行政院國家科學委員會專題研究計畫 成果報告

由富勒的社會法理學論資訊隱私權及其規制(II)
研究成果報告(精簡版)

計 畫 類 別 ：個別型
計 畫 編 號 ：NSC 97-2410-H-004-073-
執 行 期 間 ：97 年 08 月 01 日至 98 年 07 月 31 日
執 行 單 位 ：國立政治大學法律學系

計 畫 主 持 人：陳起行

計畫參與人員：碩士級-專任助理人員：楊鎧嘉
碩士班研究生-兼任助理人員：林倍志

報 告 附 件 ：國外研究心得報告
出席國際會議研究心得報告及發表論文

處 理 方 式 ：本計畫涉及專利或其他智慧財產權，2 年後可公開查詢

中 華 民 國 98 年 08 月 05 日

行政院國家科學委員會補助專題研究計畫成果報告

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計畫類別：X 個別型計畫　　□ 整合型計畫

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共同主持人：
計畫參與人員：

成果報告類型(依經費核定清單規定繳交)：精簡報告
本成果報告包括以下應繳交之附件：
■赴國外出差或研習心得報告一份
□赴大陸地區出差或研習心得報告一份
■出席國際學術會議心得報告及發表之論文各一份
□國際合作研究計畫國外研究報告書一份

處理方式：除產學合作研究計畫、提升產業技術及人才培育研究計畫、列管計畫及下列情形者外，得立即公開查詢

執行單位：國立政治大學法律系

中　華　民　國　98 年　8　月　4　日

中文摘要

本計畫爲期三年，以富勒所開啓的社會交往法律理論及其發展脈絡爲中心，批判並再建構自發性法律規制模式，並將該模式試行於資訊隱私權規制之上。第一年的工作以闡明富勒的法律思想爲主; 第二年的計畫整理近幾年資訊隱私權的法理研究，並掌握新興科技對資訊隱私所造成的挑戰; 第三年以富勒的社會法律理論脈絡批判並重建自發性法律理論，並整合資訊隱私權法理研究成果後，針對資訊隱私之規制提出建設性規劃。一方面，由於研究計畫執行順利, 今年度（執行計畫之第二年）, 已經進入第三年部分的研究。

民國九十七年底國科會進行的擴大延攬人才方案, 提供本計畫一名專任助理, 也是本計畫得以順利展開相關網站設計的因素.本計畫因此提出兩篇論文，分別發表於國際研討會; 一篇由與富勒人際互動法律理論相近的史特恩所提出「制度公民」的理論，論性騷擾規制網站的設計, 另一篇則是針對資訊工程界提出的由電子性騷擾規制論未來法律典範一文.

Abstract

This is a three-year research project. The main objective for the project is to analyze the social interaction theory of Lon Fuller and use it to reconstruct the reflexive model of regulation. This project then applies the improved regulatory model, with the insight of information privacy jurisprudence, to derive a better approach for information privacy regulation.

In the first year, the main emphasis is on the elaboration of Lon Fuller’s legal theory. In the second year, theories of information privacy and literatures on the development of technologies and their impacts on information privacy are analyzed. In the third year, insights obtained from the previous two years are used to develop an improved regulatory scheme for information privacy.

This is the second year of the three year project. Due to the support from the National Science Council during the end of the 2008, this project obtains a full time research assistant, and the project is able to enter part of the third year

research topic and starting designing a regulatory web for sexual harassment. Two papers related to this development are presented at the international conferences; one of them using Sturm's institutional citizenship idea, which is parallel to the human interaction theory of Fuller, to design a regulatory web for sexual harassment; the other paper is aimed at the information engineering community, and discusses the next legal paradigm and its impacts on the design for e-harassment regulatory web.

一。前言

本年度主題是承接上年度對富勒人際交往法律理論的理解，試圖探討資訊隱私規制上的課題，以及人際交往觀的規制方式是否能改善資訊隱私的規範困境.

執行本年度的計畫，十分順利。除大量閱讀資訊隱私所涉及的法律課題的文獻外，由於 2008 年底，國科會實施擴大內需專案，本計畫因此獲得一名有資訊科技技術背景的專任助理. 一方面本計畫所研究的資訊隱私之保障，有日益與資訊科技結合的趨勢；二方面，本計畫核心旨趣所在，是要設計一個重視人際交往的規制網站平台.

聘用技術背景的專任助理之後，本計畫如魚得水,積極展開規制網站的設計工作，本年度赴國外所發表的兩篇論文，也與此一主題相關.

二。研究目的

本年度的重點在於掌握資訊科技帶來隱私課題在法律哲學思想上,法律制度面，以及運用科技保護隱私等的發展。在法哲學領域，發現確實有重視隱私意義脈絡的理論，日形重要。此一觀點並不將隱私視為私領域，不應為人知的個人部分，而著重隱私是人際互動過程，極具脈絡意義的良善相互關係上的議題。因此一方面摒棄隱私為物（privacy as a thing）的想法，其應予保障與否，也特別重視在人際互動的意義脈絡下對於良善人際關係的影響。

如何掌握此一人際互動上的隱私保護意義，以及經由對話，讓良善人際關係得以反映，作為隱私是否受侵害的判斷依據，成為本年度計畫探討的重點。本年度，個人十分努力地由史特恩教授的三篇實證研究論文中，解讀出其理論的基本原則。並運用所掌握的基本原則，展開規制網站的設計。

三。文獻探討

資訊隱私部分，本年度個人十分廣泛地蒐集了資訊隱私保護相關的法哲學，法學，社會科學，以及新文事實等領域的相關文獻。可以說完成了一個小型的資訊隱私數位論文資料庫。當然，由於此類議題發展快速，此一小型數位資料庫有賴日後持續更新。

關於規制網站設計方面，一方面個人有計畫蒐集了史特恩教授的論著，並仔細鑽研其三個實證研究，從中理出了其理論的基本原則。這個部分，個人曾購買 Debrief 軟體，協助分解，重組，並整理出史特恩教授理論的架構。

最後有關規制網站設計的部分，前幾年受國科會補助赴美國加州柏克萊大學法學院研究期間，就蒐集了完整的規制，電子參與等課題的文獻超過一千餘篇。本年度所閱讀，整理的文獻資料，可謂相當豐富。

四、研究方法與結論

人際互動的忽視，以及在快速社會發展之下，法規範的形成上，確實出現困境。重視人際間對話，經由彼此理解而形成行為上可期待的規範，是報告人研究的主軸。本年度終於由理論的探討與批判，落實至法律制度面的反思，以及資訊科技的運用，建構網路規制平台等面向。

一方面，人際交往的法律理論以及制度上的影響，一直不被重視，因此可以預見，未來仍有一番積極對話與論戰的過程。所發展出來的規制平台，若能展現值得參考的價值，應當有助於理論，制度以及科技運用至法形成等發展領域，這也是報告人未來幾年的工作重點，期望透過經驗分享，實作成果的呈現，令更多人支持此一發展路徑。

六.自我評估

多年在資訊法律及法形成理論上的鑽研，報告人認為今後除了持續在法律爭議及理論上的辯論持續深入之外，也可以開始思考實際經由電子參與理論及實踐上的研究成果，試著將報告人這幾年的專題研究成果融入一項實驗性的網路對話平台，實際觀察理論及實踐上的課題。本年度是此一努力近程上的一個里程碑。本計畫終於在理論及制度面的探索之後, 正式進入規制網站平台的設計，並將此一設計帶到國際語法學者以及資訊工程界對話，成果豐碩。

行政院國家科學委員會補助國內專家學者出席國際學術會議報告

98 年 8 月 3 日

附件三

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(其餘各節見附件)			

一、參加會議經過

五年前，個人參與美國法律與社會學會（Law and Society Association, LSA）所規劃的跨領域研究網絡（Collaborative Research Network，CRN）中的政府規制 CRN，並參與此一 CRN 的郵件討論社群。藉此，瞭解此一快速發展領域的相關國際間發展。

LSA 的政府規制 CRN，是一個不折不扣的國際化又跨領域的研究社群。有來自不同國家以及不同專業背景，如社會，經濟，政治，公共行政，以及法學學者參與研討，是交換學術意見，擴大學術視野的好場所。尤其從此一領域專業期刊的增加以及參與成員的人數觀之，政府規制是各國越來越重視的研究議題。個人覺得一方面，社會快速而結構性的變遷，帶來規制上的嚴峻挑戰；另一方面，網際網路及資訊科技等相關領域快速開展，使得新的規制理論及實踐，十分值得投入研究，往後此一領域所帶來規制觀念及制度上的變革，值得重視。

不過今年，由於規制與治理 CRN 的協調人（coordinator）換人，由澳洲的一位法學教授擔任．她給我的信件中，告知今年參與人數少，很難將我的文章排入，所以我改由大會分發我的講次．個人的觀察，似乎在聯絡方式上，就出了些問題；不向過去，很早就收到提計畫書或摘要的請求，很晚才收到這項訊息．其結果，雖然排在發表的第一篇文章（資料如下），但是並不以規制及治理爲研討主軸．未來若仍然如此運作，個人會尋找其他更合適的國際研討會，或者已經有研究上合作關係的學者主辦的研討會，提出研究成果．

Problems and Possibilities for Safe and Equal Workplaces 3113

Sponsor:

Keyword Area： GENDER AND SEXUALITY

Schedule Information:

Scheduled Time: Sat, May 30 - 8:15am - 10:00am **Building/Room:** Conf / TBA 13

Title Displayed in Event Calendar: Problems and Possibilities for Safe and Equal Workplaces 3113

Session Participants:

Session Organizer: Nancy Reichman (University of Denver) nreichma@du.edu

Chair: Jill Weinberg (University of Chicago) jweinberg@uchicago.edu

A Sexual Harassment Regulatory Experiment Based on Internet Assisted Institutional Citizenship

*Chishing Chen (National ChengChi University)

Liminal Identities, “Regarded As,” and the End of the Protected Class

*M. Christine Fotopulos (Pennsylvania State University)

Legal Mobilization for Workplace Equality in Four European Countries

*Gesine Fuchs (University of Zurich)

Employer Reports of Sexual Harassment: Impact of Gendered Organizations and Rights Consciousness

*Ganga Vijayasiri (University of Illinois, Chicago)

Jane (Formerly Known as John): Labor Market Discrimination of Transgender Individuals

*Jill Weinberg (University of Chicago)

二、與會心得

跨領域的法學研究，雖然是未來的發展趨勢，但是法學界在這方面發展的成熟度，仍有很大的改進空間. 美國法律與社會學會，已經是這方面的領先者，每年吸引全球各地不同背景的學者及專業工作者參與. 但時仍然無法充分反映出科際整合的價值. 個人多年的努力，嘗試結合法律理論，法律制度，以及資訊科技在法律形成上的運用等領域，發展出能爲未來規制及治理上具有貢獻的模式. 然而在今年，初步可以提出整體想法時，卻無法與過去幾年一起探討的學術社群進一步交換想法，十分可惜. 簡言之，今年被安排的場次，是以性騷擾等實體法律爲主軸，參與者不太能領略個人提出論文,在規制及治理上的意義.

