

# International Crossways

## Traffic in Sexual Harassment Policy

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**ABSTRACT** This article examines how sexual harassment has been conceptualized by French feminists in an increasingly global political environment, demonstrating how feminist ideas, politics and legal initiatives are transformed as they travel across space and time. I argue that feminist networks have been a central determinant of the ways in which ideas about sexual harassment have spread across the globe in the past 20 years. However, I further contend that there were basic national differences in political, legal and cultural traditions that made it likely that feminist concepts and policies would be translated as they traveled. Moreover, I show how certain social actors heightened the importance of such cultural differences through 'symbolic boundary work'. Finally, I discuss how feminist activists both distance themselves from negative stereotypes of American feminist approaches to sexual harassment and simultaneously draw on international networks and ideas to expand the scope of French sexual harassment law.

**KEY WORDS** activists ♦ AVFT ♦ European Union ♦ feminism ♦ France ♦ globalization ♦ law ♦ media ♦ networks ♦ sexual harassment ♦ United States

### INTRODUCTION

In a consciousness-raising group in 1974, Lin Farley discovered that each member of the group had 'already quit or been fired from a job at least once because we had been made too uncomfortable by the behaviour of men' (Farley, 1978: xi). Such discussions convinced Farley (and others) that this behaviour needed a name; they decided that the term 'sexual harassment' came 'as close to symbolizing the problem as the language would permit' (Farley, 1978: xi). In the years that followed, 'sexual harassment' was transformed from a problem with no name to a body of law, first in the US and then in countries across the globe. In 1986, the US Supreme Court ruled in *Meritor v. Vinson*<sup>1</sup> that two kinds of sexual harassment were illegal under Title VII of the Civil Rights Act of 1964 (42 USC

§§2000e-2000e-17 [1994]), which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. In quid pro quo sexual harassment, a supervisor makes sexual relations a condition of continued employment. In hostile environment sexual harassment, a supervisor, colleague, or several co-workers engage in sexual or sexist innuendo or behavior that is sufficiently 'severe or pervasive' to constitute a hostile environment that negatively affects an employee's conditions of employment. In both cases, it must be shown that the behavior was discriminatory, or targeted against a person because they belonged to a protected class (i.e. were women or men).<sup>2</sup>

In 1985, the French feminist association L'Association européenne contre les violences faites aux femmes aux travail (AVFT: the European Association Against Violence Towards Women at Work) was formed to combat, as their name suggests, 'sexual violence against women at work'. In politicizing this issue, the founders of the AVFT drew from personal experience (one had been subjected to sexual pressures at work) and collective French history (another was working on a book that documented the history of *le droit du seigneur* in France – Louis, 1994). The AVFT further built upon an established French feminist agenda of denouncing sexual violence, including rape, sexual battery and domestic violence. During the time in which the AVFT was politicizing the problem of sexual harassment in France, however, sexual or gendered violence in the workplace was already a subject of law in the US. French Canadians were also increasingly concerned about the issue they called *harcèlement sexuel*, a direct translation of 'sexual harassment' and a term that the AVFT also adopted in 1985, and sexual harassment was a growing concern in Europe (see Rubinstein, 1987).

How did events in North America and Europe shape French debates about sexual harassment? On one hand, French feminists, particularly through international feminist networks, were active participants in global politics and 'traffic in feminism' (see, for example, AVFT, 1990a). On the other, fears about imitating a supposed American approach to sexual harassment were being fed by media reporting on Anita Hill's accusations of sexual harassment against then Supreme Court nominee Clarence Thomas (see Delphy, 1993; Fassin, 1991). What was the effect of such competing global forces? Were the AVFT's initiatives ultimately furthered or impeded by such a larger political context? Have international feminist networks and organizations contributed to a flattening of national difference or, on the contrary, have fears of American cultural imperialism led to a heightening of national specificity? Is it possible that these different tendencies have in some ways coexisted?

This article addresses these questions by examining how sexual harassment has been conceptualized by French feminists in an increasingly global political environment. In so doing, this article offers an opportunity

to understand the ways in which feminist ideas, politics and legal initiatives are transformed as they travel across space and time. I argue that feminist networks have been a central determinant of the ways in which ideas about sexual harassment have spread across the globe in the past 20 years. However, I further contend that there are basic differences in national political, legal and cultural traditions that ensure that feminist concepts and policies will be translated as they travel. Moreover, I argue that certain social actors can heighten the importance of such cultural differences through 'symbolic boundary work' (Lamont, 1992).

