

# Using Accountable Self Regulation to Achieve Employment Equity in Universities

By Ellen Baar

*L'auto-réglementation responsable représente une solution de rechange au modèle de gestion descendante utilisé dans la plupart des programmes d'équité en matière d'emploi. L'auto-réglementation comprend des règlements pertinents et une connaissance opérationnelle pour éliminer les obstacles systémiques plutôt que d'engager un plus grand nombre de femmes tout en maintenant les obstacles en place. Le présent article met en relief les difficultés soulevées par le recours au droit acquis plutôt qu'au communautarisme.*

Provincial and federal employment equity legislation has traditionally employed a top-down approach to design and implementation of affirmative action policies. As the Canadian Association of University Teachers has noted in its brief on the Federal Contractors Program, too little attention has been devoted to implementation (CAUT 1992: 5). The literature which has emerged from the research of law and society scholars suggests an alternative to the top-down approach which may prove useful for those seeking rapid implementation of affirmative action within the universities—accountable self-regulation. This paper will draw upon the regulatory literature to define accountable self regulation and why the approach might prove useful in university settings. Then, the paper will consider York University's attempts to implement such an approach to increase the proportion of women faculty. The limited success of York's program will be explained by addressing deviations from the accountable self regulation model which occurred during implementation at York and the failure of the Federal government to use

the legal authority available to it under the Federal Contractors Program.

## Targetted Rules and Accountable Self Regulation

Removing systemic barriers to equitable hiring and promotion requires a transformation of assumptions and of hiring and promotional practices. In K. C. Davis' terms, transformation of hiring and promotional practices requires adequate confining, structuring and checking of discretion (Davis: 4-5). But if the rapid implementation of the rules employed to limit discretion is to occur, those designing the rules must possess "street sense" (Stenning, Shearing and Addario: 18), or operational knowledge. They must possess first-hand knowledge of how hiring and promotional decisions are made in a given academic unit. In the absence of such knowledge, across-the-board rather than targetted rules will be employed (Baldwin: 331). While across-the-board rules provide for consistency across units and facilitate prosecution, they are not custom-designed to the circumstances and, as a result, the probability that an implementation gap will develop—that the rules will not be applied effectively—increases substantially (Baldwin: 328-9; Clifford and Webb: 17). Targetted rules are more likely to be implemented because they are custom-designed, feasible and complementary.

When rules are targetted to the circumstances, the probability of compliance increases. However, targetted rules alone cannot ensure compliance. Compliance can only be achieved if those expected to come into compliance are highly motivated and if they possess the knowledge

needed to define and refine their practices so that improvement becomes continuous. Creating adequate motivation to convince employers to change hiring and promotional practices is thus a prerequisite for change.

Within academia, reputation is of critical importance. Thus, the designers of the York University affirmative action program for women faculty felt that the motivation to improve hiring and promotional practices could be increased if reputation of a department were consistently affected by the degree of success achieved in hiring and promoting people from traditionally disadvantaged populations. Therefore, publication of units which were successful and unsuccessful in recruiting and retaining qualified women was expected to promote employment equity objectives.

In addition, if a privilege such as gaining authorization to hire were granted and withdrawn in response to the department's success in achieving employment equity objectives, then the motivation to implement practices which identified qualified candidates from such groups successfully, encouraged them to apply and permitted their selection, should be significant. Development of a compliance system appropriate to the department's circumstances should occur.

But could departments design a compliance system appropriate to their needs? Clearly many of them would lack the expertise. As a result, departments would need an expert with whom to consult. Such a consultant could not design a system for them, since that individual would lack sufficient understanding of the circumstances, but a consultant could give advice on options available and suggest

how others had dealt with similar problems. If the advice given was to be used, reciprocity would need to be established between the department and the consultant (Bardach and Kagan:130) since reciprocity is the foundation on which trust can be constructed. Given the need for reciprocity, the consultant could not assume responsibility for auditing compliance. That task would have to be vested elsewhere.

The model adopted at York recognized that someone in each unit, an individual with operational knowledge and clout within the unit, would need to work on devising a plan of action appropriate to the unit's circumstances. These individuals would have less knowledge about employment equity programs but would know how their unit defines positions, how recruitment is organized and candidates evaluated. By combining the two forms of expertise, it should be possible for each unit to develop a feasible plan of action.

