Accountability in an Era of Celebrity

Martha C. Nussbaum[1]

> Now let's be clear, this problem is bigger than football. There has been, appropriately so, intense and widespread outrage following the release of the video showing what happened inside the elevator at the casino. But wouldn't it be productive if this collective outrage, as my colleagues have said, could be channeled to truly hear and address the long-suffering cries for help by so many women? And as they said, do something about it? Like an on-going education of men about what healthy, respectful manhood is all about.
>
> Consider this: According to domestic violence experts, more than three women per day lose their lives at the hands of their partners. That means that since the night February 15th in Atlantic City [when the elevator incident occurred] more than 600 women have died.
>
> James Brown, CBS Sports, Thursday, September 11, 2014

On December 30, 2015, actor Bill Cosby was finally charged with sexual assault.[2] For anyone who has followed the case, one striking aspect is how late an actual indictment came, and after a huge number of accusations. One legal problem has been the statute of limitations for rape, an issue by now much discussed. But another obvious aspect is the fact that as a society we have created a class of glamorous and powerful men – entertainers, athletes – who

---

[1] This paper was given as an inaugural lecture at the Dickson Poon Law Center at King's College, London on March 9, 2017, and has been updated and revised. I am very grateful to Emily Dupree and Nethanel Lipshitz for expert research assistance.

[2] See Commonwealth v. William H. Cosby, Jr., Police Criminal Complaint 2015-2583, www.montcopa.org/2312/Commonwealth-v-William-Henry-Cosby-Jr

are in a most literal sense above the law. They will almost always prevail against all accusations, no matter what they do in the sexual domain, because they are shielded by glamor, public trust, and access to the best legal representation. Cosby might prove the exception only because his abuses of women were so numerous and so flagrant. So what I think as I read the news is, "For one Cosby, there are hundreds like him who will never be indicted."

But as I write this, in July 2017, Cosby himself has just scored a huge legal victory that suggests that he too may escape accountability: after lengthy jury deliberations in his sexual assault trial, no verdict could be reached, and the judge declared a mistrial.[3] And this was in part a result of earlier legal victories, including the ruling that only one accuser other than the primary complainant was allowed to testify, even though the prosecution had planned to call thirteen women (out of the dozens who have told their stories publicly).[4] This made it virtually impossible to show that an obsessive pattern of conduct – drugging followed by rape – had been Cosby's modus operandi for years. The other women were prevented by the statute of limitations from bringing their own charges: Pennsylvania, where the trial took place, has a longer statute of limitations for rape than other states. Despite these setbacks, the District Attorney has "vowed to put Mr. Cosby on trial again," with a new trial set for November of 2017.

Like countless women, many of whom have written to me since I first published my story in Huffington Post, I have my own Bill Cosby tale to tell.[5] In the winter of 1968, when I was an enterprising twenty-year-old, I had a big crush on a well-known actor who shortly became another of America's beloved TV dads. He was a really good actor, and at that time he was

---

[3] Graham Bowley, "Bill Cosby's Sexual Assault Case Ends in a Mistrial," *The New York Times*, June 17, 2017, www.nytimes.com/2017/06/17/arts/television/bill-cosby-trial-day-11.

[4] See Commonwealth v. William H. Cosby, Jr., Order of February 24, 2017, www.montcopa.org/ArchiveCenter/ViewFile/Item/3640.

[5] See Martha Nussbaum, "Why Some Men Are Above the Law," *The Huffington Post*, January 15, 2016, www.huffingtonpost.com/martha-c-nussbaum/why-some-men-are-above-the-law_b_8992754.html.

playing a major stage role in New York. He was then around forty. After going out with him a couple of times, I asked him back to my off-campus apartment. I had had some sexual experience, but not much; however, I decided to be daring, since it was the late 60's and I felt that I should join the culture. Unlike the Cosby women, I certainly intended to consent to intercourse. What I did not consent to was the gruesome, violent, and painful assault that he substituted for intercourse. I remember screaming for help, to no avail, and I remember him saying, "It's all part of sex."

I never seriously considered going to the police, even though there was a lot of forensic evidence. I was just too embarrassed. I didn't even go to a doctor. And I thought, with good reason, that the police would dismiss the issue because I had after all consented to some kind of sex act. Even now, the law is not well equipped to handle that type of case, since consent is usually understood to be an all or nothing matter, despite the fact that there is a world of difference between what I intended to consent to and what happened to me. I've taught rape law and read a large amount on this topic and have never found discussion of this question. This, at least, we can fix, with more nuanced accounts of legal consent in the case of violent practices.

But the issue I want to focus on is that even had all these problems been solved, the celebrity in question would certainly have prevailed. He would have denied my allegations, cast aspersions on my reputation, even perhaps attempted to portray me as an extortionist. My life, personal and professional, would have been profoundly damaged, and nothing would have been accomplished. Not specific deterrence, since I am sure he was undeterrable, shielded by fame as he was, and not general deterrence, since I would have failed. No doubt dozens of other women have come to the same conclusion about this particular man. And who knows how many hundreds or thousands, about how many hundreds of other male celebrities.

So what did I do? After my injuries faded, I decided not to "join the culture." I met a lovely man my own age, settled down into a monogamous life, married, and soon had a child. I was very lucky: I have never experienced any sexual trauma from the episode, and to this day I think it has affected me almost not at all, except that I never wanted to watch his TV show, which is not the type of show I would normally watch anyway. (Perhaps the episode also explains my strong interest in "Law and Order SVU", my favorite show.) I've had a very happy life, in sexual and other respects. I observed the public enthusiasm for my assailant, as an icon of virtuous American fatherhood, with ironic detachment. Only thirty years later, when he ran for Congress, did I ever consider coming forward with my story, just to tell the story, since I thought it was preposterous that he should hold a position of public trust. But close friends assured me that nobody would believe me after such a lapse of time, and he would be certain either to portray me as an extortionist or to sue me for defamation. (The famous are indeed unusually exposed to extortion, and that vulnerability itself is an aspect of their impunity: everyone easily believes that this is what a complaining woman is after.) I consoled myself with the fact that he was after all a Democrat, running against an especially vapid Republican opponent. Even now that he is dead, I don't name him, because the Vince Foster case showed us that a person's privacy interest can be held to survive death, and who on earth knows what some court might say about a reputational interest? I note that U. S. obituaries made no mention of any problematic conduct, but the Guardian was different: they said that he had a notorious reputation for being completely unlike the virtuous character he portrayed. Good for them!