較令人欣慰者，是今年執行計畫在理論上的進展，指向未來法律倫理，或者德行法理日益重要的趨勢. 也難怪新興課題，如生物倫理（bio-ethics），的主要訴求，不再是生物法（bio-law）. 反映出個人在規範上的理解與判斷上的掌握，日益重要.

本年度參與會議之前，就拜讀了美國伊利諾大學香檳校區的 Lawrence Solum 教授的作品：Virtue Jurisprudence: A virtue-Centered Theory of Judging. 這篇論文可以放在整個思潮中，有一股復古風，欲重新檢視希臘哲學重視德行的一面，稱做德行轉折（the aretaic turn）.Solum 教授過去的作品，就充滿了文化批判的色彩，我曾經在政大法律研究所法理學專題研討課程中，帶同學們讀過. Solum 用哈伯瑪斯的論述理論爲基礎，批判美國主流的言論自由法理，提出應當重視論述的自由(Freedom of Discourse)，而非表意自由（Freedom of Expression）. 後者毫不將相對人放在眼裡，只重視個人的表達. 論述本身就帶有很強的相互理解上的態度，因此更應當是法律強力保護的對象.

與會期間，有幸親自與 Solum 會面，彼此理念相近，因此每分鐘的交談都十分令人回味.Solum 並表示他的學生多在大陸，有興趣來台灣訪問，進一步相互理解. 日後會考慮在頂尖大學計畫之下，邀請 Solum 來台灣，與國內哲學，史學及法學學者互動.

四、建議

全球化衝擊國際間學術的發展，許多改變都在快速進行中，其中最值得我國注意者，應當事蹟及參與國際學術活動，進而結合理念相近或有意願在特定法學領域合作的學者及學校．無論是研究上或者是教學上的合作，逐漸形成若干合作學校群體，實質上，可以不被快速發展的國際法學學術社群拋棄，並且能夠受到國際間最新發展的刺激，使得國內向來不弱的法學水準能持續升級；形象上，對於台灣在國際間的地位，也提供一項重要的指標．建議國內加強對於學術交流的投資，以及，更重要者，提供經驗上的指導，以免每位學者都得經過長期的摸索．

五．攜回資料名稱及內容

Law and Society Association, 2009 annual meeting, Final Program:每個場次的主題，報告者及時間等資訊，每位參與學者的通訊資料也整理於該 Proceedings 之後。

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*Chishing Chen (National ChengChi University)

Liminal Identities, “Regarded As,” and the End of the Protected Class

*M. Christine Fotopulos (Pennsylvania State University)

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Jane (Formerly Known as John): Labor Market Discrimination of Transgender Individuals

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表 Y04

二、與會心得

跨領域的法學研究，雖然是未來的發展趨勢，但是法學界在這方面發展的成熟度，仍有很大的改進空間. 美國法律與社會學會，已經是這方面的領先者，每年吸引全球各地不同背景的學者及專業工作者參與. 但時仍然無法充分反映出科際整合的價值. 個人多年的努力，嘗試結合法律理論，法律制度，以及資訊科技在法律形成上的運用等領域，發展出能爲未來規制及治理上具有貢獻的模式. 然而在今年，初步可以提出整體想法時，卻無法與過去幾年一起探討的學術社群進一步交換想法，十分可惜. 簡言之，今年被安排的場次，是以性騷擾等實體法律爲主軸，參與者不太能領略個人提出論文,在規制及治理上的意義.

較令人欣慰者，是今年執行計畫在理論上的進展，指向未來法律倫理，或者德行法理日益重要的趨勢. 也難怪新興課題，如生物倫理（bio-ethics），的主要訴求，不再是生物法（bio-law）. 反映出個人在規範上的理解與判斷上的掌握，日益重要.

本年度參與會議之前，就拜讀了美國伊利諾大學香檳校區的 Lawrence Solum 教授的作品：Virtue Jurisprudence: A virtue-Centered Theory of Judging. 這篇論文可以放在整個思潮中，有一股復古風，欲重新檢視希臘哲學重視德行的一面，稱做德行轉折（the aretaic turn）.Solum 教授過去的作品，就充滿了文化批判的色彩，我曾經在政大法律研究所法理學專題研討課程中，帶同學們讀過. Solum 用哈伯瑪斯的論述理論爲基礎，批判美國主流的言論自由法理，提出應當重視論述的自由(Freedom of Discourse)，而非表意自由（Freedom of Expression）. 後者毫不將相對人放在眼裡，只重視個人的表達. 論述本身就帶有很強的相互理解上的態度，因此更應當是法律強力保護的對象.

與會期間，有幸親自與 Solum 會面，彼此理念相近，因此每分鐘的交談都十分令人回味.Solum 並表示他的學生多在大陸，有興趣來台灣訪問，進一步相互理解. 日後會考慮在頂尖大學計畫之下，邀請 Solum 來台灣，與國內哲學，史學及法學學者互動.

四、建議

全球化衝擊國際間學術的發展，許多改變都在快速進行中，其中最值得我國注意者，應當事蹟及參與國際學術活動，進而結合理念相近或有意願在特定法學領域合作的學者及學校. 無論是研究上或者是教學上的合作，逐漸形成若干合作學校群體，實質上，可以不被快速發展的國際法學學術社群拋棄，並且能夠受到國際間最新發展的刺激，使得國內向來不弱的法學水準能持續升級；形象上，對於台灣在國際間的地位，也提供一項重要的指標. 建議國內加強對於學術交流的投資，以及，更重要者，提供經驗上的指導，以免每位學者都得經過長期的摸索.

五．攜回資料名稱及內容

表 Y04

Law and Society Association, 2009 annual meeting, Final Program:每個場次的主題，報告者及時間等資訊，每位參與學者的通訊資料也整理於該 Proceedings 之後。

The Law and Society Association

2009 Annual Meeting
Denver, Colorado

Welcome: Chishing Chen

My Schedule

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Much of the information on this page is clickable. For example, clicking on a person's name will display all of that person's participations in the program. Author names preceded by an asterisk * were designated as presenting authors during the submission process.

Problems and Possibilities for Safe and Equal Workplaces 3113

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GENDER AND SEXUALITY

Schedule Information:

Scheduled Time: Sat, May 30 - 8:15am - 10:00am **Building/Room:** Conf / TBA 13
Title Displayed in Event Calendar: Problems and Possibilities for Safe and Equal Workplaces 3113

Session Participants:

Session Organizer: Nancy Reichman (University of Denver) nreichma@du.edu

Chair: Jill Weinberg (University of Chicago) jweinberg@uchicago.edu

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A Sexual Harassment Regulatory Experiment Based on Internet Assisted Institutional Citizenship

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I. Sturm's Institutional Citizenship Approach Toward Governance

Institutional Citizenship is a key concept of Sturm's governance theory, although she may not agree to use it to identify her overall theory. As a veteran scholar regarding within-institution equality issues, such as sexual harassment,[1] gender equality,[2] and co-authorship among co-researchers with different ranking,[3] she finds that the following assertion holds true:

> Institutional citizenship connotes a strong conception of full participation, mutual responsibilities, and shared benefits. It involves creating conditions so that people of all races, genders, and backgrounds can realize their capabilities as they understand them and participate fully in the life of the institution.[4]

However, it is worth pursuing the idea of a fair interactive relationship between individuals inside an organization, between groups inside an organization, and between individuals or organizations external to an institution.[5] Institutional citizenship provides us a needed concept of a complementary network of law-making environments consisting of both state-made law and social institutional norm formation.[6] The relationship

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1 Sturm, S., *Second Generation Employment Discrimination: A Structural Approach*, 101:3 Columbia Law Review 458 – 568 (2001).

2 Sturm, S., *the Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 Harvard Journal of Law & Gender 247 (2006). See also Sturm, S., *Conclusion to Responses, the Architecture of Inclusion: Interdisciplinary Insights on Pursuing Institutional Citizenship*, 30 Harvard Journal of Law & Gender 409 (2007).

3 Sturm & Gadlin, *Conflict Resolution and Systemic Change*, 2007:3 Journal of Dispute Resolution 1 – 63 (2007). However, it should be noted that authorship dispute is only one of the systemic disputes studied in the paper.

4 See Supra note 2, Sturm, Conclusion to Responses, at 413.

5 This point will be further elaborated later in this paper in the discussion on the complementary relationship between what Sturm called the detached neutrality approach of national law making efforts and the multi-perspective approach of social institutional law making.

6 Speaking in a conflict-resolution sense, Sturm rejects Richard Reuben's promotion of a unified public-justice system. See Sturm, supra note 3, footnote 11. And see

between communities in charge of state-made law and the social institutions that elaborate social norms is not one of command and control, but a dialogical and complementary one. Institution citizenship also connotes a strong sense of democracy, both on the national level and on the social institutional level.[7] This type of citizenship requires that an inclusive institution provide pertinent agents various equal participatory opportunities to enter the institution, as well as to express themselves and to be understood therein during the formation of institutional norms. In other words, democracy and rule of law, the established values of a democratic nation state, and not the efficiency or effectiveness of the regulation, ought to help guide the social institutional law making, both on the level of administrative regulatory control and on the micro level of social norm derivation inside an institution.

