
MASCULINITY, LABOR, AND SEXUAL POWER

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INTRODUCTION: WORK, SEX, GENDER

Hanna Rosin's *The End of Men* posits that women are gaining so rapidly professionally that they will soon overtake men.¹ She notes that blue-collar manufacturing jobs have disappeared from the American workplace and that many are likely gone for good.² The recent recession, she explains, harmed men more than women: jobs heavily occupied by men disappeared at a much higher rate than those service jobs ordinarily performed by women. She also argues that women are gaining ground in white-collar jobs, and notes that women occupy a growing percentage of managerial positions.³

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¹ HANNA ROSIN, *THE END OF MEN: AND THE RISE OF WOMEN* (2012); Hanna Rosin, *The End of Men*, *ATLANTIC*, July/Aug. 2010, at 56, 60 ("Earlier this year, for the first time in American history, the balance of the workforce tipped toward women, who now hold a majority of the nation's jobs.").

² See Rosin, *supra* note 1, at 60, 62-63.

³ *Id.* at 64.

Rosin observes that women today earn approximately sixty percent of undergraduate and master's degrees and nearly half of all professional degrees in law and medicine.⁴ Perhaps even more surprising is the attitude she reports young women and men have when approaching their university studies: young women work diligently toward attaining their degrees while “[g]uys high-five each other when they get a C.”⁵ This immature attitude of the “guys” is the subject of Michael Kimmel’s book, *Guyland*, which describes a longer adolescent stage for boys and young men than in the past.⁶ According to Kimmel, a young man’s stay in “Guyland” can last up to two decades.⁷ Many young women are wondering, Rosin reports, whether they will be able to find a serious mate.⁸

Rosin posits that American society and workplaces (and even international workplaces) are changing so rapidly that women will soon occupy the most powerful positions. It could be, she suggests, that characteristics traditionally associated with women such as empathy and consensus building are more valuable to business than the more competitive “masculine” model or the brawny “masculine” strength necessary for many blue-collar manufacturing jobs.⁹ And, she argues, women have demonstrated more adaptability than men. She faults men for their inability to “retool” or to adjust to the new economy.¹⁰

Many of Rosin’s statistics, or at least the conclusions she draws from them, have been challenged.¹¹ She acknowledges that it seems odd to worry about the diminishing power of men when we look at the White House, Congress, courts, and Fortune 500 CEOs and boards, but she sees this domination as merely a “last gasp of a vanishing age”¹² for men. In all of these high-powered venues,

⁴ *Id.* at 66.

⁵ *Id.*; see also ROSIN, *supra* note 1, at 157.

⁶ MICHAEL S. KIMMEL, *GUYLAND: THE PERILOUS WORLD WHERE BOYS BECOME MEN* 4-6 (2008).

⁷ *Id.* at 6.

⁸ ROSIN, *supra* note 1, at 157; Rosin, *supra* note 1, at 70.

⁹ Rosin, *supra* note 1, at 64.

¹⁰ *Id.* at 66; see also Hanna Rosin, *Who Wears the Pants in This Economy?*, N.Y. TIMES, Sept. 2, 2012 (Magazine), at 22 (discussing men’s difficulty “keeping up with the demands of the global economy”).

¹¹ Philip N. Cohen, *The “End of Men” Is Not True: What Is Not and What Might Be on the Road Toward Gender Equality*, 93 B.U. L. REV. 1159 (2013); Stephanie Coontz, Op-Ed., *The Myth of Male Decline*, N.Y. TIMES, Sept. 30, 2012, at SR1 (arguing that there is a convergence in economic fortunes, rather than an ascendance of women’s fortunes; noting that men still outearn women in every category; explaining the research on discrimination against mothers; and arguing that men are not descending); Derek Rose, *Men at Work: Objecting ‘The End of Men’ and Celebrating Masculinity in the Workforce*, GOOD MEN PROJECT (Jan. 9, 2012), <http://goodmenproject.com/ethics-values/men-at-work-objecting-the-end-of-men-and-celebrating-masculinity-in-the-workforce/> (claiming that many of Rosin’s statistics are “misleading or even untrue”).

¹² ROSIN, *supra*, note 1, at 199.

however, women have barely made a dent. In the highest echelons of power, Anne-Marie Slaughter, the first female director of policy planning at the State Department, has concluded that women “can’t have it all.”¹³ Slaughter makes no similar claim about men. Moreover, women still suffer from domestic violence and poverty at rates higher than those of men.¹⁴ Thus, a concern for men’s future without a closer look may be premature.

There are other concerns with Rosin’s book. While it is unclear that her predictions will come true, she appears to blame men’s presumed fate on their personal failures rather than on structural labor markets or the economy. Additionally, she tends to extrapolate to all men from a study of middle-class white men. But, even though it is open to criticism, Rosin’s thesis raises important questions about boys and girls, women and men, education, work, and power and family relationships, at least in the white middle-class community. It also provides an opportunity to examine and discuss more broadly the phenomena that she describes and what they actually mean. While Rosin’s title implies that there is a zero-sum game – that as women rise in education and power, men recede – a closer look at her book and at how men and women react to the recession and women’s newfound successes in education and employment may reveal something much deeper about gender and gender performance.

In fact, it is necessary to complicate Rosin’s thesis to reach a more nuanced understanding. Although Rosin posits that *women* are gaining on *men*, and her anecdotes hint at the importance of gender shifts, she skips back and forth between analysis of differences that she appears to consider innate to men or women and those that are socially constructed. Here I am using feminist and

¹³ Anne Marie Slaughter, *Why Women Still Can’t Have It All*, ATLANTIC, July/Aug. 2012, at 84.

