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THE EROTICS OF TORTS

Carol Sanger*

FEMINIST ACCUSED OF SEXUAL HARASSMENT. By Jane Gallop. Durham, N.C.: Duke University Press, Public Planet Books. 1997. Pp. 101. \$9.95.

I.

“What kind of feminist would be accused of sexual harassment?” asks Jane Gallop (p. 1). Gallop quickly provides her own challenging answer: “the sort of feminist . . . that . . . do[es] not respect the line between the intellectual and the sexual” (p. 12). Gallop is firm and unrepentant about not respecting this line: “I sexualize the atmosphere in which I work. When sexual harassment is defined as the introduction of sex into professional relations, it becomes quite possible to be both a feminist and a sexual harasser” (p. 11). Figuring out what this means — and what its implications are for professors, for feminists, for law schools — is the task I’ve set for this review. I begin with a warning. As Margot Channing suggested some forty years ago, “Fasten your seat belts. It’s going to be a bumpy night.”¹

The atmosphere that Gallop sexualizes is the Department of English and Comparative Literature at the University of Wisconsin at Milwaukee, where Gallop, “one of the ornaments of the post-structuralist school,”² is a Distinguished Professor. Her best known books, *Thinking Through the Body* and *The Daughter’s Seduction*, offer close readings of Sade, Freud, Lacan, Cixous, and Irigaray at the intersection of feminism and psychoanalysis.³ *Feminist Accused of Sexual Harassment* seems an altogether different kind of project. It offers a close reading of one woman, Jane Gallop herself, as the subject of sexual harassment complaints brought by two graduate

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1. ALL ABOUT EVE (20th Century Fox 1950).

2. Janet Malcolm, *It Happened in Milwaukee*, N.Y. REV. BOOKS, Oct. 23, 1997, at 8.

3. JANE GALLOP, *THINKING THROUGH THE BODY* (1988); JANE GALLOP, *THE DAUGHTER’S SEDUCTION: FEMINISM AND PSYCHOANALYSIS* (1982); other books include *READING LACAN* (1985); *PEDAGOGY: THE QUESTION OF IMPERSONATION* (1995); and *AROUND 1981: ACADEMIC FEMINIST LITERARY THEORY* (1992) [hereinafter GALLOP, *AROUND 1981*].

students after she kissed one of them in public. *Feminist Accused* — and *Acquitted*, although this outcome doesn't make its way to the title — is Gallop's effort to tell her story so that, as she puts it, everyone can "understand what's going on with sexual harassment."⁴

What's going on, according to Gallop, is doctrine gone haywire. No longer is sexual harassment concerned with brutish male bosses demanding sex from female subordinates in exchange for job security. Sexual harassment has moved from explicit demands and threats to "charged talk or behavior; implicit professional threats [that] could possibly cover the entire range of professional interaction" (p. 8). In addition to the potentially "limitless" possibilities in form, the cast of players has also increased (p. 8). "Harassment need not be perpetrated by bosses; peers can harass, even subordinates. And gender can be a variable: increasing numbers of cases involve a man claiming to have been harassed or a woman accused of harassment" (p. 8). Indeed, as things stand now, even a feminist can be accused, and even when the underlying relationship was heartily consensual.

This, for Gallop, is the most troubling aspect of what is going on: the inclusion of consensual sexual or amorous relationships between teachers and students within general harassment policies and prohibitions. *Feminist Accused* takes aim at this "bloated . . . rampant expansion" (p. 8) and argues that sexual harassment as now conceptualized and applied in schools is stupid, regressive, and fatal both for sex and for the production of knowledge. Gallop argues that sexual harassment law and policy should have nothing to do with consensual relations between professors and graduate students, for two reasons. First, law should play no part in incapacitating adult women by refusing yet again to recognize their desire for and ability to consent to sex. As she explains in a critique familiar to feminists, "Denying women the right to consent reinforces our status as objects rather than desiring subjects" (p. 38). Policies that deem all sex with professors sexual harassment are based on the protective assumption that "women do not know what we want, that someone else, in a position of greater knowledge and power, knows better" (pp. 38-39). Gallop's position is that adult women, even young adult women students, know and should be able to act on what they want.

4. P. 7. *FEMINIST ACCUSED* is part of the new Public Planet Books series published by Duke University Press. The series aspires to "provide a running narrative of our societies at this particular *fin de siècle*." Dilip Gaon Kar & Michael Warner, *Introduction to Public Planet Book Series, appearing in JANE GALLOP, FEMINIST ACCUSED OF SEXUAL HARASSMENT* (1997). It attempts "to open the scholarly discourse on contemporary public culture . . . and to illuminate that discourse with the kinds of narrative that will challenge sophisticated readers, make them think, and especially make them question." *Id.*

Her second argument, perhaps less familiar to those who attend the annual meeting of the Association of American Law Schools rather than that of the Modern Language Association, is that teaching is at core an erotic enterprise. Intense, amorous, even sexual relations between professors and students lie at the heart of what good teaching is about — the production and acquisition of knowledge. The argument comes in varying strengths. Consider this mid-level version: “Whether it is perceived as an instrument of dominance or a mode of revelation, the educational process involves an emotionally suffused link between human beings. Its intimacies form a tangled web of intellectual aspiration and erotic desire.”⁵ More simply, “learning and teaching are acts of desire and passion.”⁶ Gallop, however, endorses a stronger version, one that more or less goes the full Monty. Good professors *should* have students eager to sleep with them and there is nothing wrong in empowering those students intellectually and sexually by taking them up on their offers (p. 12). She speaks as one who was so empowered⁷ and who has subsequently also empowered a number of her students.⁸

This may not be quite the way law professors are used to talking or thinking about what it is we do for a living. It may come as a surprise to some to learn that we have all along been teaching unawares in some primordial sexual soup.⁹ Yet there is probably little disagreement about a weak version of academic erotics: the proposition that teaching involves passion. The erotics of pedagogy takes this comfortable, often noble, idea off its familiar hinge and accepts

5. Regina Barreca & Deborah Denenholz, *Preface* to *THE EROTICS OF INSTRUCTION* at vii (Regina Barreca & Deborah Denenholz Morse eds., 1997).

6. *Id.* at viii.

7. “I learned and excelled; I desired and I fucked my teachers.” P. 42.

8. Although Gallop and her plaintiff students were all women, the discussion here is not limited to same-sex faculty-student relations, as Gallop herself has not, in practice, and perhaps in theory, so limited herself. Consensual relations are, without question, complicated by the sexual identities of the various players — boy-girl, gay-lesbian-straight, etc. Gallop’s theorizing derives from her own case — an initially insecure young woman empowered by feminism and sex with big-deal men. Yet other combinations of traits among the players may produce other results. For example, does Gallop’s bravado have the same radical appeal if we give her lines to a male professor? Does involvement with women professors similarly increase the mind-body confidence of young male students, or are we suddenly in Tea and Sympathy territory? It may be that because all students have less power within the institution than their professors, they may be equally eligible for empowerment — or whatever — as a consequence of sleeping with their professors. On the other hand, the dynamic of why students fall for teachers or how officials enforce relationship policies may differ depending on everyone’s respective sexualities. As this Review progresses, I will take account of these various distinctions when they seem to matter.

9. Indeed, it has been suggested that the phrase “sexual academic” is an oxymoron, like “jumbo shrimp” or “Greater Cleveland.” See Regina Barreca, *Contraband Appetites*, in *THE EROTICS OF INSTRUCTION*, *supra* note 5, at 1, 4. On the other hand, some contend that the phrase is not oxymoronic but redundant, like “working mother” or “dysfunctional family.” See *id.* at 4.

that passion is not always limited to the subject of instruction — a passion for poetry, a passion for procedure — but at times directs itself toward the object of instruction, the student. There is something to this, at least at an empirical level, for we all know colleagues who have courted or married former students. Thus the lag for law professors may not be in behaving so very differently from those in other departments, just in failing to theorize about it. This is not to ignore our own stylized framing of the issue in legalistic terms: academic freedom, rights of association, fiduciary relationships, and so on. But while law schools may not be quite the hothouses of English departments, where ardor, as opposed to, say, nuisance, can be the very subject of instruction, there is surely enough consensual interaction going on in the legal academy to make it worth considering how Gallop's arguments about faculty-student sex and the underlying erotics of pedagogy apply to us.

II.

Feminist Accused is a great piece of performance scholarship. That is because Gallop makes her case against sexual harassment through the steamy specifics of the case against *her*. That case may have been based on only one public kiss and one public comment, but what a kiss! What a comment! (And what suspense! We get neither kiss nor comment until the book's final pages.) Thus in *Feminist Accused* performance and scholarship unfold together. This is very much part of Gallop's point: "It is no more possible to really teach without at times eliciting powerful and troubling sensations than it is to write powerfully without at times producing the same sort of sensations" (p. 100). (We will return later to the topic of what one chooses to do with the sensations elicited.) Sensations abound in *Feminist Accused* and in its readers, as the author, combining the talents of stand-up Sandra Bernhardt and sit-down Spalding Gray, performs her argument in print.

Gallop is constantly, vibrantly aware of both being and creating spectacle — in the classroom, at conferences, on the page. She well understands that "[f]or spectacle to speak, it must be analyzed, broken down into its various components" (pp. 6-7). *Feminist Accused* is therefore presented in four chunks, sketched here in brief. The first, *Feminist Accused of Sexual Harassment*, is mostly biographical. It details how Gallop became a feminist and the intellectual and sexual significance for her of that transformation.

Chapter Two, *Consensual Amorous Relations*, describes how Gallop's biographical truths were transformed into pedagogical ones.