Sturm conducted three extensive empirical studies. One of these studies concerns sexual harassment problem-solving and dispute-resolution processes in three companies: Deloitte & Touche, Intel Corporation, and Home Depot.[8] A second study concerns "systemic-conflict resolution" structures and processes at the National Institutes of Health (NIH).[9] And the third study concerns the Increasing the Participation and Advancement of Women in Academic Science and Engineering Careers program (ADVANCE),[10] developed by the National Science Foundation (NSF) to promote gender equality within universities.[11] In each of these three studies, Sturm elaborates on the dilemma embedded in and the critical points that are overlooked by the traditional regulatory approach. She also documents the details of the more responsive approaches and the theoretical bases that ensure their success.

I will summarize and discuss Sturm's original scholarly contribution to institutional citizenship from the following three aspects: A) the dilemma addressed; B) the idea of an inclusive institution as a response to the problems;

Reuben, R. *Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice*, 47 UCLA L. REV. 949, 956 (2000).

[7] "'Institutional citizenship' carries a second meaning, focused on the position of institutions in a broader democracy…. They must, then, define their membership in light of a university's responsibilities to serve the public values of the broader community." Sturm, supra note 2, Conclusion to Responses, at 413. See also Sturm's discussion of Grainne de Burca, who argues for the development of democracy beyond the state, at 416 – 7.

[8] Sturm, supra note 1, at 491–.

[9] Sturm, supra note 3.

[10] See supra note 2, at 251 and note 3.

[11] Sturm, supra note 2, pp. 271 – 86.

and C) the practice of an inclusive institution. Although the practice of an inclusive institution deals primarily with issues associated with institutional norm formation and systemic-conflict resolution on the internal-institutional level, we need significant changes on the inter-institutional level to make an inclusive institution possible, for the purposes of either knowledge sharing or external accountability; and finally, empowerment from the national-institutional level is essential for efforts to start transforming a non-inclusive social institution into an inclusive one, efforts not unlike those characteristic of the Supreme Court's handling of Harris.[12] We will focus on the Harris decision (C.1); the ADVANCE program administered by NSF (C.2); and the operation of the Center for Cooperative Resolution/Office of the Ombudsman (CCR) inside the NIH (C.3). This reconstruction of Sturm's theory and empirical findings should illuminate a rigorous overall picture of what we can learn from Sturm's works and should clarify the rich findings in her three different empirical studies.

A. The Dilemma

Institutional citizenship is an ideal that Sturm endeavors to achieve, not a prevalent principle of institutional practice. The concept is constructed out of extensive empirical studies and serves to address the regulatory dilemma revealed. The root of the dilemma is the existence of a gap between the problem definition of regulatory issues and institutional context; the fabric of the difficulty, however, is rich and deserves further analysis.

For example, traditional legal methodology tends to approach sexual-harassment conflicts by first searching for what constitutes sexual harassment and then determining whether there is a match between the defined concept and the fact-related pattern of an alleged incident of harassment. However, no concept can be constructed out of a vacuum; therefore, insufficient factual inputs can foretell the difficulty of a successful resolution. Actually, the term 'input' still connotes divided spheres between the center and the margins, the primary and secondary, and the sovereign and the subject. It is in this context that we need to transfer something from the external world to the internal, without recognizing the equally respectful and mutually influencing

12 Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993), where the Supreme Court treats sexual harassment as a form of sex discrimination, but refuses to make an across-the-board definition as to what constitutes sexual harassment. See Sturm, supra note 1, pp. 480 – 4; and section I.C.3 of this paper.

and building relationship between the regulating and the regulated.

As a result, courts taking an outsider point of view tend to overlook the full interactive patterns surrounding a sexual-harassment incident, and the courts' inquiries are limited by only the two disputing parties, who will present two conflicting pictures of the episode based on the parties' respective inevitably subjective point of view. Lots of vital information is filtered out during the process wherein a given court tries to determine which version of the incident ought to be the basis for adjudication.

Detached from the institutional context of sexual-harassment issues, the outsider point of view also lacks the incentive to plan for and the instrument to carry out a preventive mechanism whose function is either to eliminate the causes of institution-based sexual harassment or to reduce the harassment's harm in an institution. The means to these ends rest on immediate and effective resolution channels inside the institution. Unresponsive and ineffective after-the-fact enforcement is usually the only choice left.

Reversing the outsider point of view and approaching the sexual-harassment issues inside the institution itself do not make the problem any easier. Embedded in the situation where certain intangible but real cultural factors hold fast, the harassing or the harassed party, or both of them, may not realize the unlawful nature of the acts in question. Reflective opportunities may be difficult to come by owing to such cognitive failure. Often times, however, corrective measures may not be able to function even when acts of harassment are recognized, because the unequal relationship between the parties may unfortunately thwart the disadvantaged parties resorting to the institution's internal remedial channels. To recognize both the importance of regulatory bodies' concept-development efforts and the importance of within-institution context-reframing tasks is the root of the dilemma. Taking institutional normative development seriously is the needed first step in moving toward a balanced approach that emphasizes the dialectical and mutually enabling relationships between the state's law-making bodies and the self-regulatory institution.

Sturm explores further the difficulty of institutional norm derivation and revision in her empirical study of the ADVANCE program initiated by the NSF. She found three general problems associated with the enforcement of the gender-equality rules and regulations in the universities and other academic institutions. These dilemmas can be summarized as the difficulty of sustaining an initiative, the difficulty of walking a legal tightrope, and the difficulty of

establishing and maintaining public accountability.

The sustaining-initiative question basically has to do with the dilution of the gender-equality issues as they propagate through the entire structure of the organization. The commitment of the organization to gender equality is perhaps not in doubt, but must be realized through the complex interaction among different actors and divisions of the organization. The decision-making process may also involve power sharing, and hence the diverse local goals, concerns, and criteria of measurement baselines held by the different levels of the institution may easily dilute the dedication of the organization and may leave the local bias unchecked. For example, reacting to gender-equality initiatives,

> [u]niversities' decentralized administrative structure complicates efforts to achieve institutional mindfulness. Power is highly distributed in academia, and change is often difficult to achieve. Decision making power resides in departments with considerable autonomy and weak performance metrics. This fragmented authority structure limits the power of any one level or actor to accomplish institutional change, including those at the top.[13]

The legal tightrope refers to another inevitable consequence due to the separation of problem definition and institutional context. In general, unclear legal concepts contribute to unsatisfactory enforcement, but are not the most significant factor therein. One-sided views of law making and law practice focus only on concept formation, and overlook vital clues hidden perhaps in the institutional context. Organizations are therefore only the recipients of law and never the active, positive contributors to the law-making process. Putting organizations in such passive roles leads to another undesired consequence: the organizations become excessively cautious and self-forbidding. What is more, the organizations will refuse to study the issues in fear of the legal liability drawn out of the empirical findings of institutional internal illegal practice.

For example, Sturm points out that in Gratz v. Bollinger,[14] the Supreme Court invalidated the University of Michigan's undergraduate admissions program because "the automatic assignment of points to members of particular racial groups failed to provide for the individualized consideration of each applicant, made race a dispositive factor in every case, and thus was not narrowly tailored to achieve the asserted compelling interest in diversity."[15] As

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[13] Sturm, The Architecture of Inclusion, supra note 2, at 258.
[14] 539 U.S. 244 (2003).
[15] Sturm, The Architecture of Inclusion, supra note 2, at 260.

a consequence, in order not to invite legal challenges, "[s]ome general counsel have advised extreme caution in the wake of this legal uncertainty."[16] 'Race' or 'gender' becomes a taboo word, and no universities dare to use it in their programs. Also, many universities decide not to conduct studies on their own admissions practices, studies that could reveal problem spots. Such studies, if conducted rigorously, could yield empirical findings that might very well establish both the existence of discrimination in, and associated legal liability for, the universities themselves. As a result, it is difficult to expect institutions to develop a self-correcting within-institution mechanism that would advance gender equality.

Effective public accountability is the third challenge facing an institution. Sectors within an institution differ from one another regarding their proper expertise and regarding their proper functions. An effective system of public accountability would require a performance metric that is both common (no bias favoring or discriminating against various sectors) and tailored to micro-level variation (the latter feature serving to encourage local experimentation and innovation). In an institution consisting of a complex network of organizational sub-units, effective public accountability creates serious challenges. The division of labor within the institution raises the likelihood that differences of expertise between the parties that are accountable and the parties to which accountable parties are answerable may lessen or wipe out the success of the evaluation process. In her empirical study of the ADVANCE program, Sturm finds that,

> [f]requently, affirmative action officers have backgrounds in law or human resource management and are not members of the faculty or senior administrators with high-level authority to review faculty appointments…. Outside auditors who are unfamiliar with academic and departmental culture can find it difficult to know the right questions to ask, or how to get access to information about dynamics, pools, and barriers[17].

Using Mitchell's concept of "structural holes,"[18] Sturm points out that a critical factor residing in the process of institutional-norm derivation may cause

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[16] Id.

[17] Sturm, supra note 2, at 265.

[18] Lawrence E. Mitchell, Structural Holes, CEOs, and the Missing Link in Corporate Governance, 11 Pub. Law & Legal Theory, Working Paper No. 77(2003). See also Sturm, supra note 2, footnote 31.

failure. An institution has to be bureaucratic according to the principle of division of labor. Units of the organization must be differentiated along the lines of expertise to efficiently exercise the right concentrated force; in this way, the units can fulfill their respective specialized tasks that, together, represent the overall mission of the institution. The organizational chart reflects the model of interaction within the organization. Difficulty in achieving an adequate level of communication and mutual understanding can reveal structural deficits among networks of people within the institution, and many of these deficits are due to a lack of intermediaries, either personal or institutional. Such intermediaries would help connect any two within-organization networks of people to each other. Therefore, effective communication among well-connected networks of people is the first criterion for identifying the presence of a successful intermediary, and there should be little doubt that these intermediaries are crucial to an institution's successful derivation of norms.

In the following two sub-sections, I will introduce the overall ideas and practices of institutional citizenship that Strum applied to the dilemma discussed above.

B. The Idea of Institutional Citizenship

As discussed in the beginning of this section, institutional citizenship represents a movement to expand the democratic ideal from the level of national law-formation to the social-institutional level. For example, in terms of adjudication, institutional citizenship equally emphasizes the processes of court adjudication and alternate dispute resolution (ADR). It also calls attention to the complementary and mutually enabling relationship between the courts and ADR. Furthermore, the ADR corresponding to institutional citizenship has not only a much broader scope of inquiry than what we generally recognize, but a different foundation of legitimacy, as well. Here, I will discuss these points in turn.