Joseph Rees' work on labour management safety committees employed by California's Cooperative Compliance Program provided insights into where the

auditing function should rest. Rees found that ongoing improvement of safety practices required suggestions from employees about how existing practices could be improved (Rees, 1988: Ch 5). However, he found that suggestions from workers would only be forthcoming if implementation of their suggestions was rapid. Rapid implementation depended on allocations of resources from senior management. If the safety committee's representatives were highly respected employees chosen by their colleagues and the management representatives had clout with those senior managers who could authorize necessary resources, continuous improvement would then become possible.

By analogy if a joint labour management committee were responsible for auditing performance, the management representatives had clout with management and the union representatives were respected by their colleagues, then the committee should be able to sell their recommendations consistently to management and to labour. As well, when the committee was convinced that a department's compliance system was inadequate, it should have sufficient clout to

ensure that privileges were withdrawn or a department's reputation affected. In other words, the role of the joint committee would be to audit behaviour and if motivation were deemed inadequate, the committee would use reputation and its ability to recommend that privileges be removed to increase motivation in future.

Braithwaite (p.1470) terms this approach to regulation enforced self regulation while Baar (p.5) calls it accountable self regulation. Self regulation occurs when highly motivated actors develop a compliance or internal control system designed to ensure that members of an organization consistently behave as intended. Self regulation assumes that the actors are prepared to invest in obtaining the expertise needed to design an effective compliance system and the resources required for speedy and effective implementation.

Accountable self regulation, on the other hand, does not assume that all actors are highly motivated or that they possess the required expertise. Instead, the need to increase motivation to comply is assumed and thus there is an ongoing need to monitor results, and take action to increase the degree of motivation.

Let us contrast these assumptions with those which usually characterize employment equity programs. The Federal Contractors Program (CAUT, 1991:3) assumes that the threat to withdraw federal grants from universities will motivate the president of a university to invest in purchasing the expertise needed to develop an affirmative action program which will establish and consistently achieve targets and timetables for hiring increased numbers of people from traditionally disadvantaged groups. In turn, those implementing the program are motivated to comply because the president and board of governors of their institution have authorized implementation of the targets and the timetable for their achievement. This approach concerns itself with results, paying little attention to how they are achieved. Attention does not focus on changing the hiring or promotional processes. The structure remains the same but the results change in response to the authority of the president. At York University, this was called the top-down model and that model was rejected because it was seen as being incompatible with

**Figure 1**  
**Academic Units Which Haved Filled More Than Five Tenure Stream Positions**  
**1986-87 to 1989-90**

Unit	Women/Total Appointments	% Women
Admin. Studies	11/27	40.7
<b>Arts:</b>		
Economics	0/7	0.0
English	6/10	60.0
Humanities	4/7.33	54.6
Language, Literature & Linguistics	5/11	45.5
Mathematics	2/6	33.3
Political Science	4/10.67	37.5
Psychology	7/13	53.8
Social Science	6/8	75.0
Sociology	5/6	83.3
<b>Atkinson:</b>		
Admin. Studies	7/12	58.3
Education	3/7	42.8
<b>Science:</b>		
Biology	2/6	33.3
Chemistry	0/7	0.0
Computer Science	0/9	0.0
Physics	0/7	0.0

collegial decision-making and decentralization of hiring and promotional decisions. As Baldwin notes, "a 'top-down' approach is unrealistic, it fails to give due regard to enforcement difficulties and diminishes the role of the enforcer" (Baldwin: 333).

### **The York University Approach to Affirmative Action for Women Faculty**

Instead of employing a top-down model, contract negotiations at York University resulted in adoption of a form of accountable self-regulation. The contract provided an affirmative action program for women faculty as a basis on which to build a broader employment equity program. The contract specified that units with fewer than 30% women faculty would be required to employ a 'substantially equal test' when evaluating potential new employees. All units were required to develop and gain approval of an affirmative action plan which would spell out their hiring processes. Affirmative action plans would be approved by a joint labour management implementation committee. The committee would review all hirings to ensure that the plan had been followed and the committee was authorized to recommend to the president that a hiring not be made if the hiring did not meet the committee's standard for affirmative action. As well, the contract provided for the half time release from teaching duties of an individual who would serve as an Affirmative Action Director, a person with expertise to provide advice on how plans might be designed and implemented. Support services were provided as well.