### GLOBALIZATION, NATIONAL SPECIFICITY AND SYMBOLIC BOUNDARIES

There has recently been a surge of work documenting the importance of 'globalization', or the increasingly international nature of, for instance, economic markets, politics and culture (see Boli and Thomas, 1997; Meyer, 1994; Meyer et al., 1991; Strang and Meyer, 1993). Boli and Thomas (1997), for instance, identify the principles of universalism, individualism, voluntaristic authority, rational progress and world citizenship as central elements of world culture. According to these authors, work on international change in the status and role of women shows that world cultural models now make state action on behalf of women virtually obligatory, as states learn that they have an interest in placating transnational and domestic women's groups committed to equality (Berkovitch, 1994, cited in Boli and Thomas, 1997: 186). A growing body of literature in this tradition demonstrates the ways in which local legislation is often influenced more by international norms than by local public opinion (e.g. Boyle and Preves, 2000).

However, despite the importance of international networks, legislative debate and jurisprudence as well as political debates still take place largely in a national context. In some places and for some issues, such as female genital cutting in many African countries (Boyle and Preves, 2000), international norms are particularly decisive. However, in other national contexts and in regard to different issues, this is not so clearly the case. Ultimately, the extent to which politics and law are primarily shaped by international norms, local politics, or a complex interplay between the two remains an empirical question. Through documenting variation, students of globalization can gain insight into the circumstances that shape different outcomes.

Countries, like France, with strong national political traditions may be more likely to resist international norms, particularly when they are seen as antithetical to 'national traditions'. Drawing on the work of sociologist Michèle Lamont (1992), I use the term 'boundary work' to refer to the way

in which social actors emphasize 'symbolic boundaries' between themselves and others. By drawing inclusive boundaries, individuals affirm similarities between themselves and specific others, thereby affirming some group identity. In contrast, by drawing exclusive boundaries, individuals define their own identity in opposition to others. Though Lamont uses the concept of symbolic boundaries to explain interpersonal behavior, it is also useful for understanding more macro-political and cultural processes. From this perspective, the kind of macro-cultural convergence noted by students of globalization can occur when political actors affirm international similarities, often as a way of gaining political legitimacy. However, political actors can alternatively reject international cultural models by drawing exclusive boundaries. Such 'boundary work' can have an important impact on public policy, as is demonstrated by the case of French legislative and political history of sexual harassment.

#### DATA AND METHODS

This article draws on several sources of data, collected using multiple methods. First, I examined the major French and American sexual harassment legal texts, including statutes and jurisprudence. Second, using a detailed coding scheme and statistical analysis, I analyzed 681 randomly sampled articles in which the term 'harcèlement sexuel' or 'sexual harassment' appeared in the title or lead paragraphs in three of the leading French and three of the leading American newspapers and news-magazines (i.e. *Le Monde*, *L'Express*, *Le Nouvel Observateur*; *New York Times*, *Time*, *Newsweek*) during the period between 1975 and 2000. Third, I conducted almost 60 in-depth interviews with feminist activists, public figures (including Elisabeth Badinter, Françoise Giroud, Marie-Victoire Louis, Catherine MacKinnon, Camille Paglia, and Phyllis Schlafly), lawyers, human resource personnel and union activists. Rather than a representative sample of French and Americans, the respondents are cultural entrepreneurs, who, through their jobs or voluntary activity, are likely to have a particular impact on the conceptualization of this social problem.

#### CROSS-NATIONAL EXCHANGE OF IDEAS

Since its inception, the AVFT has collaborated with many European and North American activists and scholars. The association has used North American and European research and policy to academic, political and legal ends. For instance, the first AVFT conference on sexual harassment and the anthology that grew out of it included work by a range of French

and international scholars, including, for instance, Catherine MacKinnon (AVFT, 1990a). Marie-Victoire Louis further explained that, when writing her 1994 book *Le Droit de cuissage*, reading American and Canadian feminist work 'saved [her] years of reflection'. Yet, Louis was also committed to writing a history of sexual violence in France in order to dispute popular claims that French traditions of gallantry and harmony between the sexes served as an antidote for sexual violence in France (see, for example, Ozouf, 1995; and, for a critique, Ezekiel, 1995; Scott, 1995). Louis's academic work thus also served a political purpose: legitimizing the mission of the AVFT in France.

The AVFT also drew on American and European policy to advocate for sexual harassment legislation in France in the early 1990s and received subsidies in the early years of the association from the EU. According to Louis:

The [European] Council's decisions and recommendations allowed us to push the [French] legislation. It was an extraordinary tool. . . . [Our use of it] was strategic. The association got its first concrete financial support from [the European Community]. . . . So Europe allowed us to live financially and we could draw on those different declarations . . . and sexual harassment surveys [to argue our case].

The AVFT used the European directive, report and recommendation to argue for the necessity of a sexual harassment law in France. In June 1990, the AVFT proposed a penal law that defined sexual harassment as:

Any act or behavior towards a person that is sexual, based on sex or sexual orientation and has the aim or affect of compromising that person's right to dignity, equality in employment, and to working conditions that are respectful of that person's dignity, their moral or physical integrity, their right to receive ordinary services offered to the public in full equality.