For the traditional pattern of within-institution interaction to evolve into a pattern that is democratic (that offers full and equal opportunity to participate in within-institution collective decision making), courts need to enable and initiate the change. This evolution may require that the courts practice self-restraint and refrain from handing down substantive rulings; at the same time, the courts could acknowledge a principle that helps guide the within-institution structural

changes leading to the establishment or the reshaping of dispute-settlement policy, in line with what the Supreme Court did in Harris.[19]

On the institutional level, institutional citizenship represents needed conceptual, as well as cultural, changes. Sturm points out the importance of institutional mindfulness, i.e., the self-consciousness, the self-criticism, and the self-adjustment attributable to an institution's decision-making structure and process. This mindfulness, or a lack of it, may lead to biased or decriminalized decisions at the expense of the non-dominant group. As with the dilemma of the legal tightrope, discussed in the previous subsection, institutional mindfulness cannot be adequate if the institution has only in mind the immediate legal consequences of a legal decision, and if the institution arranges its rules and mechanisms accordingly. The emancipation initiated by the courts cannot take hold without the institution's adopting a wider scope of inquiry that incorporates social, cultural, and organizational issues such as potential causes of bias into the self-consciousness, the self-criticism, and the self-adjustment processes.

Institutional mindfulness also demands a different scale of dialog and interaction both quantitatively and qualitatively. Full participation means enlarged bodies of participants that engage in dialog and in other forms of interaction. The context of full participation improves the chances of successful self-criticism and correction. This is the ideal situation, however, and seems too good to be true. Indeed, Sturm provides two further ideas to qualify the patterns of interaction (including dialog) that emerge in such enlarged participatory bodies: the idea of intermediaries and the idea of multi-partiality. But before introducing these two ideas, we still need to observe a difference between affected people and related people to fully appreciate Sturm's idea of institutional mindfulness.

In legal terms, who can participate in a legal procedure usually depends upon whether the party wanting to join the procedure has legal interests or not; or simply whether the person is affected by the procedure. Again, this limitation due to the legal tightrope represents another constraint harmful to the reflective process that facilitates efforts to unravel the social, cultural, and organizational causes of biased patterns of within-institution interaction. Institutional mindfulness therefore demands that the design of the institutional structure ought to be more open, allowing for insights from all related parties, whether internal or external to the institution. The parties could facilitate institutional transformation, both conceptually and practically. Such expansion of

[19] See supra note 11.

involvement also contributes to the pooling of vital information across different social sectors, a step that is necessary for an effective response to any sustained practices rooted in unequal relationships.

This necessary broadening of input from indirectly affected parties can occur in two ways in the institution. In terms of dispute resolution, Sturm uses the term 'systemic conflict', or as some scholars call it, 'structural conflict', to represent those conflicts "rooted in conditions sustained by institutional practices."[20] In a regulatory sense, inclusion of parties whose legal interests are not directly affected by the sexual-harassment practices in the workplaces

> expands the field of "regulatory" participants to include the long-neglected activities of legal actors within workplaces and significant nongovernmental organizations, such as professional associations, insurance companies, brokers, research consortia, and advocacy groups. These actors have already begun to play a significant role in pooling information, developing standards of effectiveness, and evaluating the adequacy of local problem-solving efforts.[21]

Emancipation brought forward by institutional citizenship has opened up tremendous information, communication, and interaction as never before. How to properly channel them in support of reflective processes and how to justify the decisions reached as the result of the processes are two critical issues that, if rigorously addressed, would greatly strengthen the theory of institutional citizenship. Sturm presents the ideas of intermediaries and of multi-partiality for just such purposes.

Intermediaries are persons or organizations that function as bridges to connect different social networks, and that even help bridge dichotomous couplings such as the public and the private, the legal and the non-legal, the general and the contextual, and the coercive and the cooperative. Intermediaries can serve those vital functions because the information- or knowledge-pooling of these intermediaries enables them to filter through the context of interaction without being wholly subject to embedded cultural, social, or organizational factors. The intermediaries usually build up their working relationships with multiple social networks in the institution. These long-standing connections usually provide the basis for communication and mutual understanding. The factor best able to strengthen within-institution intermediaries and to remove

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[20] Sturm, supra note 3, at 7.
[21] Sturm, supra note 1, at 463.

such obstacles as traditional institutional practices is intermediaries' access to external intermediaries, whether organizations or individuals, that can pool together cross-contextual perspectives. Examples of how intermediaries function and their contributions will be further discussed in the next subsection.

Multi-partiality is another conceptual change important to people's embrace of institutional citizenship. Basically, Sturm is right to point out the fact that the long-accepted 'detached-neutrality' is not the only way to justify the impartiality of our decisions. Instead, we should admit the fact that multiple perspectives do exist in an institution, and that their existence should be treated as a virtue and not a vice. What we need is an institutional design granting each perspective a fair chance to be a candidate for selection and to undergo thoughtful examination accordingly. Such examination should be an obligation. In other words, we could build participatory accountability that requires "ongoing examination and justification to participants and a community of practitioners"[22]; of course, these actors may very well hold different perspectives owing to their different professional experiences, scholarly disciplines, or values. Conflict resolvers also should "subject their analysis to the scrutiny of their peers and to explain and justify their choices as part of doing their work."[23] Multi-partiality therefore opens up a new cradle for the cultivation of public norms. And it is worth noting that public norms can derive from sources other than the traditional adjudication process.

> They also emerge when relevant institutional actors develop values or remedies through an accountable process of principled and participatory decision making, and then adapt these values and remedies to broader groups or situations. ADR can play a significant role in developing legitimate and effective solutions to common problems and, in the process, produce generalizable norms.[24]

C. The Practice of Institutional Citizenship

Institutional citizenship emphasizes the importance of law making, both on the national level and the social institutional level. Institutional citizenship also represents a fundamental change that needs conceptual refocusing, so other

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[22] Sturm, supra note 3, at 4.
[23] Id.
[24] Id, at 3.

individual and organizational intermediaries could have a role to play, both in bridging the divide between the law-making efforts at the national level and those at the institutional level and in bridging the divide between previously isolated networks of institutional practices. Again, the goals would be the pooling and the sharing of both information and knowledge, full participation of all perspectives as required by multi-partiality, and public accountability. In her three empirical studies, Sturm demonstrates how on the national level, a court or administrative agency could adopt the idea of institutional citizenship to kick off the institutional law-making process. This subsection discusses the Harris[25] case handed down by the U.S. Supreme Court, and the way the ADVANCE program is administered by the NSF, which is actually a national institutional intermediary.

Once empowered, an institutional intermediary must actively engage different networks of practices within an organization to initiate changes, which rest on the pooling and the sharing of information and knowledge. The changes are of two types: adjustments to institutional structures and the formation of institutional norms. In this regard, Sturm observes and analyzes the operation of the Center for Cooperative Resolution/Office of the Ombudsman (CCR) at the National Institutes of Health (NIH).[26] I will summarize, at the end of this subsection, how the CCR resolves ordinary as well as systemic conflict inside the NIH; how the CCR, using its ombudsman's capacity, accumulates its experience and knowledge and provides feedback upward to lead to structural changes; and how multi-partiality is maintained during the process to justify the legitimacy of the CCR's decisions and rules of regulation that lead to the settlement of conflicts and regulatory changes within the NIH.

1. The Harris Case

Harris is significant and, indeed, could legitimately serve as a demonstrative case where the idea of institutional citizenship took root and flourished. The reason for this significance concerns the absence in Harris of Court-established substantive rules or Court-established constructions regarding the precise criteria for identifying the presence of sexual harassment. After the Supreme Court established that sexual harassment constitutes sex

[25] See supra note 11.
[26] See supra note 3, at 4.

discrimination,[27] Harris built on this definition by outlining "a framework that is capable of providing for dynamic interactions between general legal norms and workplace-based institutional innovation. "[28] In addition, Justice Ginsburg elaborated a reciprocal test: ""[t]he critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."[29] Such a guideline is significant, since it directs attention to the examination of patterns of interaction and to other organizational, social, and cultural factors that may twist an interactional pattern into one that is biased but unnoticed.

The Harris court and the following courts have refused to define what constitutes a hostile environment of sexual harassment; however, the courts have provided companies with an affirmative defense if they "exercised reasonable care to avoid harassment and to eliminate it when it might occur."[30] Together, the courts have fostered both a need and an incentive for companies to open themselves to outside intermediaries, like lawyers, consultants, non-profit organizations, and insurance companies: the premise is that this kind of exposure would help the companies institutionally regulate and prevent

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[27] 42 U.S.C. § 2000e-2(a)(1) (1994), treats sexual harassment as a violation of said paragraph: it is "an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."; see Harris, 510 U.S. at 21; see Meritor Sav. Bank v. Vinson, 477 U.S. 57, 63 (1986); see also Sturm, supra note 1, footnote 61 and accompanying text.

[28] Sturm, supra note 1, at 479.

[29] Sturm, supra note 1, at 480. It is worth pointing out here that such a reciprocal test is exactly part of what Fuller has called morality of duty. The reciprocal concern within or outside an institution has been the social area that the majority of the legal community has overlooked. Sturm's institutional citizenship is exactly an effort to so shake up the dominant view that it integrates democracy and rule of law into the workplace and other social institutions where an emphasis on examining patterns of interaction and multi-partiality, instead of an emphasis on allegedly detached applications of a legal concept, can yield acceptable institutional norms. See also Chen, c.s., Human Interaction and Legal Principle, presented first at the 2008 Law and Society Annual Meeting at Montreal, to be published (Dworkin must incorporate Fuller's interactional point of view to render workable his theory of community of principle, which he brought forward in Law's Empire. From a unity point of view, such incorporation involves not only the elaboration of two kinds of justice—distributive and commutative—but also the identification of their complementary nature).

[30] See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998), and Sturm supra note 1, at 481.

sexual harassment; and the courts have encouraged or demanded that companies implement effective procedures for settlement of internal sexual-harassment claims. In this way, better practices should become more prevalent, since institutional internal data are accessible to intermediaries, who hence, could properly understand the problem. The pooling and the sharing of information, knowledge and experience among intermediaries also have improved the overall society's focus on the issue.

