages compliance through mutual cooperation, and progresses from minor issues to serious ones while using soft norms and a measured response.<sup>148</sup> It challenges the demarcation among the civil–criminal–administrative nature of sexual harassment treatment by focusing on a scaled response adapted to the SHC's preventive role.<sup>149</sup>

Responsive regulatory activity should be sensitive to organizational culture, employ a variety of tools, and assume progress will be achieved on a case-by-case basis while learning from the field and striving for agreements.<sup>150</sup> This activity is relevant to behaviors that—legally speaking—are minor offenses but nevertheless require treatment and intervention.<sup>151</sup> Cases involving threatening looks, excessive closeness, or inappropriate jokes and suggestions may intimidate possible complainants. Thus, the author who served as an SHC makes clear this is not acceptable behavior that still requires a remedy even if it falls outside the scope of the law. At times, interpretations of personal advances differ, with some students interpreting this as harassment and others not

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national level reports provided by all academic institutions in Israel. The data was collected in 2016 from reports submitted to the committee by all academic institutions in Israel providing information of how SH complaints were treated in the years 2015 & 2016.

<sup>147</sup> See IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 5 (1992); JAY A. SIGLER & JOSEPH E. MURPHY, *INTERACTIVE CORPORATE COMPLIANCE: AN ALTERNATIVE TO REGULATORY COMPULSION* (1988).

<sup>148</sup> See John Braithwaite, *Responsive Regulation*, <http://johnbraithwaite.com/responsive-regulation/> (last visited Apr. 22, 2024).

<sup>149</sup> See generally Sarah L. Swan, *Between Title IX and the Criminal Law: Bringing Tort Law to the Campus Sexual Assault Debate*, 64 U. KAN. L. REV. 963 (2016) (discussing proper legal regime to address sexual harassment on campuses, addressing debate for and against Title IX enforcement by proponents of criminal involvement instead of administrative authorities).

<sup>150</sup> See Koss et al., *supra* note 133, at 244.

<sup>151</sup> See *id.*

seeing it as such.<sup>152</sup> For members of some minority groups, such as religious and ultra-orthodox, a casual expression or gaze at a woman may be interpreted as an insult. The starting point in any inquiry is recognizing the complainant's experience and strengthening their courage to file a complaint and address the injury. Simultaneously, granting full legitimacy to the injury does not necessarily require severe punishment of the respondent. Cases that are seemingly small and require an apology letter or boundary clarification are important because they elucidate the relationship between sexual harassment and maintaining a respectful culture while developing intercultural competence on campus in general.<sup>153</sup> Therefore, the author who served as an SHC chose to extend the boundaries of the position by providing monitoring and treatment through micromanagement in legally borderline cases.

The creative potential of the SHC to promote empowerment and care is part of her unique authority. At the end of the treatment process at Bar-Ilan University, there is a recommendation to the superior in charge—the Rector, the Dean of Students, or the Vice President of Human Resources, as appropriate. The recommendation could be a generic referral for the offender to a disciplinary committee or other action. Many times in the shadow of this authority, parties may settle cases with the resignation of the respondent or consensual arrangements equivalent to plea bargains in order to avoid the burden of a trial before the University tribunal.<sup>154</sup> Even in the most severe cases at Bar-Ilan University, when the respondent and their supervisor realize a violation of the law has occurred, the process of inquiry concludes with an agreed course of action and sanctions (which may be severe at times, such as permanent dismissal of the respondent). A dean of students who understands that a student is in danger will often use their authority to monitor the situation, and this may mobilize the dean to become a partner in preventing the next case of harassment.<sup>155</sup> We always

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<sup>152</sup> See Howard, *supra* note 12, at 507.

<sup>153</sup> See *id.* at 509.

<sup>154</sup> For an overview of the prevailing tendency to avoid trial and pursue plea bargains and settlements, see generally Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004); Marc Galanter, *The Hundred-year Decline of Trials and the Thirty Years War*, 57 STAN. L. REV. 1255 (2004); Michal Alberstein & Nourit Zimmerman, *Constructive Plea Bargaining: Towards Judicial Conflict Resolution*, 32 OHIO ST. J. DISP. RESOL. 279 (2017); Kanner et al., *supra* note 144.

<sup>155</sup> Considering the relatively minor nature of the cases this author has treated, no litigation has challenged recommendations suggested and implemented by the University. Cf. generally Erin E. Buzuvis, *Title IX and Procedural Fairness: Why Disciplined-Student Litigation Does Not*

emphasize our shared interest in promoting a safe and respectful organizational culture. The shadow of a prolonged semi-legal procedure is another incentive to encourage small-scale organizational change, which is the best way to address problems that require immediate intervention.