Central to my commitment as a feminist teacher is the wish to transmit the experience that brought me as a young woman out of roman-

tic paralysis and into the power of desire and knowledge, to bring the women I teach to their own power, to ignite them as feminism ignited me when I was a student. [p. 12]

Offering up her own amorous — and amorous plus — relations with teachers and students as Exhibit A in defense of unregulated consensual relations, she argues that nothing less than knowledge itself is now at stake: if universities prohibit “not only sex but ‘amorous relations’ between teacher and student, the ‘consensual amorous relation’ that will be banned from our campuses might just be teaching itself” (p. 57).

In Chapter Three, *Object of Intellectual Inquiry*, Gallop extends this claim and argues that more than just direct student-teacher interaction is risked by over-ambitious harassment policies. That is, not only sex, but scholarship *on* sex is under attack. The basis of this somewhat self-indulgent but provocative chapter is again biographical. Gallop had been planning a conference on teacher-student sex. When some feminist faculty objected, the original plan was scrapped in frustration and “Pedagogy: The Question of the Personal” was substituted.¹⁰ Even this less heated subject drew fire from so-called feminist faculty, including the university affirmative action officer at whom Gallop yelled “fuck you” in frustration. Feminist students later picketed the conference and handed out bumper stickers reading “Distinguished Professors Do It Pedagogically” (p. 68).

Gallop’s point here is that not only engaged teaching but scholarship itself falls under the threatening shadow of university anti-harassment policies. Indeed, she notes that the students who filed the complaint specifically sought the suppression of her scholarship by asking the university to find that “making the complaint the subject of intellectual inquiry constitutes retaliation” (p. 78). Of course, the university did not do so, and Gallop has indeed made the episode the subject of scholarly inquiry. *Feminist Accused* thus stands as a more scholarly version of her earlier retort to the university affirmative action officer.

Finally, we come to Chapter Four, the long-awaited hard copy, *Professor Accused of Kissing Students*. We get the steamy details of the kiss (“[Professor Gallop] mashed her lips against mine and shoved her tongue in my mouth”), the comment (“[G]raduate students are my sexual preference[!]”), and the conference at which both occurred (the First Annual Graduate Student Gay and Lesbian Conference, “a conference that was sexier than most”).¹¹

10. The conference papers are collected in *PEDAGOGY: THE QUESTION OF IMPERSONATION* (Jane Gallop ed., 1995).

11. P. 84. In a section of the book one might not want to leave lying open around the house, Gallop notes that conferences are not just intellectually professional events, but “profoundly social” and “also inevitably sexy. It is not uncommon for scholars to have affairs

More importantly, Chapter Four brings Gallop's argument full circle, as *Feminist Accused* concludes as it began, setting out the intimate connection between spectacle and scholarship, sex and intellect. Here is the summation:

When I said that graduate students were my sexual preference, when I kissed my advisee in a bar for all to see, I was making a spectacle of myself. . . .

. . . The spectacle was meant to shock and to entertain, and to make people think.

I gave this book a tabloid title because I wanted, again, to make a spectacle of myself

. . . to produce a sensation. Not the hollow kind where sensation is achieved at the expense of thought. But the best kind, where knowledge and pleasure, sex and thought play off and enhance each other.

When I kissed my student . . . I was trying to produce just such a spectacle. But I failed to make myself understood.

By writing this book, I thought I'd give it another shot. [pp. 100-01]

Thus the question: Does *Feminist Accused* succeed where feminist accused believes herself to have failed? In this second, printed performance, has Gallop made herself understood? My short answer is yes, she has. It is impossible not to grasp her message, her method, and the relation between the two. At the same time, making one's case understood is not the same thing as prevailing. That is, an argument can be both conceptually clear and substantively wrong, or at least incomplete, in ways that I shall argue ought to matter in considering policy.

On certain relatively minor factual matters, Gallop is just plain wrong. These are easily identified, quickly fixed and, I think, not really crucial to her case, however useful they may be to the drama of her argument. For example, sexual harassment is not a criminal act (pp. 6, 27, etc.). On other matters, Gallop is not wrong, but disingenuous (or astonishingly naive and this seems impossible). The infamous public kiss is a good example. Gallop describes the kiss as "a performance. By that, I do not mean that I wasn't really kissing her or that I didn't find it sexy. What I mean is that . . . we kissed like that because we knew we were being watched. And it was precisely the knowledge of being watched that made it sexy."¹²

during conferences, even more common to engage in flirtations. . . . A good conference is likely to be an eroticized workplace." Pp. 82-83.

12. P. 91. Publicity has an erotic flip side. Consider the pleasure of the covert: "The door opened quickly and an attractive young female in tight washed jeans and a cotton sweater slid elegantly through it and sort of glided along the wall to the third row, where she deftly maneuvered between the crowded seats [Law professor] Callahan was ignoring this entry. . . . Darby Shaw [picture Julia Roberts] was not afraid of him, and for a split second he wondered if anyone knew he was sleeping with her. Probably not." JOHN GRISHAM, *THE PELICAN BRIEF* 12 (1992).

I think the description conveys the moment rather nicely. But Gallop loses ground when two pages later she snickers at the idea that this kiss, which “lasted no more than a minute and didn’t go below the neck[] could actually function as ‘proof’ of harassment” (p. 93). Such geographical distinctions form the basis of Gallop’s insistence that her relations with students are amorous and sexy but not sexual and therefore outside sexual harassment. We have had too much national quibbling lately about what intimate behavior counts as “sex” for Gallop to take refuge in this kind of definitional thicket. Consensual relations may not be harassment but it is not because they involve necking instead of intercourse.

But on the stuff that really matters — a sustained if sensational inquiry into the project of teaching and what we devote ourselves to as academics — Gallop’s clarity is important, provocative and worth our time. Putting aside for the moment images of a tongue down some graduate student’s throat — and acknowledging that much of Gallop’s point is that we *cannot* put the image aside — Gallop provides case and occasion to think hard about the complicated, anxiety-producing subject of consensual relationships in the academy and the companion issue of passion and pedagogy. Her contribution is certainly timely, as the meanings of consensual relations off-campus have lodged themselves more vividly in the country’s consciousness and as universities now hammer out policies to govern and guide members of the academic community as they fool around and fall in love with one another.

But more provocative than its timing is its content, for Gallop’s contribution turns the debates, as usually rehearsed, on their heads. The structure of the traditional argument is this: Everyone agrees as a starting point that adult women have full contractual capacity. In the academic context, however, the consent of adult women students to sex with professors is understood as a more fragile proposition, increasingly qualified in school harassment policies by adjectives like “apparent” or “alleged.” Administrators are concerned that student consent may be something less than fully voluntary for a number of persuasive reasons: the immense and intractable power disparity between professor and student; the psychoanalytic problem of transference; and the fiduciary-like relation between professor and student that precludes arms-length dealing.¹³ Other bases of opposition to consensual relations include the appearance, if not the fact, of favoritism. Students not romantically involved with their professors may worry about what difference that fact will make. In the special case of law students, policies against consensual relations are seen as an introduction to a model concep-

13. These arguments are forcefully set out in Caroline Forell’s *What’s Wrong with Faculty-Student Sex: The Law School Context*, 47 J. LEGAL EDUC. 47 (1997).

tion of professional conduct.¹⁴ A number of universities have endorsed these concerns and now forbid or discourage consensual relationships between students and faculty when the professor is in any kind of supervisory role with regard to the student.¹⁵

Gallop buys none of this. She agrees that there is something special about the educational setting. But what's special, she says, is that it makes consent more sensible, not more suspect. The academy is *exactly* the place where amorous relations should flourish and for reasons directly connected to the educational project. She not only assumes the validity of student consent, but argues that sleeping with a teacher may well be a sign of a student making the most of her education. "Lots of other smart, ambitious young women, many of them likewise feminist academics today, have felt powerful because they seduced their teachers."¹⁶

In the end, I remain unpersuaded that a headlong dive into sexual relations with professors is necessarily the smart student's ticket to personal or intellectual power. I am dissuaded from the view less by Gallop's theorizing than by her evidence — that is, Gallop's own case, a sample of one.¹⁷ I do not doubt *her* story of success and pleasure, or the more general proposition that there is something thrilling in moments of connection with students that spark something below the brain. Yet Gallop's story is not every student's, and that distinction matters.¹⁸ In this review, I want to focus on two

14. See *id.* at 69.

15. See sources cited *infra* notes 85-86 and accompanying text.

16. P. 43. Gallop explains that students are empowered in part by having their consent respected. This reminds me of the old Elaine May and Mike Nichols routine where the reluctant teenage girl asks her boyfriend if he will respect her the next day. "Will I respect you? Oh boy, how I will respect you! I will respect you SO much!"

17. Evaluating Gallop's claims without trashing her practices has been a challenge in reviewing the book. Her method raises questions about abstraction and particularity in the context of sexual harassment.

18. Using one's own story as the basis for policy proposal is tricky business, especially when the story is thrilled with its own sensationalism. Gallop has argued that what she calls a "limit case," that is, an *extraordinary* set of facts, is specially valuable for theorizing. P. 7. Legal scholars are also thinking hard about the role of the snappy story, or anecdote, in law. Susan Bandes, for example, has recently undertaken a valuable study of the anecdote in criminal law. See Susan Bandes, *Narrative Coherence and the Anecdotal Turn: Stories of Police Brutality* (on file with author). And it is through a criminal law anecdote that I want to challenge, or at least complicate, Gallop's biographical method. Like Gallop's, the limit case I put forth involves consensual relations, power disparities, inversion of power, and an institutional setting.