2. NSF as a National Institutional Intermediary

The issues that institutional citizenship addresses can be approached from the point of view of information flow and accumulation. The complex institutional structure shaped by long term cultural, social, and organizational factors may prevent information from reaching the right people in the organization, hence further obstructing the knowledge accumulation that an institution needs in order to undertake important transformational tasks. The legal tightrope further limits both the search for new knowledge and the revelation of such knowledge to the outside world. The problem from then on is not just one limited to the social institution itself; rather, it becomes one of a society-wide scale. Harris demonstrates how, in the judiciary, a court could initiate the process of institutional citizenship, where an institution opens itself to outside intermediaries like lawyers and consultants, who help restructure and, thereby, help improve the company's handling of sexual harassment problems. The ADVANCE program initiated by the NSF can serve as a good starting point for a reexamination of the administrative processes leading to institutional citizenship.

Rather than promulgate general rules and regulations whose function is to strengthen gender equality among institutions of higher education, the NSF provides funds to a pool, or a community, of universities that is representative of the even larger university community. A recipient university could use the funds to lead the way to gender reform. The criteria underlying the distribution of funds include the qualifications, the position, and the structure of the implementation team within the given university. These criteria reflect the mindfulness of the university and its capacity to lead in the direction of change. Other criteria require examinations of the primary investigators' administrative experience, academic quality, working relationships with other parts of the

university, and professional legitimacy.[31]

After selecting the participating universities, the NSF works with these universities to devise periodically revised metrics of evaluation used in the peer-review process, which connects external accountability and internal reflection to each other.[32] The network of universities not only explores different ways of improving gender equality[33] in their hiring and admission practices, but also promotes the accumulation and the sharing of knowledge by the networked universities and indeed by other universities. In essence, what the NSF does is primarily to help develop a community of practices that derive from within the community, not from high up or afar, so that the community continuously harnesses the resulting communication channels.[34]

3. CCR – the Intermediary inside the NIH

By referring simply to its name, we know that the Center for Cooperative Resolution/Office of the Ombudsman (CCR) serves both a conflict-resolution function and an ombudsman function. This is a characteristic worth emphasizing, since on the national level, the administrative and judicial functions, even within an administrative agency, are usually separated with little coordination.[35] Inside the National Institutes of Health (NIH), the CCR is responsible for

> (1) dispute resolution through neutral, confidential, and informal processes; (2) conflict management and prevention through training and education; and (3) dispute systems designed to create or improve mechanisms to effectively

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[31] Sturm, supra note 2, pp. 280, 289,

[32] Id.

[33] Id., see pp. 282-7, for a discussion of the development at the University of Michigan; and footnotes 18, 19, and p. 331 for the Columbia University information.

[34] Id., 328.

[35] Sturm, supra note 3, footnote 49 and accompanying text. Citing Aimee Gourlay & Jenelle Soderquist, Mediation in Employment Cases Is Too Little Too Late: An Organizational Conflict Management Perspective on Resolving Disputes, 21 HAMLINE L. REV. 261, 264, Sturm points out that "administrative agencies also tend to separate their dispute resolution activities from their preventive and standard-setting work." Id., at 11. Better coordination of the functions of both administration and dispute resolution on the institutional level provides another reason for the partnership view of law-making, on the national as well as on the institutional levels.

handle disputes.[36]

As the coordinator of conflict resolution within the NIH, the CCR handles hundreds of cases, both ordinary and systemic, the latter being similarly patterned disputes involving more than just two disputing parties. In either case, structural and cultural changes may be crucial to a successful settlement of the conflicts. The CCR's pooling of experience and knowledge is valuable not only for dispute settlement, but also for filtering upper management's options to change NIH policy or structure; in turn, CCR's effort will further improve the general environment of the NIH and prevent the re-occurrence of disputes.

In terms of effectiveness, the issue of whether or not an institutional intermediary is located at the intersection of multiple inter-related systems constitutes the key to success. The CCR powerfully exemplifies this observation. The CCR maintains efficient flows of information, working experience, and knowledge by directly connecting to groups of people who occupy the same professional position and who include scientists, institute directors, and nurses within various units of the NIH. The CCR is also part of the network of federal, university, and national ombudsman offices, and thus is in a position to diffuse its practices to, and to receive constructive input from, those communities: "CCR staff members regularly speak at conferences and workshops about their approach linking individual and systemic change."[37] The CCR is also indirectly interrelated to scientists who belong to wider norm-related communities, in both the public sector and the private sector, and who are frequently recipients of NIH grants.[38]

As to the accountability issue, this paper points out in the subsection on the idea of institutional citizenship that multi-partiality, instead of detached-neutrality, provides the basis of legitimacy at the institutional level. The CCR can serve as a prime example in support of this assertion. Networked in a highly decentralized organization, such as the NIH, the CCR has long-term deep connections with repeat clients inside the NIH, and these connections may contribute to possible bias on the part of the CCR. It is therefore significant to have two institutional designs to help maintain the accountability of the CCR. External accountability is sustained by "bringing in outsiders to do reflective practice work with the organization"[39]; internal accountability is participatory in

[36] Sturm, supra note 3, at 15.
[37] Sturm, supra note 3, at 41.
[38] Id.
[39] Sturm, supra note 3, at 50.

its nature, and requires constant peer reviewing to bring different backgrounds and perspectives into the decision-making process.[40] In order to achieve such participatory accountability, members of the CCR together present an impressive combination of professional backgrounds, ranging from the sciences, counseling, and organizational processes, to law and literature.[41]

II. Institutional Citizenship on the Web – Sexual Harassment

Information is vital to the success of institutional citizenship. First of all, information should be easily accessible, especially when the information reveals unequal within-organization power relationships that are due to social, cultural, and organizational factors and due even to the power itself. If we are unconscious of the existence of such abusive relationships, no reflective effort could be initiated. Second, the revealed information reflecting the context of abusive relationships and the reality of abusive actions should be sufficient for the formulation of problem-solving approaches. Third, the information should be channeled to the person who can both conceptualize the related issues and then either formulate a resolution or forward the information to someone who can do so.

Certainly, the difficulty is more than simply producing, accumulating, and communicating the related information. In a pluralistic society, diverse perspectives can reflect different ethnic origins, education backgrounds, and work experiences. Serving as the institutional basis of legitimacy under the institutional citizenship framework, multi-partiality serves to capture the essence of a snippet of reality, and thus further requires the channeling of information to a network of related parties of diverse interests. And the actual dialog and the exchange of opinions and perspectives based on the revealed information become equally important.

How the Internet could be designed and used to facilitate a process leading to institutional citizenship is in need of exploration. As we know, the Internet is an excellent medium by which to transmit information; it could also

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[40] Id., at 48.

[41] "Howard brings a certain sensitivity to the scientific mission and a commitment to critical reframing. Kathleen offers a counseling framework, emphasizing the power of relational systems in shaping interaction. Doris comes to problems with a background in organizational systems and processes. Kevin brings advanced degrees in law and literature, thus combining literary, legal, and policy orientations." Id., footnote 128.

be set up as a platform for dialogical purposes. In addition, we believe that institutional citizenship provides good design principles to guide the development of an effective system for institutional renovation. For example, a community of intermediaries, coming possibly from the government, primary organizations associated with the issues, and other non-government organizations devoted to related causes, could band together through the Internet to exchange ideas and to act together in directing the reflective processes of the communities of organizations. This multi-partiality relative to the community of intermediaries also enhances accountability on a fundamental level.

Drawing on the vision of a multi-level communication system, we first locate three levels of communication. The national institutional level is where the adjudicative and administrative processes take place. The universities under the ADVANCE program and other related interests group and research foundations, as discussed in the previous section, can be called the organizational level. And the internal institutional level refers to all the units within an organization, like CCR of the NIH; a administrative office or academic department in a university; or human resource office inside a corporation. These institutions and organizations of different levels form an environment inter-connected by the Internet and directed primarily by a community of intermediaries.

How the Internet system (in essence, a multi-level communication system) may function is what I plan to elaborate on in this section. I will use sexual harassment as a test case to illustrate how the system works and the rationale behind its functions.

A. A General Design of a Web System for Sexual-harassment Norms

As I point out, information and communication constitute the basis of reflective efforts. I believe that, in an Internet multi-level communication system, we need three basic functions to direct the flow of information and associated types of communication to frame an effective system that can lead to better institutional norm derivation and circulation relative to sexual harassment. The first function we need is to reveal experiences of sexual harassment and to accumulate a record of these experiences. A worker faces a real or potential threat of sexual harassment, or a member of the management

encountering real or potential conflicts of sexual harassment within the organization, may bring his or her case to the web anonymously. Helpers from the non-government organization, under the supervision of the community of intermediaries, provide consultation to the help seekers. If the individual is willing to make his or her case known to the public, with proper treatment of the case to protect personal privacy, publication of the case will reveal proper details to the rest of the organization and the wider society. The publication of the cases not only helps other people in a similar situation deal with it but also can initiate Web-based conversation that brings to light possibly hidden aspects of the case or other perspectives about how the case ought to be handled. All these cases and their associated dialog serve another important function: they are the test cases for any proposed solutions to or advocated opinions on other parts of the system.

The second function we need for the system is a dialog platform that could bring all the public discussions on board in order to generate deliberative and reflective thinking. Each speaker can self-identify the characteristic of his or her statement, like agreement or disagreement; and each speaker can connect his or her statement to other statements on the Web. Through these tags of identification and connection, we can observe both the interaction patterns and the development of issues. Members of the community of intermediaries may actively step in to direct the conversation and lead the way to further exploration.

The third function we need for the Internet multi-level communication system is a platform for argumentation. On this platform, we have a more structural setting in which participants can lead the dialog toward a deeper penetration of issues. An issue under dispute can undergo further analytical decomposition into a set of minor issues. By articulating the reasons for their own opinions, people entering the argument platform can provide reasons to support any side of the issue. This communication system, moreover, will encourage people to reveal the basis of their advocacy; for example, opinion holders can declare whether they base their thesis on their personal experience, some empirical findings, or educated opinions. Available to the users is document-deposit function that enables them to link their statements to documented facts or scholarly opinions. Throughout these functions, members from the community of intermediaries are vital to sustaining the argument process.

Aided by the participation of the community of intermediaries, the

argument platform can serve as a conflict-resolution channel inside an organization. However, the only people who can gain access to such an internal dispute-resolution platform are the parties immediately affected by the conflict.

