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The Social Impact of Sexual Harassment

A Resource Manual for Organizations and Scholars

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Introduction

Sexual harassment has become one of the leading issues in the United States. The problem started to fester in the seventies and began to be addressed in the eighties; however, it did not become a public issue until the nineties, when 12,000-plus articles dealing with sexual harassment had been published in various journals — a rate of 1,200 a year.[1] In the first six years of the new century (2000-2005), more than 2,000 articles appeared on the subject.[2] A scan of articles banks, such as *Fact File* and *Sociological Abstracts* (SocioFile), during the eighties, however, shows only a smattering of articles, while a similar check in the seventies shows sexual harassment was hardly even mentioned as a subject. Indeed, a subject search of the *Reader's Guide to Periodical Literature* shows that sexual harassment is first defined as a category in 1980, with two cross-references added in 1985: sex discrimination in education and sex in business. Between 1980 and 1989 an average of three articles per year were written on the subject and most of the articles dealt with non-harassing issues, such as "Race, Scholarship, and Affirmative Action" (May 1989) and "Handling an Office Crush" (November 1989). In 1990, the number of articles increased to seven. In 1991, the number of articles dealing with sexual harassment skyrocketed to more than one hundred. Popular media attention toward sexual harassment has remained consistently high ever since. The *Social Science Index, Psychology Abstracts, Educational Index, Women's Studies*, and *Business Periodical Index* all show a significant increase in the topic after 1990.

The topical attention toward sexual harassment coincided with a potpourri of studies that began to document the extent of the problem. Some instances of sexual harassment are relatively low. Duckro et al. (1998) found that fewer than 1 in 10 women in ministries experienced sexual harassment. This is one of the lowest percentages found in the multitude of studies dealing with sexual harassment. The majority of social

science research cites much higher incidences of sexual harassment. This can range from 50-67 percent of women in the workforce, if one measures by currently harassed standards, and upward to 80-90 percent if one measures whether a person has been harassed at some point in their careers (Loy and Stewart, 1984; Maypole, 1986; Grauerholz, 1989; Donald and Merker, 1993). A number of studies in education illustrate the disparate findings are often related to whom one is focusing on. Forty to 50 percent of the female faculty members at institutions of higher learning report being sexually harassed at some point by other members of the faculty or by administration (Sandler, 1997; Rubin and Borgers, 1990). Students are also targets. Schneider (1987) found that 60 percent of female graduate students had been sexually harassed by a male professor (see also Wilson and Krauss, 1983), while Kalof et al. (2001) found that 40 percent of the female undergraduates and 30 percent of the males experienced some form of sexual harassment.

Students also perpetrate sexual harassment. A study by Matchen and DeSouza (2000) found that 53 percent of the female and male faculty members at a large Midwestern university experienced at least one incidence of sexually harassing behavior from students. An assortment of independent studies has found similarly high incidences of sexual harassment. It has been found to be widespread in the military (DeLauro, 1997; Bastian et. al, 1996), in heath care (Helmlinger, 1997; Williams, 1996; Begley, 1994) and in both large and small businesses (Gotcher, 2000; Buhler, 1999; Fitzgerald, 1993). It crosses all socio-economic categories (Grauerholz, 1996). The extent of the problem ranges widely, however. Some studies find the problem to affect 20 to 40 percent of the workforce (Rubin and Borgers, 1990; Sandler, 1997), while other studies in the same field indicate more than 60 percent has experienced sexual harassment (Schneider, 1987; Wilson and Krauss, 1983).

Further evidence of the problem is traced by examining sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) over time. The EEOC first ruled in 1980 that making sexual activity a condition of employment or promotion was a violation of the 1964 Civil Right Act (Kantrowitz, 1992). More extensive revisions to its sexual harassment policy were made in 1990 (Bell et. al., 2002), a year

TABLE I.1
EEOC SEXUAL HARASSMENT COMPLAINTS

1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	**1980-1989**
1	0	1	1	4	9	624	1,658	1,901	1,650	**5,849**
1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**1990-1999**
2,217	2,001	2,910	3,517	4,005	4,626	4,508	4,606	4,552	4,783	**37,725**

These numbers are markedly lower than those typically cited because they do not include reports filed with the Fair Employment Practice Agencies (see Table I.2 for comparison). It does provide an apple-to-apple unit of measurement going back to 1980, however. Source: EEOC.