¹⁴ SHANNAN CATALANO, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 239203, INTIMATE PARTNER VIOLENCE, 1993-2010, at 1, 3 (2012) (“From 1994 to 2010, about 4 in 5 victims of intimate partner violence were female.”); CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, P60-243, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011, at 14 (2012) (reporting that 13.6% of men were in poverty in 2011 compared to 16.3% of women); KATHLEEN SHORT, U.S. CENSUS BUREAU, P60-244, THE RESEARCH SUPPLEMENTAL POVERTY MEASURE: 2011, at 6 (2012) (reporting higher poverty rates for women than those of men under both the official measure of poverty and the Supplemental Poverty Measure (SPM)); Patricia Tjaden & Nancy Thoennes, *Prevalence and Consequences of Male-to-Female and Female-to-Male Intimate Partner Violence as Measured by the National Violence Against Women Survey*, 6 VIOLENCE AGAINST WOMEN 142, 156 (2000) (describing how the findings of the authors’ study “support findings from the Bureau of Justice Statistics’ National Crime Victimization Survey that show that women are at greater risk of intimate perpetrated violence than men”). *But see* Murray A. Straus, *Blaming the Messenger for the Bad News About Partner Violence by Women: The Methodological, Theoretical, and Value Basis of the Purported Invalidity of the Conflict Tactics Scales*, 30 BEHAV. SCI. & L. 538, 539 (2012) (stating that “more than 200 studies have found ‘gender symmetry’ in perpetration of physical assaults on partners”).

masculinities theory to define sex and gender. Sex, as I use it, is biological, basically the different organs that define men's and women's reproductive capacities.¹⁵ Gender, on the other hand, is much more important and consuming. It is a constantly evolving socially constructed set of behaviors and performances that change depending on context.¹⁶

This Essay focuses on gender and sexuality to analyze Rosin's thesis. It relies in large part on feminist and masculinities theories to consider how men and women may both suffer gendered disadvantage. It looks specifically at Las Vegas, a market that is sexualized, in order to complicate Rosin's narrative, and to create a better understanding of what is happening in the U.S. workforce. While the Las Vegas market is not representative of markets across the country, it is economically and socially significant and, with the expansion of the casino and gaming industries to a number of states other than Nevada and to locations outside the United States, such as Macau and the Philippines, casino gaming is becoming increasingly common.¹⁷ And along with casino gaming come sexuality and gender performance.

This Essay posits that the "sexy" casino market demonstrates that although men may have lost some ground to women in highly sexualized jobs, and may be unwilling to compete for those jobs as sexual objects, men retain perhaps the greater power as consumers and directors of sexual performance and appetites. Moreover, although Rosin does not come to the same conclusion, her interviews of college women suggest that young women are still subject to their male colleagues' erotic preferences. This Essay challenges Rosin's thesis that hooking up on college campuses is necessarily good for young women. While Rosin rightfully questions those who seek to limit college women's sexual agency, her book ignores the research demonstrating that hookups between college men and women are not equal: men continue to exercise both sexual and social power over women on college campuses. We cannot ignore men's sexual power either as students or as consumers of sexy female workers in our query whether men are nearing an end.

Part I discusses the social construct of gender and employs masculinities theory to explain why some men and women react in the ways that Rosin describes. Part II analyzes the sexualized market of casino bartenders and cocktail servers to consider how gender affects this market. It describes the

¹⁵ Ann-Maree Nobelius, *What is the Difference Between Sex and Gender?*, MONASH U. (June 23, 2004), <http://www.med.monash.edu.au/gendermed/sexandgender.html>.

¹⁶ *Id.*

¹⁷ CASINO CITY PRESS, CASINO CITY'S GLOBAL GAMING ALMANAC 57 (2011) (referencing the spread of gambling to Asia, notably Macau and the Philippines); Dan Ring, *Massachusetts Casino Law Marks 1-Year Anniversary, Ignites Debate over Progress*, MASSLIVE.COM (Nov. 23, 2012, 11:11 AM), http://www.masslive.com/politics/index.ssf/2012/11/massachusetts_casino_law_marks.html (describing Massachusetts as "one of 24 states to legalize commercial casinos," and observing that "[i]ncluding states with Indian casinos, 40 states have legalized casinos").

ever-increasing role that young women play as bartenders and the failure of men to move into the traditionally female cocktail server jobs. It considers men's diminishing power as employees in sexualized labor markets, but also power exercised by men as consumers of sexualized markets and the effects that these power deficits and surpluses have on the workplace. It also discusses the hookup culture on college campuses addressed in Rosin's book to demonstrate that male college students also retain considerable sexual and social power over their female counterparts. The Essay concludes that if Rosin's prediction is true that men are losing ground to women in the labor market, the law should not reify gender and masculinity in order to exacerbate these differences. Nonetheless, it also observes that because of masculinity prescriptions, men will likely continue to control erotic tastes and behavior.

I. LAW, GENDER, MASCULINITIES, AND WORK

Gender is ever-present. It influences our choices about how to act, how to dress, whom to befriend, whom to hire, and whom to fire. It is a social construction even more powerful than biological sex. In fact, non-conforming gender performance rather than one's sex often leads to discrimination or harassment in the workplace.¹⁸ To a certain extent, the law of the workplace recognizes the differences between gender and sex, and acknowledges that discrimination based on gender is illegal sex discrimination.¹⁹ At the same time, the law reinforces gender differences, granting little or no protection to men whose gender varies from traditional views of masculinity, while leaving some room for women to adopt more masculine styles and behaviors in business.²⁰ This difference in treatment likely results from the view that men are superior; therefore, women who emulate men can be forgiven. On the other hand, because women are inferior, men who act or look like women are pariahs.²¹ These men are traitors to their sex because in acting like women they challenge the masculinity of other men and weaken their hold on power.²²

¹⁸ See Ann C. McGinley, *Creating Masculine Identities: Bullying and Harassment "Because of Sex,"* 79 U. COLO. L. REV. 1151, 1226-27 (2008) ("[M]en who are harassed for failure to conform to accepted notions of masculine behavior and dress are, therefore, discriminated against because of their gender . . .").

¹⁹ See Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2006).

²⁰ Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 3 (1995) (describing how the effeminate man is "despised" for "descending" from his masculinity, while the "masculine woman is today more readily accepted").

²¹ *Id.*

²² *Id.* One exception to this conclusion is the treatment that transgender individuals have received from some courts. Although courts previously concluded that discriminating against a person because he or she is transgender is not sex discrimination, courts have more recently begun to protect transgender individuals from discrimination under Title VII of the Civil Rights Act of 1964. See Ann C. McGinley, *Erasing Boundaries: Masculinities, Sexual Minorities, and Employment Discrimination*, 43 U. MICH. J.L. REFORM 713, 714 (2010)

Understanding masculinities theory might help us understand men's behavior in reaction to their job losses that Rosin describes.