III. Conclusion

行政院國家科學委員會補助國內專家學者赴國外出差或研習報告

98 年 8 月 4 日

附件三

報告人姓名	陳起行	服務機構及職稱	國立政治大學 教授
時間 會議 地點	June 18-23, 2009 Athens/Vouliagmeni, Greece	本會核定 補助文號	NSC 97-2410-H-004 -073 -
會議名稱	（中文）2009 年第一屆未來網路發展國際研討會 （英文）The First International Conference on Advances in Future Internet (AFIN 2009)		
發表論文題目	（中文）由網路輔助的電子性騷擾規制網站論未來法律典範 （英文）Internet and the Next Legal Paradigm - a Web Assisted Regulatory Approach toward e-Harassment		
(其餘各節見附件)			

一、參加會議經過

個人過去數年的研究，逐漸由法理， 法律制度，進而發展到資訊技術的整合．今年首次利用出國研習的機會，以個人理論及法制上的成果，開始設計能夠落實這些理論及制度面想法的網路平台，並與國際資訊科技的學者及工作者交換心得.

看到第一屆未來網路發展國際研討的 Call for Paper 時，心中有很強烈的交流意願，因此著手撰寫論文，並且學習用資訊工程界的文章模式，感謝助理們的協助，使得學習的時間大幅縮減．文章經過審查，不但接受發表，並且放在第一場的第一篇文章報告．對於多年試著進行跨領域的研究者而言，這確實是很大的鼓勵.

機票近來不但大漲，而且變動快速．經查若像以往，買華航機票延伸一點，貴得離譜．因此自行上網，找由維也納負雅典的來回機票．之後，由於華航無預警的取消航班，我的雅典飛回維也納的行程無法一併變動，所以轉機的等待時間，多了數日．這也是往後變化多端的國際飛行，在預算有限的條件下，必須克服的難題．當然，好在雅典及維也納都是可以學習其文化，歷史等的豐富發展，使得等待的時間，並不難熬.

個人被安排發表的場次如下：

2009 First International Conference on Advances in Future Internet

AFIN 2009

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二、與會心得

雖然個人論文涉及網路平台的建構，但是文章用了相當篇幅，解說設計上所依據的法理以及法制上的考量，所以如何提供資訊工程界的參與者理解，構成一大挑戰. 好在一方面對自己的想法已經很清楚；二方面過去長期參與辯論比賽及指導，所以還略知溝通上的基本要求，結果效果不錯.

與會者也問了重要的問題，如： 歐洲不似台灣，網路並不如想像中發達，我的網站，如何能接觸到廣大步上網的民眾；上網進入網站討論的人，需不需要透露其個人身份(identity)? 以及，發展這類網站，有無策略?

個人覺得，這些問題讓法理以及制度上的思考，成爲關鍵，正是跨領域值得考量者. 首先，個人重視事實意義脈絡的掌握與呈現(context reflection);因此，如何將網站視爲社會工作團體接觸社會的管道，一直是本計畫的核心課題. 換句話說，個人所設計的網站，在指導理念上，借用哥倫比亞大學法學教授 Susan Sturm 的理論，已經具有多觀點的想法(multi-partiality)；因此，規制網站的設計理念，一直以多觀點對話協調爲基準.

至於進入網站發言者，是否必須以真實身份，並且揭露自身真實身份. 設計上，有許多不同的想法,也涉及相當多的不同價值選擇. 目前個人的網站設計，稟持必須註冊，提供真實身份資料，但是進入網站發言時，可以用暱稱，不必以真實身份爲之.好處是一方面保護隱私，但是在必要時刻，系統維護者仍然可以知道，真實發言者的身份，如有逾越正當的網站使用規範時，得以做出適當的處分.

至於個人發展此一網站的策略，則正好與一直強調的治理理念相關，由下而上，期盼由一個主題的成功規制，發展至其他主題,而形成一個網路討論網絡.此外，空間上，也可以由一個國家，一個地區，逐漸發展至多個國家及地區. 新加坡大學法學院的教授來訪時，曾經與之討論過性騷擾規制網站的設計理念，回去之後，這位教授便將新加坡婦女團體的網站寄

來，表示假以時日，可以將此一網站延伸至該國．當然目前離審慎樂觀的地步都還遠，但是發展想法上，確實是有一個遠大的目標及企圖.

四、建議

跨領域是艱辛的工作，但成功者，收穫也相較可觀．建議國內學術界能持續經營一個對跨領域有意識地友善環境，往後在此一領域，應當有可觀的收穫．報告人在雅典研討會報告結束後，有一位英國研究單位的研究員特地與報告人切磋相當一段時間，他並且表示報告人的論文是第二篇他在研討會所接觸到研究紮實的報告。我們互換名片，相約日後一起申請歐盟計畫，進一步合作。其資料如下：

Dr Benjamin Aziz

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五．攜回資料名稱及內容

光碟資料一份，內有所有研討活動資訊以及每一篇發表論文的全文.

The Internet and the Next Legal Paradigm: A Web-assisted Regulatory Approach toward e-Harassment

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Abstract

How the Internet can facilitate a paradigm shift in law is the focus of this article. I first analyze the dilemma plaguing law today. I then discuss the idea of governance that is needed to pull law out of its current hardships. Finally, I propose a Web-assisted e-harassment regulatory approach in order to draw attention to, and invite further comments on, what institutional design can best realize the idea of web-assisted governance.

Keywords: Paradigm Shift, Governance, Web-assisted Regulation, e-Harassment.

1. Introduction

Laws and regulations are under great challenge and in need of a paradigmatic transformation. The Internet presents its share of problems in this regard; it also provides new opportunities to realize the needed new paradigm of law. Researchers have documented that recent legal thought has moved from a command-and-control mode toward one of governance, which emphasizes dialog and self-regulation [1]. The Internet will certainly expedite this process [2]; this article should demonstrate one approach to spearheading much needed change in the realm of law.

This article discusses the dilemma that law is facing; and this discussion sets the backdrop for the governance approach. The article then elaborates on the idea of institutional citizenship, one of the governance theories brought forward by Susan Sturm [3]. Specifically, the article examines how her idea could gain strength from a Web-based regulatory approach to the regulatory problem of e-harassment. This examination should illustrate how the Internet could facilitate the development of the next paradigm shift in law.

2. The Dilemma of Law

The root of the dilemma of contemporary law is the existence of a gap between the problematic definition of regulatory issues and its institutional context. For example, traditional legal methodology tends to approach harassment conflicts by searching for what constitutes harassment first and then by deciding whether there is a match between the defined concept and the "fact pattern" of an incident of harassment. However, no concept can be constructed out of a vacuum; therefore, a lack of sufficient factual inputs foretells the difficulty of a successful resolution to the dilemma. Actually, the term 'input' still connotes a divided sphere between the center where law resides and the margins that contains factual consideration. The term thus points out the reality of legal tradition that the law is primary and the context of the factual situation is secondary, or the law is the sovereign and context of the related facts are subjects that may be overlooked. As a result, we always point to the need of taking something from an allegedly external world and of transforming this something into an internalized legal entity. At the center of this process is a failure to recognize that the relationship between the regulator and the regulated has become one of equal respect and of mutual influence.

As a result, courts taking an outsider point of view tend to overlook the full interactive patterns surrounding an e-harassment incident; and their inquiries are limited by only the two disputing parties who will present two conflicting pictures of the episode based on their inevitably subjective point of view. A lot of vital information is filtered out during the process of determining which version of the incident ought to be the basis for adjudication. Detached from the institutional context of e-harassment issues, the legal outsider's point of view also lacks both the proper incentive to plan for—and the proper instruments to carry out—a preventive

mechanism that would either eliminate the causes of an institution's harassment or reduce the harassment's harm by means of immediate and effective resolution channels inside the institution. Unresponsive and ineffective after-the-fact enforcement is usually the only choice left. Reversing the outsider point of view and approaching the e-harassment issues inside the institution itself does not make the problem any easier to eliminate or to mitigate. Embedded in the situation, where certain intangible but real cultural factors hold fast, the harassing party or the harassed party, or both of them, may not realize the unlawful nature of his or her acts. Such cognitive failure may effectively undermine opportunities for reflection. What is more, corrective measures may not be able to function even if the parties recognize acts of harassment, because the unequal relationship between the parties may unfortunately thwart the disadvantaged parties' resorting to the institution's own remedial channels.

The root of the dilemma is thus to recognize that it is equally important both to conduct the conceptual building effort by means of regulatory bodies and, at the same time, to initiate the contextual reframing tasks inside the institution. Taking institutional normative development seriously is the needed first step toward a balanced approach that emphasizes the dialectical and mutually enabling relationship between a state's law-making bodies and a self-regulatory institution.

3. Institutional Citizenship as a Governance Model

Institutional citizenship helps us conceptualize a complementary network of law-making environments comprising both state-made law and social institutional norm formation. The relationship between communities in charge of state-made law and the social institutions that elaborate social norms is not one of command and control, but a dialogical and complementary one. Institutional citizenship also connotes a strong sense of democracy, both on the national level and on the social-institutional level. This type of citizenship requires inclusive institutions that create equal participatory opportunities wherein citizens can enter into, express them in, and be understood in the formation of forming institutional norms. In other words, democracy and the rule of law, which are the established values of a democratic nation state, should also guide social institutional law making, as well.

Sturm conducted three extensive empirical studies highly pertinent to the topic of the current article. The first study concerns the harassment problem-solving processes and the dispute-resolution processes in three companies: Deloitte & Touche, Intel Corporation, and Home Depot [4]. The second study concerns the "systemic conflict"-resolution structures and processes of the National Institutes of Health (NIH) [5]. And the third study concerns the Increasing the Participation and Advancement of Women in Academic Science and Engineering Careers program (ADVANCE) program developed by the National Science Foundation (NSF) to promote gender equality within universities [3]. In all three studies, Sturm elaborates on the dilemma embedded in, and the critical points that are overlooked by, the traditional regulatory approach. She also details the more responsive approaches and the theoretical bases that ensure their success.