before the CRA itself was revised to more forthrightly address the issue of sexual harassment. Sexual harassment complaints in the first half of the 1980s were negligible and in the second half of the 1980s were relatively low. There was a precipitous rise in EEOC complaints during the 1990s. This increase did not escape media attention, which reported that sexual harassment claims to be "nearly double the number of complaints in 1987" (Pyle and Bond, 1997; see also Stephen, 1999)," keep rising dramatically" (Davis, 1998), are "the fastest growing employee complaint" (Buhler, 1999), have "jumped 150 percent from 1990 to 1996" (Daugherty, 1997), and that the number of complaints has "increased exponentially over the last decade" (Mazzeo et al., 2001). The rise in EEOC complaints during the nineties that is seen in Table I.1 lends support to these media assessments: sexual harassment emerged as an issue in the eighties and became a major issue during the nineties. EEOC documentation during the first part of the new millennium indicates the problem persists as a major issue, both in terms of the number of complaints and the monetary cost to businesses.

Numerous studies suggest that the problem of sexual harassment has remained a continuing social issue. Studies of government employees by the United States Merit System Protection Board in 1988 and 1994 found similarly high rates of sexual harassment during both time periods: 11

TABLE I.2
EEOC AND FAIR EMPLOYMENT PRACTICE
AGENCIES [FEPAS] COMPLAINTS
COMBINED FY 1992-FY 2002

1992	1993	1994	1995	1996	1997	1998
10,532	11,908	14,420	15,549	15,342	15,889	15,618

1999	2000	2001	2002	2003	2004	2005	2006
15,222	15,836	15,475	14,396	13,566	13,136	12,679	12,025

Source: EEOC

percent of the men and 44 percent of the women had experienced harassment. Another comparison by the Department of Defense shows that not only was sexual harassment fairly widespread in the military in 1988, with 54 percent indicating direct knowledge of sexual harassment, but it remained high at 50 percent in 1995 (Firestone and Harris, 1994, 1999; Niebuhr, 1997). Still another study conducted in 2000 by the American Association of University Women found that 8 in 10 students are subjected to some form of sexual harassment during their school years, which is the same ratio that was found in their 1993 report (Bowman, 2001). The only real difference between 1990 and 2000 is the increased incidence of men who are reporting being sexually harassed today (Bowman, 2001; Abrams, 1998; Berdahl et al., 1996). The persistence of sexual harassment tends to imply that nothing has changed, and this is simply not the case. The definition of sexual harassment has been vastly expanded since the Supreme Court first handed down its landmark decision in *Meritor Savings Bank v. Vinson* more than 20 years ago. The changing face of sexual harassment is a central theme of this analysis.

Sexual harassment initially emerged as a litigious issue during the 1970s and 1980s. Sexual harassment leapt to the attention of the public in the early 1990s. Obviously, something happened to catapult sexual

TABLE I.3
EEOC MONETARY BENEFITS AWARDED
(in millions)

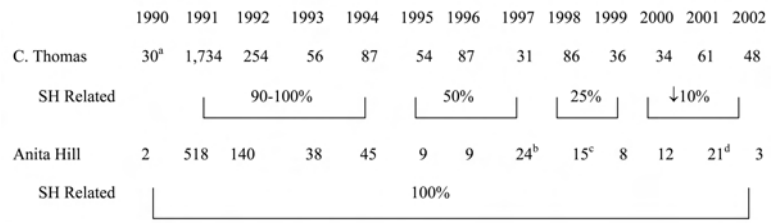
1992	1993	1994	1995	1996	1997	1998
$12.7	$25.1	$22.5	$24.3	$27.8	$49.5	$34.3

1999	2000	2001	2002	2003	2004	2005	2006
$50.3	$54.6	$53.0	$50.3	$50.1	$37.1	$47.9	$48.8

*Does not include monetary benefits obtained through litigation.
Source: EEOC

harassment into the forefront of social issues of the nineties. The simple and often cited reason for the public face of sexual harassment is the Clarence Thomas hearings in the United States Senate and the charges brought by Anita Hill against her former employer, which, as Richard Morgan (1991) reported, caused the issue to "shoot to the top of the national agenda [within a day]." There is some support for this interpretation. The Thomas hearings definitely gave the issue social currency (Lee, 2001a); it made sexual harassment, as Eric Fassin (2002:135) nicely phrased it, suddenly "thinkable" (see also Lawrence, 1996). The hearings certainly framed the issue from that point on. The impact of the Thomas hearings on the sexual harassment debate has been studied by Black and Allen (2001), who conducted an extensive media analysis of stories in major newspapers by charting sexual harassment stories that appeared at three separate points in time during the nineties: in the aftermath of the Thomas/Hill hearings, following allegations of sexual harassment against Senator Bob Packwood, and charges of sexual harassment brought by Paula Jones and Kathleen Willey against President Clinton. They found that subsequent discussion of sexual harassment after the Thomas hearings showed clearly that "Hill has become not only an accepted name to invoke in discussions of sexual harassment, but she has also become an important political and social commentator sought by journalists." In fully two-thirds of the reports, the authors found either