The law story is that of Reginald Powell, a felon convicted of murder and sentenced to death after being represented at trial by Mary Ann Marxkors. See *Lawyer-Client Intimacy Prompts Death Row Plea*, N.Y. TIMES, Feb. 16, 1998, at A5. While preparing for the trial, Marxkors and Powell became emotionally involved with one another. After the sentence was imposed, they had sex in a holding cell in the court building; "It became physical when the judge told me he was going to sentence Reggie to death." *Id.* Powell appealed his death sentence on the basis of ineffective assistance of counsel due to his lawyer's clouded judgment. For example, Marxkors had recommended that Powell go to trial instead of pleading guilty in exchange for a life sentence. Only later did she realize that "there was a great gap in

ways in which *Feminist Accused* remains an incomplete account of consensual relations.¹⁹ First, Gallop mostly ignores and certainly minimizes the possibility of harm to students as a result of their consensual relationships with professors. Second, Gallop takes a simplistic view of consent in a complex setting. In what follows, I want to round out her picture of consent, focusing not just on whether it is voluntary, but also on whether it is informed and on exactly what information a student might need. I also return to the subject of harm, to consider, as Gallop does not, where the risks as well as the delights of student-faculty interaction reside.

III.

In 1971, Jane Gallop, college sophomore, became a feminist. In consequence, she was transformed from a poor student with mediocre grades who cut classes and played a lot of bridge into an intellectual dervish who wrote an honors thesis, read books not assigned for any course, and set her mind on graduate studies. And that is only half of what happened. Sounding *a little* like a detergent commercial, Gallop also tells us that “[t]hanks to feminism, not only did I become a better student, but my sex life improved” (p. 4). She had her first orgasm, discovered sexual pleasure and desire, and “walked around . . . constantly in heat, energized for political activity and schoolwork” (pp. 4-5). For Gallop, “feminism will always name the force that freed me to desire and to learn;” feminism is “that milieu where knowledge and sex bubble together” (p. 6).

Sex and knowledge bubbled up for Gallop as an undergraduate in a defining moment at an all-women’s party following the spectac-

the way she saw Mr. Powell and his crime and the way the jury and judge looked at him and the crime.” *Id.* On February 25, 1998, Powell was executed by lethal injection. *Killer Who Was Lover of Lawyer Is Executed*, N.Y. TIMES, Feb. 26, 1998, at A4.

What are state bar associations to make of this story when deliberating consensual relations policies for lawyers and their clients? Lawyers are not barred from sleeping with their clients in Missouri; Oregon alone prohibits all sexual relations between attorney and client. See Caroline Forell, *Oregon’s “Hands Off” Rule: Ethical and Liability Issues Presented by Attorney-Client Sexual Contact*, 29 WILLAMETTE L. REV. 711 (1993). See generally Linda Fitts Mischler, *Reconciling Rapture, Representation, and Responsibility: An Argument Against Per Se Bans on Attorney-Client Sex*, 10 GEO. J. LEGAL ETHICS 209 (1996) (arguing that the attorney’s “personal self” should be beyond regulation). Is it unfair to consider the Powell case because it seems extraordinary? As Bandes points out, a danger of this kind of narrative is that “it may confuse listeners into believing it is representative [exactly because] it is so evocative and memorable.” Bandes, *supra*, at 27. Or does it properly emphasize how high, if rare, the stakes can be when a lawyer scrambles her personal and professional judgments about a client? Sleeping with one’s client will always be disastrous, and as evidence of real lives is crucial to the project of law, anecdote provides “a way of testing theory to ensure it is grounded in reality.” Bandes, *supra*, at 29.

19. For a more complete discussion of Gallop’s case itself and the background conditions regarding harassment at the University of Wisconsin at Milwaukee, see Margaret Talbot, *A Most Dangerous Method: The Pedagogical Problem of Jane Gallop*, LINGUA FRANCA, Jan.-Feb. 1994, at 24.

ular, “carefully staged entrance” (p. 14) of a professor and student. What marked the moment was not only that the teacher and her student had presented themselves publicly as a couple, but that the usually feminine student was dressed in a suit and the feminist teacher in a dress. Gallop explains that “[i]t was crucial to this feminist spectacle that the student was the one wearing men’s clothing. . . . Her suit hinted that their connection made it possible for this student to take on power with the teacher” (p. 15). In these early days of women’s studies and women’s liberation, the experience of taking on power with the teacher extended to sites formerly closed to students, such as academic committees and classrooms, where working out the fundamentals of early feminist courses was necessarily a collaborative process.

It extended as well to more private areas, for as Gallop explains, “[f]eminism provided the occasion to fantasize teacher-student sex alongside other brave new possibilities” (p. 18). The possibilities crystallized when Gallop hit graduate school and made it a project to seduce her two thirty-something male dissertation advisors. After years of her doing her “utmost” to bring about their consent — in behavior that sounds remarkably like stalking — they each finally succumbed to what Gallop identifies as casual sex once with each (p. 41). And the nub of wisdom derived from these encounters?

These two had enormous power over me I was bowled over by their brilliance; they seemed so superior. I wanted to see them naked, to see them as like other men. Not so as to stop taking them seriously as intellectuals (I never did), but so as to feel my own power in relation to them. . . .

Screwing these guys definitely did not keep me from taking myself seriously as a student. . . . Seducing them made me feel kind of cocky and that allowed me to presume I had something to say worth saying. . . .

. . . .

. . . I felt that in their eyes I was both a desirable woman and a serious scholar. [pp. 41-43]

In other words, Gallop went the student in the suit one better. Instead of wearing a suit to demonstrate the power inversion with her professors, she was the cocky one.

Now comes some questionable logic. Because Gallop was empowered by being both smart and sexy with her professors — playing at their level and leveling them — she believes that this opportunity should be made available to other students smart and sexy enough to recognize that seducing the teacher may bring improvements all around. Indeed, she converts the belief into a practice. Consistent with her pledge to “ignite [students] as feminism ignited me when I was a student” (p. 12), Gallop sleeps with under-

graduate men, graduate women, both members of a lesbian couple, and so on.²⁰ She doesn't assert that *everyone* catches fire as she did. On the contrary, "In my experience, the teaching relation remained essentially the same after sex: the casual students continued not to care particularly about the teaching; the serious students continued to take the teaching seriously and to be taken seriously as students by the teacher."²¹

The move from biography to pedagogy to harassment policy proceeds directly. Sexual harassment policies that forbid the very conduct that enabled Gallop to be Gallop will necessarily prevent other such students from becoming all that they can be — which to some extent seems to be junior Gallops.²²

IV.

Central to Gallop's entire argument is the fact of consent: "the question of whether sexual advances are *wanted* is absolutely crucial" (p. 38). The statutory framework here is clear: sexual harassment is defined as unwelcome sexual advances and consent negates unwelcomeness. Policies that punish consensual relations, argues Gallop, negate consent. She explains that such policies are necessarily "based on the assumption that when a student says yes she really means no. I cannot help but think that this proceeds from the same logic according to which when a woman says no she really means yes" (p. 38).

But the matter of consent is somewhat more complicated. In the context of sexual harassment, yes can mean yes *and* the sexual advance can still be unwanted, as the Supreme Court made clear in *Meritor Savings Bank v. Vinson*.²³ Bank employee Michelle Vinson had consensual intercourse with Sidney Taylor, a bank vice-president, over a period of years in order to keep her job. But as the Supreme Court instructed,

the fact that sex-related conduct was "voluntary," in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII. The gravamen of any sexual harassment claim is that the alleged sexual advances were "unwelcome." . . . The correct inquiry is whether

20. Students seem to do their share of igniting. Gallop dedicates her 1992 book, *Around 1981: Academic Feminist Literary Theory* to "my Students: The bright, hot, hip (young) women who fire my thoughts, my loins, my prose. I write this to move you, to please, to shake you." GALLOP, *AROUND* 1981, *supra* note 3.

21. P. 49. I will assume that the serious students who didn't sleep with Gallop were also still taken seriously by the teacher, although a concern or two along these lines in their minds would not be surprising.

22. Gallop describes the initial allure of the student later kissed in public: "An ambitious woman with a flair for outrageous performance, she identified with me and thought I'd be the ideal teacher for her. I responded strongly to her desire for a career like mine." P. 54.

23. 477 U.S. 57 (1986).

respondent by her conduct indicated that the alleged sexual offenses were unwelcome, not whether her actual participation in sexual intercourse was voluntary.²⁴

In other words, while lack of consent is one sign of unwelcomeness, it is not necessary for unwelcomeness.

Gallop's riposte may be that consensual but *unwanted* sexual relations are not at all what she has described or endorses. That is, the students with whom Gallop has been sexually involved have said, meant, and desired their yeses. Sherry Young adds convincingly to the position: "[t]he idea that women cannot acclimate to the rigors of a professional life has been decisively rejected only recently. Feminists should not put forth the proposition that women are unsuited to the rigors of a *personal* life."²⁵ At the same time, however, *Vinson* and the thousands of other cases won and settled since make clear why consent — not so much with regard to sex, as Gallop stresses, but in relation to power — is complicated. Do faculty secretaries really *want* to pick up their bosses' laundry, as many agree to do in violation of hard-won rights under union contracts? Those concerned about consensual sexual relations between faculty and students doubt the integrity of the student yes for similar structural reasons. Putting aside consent that results from job-related arm (or grade) twisting, as all would agree to do in clear coercion cases, there is something about the power imbalance in the teacher-student relationship which makes us hesitate before giving consent in that setting its usual force. These arguments are not unfamiliar in the ongoing feminist debate about agency versus coercion. Consensual relations policies provide another instance where skepticism *and* respect regarding women's consent to sex have simultaneous appeal.²⁶

In this essay, however, I want to suggest a different framework for thinking about the quality of consent in the context of teacher-student relations. Let us assume that agency is not abandoned by virtue of an adult's status as a student; that is, even though we regularly treat our students like children, each retains the capacity to decide whether or not to become an item with his or her teacher.²⁷

24. *Vinson*, 477 U.S. at 68.

25. Sherry Young, *Getting to Yes: The Case Against Banning Consensual Relationships in Higher Education*, 4 AM. U. J. GENDER & L. 269, 302 (1996) (emphasis added).

26. See Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995); Martha Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777 (1988).