The 30% trigger defined those departments with fewer than 30% women faculty as out of compliance while those with 30% were defined as in compliance. Thus a standard had been set and emphasis was placed on achieving the standard rather than on continuously improving the compliance system. As a result, the flexibility provided by accountable self-regulation was not employed to its fullest. Even more important, it was assumed implicitly that systemic discrimination did not exist in units which had 30% women, a most unfortunate feature of the design.

Selection of the members of the Joint Implementation Committee on Affirma-

tive Action was left to the discretion of the parties. Not enough attention was paid to ensuring that the management representatives had the clout needed with the President and the Vice President Academic to ensure that committee recommendations were followed consistently. Faculty representatives on the committee tended to be volunteers. They also tended to be junior female members of their departments with an interest in equity issues, but often without the necessary clout among their colleagues.

Deadlines for authorization of an affirmative action plan were established, yet only units authorized to hire met these deadlines since there was too little motivation on the part of other units to develop a plan. Plans would not have been forthcoming if the Vice President Academic had not sent a memo to all units stating that units seeking approval to hire were required to have an approved affirmative action plan. In the absence of a willingness to withdraw the privilege of hiring, the motivation needed to develop and gain departmental and Joint Implementation Committee approval for a plan would have been lacking. People did not comply with the terms of the contract until the procedures for authorizing appointments – a matter not addressed in the contract – were amended to complement the program.

Most units selected a woman within the unit or the unit's chair to develop a plan for their unit. There was little consultation within the units when the plan was under development. As a result of limited participation in plan development, hiring committees had a poor understanding of the processes they were expected to follow or the reasons for them. This reduced the probability that better ways of achieving the plan's objectives would be developed enabling the plan to evolve continuously.

Instead, units would approve the plan at a department meeting, and at the implementation stage it would be seen as a set of hoops a department had to go through to gain approval for a hiring recommendation made rather than as a new approach to hiring which would improve the quality of candidates and the ability of the unit to identify more effectively the most promising candidates.

One unit in which more than 30% of

the faculty are women provided a model of how the process should work. By approaching granting agencies distributing funds in the area in which they were searching, the unit was able to identify government researchers, people with appointments in community colleges, as well as people in universities who had the skills required. Letters and telephone calls were employed to make these individuals aware of the job opening and to encourage applications. Several of those short-listed were not in the job market, were not searching for employment in universities, but applied in response to the encouragement to do so.

Most applicants were fascinated by the letter they received informing them of how the interview would be organized. Forty-five minutes was to be spent on a presentation of one's own research and answering questions. An additional forty-five minutes was to be devoted to defining how a second or third year course on the topic would be organized and taught. Differentiating between curriculum development and research skills during the interview process provided members of the hiring committee with information the committee believed was more accurate than that gathered through traditional interviewing processes. Those data increased the emphasis placed on curriculum development and teaching skills when evaluating candidates.

Most units, however, made no significant changes in their interview processes. The areas in which change was most significant were identifying the pool of candidates and comparing candidates explicitly. To be approved, affirmative action plans were required to provide for proactive search, evidence that knowledgeable people with well-developed networks among the populations to be recruited had been contacted for suggestions of individuals who might be encouraged to apply. As well, at the screening and interview stages units were expected to have instruments for receiving comparative evaluations of candidates on job relevant criteria. Explicit comparison of candidates in the appointment file was a requirement which generated considerable opposition from some units. The absence of such comparisons became a frequent reason for returning appointment files for further information.

Senior administrators were delighted

with the improved quality of appointment files as a result of the affirmative action for women initiative. Their audits of candidate qualifications became easier to conduct. Yet, for the Implementation Committee, the auditing process remained difficult because its task was to review the process when women had not been found to be substantially equal to male applicants.

Affirmative action representatives in the units rarely provided the implementation committee with data on the disputes which arose within units or on deviations from the plan which occurred. Such information was more likely to be shared with the Affirmative Action Director but it was not revealed systematically to the implementation committee. As a result, the committee was forced to review curriculum vitae and letters of recommendations without the expertise characteristic of a specialist in the field in search of evidence that qualified women had been afforded inadequate consideration. Requiring the director to make a recommendation on each appointment file and certification by the affirmative action rep-

resentative that the process giving rise to shortlisting and a recommendation to appoint was consistent with each stage in the unit's plan might improve the information available to the implementation committee.