This act or behavior can notably take the form of: pressure [*pressions*], insults, remarks, jokes based on sex, touching, battery [*coup*], assault, sexual exhibitionism, pornography, unwelcome implicit or explicit sexual solicitations, threats, or sexual blackmail. (AVFT, 1990b)

Like American law but unlike the French law that was ultimately passed, this proposal defined sexual harassment to include not only what is called in American law 'quid pro quo' sexual harassment, when a boss offers an ultimatum: 'accept my sexual advances or lose your job', but also 'hostile environment' sexual harassment – sexual or sexist behavior or speech on the part of a superior or colleague that falls short of an ultimatum.<sup>3</sup> Unlike American law, but similar to the European recommendations, this proposal also condemned discrimination on the basis of sexual orientation. While, like American jurisprudence it stressed people's rights to

employment opportunity, unlike US law, the AVFT proposal also stressed their rights to dignity, moral and physical integrity, and services.

#### FRENCH SEXUAL HARASSMENT LEGISLATION

Much to the disappointment of the AVFT, the penal law that was eventually passed in 1992 only targeted instances in which a boss uses or tries to use his official authority to coerce an employee into having sexual relations with him or with a third party. It stated:

The act of harassing another by using orders, threats, or constraint in the goal of obtaining sexual favors, by someone abusing the authority conferred by his position, is punished by [a maximum of] one year of imprisonment and [a maximum] fine of 100,000 F. (Art. 222-33 du Code Pénal)<sup>4</sup>

A second sexual harassment law was added to the Labor Code in 1992 and provided additional recourse for victims of employment retaliation linked to sexual harassment at work (Art. L. 122-46). It stated:

No employee can be penalized or dismissed for having submitted or refusing to submit to acts of harassment of an employer, his agent, or any person who, abusing the authority conferred by their position, gave orders, made threats, imposed constraints, or exercised pressure of any nature on this employee, in the goal of obtaining sexual favors for his own benefit or for the benefit of a third party. (Art. L. 122-46)<sup>5</sup>

However, neither French statute recognized hostile environment sexual harassment or sexual harassment among peers, nor did either statute establish genuine employer liability for sexual harassment (see Benneytout et al., 1992; Felgentrager, 1996). Moreover, the French sexual harassment laws ultimately defined sexual harassment as a form of sexual violence but *not* as a form of sex discrimination in employment. In the sexual violence frame, sexual harassment is condemned because it involves the imposition of sexual relations against someone's will. Whereas physical force is the means by which sexual relations are imposed in rape, professional hierarchical power and the victim's dependence on her or his job is the means by which sexual relations are imposed in the French conception of sexual harassment. In contrast, according to the discrimination frame, harassment is illegal because it is targeted at women because they are women (or at men because they are men, in some cases) and has a negative effect on the victim's employment opportunities (see Saguy, 2000; Franke, 1997). While according to American law, sexual harassment is compensated with civil remedies (considerable monetary compensation from the employer paid to the sexual harassment

victim), French law proscribed penal sanctions (fines and prison terms, in practice suspended prison terms) and very small monetary compensation from the harasser (typically 1800 Euros).

In an article, three members of the AVFT criticized the penal law, particularly for not addressing hostile environment sexual harassment:

Touching, sexist language and insults, pornography, etc. – whose function is not to obtain sexual relations with a specific person, but most of the time is a product of *sexist behavior* and has the goal of humiliating the harassed person – is not accounted for. Yet, such repeated sexual and sexist behavior can gravely affect the person's health, upset their work and professional relations and usually lead her to resign. (Benneytout et al., 1992: 3)

These authors pointed to several negative effects of hostile environment sexual harassment, including in employment and health. They further pointed out that this definition contradicted the European Community Recommendation (No. 92/131/CEE).

Once sexual harassment laws were added to the French Penal and Labor Codes, the next challenge was seeing that they were enforced. The AVFT greatly contributed to this effort through its publications and by providing emotional support and legal counsel for victims of sexual violence at work. In the past few years, legally trained employees of the association have begun representing sexual harassment plaintiffs, rather than referring them to outside lawyers, an initiative that has led to more successful outcomes for plaintiffs, according to AVFT members.