27. Sherry Young's description of her women law students makes the point: Ranging in age from twenty-two to over sixty . . . many of our students come to law school after careers as nurses, soldiers, teachers, and construction workers. . . .
 . . . All are bright, determined, ambitious people who threw what they could into a car and headed for a strange place to wrestle with the complexity of the law. . . . [T]hose who contend that such women are no more capable of deciding who to date than children or mental patients bear a heavy burden of persuasion.

I do not want to see “desire erased” in Gallop’s phrase (p. 43). There is, however, a second aspect to consent that law regularly attends to: consent must be not only voluntary, but *informed* as well. Information is understood to enhance and secure voluntariness. Thus in a variety of transactions the law requires that information be disclosed before the consenters are bound. Consumers get financial and remedy disclosures before they buy or lease things. Birth mothers must receive all kinds of information — on counseling, on financial support, on revocation — before they may consent to the adoption of their child.²⁸

And just what information would be useful to the student who seeks or accepts an amorous relation with her professor? The facts that might best inform such a decision are rather hard to come by. How can a student know if the professor *really* finds her the brightest mind he has ever come across, is *really* going to leave his wife, or will *really* love the student forever? These are risks all lovers, at present, have to take on faith.²⁹ As with representations made prior to marriage, the fact that suitors, their circumstances, or their intentions are not exactly as the listener was led to believe is rarely enough to invalidate the initial consent and annul the marriage; “[t]he law therefore wisely requires that persons who act on representations or belief in regard to [matters of personal qualities or character] should bear the consequences which flow from contracts into which they have voluntarily entered.”³⁰

There is, however, information about the law of sex discrimination that might be useful to have in the back of one’s mind. This information concerns not so much what one might like to know go-

Young, *supra* note 27, at 271-72. While it is true that all graduate students are adults at law, I note that even Jane Gallop describes herself when a graduate student as being “in my professional [if not chronological] adolescence.” GALLOP, THINKING THROUGH THE BODY, *supra* note 3, at 42.

28. See TENN. CODE ANN. § 36-1-111(k)(2)(E) (1995) (requiring judge to ask whether surrendering parent “desires counseling . . . concerning the decision to surrender or give parental consent . . . and if the person has been made aware of any assistance which might be available to the person should the person decide not to place the child for adoption”); see also D.C. CODE ANN. § 32-1007(b) (1993). On revocation, see MASS. GEN. LAWS ANN. ch. 210, § 2 (West 1997) (stating that consent is valid no sooner than four days after birth).

29. But consider the proposed tort of seduction that applies the elements of intentional misrepresentation to lies told for the purpose of inducing sexual consent. See Jane Larson, “Women Understand So Little, They Call My Good Nature ‘Deceit’”: A Feminist Rethinking of Seduction, 93 COLUM. L. REV. 374, 453 (1993). The tort provides that “One who fraudulently makes a misrepresentation of fact, opinion, intention, or law, for the purpose of inducing another to consent to sexual relations in reliance upon it, is subject to liability to the other in deceit for serious physical, pecuniary, and emotional loss caused to the recipient by his or her justifiable reliance upon the misrepresentation.” *Id.*

30. Reynolds v. Reynolds, 85 Mass. (3 Allen) 605, 607 (1862). The traditional view has been that any misrepresentations made before the marriage must go to the “essentials” of marriage; thus “error or disappointment in personal qualities” were not enough. Reynolds, 85 Mass. (3 Allen) at 607. See also Johnston v. Johnston, 22 Cal. Rptr. 2d 253 (1993) (husband has turned from “prince to frog”).

ing *into* the relationship, but rather what can happen (so far as the law is concerned) after the dance is over — for as with other personal relationships, consensual relationships between teachers and students also end.³¹ The finale can be welcomed, it can be inconsequential, or it can difficult. Even William Kerrigan — consenting professor *ad infinitum et nauseam* — concedes that “[l]ike all human relationships, [student-teacher relations] are flawed and sometimes tragic. There is usually this initial idealism — the teacher presents ideas in a beautiful form, and so there is this element of seduction in pedagogy. And then things come down to earth, and there often follows disappointment and, on the part of the student, anger.”³² Whether angry or not, if the end is not so devastating that the student never sets foot in the chemistry department again, what she will most want to do is simply get on with her course or program, her degree or dissertation.

Sometimes, however, the forward motion of the former lover is blocked. Among the professorial promises made or implied during the relationship is what we might call the hedge-betting honesty pledge. It goes something like, “Whatever happens to our love, our intellectual connection will always remain,” or “Our relationship may be doomed, but be confident that your bright career is not.”³³ Honest when uttered, perhaps — but there may be newly discovered discomfort in having the student around in quite the same proximity as he or she once was. And what does the law of sexual harassment have to say about cases in which the consensual lover with the greater institutional power has the consensual lover with less transferred, demoted, or fired?

The leading case is *Huebschen v. Department of Health and Social Services*.³⁴ During the spring of 1979, David Huebschen, a probationary employee in the Department, developed a close friendship with his supervisor, Jacquelyn Rader. Although the friendship blossomed into romance and a brief liaison in a motel, by November the bloom was gone; indeed, “after Rader had made a

31. Indeed, the end may come so soon after the beginning that it may be extravagant to call the connection a relationship.

32. Colloquy, *New Rules About Sex on Campus*, HARPER'S MAG., Sept. 1993, at 33, 36 [hereinafter *New Rules Colloquy*] (remarks of William Kerrigan).

33. A more formal version of this vow is now apparently included in “Consensual Relationship Agreements” offered to consensually involved employee couples by a number of companies. See Tom Kuntz, *For Water Cooler Paramours, The Ties That (Legally) Bind*, N.Y. TIMES, Feb. 22, 1998, (Week in Review), at 7. The written representation states: “I want to assure you that under no circumstances will I allow our relationship or, should it happen, the end of our relationship, to impact on your job or our working relationship.” *Id.* This is then affirmed in writing by the “object of affection.” *Id.* The clause is intended to convert the promisor's assurance into an enforceable obligation of sorts so that demoting one's beloved now becomes an actionable breach of the agreement for which a particular grievance procedure is available.

34. 716 F.2d 1167 (7th Cir. 1983).

sexually insulting remark to him, Huebschen told her that ‘this sexual stuff just ha[s] to stop’ and that he just wanted to be a friend.”³⁵ Rader soon informed Huebschen that there were problems with his job performance and by the end of the year, on Rader’s recommendation, his probation was terminated. Huebschen sued, claiming that this was sexual harassment under Title VII and sex discrimination under the Equal Protection Clause.

While the Title VII action crumbled because Rader was not an employer within the meaning of the statute, the sex discrimination claim failed for reasons of greater interest to us here. Reviewing the basic law, the court noted that the plaintiff “must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual.”³⁶ This he failed to do. While there was no question that Rader acted spitefully, what mattered was her *motivation* for spite. And that, said the court, was not triggered by Huebschen being a man, but rather being “a former lover who had jilted her.”³⁷ Accordingly, “the proper classification, if there was one at all, was the group of persons with whom Rader had or sought to have a romantic affair,” a group unprotected by the Equal Protection Clause.³⁸

*Kepler v. Hinsdale Township High School District 86*³⁹ elaborated on the *Huebschen* court’s analysis. In that case a male principal, Dr. Miller, had a four-year consensual sexual relationship with the female Director of Special Services, Ms. Kepler. After they had broken up, Dr. Miller twice asked Ms. Kepler to have sex with him and each time she refused. Within a few months, he informed her that “she had lost professional credibility in his eyes, and that as far as he was concerned she should leave the district.”⁴⁰ By 1988, Kepler had been demoted to a plain special education teacher. She then sued the school district for sexual harassment and discrimination. Or, as the court restated in its opening paragraph, she “alleges [those causes of action] but what she really wants is to make others pay for her mistakes. She will not succeed here.”⁴¹

The reason for her failure is the prior consensual relationship with her boss. In setting up its decision, the court distinguished between two kinds of quid pro quo actions: those where the employer makes his offer or threat clear — “sleep with me and you get a raise” — and those where the employer simply asks for sex, doesn’t

35. *Huebschen*, 716 F.2d at 1169.

36. *Huebschen*, 716 F.2d at 1171.

37. *Huebschen*, 716 F.2d at 1172.

38. *Huebschen*, 716 F.2d at 1172.

39. 715 F. Supp. 862 (N.D. Ill. 1989).

40. *Kepler*, 715 F. Supp. at 865.

41. *Kepler*, 715 F. Supp. at 864.

get it, and then, in the absence of a prior threat “fires, or demotes the employee, or just makes life miserable, but without further sexual advances or innuendos.”⁴² This latter category, the court notes, are not really cases of quid pro quo but of “sexual retaliation.” In the absence of a prior sexual relation, the difference doesn’t matter so very much because “both amount to sexual discrimination.”⁴³

The existence of a consensual relationship, however, dooms the plaintiff’s claim of discrimination based on sex. That is because “an employer who seeks retribution because his former lover has jilted him may be reacting not to the rejection of copulation *per se*, but to the change in the status quo — that is, the termination of the intimate physical and emotional relationship.”⁴⁴ The court acknowledged that Title VII prohibits sex discrimination in the workplace, but concluded that

[a]n employee who chooses to become involved in an intimate affair with her employer . . . removes an element of her employment relationship from the workplace, and in the realm of private affairs people *do* have the right to react to rejection, jealousy and other emotions which Title VII says have no place in the employment setting. . . .

. . . [That employee] cannot then expect that her employer will feel the same as he did about her before and during their private relationship. Feelings will be hurt, egos damaged or bruised. The consequences are the result not of sexual discrimination, but of responses to an individual because of her former intimate place in her employer’s life.⁴⁵

The only way the plaintiff could rebut the presumption — created by the existence of the former consensual relationship — that she was penalized because she was a former lover and not because she was a woman, would be to show that Dr. Miller had “threatened punishment if copulation or some form of erotic engagement was refused.”⁴⁶

A third case further underscores the predicament of a plaintiff punished on the job as a result of the wounded feelings of a former lover. In *Campbell v. Masten*,⁴⁷ Susan Campbell, a research biologist, was fired from her job after her boss heard critical comments about her from Jeffrey Masten, a co-worker with whom she had had an affair. Campbell argued that Masten wanted her off the premises because he took her very presence at work as a threat to his new marriage. Aware of the earlier cases, Campbell argued that

42. *Keppler*, 715 F. Supp. at 868.