FIGURE I.1
POPULAR AND PROFESSIONAL ARTICLES
PUBLISHED POST-THOMAS HEARINGS
(1991-1992)



a. Thomas' appointment to the appellate court gets some attention
b. Hill's book on the hearings is released and thrusts her back into the public limelight
c. Hill's name is often linked to the Packwood and Clinton-Lewinsky scandals
d. A book is released where the author says he lied about Hill that reframes the Thomas hearings.

Thomas' or Hill's names were mentioned in an attempt to place the story within some historical context. A media analysis of stories in major newspapers conducted for this book[3] finds that while Thomas' name is less often invoked, Hill's continues to be widely cited on matters of sexual harassment.

The public debate over sexual harassment that evolved after the Thomas hearings clearly brought the issue of sexual harassment into the limelight. This, in itself, did not result in the dramatic and rapid change in law and corporate America's (relatively) prompt response. The public debate that emerged over the issue of sexual harassment coincided with a number of other social exigencies that all came to fruition around 1990. These exigencies not only made sexual harassment an issue, but also required it be forthrightly addressed. First, *Meritor Savings* was a landmark Supreme Court decision handed down in 1986 that had been languishing in the lower courts for years. In the coming years, various appellate court decisions extended the High Court's initial verdict in *Meritor*; these lower court rulings were essentially upheld by the High Court in their refusal to grant *certiorari*, and were finally and forthrightly addressed by the High Court in *Harris v. Forklift Systems* in 1993. The *Harris* decision held corporations responsible for specific forms of gender

behavior in the workplace, beyond the initial ruling of the High Court in *Meritor*.

Second, the EEOC elaborated and clarified certain legal principles in 1990 beyond those issued in 1980, and the CRA itself was revised in 1991. The EEOC reasserted the basic distinction between *quid pro quo* and hostile environment and went on to categorically state that an employer "will always be held responsible for acts of *quid pro quo* harassment by a supervisor" (Dale, 2004: 5). Policy guidelines also went on to indicate that the Commission will look at all "objective evidence, rather than subjective, uncommunicated feelings … to determine whether the victims conduct is consistent, or inconsistent, with her [sic] assertion that the sexual conduct is unwelcome" (Dale, 2004: 5). In the following year the Civil Rights Act of 1964 was revised. The revision specifically addressed the issue of sexual harassment and applied it to gender discrimination in the workforce (Bell et al., 2002). Corporations were held responsible not only for ensuring equal gender assessment when hiring and promoting an individual but for ensuring one gender group was not treated in a sexually demeaning manner in the workplace.

And third, people's mores had undergone dramatic change during the second half of the twentieth century. Behavior that was once smiled about, condoned, or accepted as a matter of course in the fifties and sixties was by 1990, looked at less benignly, not just by women, but increasingly during the 1990s by men. Certainly sexual harassment was no longer invisible, as MacKinnon (1979) had once charged. Workplace behavior that a few decades ago was tolerated was being addressed, and more and more people were acknowledging the inappropriateness of at least some of these miscreant acts (see Markert, 1999).

The present study of sexual harassment leans heavily on a social constructionist perspective. Social constructionists trace the evolution of social problems to appreciate how the problem has risen, been framed by involved parties, and entered the public sphere. It does this by examining not only why the issue of sexual harassment emerged as an issue when it did, but also how sexual harassment has changed over time. Traditionally, social constructionists examine more discrete periods: critical periods or turning points that give rise to specific issues (Ritzer, 2000: 93-602;

Danaher et al., 2000; Baert, 1998: 118-128). Such a perspective would focus on a key person, such as Catherine MacKinnon, who published a landmark book on sexual harassment, *Sexual Harassment of Women: A Case of Sex Discrimination* in 1979, or key Supreme Court decisions, which puts the focus on who constructed the debate and how the issue was framed (see Johnson, 1995; Sasson, 1995). Joel Best (2003), a leading proponent of constructionism, argues that a broader historical approach could help reclaim the social constructionist concept, which he suggests has fallen into disrepute in some quarters because it has been carelessly applied, and that a historical approach might further stimulate new insights. After all, social problems have histories that shape their existing context (see Holstein and Gubrium, 2003), and both MacKinnon and the High Court relied on issues rooted to the Civil Rights Act of 1964 to frame legal precedent, even if the CRA did not specifically address the issue of sexual harassment. Changing mores were also cited by the High Court for moving beyond the CRA in deciding *Meritor* and subsequent sexual harassment cases.