### III. GUIDELINES FOR RECONSTRUCTING THE SEXUAL HARASSMENT CASE

The above six alternative justice principles embody a particular set of conflict resolution ideals and practices that this article offers as guidelines for SHCs.<sup>156</sup>

**Build a process:** Make sure to structure the sexual harassment complaint hearing with problem-solving in mind, carefully setting the agenda, collecting relevant information, and providing a transitional space for transforming the harassment condition.<sup>157</sup>

**Develop a constructive, future-oriented perspective:** Perceive your role as encouraging a learning experience to empower relevant stakeholders—especially the complainant—in a process that encourages hope, well-being, and healing.<sup>158</sup> It is also important to learn how to prevent future similar cases.

**Deconstruct the conflict; complexify and manage it:** Many cases of harassment involve multiple subjects, ambivalent approaches, intersectional identities, and complex relationships.<sup>159</sup> Addressing this complexity is important for finding the appropriate creative response, treatment, and setting the hearing agenda.<sup>160</sup>

**Focus on the hidden layer:** Attempt to identify stakeholders' underlying needs and interests and the conflict's cause.<sup>161</sup> Actively listen to stakeholders, assuming that digging into the case while addressing needs and interests will enable creativity and synergetic solutions.<sup>162</sup>

**Focus on relationships and acknowledge emotions:** Target your intervention toward understanding, improving,

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*Undermine the Role of Title IX in Campus Sexual Assault*, 78 MONT. L. REV. 71 (2017) (describing the extensive litigation by disciplined students and its importance in terms of monitoring and supervising Title IX procedures).

<sup>156</sup> See generally *supra* Part II; see also Alberstein, *supra* note 58, at 130–42.

<sup>157</sup> See *supra* Part II(A).

<sup>158</sup> See *supra* Part II(B).

<sup>159</sup> See MNOOKIN ET AL., *supra* note 85, at 2–15, 28–43.

<sup>160</sup> See *supra* Part II(C).

<sup>161</sup> See FISHER & URY, *supra* note 60, at 42–57.

<sup>162</sup> See *supra* Part II(D).

maintaining relationships, and fostering a respectful culture on campus.<sup>163</sup> Acknowledging emotions can be an important step for stakeholders, allowing them to understand the situation more clearly.

**Work from the bottom up:** Empower victims and relevant stakeholders. Address any concern from the ground level, treating it swiftly and with a measured response.<sup>164</sup> Learn from colleagues from all disciplines and nurture a culturally sensitive approach.

#### IV. BETWEEN THERAPY & LAW

Some may argue various laws aimed at preventing sexual harassment intend to declare certain behaviors prohibited because society wishes to bring about changes in behavior that are often overlooked because of gender perceptions and norms. Providing a broad therapeutic response while internalizing the norm and protecting human dignity fits perfectly within the function of law as promoting social change and may even be its ideal application.<sup>165</sup>

Starting from the very first phone call, therapeutic elements are integrated into the SHC's work. The SHC must process claims quickly while protecting complainants and providing them a safe space. Investigations frequently require consulting with therapeutic experts, and the complainant—and sometimes the respondent—often requires counseling. Combining remedies—such as writing an apology letter and attending therapy to promote transformation and healing—is an integral part of constructively processing complaints. Part of this approach entails a follow-up to reassure complainants the situation is improving.

Nevertheless, therapy is not the only value that guides the SHC's work. Approaching the SHC may sometimes result in complainants' loss of control because the latter's personal interest is only one consideration among many guiding the SHC. Complainants who withdraw complaints—or whom victims reached following rumors from third parties—may be reluctant to cooperate with the investigation. In many cases at our University, they refuse to testify. Sometimes they urge the SHC to close the investigation and may become angry or even furious about opening a case they prefer to keep only to themselves. They may be afraid the SHC will not strictly maintain confidentiality and it will affect their career; too much sunlight, they fear, can burn. However, the SHC's role is to investigate a case for the potential victims' and community's benefit. The author who served in this role always explains the need

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<sup>163</sup> See *supra* Part II(E).

<sup>164</sup> See *supra* Part II(F).

<sup>165</sup> See Baker, *supra* note 46, at 884–85.



to keep handling the case for the victims' own sake, since there is always the possibility that, in retrospect, they may feel the University did not do enough and challenge the University as failing to adequately minimize the risk that harmful behavior will reoccur.