A. *Masculinities Theory and the Law*

Masculinities theory evolved primarily from sociology and social psychology.²³ The term “masculinities” in the plural communicates that masculinity is not a natural reaction to a person's biological sex. Instead, men achieve their masculinity through performances, or interaction with others, and there are varying ways to perform masculinity.²⁴ Early masculinities theorists developed the concept of the “hegemonic masculinity.”²⁵ Hegemonic masculinity is a set of gender practices that confers power in a given context. In some contexts, such as the White House and Fortune 500 boardrooms, “hegemonic masculinity” refers to an upper-middle-class white form of masculinity. In blue-collar workplaces or prisons, alternative forms of performing masculinity are dominant and more powerful.²⁶

(stating that sexual minorities have made progress toward protection against discrimination under Title VII); Kimberly A. Yuracko, *Soul of a Woman: The Sex Stereotyping Prohibition at Work*, 161 U. PA. L. REV. 757, 758-59 (2013) (describing how recent Supreme Court decisions have advanced the protection of effeminate men and masculine women in the workplace).

²³ This description of masculinities theory is derived in large part from Ann C. McGinley, *Work, Caregiving, and Masculinities*, 34 SEATTLE U. L. REV. 703, 706-09 (2011).

²⁴ NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* 26 (2010) (characterizing masculinity as a socially constructed, interactive set of practices); Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *FEMINISM AND MASCULINITIES* 182, 182-83 (Peter F. Murphy ed., 2004) (discussing how men “prove their manhood in the eyes of other men,” and perform “heroic feats” before other men because “[men] want other men to grant [them their] manhood”).

²⁵ R.W. CONNELL, *MASCULINITIES* 76-78 (2d ed. 2005).

²⁶ Some masculinities theorists refer to the “hegemony of men” as a more accurate term that includes hegemonic forms of performing masculinity but also recognizes the power men possess as a group. See, e.g., Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 *FEMINIST THEORY* 49 (2004) (proposing the recognition that men are both a “social category formed by the gender system and collective and individual agents”). In my view, concepts of “hegemony of men” and hegemonic masculinity are not mutually exclusive. See Ann C. McGinley & Frank Rudy Cooper, *Introduction: Masculinities, Multidimensionality, and Law: Why They Need One Another*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 1, 5 (Frank Rudy Cooper & Ann C. McGinley eds., 2012). As David Cohen explains, the performance of masculine practices further constructs the power, or hegemony of men as a group. David S. Cohen, *Sex Segregation, Masculinities, and Gender-Variant Individuals*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH*, *supra*, at 167, 181 (describing masculine practices enforced against boys' gender-nonconforming behavior to create power).

Masculinities theory recognizes that certain practices are normative. Masculinity prescriptions affect men and women of different races, ethnic backgrounds, classes, and sexual orientations in different ways. For many men, defining oneself as “masculine” requires proof of two negatives: that one is not feminine or a girl, and that one is not gay.²⁷ Most men, however, cannot achieve the hegemonic masculinity ideal, and they respond by constantly struggling toward achieving the ideal,²⁸ or by reacting to the ideal by engaging in subversive forms of masculinity.²⁹ While men as a group are powerful, individual men see themselves as powerless because of the constant competition to prove themselves to other men. Men attempt to gain control, a struggle that is rife with fear, shame, and emotional isolation.³⁰ These performances are homosocial; men engage in them to prove to other men that they are masculine.³¹

In sum, masculinities theory assumes that men engage in homosocial behavior to prove their masculinity to each other and to assure that they are part of the group. The behavior’s purpose and effect are to solidify men as a group and to identify women and others as outsiders. Although in many workplaces men do not treat other men and women in extremely harassing ways, many micro-masculinities occur at work that set out power differentials among men and between men and women. Men who engage in this behavior construct and perform their masculinity at work. When work disappears, men confront a challenge to their own sense of masculine identity, a challenge that we see in Rosin’s reports of men’s reaction to finding themselves out of work.

B. *Men’s Lack of Plasticity: Masculine Norms and Contradictory Responses to Breadwinning*

Rosin argues that men need to adapt to the changing economic situation, but many of them seem to be unwilling or unable to acquire new skills to make them competitive in the current working environment. She notes the demise of blue-collar jobs once performed by men and the growth of the nurturing professions.³² She also observes that there is no practical reason why men who are losing their jobs cannot go back to school to acquire the skills to move into these jobs. Unfortunately, however, she notes that men are reluctant to acquire

²⁷ See Kimmel, *supra* note 24, at 185, 187-88.

²⁸ *Id.* at 186-87.

²⁹ See David L. Collinson, ‘Engineering Humour’: *Masculinity, Joking and Conflict in Shop-Floor Relations*, 9 *ORG. STUD.* 181 (1988) (describing masculinities by blue-collar workers in a British plant).

³⁰ See DOWD, *supra* note 24, at 31 (“Out of this sense of powerlessness comes the desire for control. Masculinity thus is about fear and shame and emotional isolation . . .”); John S. Kang, *The Burdens of Manliness*, 33 *HARV. J.L. & GENDER* 477, 496 (2010) (observing that manliness places a burden on men in the military who must prove they are not cowardly).

³¹ See Kimmel, *supra* note 24, at 186-87.

³² See ROSIN, *supra* note 1, at 123-24.

new job skills, especially where the job is gendered female.³³ Although nursing schools, for example, have tried to recruit men, they have had little success.³⁴ The same is true for other programs leading to college and professional degrees, such as pharmaceutical degrees. Men have failed to return to school for more training in these areas, although women have moved into these professional jobs at good salaries.³⁵

Our society identifies the role of breadwinner as masculine. For example, men who are good breadwinners are considered to be good fathers even if they spend little time with their children. In contrast, women who earn substantial sums are often criticized as being bad mothers. Being a good breadwinner enhances a man's masculinity and detracts from a woman's femininity. This reality makes Rosin's findings that far fewer men than women are adapting to the new economy by acquiring new skills and education puzzling.