#### THE AVFT INTERPRETS FRENCH SEXUAL HARASSMENT LAWS

Despite reservations about available French sexual harassment laws, the AVFT has put them to good use. Drawing on solid knowledge of national law and politics as well as international networks, this association has worked to ensure that the existing laws are enforced and, through its publications and work on behalf of sexual harassment victims, has tried to push the courts and general public to interpret the laws as broadly as possible. In interviews, AVFT members spoke openly about their ties to feminist intellectuals and activists across the globe, with whom they exchange knowledge and share personal ties. National, international and foreign conferences and workshops, organized by the UN, universities, or various associations, have given AVFT activists the opportunity to participate in international feminist dialogs that have shaped their perspectives. They have used these perspectives to complement French legal definitions. For instance, although French law defines sexual harassment as a form of sexual violence but not a form of sex discrimination, the

following activist drew on Canadian arguments to show that sexual harassment is the quintessential form of sex discrimination: 'As the Canadian women say, "For guys, it's clear. . . . A woman is there to be pretty, made up, in a short skirt, even fondled." . . . It's because she's a woman that she is treated like that. So if that's not discrimination, I don't know what is!'

This same activist, who was trained as a jurist and is particularly skillful in drawing on American, Canadian and European legal concepts as well as French law, said in response to a vignette that described a situation in which a female salesperson is ogled by her male superior and repeatedly asked about her sex life and sexual availability:

One could consider that this creates a sexist environment. It's the type of environmental harassment that would not at this moment be pursued by the law narrowly conceived [in France]. But, in my opinion, that could change because, you have to be logical. . . . I don't see what [the victim] can think besides: 'if I don't smile, if I don't laugh when he says these stupid things, I could be fired at the next downsizing.' One must be realistic. In my opinion, there is constraint. And . . . if she says yes, he won't say no. So, implicitly his remarks aim at obtaining sexual favors.

This respondent borrowed the term 'environmental harassment' from the American legal category 'hostile environment' sexual harassment. However, because French law did not, at the time, recognize hostile environment sexual harassment, she subsequently drew upon the French legal concepts of 'constraint' and 'sexual favors' to demonstrate that the behavior at hand should be considered sexual harassment as legally defined in France. This is indicative of the kinds of argument the AVFT has made in French courts on behalf of sexual harassment plaintiffs.

#### FRAMING OF SEXUAL HARASSMENT IS INFORMED BY POLITICAL AND LEGAL TRADITIONS

We have seen how, despite international networks and processes of globalization, sexual harassment has been defined differently in France than by the EU or in the US in its scope, frame and remedy. While the EU and US defined sexual harassment to include hostile environment sexual harassment and harassment among peers, French lawmakers, in 1992 and again in 1998, restricted the scope to a boss who uses his official authority to coerce a subordinate into having sexual relations with him or a third party. (The law would be extended to colleagues, however, in 2002 with the passage of *la loi sur la modernisation sociale*, discussed further in the conclusion.<sup>6</sup>) While the EU framed sexual harassment as both an affront to dignity and a violation of equal opportunity and the US framed it as a

form of sex discrimination in employment, France framed sexual harassment as a form of sexual violence but not as a form of employment discrimination. Finally, according to American law, sexual harassment is compensated with civil remedies (considerable monetary compensation from the employer paid to the sexual harassment victim), while French law proscribed penal sanctions (fines and prison terms, in practice suspended prison terms) and very small monetary compensation from the harasser. What accounts for these differences? One reason is that this legislation was shaped by French political and legal traditions that are specific to France.

In the US, the framing of sexual harassment as a form of sex-based employment discrimination was built upon political and legal traditions of civil rights and identity politics that are not part of French political culture. Politically, France has never had a civil rights movement equivalent to that of the US in the 1960s, which has left an important political legacy, including a stress on group-based discrimination and identity politics, based upon, for instance, race, ethnicity and gender. French political leaders and philosophy have been opposed to categorizing people according to racial, ethnic or religious affiliation, out of fear that this information could be used to persecute minority groups. This is institutionalized notably in the French census, which does not gather information about race, ethnicity or religion. Since the separation of church and state under the Third Republic, French citizens have been expected to confine their customs and beliefs to the 'private sphere', meaning both that the state should not segregate citizens according to these criteria and that citizens should not 'politicize' these differences (Noiriel, 1992: 109). Arguments about 'French universalism' historically have been particularly powerful in discredited calls for the politicization of group (i.e. racial or gender) identity (Fassin, 1998; Scott, 1997; see also Brubaker, 1992), although there is some evidence that competing models are rising in importance lately (see Daley (2001) on Science Po's new affirmative action policy).