Mine has been a selfish and self-protective response. I do wonder whether even a futile complaint could have prevented other harms. But now I want to set this issue in a larger context before returning to the case of celebrity accountability.

First I'll give some facts about how women are doing around the world. Then I'll zero in on the unsolved problem of sexual violence. I'll describe some real progress on even this thorny issue, both in law and in culture. But then we must return to the recalcitrant case of actors and sports stars, where big money still prevents full accountability.

It is an honor and pleasure to dedicate this essay to my dear friend Josh Cohen. He has been a feminist since the very start of his career, at a time when many men, certainly including men on the left, were deaf to women's demands for full equality. Confident and strong, he never felt threatened by strong women articulating strong demands. As a teacher, he fostered the careers of many of our best women in political thought, prominently including Debra Satz and Annabelle Lever of this volume. As an editor, he continues to usher into print the most demanding and creative feminist work, for example Kate Manne's work on misogyny. His tough and incisive comments on work in progress challenge us to aim higher and do better. As a friend his support is unparalleled.

Women's Progress

Women are making progress.[6] In 1893, New Zealand became the first nation to offer women the vote;[7] in 2014, every nation of the world now gives women the vote: even Saudi Arabia did so in 2015. In 1900, there was no female member in any national parliament; in 2013, according to the World Bank, the proportion of seats held by women is 21.77 percent,

---

[6] I am indebted to an exhaustive compilation of data by Nethanel Lipshitz, on file with both Lipshitz and me, which amalgamates data from the World Bank, the Human Development Reports, the UN World Women's Report, and numerous other sources. I simply pick a few examples here. A more extensive treatment of these issues is in my "Women's Progress and Women's Human Rights," Human Rights Quarterly 38 (2016), 589-622.

[7] One should note, however, that women in the territory of Utah got the vote in 1870, until it was taken away from them by Congress in 1887 – a history that complicates facile assumptions about Mormon "patriarchy."

rapidly up from 12.74 percent in 1990.[8] In educational enrollment and attainment, although some nations still show substantial gaps, women have basically closed the gap worldwide, coming up to parity with men in primary and secondary enrollment, and surpassing men in tertiary enrollment. Women's labor force participation is also advancing, although it still lags behind men worldwide: 50.6 percent as contrasted with 76.7 percent for males.[9] Although aging women and single female heads of households still exhibit a dramatically higher-than-average rate of poverty, women are on average slowly rising economically, so that their share of national poverty is around fifty percent in Europe, Latin America, and Africa.

In the very basic area of life and health, we also see dramatic improvement. Women's life expectancy at birth has climbed from 54 years in 1960 to 72 years in 2012, about the same increase that we see for men. Women now outlive men in virtually every country. Maternal and infant mortality are declining, though they are still severe problems. Women appear to enjoy nutritional status in childhood similar to that of males. We see few disparities in immunizations or rate of communicable diseases. Even HIV affects women and men equally. A lot of this progress comes from development and affluence. But women's relative status has improved even in many nations that are still lagging behind in overall economic development.

There are two especially recalcitrant issues. One is women's burden of care work in the household. A vastly disproportionate amount of child care, elder care, and domestic labor is currently done, worldwide, by women. The rare case is where the woman is hired and paid a wage; even such women are exploited, since the wage for work perceived as "women's work" is not adequate. But a large proportion of such work is done for free by women, and they are

---

[8] The US is lower than the world average, with 18.5 percent of total seats in House and Senate held by women. The UN World Women's Report gives ten percent for lower or single houses of parliament in 1995, the year of the Beijing Platform for Action, and 17 percent by 2009.

[9] This does not count unsalaried domestic or care labor, a big issue, on which further below. Some nations have a much larger participation gap: in the Arab States, for example, the female rate is 24.7 percent, the male rate 73.2 percent. South Asia also has a very large gap.

supposed to do it out of love. This is just how things are. There are many issues here: the burden of the "double day," the failure of economic accounting to count this work as work or to assign to it a monetary value, the consequent devaluation of women's work in many contexts such as divorce or damage suits. But that is not my topic in this essay.

The other exceedingly recalcitrant issue is sexual violence. According to the 2014 Human Development Report, about one third of the world's women will experience sexual or other physical violence in their lifetime, usually from an intimate partner.[10] Good data in this area are very hard to come by, but it is clear that the problem is not endemic to poorer nations, and that the rate in the US is appallingly high, as I'll describe later.

Even on these issues, however, once highly controversial, or (worse) neglected as the way family life just is, there is an emerging international consensus that violence against women ought to be taken very seriously. Male business as usual is no longer business as usual. Rape, domestic violence, and sexual harassment still occur with depressing regularity, but they are publicly deplored as they were often not earlier; they are big news, when once they were just daily life. When Boko Haram kidnaps young women, this event, the sort of thing that has occurred for centuries without protest, is now the object of widespread international protest. The (former) Prime Minister of Italy, Enrico Letta, shone a spotlight on the frequency of domestic violence, stalking, and killings motivated by male jealousy, saying that Italy is "at war against femicide" --thus placing the crimes in a category comparable to that of genocide, as feminists have long since urged.[11] He followed this up with new tough laws.

---

[10] Khalid Malik, "Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience," *Human Development Report 2014*, United Nations Development Programme (2014). Accessible at http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf

[11] On both of these cases, and on the feminist argument about genocide, see below. See also Anushay Hossain, "Femicide in Italy: Domestic Violence Persists Despite New Laws," *Forbes*, August 26, 2013, www.forbes.com/sites/worldviews/2013/08/26/femicide-in-italy-domestic-violence-persists-despite-new-laws/#412bf5584bc2.