The answer to this puzzle is complicated, but it appears that the *type* of work performed may be as important to a man's masculine identity as the work's pay. In other words, men's identity is with *men's work*, which traditionally coincided with the better-paying jobs; as the better blue-collar jobs disappear and new, more "feminine" jobs take their place, men hesitate to get the training for those jobs even if they have the potential to pay significant wages. In *Who Wears the Pants in This Economy?*, Rosin profiles Alexander City, Alabama, the home of the Russell Corporation, an athletic wear manufacturer.³⁶ At its height in 1996, Russell employed more than 7000 of the town's 15,000 residents, but, as a result of moving much of its manufacturing abroad, that number has dropped to approximately 900.³⁷ Rosin observed that as men in Alexander City lost their jobs and their incomes, the women either continued to work in the jobs they previously had or found new jobs as teachers, secretaries, nurses, or in the service industry.³⁸ When Rosin asked why the men were not taking jobs as the women were, one of her interviewees told her: "We're in the South. A man needs a strong, macho job. He's not going to be a schoolteacher or a legal secretary or some beauty-shop queen. He's got to be a man."³⁹ This quote demonstrates that the type of job enhances the male worker's masculine identity. Working is a gender performance for these men, and their masculinity is challenged more by working in a job traditionally held by women than by not working at all. At least in the community of Alexander, masculinity, it seems, is enhanced more by doing work traditionally identified as masculine than by breadwinning itself.

³³ *Id.* at 124-26.

³⁴ *Id.* at 124-25.

³⁵ *Id.* at 118, 120, 126 (discussing the gender gap in pharmacy programs).

³⁶ See Rosin, *supra* note 10.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Many men fail to attend nursing school or acquire training for similar jobs precisely because nursing is considered a female job. In effect, jobs have gender too. And a job's gender depends as much on who traditionally does the job as on the requirements of the job itself. Traditionally, jobs requiring emotional labor are "women's jobs" and work requiring physical strength is "men's work."⁴⁰ But many jobs characterized as female or male mix elements of both emotional and physical labor. For example, there is no question that nursing requires significant physical strength: lifting, pushing, shoving, and supporting dead weights. But because women predominate in nursing, society emphasizes the nurturing aspect of the job. This emphasis, along with the salary depression caused by the female job identity, discourages men from entering the nursing profession. Work is important to the performance of male identity, and becoming a nurse generally does not permit men to perform their masculine identities. There are some notable exceptions to this conclusion. For example, when I took my daughter for knee surgery, nearly all of the nurses in the orthopedic surgical center were men. Orthopedic surgery, which requires heavy equipment and involves breaking and sawing through bones, is known as a macho specialty among doctors. The male nurses I met were also macho, with large muscled bodies covered with tattoos. They had adapted to the reality of the job and carved out a masculine specialty in nursing, which permitted them to perform their masculinity at work. This was no "woman's job."

Moreover, it appears that traditional families adapt by creating myths that protect the masculinity of the non-working father and husband. Even though the father/husband is not contributing to the family by working, Rosin noted that wives, at least those in more traditional communities, continued to maintain that the man is the "head of the household" and the protector of the family.⁴¹

Traditionally, men have performed their masculinity in two important roles: as breadwinner⁴² and as sexual aggressor.⁴³ It is therefore not surprising that as men's role as breadwinner comes under attack due to the economic downturn and the offshoring of good manufacturing jobs, they may emphasize their sexual side in order to prove their masculinity. Many men who are older or who have families may be disinclined or unable to take advantage of the sexual availability of women in their midst. But men can continue to identify as

⁴⁰ See JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 71 (2000); Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 B.Y.U. L. REV. 99, 107-08, 124-26.

⁴¹ Rosin, *supra* note 10.

⁴² JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 59 (2010) (discussing the "breadwinner-housewife dichotomy"); Karyn Loscocco & Glenna Spitze, *Gender Patterns in Provider Role Attitudes and Behavior*, 28 J. FAM. ISSUES 934, 934-35 (2007) (identifying breadwinning as a critical gender boundary).

⁴³ See, e.g., Collinson, *supra* note 29, at 191 (observing masculinities displayed by blue-collar workers in shop culture where the younger workers emphasized their sexuality and the older workers emphasized their role as breadwinners).

masculine in certain sexualized industries such as those found in the casino industry in Las Vegas and other cities. Part II discusses how sexualized industries such as Las Vegas's casinos give men power as consumers that they may be sacrificing as workers.

II. SEX, GUYLAND, AND LAS VEGAS

Casino gaming has become increasingly sexualized.⁴⁴ In Las Vegas in the 1990s, for example, city leaders attempted to sell the city as a family destination.⁴⁵ That marketing attempt failed to bring in visitors who would spend sufficient money in the casinos, and the city has turned increasingly to selling sex appeal.⁴⁶ The Las Vegas Convention and Visitors' Authority, under the leadership of then Mayor Oscar Goodman, rejected the earlier attempts at selling Las Vegas as a family destination and adopted a new advertising motto, "What happens here, stays here," in order to convey a hipper attitude and attract a younger customer base.⁴⁷ As a result, Las Vegas has become the number one adult entertainment destination in the United States.⁴⁸

The casino floors themselves are even sexier than in the past. Cocktail servers are at the center of the casinos' sexy marketing. Considered the "eye candy" used to attract heterosexual male visitors, cocktail servers are almost exclusively female and wear very skimpy, provocative costumes.⁴⁹ The casinos have added specialized "pleasure pits" for gaming, slightly off the casino floors, where young women dressed in even skimpier costumes than those on the casino floor either tend bar or serve drinks to customers.⁵⁰ Many casinos now have European (topless) pool clubs and ultra clubs with a hip, sexy appeal.⁵¹ Moreover, in order to draw a young, hip crowd, casinos have built

⁴⁴ See generally Ann C. McGinley, *Trouble in Sin City: Protecting Sexy Workers' Civil Rights*, 23 STAN. L. & POL'Y REV. 253 (2012).

⁴⁵ *Id.* at 253 n.2.