On the other hand, France does have a long history of politicizing work-based group identities in its social policies, social theory, labor law, unions and occupational-group representations, such as 'socioprofessionnels', within the *Commissariat au plan* committees (Boltanski, 1987; Desrosières and Thévenot, 1988). France also has a long tradition of critiquing the arbitrary use of power (see Crozier, 1964: 220; Lamont, 1992: 49). These traditions of social divisions along work-based group identities and a mistrust of professional hierarchical power were compatible with an understanding of sexual harassment as an abuse of professional hierarchical authority, while the relative dearth of (racial, ethnic and gender) identity politics posed a challenge for French feminists who argued that sexual harassment was an instance of sex-based discrimination. In early discussions about sexual harassment, in the late 1980s, French activists,

intellectuals and journalists linked the contemporary issue of sexual harassment to the historically contested *droit de cuissage*, *droit de seigneur* or First Night, in which lords were entitled to sleep with their serfs' brides on their wedding night, a right that was later forgone in exchange for a specific tax.<sup>7</sup> In the 19th century, the term *droit de cuissage* was used to refer to overseers who, because of the enormous power they had over female factory workers, engaged in (often consensual and frequently coerced) sexual relations with them, a practice that was condemned by several strikes and demonstrations (Louis, 1994). This term was 'reinvented' in the late 1980s to raise consciousness about what was then beginning to be called 'sexual harassment'. Note how *le droit de cuissage* focuses only on behavior in which a person uses his professional authority to obtain sexual intimacy with a person under his orders and not on hostile environment or peer sexual harassment. Indeed, as long as power was understood as emanating only from one's position in a professional hierarchy and not one's gender, it is difficult to conceptualize either more 'hostile environment' sexual harassment or sexual harassment among professional hierarchical peers.

When political traditions are institutionalized in laws, they potentially become more powerful predictors of public policy. An important product of the civil rights movement in the US was Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin. Not only does Title VII reinforce cognitive and political understandings of (racial, gender and religious) group-based social inequality, but it also provides a particular legal avenue for addressing such harm, involving a civil trial and civil remedies. Specifically, under Title VII, the employer is held liable for all forms of discrimination in employment, including (since 1986) sexual harassment. The prior existence of Title VII provided American feminists with a legal frame for sexual harassment (a form of employment discrimination) and a legal avenue for recourse (civil trial and civil remedies), assuming that they could make the case that sexual harassment was a form of sex discrimination, which they ultimately did (see Saguy, 2000).

As discussed earlier, France does not have a civil rights political tradition, although it has a strong tradition of labor law (see Saguy (2000) for a discussion of how this plays out in the case of sexual harassment). Considering this, it is not surprising that French discrimination law is more narrowly defined and poorly enforced. All of the French lawyers and activists that I interviewed agreed that French employment discrimination law is exceedingly difficult to prove and is poorly enforced. There are enforcement problems with French penal laws banning sexual violence, like rape and assault, as well, but French outrage about such criminal acts has grown over time, partly in response to the work of French feminists.

Considering both French political and legal traditions, it is not surprising that sexual harassment was defined, in laws passed in 1992, as a form of sexual violence, rather than as an instance of sex discrimination, its legal scope limited to only sexual coercion on the part of a professional hierarchical superior, and remedied with penal damages.<sup>8</sup> However, neither political nor legal traditions dictate social policy independent of social actors. In the next section, I use the concept of boundary work to discuss how French lawmakers, journalists and public figures have evoked the national specificity of France in opposition to 'Anglo-Saxon' countries to oppose alternative definitions as 'un-French'.

### JOURNALISTS, PUBLIC FIGURES AND LAWMAKERS ACCENTUATE NATIONAL DIFFERENCES THROUGH BOUNDARY WORK

The mass media has accentuated apparent national differences between the US and France in its reporting on sexual harassment. Of 185 articles published in the leading French newspaper and news magazines (*Le Monde*, *L'Express*, *Le Nouvel Observateur*) on the topic of sexual harassment from 1985 to 2000, 48 percent, or almost half were primarily about the US rather than France.<sup>9</sup> This focus on the US reveals that sexual harassment is treated largely as an American issue, rather than predominantly as a topic of domestic concern at home. Moreover, when reporting on the US, the French press has tended to focus on 'American excesses' of litigiousness, Puritanism and Battle of the Sexes, thereby serving as a warning to French readers that sexual harassment law should be approached with caution (e.g. Badinter, 1991; see also Delphy, 1993). According to an article in *Le Point* (25 January 1992: 68):

The counter example that the [French] lawmakers fear, is obviously the United States. A country where male [in French, *le mâle*] has become the synonym of incarnated evil [in French, *mal*]. Where the *politically correct* [in English in original], this soft dictatorship of non-discrimination, obliges men to always be on guard so as not to be reprimanded, chased out, fired, or heavily condemned by the courts.