Even in one of those still quite primitive and patriarchal nations, the United States, there is movement.[12] For years rape on college campuses, fueled by alcohol abuse and the toxic atmosphere created by big-time college sports, has gone virtually unreported, as complainants are routinely dissuaded from pursuing their complaints. In his last two years in office, President Obama – actually led by (former) Vice-President Biden, a long-time feminist -- directed attention to this issue, launching a campaign against campus sexual assault and even publishing a list of fifty-five especially problematic institutions, on which, I am sorry to say, the University of Chicago figures.[13] And lately, wonder of wonders, the most all-American institution of all, the National Football League, is writhing in distress after a wave of domestic violence issues involving prominent players. Ray Rice is gone, a mere unsigned free agent. Greg Hardy is out, another unsigned free agent. Jonathan Dwyer is out, another unsigned free agent. MLB's Aroldis Chapman has returned after a suspension, but at least MLB now has an announced domestic violence policy. And the heat is on: a dozen still-active NFL players have domestic violence arrests, and there is mounting pressure on the league to discipline them too.[14]

---

[12] I put it this way because, after the notorious gang rape in India, numerous Americans took a superior stance, calling India a "patriarchal" nation, and a group of feminists at Harvard Law School published a report announcing that they had formed a task force to advise "India and other developing nations" on the problems of sexual violence that "their" people face. "Harvard to the Rescue!" was the headline of one Indian blog piece written by Nivedita Menon, a prominent member of India's very old and well-developed feminist movement. "It's been a long hard haul," wrote Menon, "so it's a great relief that the Harvard Law School has stepped in to take this burden off our shoulders." See Nivedita Menon, "Harvard to the rescue!" *Kafila*, February 16, 2013, https://kafila.online/2013/02/16/harvard-to-the-rescue. Charity should begin at home. In India female university students are comparatively safe (no campus sports, most students live at home), and domestic violence has not been a hallmark of big-time sports role models such as cricketers and tennis players.

[13] The Office of Civil Rights' investigation into the University of Chicago stemmed from a 2013 Title IX complaint filed by former student Olivia Ortiz, and was broadened to include the University's "policies and practices regarding sexual misconduct" in 2014. See Joy Crane, "University under federal investigation for sexual assault policy," *The Chicago Maroon*, February 11, 2014, www.chicagomaroon.com/2014/02/11/university-under-federal-investigation-for-sexual-assault-policy/.

[14] See "Still Playing: 12 NFL Players Have Domestic Violence Arrests," *NBC News*, September 17, 2014, www.nbcnews.com/storyline/nfl-controversy/still-playing-12-nfl-players-have-domestic-violence-arrests-n204831. The one accused person who emerges with honor is Chicago Bears receiver Brandon Marshall, who did have a string of domestic violence arrests, one leading to a battery conviction in 2008,

Of course it isn't as if these things are new events: it's the climate of their reception – from fans, from politicians,[15] sports journalists, and, perhaps most important, from the league's corporate sponsors,[16] that has undergone a virtual revolution. When you listen to The Score (a typical sports talk station in Chicago) these days, it's quite astonishing: you might almost be at a 1980's feminist consciousness raising session run by Andrea Dworkin. Even beer has joined the women's movement: on September 16, 2014, NFL corporate sponsor Anheuser Busch stated: "We are disappointed and increasingly concerned by the recent incidents that have overshadowed this NFL season. We are not yet satisfied with the league's handling of behaviors that so clearly go against our own company culture and moral code."[17] Wow. Either staggering hypocrisy or revolutionary change. And in a sense even hypocrisy would itself be a revolutionary change, reflecting deference to new social norms.

Let me now briefly trace the evolution of law and social norms toward greater accountability, and then to show what still needs to be done.

Sexual violence in the US[18]

First let me describe the current dimensions of the problem.

The most recent National Intimate Partner and Sexual Violence Survey, published by the Centers for Disease Control and Prevention, puts the incidence of sexual violence even higher than previous

---

but who has sought help for "borderline personality disorder" and has become a national spokesperson for mental illness issues. Since that time he has had no further violence issues.

[15] The Governor of Minnesota has been very vocal in the Peterson incident.

[16] Radisson, Nike, and Target all quickly dropped sponsorship of Peterson, and Anheuser Busch made perhaps the most influential move of all (see below).

[17] See Michael Klopman, "NFL Sponsor Anheuser-Busch 'Disappointed And Increasingly Concerned' With League," *The Huffington Post*, September 16, 2014, www.huffingtonpost.com/2014/09/16/anheuser-busch-statement-nfl_n_5831532.html.

[18] I apologize for this narrow focus. Every country has its own history, but ours is complicated enough to demand a full-length analysis.

studies.[19] Nearly one in five women surveyed said they had been raped or had experienced an attempted rape, and one in four reported having been beaten by an intimate partner. One in six women have been stalked. Sexual violence is, of course, not only toward women, but it affects women disproportionately. 1/3 of women said they had been victims of some form of sexual assault. One in seven men have experienced sexual violence and one in 71 have been raped (usually when very young). More than half of female rape victims were raped by an intimate partner and 40 percent by an acquaintance.

Nor are these numbers unconnected to traditional patriarchal attitudes: Edward Laumann, one of the great sociologists of our era, found some highly disturbing facts in his exhaustive survey of American sexual attitudes and experiences, published in The Social Organization of Sexuality, and the more popular Sex in America.[20] Here's what Laumann found. And I emphasize that Laumann is no radical and not even a feminist, but a very conservative quantitative scholar of impeccable respectability.

First, American men widely share a picture of male sexuality as easily aroused then uncontrollable. Once aroused, a man just "can't stop." Women are commonly seen as temptresses whose very presence and whose physical allure makes men lose control, and after that they just aren't responsible for what they do. Men combine this beliefs with a related myth about women: that they really want sex even when they say they don't, and even when they fight against it. Laumann came to the following conclusion about how these attitudes lead to problematic acts of aggression:

---

[19] Smith, Chen, Basile, Gilbert, Merrick, Patel, Walling, and Jain, "The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report" (April 2017), www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf.

[20] See Edward Laumann, *The Social Organization of Sexuality*, (Chicago: University of Chicago Press, 1994); and Edward Laumann, Robert T. Michael, John H. Gagnon, and Gina Kolata, *Sex in America: A Definitive Survey* (New York: Warner Books, 1995).

> Although, clearly, sexual interactions between men and women are fraught with ambiguity and potential conflicts, there is something more going on than a few misunderstandings. There seems to be not just a gender gap but a gender chasm in perceptions of when sex was forced. We find that large numbers of women say they have been forced by men to do something sexually that they did not want to do. But very few men report ever forcing a woman. The differences that men and women bring to the sexual situation and the differences in their experiences of sex sometimes suggest that there are two separate sexual worlds, his and hers.[21]

Specifically, Laumann found that 22 percent of women said they were forced sexually at some time after age thirteen (and only .6% were forced by another woman). Only 2% of men were forced. All but 4% of these women knew the man who was forcing them and nearly half said they were in love with him.