The process suffered from placing too much emphasis on developing a plan and getting it approved while placing too little emphasis on teaching unit representatives how to monitor compliance with the plan and how to report to the committee. An amendment to the contract providing that the affirmative action representative in units must be tenured failed to address the unwillingness of unit members to reveal to outsiders their unit's dirty laundry. Tenured representatives remained unwilling to "rat on their colleagues," an action that was seen to threaten the unit's access to valuable new appointments. Yet unit representatives often lacked both the expertise and the clout needed to convince unit members of the need to improve hiring processes.

Furthermore, while the administration was prepared to allocate course release time for an affirmative action director

when units needed assistance in developing affirmative action plans that could gain the Implementation Committee's approval, the continuing need for expertise to train unit representatives and provide them with the design skills needed to continue improving their plans was poorly understood. Thus, senior management deemed this a one-time-only rather than a continuing expenditure despite the fact that the funding was authorized in the contract. The perception that once in place plans do not need refinement is lethal to effective accountable self regulation, an approach which relies for its success on continuously improving the targetting of rules. As well, it is a view which disregards the need for continuously ensuring that motivation of units remains adequate to stimulate ongoing investment in improving the processes.

While the Affirmative Action for Women Faculty increased the proportion of women particularly in fields where the supply of qualified women is greatest, the program has proven ill-equipped to change the behaviour of units where supply is less plentiful and commitment to the objec-

*men talking with men about men's violence*

## Metro Men Against Violence

METRO MEN AGAINST VIOLENCE is a group of men committed to the struggle against individual and social expressions of violence. We think that men's emotional and physical violence will not end until men become part of the solution. We are pursuing alternatives to this violence and we support the efforts of others and their response to it.

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c/o Bob Alexander  
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tives of the program is low relative to other priorities. Change in the behaviour of these units was expected to occur because reputation would provide an incentive to comply. Yet the ability to use reputation to increase motivation has been undermined by the belief on the part of some Implementation Committee members that the Committee's public report should not dwell on naming units out of compliance. Instead this information was communicated in private memoranda to the President and Academic Vice President. Furthermore, a labour-management committee responsible for administering the collective agreement failed to authorize publication of the Committee's Report. In another instance, threat of a grievance was required to gain release of the data from the report. Release of the text was never achieved and the data were not widely circulated.

The York experience suggests that it is extremely difficult to get the Implementation Committee and the President to assign affirmative action a higher priority than other critical academic priorities. As a result, the committee hesitated to recommend that an appointment not be made. Preparedness to make such a recommendation was more likely to come from the Implementation Committee. However, failure of the Academic Vice President and the President to accept such advice

undermined the authority of the Implementation Committee and the motivation of units to comply. In an effort to remain legitimate, the Committee became much less willing to recommend against an appointment. Thus potential sanctions, such as the possibility of losing an appointment, fell into disuse.

During the first three years of operation, substantially more women were hired in a wide variety of academic units than had been the case prior to implementation of the program. See Figure 1. Only a small number of academic units continued to have no women faculty or only a single woman faculty member. See Figure 2. However, there is little evidence that units treated their affirmative action plan as in need of continuous improvement. Amendments to improve plans were rare. Most units continued to do as little as was necessary to achieve access to valued privileges. As a result, the potential for development of compliance systems considerably more effective than the minimum required was not realized. In addition, since contractual provisions applied to hiring but not promotion, insufficient attention was devoted to improving the process of determining whether candidates should move from pre-candidacy to candidacy for promotion and tenure. Pre-candidacy decisions tend to be made after two years and unlike promotion and ten-

ure decisions, there is little checking of these decisions by Faculty or Senate committees. Given the degree of unchecked discretion, it is not surprising that concern about systemic discrimination at the pre-candidacy stage has developed.