The SHC's role is to carefully balance the complainant's privacy right and her therapeutic sensitivities against what the SHC perceives as her own future interest, other victims' interests, the public interest in investigating and clarifying the case at hand, and the respondent's interest in clearing their name. This broad spectrum of interests may produce choices that may not be therapeutic in the strict individualistic sense. Nevertheless, explaining to the parties the variety of considerations imparts a sense of fairness and professionalism. Gaining their trust is one of the milestones in clarifying complaint processes that parties perceive as legitimate.<sup>166</sup> Therapy in the shadow of the law and authority becomes, in that sense, a unique quality of this process. The SHC's focus is not on personal needs as in clinical therapy but on narratives of entitlement, which individuals socially construct and practitioners need to address from a cultural perspective.<sup>167</sup> The SHC perceives emotions and needs as social-constructs, dependent on people's interpretation and their cultural perspective's framing and as susceptible to change and transformation over time. We can reconstruct narratives of harassment via the normative narratives of the law, transform the experience of a victim while maintaining a safe space, and provide an educational experience for the harasser.<sup>168</sup> Detailed annual reports to the Knesset and University management on anonymized cases the SHC treated exemplify the public nature of this role, which integrates anonymity for the individuals with transparency as to the modes of treatment.<sup>169</sup> The goal is to heal the social fabric via the unique public-private exchange that this process produces.

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<sup>166</sup> For more on limiting notions of legitimacy, see generally Walker, *supra* note 40. For a discussion of due process and cooperation, see David De Cremer & Tom R. Tyler, *The Effects of Trust in Authority and Procedural Fairness on Cooperation*, 92 J. APPLIED PSYCH. 639, 646 (2007).

<sup>167</sup> For a discussion of the relationship between narrative therapy and mediation, see generally WINSLADE & MONK, *supra* note 109.

<sup>168</sup> See generally *id.* (discussing how narratives of exaggerated entitlement may transform during a narrative mediation conversation, potentially during dialogue with the commissioner, as the harasser considers other perspectives on his conduct, including the effect on the victim and potential victims).

<sup>169</sup> See *supra* Part II(F).

## V. BEYOND SEXUAL HARASSMENT

When the Rector of my university asked me, the author who served as an SHC, to take on this role, I was honored and in awe. Yes, like many women—possibly all women—I experienced sexual harassment (#MeToo) and knew how important it is to fight this phenomenon and transform the organizational culture. At no time in my life had I imagined myself taking up such a delicate and demanding role of fighting publicly for this cause and being personally responsible for protecting so many vulnerable persons. The request was a calling—I knew I should say yes, but I did not know why or how. Each time I had a case to address, I felt this mission giving me energy to provide temporary redress, to collect evidence, to report and recommend, and to follow up. This sense of a mission, of a calling, was many times my guiding compass, the force behind insistence and persistence, often against other voices in the organization. I felt it was following this inner voice that gave me energy and guidance. Conducting this role requires strong intuition and a sense of justice, and some moments are filled with doubt: approaching the grey land of discretion, trying to capture the situation, demarcating the relationship and context, and framing and reframing my expected role.

Sexual harassment is only one of many contexts that require responsive regulation and a conflict resolution approach. In that sense, this article illustrates an innovative way for the law to advance from one case to another while aspiring to transform organizational culture. Many consider sexual harassment one form of discrimination based on cultural bias, and, in that sense, this approach can be expanded to address other minorities including LGBTQ+ communities, ethnic and religious communities, people with disabilities, and so forth. This second stage should encourage sexual harassment lessons to promote intercultural competence and to fight racism, discrimination, and implicit bias beyond sexual harassment to many forms of social discrimination.<sup>170</sup>

Our workplace—the University at the center of this article—constitutes our second home because we spend much of our time and daily life there. Sexual harassment threatens not only the social fabric of the University, but also the research and learning conducted there and hence requires effective intervention. The University’s self-regulation of this intervention accounts for the

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<sup>170</sup> Indeed, my current role at the University is as the “Chair of Israeli Hope” in academia: a commissioner for the promotion of integration of the tribes of Israeli society, a project sponsored by the President of Israel, Reuven Rivlin, and by the High Council of Education. The project aims to encourage intercultural competence and to fight discrimination and bias.

unique character and needs of the organization, combines therapy with authority, and implements conflict-prevention risk management of the situation. Seeds for such an approach mostly exist today in problem-solving courts and small enclaves of ADR processes, but the greater part of legal practice is still based on a command-and-control perspective, a narrow application of norms, and a focus on the past. Taking lessons from sexual harassment treatment as a paradigm for conflict resolution in the shadow of the law may have far-reaching influence on the practice of law in general and on the possibility of promoting social change via legal action.