Men, by contrast, overwhelmingly denied using force: only 3% said they forced a woman and .2% said they forced a man. Some may be lying; but Laumann and his co- authors plausibly hold that the huge disparities cannot be explained away in this manner. They suggest that a more likely explanation is that "most men who forced sex did not recognize how coercive the women thought their behavior was."[22] They imagine the husband who comes home drunk from a night out with the boys, wanting sex now and thinking it his due; the young man on a date with a sexy woman who makes and accepts some advances but says no to intercourse. Laumann and his co-authors summarize: "He thinks the sex they have was consensual. She thinks it was forced."[23]

Law can't change culture on its own, obviously enough. But we'll now see that law has aided and abetted some of these problems, defining some acts of sexual violence as not

---

[21] Laumann et al. (1995), 223.
[22] Ibid., 229.
[23] Ibid.

problematic. We'll also see, however, that by the 1970's, under the influence of feminism, law began to be a force for change.

U.S. Law and How it has Changed

Before the feminist challenge to criminal law that began in the 1970's, a woman complaining of rape was required to show that the man involved had used physical force, and force additional to the force requisite to consummate the sexual act itself. The mere threat of force was often considered insufficient, although the threat of death or grave bodily injury usually was. Usually, too, the woman had to show that she had resisted, even in the face of force or the threat of force, since only this was taken to given evidence of non-consent. Some states made resistance a formal statutory requirement, but more often it was read into statutes as a requirement implicit in the notions of force and/or non-consent. The old requirement was that the victim resist "to the utmost"; more recently, this was replaced by terms such as "reasonable resistance" or "earnest resistance". Typical of its period was a New York statute of 1965 saying that rape is committed only when the man uses "physical force that overcomes earnest resistance," or makes a threat of "immediate death or serious physical injury."[24] A woman who did not resist physically, or who succumbed to lesser threats, was treated as consenting, and the man's conduct was not criminal at all.

The standard produced bizarre results. In one case, the victim said she submitted to intercourse because the man threatened her with a knife or box cutter. She got the weapon away from him, then submitted to intercourse a second time when he choked her and told her he could kill her. A 1973 New York appellate court set aside the man's conviction, saying, "[R]ape is not committed unless the woman opposes the man to the utmost limit of her power.

---

[24] See Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge: Harvard University Press, 2000), 24. See also N.Y. Penal Law § 130.00(8) (McKinney 1965).

The resistance must be genuine and active. It is difficult to conclude that the complainant here waged a valiant struggle to uphold her honor."[25] In another case, a petite Illinois woman who had stopped along a secluded bike path submitted to oral sex when a man, almost twice her weight and a foot taller than her, put his hand on her shoulder and said ominously "This will only take a minute. My girlfriend doesn't meet my needs. I don't want to hurt you."[26] Understanding this as an implicit threat, the woman did not fight back. Nonetheless, an Illinois court set aside the man's conviction, saying "the record is devoid of any attendant circumstances which suggest that complainant was forced to submit."[27]

These stringent requirements were criticized by law enforcement professionals, who believe it unwise for women to fight back in situations of attack. But even in 1981, in a case in which the defendant took away a woman's car keys in a dangerous area of town, "lightly choked" her, and made menacing gestures, a lower court concluded that the woman had not resisted sufficiently to establish non-consent.[28] Although the conviction was reinstated on appeal, a three-vote minority, in the 4-3 decision, said of the victim, "She must follow the natural instinct of every proud female to resist, by more than mere words, the violation of her person by a stranger or an unwelcome friend."[29] In another case, a high school principal coerced a female student to submit to sexual intercourse multiple times by threatening to block her impending graduation.[30] Nonetheless, the case was dismissed because the principal did not threaten the victim with physical force (a narrow statutory scope that even the court was hesitant to enforce).

---

[25] People v. Hughes, 41 A.D.2d 333 (N.Y. App. Div. 1973).
[26] People v. Warren, 446 N.E.2d 591 (Ill. App. 1983). This case, and others in this section, are helpfully discussed by Schulhofer (2000), at pp. 1-10, and 33-34.
[27] Ibid.
[28] State v. Rusk, 289 Md. 230, 424 A.2d 720 (1981).
[29] Ibid.
[30] State v. Thompson, 792 P.2d 1103 (Mont. 1990).

Notice the strange asymmetry between this treatment of sexual crime and our standard attitudes to property crime. If I remove your wallet without your express permission, I am committing a crime. I cannot defend myself by pointing to the fact that you failed to put up a fight. But if a man had intercourse without a woman, invading her intimate bodily space, our system thought it a crime only if she offered physical resistance, frequently in the face of danger. Nor does a conviction of theft require a showing that the thief used more force than was necessary to accomplish the theft itself (although such force may be an aggravating factor). But it was only in 1992, in an unusual ruling, that a New Jersey court held (explicitly *f*rejecting prior tradition) that the element of "force" in rape was established simply by "an act of non-consensual penetration involving no more force than necessary to accomplish that result."[31] (This analogy to property crime is developed in a powerful way by U. S. criminal law academic Stephen Schulhofer, a former colleague with whom I've been privileged to co-teach, in his important 2000 book Unwanted Sex: The Culture of Intimidation and the Failure of Law.[32])

Moreover, a woman who brought a rape charge would typically be subjected to humiliating questioning about her sexual history. It was oddly assumed that the fact that a woman was not chaste was evidence of consent to the particular sexual act in question. Why would such an assumption be made? When we encounter a friend dining at a fine restaurant, we usually do not infer that he or she would love to have a plate of rancid broccoli rammed down his throat. And yet it is just this sort of "reasoning" that pervaded most rape trials. It would appear that the inference reflects an underlying picture of women as divided into two groups: either chaste, or whores with whom anything is permitted. These pictures of women have deep roots in our entire culture, coloring the ways in which we see, or mis-see, particular events. As eminent a cultural authority as Samuel Johnson once said to Boswell, in response to his inquiry regarding

---

[31] State in Interest of M.T.S., 609 A.2d 1266, 1267 (N.J. 1992).
[32] See Schulhofer (2000).

whether it was “hard that one deviation from chastity should so absolutely ruin a young woman”: "Why no, Sir; it is the great principle which she is taught. When she has given up that principle, she has given up every notion of female honour and virtue, which are all included in chastity."[33] This idea is surely at work in the perception that a woman who does not struggle, at some risk to herself, has consented and has no right to complain. These beliefs are greatly reinforced by pornographic depictions of women. Women whose non-chastity implies consent to anything and everything exist in pornography, but they do not exist in reality -- except in the limiting case of a person whose selfhood is so broken down by repeated ill treatment that she can no longer assert choice and selfhood at all.