### Communitarian Regulation and the Federal Contractors Program

The literature indicates that accountable self regulation is most successful when there is what Rees has called communitarian regulation (Rees, 1991: 11). Three Mile Island stimulated communitarian regulation within the nuclear industry because every member of the industry recognized that they shared a common fate: inadequate safety by any one member threatened the resources available to every other member. In response, members of the industry needed to collectively finance development and implementation of codes of practice. They established an audit system designed to identify those not complying with the codes so that nuclear generators could provide one another with advice on how to come into compliance as quickly as possible reducing the threat to all other members of the industry. (Shearing, Stenning, Addario: 12 ). The motivation to provide reliable risk reduction comes from the members of the industry rather than from outside the industry. Similarly, the Toronto Stock Exchange, concerned about its reputation, has developed an effective system for regulating its members and for checking the exchange of securities to ensure that operations of the market are fair (Stenning, Shearing, Addario and Condon: 106-107).

The Federal Contractors Program has not generated communitarian regulation within the universities. Units have not become conscious of the spillover effects their behaviour can generate for one another threatening access of all units to federal funding. Unwillingness of the federal government to deny a university access to federal funding because employment equity programs are inadequate deters development of communitarian regulation. Under such circumstances, compliance occurs because of the potential loss of privilege rather than because each is a hostage to all others. If units believed that their own fate was deter-

**Figure 2**  
**Academic Units With Less Than 15% Women in Probationary Tenure Stream Positions**

	1986-87 (% Women)	1989-90 (% Women)
<b>Arts:</b>		
Economics	3.4	2.9
Geography	0.0	8.7
Philosophy	7.1	12.5
<b>Atkinson:</b>		
Economics	11.1	11.1
Fine Arts: Theatre	7.1	12.5
Glendon: Economics	11.1	11.1
<b>Science:</b>		
Computer Science	6.7	12.5*
Earth & Atmospheric	0.0	11.1
Physics	3.6	3.7

Source: Report of the Joint Implementation Committee on Affirmative Action for Women Faculty and Librarians 1989-90, North York: York University. \* inconsistency in report.

mined by the actions of all other units within the university, then they would audit each other and advise one another on how their hiring practices could be improved. Auditing would not be employed to define those who need to be sanctioned; instead auditing would be employed to identify those whose practices need to be improved for the benefit of all.

As long as the motivation to comply comes from the loss of privilege, rather than from being a hostage to all others, then the success of the program depends on the willingness of those dispensing privileges to withdraw them when compliance is insufficient. In the case of the York program that requires that units lose the ability to hire despite understaffing if their processes are inadequate or that the Implementation Committee and the President agree that an appointment should not be made because the search process did not meet affirmative action objectives. The parties must trade off adequate staffing of critical courses in the curriculum and support of collegial decision-making in order to support affirmative action objectives.

The model for implementation of affirmative action at York University assumed that the Federal Contractors Program would provide sufficient motivation for investment in an effective program. Furthermore, it assumed that reputation, an expert Affirmative Director and unit representatives with operational knowledge could provide the incentive and expertise needed for continuous improvement in the quality of affirmative action plans. The unwillingness of the Federal Contractors Program to withdraw grants from universities not in compliance reduced the potential for communitarian regulation. Improving the internal control system of units engaged in hiring became a less pressing priority reducing the preparedness of the university to invest in providing units with the expertise they needed to improve their hiring procedures. In fact with funding cuts and less emphasis on the size of the cohort nearing retirement, hiring assumed a lower priority reducing the opportunities for the historically disadvantaged to join the ranks of the professoriate. As the frequency of hiring declined so did preparedness to invest in an effective approach to affirmative action.

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## Conclusion

Traditional approaches to affirmative action have relied on senior management to implement a private justice system which would provide the motivation needed to reduce systemic discrimination systematically. Private justice systems are not subject to legal standards; broad discretion accrues to those responsible for making hiring decisions. The breadth of discretion means that the results sought are often achieved by trading off fairness and consistency.

