

2. Paul W. Taylor, "Reverse Discrimination and Compensatory Justice," in *The Affirmative Action Debate*, ed. Steven M. Cahn (New York: Routledge, 1995), 14.
3. Neil L. Rudenstine, "Why a Diverse Student Body Is So Important." *Chronicle of Higher Education* (April 19, 1996): B1.

SEXUAL HARRASMENT

Sexual Harassment and Solidarity

Larry May

Sexual harassment, like rape, seems obviously wrong. Yet, many men are not as willing to condemn it as they are willing to condemn rape. In part, this is no doubt due to the fact that it is less clear what are the boundaries of the concept of harassment, where some putative forms of harassment are not easily distinguished from "horseplay" or pranksterism. But it may also be due to the fact that men are reluctant to condemn practices which have for so long functioned to build solidarity among men. The *Playboy* centerfold pinned to the bulletin board at a workplace has at least two functions. It is a constant source of erotic stimulation for the men who work there; and it is a constant source of embarrassment and annoyance for many of the women, a clear sign that this is not the kind of place for them, but that it is a place for men.

In this chapter I wish to examine sexual harassment in its various forms, seeking a basis for moral criticism of it. In addition to more standard criticisms, largely parallel to those developed in law, I offer a new critique that calls attention to the way that sexual harassment promotes male solidarity and also thereby often excludes women from full and equal participation in various practices and contexts. At the end of the chapter I discuss positive aspects of male solidarity and indicate why sexual

harassment is not a good basis for such solidarity. Men need to feel good about who they are as men, not on the model of little boys retreating to a clubhouse with a "no girls allowed" sign on the door, but on the model of reformed alcoholics who are now so changed that they are not afraid to discuss their past problems with others as well as among themselves.

SEXUAL INTIMIDATION

The case of *Alexander v. Yale University* was the first sexual harassment lawsuit to concern an educational rather than a workplace setting.¹ The case concerned a female student at Yale University who alleged that one of her male political science professors threatened to *lower* her grade on a term paper (from a B to a C) unless she slept with him. The student, who was hoping to go to law school, felt intimidated by the proposal but did not capitulate. After her initial accusation, other women came forward with similar stories about this particular political science professor. The professor denied these other charges but admitted discussing grades with the student who sued. He claimed that he had offered to *raise* the student's grade (from a C to a B) if she slept with

him, but that she had simply declined his offer. Since, on his view, the grade had remained what the student had earned, no harm had been done to the student. No foul, no harm.

This case raised difficulties with the way that sexual harassment had been previously understood. Previously, sexual harassment was thought by the courts to involve five elements:

1. a sexual advance
2. by a person in a more powerful position
3. made to a person in a less powerful position
4. against the second person's will
5. which adversely affected
 - a. retention of job
 - b. evaluation or
 - c. promotion.

At least according to the version of the story told by the political science professor, the student had not been adversely affected, and so the fifth element of sexual harassment was not present.

Sexual harassment was understood to be harmful in that it constituted an unjustified form of intimidation, much like blackmail. But the attorneys who defended the Yale student felt that a different model was needed given the group-oriented nature of the offense. So they seized on the idea that sexual harassment like that directed at the student was a form of sex discrimination and thus harmful as a form of degradation. But what if the facts were as alleged by the professor, was there any discrimination against or degradation of the student? This seemed not to be like blackmail, since there was no clear indication that she would be rendered worse off if she turned down the professor's proposal.

If the facts were as the student alleged, then this was an egregious case of sexual intimidation. No one who understands the purpose of educational institutions would countenance the idea of a male professor threatening to give a student less than she deserved unless the student did something so utterly outside

the realm of academic achievement as providing sexual favors. Worse than this is the idea of a male professor abusing his power and authority over often naive students for his own personal gain. And worse yet is the idea that a man could extort sex from an otherwise unwilling female by threatening to do something undeserved to harm her career prospects. For all these reasons, sexual harassment of the sort alleged by the student is clearly morally wrong.