Changing social conditions are important in shaping legal decisions (see Grana et al., 2002: 4-20; Friedman and Macaulay, 1977: 213-217; see also Hunt, 1993). This is because judges are immersed in the general culture and this cultural sensitivity affects their decisions (Horowitz, 1977). The law as an instrument of social change has also received considerable attention (Lader, 2003; Garth and Sarat, 1998; Donohue, 1998; McCann, 1998). Law certainly acts as a socializing agent to change behavior (see Grana et al., 2002: 161190; Lader, 2003; Cotterrell, 1992), and the more historic the court's ruling, the more direct an impact the ruling will have (see Brooks, 2002; McCann, 1998; Horowitz, 1977). The intricate and reciprocal influence of social changes affecting legal precedent and the law's impact on changing people's behavior can really only be appreciated using the historical approach.

Chapter 1 apprises the reason sexual harassment became identified as a problem in the seventies and eighties and became *the* issue of the nineties. Sexual harassment, after all, is nothing new. It has been traced back to at least the 1600s (Segrave, 1994; see also Bell-Scott, 1997). Despite the problem, it really did not become an issue until the 1970s, at

which time the nascent feminist movement of the sixties began to permeate the wider society and change people's attitude toward sexual conduct. This is when the sexual behavior of men toward women in the workplace was first labeled sexually harassing. Another decade-plus would pass before it became a public issue with the Thomas hearings in 1990. In the interim, the court's wrestled with the issue by trying to decide whether sexual harassment violated the Civil Rights Act of 1964. Once legal precedent was established with *Meritor* in 1986, subsequent laws incrementally expanded the definition of sexual harassment. This chapter examines the changing social conditions which influenced the court's decision. An analysis of these social dynamics is interwoven with the role of the courts in first defining and then expanding the concept of sexual harassment.

The courts, by defining the problem as a workplace issue, placed the primary burden on businesses to take proactive measures against sexual harassment. Chapter 2 looks at organizational responses to sexual harassment. The first part of the chapter examines the consequences of sexual harassment on the workplace. The financial cost of sexual harassment for companies is certainly one factor which prompted organizations to look harder at the problem. These cost are not only associated with litigation, but the cost to the victim and the disruption of the workplace when the harasser remains with the company. The body of this chapter examines macroscopic structural policies and microscopic management resources that companies have utilized to address the three prevalent areas of sexual harassment: physical, verbal, and nonverbal harassment. The chapter concludes by appraising how organizations deal with reporting and resolving sexual harassment issues.

Chapter 3 focuses on how the attitudes of workers toward sexual conduct in the workplace have changed over time. This chapter identifies areas that have been resolved: behavior that today is widely understood as comprising inappropriate sexual conduct. The opposite end of the spectrum is then assessed: behavior that is widely understood to be sexual in nature but does not constitute sexual harassment. This is important because there has been so much attention to the problem of sexual behavior in the workplace that one often fails to realize that most workers do *not* have an issue with certain types of sexual behavior. Identifying

what is and is not an issue leads to an analysis of those behaviors that remains ambiguous and which continues to pose problems in the workplace. Sexual harassment has certainly become more visible and not all sexual behavior poses a problem. At the same time, it remains invisible (or at least opaque) and a problem among some groups. Those social groups that are still tolerating sexually inappropriate conduct in the workplace (or are not reporting it) are likely to stop tolerating it at some point in the future as they "get the word"; similarly, those companies that are not addressing the issue are likely to soon see attention direct toward them to "bring them into line" with those that have taken more proactive steps to address the problem. Groups and organizations that are not dealing with sexual harassment are identified in the conclusion of this chapter.

Chapter 4 concludes the analysis of sexual harassment by extending it into the international arena. The first part of this chapter examines the evolution of sexual harassment standards in other countries. It is widely acknowledged that even the more advanced western democracies lag a decade or more behind the United States in dealing with sexual harassment (Dhavemas, 1987:78; Zippel, 2001); other countries are just now beginning to grapple with the problem (French, 2001; Valente, 2001; Daorueng, 2001; Akita, 2002). This section concludes by gauging the development of sexual harassment policy across a diverse group of countries. It does this by placing countries into tiers, according to the degree to which they are addressing the problem of sexual harassment. In the process of examining unfolding international developments, this study also appraises degrees of success that countries have had in modeling sexual harassment policy after the American model.