This article cites Elisabeth Badinter, who explains:

'In the United States, but also in Great Britain, a virility crisis arose at the end of the 19th century for many complex reasons. France escaped [this crisis]. Then a terrible spiral of male violence, fear, hatred, and finally the war of the sexes followed. . . .' But Elisabeth Badinter does not imagine for a moment, for example, that the incident involving Judge Thomas, who his ex-secretary [*sic*] accused before the Senate of pornographic language and sexual bragging, when he was supposed to be confirmed as member of

the Supreme Court, could be reproduced one day in France. 'A Frenchman who draws his sexual organ in front of his secretary or says that someone put a pubic hair on his glass of Coca Cola would just pass for an idiot,' she exclaims. 'It's a strength of this French connivance in male-female relations. I consider that it is a triumph of our civilization.' (*Le Point*, 25 January 1992: 69; see also Ozouf, 1995; and, for a critique, Ezekiel, 1995, 2002; Scott, 1995.)

The French press and French public intellectuals like Elisabeth Badinter and Michèle Sarde (see *Le Point*, 25 January 1992: 69) have thus focused on the threats of sexual harassment *law* rather than the act of sexual harassment itself and have presented the domestic problem of sexual harassment as a question of national gender cultures and, by extension, *national identity*.

Drawing on French media reporting of sexual harassment in the US, French lawmakers argued, in the early 1990s, that sexual harassment bills à l'américaine would disrupt gender relationships and threaten everyday seduction. The official Senate report on the Labor Code reform summarized such concerns:

Recent press articles report that in [the US] 'the simple act of holding the door open for a woman can elicit a severe reprimand, and that most men admit to being much more cautious in their dealings with women in the workplace. Sometimes this resembles a caricature and can even turn against women by leading to segregation, fatal for equilibrated gender integration and normal work relations.

This conclusion can, in particular be drawn from the manner that Supreme Court candidate Mr. Clarence Thomas's judgment played out after he was accused of sexual harassment by one of his former employees, Anita Hill. (The Official Report of the Senate, No. 350, Seconde Session Ordinaire de 1991-1992: 16-17)

Such criticism of the American model was so pervasive that eventually, Yvette Roudy and Véronique Neiertz, the lawmakers who proposed the criminal and labor sexual harassment laws, respectively, were forced to address them. In order to salvage their bills in a climate in which the Hill-Thomas debate was being used in France to warn of the dangers of sexual harassment law, each presented revised bills that defined sexual harassment narrowly – as abuse of official authority to obtain sexual relations – and argued that these modest proposals would respect the 'specificity of French culture'. In legislative debates, these bills were portrayed as modest, 'avoid[ing] the excesses of North American legislation' that lead 'to the repression of libertine discussion [*propos grivois*], *gauloiseries* [literally meaning typical of the French, also called the Gaulles, but referring to lewd discussion], or simple light jokes or comments having to do with sexual relations' (Assemblée Nationale, 1992: 28). Yvette Roudy explained:

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When I proposed it to the socialist group, the first reaction was: 'You aren't going to prohibit flirting. We aren't in the United States.' I explained to them. Sexual harassment in the corporation, abuse of power, exploitation. If there wasn't a hierarchical dimension, the group would not have accepted it, fearing that it would be penalizing flirtation. (*Libération*, 30 April 1992)

In other words, Roudy strategically emphasized the most taken-for-granted ideas about inequality in France – professional hierarchical power – rather than developing more controversial themes of sexism and discrimination. Likewise, when presenting her proposal of a sexual harassment labor law, Véronique Neiertz disarmed her adversaries by contrasting the 'reasonable' character of the French initiative to American 'excesses' and by limiting the content of the project to address only sexual harassment of an employee by her or his boss (*Le Point*, 25 January 1992; see also Jenson and Sineau, 1995: 287).

#### FEMINISTS RESPOND TO ANTI-AMERICAN RHETORIC AND DRAW ON INTERNATIONAL NETWORKS

Negative representation of the US has continued to shape French understandings of sexual harassment, even after 1992, when the penal and labor laws were passed. Such skepticism has not been limited to political conservatives or anti-feminists, but, on the contrary, has been expressed by many of those affiliated with the left and with feminism. Indeed, two of the most vocal critics of American approaches to sexual harassment law include Françoise Giroud, politically center and a former Secretary of Women's Rights, and Elisabeth Badinter, a prominent intellectual and a self-identified and press-identified 'feminist' closely affiliated with the French Socialist Party.

In interviews, Françoise Giroud and Elisabeth Badinter praised the 1992 French sexual harassment laws for their exclusive focus on abuse of power and criticized the broader reach of American regulation. In defending the French laws, Giroud and Badinter drew symbolic boundaries against Americans and, more specifically, against American feminists. They presented American society as seized by gender warfare and France as a place of harmonious relations between the sexes. Françoise Giroud explained:

Two big centuries ago, the French invented a way of speaking amongst each other, of loving each other – I'm talking about men and women – and of making conversation, of having relationships that are a lot softer and sweeter than American relationships. There is no comparison. And that's felt in the whole history of these last years.