If we believe the male political science professor, something morally wrong has occurred as well, although somewhat less clearly so. On his version he offered to give the student a grade better than she deserves, and so he seemingly did not threaten to harm her undeservedly. But there was an indication that the female student may have been harmed which can be seen in that she would not have wanted to have such proposals made in the first place. The student was put in the position of having her sexuality count as a basis of academic achievement. This had a negative impact on the educational environment in which the student resided. I have elsewhere argued that this was indeed a form of sex discrimination which effectively coerced the student, even though there was no direct threat to her, at least if we believe the professor's story.²

The professor's "offer" changes the range of options that the student previously had in a way which makes her post-offer situation worse than it was in the pre-offer state. The student could no longer proceed as before, thinking of her options in a purely academic way. And in this sense she is disadvantaged, perhaps even coerced, in that she is made to accept a set of options that she would not otherwise choose. When such proposals get made, the well is poisoned, and it is no longer possible for the student to think of herself as merely a student and not also as a sex object.³ In the case of sexual harassment, seen as either a direct threat or as a seemingly innocent sexual offer, harm has occurred.

Laurence Thomas has challenged my analysis of sexual harassment in offer situation. He contends that not all examples of sexual offers contain veiled threats or can be characterized as situations that the woman would prefer not to be in. He gives an example: "Deborah is Peter's secretary. Peter offers to pay Deborah so many dollars per week, in addition to her present salary, if she would be his exclusive sexual partner. The money would come out of his own pocket."⁴ Thomas stipulates that there is no veiled threat here, and no one is under psychological duress. In the case in question. Thomas "is not inclined to think that there is a moral wrong here." His rationale is expressed in this blunt statement: "It simply cannot be the case that we should not enter into any interaction if there is the possibility that it might become morally explosive."

It seems to me, however, that Peter has done something morally suspect by introducing sex into the workplace. Even though Deborah can take the offer or leave it, she cannot, on her own, return to a situation where her relationship with Peter was strictly professional. By turning the offer down, she does not return to the previous state of affairs because of the way that Peter's offer has changed the relationship between them and set the stage for abuse of Peter's authority. This much Thomas admits; yet he claims that we cannot stop acting just because it might turn out that abuse could occur. But he has focused on only one aspect of the problem, the possibility that things might turn ugly. What he has missed is that the relationship has changed, nearly irrevocably, in a way that is out of Deborah's control.

In some cases of sexual offers, or sexual innuendos, nothing straightforwardly coercive occurs, but there may be reason nonetheless to think that a moral wrong has occurred. The moral wrong concerns the way that a person's options are restricted against that person's will.

It is morally wrong not only to make a person's options worse than they were before, but also to limit them undeservedly if this is against the person's will. In this latter case, it is not the worsening of the situation but rather the way that it is undeservedly taken out of the control of the woman which makes it morally suspect. To put the point starkly, sexual harassment normally involves a restriction of options which also restricts autonomy. In the straightforwardly coercive cases of sexual harassment, autonomy is restricted because a woman is forced to accede to a man's wishes or risk harm to herself. In some subtler cases of sexual harassment, autonomy is restricted in that a change in relationship is effected against the wishes of the woman, possibly to her detriment. But even if it is not to her detriment, she has been undeservedly forced into a situation that she has not chosen. In the next sections I will explore in more detail the moral harms of some of the subtle cases of sexual harassment.

HOSTILE ENVIRONMENTS

In 1993 the United States Supreme Court gave its clearest support to a relatively new basis for understanding the harm of sexual harassment which is closer to the basis I have just suggested than is the intimidation model, although with several important differences. The Court carefully enunciated a doctrine that held that sexual harassment can be harmful in that it produces a hostile or abusive work environment for a person because of her gender.⁵ I want to explore various theoretical issues that are implicated in this new approach to sexual harassment, where the older model of intimidation and blackmail is by and large abandoned. I am especially interested in how this new model affects our understanding of male behavior in educational and workplace settings.

Here are some of the relevant facts of the case of *Harris v. Forklift Systems Inc.*

Teresa Harris worked as a manager at Forklift Systems Inc., an equipment rental company, from April 1985 until 1987. Charles Hardy was Forklift's president. The magistrate found that, throughout Harris's time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendos. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumb ass woman." Again, in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris's] raise." Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. He threw objects on the ground in front of Harris and other women, and asked them to pick them up. He made sexual innuendos about Harris's and other women's clothing.⁶

This pattern of harassment was not aimed at extracting a particular form of behavior, such as a sexual favor. It was not straightforwardly coercive, but nonetheless something seems morally wrong about Hardy's actions.