⁴⁶ *Id.* at 253.

⁴⁷ *Id.* at 258, 260-61 (noting that Las Vegas "turned up the heat" in order to attract younger customers).

⁴⁸ *Id.* at 253 n.4.

⁴⁹ See generally Ann C. McGinley, *Babes and Beefcake: Exclusive Hiring Arrangements and Sexy Dress Codes*, 14 DUKE J. GENDER L. & POL'Y 257 (2007) (describing the hypersexual environments in the Las Vegas casinos) [hereinafter McGinley, *Babes*]; Ann C. McGinley, *Harassing "Girls" at the Hard Rock: Masculinities in Sexualized Environments*, 2007 U. ILL. L. REV. 1229 [hereinafter McGinley, *Harassing*] (describing the sexualized environment at the Hard Rock Hotel & Casino in Las Vegas).

⁵⁰ Lark Ellen Gould, *Putting Some Go-Go Into Your Blackjack Game in Las Vegas*, OPEN PLACES, <http://openplac.es/trips/gaming-in-the-pleasure-pit-at-planet-hollywood-las-vegas> (last visited Feb. 4, 2013) (observing that "handpicked hotties" at the Pleasure Pit at Planet Hollywood wear lingerie).

⁵¹ See Kitty Bean Yancey, *A Guide to Vegas Adult and Topless Pools*, USA TODAY, http://travel.usatoday.com/destinations/2010-06-10-las-vegas-adult-topless-pools-guide_N.htm (last updated July 7, 2010, 1:28 PM); Chris Mohny, *The Hottest New Nightspot Trend in*

night clubs within the casino buildings and licensed them to management companies to operate.⁵² These clubs, along with the ultra bars and pool clubs, restrict access to adults only⁵³ and permit entry to female customers who are young, attractive, sexy, and provocatively dressed over those who do not fit the image.⁵⁴ The female customers, along with the female cocktail servers and bar tenders, lure male customers who are expected to spend exorbitant amounts of money to buy table service of bottles of wine or alcohol.⁵⁵

Atlantic City, New Jersey, which added casino gaming in 1978, has followed the Las Vegas model, upping the sexuality in the casinos by introducing new, skimpier, sexier costumes for cocktail servers as a means of attracting visitors.⁵⁶ Sexualized industries, represented by the casinos, are growing and, while not necessarily representative of the U.S. economy, can tell us something about the power between the sexes. For this reason, it is interesting to test Rosin's thesis against the reality on the ground in Las Vegas.

A. *Gendered Jobs in Las Vegas*

Rosin claims in *The End of Men* that women are moving ahead of men in the workplace. Although Rosin did not consider Las Vegas or any sexualized industry in her book, an interesting phenomenon is increasingly occurring in Las Vegas. As Las Vegas has become even more sexualized than before, young, sexy women have held onto their almost exclusive possession of cocktail server jobs while at the same time making inroads into the formerly all-male bartender jobs.⁵⁷ Men are being left behind as potential employees in these positions.⁵⁸

Vegas, TODAY.COM, <http://www.today.com/id/6328366#UVG38BysiSp> (last visited Mar. 26, 2013) (describing Las Vegas "ultralounges" as having "a decidedly upscale, classy vibe" where the "[d]écor is modern, sleek, and sexy – and so is the staff").

⁵² *Nightlife: Nightclubs*, VEGAS.COM, <http://www.vegas.com/nightclubs/> (last visited Apr. 20, 2013).

⁵³ See McGinley, *supra* note 44, at 254 n.9.

⁵⁴ *Id.* at 261 ("[S]cantly dressed young women patrons . . . are often admitted free of charge . . .").

⁵⁵ *Id.*

⁵⁶ Suzette Parmley, *Resorts Casino Unveils Provocative New Image*, PHILA. INQUIRER, May 28, 2011, at A13 (describing Resorts' marketing package as a "sexier Atlantic City"); Francis Reilly, *What Happens in Atlantic City . . .*, DAILY J., Sept. 24, 2012, at A11 (describing a casino's "party pits," where the cocktail servers wear "little more than a see-through negligee").

⁵⁷ See Ann McGinley, *What Happened in Vegas?*, SLATE (Mar. 26, 2013, 7:30 AM), http://www.slate.com/articles/double_x/doublex/2013/03/las_vegas_bartender_went_from_a_male_to_a_female_job.html.

⁵⁸ *Id.*

1. Cocktail Servers

Female cocktail servers prance from one male customer to another, dressed in skimpy outfits, wearing tons of makeup and voluminous hair. The casino industry in Las Vegas caters to the erotic preferences of heterosexual men. Eroticism, at least in the most successful, upscale casinos, goes only one way: the casinos drip with female sexuality designed to please “masculine men.”⁵⁹ There are almost no male cocktail servers in Las Vegas. Only one casino comes to mind that has employed male cocktail servers: the Rio Casino and Hotel. But the presentation of the men in the jobs known as “bevertainer” positions is asexual compared to the highly sexualized presentation of the female bevertainers. At the Rio, the casino renamed the cocktail servers “bevertainers” and hired women (and a few men) to entertain the patrons by singing or dancing sporadically as they serve cocktails.⁶⁰ Apparently, the Rio concluded that the eighty-seven cocktail servers that it laid off were not sufficiently sexy or attractive for the new position.⁶¹

The idea was that the Rio could hire sexy, young, attractive cocktail servers for the job because it is more than a cocktail job. It is entertainment. Female bevertainers dress in bare, lacy teddies, similar to lingerie, and the few male bevertainers who work at the Rio wear a costume similar to pajamas – very modest short sleeve tops with a small v-neck and long bottoms.⁶² There is a serious question whether this difference in costuming is legal under Title VII. In *Jespersen v. Harrah’s Operating Co.*⁶³ the Ninth Circuit, sitting en banc, stated that it is permissible for employers to differentiate between men and women in dress and appearance codes so long as the code does not impose an unequal burden on men and women, or unreasonably sex stereotype an employee because of sex.⁶⁴ The Rio bevertainer costumes not only impose a greater burden on women because they are much more revealing, but also stereotype female bevertainers as sex objects while allowing male bevertainers to avoid sex stereotyping. Moreover, there is a serious question about the

⁵⁹ See McGinley, *Harassing*, *supra* note 49, at 1232 (describing how casinos advertise women as “men’s pleasure objects”).