43. *Keppler*, 715 F. Supp. at 868.

44. *Keppler*, 715 F. Supp. at 868.

45. *Keppler*, 715 F. Supp. at 869 (emphasis added) (citations omitted).

46. *Keppler*, 715 F. Supp. at 869.

47. 955 F. Supp. 526 (D. Md. 1997).

her termination was clearly based on her sex: Masten would not have initiated an affair with her "but for her gender as a female."⁴⁸ The court refused to buy this link to sex discrimination. It agreed that Masten's affair with and subsequent antipathy toward Campbell were "premised on the underlying fact that Campbell is a woman, given his apparent heterosexuality."⁴⁹ Nonetheless, Masten's behavior was based on personal animosity toward his former lover based on that relational status, not her sex. "In the absence of such a distinction," warned the court, "any workplace affected by consensual workplace romances gone sour, and the concomitant workplace politics, could spawn Title VII claims."⁵⁰ The court then gave a sobering glimpse into permissible workplace politics, noting that while

Masten's criticism of Campbell's work after their relationship ended . . . may have detrimentally affected [her boss's opinion of her], it is hardly uncommon for a friend to demonstrate loyalty through a showing of allegiance and support after [a] friend ends a romantic relationship with another. While such behavior may cause divisiveness among co-workers as a result of blurring the line between one's private life and one's workplace, it does not add up to, or even approach, sex discrimination.⁵¹

One can easily imagine the workings of such shows of allegiance among colleagues in the academy, where committees award or renew student fellowships, draft departmental recommendations, appoint graduate students as TAs, urge appointments, and so on.⁵² As

48. *Campbell*, 955 F. Supp. at 528.

49. *Campbell*, 955 F. Supp. at 528.

50. *Campbell*, 955 F. Supp. at 528.

51. *Campbell*, 955 F. Supp. at 529. Retaliation is also unactionable when directed against an employee for uncovering a secret consensual relationship, see *Ellert v. University of Texas*, at Dallas 52 F.3d 543, 546 (5th Cir. 1995) (secretary fired after discovering Dean in embrace with his assistant; no summary judgment for plaintiff; "[e]ven if [secretary's] knowledge of the affair was the true *animus* behind the discharge decision, it was a motivation that did not rely upon her gender and, as such, it was not within the ambit of Title VII's protections"), or when directed against a third party disliked by one party to the consensual relationship, see *Polk v. Pollard*, 539 So. 2d 675 (La. Ct. App. 1989) (woman employee fired by male supervisor at request of another woman employee with whom supervisor was having a sexual relationship).

52. Retaliation is not always subtle. In the only published case involving a law professor, *George v. University of Idaho*, 822 P.2d 549 (Idaho Ct. App. 1991), the professor mailed letters to every member of the Idaho state bar advising them that his former lover and student "was neither competent nor morally fit to practice law," formally opposed her application to take the bar examination, and sent letters to state newspapers disparaging his student's character. *George*, 822 P.2d at 552-53. This awful behavior followed a formal settlement agreement between the school, student, and professor based on his earlier "physical and emotional intimidation [of the student], in and out of the classroom" after their relationship ended. *George*, 822 P.2d at 550. It is worth noting that the settlement agreement had given the harassing professor an eighteen-month leave of absence with pay and a best efforts pledge from the university president and law school dean to secure him other employment "accentuating the positive aspects of his performance at the law school." *George*, 822 P.2d at 551.

the cases make clear, denying such benefits to one's former lover, either directly or through the action of loyal friends, does not add up to sex discrimination. The cases may, however, provide the basis for some reflection on the part of a would-be student sweetheart. Where there has been no quid pro quo threat or request after the consensual relationship has ended, there is simply no relief for whatever professional vindictiveness follows.⁵³

Outside the harassment area, the law recognizes that the dynamics — indeed, the location alone — of particular transactions can influence the quality of consent. Consider consumer sales in one's home or directives to physicians signed in nursing homes. Both are seen, for different reasons, as inherently coercive in ways that change how the law responds to the transaction. Because we tend to be polite and submissive toward strangers in our own homes, the consumer can rescind the contract for the *Encyclopedia Britannica* within five days. Because nursing home residents are highly dependent on those who care for them, their do-not-resuscitate orders must be regularly renewed and in front of witnesses. Campuses too may similarly disturb the background conditions necessary for a fair deal.

There are, of course, a few problems with disclosure as a corrective mechanism for personal relationships. With the exception of communicable diseases, sweethearts need disclose little else to one another as a matter of law. Moreover, even highly informed people don't believe the statistically likely event will ever happen to *them*, especially in matters of the heart. As Lynn Baker's study on divorce denial among the newly married demonstrates, love means never having to work percentages.⁵⁴ Thus, despite recently touted consensual relation contracts, mandatory disclosure requirements seem off the mark as a way of redressing institutional power imbalances between lovers.⁵⁵ For now it is enough to consider the retaliatory employment cases as reminders that the course of true amorous relations never did run smooth. Indeed, they often go off course in ways that, if known beforehand, might sound a gentle alarm.

53. See *Babcock v. Frank*, 729 F. Supp. 279, 287 (S.D.N.Y. 1990) (holding that Title VII protection "ought not be withdrawn merely upon a showing that the victim of [the present] harassment had in the past entered into a consensual sexual relationship with the perpetrator").

54. See Lynn A. Baker & Robert E. Emery, *When Every Relation Is Above Average*, 17 *LAW & HUM. BEHAV.* 439 (1993) (presenting study suggesting young adults have undue optimism about the chances they will end up divorced, thus leading them to ignore divorce statutes and the like until they encounter marital problems).

55. See, e.g., Kuntz, *supra* note 33.

V.

The failure to think about consent as an informed decision is one gap in Gallop's account. Another missing piece of her story has to do with the relation between the erotics of pedagogy and the possibility of harm to students. In this section I want to sketch in that missing material and explore the downsides not of *frisson* itself, but of *frisson mise en action*.

During my first year of teaching, I remember working through some seemingly impossible, self-contradictory U.C.C. section on my syllabus for the next day. I took my diligent little diagrams and cross-referenced Code to a more senior professor to see if he agreed with my analysis. Looking over my arsenal of material, he smiled and said, "The chart is fine. But some advice? Relax. Remember, whatever you are teaching, they are thinking about sex." My colleague didn't mean sex with me, he meant just sex. Victorian scholar James Kincaid similarly observes that "eroticism is the air we breathe" and in that regard classrooms are really not so very different from everyplace else.⁵⁶

Even if one doesn't accept that the earth's atmosphere is erotically charged, there are still reasons why people in proximity to one another tend to become involved. As Gallop points out, teachers and students connect up with one another for the "usual range of reasons why people make contact: loneliness, sympathy, rebounding from a recently failed relationship, and, of course, admiration" (p. 49). There is also the luck of true love, which can strike anyone at any time.

But none of these nothing-special-about-the-academy accounts of teacher-student relationships seems complete. Classrooms *are* different from, say, supermarkets or subway trains. (Although I see Kincaid's point: suddenly everything is looking erotic.) There is something about the academy and its relation to relationships that commands greater investigation. We could start with the physical surroundings. Kincaid points out that "as Judy Blume has shown and as every boy and girl in the sixth grade knows, blackboards are the most pornographically arousing things there are. Just go to one at age twelve to work a math problem and see what happens — zing!"⁵⁷ But it is less the equipment than the milieu and method of

56. See James R. Kincaid, *Eroticism Is a Two-way Street, and I'm Working Both Sides*, in *THE EROTICS OF INSTRUCTION*, *supra* note 5, at 81, 88, 92.

57. *Id.* at 89. Kincaid's argument is somewhat more developed. He observes that one finds *many* things in schools: "Classroom eroticism is certain to be there, sure, just like anxiety, fear, repulsion, boredom, and even curiosity, affection, and good-will. To isolate it, however, as this volume has tried to do, is foolish, futile, and foul." *Id.* at 93. The reason it is foul, Kincaid explains, is because:

it draws attention away from issues that matter. . . . [W]e are being skinned alive by right-wing anti-intellectuals now in power: virtually all our values and best procedures

the classroom that set the stage for erotic interaction, at least when one is beyond middle school. Why are teachers and students drawn to one another for reasons connected with the educational process?

In framing the inquiry this way, I weed out from our consideration two explanations for student-teacher sex still offered with varying degrees of respectability. The first is that sex or romance with students is something like a job perk. Fictional examples will do. Consider the hero of Anne Bernays's *Professor Romeo*, Jake Barker, who has been sleeping with students for decades. "Let's begin with what happens when you walk into a classroom," says Barker's therapist, rather too late in Barker's career to be of much help. "What do you see?" "Pussy. Acres of pussy sitting there like daisies in a garden."⁵⁸ The second explanation is that sleeping with students is a humanitarian act. John Updike captures this in *Memories of the Ford Administration*, in which he recounts that "[i]n the Sixties, indeed, gentle and knowing defloration had been understood by some of the younger, less married faculty gallants as an extracurricular service they were being salaried to perform."⁵⁹ It is worth noting that both of these explanations — quantity and community service — fall within the realm of consensual, and therefore non-harassing, relationships. I note as well that the 1960s are not dead. In a 1993 *Harper's Magazine* "Forum on New Rules About Sex on Campus," Professor William Kerrigan explained with a very straight face that:

[T]here is a kind of student I've come across in my career who was working through something that only a professor could help her with. I'm talking about a female student who, for one reason or another, has unnaturally prolonged her virginity. Maybe there's a strong father, maybe there's a religious background. And if she loses that virginity with a man who is not a teacher, she's going to marry that man, boom. And I don't think that marriage is going to be very good.

are in jeopardy: theory, multi-culturalism, research itself, government support for the arts and humanities, experimental work, gender studies, queer studies, university presses, journals, small colleges, large universities, new jobs, any jobs, and intellectual freedom. . . .