These judgments about women also colored the interpretation of the mental element of rape. Men who hold these stereotypical views of women -- widely disseminated in our society through pornographic depictions of women and many other cultural sources -- may actually come to believe that a woman who says no is consenting to intercourse. The question the law typically had to face, as we have seen, is whether such beliefs were reasonable. The standard of the "reasonable" is notoriously elusive, and frequently serves as a screen onto which judges project their own (generally male) ideas of appropriate social norms. Many will recall the rape trial of Mike Tyson, at which he claimed (unsuccessfully) that the willingness of D. W. to accompany him to his room was sufficient to make his belief in her consent reasonable, despite the evidence of her vigorous objections and her attempts to escape.[34] Such beliefs about consent were not found reasonable in 1993; earlier they probably would have been. In a 1982 case, in which a group of Boston doctors took a nurse bodily to a car, drove her up to Rockport, and had sex with her over her repeated protests, Justice Brown of the Appeals Court of

---

[33] James Boswell, The Life of Samuel Johnson, L.L.D., Vol. III (London, 1835), 47.
[34] See http://www.nytimes.com/1992/03/27/sports/tyson-gets-6-year-prison-term-for-rape-conviction-in-indiana.html?pagewanted=all.

Massachusetts commented that it was high time to reject the defense of reasonable mistake as to consent in cases such as this:

> It is time to put to rest the societal myth that when a man is about to engage in sexual intercourse with a "nice" woman, "a little force is always necessary." ...I am prepared to say that when a woman says "no" to someone[,] any implication other than a manifestation of non-consent that might arise in that person's psyche is legally irrelevant, and thus no defense....In 1985, I find no social utility in establishing a rule defining non-consensual intercourse on the basis of the subjective (and quite likely wishful) view of the more aggressive player in the sexual encounter.[35]

As Justice Brown recognizes, men often indulge in wishful thinking about women's wishes, and (whether hypocritically or sincerely) convince themselves that aggressive behavior is what the situation calls for. If we interpret the "reasonable" in "reasonable mistake" in line with prevailing male social norms, we encourage this sort of wishful thinking. Justice Brown announces a truly radical conclusion: when a woman says "no," it is never reasonable in the legal sense to believe that she means "yes."

These false beliefs had a large effect on law and public policy. They informed men's sexual desires and sexual behavior -- as when the knowledge that a woman is not chaste gave rise to an assumption that she would "do it" with anyone,[36] as when arousal by a woman's clothing, gestures, or kissing was taken to license the use of sexual force. They also shaped the desires and preferences of women, in many harmful ways. Women who had been raped, however violent and non-consensual the incident, felt shamed and sullied, and frequently did not even consider turning to the law for help. Often guilt about their own sexual desires, or about having consented to kissing or petting, made women feel that they had "asked for it," even when the

---

[35] Commonwealth v. Lefkowitz, 20 Mass. App. 513, 481 N. E. 2d 277, 232 (1985).

[36] A vivid description of the gang-rape of a young woman of lower class and bad reputation, spurred on by the mythology in question, is in Joyce Carol Oates, *We Were the Mulvaneys* (1996).

rape involved violence and substantial physical damage. In addition, women who had consented to intercourse, but who had not consented to acts of violence within intercourse, also felt it impossible to complain, since the reigning view was that a woman who said yes to intercourse had no right to complain about any further act that ensued. Such a woman would surely have been treated with mockery and abuse by the police had she complained of assault, as in my own case.

These frequently tragic reactions were caused by a kind of distortion in belief and desire that the feminist movement of the 1970's exposed, arguing repeatedly that female sexual desire and attractiveness are not a way of "asking for it", that the only thing that counts as "asking for it" is a woman's expressed consent to the acts in question -- just as the only way of "asking for" someone to take your wallet is to take it out and give it to that person, without intimidation or threat, either explicit or implicit. It seems clear that this critique has exposed damaging falsehoods -- although much more work needs to be done to achieve a legal system that adequately protects women's choices.

No Means No

A watershed moment in the feminist legal struggle was the 1983 case of Cheryl Araujo, subject of the 1988 film The Accused, starring Jodie Foster, which I would rank as one of the very best films about law.[37] The film is reasonably faithful to the case with one large change: the male rapists were working-class Portuguese men, but in the film they are college fraternity boys. The choice, wise I think, was to avoid denigrating men of a particular class or ethnic origin, but to portray rape culture as universal, as indeed it is.

---

[37] *The Accused*. Kaplan, Jonathan. Paramount Pictures, 1988. Film.

The events took place in New Bedford, MA. Cheryl Araujo, age 21, 5'5", 110 pounds. March 1983, walked into Big Dan's bar to get cigarettes. I now quote from the trial record. "The facts the jury could have found are as follows. On the evening of March 6, 1983, a young woman (victim) entered Big Dan's Tavern in New Bedford to purchase cigarettes. While there, she ordered a drink and engaged in a brief conversation with another woman patron. The two women also conversed with and observed the pool game of codefendants John Cordeiro and Victor Raposo."[38] There were approximately fifteen men in the tavern. "Sometime after the other woman left Big Dan's, the victim also prepared to leave. Cordeiro and Raposo offered to give her a ride home, which she declined. While the victim was standing in the area of the bar, Silvia and Vieira approached her from behind, knocked her to the floor, and removed her pants as Cordeiro and Raposo tried to force the victim to perform fellatio.

"Silvia and Vieira then dragged the victim, kicking and screaming, and swung her onto the pool table. There, Silvia penetrated her vaginally while she was restrained at various points by Cordeiro, Raposo, and Vieira. After Silvia got off the victim, he held her by the hair as Vieira got on top of her. While restrained on the pool table, Cordeiro again attempted to force the victim to perform fellatio. Eventually, clothed only in a shirt and one shoe, the victim escaped and ran into the street where she flagged down a passing truck."[39]

The bartender on duty testified at trial that Araujo was “lying on the floor screaming” as two men forcibly removed her clothing, and two other men could be heard boisterously shouting "Do it! Do it!”[40] The defendants testified that she led them on, dancing with them and returning their kisses. Despite the court's efforts to shield her, Araujo’s name was repeatedly broadcast

---

[38] Com. v. Vieira, 401 Mass. 828, 830 (Mass. 1988).
[39] Ibid.
[40] “Witness’s Testimony Implicates Two Men in Tavern Rape Case,” *The New York Times,* March 1, 1984, www.nytimes.com/1984/03/01/us/witness-s-testimony-implicates-two-men-in-tavern-rape-case.html

on cable TV. Leading feminists gathered to talk about the case, and it became a national cause célèbre.