By contrast, accountable self regulation emphasizes the need for targeted feasible rules which confine, structure and check the exercise of discretion thereby limiting the ability to trade off affirmative action to achieve other objectives. The approach stresses the ability of behavioural ordering (Stenning, Shearing, Addario and Condon: 108) to alter traditionally discriminatory practices as long as the motivation to change remains substantial. Continuous auditing is a necessary but not a sufficient condition. If compliance deficits are substantial (Rankin and Brown: 332) then the motivation to change will be reduced. Yet the need for reciprocity (Bardach and Kagan: 130) promotes reticence (Kagan: 93) reducing preparedness to employ available sanctions consistently. Under such circumstances, communitarian regulation is needed to promote ongoing investment by the employer in reducing systemic discrimination. However, the resulting investment in preventive measures, and in monitoring needed to implement remedial action rapidly, will only occur if the potential for calamity is perceived as being great and the spillover effects from each unit's actions are deemed substantial. If the Federal Contractors Program fails to withdraw funding, the potential to achieve change through accountable self regulation will decline substantially.

The change required to eliminate systemic discrimination is neither simple nor cheap to implement. Thus, a high degree of motivation is needed if implementation gaps and enforcement deficits are to be avoided (Genn:36). Generating sufficient motivation for employers to demand that units restructure themselves to reduce systemic discrimination con-

tinuously is critical. Until the federal government becomes prepared to use its procurement policy consistently to provide the incentives required to generate such restructuring, the numbers of employment equity group members employed in faculty positions may increase but systemic discrimination will persist.

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# Employment Equity in Ontario School Boards

By Alison Taylor

*Depuis une quinzaine d'années, le ministère de l'Éducation de l'Ontario encourage les conseils scolaires à mettre sur pied des programmes d'équité en matière d'emploi afin d'éliminer la discrimination basée sur le sexe à l'embauche. Le présent article donne un aperçu de la politique d'équité en se fondant sur les expériences de trois directrices d'écoles qui hâtent le changement dans le système scolaire.*

In response to the demands of women's groups, for over fifteen years the Ontario Ministry of Education has been encouraging school boards to develop employment equity programs for women in order to eliminate gender-based discrimination in hiring. Currently, school boards are required to enact employment equity programs for women and provincial targets have been set by Ministers of Education.<sup>1</sup> It is expected that women will represent fifty percent of the numbers in certain administrative positions by the year 2000. The most recent statistics available indicate that there is a long way to go for these targets to be met.

There are four main components to employment equity programs within Ontario school boards. First, there is a requirement of data collection. Since 1984, school boards have been required to collect data by sex on occupational and salary distributions, and on projected vacancies, qualified candidates, and competition processes.

Second, school boards have been required since 1984 to develop affirmative action plans with goals and timetables for the hiring, promotion, and training of all female employees. These programs remain voluntary in that there are currently no sanctions for failing to meet targets.

Third, since 1986, Directors of Education have been required to include affirmative action sections in their annual reports. And finally, between 1985 and

1989, school boards were encouraged to apply to the Ministry of Education for incentive funding to assist them in starting up their programs. This funding was to be used to support the employment of an employment equity coordinator within the board for 3 years (maximum \$48,000 in funds given per board). Boards were expected to make these positions permanent.

Questions around the "success" of employment equity initiatives are frequently asked and clearly some form of policy evaluation is necessary. However, my purpose in this paper is to present and discuss some of the views and experiences of three women high school principals in Ontario school boards in order to explore how employment equity programs actually work in practice and to identify locations for resistance and change within hierarchical structures.

## Equity Policy in Practice

My discussions with three high school principals who I will call Jan, Marg, and Diane, indicated certain problems with employment equity policy — problems inherent in the formation of the policy as well as in the implementation of programs within boards. In other words, the discourse of employment equity is problematic.<sup>2</sup> I found the women administrators to be articulate in expressing locations of contradiction and tension.

For example, a critical issue concerns the justice of employment equity programs. I am sure we have all heard it expressed that employment equity programs simply perpetuate reverse discrimination. They interfere with the principle of merit, a sacred tenet of liberal democratic society. Conversely, defendants of employment equity programs tend to counter with the argument that equity for all requires treating groups differently, based on their different needs.

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## Correction

In our Fall 1991 issue, "Violence Against Women: Strategies for Change," a rather serious typographical error occurred in Heidi Eigenkind's article, "Bearing Witness: A Questioning of the Politics of Memory." On page 24, where it reads: "Often, the knowledge that most challenges us comes in some form of memory: body sensations, stories fathers tell us," it should in fact read: "stories others tell us." Pointing out the error, Heidi writes to us that "no story ever told me by my father contained much truth!"