As discussed in the beginning of this section, institutional citizenship represents a movement to expand the democratic ideal from simply the level of national law-formation to the social-institutional level. For example, in terms of adjudication, institutional citizenship equally emphasizes the processes of court adjudication and alternate dispute resolution (ADR). This type of citizenship also calls attention to the complementary, and mutually enabling, relationships between the courts and ADR. Furthermore, the ADR that institutional citizenship emphasizes has both a much broader scope of inquiry than what we generally recognize and a different foundation of legitimacy.

Courts need to initiate and empower the transformation of an institution's traditional patterns of interaction into democratic patterns that create full and equal opportunities for participation in the institution's collective decision making. The courts should conduct self-restraint and not hand down substantive rulings; indeed, the courts should establish a principle that guides the institution's structural changes and that, in turn, helps the institution establish or reshape its policy-implementation scheme and its dispute-settlement procedures.

A good example of this court behavior can be found in a US Supreme Court decision, Harris v. Forklift Sys., Inc. (510 U.S. 17, 1993), where the Court treated harassment as a form of discrimination, but refused to make an across-the-board definition as to what

constitutes harassment. Thus, the Court established a principle (i.e., harassment constitutes discrimination) and empowered a form of self-regulation that would facilitate both structured settlements of harassment disputes and the development of public norms for harassment. As Sturm documented, legal intermediaries like lawyers, consultants, public-interest foundations, and insurance companies, played instrumental roles in deriving social norm for harassment, and these roles would have been impossible without a decision like Harris [4].

On the institutional level, institutional citizenship also provides a needed conceptual basis for change. Sturm points out the importance of institutional mindfulness: an institution's capacity for self-consciousness, self-criticism, and self-adjustment relative to the institution's decision-making structure and processes may lead to biased or decriminalized decisions at the expense of the non-dominant group. Institutional mindfulness cannot be approximated if the institution has only in mind the immediate legal consequences of a legal decision, and if the institution arranges its rules and mechanisms accordingly. Court-initiated emancipation cannot come to fruition without a wider scope of institution-based inquiry that integrates social, cultural, and organizational issues—including potential causes of bias—into the institution's processes of self-consciousness, self-criticism, and self-adjustment.

Institutional mindfulness also demands a different scale of dialog and interaction, both quantitatively and qualitatively. Full participation means that enlarged bodies of participants engage in interaction, including dialog. As a result, the institution may improve its chances of self-criticism and correction. This is the ideal situation, however, and seems too good to be true. Indeed, emancipation brought forward by institutional citizenship can release an unprecedented flood of information, communication, and interaction. Two critical issues that would round out the theory of institutional citizenship are (1) how to channel this flood toward worthwhile destinations in order to facilitate reflective processes, and (2) how to justify the decisions reached as a result of the processes. Sturm provides the concept of intermediaries and multi-partiality for such purposes.

Intermediaries are persons or organizations that function as bridges to connect different social networks, and even provide bridges for other dichotomies such as public and private, legal and non-legal, general and contextual, and coercive and cooperative dichotomies. By engaging in information- or knowledge-pooling practices, intermediaries filter through the contexts of interaction without being completely subject to the embedded cultural, social, or organizational factors. The intermediaries usually build up their working relationships with multiple social networks in the institution. These past connections usually provide the basis of communication and mutual understanding. The most influential factor that elevates the status of an institution's intermediaries and distances them from traditional institutional practices is the access that the intermediaries enjoy to external organizations and to external individuals, creating opportunities to pool together cross-contextual perspectives.

Multi-partiality is another conceptual change crucial to our embrace of institutional citizenship. Basically, Sturm is right to point out the fact that the long-accepted 'detached-neutrality' is not the only way to justify the impartiality of our decisions. Instead, we should admit the fact that multiple perspectives exist in an institution, and that their existence should be treated as a virtue and not a vice. What we need is an institutional design that gives each perspective a fair chance to be a candidate under consideration and to be examined accordingly. Such examination should also be an obligation. In other words, we could build participatory accountability that requires the provision of "ongoing examination and justification to participants and a community of practitioners" [5]. This accountability may very well reflect different perspectives owing to different professional experiences, scholarly disciplines, or value judgments. Conflict resolvers are also required to "subject their analysis to the scrutiny of their peers and to explain and justify their choices as part of doing their work" [5].

4. Institutional Citizenship on the Web, and e-Harassment

As we can see, information and its management are vital to the success of institutional citizenship. First of all, information should be easily accessible, especially when an organization's unequal social, cultural, or organizational power relationships threaten such accessibility. If we are unconscious of the existence of such abusive relationships, no reflective effort could be initiated. Second, the revealed information reflecting both the context of abusive relationships and the reality

of abusive actions should be sufficiently sizable, so that we can formulate an effective resolution to the problem. Third, the information must be channeled to the person or persons who can both conceptualize the related issues and formulate a resolution, or at least who can forward the information to someone who has such capacity and authority to react.

Certainly, the difficulty is more than simply producing, accumulating, and communicating the related information. In a pluralistic society, a given perspective may acquire diverse characteristics owing to diverse contributors' various ethnic, educational, work-experience, or ideological backgrounds. Serving as the basis for legitimacy under the institutional citizenship framework, multi-partiality serves to capture the essence of this pluralistic reality, and thus further requires the channeling of information to a network of related parties of varying interests. And the actual dialog and the exchange of opinions and perspectives, based on the revealed information, become equally important.

How the design and the use of the Internet could facilitate the process leading to institutional citizenship is worthy of exploration. As we know, the Internet is an excellent medium by which to transmit information; the Internet can also serve as a platform for dialogical purposes. In addition, we believe that institutional citizenship provides rigorous design principles for guiding the development of an effective institutional-renovation system. For example, a community of intermediaries—perhaps from the government or from non-governmental primary or secondary organizations associated with the issues—could assemble together by virtue of the Internet and could, as an assembly, exchange ideas and actively direct the reflective processes of the communities of organizations. This multi-partiality on the community of intermediaries also injects accountability into the processes.

There are different levels of communication involved in the development of harassment public norms. The national institutional level is where the court adjudicative and administrative processes of government agencies take place; the inter-organizational level, like the communities of companies and other social organizations, is where e-harassment does take place and is where companies can ask for external consultative help; and the internal institutional level, which refers to all the units and their interactions within an organization, is where actual e-harassment behavior and the derivation of its social norm take place. These institutions and organizations of different levels form the environment for the development of harassment public norms. The community of intermediaries is essential to direct the whole communication process and maintain its multi-partiality nature.

5. A Sketch of Web-assisted e-Harassment Regulation

As we point out, information and communication are the bases of reflective efforts. We believe that, in a multi-level Internet-based communication system, we need three kinds of information-communication functions to frame an effective system that can improve institutional norm derivation and institutional norm circulation regarding e-harassment harassment. The first essential function is to identify and to archive experiences of harassment. Individuals facing real or potential threats of harassment, or management personnel encountering real or potential harassment conflicts within the organization may bring their own case to the Web anonymously. Helpers from a non-government organization, under the supervision of a community of intermediaries, can counsel individuals seeking assistance. If such individuals are willing to make their case known to the public, and if treatment of the case sufficiently protects personal privacy, the case can be published on the Web. The publication of these cases not only may help similarly situated people deal with their own corresponding issue, but also may initiate Web-based conversation revealing either other possibly hidden aspects of these types of cases or other perspectives as to how the case ought to be handled. All these cases and their associated dialog are, we should note, test cases for any proposed solutions or advocated opinions on the Web.

The second essential function for the system is a dialog platform that could assemble all the public discussions and that, in this way, could generate deliberative and reflective thinking. Each speaker can self-identify the characteristics of his or her statements, such as the statements' agreement or disagreement with other statements, and can thereby connect his or her statements to other statements on the Web. Through these tags of identification and connection, we can observe both the interaction patterns and the development of issues over time. Members of the community of intermediaries may actively step in to direct the conversation and the exploration.

The third essential function for the multi-level Internet-based communication system is a platform for argumentation. This platform's substantive structure can promote deeper penetration of the issues. For example, the substantive structure can promote substantive analysis that breaks an issue under dispute down into a set of minor issues. A person entering the argument platform can provide reasons to support any one side of an issue by stating the reasons for his or her opinions. And participants are further encouraged to reveal the basis of their advocacy; for example, whether they base their thesis on their personal experience, some empirical findings, or educated opinions. Participants have access to a document-deposit feature that enables them to link their statements to documented facts or scholarly opinions. Herein, members from the community of intermediaries are vital guides in the argument process.

The community of intermediaries' participation in the argument platform may also constitute a conflict-resolution channel-cum-platform inside an organization. However, people that can gain access to such internal dispute-resolution platforms are restricted to the parties immediately affected by the conflict.

6. Conclusion

E-participation is a new and fast-advancing field of research that involves the cooperation of multidisciplinary studies. Much work is still needed before this field can take off [6]. The current paper provides a legal perspective on the matter, and we hope to demonstrate the assertion that, by changing some core assumptions, we perhaps can identify and flesh out novel effective roles of the Internet. Otherwise, the Internet may very well bring very limited change [7], despite all our fervor. We have discussed a Web design that concerns harassment issues and that rests on the idea of institutional citizenship, and whether or not this design or a similar one can maximize the Internet's role in our regulatory endeavor is a topic worth studying.

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行政院國家科學委員會補助國內專家學者赴國外出差或研習報告

98 年 8 月 4 日

附件三

報告人姓名	陳起行	服務機構及職稱	國立政治大學 教授
時間 會議 地點	June 18-23, 2009 Athens/Vouliagmeni, Greece	本會核定 補助文號	NSC 97-2410-H-004 -073 -
會議名稱	（中文）2009 年第一屆未來網路發展國際研討會 （英文）The First International Conference on Advances in Future Internet (AFIN 2009)		
發表論文題目	（中文）由網路輔助的電子性騷擾規制網站論未來法律典範 （英文）Internet and the Next Legal Paradigm - a Web Assisted Regulatory Approach toward e-Harassment		
(其餘各節見附件)			

一、參加會議經過

個人過去數年的研究，逐漸由法理， 法律制度，進而發展到資訊技術的整合．今年首次利用出國研習的機會，以個人理論及法制上的成果，開始設計能夠落實這些理論及制度面想法的網路平台，並與國際資訊科技的學者及工作者交換心得.