In the end, four defendants were convicted of rape. Two others were acquitted. One of the jurors said: "She wasn't the greatest of women. She probably egged them on to some degree and they lost control. But after she said no, she was violated. That's how they broke the law."[41]

The juror's utterance is confused. It includes the time-honored idea that when men are led on they will "lose control." But then, it veers around to a different idea: she said no, and that means that when they went ahead she was violated and they broke the law. Many years later, one of the witnesses who picked up Araujo after she fled into the street echoed this idea: "So many things came out with the case, so many lies – that she was a whore, and things like that – but my thoughts were always that a woman, no matter what, has the right to say no. And frankly, even if she was a whore, it doesn't matter, because she said no."[42] Like both of these remarks, the case was a true turning point in US law, and a major occasion of public education. It established that No MEANS NO.

Under the pressure of this feminist critique, rape law has changed considerably, increasingly reflecting the insight that a woman's "no" means that she does not consent, and does not mean that she is "playing games" and "asking for it", and that her prior sexual history is irrelevant to the question of consent on a particular occasion. Change has been slow, and there are many problems to solve.

1. The longstanding emphasis on "no means no" does not yet enable the law to grapple well with cases in which the victim is silent out of fear (as in Warren, the case of the small

---

[41] Source was accessed in 2000 but can no longer be traced.
[42] Jay Pateakos, "After 26 Years, Brothers Break Silence," *Wicked Local*, October 26, 2009, www.wickedlocal.com/x884487240/After-26-years-brothers-break-silence.

Illinois biker), and there remains a tendency to suppose that silence expresses consent. Note that we would never think that a patient's silence in response to a question about whether he wanted a medical procedure was evidence of consent to that procedure; a doctor would be culpable if he simply went ahead and did the procedure, claiming that the patient had expressed consent by silence.[43] Our failure to think similarly about women probably betrays the legacy of the "societal myth" that good women will fight to the utmost. The law has not yet figured out how to articulate the idea of consent in a consistent manner that protects a woman's autonomy in cases like Warren.[44]

2. "No means no" also doesn't enable us to deal well with extortionate use of power: the high school principle. The student probably didn't fear physical force, but she submitted to an extortionate demand that would clearly have been illegal in the financial area.

3. Date rape: the beliefs about "asking for it" are still operative here: men see petting or even kissing as invitation to intercourse and are outraged if they are expected to stop.

Where sexual violence on campus is at issue, we are currently grappling with these issues, but with many confusions and uncertainties. The new Title IX guidelines, under which we all work, establish mandatory reporting.[45] The minute a student makes a faculty or administrator aware of any issue of sexual misconduct, she is required to report it to the Title IX coordinator, who then confers with the victim and decides how to proceed. The victim certainly doesn't have to press charges, and may ask for complete confidentiality. Usually if she doesn't want to press charges they will not be pressed, since there is typically no other evidence. If she does,

---

[43] See Stephen J. Schulhofer, "Taking Sexual Autonomy Seriously," *Law and Philosophy*, Vol. 11, No. 1/2 (1992), 35-94.

[44] See Ibid.

[45] See Russlynn Ali, "Dear Colleague Letter," *United States Department of Education – Office for Civil Rights*, April 4, 2011, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf.

then there is a lengthy process in which the accused is asked for a statement, accuser and witnesses also submit their statements, and the Title IX panel reaches a determination of some type. In one case I know well, the process worked well: the women's grievance of inappropriate touching (but not assault) at a public event led to probation for the male student, together with mandatory sex and alcohol counseling, which seemed an appropriate result. But the procedures still raise difficult questions:

First, how can confidences be protected when there is mandatory reporting? I worry that women will be less likely to open up to me or other faculty, knowing that I am now legally obliged to report it and name her – even though in principle the Title IX office says it protects confidentiality.

Second, there is a huge question about the standard of proof. Title IX recommends that the standard be the preponderance of the evidence, not reasonable doubt. Miscarriages of justice can easily occur. A group of law academics – after a difficult case at Harvard that did look like a miscarriage of justice – signed a statement protesting the standard and recommending reasonable doubt.[46]

Third, is the Title IX process really right to require affirmative consent, and what exactly is that? Schulhofer and others have made excellent points about the shortcomings of "no means no."[47] And yet the idea that sex will be turned into a ritual in which each step must be preceded by explicit verbal permission seems both chilling and unrealistic to many people. And also ridiculous when both parties are typically very drunk. I am on the Schulhofer side here, but one can see the point of view of critics who suggest that affirmative consent has gone too far.

---

[46] See "Law Professors' Open Letter Regarding Campus Free Speech and Sexual Assault," May 16, 2016, www.lankford.senate.gov/imo/media/doc/Law-Professor-Open-Letter-May-16-2016.pdf.
[47] See Schulhofer (1992).

Fourth, are campus tribunals equipped to deal with these issues? It's easy to see why Title IX wants universities to do so. If nothing happened unless the complainant were to go to the police, very few cases would be prosecuted. Women do not trust the police, and they fear the inevitable loss of privacy and confidentiality that would ensue. Often they also do not want to charge the man with a felony, which would surely blot his life indefinitely. But people's lives are now in the hands of people most of whom lack legal training, and it's only the rare campus that subsidizes legal counsel for the accused.

We are grappling with those questions. They are tough and subtle. That we have reached this place is a tremendous victory. It means that we have achieved consensus on a bunch of really difficult things, and are now pushing the frontier toward greater accountability with regard to some thorny issues that otherwise would not get dealt with.

Celebrity and Accountability

Now we must introduce a large qualification. Some especially serious sexual crimes, serial predation of a very damaging sort, still face no accountability. And now we return to professional sports and to my Huffington Post piece. We have reached a further frontier in terms of accountability. Private citizens who rape women are frequently, held accountable, although non-reporting and imperfections of the criminal justice system are still serious problems. Even politicians face accountability, since politicians are considered expendable. But there are certain people who have talents that make a lot of money for other people, and those people are typically shielded from accountability. Sports stars are not fungible. They have big talents, difficult to replace, and those talents make lots of money for other people. Media stars and actors might have been expendable and replaceable at one time in their career: after all, for every role there are probably several hundred out of work actors who could play that role very

well. But once actors become stars they are no longer fungible, and studios and investors have a lot invested in them.