In such a climate and in such a world . . . waving a banner that proclaims "Stamp Out Classroom Sex," or "Classroom Sex Now!" as if this were an issue either way, as if it mattered . . . [is silly].

Id. at 93.

58. ANNE BERNAYS, *PROFESSOR ROMEO* 212 (1989).

59. JOHN UPDIKE, *MEMORIES OF THE FORD ADMINISTRATION* 62 (1992). Edward Albee offers a variation on the theme in *Who's Afraid of Virginia Woolf* in the relationship between Martha, the college president's daughter and Nick, the new math hire. See EDWARD ALBEE, *WHO'S AFRAID OF VIRGINIA WOOLF* (1962).

There have been times when this virginity has been presented to me as something that I, not quite another man, half an authority figure, can handle — a thing whose preciousness I realize.⁶⁰

Yeah, yeah.

Yet there *are* explanations more connected to pedagogy than to opportunism. Joint intellectual discovery is both thrilling and catching. There is also the comfort of being in the same field or profession. Many professors have chosen the pleasures of reading (and shopping), trying out ideas (and doing dishes), editing (and climbing into bed) with another academic. And to some extent, students are academics — as we *want* the best of them to be — if in cadet status, a designation which is only temporary and therefore at times seems quite artificial. Why then the fuss at what might be characterized as nothing more wily or pernicious than premature graduation?

It may help to look at the question from the cadet side of things. That is, putting aside why we are drawn to them, why are some of them drawn to some of us? Surely the process of teaching has something to do with it. Professor John Glavin provides a job description unlike most advertised in the *Chronicle of Higher Education*:

Society licenses the teacher to do what virtually no other adult in the real world can. He or she stands up several times a week for fifty, seventy-five, ninety minutes to exhibit with unconditional authority the self. This is not the self enveloped in a role or in a part, not wearing a uniform or enclosed by a vestment, and certainly not playing by any sort of rules. The teacher is there simply and obviously to improvise the self, and to carry off that self-improvisation without inhibition until the class comes, by the teacher's consent, to an end. (Isn't that why so many of us prolong class just that extra minute after the period officially ends, to confirm exactly how much our narcissism controls this particular site of exhibition?) The successful teacher . . . enjoys — needs, also — more than anything else that sheer power to exhibit the self untrammled that insists that everything s/he thinks and feels and knows ought to be interesting and relevant to everyone who listens. And that enjoyment guarantees in turn the student's enchantment.⁶¹

If one factors age differences, the institutional power of the professor — the command of subject, the podium, the tie — the phenom-

60. *New Rules Colloquy*, *supra* note 32, at 35-36; but see Trudy Tynan, *U Mass Faculty Frowns on Prof's Views of Sex with Students*, AP, Sept. 25, 1993, available in 1993 WL 4559690 (Faculty senate votes to "emphatically dissociate itself" from Kerrigan's statements).

61. John Glavin, *The Intimacies of Instruction*, in *THE EROTICS OF INSTRUCTION*, *supra* note 5, at 12, 16-17. Glavin argues that the narcissism of the classroom has been fed in recent times by the demands of a generation raised on Sesame Street: "Hostility has now become the adolescent badge of authenticity; indifference, the cool response. Take me, try to take me . . . challenge all but the nerds. Charm my resistance. Captivate my indifference. Please me, entertain me, divert me, fascinate me, thrill me — seduce!" *Id.* at 12.

enon of transference plus the thrill of it all, it may be a very small move from enchantment to desire.

But what is the desire about? Why do so many students, traditionally women students, fall for their teachers? Regina Barreca proposes an answer that may sound uncomfortably familiar to women academics:

Those of us who fell for the professor cast ourselves as Cinderella intellectuals, waiting for the *phrase* — rather than the slipper — that fit us perfectly. We waited, at fourteen, at nineteen, at twenty-five or even thirty-five, for the figure who would see what was hidden and special and glorious in us, who would love us for our smart selves alone and not our yellow [or brown] hair — or so we thought . . .⁶²

Girls waited because smartness, insight, and brilliance are not the qualities for which they have been traditionally rewarded. There is now a huge literature on why (popularity) and when (adolescence) girls stop raising their hands in class. Being chosen for “one’s smart self alone” — and by the *teacher* — can be thrilling indeed.

Yet Barreca’s quote reveals the tricky part of such recognition, for sometimes more than just a phrase is offered, praise for the student’s “fine mind” serving as catalyst (or bait) for what follows. And how do students respond to the larger invitation? Some pretend the advance or kiss didn’t happen or, if it did, that it is something one manages:

[H]e was so innocent of his own vibes, so apparently married, and so earnestly solicitous about my graduate work, that I think my assessment at the time was correct: he had a mild crush on me, at least partly because he *did* like my mind, and it was up to me, at twenty-one, as it had been at fourteen when my eye doctor kissed me, to handle my confusion as best I could (assuming that he, the grown man, could not handle his).⁶³

Other students, as Robin West and Jane Gallop discuss, become involved. West explains a structural piece of the dynamic:

A good male student will often attach himself to a brilliant professor, and will aspire to *be like* him. A smart female student . . . *might* attach herself in this way But it’s not very likely. Unlike the male student, she is far more likely to be attracted to the brilliant professor, and aspire not to be *like* him, but to give herself *to* him.⁶⁴

West argues that because women are deeply acculturated to become “giving selves,” an identity that includes giving or consenting to sex, “the definition of ‘self’ as a sexually giving self rather than

62. Barreca, *supra* note 9, at 2.

63. Myra Goldberg, *But I Thought He Liked My Paper*, in *THE EROTICS OF INSTRUCTION*, *supra* note 5, at 166, 167. Goldberg notes that she later rejected this man’s offer of help in her career, “something I could have used.” *Id.*

64. Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *WIS. WOMEN’S L.J.* 81, 109 (1987).

an academically demanding self is always there, always in competition [with the intellectual self], always available."⁶⁵ Here prepositions become crucial. Sleeping with the great man — giving one's self *to* him — ends the woman's internal war by reconciling the two selves; chosen for her mind, she also gets to give herself sexually. The high is undeniable: "It feels palpably *meaningful* to enrich the life of someone who is admirable and immersed in a discipline you value by merely *being*, and by giving what you are."⁶⁶ The result, West insists, is a "deeper tragedy, a more profound loss, and a greater harm" than the student who trades sex for an A.⁶⁷ That student at least moves on with her life. In contrast, the student member of "the fully consensual and highly regarded romantic attachments of female graduate students and assistant professors" often gives up her own intellectual project in order to enrich *his* life — or semester.⁶⁸

Gallop describes an almost identical terrain. In the 1970s, French departments "were full of female students, the faculty was predominately male, the powerful professors were nearly all male, and it was the male graduate students who were treated and took themselves to be 'professional,' who were being groomed to take the place of the faculty."⁶⁹ Like West, she too understood that sleeping with professors was meaningful. The difference, however, is that Gallop was keen to take *from* her two naked professors; any giving on her part was incidental. Sleeping with them "seemed to make it somewhat easier for me to write" (p. 42). Perhaps most important, "I felt that in their eyes I was both a desirable woman and a serious scholar" (p. 43).

This last claim oddly narrows the gap between Gallop's invigorated graduate student and West's disempowered one. Both are at least momentarily rewarded by combining sex with intellect as a result of professorial sex. But, we might ask, borrowing from James Thurber, is sex (still) necessary? As we approach the millennium, might not a bright woman student find confidence and satisfaction without going through this tired and risky — win *or* lose, on West's account — academic rite of passage? Barreca puts the question this way: "At what point . . . did the moment come for each of us when we realized that we wanted to be the teacher, and not sleep with the teacher?"⁷⁰ Using a range of wonderful literary examples by women authors, she points out how unnecessary, time-consuming,

65. *Id.*

66. *Id.* at 110.

67. *Id.* at 109.

68. *Id.*

69. GALLOP, THINKING THROUGH THE BODY, *supra* note 3, at 42.

70. Barreca, *supra* note 9, at 2.

and comical the detour can be. In George Eliot's *Middlemarch*, for example, poor Dorothea Brooke imagines that "the really delightful sort of marriage must be that where your husband was a sort of father, and could teach you Hebrew if you wished it" and ends up with the learned, desiccated Casaubon.⁷¹ Barreca observes that "Dorothea makes the mistake that colors all feminine affection for the teacher/lover: confusing scholarship with kissing a scholar."⁷²

But what is so bad about kissing — or, à la Gallop, bagging — the scholar? What exactly is the harm? I suggest there is a catalogue of options to chose from. A subtle and disturbing form of harm is West's suggestion that graduate students who get the professor end up wasting their talents and abandoning their own work in order to serve the great man. Second, in cases where the student wins, then loses the professor, there is the possibility of professional retaliation. Third, because professor and student lover are not alone in the academy, there are often the practical consequences of public exposure. Consider former student-girlfriend Leslie Irvine's experience:

For a long time, I went around feeling naive, humiliated, and ashamed. Many of his colleagues knew the extent of the errands I ran for him. . . . Many of his colleagues were also my professors, and the humiliation I felt in their presence was great. I was ridiculed by students who were aware of what was going on. My emotional attachment to him earned me the title "Professor X's pitbull," as though I could not think for myself, only defend my master on command.⁷³

Finally, to the extent teacher-student relationships result from the phenomenon of transference (the projection of qualities belonging to an important person from the student's past onto the therapist), the student may feel betrayed when the teacher, like the therapist, violates the rules of the role. The betrayal comes when the therapist uses information or trust gained in a professional capacity not to help the patient understand those earlier relationships, but for the therapist's personal advantage with the patient. Gallop cheerfully accepts that transference is "a nearly universal response to people whose opinions of us have great authority, in particular doctors and teachers" (p. 56). But here Gallop's analysis becomes remarkably unaware. She characterizes transference itself as "undoubtedly an 'amorous relation'" (p. 56). We love our parents; we project that love onto whoever is standing at the front of the room. And that is about it for Gallop's transference discussion. But this dip into psychoanalytic theory stops somewhere short of its usual

71. *Id.* at 2.