⁶⁰ Louis Cypher, *Layed-off* [sic] *Rio Cocktail Servers Protest “Bevertainer” Positions*, MAJORWAGER.COM, <http://www.majorwager.com/forums/mess-hall/120470-layed-off-rio-cocktail-servers-protest-bevertainer-positions.html> (last visited Apr. 20, 2013).

⁶¹ *Id.*

⁶² See Tracey E. George, Mitu Gulati & Ann C. McGinley, *The New Old Legal Realism*, 105 NW. U. L. REV. 689, 725-26 (2011). The Sands China Limited has been advertising for bevertainers to work in their casino in Macau. The advertisement is directed exclusively at South Korea residents, and one of the qualifications is listed as “Must feel comfortable wearing the assigned uniform.” See *Job Description*, LEARN4GOOD (Oct. 3, 2012), http://www.learn4good.com/jobs/hotel_industry/e/162475/search/macau/.

⁶³ 444 F.3d 1104 (9th Cir. 2006) (en banc).

⁶⁴ *Id.* at 1110, 1111-13.

entertainment value of the singing and dancing performed by the bevertainers. In fact, it is difficult to find a bevertainer who is singing or dancing.⁶⁵

But the Rio is an exception. At least it hires men. In most casinos, men are not employed as cocktail servers.⁶⁶ And, from all reports, men are not challenging this discriminatory decision by management.⁶⁷ Cocktail server jobs are traditionally held by women.⁶⁸ The more expensive the casino, the better looking the cocktail servers. These are good jobs, especially at the high-end casinos. Although the hourly wage is not particularly high, cocktail servers earn significant sums in tips. Some say they make more than \$100,000 per year.⁶⁹ Ironically, it appears that few men apply for these jobs. One woman who works in personnel in a Nevada casino (not the Rio) admitted that she had a cocktail server costume for a male applicant just in case a man applies so that she can demonstrate that her casino does not discriminate.⁷⁰ That costume, by the way, is a very small, sexy, bikini-like affair – very different from how the Rio actually dresses its male bevertainers. Its purpose, the female manager suggested, was to discourage men from applying for the jobs.⁷¹ And, she reports, men do not apply.

Like the men who Rosin notes are refusing to train or apply for traditionally female jobs in the non-sexualized workplaces, the men in Las Vegas are not applying for the sexualized jobs that are traditionally considered to be female jobs. When I ask my male students about this phenomenon, the vast majority of them expresses no concern that men are being discriminated against. Instead, they argue that most men do not want these jobs because they are traditionally female jobs. It is likely that unless the jobs were restructured as

⁶⁵ For a description of an evening with the bevertainers at the Rio, see George, Gulati & McGinley, *supra* note 62, at 725-26.

⁶⁶ One blogger reports that the Rio has only nine male bevertainers, and that he has never seen male cocktail servers in any other casino in Las Vegas. See Scott Roeben, *Captured: Vegas' Elusive Male Cocktail Server*, PULSE VEGAS BLOG (Mar. 14, 2011, 4:33 PM), <http://lasvegasblog.harrahs.com/las-vegas-entertainment/captured-vegas-elusive-male-cocktail-server/>. A female cocktail server blogs the following:

There are only two places I know of that have male cocktail servers. One is The Rio, but they are known as Bevertainers, where they dance every once in awhile, so they are not cocktail waitresses in the traditional Vegas definition. The other place is Bally's, where both the male servers are gay, so that may be a requirement. I'm kidding of course (they really are gay), but I don't know if they still work there. They had been there since the place opened, when Bally's used to be the old MGM.

Want My Job?, COCKTAILDOLL, <http://cocktaildoll.com/wantmyjob.htm> (last visited Apr. 20, 2013).

⁶⁷ See McGinley, *Babes*, *supra* note 49, at 262.

⁶⁸ *Id.* (“Nevada casinos openly and self-consciously sell sexual appeal by limiting cocktail serving jobs to women dressed in alluring outfits.”).

⁶⁹ See George, Gulati & McGinley, *supra* note 62, at 719-20.

⁷⁰ See *id.* at 721.

⁷¹ *Id.*

masculine, men would prefer not to do the job.⁷² As they stand now, these jobs, although well-paying, would challenge the masculine self-identity of a man who is job hunting. Even worse than nursing or teaching, this job would likely challenge the male holder's masculine identity because the job is not only a service position, but is also sexualized. A sexualized costume for male employees in one of these jobs would likely make men even more uncomfortable because they view themselves as sexual aggressors, rather than objects of sexual desire.

2. Bartenders

But the story changes in the case of the bartenders. Bartending is traditionally a man's job, but as the casinos attempt to sexualize their bars and clubs, they have begun to hire sexy, young, attractive women for these jobs.⁷³ In fact, a non-union casino recently sought female bartenders and made the applicants interview in bikinis.⁷⁴ Women are getting these jobs, especially in the parts of the casino that characterize themselves as sexier, such as the ultra lounges and the clubs.⁷⁵ The costumes these women wear are very provocative. Because bartending was originally a man's job, it has not yet lost its appeal to men. Men complain, however, that the jobs are going to unqualified women. A group of male bartenders filed charges with the Nevada Equal Rights Commission, claiming that they were passed over for jobs as bartenders in some of the new clubs that were opening in the casinos.⁷⁶ It takes more than a nice figure, they argue, to be a good bartender.

At least when it comes to the visible job of bartender, men are losing some power as workers in Las Vegas, especially as the industry attempts to increase the sexualization of service jobs. This is, of course, because the sexualization goes only one way. The irony is that power plays out in interesting and

⁷² One young man sought advice from Internet users on how to confront this mindset:

Okay so my girlfriend is a cocktail server at a bar/club situation. She is leaving for an internship for 2 months. I'm pushing for her manager to make me a server for while she is gone. I have an extremely open and fun personality and people like me. However he thinks only girls should be in that spot. Is there anything I can do or say to possibly sway his mind? I just want to earn us a little bit of extra income while she is gone and I know I could do well. Thoughts? Opinions?