In this context, Giroud and Badinter argued that French women can

negotiate most situations well on their own (see also Ozouf, 1995; and, for a critique, Ezekiel, 1995; Scott, 1995).

In her interview, Elisabeth Badinter argued that sexual harassment law would 'rule out the possibility that couples will form, that people will date, have flings'. There are people in the US who have also criticized sexual harassment policies as threats to 'sexual freedom'. However, in France, such arguments have often been framed in opposition to the US (e.g. Badinter, 1991). Some French journalists and intellectuals have contrasted alleged French respect for *vie privée* (a personal sphere outside state control) to American disregard for this principle, manifested in articles about politicians' sex lives and in 'overzealous' sexual harassment laws.

Yet other French social actors have contested the existence of such a 'French character' and have criticized the 'narrowness' of French sexual harassment law and the uneven protection of privacy among the powerful (men) and powerless (women). One French study of Mitterrand's presidency, for instance, described how the French press has targeted female French politicians' physical appearance and sexual behavior (Jenson and Sineau, 1995: 334). Likewise, French scholars have denounced the fact that courts rarely respect rape victims' privacy, but rather, scrutinize their sexual past for signs that they welcomed the assault (Mossuz-Lavau, 1991), historically a problem with the prosecution of rape in the US as well.<sup>10</sup> Activists at the AVFT have expressed similar concerns about the privacy of sexual harassment plaintiffs.

In an interview, Marie-Victoire Louis argued that negative caricatures of American feminists serve to disqualify and intimidate French feminists (see also Louis, 1999; Ezekiel, 1995). Other AVFT activists and many of the French plaintiff lawyers I interviewed concurred that myths about 'American excesses' are often used to discredit their work.

As this article was going to press, the debate over sexual harassment erupted anew in France when a group of graduate students started a petition. CLASCHEs (Collectif de lutte anti-sexiste contre le harcèlement dans l'éducation supérieur – Collective for the Anti-Sexist Fight against Harassment in Higher Education) denounced the practice of and silence surrounding sexual harassment in higher education, particularly by a professor of his students. In the petition, CLASCHEs argued that the penal code was 'indispensable' but 'largely insufficient' and that the institutions of higher education 'provide themselves the means to fight against sexual harassment'. Specifically, the petition demanded: '1) To immediately clarify and diffuse information relative to sexual harassment and notably the law that punishes it; and 2) to put in place disciplinary regulations and qualified commissions including representation from students' (see also Le Collectif CLASCHEs, 2002).

The petition and the support it received (see, for example, Fassin, 2002) was in itself newsworthy in a context where the existence of sexual

harassment in France was minimized in general, and in higher education in particular. The mass media interest, however, was heightened when it learned of a particular case involving a high-profile intellectual being pursued in penal court for sexual harassment by one of his doctoral students, who began penal proceedings only after the academic authorities had failed to help her (Pierrat, 2002).

An in-depth treatment of this media reporting is beyond the scope of this article, although it merits further discussion. Suffice it to say here that allusions to 'American excesses' or 'politically correct' (an American 'movement') resurfaced as a ploy to discredit those wanting to bring sexual harassment in higher education under the spotlight (see Grosjean, 2002; Lanez, 2002). In response to such arguments, the plaintiff's lawyer countered in *Le Monde* that his client was involved in a classic 'French story' of '*le droit de cuissage*', and that 'sexual harassment did not surge into our French law as a clone thought up in Hollywood' (Pierrat, 2002).<sup>11</sup>

## CONCLUSION

In sum, we have seen that traffic in feminist ideas and policies does not happen automatically but requires activists, networks and organizations to facilitate the movement of ideas and practices. Moreover, imported ideas are invariably transformed as they interact with political and legal traditions. If those resistant to change can convince others that a new idea threatens national traditions, it may be possible to reject the former outright as, for instance 'un-American' (in the case of American response to 'communist' or 'socialist' ideas) or 'un-French' (in the case of French response to 'American' ideas).<sup>12</sup>

In other words, the perceived origin of ideas often has great symbolic importance. Because of the historical suspicion and hostility that exists in France toward the US, anti-American arguments are powerful a priori.<sup>13</sup> Savvy political actors wishing to discredit particular policies may thus frame them as American imports when possible (see, for example, Bleich (2000) on French discrimination law), whereas intelligent political reformers will downplay any American influence in their reforms and stress instead how they are grounded in French tradition.

In the case of sexual harassment legislation in the early 1990s, French lawmakers, public figures and journalists appealed to 'French culture' to justify limiting French sexual harassment law to abuse of professional hierarchical power. As this article was going to press, the French sexual harassment statutes were modified to apply to co-workers as well as to professional hierarchical superiors.<sup>14</sup> Does this mean that the American model finally overcame French resistance? I would answer that question with a clear and resounding 'no'.