What Hardy did was to create an environment in which it was very difficult for his female employees to be taken seriously as equals to their male counterparts. Justice Sandra Day O'Connor, delivering the opinion of the court, considered this case an example of a "discriminatorily abusive work environment." This new standard "takes a middle path between making actionable any conduct that is merely offensive, and requiring the conduct to cause a tangible psychological injury." A hostile environment is, according to O'Connor, not something that can be defined with mathematical precision, but it can be determined by "looking at . . . the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a more offensive utterance; and whether it unreasonably interferes with an employee's work performance."

The harm of a hostile work environment is relatively clear. Again, according to O'Connor, a "discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers." Even without a showing of these specific harms, O'Connor rightly pointed to the denial of "workplace equality" which is broadly guaranteed by Title VII of the Civil Rights Act of 1964.⁷ The key here is that this form of behavior treats men differently from women, subjecting only the women to these risks.

The chief harm of sexual harassment is indeed that it discriminates against women by subjecting women to "run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living"⁸ and thereby demeans them. Sexual harassment, even of the more subtle variety, normally changes the work environment against the wishes of the women. And this creates a difference between male and female employees. Women are forced to be seen as both workers and sexual objects, while men are free either to be seen as only workers or to be seen as workers and sexual objects. The environmental change effected by sexual harassment discriminates against women, generally to their detriment.

What if the changes in the work environment are welcome? What if a particular woman wishes to be able to advance by the use of sexual favors? To go back to Thomas's example, what if Deborah wishes to be able to supplement her income by doing sexual favors, on the side, for her boss? Does it still make sense to say that the environment is discriminatory? I believe the answer to this question is yes. But I'm not so sure that the environment is always hostile or abusive. In order to see this one needs to think about the way that women in the workplace, or in an educational setting,

will be affected as a group. The environment is discriminatory because of the way that only women have had their options restricted in respect to the kind of relationships they can have with their male bosses. Normally only women, not men, are the ones whose appearance and sexual characteristics matter and who will be judged according to non-work-related, sexual criteria.

In my view the court has done well to focus on the discriminatory environment, rather than intimidation, created by even subtle examples of sexual harassment. But it has potentially led us astray by calling that environment hostile or abusive. Surely in the most egregious cases, such as that of Charles Hardy and Teresa Harris at Forklift Systems Inc., the discriminatory work environment does become abusive. But in the more subtle cases, this is not necessarily so, and yet the environment is still discriminatory, and morally suspect for that reason. When more subtle forms of sexual harassment occur, such as when a *Playboy* centerfold is displayed in a common room, women are treated in a way that men are not, and even if some women find this to be welcome it still puts them at a competitive disadvantage in terms of being taken as seriously as their male counterparts with regard to job performance. Their sexuality is considered, illegitimately, to be relevant to job performance, and other, legitimate, bases of job performance are put on the same level as this illegitimate basis, thereby tainting the legitimate bases. This situation has been forced upon them and is, generally speaking, contrary to the autonomy of the women in question.

Sex discrimination can be morally wrong on at least three counts: women are degraded; they are treated unfairly; or they are denied a certain amount of autonomy over their lives. When women seem to welcome differential status in a given context, as in the case of Deborah welcoming the opportunity to make more

money by sleeping with her boss, it can appear that women are gaining autonomy rather than losing it. But this is not the case. For what is being lost is the choice of whether to be treated only as a worker and not also as a sex object. In most contexts this loss of control brings more harm to the woman's autonomy than the possible gain from being given more attention or allowed to use one's sexuality to gain certain advantages. What counts as "job related" or "meritorious" has undergone a sometimes subtle shift, to the detriment of women workers.

FEMALE EXCLUSION FROM FULL PARTICIPATION

One of the things often ignored in discussions of sexual harassment is how it promotes male solidarity, especially a solidarity that keeps women in an inferior position and excludes them from full and equal participation in a practice. Think of a very minor form of sexual harassment, at least as compared to that suffered in the *Harris* or *Alexander* cases, namely, a *Playboy* centerfold placed on a locker door in an employee work area. Such an act is not likely to cause serious psychological distress to female employees, and it is not some kind of quid pro quo attempt to extort sexual favors. Nevertheless it resembles these more egregious acts in excluding women from full and equal participation in a work environment with their male colleagues, as we will see.

How is it that even such seemingly innocuous acts as posting the *Playboy* centerfold in a common area can contribute to a form of male bonding and solidarity that is aimed at, or at least has the known effect of, making females feel unwelcome? My analysis is explicitly group oriented. The various forms of sexual harassment share, it seems to me, the effect of creating an environment in which women feel excluded. In this respect