Male Cocktail Server?, YAHOO! ANSWERS (June 3, 2011, 5:42 AM), <http://answers.yahoo.com/question/index?qid=20110602224205AAD4FLp>.

⁷³ Liz Benston, *Youth, Good Looks a Gold Mine on LV Strip*, LAS VEGAS SUN, May 19, 2006, at A1.

⁷⁴ Chris Allen, *So You Want to Be a Casino Dealer or Bartender in Las Vegas*, EZINE ARTICLES (Jan. 23, 2009), <http://ezinearticles.com/?So-You-Want-to-Be-a-Casino-Dealer-Or-Bartender-in-Las-Vegas&id=1914843>.

⁷⁵ See Benston, *supra* note 73.

⁷⁶ See *id.* This case was settled. See Liz Benston, *\$25,000 Check Cuts No Ice with Bartender*, LAS VEGAS SUN (Aug. 27, 2008, 2:00 AM), <http://www.lasvegassun.com/news/2008/aug/27/25000-check-cuts-no-ice-bartender/>.

unconventional ways. Although individual women win out as workers, it is not an unmitigated benefit for women. Women who serve in these positions make significant sums of money, but a young woman does not stay young forever. In fact, even women who might have previously been competitive for these jobs are considered “over the hill” by the time they reach their late twenties or early thirties.⁷⁷ Moreover, it is only some women – in fact, a small percentage of them – who can live up to the standards set for these jobs. Thus, this subset of women gains only for a short period of time. And, the stereotyping that women as a whole may suffer as a result of some individual women’s gains might be harmful to women as a group. Thus, commodification of women’s bodies supports some women and their families, but it also creates a negative environment for many other women who might prefer not to be commodified. Increased sexualization of women may harm women as a group in two ways. First, increased sexualization of casino jobs focuses only on the desires of heterosexual men and categorizes women as a group as objects of sexual aggression and desire. Second, men who formerly had these jobs or who compete with women for bartender jobs feel resentment toward women who now occupy the jobs.⁷⁸ That resentment plays out in a failure to recognize that the female bartenders have skills necessary to do the job well, and may also lead to discriminatory attitudes toward women workers as a group.

But ironically, even though individual men lose in the labor market in the sexualized workplace, heterosexual men as a group have more power as consumers and customers because it is their perceived sexual appetites that drive the market for young, sexy female bartenders. Even individual heterosexual men who lose out in the labor market “win” as customers because their sexuality prevails. It is this sexuality that creates the market for the individual female bartenders.

Thus, in the sexualized environments women are taking men’s jobs – not because they are more adaptable or able to retrain for the jobs, but actually because the market is getting increasingly more sexualized and it is women’s sexuality that the market sells, not men’s. This market, ironically, is driven by men’s preferences. Men are the losers as workers, but they continue to exercise significant power over the market as consumers. It does not have to be this

⁷⁷ See Benston, *supra* note 73.

⁷⁸ See, e.g., Graig Mantle, *Bartending: Not Just for the Boys*, MUSTANG DAILY (Apr. 7, 2008), <http://mustangdaily.net/Bartendingnotjustfortheboys/>. One of the responses to the blog states:

Just ask any male bartender in big cities like Chicago, New York or Las Vegas. Every man, myself included, has applied to bar jobs with vast experience, work ethic, dependability and personality only to be passed up for a 22 year old girls [sic] with large breasts and a cute smile. Sexism in the bar business is booming right now and men are on the receiving end. I paid over \$1000 to go to bartending school (fee included job leads daily) and once I got there, they were no longer hiring the same day!

Brock, Comment to *Bartending: Not Just for the Boys*, MUSTANG DAILY (Dec. 14, 2009, 4:12 PM), <http://mustangdaily.net/Bartendingnotjustfortheboys/>.

way. It could be that sexualized cities like Las Vegas would accommodate the sexual desires of heterosexual women as well as those of heterosexual men (and those of gay or bisexual women and men). If Las Vegas and other sexualized markets were to do this, we could imagine night clubs in upscale casinos that might have sexy, attractive young men prancing about in skimpy costumes serving drinks or tending bar. But we generally do not see young men dressed this way in the upscale casinos. Perhaps this is due to society's notion that men dressed in skimpy costumes are not sexy because the costumes would make men appear too vulnerable and insufficiently masculine. An alternative would be to dress male bartenders in costumes that emphasize their brawn. No matter. We don't see those costumes on male bartenders either. Instead, they dress in slacks, shirts, and vests while their female counterparts dress as sex kittens.

B. *Hookups and Sexual Power on Campus and Beyond*

This observation brings us back to Rosin's book and her assertion that young women on college campuses are not harmed by the hookup culture.⁷⁹ Rosin asserts that hookups benefit young women who are ambitious about their futures by delaying the time when they will be in a serious relationship with a young man.⁸⁰ She notes that young women manipulate hookup culture to satisfy their own sexual and economic needs. She describes a group of mid- to late-twenties college graduates working toward MBAs in an elite school who see their responses to porn jokes as practice for negotiating with men and psyching them out.⁸¹ These women also use their sexuality to gain advantage over the men in the negotiation.⁸² But only a few pages later Rosin describes the story of a twenty-seven-year-old woman named Sabrina who, although professing an interest in independence, had been engaged to be married multiple times in her early twenties and who was still looking for a mate. At the end of the chapter, Sabrina had found one.⁸³ This description does not make Sabrina seem independent or powerful. It makes her appear somewhat desperate.

⁷⁹ ROSIN, *supra* note 1, at 21. A "hookup" is ambiguous but ordinarily refers to a situation where two people meet at a party or are hanging out and end up doing something sexual. The encounter may include intercourse, but does not in a majority of the cases. See Paula England et al., *Hooking Up and Forming Romantic Relationships on Today's College Campuses*, in THE GENDERED SOCIETY READER 578, 579 (Michael S. Kimmel and Amy Aronson eds., 4th ed. 2011).

⁸⁰ ROSIN, *supra* note 1, at 21 (describing how college girls want to "have sexual adventure without commitment" and without "derailing their careers").