It is beyond the scope of this article to treat the *loi sur la modernisation sociale* in detail. It should be noted, however, that the original text, concerned with downsizing, said nothing about sexual harassment. The amendment concerning sexual harassment was added after the addition of an amendment on *moral* harassment, a concept coined in 1998 in the book of the same name by psychologist and psychotherapist Marie-France Hirigoyen (1998). Though Hirigoyen studied in the US (and France) and made reference to American discrimination laws in her book, she framed 'moral harassment' as a form of interpersonal violence and perversion, as the subtitle of her book 'Perverse Everyday Violence' clearly reveals. Presented in such individual terms and devoid of any discussion of discrimination, sexism, or sexuality, the concept seemed to resonate with the French who turned *Harcèlement Moral* into a bestseller and formed associations to fight for moral harassment legislation.

Perhaps because the concept of moral harassment was free from any link to discrimination, sexism, or sexuality, it was easier to convince French lawmakers to address it, including when it occurred among co-workers. Once this provision was proposed and revised to apply to co-workers as well as professional hierarchical superiors, the National Assembly decided that the sexual harassment laws should be revised to bring them in line with the moral harassment laws. After all, consistency among the various legal codes is very important in the French legal system. According to the National Assembly Report (Terrier, 2001):

This article [on sexual harassment], adopted by the National Assembly in the second round, aims to make the dispositions relative to sexual harassment consistent with those relative to moral harassment. Sexual harassment is today limited to behavior of a hierarchical superior. This restrictive condition is eliminated.

The framing of sexual harassment as a form of interpersonal violence – rather than, say, as a form of group-based employment discrimination – was thus affirmed as the scope was simultaneously enlarged to include harassment among co-workers. It appears that Hirigoyen's best-selling book was powerful enough to lead to a reconfiguration of the category of violence so that it could henceforth accommodate hostile environment harassment. This is an important reminder that social categories can be changed and that national culture both endures and evolves.

## NOTES

1. *Meritor v. Vinson* 477 US 57 (1986).
2. For a discussion of the different kinds of discrimination arguments used by the courts in sexual harassment cases, see Franke (1997).

3. In American law, 'hostile environment' sexual harassment has to be sufficiently 'severe or pervasive' to negatively affect one's work conditions. Severity and pervasiveness are judged both from the perspective of the plaintiff and from that of the 'reasonable person' (hypothetical person of average sensibilities).
4. The statute was revised to read 'The act of harassing another by using orders, threats, constraint, or *serious pressure*' by a 1998 amendment (Loi No. 98-468 du 17 juin 1998 relative à la prévention et à la répression des infractions sexuelles ainsi qu'à la protection des mineurs, *Journal Officiel de la République Française* 17 June 1998: 9255-9263; my emphasis). With the passage of the *loi sur la modernisation sociale* in 2002, the phrase 'by someone abusing the authority conferred by his position' was eliminated (see Conclusion).
5. With the passage of the *loi sur la modernisation sociale* in 2002, 'person who, abusing the authority conferred by their position, gave orders, made threats, imposed constraints, or exercised pressure of any nature on this employee, in the goal of obtaining sexual favors' was replaced by 'person whose goal is to obtain sexual favors'.
6. Loi No. 2002-73 du 17 janvier 2002 de modernisation sociale.
7. Whether *le droit de cuissage* actually existed (Louis, 1994) or was a 'myth' (Boureau, 1995) is contested, but the existence of a *droit de cuissage* tax is amply documented.
8. Note, however, that sexual harassment victims in France can seek compensatory damages during penal trials, although typical awards are only about 2000 Euros. Moreover, French labor law offers additional compensation for those who have suffered employment retaliation linked to sexual harassment, including reinstatement, back pay and social benefits (see Le Magueresse, 1998).
9. The sample was constructed by selecting all articles in which the term 'harcèlement sexuel' appeared in the title or leading paragraphs of the article, using the Nexis tool 'hlead'.
10. In the US, it was only recently prohibited, in the Violence Against Women Act of 1994 (Pub. L. No. 103-322, 108 Stat. 1902, codified as amended in scattered sections of 8,18,42 USC [1995]), for defendants in rape and sexual harassment cases to use the sexual past of the plaintiff as evidence that she welcomed the assault, and this law has come under attack recently by the Supreme Court.
11. 'Le délit de harcèlement sexuel n'a pas surgi dans notre droit hexagonal à la faveur d'un clonage de l'imagination hollywoodienne.'
12. Thanks to Judith Ezekiel for our stimulating discussion on this point.
13. This hostility coexists with conflicting sentiments of admiration and mutual support. On French views of the US, see Lacorne et al. (1986).
14. Loi No. 2002-73 du 17 janvier 2002 de modernisation sociale.

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