72. *Id.* at 5.

73. Leslie Irvine, *A "Consensual" Relationship*, in *SEXUAL HARASSMENT ON CAMPUS* 234, 242 (Bernice Sandler & Robert Shoop eds., 1997).

end. While transference *may* be an “inevitable part of any relationship [a student] has to a teacher who really makes a difference” (p. 56), it is not supposed to operate as a dating service. Therapists and teachers who know what they are doing must do more than recognize the basic phenomenon. They must also have an appreciation of counter-transference, the projection of their own emotional resonances back onto the patient-student and think twice before giving in to the desire to put student adoration to personal use.

The notion of restraint in the context of teaching is disarmingly discussed by Michèle Barale in an essay focusing on the problems of erotic pedagogy particularly for gay and lesbian teachers. Barale notes that the gay or lesbian teacher

can become the perfect symbol for a variety of meanings. We may represent all the possibilities of rebellious sexuality . . . [the] sites for the expression of both their liberalism and their bigotry . . . certainly we are the dramatis personae of private dramas enacting the fears and thrills of sexual identity; and god knows that we play out parental roles we can't begin to fathom, were we even to want to.⁷⁴

Because the professor may feel alienated from his or her department and may also share with students a more general sense of exclusion from the dominant culture, “it can become all too tempting to enter not only our students’ intellectual lives but also their beds.”⁷⁵ But Barale stays out of student beds exactly to preserve the pedagogical use of the classroom’s erotic charge. Her explanation seems right for professors across the board:

Since neither the material of the classroom nor pedagogy itself ever can or should be made off-limits for erotic pleasure, the students must be. The boundary that separates our sexual desire from that of our students has to be intentionally established to allow no negotiation [Otherwise] it will be only too easy to use the classroom as a way to feel good about ourselves. . . . As long as we are unconscious of this internal conflict, it is not difficult to manipulate the continuance of an infatuation even while giving it the lip service of denial.⁷⁶

Law professors may have less problem with the erotics of our materials, but an eroticized moment in class or the professor as pedagogical object of desire is not unfamiliar. And what to do? Barale suggests recognizing the value of boundaries, not as a means of stamping out desire, but rather to let students know what they *can* have and *can* expect from their teachers.⁷⁷ I take this to mean that

74. Michèle Aina Barale, *The Romance of Class and Queers: Academic Erotic Zones*, in *TILTING THE TOWER* 16, 18-19 (Linda Garber ed., 1994).

75. *Id.* at 17.

76. *Id.* at 22.

77. “I am not saying, ‘no red cowboy boots or muscle Ts or leather mini-skirts . . . let’s make the world safe for tweed again.’” *Id.* at 23. An example of this may be the policy of one colleague who refuses to date students even after they have graduated so that his current students have the security of knowing they are not being set up for a later hit. This is an

students may rightfully expect quite a lot from our intellectual lives and efforts. The project is hardly hermetic: "Intensely engaged by what we do, we necessarily become intensely engaged with those who do it with us."⁷⁸ The difference between kinds of intense engagement is not primarily one of degree, but rather of self-awareness; amorous relations are the ones that "feel[] better than [they] teach[]."⁷⁹

VI.

What are the implications of all this for policies? I agree with Gallop that consensual sexual relations between professors and students are not by themselves sexual harassment. They may be many other things: unwise, foolhardy, misguided, unnecessary and perhaps at times irresistible. But characterizing consensual relations as harassment in the first instance is too assured a move. One must at least puzzle through the question of whether student consent — especially law student consent — can be valid even when taken under circumstances of institutional constraint.

And here, with regard to the politics of consensual relations policies, Gallop's insights momentarily take a less feverish tone. She reviews the tensions between "victim feminism" and "power feminism." Those in the "victim" camp think young women still benefit from policies — anti-pornography ordinances, prohibitions of consensual relations — that those in the "power" camp regard as unnecessary protectionism. The power/victim labels are silly but the debate is not. Both groups are trying to figure out how to prevent continued disadvantage for women on the basis of sex. In my view, adherents simply locate themselves at different points on the Not There Yet Continuum. Not surprisingly, Gallop, who has taken her fair share of prisoners, admits a preference for "something like 'power feminism'" (p. 71). Yet she admits that it is troubling indeed "to see that this new nineties 'power feminism' frequently talks as if the worst enemies of women were other feminists, the wrong sort of feminists. . . . History and theory together suggest that we think about whose interests it serves when feminists are at each other's throats" (pp. 71-72).

In addition, including consensual relations within harassment policies may well distract attention from the kinds of quid pro quo

interesting, self-imposed version of the Victorian-era restriction that disallowed widowers from marrying their deceased wife's sister in order to maintain household integrity ("to at least interrupt daydreaming") during the wife's life in a period when unmarried sisters not uncommonly lived with the married ones. See Margaret Mead, *Anomalies in American Postdivorce Relationships*, in *DIVORCE AND AFTER* 107, 118 (Paul Bohannon ed., Anchor Books 1971) (1970).

78. Barale, *supra* note 74, at 17.

79. *Id.*

cases about which there is no dispute and which have long plagued the educations and careers of women students. One sees a pronounced, almost delighted, tendency in public discourse to seize marginal or eccentric applications of harassment policy — the kindergarten kisser, for example — to demonstrate once and for all how foolish and repressive the whole project really is. There is a particular risk for feminists in all of this. Where consensual, nonsupervisory relationships are understood as harassment, the already-prevalent male-fantasy fear that looking at a woman cross-eyed will cost you your career is intensified. David Mamet's play *Oleanna* got this bit of anxiety right.⁸⁰ This, in turn, is chalked up to feminist faculty who, as everyone knows, want to stamp out all sex for everyone forever in order to demonstrate their tremendous power within their institutions.⁸¹

But although consensual relationships may not be harassment, they may still constitute a category of behavior about which academic institutions are properly concerned. Even if we assume perfect consent in every case, there is still the matter of conflict of interest during the relationship and the possibility of retaliation afterwards. There is still a reasonable concern about the appearance of favoritism in the eyes of those students not attractive or attracted to their professors.⁸² In this regard, consensual relations policies simply extend familiar rules against nepotism or fraternization.⁸³

80. See DAVID MAMET, *OLEANNA* (1992).

81. Professor Kerrigan: "The 'paradigm' is a generation of academic feminists who push this legislation because in an era where a leer constitutes rape, they believe they are powerful enough to punish womanizing male colleagues." *New Rules Colloquy*, *supra* note 32, at 38.

82. Here too the law of sexual harassment fails would-be plaintiffs. Paramour suits brought by third parties, those employees who were not promoted when the boss's sweetheart was, are generally unsuccessful along much the same lines as the "after the dance is over" cases. As with retaliation, *favoritism* based on personal relationships between supervisor and employee is not considered discrimination based on sex. The EEOC Guidance on Employer Liability under Title VII for Sexual Favoritism states:

Not all types of sexual favoritism violate Title VII. It is the Commission's position that Title VII does not prohibit isolated instances of preferential treatment based upon consensual romantic relationships. An isolated instance of favoritism toward a "paramour" (or a spouse, or a friend) may be unfair, but it does not discriminate against women or men in violation of Title VII, since both are disadvantaged for reasons other than their genders.

EEOC: Policy Guide on Employer Liability for Sexual Favoritism Under Title VII, 8 Lab. Rel. Rep. (BNA), No. 694, at 405: 6817 (Jan. 12, 1990), *quoted in* O'Patka v. Menasha Corp., 878 F. Supp. 1202, 1206 (E.D. Wis. 1995); *see also* Ayers v. American Tel. and Tel., 826 F. Supp. 443 (S.D. Fla. 1993) (discussing favoritism in the context of age discrimination).

83. This is the rationale followed by the University of Michigan:

The University's nepotism policy precludes any professional staff member from evaluating the work or academic performance of others with whom they have intimate familial or close personal relationships. Thus, consensual romantic or sexual relationships between faculty/staff and students also require disclosure to the appropriate administrative supervisor so that arrangements can be made for objective evaluation and decision-making with regard to the student.

Policy of University of Michigan, *excerpted in* Memorandum from Northwestern Provost (n.d.) (on file with author) [hereinafter Northwestern Memo].

There is also the general matter of women and the atmosphere of education. It would be nice to think that girls could just attend school. I do not mean "school" as a euphemism for "convent." College and graduate study present students with sexual opportunities and temptations in all sorts of new forms and quantities; figuring out how to deal with them is part of what one gets gratis with the degree. At the same time, however, there is something heartening in an institution where students would not have to consider themselves sexually available to everyone — especially those whose duty is to teach, even if they teach in classrooms where the pedagogical voltage is high.

It is here, in fixing the default rule for consensual relations, that Gallop and I part company. While she admits that personal relations with students can sometimes be "intense, complicated, and sticky" (p. 53), she places the risk of stickiness on the student. That is accomplished by having no rule at all. The university is like any other place (except the family, the military, and many businesses) where parties are left to sort out their relationships by themselves.