More generally, we live in a culture of celebrity which makes these people think that they are above the law, sometimes from a very early age. Things are worse with athletes because the corrupting effect of big-money talent sets in very early. They are groomed from high school on, pampered in colleges and universities, and made to feel like the rules for other people don't apply to them. They are encouraged to deceive. Thus U. S. colleges often give fake classes and fake grades to athletes, and the athletes understand that faculty are lying to protect them from academic accountability.[48] As for sex, they are often recruited in situations that positively encourage sexual misconduct: women are virtually pimped out to athletes universities are trying to recruit, and most big-sports universities have no shame about acting as pimps in this way.[49] So from a very young age they live in a culture of deceit and sexual corruption. Actors typically learn corruption later on, although the very real corruption of sleeping your way to a role is surely a bad influence on younger actors.

Let me now mention one issue on the other side, which makes accountability even more difficult. It is the ever-present possibility, which I mentioned earlier, that superstars will be lied about for purposes of extortion, which really does muddy the waters. We know that sometimes celebrities are really guilty as charged, but sometimes not. I believe, for example, that charges of sexual assault against the basketball star Derrick Rose were probably false, and made in order to extort money. He courageously contested them, and a court found in his favor.[50] But no doubt for every case where the person is innocent (and of course this is just my conclusion,

---

[48] For the particularly egregious but hardly isolated case of the University of North Carolina at Chapel Hill, see https://www.nytimes.com/2017/03/31/sports/ncaabasketball/north-carolina-final-four-cheating-fake-classes.html. s

[49] An egregious but hardly atypical case was that of the University of Colorado, see http://articles.latimes.com/2004/feb/20/sports/sp-colorado20.

[50] Jane Doe v. Derrick Rose, et al., 2016 WL 9023602 (C.D. Cal. 2016).

which could be utterly wrong) there are many more where the person is guilty, and defends himself by raising the extortion issue.

I've mentioned some athletes who did face accountability. One salient case is Ray Rice, the case mentioned in my epigraph at the beginning, where the misconduct (punching his then-fiancée so hard that he knocked her unconscious) took place in an elevator that had a hidden camera. In a few other similar cases the conduct has been documented beyond dispute. But these cases don't really show that big money stars aren't above the law, because what we see is that women are still not empowered to bring charges, and are treated very badly by authorities when they do come forward. Consider Cosby's case, where many women tried hard over the years to press charges against him, but one by one had no success in establishing culpability, though some had received financial settlements. This past year it is only the overwhelming record of cases with a precisely similar pattern that finally caused Cosby to lose honors and lucrative opportunities – and now one prosecution, the only one not blocked by the statute of limitations, is actually going forward. Most cases are not at all like this. And even this case, which looks like success, has had many twists and turns, so we should not predict with confidence that he will be convicted. Surely the long Cosby saga has been draining and terrible for the women involved because of the great power of the celebrity machine protecting him. Another factor that discourages optimism is that, despite the large number of accusers, it took the statement of a male comedian, Hannibal Burress, calling Cosby a "rapist," to catapult the issue to the front of public attention, ultimately causing more women to come forward, and giving credibility to the ones who had. Women should not need to depend on a male voice to validate their accusations.

Cosby is now seventy-nine years old. His acting career was over even before it was ended by the revelations about him. It is I think no accident that people stopped defending him just

when he was not making money for them anyway. (It is rather encouraging, however, that two famous media personalities, Roger Ailes and Bill O'Reilly, have recently been fired because of credible accusations of sexual harassment – and fired by the conservative Fox News.[51])

Now, as my last grim exhibit, let's consider a case where big money is at stake and credible allegations don't get taken fully seriously: the case of Jameis Winston. Jameis Winston is an extremely gifted quarterback who began his fame while at Florida State University and since 2015 plays for the Tampa Bay Buccaneers of the NFL. He is 6'4" and weighs 227 pounds. He is 23 years old. He has broken the franchise's record for passing yards and passing touchdowns in a season, and he is the first quarterback in NFL history to start his career with consecutive seasons of 4000 yards passing. He holds several other records I won't bother to enumerate. So: a big talent.

Now the facts about sex and non-accountability. On November 14, 2013, the State Attorney of the Second Judicial Circuit announced they were opening an investigation into a sexual assault allegation involving Winston that was originally filed with the Tallahassee Police Department (TPD) on December 7, 2012.[52] The complaint was originally investigated by the police and classified as open/inactive in February 2013 with no charges being filed. The police report, containing the complainant's original statement, was posted by the Tallahassee Police Department. Tallahassee police then stated that the complaint was made inactive "when the victim in the case broke off contact with TPD, and her attorney indicated she did not want to move forward at that time"[53] and then re-examined after media requests for information

---

[51] https://www.nytimes.com/2017/05/18/business/media/roger-ailes-fox-news-sexual-harassment-.html, https://www.nytimes.com/2017/04/19/business/media/bill-oreilly-fox-news-allegations.html. Ailes died shortly after being fired. O'Reilly remains active on his own podcast.

[52] See "Tallahassee Police Department Incident Report 00-12-032758," December 7, 2012, http://media.graytvinc.com/documents/Complete+Case+File.pdf.

[53] "No charges filed yet against Winston," *The Chicago Tribune*, November 22, 2013, http://articles.chicagotribune.com/2013-11-22/sports/chi-no-charges-filed-yet-against-winston-20131122_1_sexual-assault-charges-dna-florida-state.

started coming in early November. Note the importance of the media in pressuring the recalcitrant institutions of the law for real accountability.

On December 5, 2013, State Attorney Willie Meggs announced the completion of the investigation and that no charges would be filed against anyone in this case, citing "major issues" with the woman's testimony. Meggs stated that "We have a duty as prosecutors to determine if each case has a reasonable likelihood of conviction. After reviewing the facts in this case, we do not feel that we can reach those burdens."[54] Allegations of improper police conduct were made by both parties, with the complainant claiming to have been pressured into dropping her claim and Winston's attorney alleging inappropriate leaks to the media. Florida State's policy is that athletes charged with a felony cannot play until their case is resolved, but Winston continued to play throughout the investigation because he was never charged**.**

On April 16, 2014, the New York Times reported irregularities in the rape investigation involving Winston.[55] The complainant developed bruises and semen was found on her underwear. 34 days later the complainant identified Winston by name as her attacker. Tallahassee police contacted Winston about 13 days later. No DNA sample was taken from Winston until the prosecutor took over the case, months later; once it was taken in November 2013, it was found to match DNA found in the complainant's underwear. The investigation was conducted by Officer Scott Angulo, who, the Times article notes, did private security work for the Seminole Boosters, the primary financier of Florida State athletics.