⁸¹ *Id.* at 29 ("If they could ignore the porn jokes, they could hold their own on the trading floor. . . . This was their way of psyching the men out, by refusing to back down in any game where, in another era, they would have been assumed to be the weaker opponent.").

⁸² *Id.*

⁸³ *Id.* at 32-37, 45-46.

And, while Rosin claims that women enjoy and promote the hookup culture, she also admits that a larger percentage of men than women have orgasms during hookups, and that a larger percentage of women would like their hookup to turn into something more.⁸⁴ Rosin, perhaps rightfully, reacts negatively to some condemnations of hookup culture that derive from moralistic, old-fashioned concerns about the proper sexual role of women.⁸⁵ Nonetheless, there is significant social science research, based on surveys of thousands of college students, that demonstrates that women have less control over and power in hookups than do their male counterparts.⁸⁶ In fact, some researchers conclude that hookup culture may have led to increased sexual assault of women and an acceptance of sexual violence against women, but it is unclear that hookups are necessarily worse than relationships because relationships, too, can lead to sexual assault and violence.⁸⁷

While hookup culture has its positive aspects in that it preserves women's ambitions by permitting them to avoid settling down into relationships that are too demanding of their time,⁸⁸ research clearly shows that far fewer women have orgasms in hookups than do their male partners and that young women do not have the power or the ability to insist that their partners work to give them pleasure.⁸⁹ Male students do not disagree with this information. Those who participate in the surveys state that they do not care whether their female hookup partners have orgasms, but they do care that their girlfriends have them.⁹⁰ Michael Kimmel notes that women fake orgasms in hookups either to

⁸⁴ *Id.* at 25.

⁸⁵ See generally LAURA SESSIONS STEPP, UNHOOKED: HOW YOUNG WOMEN PURSUE SEX, DELAY LOVE, AND LOSE AT BOTH (2007).

⁸⁶ See England et al., *supra* note 79, at 581-84 (finding, in a study of 4000 college students, that there is an "orgasm gap" in that many more men than women experience orgasm during hookups, that men are the initiators of hookups, and that although hookups on campus are common, there is a double standard as to how men and women who hook up are viewed by other students).

⁸⁷ Lisa Wade & Caroline Heldman, *Hooking Up and Opting Out: Negotiating Sex in the First Year of College*, in SEX FOR LIFE: FROM VIRGINITY TO VIAGRA, HOW SEX CHANGES THROUGHOUT OUR LIVES 128, 131 (Laura M. Carpenter and John DeLamater eds., 2012) (discussing how women also avoid relationships to avoid attachment to destructive men).

⁸⁸ Elizabeth A. Armstrong et al., *Is Hooking Up Bad for Young Women?*, CONTEXTS, Summer 2010, at 22, 25 (describing how relationships can detract from the college experience and make it difficult to meet people).

⁸⁹ See Elizabeth A. Armstrong et al., *Accounting for Women's Orgasm and Sexual Enjoyment in College Hookups and Relationships*, 77 AM. SOC. REV. 435, 457-58 (2012); England et al., *supra* note 79, at 581-84.

⁹⁰ See Armstrong et al., *supra* note 89, at 458 (describing how men in relationships are concerned with their partner's sexual satisfaction, while men engaging in hookups generally are not); Armstrong et al., *supra* note 88, at 25 (describing survey results indicating that women have orgasms more often in relationship sex than in hookup sex).

make the male partner feel good or to get it over with.⁹¹ This is hardly the stuff of satisfied customers.

It seems that the disproportionate numbers of women on campus gives men an advantage and they exercise this power over women in the social and sexual realms. Inequality among women and men on campus continues. Young men, in more cases than young women, appear to govern the relationship as well as the sexual experience. As Michael Kimmel notes, hooking up continues to retain some of the features of dating: it is initiated by the guys and enhances their reputations, but damages the girls' reputations. The double standard lives on.⁹² In fact, while most hookups do not turn into relationships, because of the lack of dating on campus, the hookup is the only entry to a potential relationship. Although many women enjoy hooking up, and neither men nor women necessarily want a monogamous relationship, many young women "do it because it is the only game in town."⁹³ They would prefer some type of relationship, even a friendship, with their hookup partner.⁹⁴

Thus, it appears that men in college, after college, and in increasingly sexualized industries have sexual and erotic power over women.⁹⁵ It is unlikely that we will reach the end of men while they retain this power.

CONCLUSION: MEN'S ONGOING DOMINANCE

Rosin's book is provocative and interesting. It sets out the thesis that men are descending in power as women ascend, but to the extent that Rosin's thesis is accurate, it seems that men are more enslaved by their masculine identities than women are by their feminine identities. If we are to set men free from the social strictures, the law and society must begin to work toward recognizing the harms that pressured adherence to gender norms renders. The law should refuse to lionize gender and eschew reliance on socially constructed gender norms to make decisions. Through legislation and judicial decisionmaking, the law should attempt to support a spectrum of gender identities, those which are most comfortable to the individual, regardless of biological sex. So long as men are encouraged to conform to masculinity prescriptions, they will continue

⁹¹ See KIMMEL, *supra* note 6, at 210; Michael Kimmel, *Is It the End of Men or Are Men Still in Power? Yes!*, 93 B.U. L. REV. 689, 694-95 (2013).

⁹² KIMMEL, *supra* note 6, at 197.

⁹³ *Id.* at 202.

⁹⁴ *Id.* at 203.

⁹⁵ On college campuses, at least, men do not believe or feel that they have this power. Rachel Kalish and Michael Kimmel explain that college-aged men believe that other men have much more sex than they do and worry that now that women can compare their sexual experiences with different men they will not perform adequately. See Rachel Kalish & Michael Kimmel, *Hooking Up: Hot Hetero Sex or the New Numb Normative?*, 26 AUSTRALIAN FEM. STUD. 137, 146-47 (2011). Nonetheless, the hookup culture definitely thrives amidst continuing inequality between men and women, with men having more control over the experience.

to perform their masculine identities where they can: in the labor market or in the social or sexual sphere. Neither type of dominance is good for men, women, or society.