In contrast, a number of colleges and universities have enacted policies that place the risk of messy aftermath on the professor. Most focus only on relationships in which the professor retains a supervisory role with regard to the student.⁸⁴ Under this regime consensual relationships are permitted but clearly discouraged. The mechanism of discouragement is burden shifting. New York University Law School, for example, creates a presumption that sexual relations between persons of disparate institutional power are not

84. See Administrative Procedures for the Nepotism and Consensual Sexual or Romantic Relationships Policy, University of Minnesota (n.d.) (on file with author) ("Members of the University community who are in personal relationships with each other and are likely to be placed in a position to . . . supervise . . . grade or advise, or otherwise directly influence the academic progress or employment of the other person in the relationship, must consult with an appropriate administrator to seek guidance about eliminating and avoiding existing and potential conflicts arising from the relationship") (emphasis added); Office of Equal Opportunity, Tufts University, *Tufts Policy on Consensual Relationships* (visited June 23, 1998) <<http://www.tufts.edu/oeo/consent.htm>> ("Voluntary consent by the student in such a relationship [between faculty members or academic administrators and students] is suspect, given the fundamental nature of the relationship."); see also Jeff Leeds, *U.Va. Faculty Passes Student-Teacher Sex Ban*, VIRGINIAN PILOT AND LEDGER-STAR (Norfolk, Va.), Apr. 23, 1993, at A1, available in 1993 WL 8440087 ("[t]he policy . . . would forbid professors and graduate teaching assistants from amorous or sexual relationships or overtures involving students whom they teach, coach, evaluate or to whom they allocate money."). The AALS Statement of Good Practices goes further, stating that "Even when a professor has no professional responsibility for a student, the professor should be sensitive to the perceptions of other students that a student who has a sexual relationship with a professor may receive preferential treatment from the professor or the professor's colleagues." AALS Executive Committee, *Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities* (Nov. 17, 1989), reprinted in ASSOCIATION OF AMERICAN LAW SCHOOLS, 1995 HANDBOOK 89, 91 (1995).

automatically consensual.⁸⁵ If the relationship is challenged, the professor must then demonstrate the voluntariness of the student's consent. And the burden of doing so is clearly his: the policies refer to "ostensibly"⁸⁶ or "apparently"⁸⁷ consensual relationships and consent is "suspect."⁸⁸ Of course, when everyone lives happily ever after — whether together or apart — burdens of proof will never arise. When they do not, "it is almost always the case that the individual with the power or status advantage will bear the burden of accountability."⁸⁹

Putting the burden on the party in greater control of the transaction is a familiar method of allocating risk. The professor is surely better able to protect himself against the consequences of involvement: he has superior information; he knows how the institution works; he may be a repeat player or at least will have heard the war stories of others. The professor may also be the one with more at risk. In a personal sense, there is perhaps vanity; institutionally, there may be something more, although many policies are silent with regard to penalty.

A few other schools, most recently Yale, rely not on the frailties of consent but on the impact of consensual relations for others.⁹⁰ Because the focus here is on favoritism and not consent, the relations are prohibited outright. This makes sense as even hugely consensual relationships still "jeopardize[] the integrity of the educational process by creating a conflict of interest and may lead to an inhospitable learning environment for other students."⁹¹

The articulation of institutional rationale for consensual relations policies is important. Rules that burden consent may have the effect of closing down consensual relations but do so by indirection. I prefer the candor of the prohibition, based not on the student's inability to fall in love but on the consequences of doing so for everyone else. Policies based on academic atmosphere situate faculty-student romances in broader and relevant context. The parties connection may be consensual but it is not wholly private. Rules that

85. See Sylvia Law, *Good Intentions Are Not Enough: An Agenda for Law School Deans*, 77 IOWA L. REV. 79, 85 (1991).

86. Policy of University of Florida excerpted in *Northwestern Memo*, *supra* note 83.

87. Policy of University of Maryland, excerpted in *Northwestern Memo*, *supra* note 83.

88. Policies of Tufts and Indiana University, quoted in *New Rules Colloquy*, *supra* note 32, at 36.

89. Policy of University of Wisconsin-Madison, excerpted in *Northwestern Memo*, *supra* note 83.

90. See *Yale Bans Sex Between Students and Faculty*, N.Y. TIMES, Nov. 15, 1997, at B5.

91. *Id.* (internal quotation marks omitted). Stanford University phrases it somewhat differently and notes that consensual relationships "may undermine the real or perceived integrity of [faculty] supervision . . . particularly the trust inherent in the student-faculty relationship." Policy of Stanford University, quoted in *New Rules Colloquy*, *supra* note 32, at 36.

insist on supervisory neutrality — what we might call professionalism — do not thwart desire or deny agency, at least for longer than a law school semester.⁹²

There are, of course, certain problems with any rule. Whether a ban or a frown, the policy may go unenforced or may be enforced unevenly — with enforcement perhaps more often directed at same-sex student-faculty couples.⁹³ And as I have suggested, policies against student-faculty relationships fail to account for the spontaneous nature of much romance. Still, what is lost with a policy that requires a professor not to pursue or accept involvement with students while he is in a supervisory capacity? Counting the days until the semester's end might be seen as today's version of the nineteenth-century Grand Tour forced upon young lovers as a test of their commitment to one another.⁹⁴ The burden is especially manageable in law schools, where long-term relationships with our students are relatively rare. Some argue that such a rule is just fine in metropolitan areas where professors can hang out at Barnes and Noble coffee counters all over town to meet like-minded strangers, but it is another story in college towns where unmarried professors necessarily count on the periodic arrival of new graduate students. This may well be a recruitment issue on some campuses. More serious may be the reported reluctance of professors to mentor graduate students with the care and enthusiasm once embraced in that relationship. Male partners in some law firms have expressed hesitation in taking on junior women associates for fear of overstepping some invisible line of impermissible contact.⁹⁵ Gallop warns that consensual relations policies will produce a similar dynamic of withdrawal in the academy. Not just mentoring but engaged, stimulating, hot teaching itself will eventually fade away.

I'm not so sure. Janet Malcolm is convinced that "the new repression can only spur the irrepressible Gallop to new audacities."⁹⁶

92. I recognize that such prohibitions are less problematic in law schools where we rarely have sustained supervisory authority over any one student. In contrast, graduate students typically work under a small number of professors for a period of years. This intensifies the problem from both directions: the dissertation advisor has substantially more power over her non-anonymous student and banning the relationship has greater long-term cost to the participants.

93. See *Naragon v. Wharton*, 737 F.2d 1403 (5th Cir. 1984) (lesbian professor fired after suit against college by parents of a student with whom professor was involved; a similar relationship between a heterosexual professor and a student had gone unchallenged and unpunished).

94. Certainly the law does not regard postponement as legally irreparable in the case of minors who want to marry but without parental consent must wait until the age of majority. See *Moe v. Dinkins*, 533 F. Supp. 623 (S.D.N.Y. 1981), *affd.*, 669 F.2d 67 (2d Cir. 1982).

95. See Cynthia Fuchs Epstein, *Glass Ceilings and Open Doors*, 64 *FORDHAM L. REV.* 306, 376 (1995) (reporting some male partners in large firms avoid contact with women attorneys for fear of being accused of sexism).

96. Malcolm, *supra* note 2, at 9.

Audacity may be beyond the reach or aspiration of most of us; yet I accept a calmer version of Gallop's premise. Who can deny the thrill of that moment in class where, as she wonderfully puts it, one feels "the buzz of live knowledge" and "learning begins to dance" (p. 20)? At such moments, Gallop explains and we understand that "my students love me and I'm crazy for them" (p. 20). This is a moment most of us recognize, appreciate, seek. Still, one can be joyously crazy for one's students and still not sleep with them.

We might look to Plato's *Symposium* for precedent. There beautiful, bad Alcibiades tells his chums about his mad crush on Socrates:

And speaking for myself, gentlemen, if I wasn't afraid you'd tell me I was completely bottled, I'd swear on oath what an extraordinary effect his words have had on me — and still do, if it comes to that. For the moment I hear him speak I am smitten with a kind of sacred rage . . . and my heart jumps into my mouth and the tears start into my eyes⁹⁷

Alcibiades reports on his diligent efforts to seduce Socrates: inviting him to dinner, bumping into him around town, wrestling with him in the gym — "thinking that something was bound to happen there."⁹⁸ He finally gets Socrates alone on a trip and realizing it is now or never, "wrapped my own cloak round him — for this was in the winter — and, creeping under his shabby old mantle, I took him in my arms and lay there all night with this godlike and extraordinary man."⁹⁹ But as Alcibiades reports the next morning:

[W]hen I got up . . . I had no more *slept* with Socrates, within the meaning of the act, than if he'd been my father or an elder brother.

You can guess what I felt like after *that*. I was torn between my natural humiliation and my admiration for his manliness and self-control.¹⁰⁰

The extraordinary effect of a teacher's words; mutual admiration; self-control. The Socratic Method?

Almost. This slice of the *Symposium* misses the sexual relationships between Athenian teachers and their students that were regularly included within pedagogical pursuits of beauty. It is then perhaps the Platonic form of Socrates we should keep before us.

Or maybe conflict analysis is enough. Not the standard concern regarding how we treat the student we adore and how we treat the rest of the class. I mean instead the conflict between two internal

97. PLATO: COLLECTED DIALOGUES 567 (Edith Hamilton & Huntington Cairns eds., 1961).

98. *Id.* at 568. Compare Gallop's campaign against her two professors: "Trying not to be too obnoxious, I watched for opportunities that might present themselves, prepared to take advantage and press my suit." P. 41.

99. PLATO: COLLECTED DIALOGUES, *supra* note 99, at 570.

100. *Id.*

sources of professorial pleasure: the erotics of intellectual exchange and the separate charge of the long kiss. The two strands are not always easy to keep apart. When exactly does physical desire slip the pedagogical bonds from which (we at least pretend) it arose? Who knows? The exact moment matters less than the general awareness that the personal and the professional are distinct categories. The spheres overlap — and much is owed to feminism for insisting on this. But feminists have never claimed an identity of interest between the two. Gallop's enthusiasm for complete merger makes for snazzy reading. But it also makes for sloppy theorizing and reckless practices.