---

[54] Mark Schlabach, "FSU's Jameis Winston not charged," *ESPN*, December 6, 2013, www.espn.com/college-football/story/_/id/10082441/jameis-winston-not-charged-sexual-assault-investigation.

[55] Walt Bogdanich, "A Star Player Accused, and a Flawed Rape Investigation," *The New York Times*, April 16, 2014, www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html.

The official FSU hearing, presided over by retired Florida Supreme Court Justice Major B. Harding, on December 21, 2014, cleared Winston of violating the student conduct code in the sexual assault allegation. He said:

> I do not find the credibility of one story substantially stronger than that of the other. Both have their own strengths and weaknesses. I cannot find with any confidence that the events as set forth by you, (accuser), or a particular combination thereof is more probable than not as required to find you responsible for a violation of the Code. Therein lies the determinative factor of my decision.[56]

So that was that for the criminal charges. However, in January 2016 the university paid the accuser $950,000 to settle a civil suit she brought against the university. The accuser, Erica Kinsman (who has publicly identified herself), also filed a civil suit against Winston in April 2014 and Winston countersued her for defamation and tortious interference in May 2014.[57] In a September 2015 ruling, a federal judge dismissed Winston's tortious interference claim, but declined a motion to dismiss his claim for defamation. Winston's and Kinsman's suits were combined and are scheduled for the US District Court for the Middle District of Florida to begin in May 2017.

Meanwhile, in the fall of 2015, Winston began his stellar pro career.

I am not a retributivist. I think that the appropriate goals of criminal law in this and other cases are specific deterrence, general deterrence, and reform. It's pretty obvious that general deterrence has not been served here: other athletes see, from this case, that if you are a big

---

[56] See "Full copy of Jameis Winston hearing decision," December 21, 2014, www.foxsports.com/college-football/story/full-copy-of-jameis-winston-hearing-decision-122114.
[57] Kinsman v. Winston, 2015 WL 11216946 (M.D.Fla.)

talent you are above the law. University officials and rich alumni will pay to protect you. But what about specific deterrence and reform?

On February 23, 2017, Winston made a guest appearance at a St. Petersburg Florida elementary school – the type of thing athletes do to show that they are good people and to help public relations for the sport. During the motivational talk, he said,

> All my boys stand up, all my ladies you can sit down. But all my boys, stand up. We strong, right? We strong! We strong, right! All my boys, tell me one time: I can do anything I put my mind to. A lot of boys aren't supposed to be soft-spoken. You know what I'm saying? One day, y'all are going to have a very deep voice like this, One day, you'll have a very very deep voice. But the ladies – they're supposed to be silent, polite, gentle. My men, my men supposed to be strong.[58]

School officials and parents were very upset, and on February 24 Winston apologized for his "poor word choice."[59]

So here we see someone utterly undeterred, unreformed, unreformable. Even when his goal is to motivate students to strive, the only way he finds to express that idea is a set of sexist stereotypes. And guess what stereotypes: male force, male strength, female silence and non-resistance. But then, why would Winston be deterred or educated, when a public university, using taxpayer dollars, paid out a million of those dollars to settle a complaint involving him, and when at every step in the road powerful university officials and alumni (those Seminole Boosters) were conniving to corrupt the justice system. I almost feel sorry for Winston, since he has been exploited throughout his life, used as a tool for the enrichment of

---

[58] Alanna Vagianos, "NFL Player to Elementary School Class: Girls Are 'Supposed To Be Silent,'" February 23, 2017, www.huffingtonpost.com/entry/jameis-winston-accused-of-rape-to-elementary-class-girls-are-supposed-to-be-silent_us_58af20a2e4b0a8a9b78012e6.

[59] Ibid.

others, never permitted to get a decent education, and, no doubt, already on the road to a horrible later life of dementia from CTE.[60] Corrupt university officials and alumni are as much in need of accountability as he, and indeed more so, since they are almost certainly serial offenders and perhaps he won't be.

The longer history I've narrated contains many signs of hope both for culture and for law. Law has indeed been an active participant in changing rape culture. But there is unfinished business. In a culture of celebrity, and especially when celebrities make money for others, accountability is likely to prove elusive – unless the public rises up. After all, both sports and theater depend on us. And we can already see the results of public outcry in the Ray Rice incident, in the attitude of sports talk shows, in the behavior of beer companies. The sports leagues have already shown their deference to public opinion in such actions as their boycott of North Carolina over that state's recent anti-LGBT law (later repealed, in large part because of that pressure), and their threatened boycotts of other states currently considering such laws. Both leagues and corporate sponsors are our hopes for the future. Winston's past misconduct was sheltered because the old-boys' club of Florida State University was determined to protect their rare star. But I actually believe that at this point, if he were to behave in a similar way in the NFL, things would be different – because the good old boys don't hear women's voices, but beer and the NFL do seem to, at least sometimes. Consumers are powerful in a consumer culture, and we are all consumers.[61] Both sports leagues and their corporate sponsors are accountable to us, to a large and diverse public. They need to hear all the time from people who

---

[60] For the latest evidence, see https://www.upi.com/Health_News/2017/07/25/Nearly-all-NFL-players-in-study-show-evidence-of-brain-disorder-CTE/7201500998697/. Accountability for the likely concealment of this evidence belongs to many, and yet, for the financial reasons I've discussed, those who participated are unlikely to face any penalty. 99 percent of former NFL players show evidence of CTE! This issue of accountability is huge, but lies beyond the scope of this article.

[61] Many of us are also parents, and of course parents play a huge role in forming a new generation that lacks such attitudes. Indeed because of the CTE issue, which has already engaged parents across the nation, we can expect the demise of football within one generation, although the sexual violence issue in sports does not stop there. So parents have a bigger job to do!

care about women, about LGBT people, about general decency of conduct. So let's applaud James Brown and other sportscasters who keep the heat on the league and the sponsors. (Brown is the host of The NFL Today and Thursday Night Football, so he's a very influential figure.) Let's express outrage about outrageous offenders like Winston, but let's not stop with the past. As Brown rightly said: outrage is useful only if it leads to a real project: really hearing women's voices, and really telling the leagues, the sponsors, the players and the parents of future players, (to use Brown's words) "What healthy, respectful manhood is all about."