看到第一屆未來網路發展國際研討的 Call for Paper 時，心中有很強烈的交流意願，因此著手撰寫論文，並且學習用資訊工程界的文章模式，感謝助理們的協助，使得學習的時間大幅縮減．文章經過審查，不但接受發表，並且放在第一場的第一篇文章報告．對於多年試著進行跨領域的研究者而言，這確實是很大的鼓勵.

機票近來不但大漲，而且變動快速．經查若像以往，買華航機票延伸一點，貴得離譜．因此自行上網，找由維也納負雅典的來回機票．之後，由於華航無預警的取消航班，我的雅典飛回維也納的行程無法一併變動，所以轉機的等待時間，多了數日．這也是往後變化多端的國際飛行，在預算有限的條件下，必須克服的難題．當然，好在雅典及維也納都是可以學習其文化，歷史等的豐富發展，使得等待的時間，並不難熬.

個人被安排發表的場次如下：

2009 First International Conference on Advances in Future Internet

AFIN 2009

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二、與會心得

雖然個人論文涉及網路平台的建構，但是文章用了相當篇幅，解說設計上所依據的法理以及法制上的考量，所以如何提供資訊工程界的參與者理解，構成一大挑戰. 好在一方面對自己的想法已經很清楚；二方面過去長期參與辯論比賽及指導，所以還略知溝通上的基本要求，結果效果不錯.

與會者也問了重要的問題，如： 歐洲不似台灣，網路並不如想像中發達，我的網站，如何能接觸到廣大步上網的民眾；上網進入網站討論的人，需不需要透露其個人身份(identity)? 以及，發展這類網站，有無策略?

個人覺得，這些問題讓法理以及制度上的思考，成爲關鍵，正是跨領域值得考量者. 首先，個人重視事實意義脈絡的掌握與呈現(context reflection);因此，如何將網站視爲社會工作團體接觸社會的管道，一直是本計畫的核心課題. 換句話說，個人所設計的網站，在指導理念上，借用哥倫比亞大學法學教授 Susan Sturm 的理論，已經具有多觀點的想法(multi-partiality)；因此，規制網站的設計理念，一直以多觀點對話協調爲基準.

至於進入網站發言者，是否必須以真實身份，並且揭露自身真實身份. 設計上，有許多不同的想法,也涉及相當多的不同價值選擇. 目前個人的網站設計，稟持必須註冊，提供真實身份資料，但是進入網站發言時，可以用暱稱，不必以真實身份爲之.好處是一方面保護隱私，但是在必要時刻，系統維護者仍然可以知道，真實發言者的身份，如有逾越正當的網站使用規範時，得以做出適當的處分.

至於個人發展此一網站的策略，則正好與一直強調的治理理念相關，由下而上，期盼由一個主題的成功規制，發展至其他主題,而形成一個網路討論網絡.此外，空間上，也可以由一個國家，一個地區，逐漸發展至多個國家及地區. 新加坡大學法學院的教授來訪時，曾經與之討論過性騷擾規制網站的設計理念，回去之後，這位教授便將新加坡婦女團體的網站寄

來，表示假以時日，可以將此一網站延伸至該國．當然目前離審慎樂觀的地步都還遠，但是發展想法上，確實是有一個遠大的目標及企圖.

四、建議

跨領域是艱辛的工作，但成功者，收穫也相較可觀．建議國內學術界能持續經營一個對跨領域有意識地友善環境，往後在此一領域，應當有可觀的收穫．報告人在雅典研討會報告結束後，有一位英國研究單位的研究員特地與報告人切磋相當一段時間，他並且表示報告人的論文是第二篇他在研討會所接觸到研究紮實的報告。我們互換名片，相約日後一起申請歐盟計畫，進一步合作。其資料如下：

Dr Benjamin Aziz

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五．攜回資料名稱及內容

光碟資料一份，內有所有研討活動資訊以及每一篇發表論文的全文.

行政院國家科學委員會補助國內專家學者出席國際學術會議報告

98 年 8 月 3 日

附件三

報告人姓名	陳起行	服務機構及職稱	國立政治大學 教授
會議時間地點	2009.5.28-5.31 Denver, USA	本會核定補助文號	NSC 97-2410-H-004 -073 --
會議名稱	(中文)2009 年美國法律與社會學會年會 (英文)2009 Law and Society Association Annual Meeting		
發表論文題目	(中文) 以制度公民為基礎的性騷擾規制網站實驗 (英文) A Sexual Harassment Regulatory Experiment Based on Internet Assisted Institutional Citizenship		
(其餘各節見附件)			

一、參加會議經過

五年前，個人參與美國法律與社會學會（Law and Society Association, LSA）所規劃的跨領域研究網絡（Collaborative Research Network，CRN）中的政府規制 CRN, 並參與此一 CRN 的郵件討論社群。藉此，瞭解此一快速發展領域的相關國際間發展。

LSA 的政府規制 CRN, 是一個不折不扣的國際化又跨領域的研究社群。有來自不同國家以及不同專業背景，如社會，經濟，政治，公共行政，以及法學學者參與研討，是交換學術意見，擴大學術視野的好場所。尤其從此一領域專業期刊的增加以及參與成員的人數觀之，政府規制是各國越來越重視的研究議題。個人覺得一方面，社會快速而結構性的變遷，帶來規制上的嚴峻挑戰; 另一方面，網際網路及資訊科技等相關領域快速開展，使得新的規制理論及實踐，十分值得投入研究，往後此一領域所帶來規制觀念及制度上的變革，值得重視。

不過今年, 由於規制與治理 CRN 的協調人（coordinator）換人, 由澳洲的一位法學教授擔任. 她給我的信件中, 告知今年參與人數少, 很難將我的文章排入, 所以我改由大會分發我的講次. 個人的觀察, 似乎在聯絡方式上, 就出了些問題; 不向過去, 很早就收到提計畫書或摘要的請求, 很晚才收到這項訊息. 其結果, 雖然排在發表的第一篇文章（資料如下）, 但是並不以規制及治理爲研討主軸. 未來若仍然如此運作, 個人會尋找其他更合適的國際研討會, 或者已經有研究上合作關係的學者主辦的研討會, 提出研究成果.

Problems and Possibilities for Safe and Equal Workplaces 3113

Sponsor:

Keyword Area： GENDER AND SEXUALITY

Schedule Information:

Scheduled Time: Sat, May 30 - 8:15am - 10:00am **Building/Room:** Conf / TBA 13

Title Displayed in Event Calendar: Problems and Possibilities for Safe and Equal Workplaces 3113

Session Participants:

Session Organizer: Nancy Reichman (University of Denver) nreichma@du.edu

Chair: Jill Weinberg (University of Chicago) jweinberg@uchicago.edu

A Sexual Harassment Regulatory Experiment Based on Internet Assisted Institutional Citizenship

*Chishing Chen (National ChengChi University)

Liminal Identities, “Regarded As,” and the End of the Protected Class

*M. Christine Fotopulos (Pennsylvania State University)

Legal Mobilization for Workplace Equality in Four European Countries

*Gesine Fuchs (University of Zurich)

Employer Reports of Sexual Harassment: Impact of Gendered Organizations and Rights Consciousness

*Ganga Vijayasiri (University of Illinois, Chicago)

Jane (Formerly Known as John): Labor Market Discrimination of Transgender Individuals

*Jill Weinberg (University of Chicago)

表 Y04

二、與會心得

跨領域的法學研究，雖然是未來的發展趨勢，但是法學界在這方面發展的成熟度，仍有很大的改進空間. 美國法律與社會學會，已經是這方面的領先者，每年吸引全球各地不同背景的學者及專業工作者參與. 但時仍然無法充分反映出科際整合的價值. 個人多年的努力，嘗試結合法律理論，法律制度，以及資訊科技在法律形成上的運用等領域，發展出能爲未來規制及治理上具有貢獻的模式. 然而在今年，初步可以提出整體想法時，卻無法與過去幾年一起探討的學術社群進一步交換想法，十分可惜. 簡言之，今年被安排的場次，是以性騷擾等實體法律爲主軸，參與者不太能領略個人提出論文,在規制及治理上的意義.

較令人欣慰者，是今年執行計畫在理論上的進展，指向未來法律倫理，或者德行法理日益重要的趨勢. 也難怪新興課題，如生物倫理（bio-ethics），的主要訴求，不再是生物法（bio-law）. 反映出個人在規範上的理解與判斷上的掌握，日益重要.

本年度參與會議之前，就拜讀了美國伊利諾大學香檳校區的 Lawrence Solum 教授的作品：Virtue Jurisprudence: A virtue-Centered Theory of Judging. 這篇論文可以放在整個思潮中，有一股復古風，欲重新檢視希臘哲學重視德行的一面，稱做德行轉折（the aretaic turn）.Solum 教授過去的作品，就充滿了文化批判的色彩，我曾經在政大法律研究所法理學專題研討課程中，帶同學們讀過. Solum 用哈伯瑪斯的論述理論爲基礎，批判美國主流的言論自由法理，提出應當重視論述的自由(Freedom of Discourse)，而非表意自由（Freedom of Expression）. 後者毫不將相對人放在眼裡，只重視個人的表達. 論述本身就帶有很強的相互理解上的態度，因此更應當是法律強力保護的對象.

與會期間，有幸親自與 Solum 會面，彼此理念相近，因此每分鐘的交談都十分令人回味.Solum 並表示他的學生多在大陸，有興趣來台灣訪問，進一步相互理解. 日後會考慮在頂尖大學計畫之下，邀請 Solum 來台灣，與國內哲學，史學及法學學者互動.

四、建議

全球化衝擊國際間學術的發展，許多改變都在快速進行中，其中最值得我國注意者，應當事蹟及參與國際學術活動，進而結合理念相近或有意願在特定法學領域合作的學者及學校. 無論是研究上或者是教學上的合作，逐漸形成若干合作學校群體，實質上，可以不被快速發展的國際法學學術社群拋棄，並且能夠受到國際間最新發展的刺激，使得國內向來不弱的法學水準能持續升級；形象上，對於台灣在國際間的地位，也提供一項重要的指標. 建議國內加強對於學術交流的投資，以及，更重要者，提供經驗上的指導，以免每位學者都得經過長期的摸索.

五．攜回資料名稱及內容

表 Y04

Law and Society Association, 2009 annual meeting, Final Program:每個場次的主題，報告者及時間等資訊，每位參與學者的通訊資料也整理於該 Proceedings 之後。