The second part of this chapter examines problems American men and women can encounter in gender relations outside the United States when working in countries that do not share the same attitudes and values regarding gender equity in the workplace. Turning the coin over, the chapter then proceeds to appraise some of the problems foreign nationals have encountered in the United States when their nativistic values conflict with laws about gender relations in this country.

Numerous theories have been proposed to explain why some people harass and others do not. Some of these theories are explicitly addressed in the body of the text; others are more implicitly acknowledged. Appendix A sketches some of the theories that are evoked to explain sexual harassment. Relevant theories are asterisked in the text for the reader who wishes to (re)acquaint themselves with particulars of the applicable theory.

Chapter 1

Sexual Harassment Emerges as a Social Issue

The French critic and social historian Hippolyte Taine (1828-1893) once quipped that things do not drop from the sky like meteors. He meant that things happen for a reason. There is a chain of causation that explains why some things happen and others do not. Max Weber called this adequate (in contrast to necessary) causation, by which he means that if *x* occurs then it is probable that *y* will occur. Certainly things are historically linked: one change begets others that in turn give rise to other changes. Weber applied this principle to his seminal study, *The Protestant Ethic and the Spirit of Capitalism* (1958 [1904]). He did not say that the rise of Protestantism *caused* capitalism. Rather, changes in faith from other-worldly Catholicism to more worldly Protestantism — specifically Calvinism — changed the way people saw the world and this change laid the groundwork for the peculiar spirit of acquisitiveness that eventually made capitalism possible.[1] This idea of adequate causation can be applied to social issues. The social world must be receptive to new ideas.

This receptivity is itself part of an evolving historical tradition. Emile Durkheim used a related concept to Weber's notion of causality that he called social currents. Social currents are the forces of history that push certain ideas in certain directions and provide the underpinning for adequate causality.[2] The social currents that paved the way for sexual harassment litigation began with the Civil Rights Act of 1964. This makes it necessary to first examine how women were written into a law that was aimed at leveling the playing field for blacks. Despite gaining "rights" with the passing of the CRA by Congress, discriminating against women in the workplace continued for nearly a decade before it began to be addressed by the courts. In fact, the courts in the seventies were

responding to changing attitudes within the wider society, which was prompted by the feminist social currents that took place during the sixties. Feminist attitudes were initially confined to a relatively small group of educated white women, but they began to percolate within the wider society by the seventies. These changes are next assessed because they are directly responsible for some of the "awakening" of legal opinions among some of the judiciary during the late 1970s and early-1980s that eventually lead to the High Court hearing the first case specifically addressing sexual harassment in 1986. The body of this chapter focuses on these court decisions. Once precedent was established in the *Meritor Savings* case, subsequent High Court decisions incrementally extended the parameters of sexual harassment law.

Sneaking in the Back Door: Adding Women to the Civil Rights Act of 1964

The Civil Rights Act developed as the natural and cumulative outgrowth of the Civil Rights Movement. It barred discrimination against a person because of his/her race or national origin. Religion was incorporated into the Act with little controversy, religious freedom being a hallmark already clearly established by the First Amendment. Sexual discrimination appears to have been appended as an afterthought (Bell et al., 2002; Fineran and Bennett, 1998) in attempt to sabotage the legislation (Saguy, 2000; Brauer, 1994 [1983]).

The initial legislation formulated by President John F. Kennedy and submitted by President Lyndon B. Johnson after Kennedy's assassination excluded any mention of gender. There was concern that women's rights were not taken seriously at the time and that any inclusion of women's rights might result in defeat of the bill (Brauer, 1994: 369; Loevy, 1990). This appears to have been the strategy used on the House floor, because it was the conservative Virginian, Howard Worth Smith, an ardent opponent of the legislation, who proposed the amendment to prohibit sex discrimination. Brauer (1994: 377) demonstrates the "light" vein in which the legislation was proposed and documents an observation by Smith himself to another member of the House that it was just a "joke" (see also

Loevy, 1990; Berkley and Watt, 2006). It may have carried, then, not because the social currents were moving women forward, but because the social currents would not be stalled for blacks. Nevertheless, the bill passed and was signed into law, and it would be considered by legal experts on women's rights in 1975 to be "the most comprehensive and important of all federal and state laws prohibiting employment discrimination" (quoted in Brauer, 1994: 369)

Regardless of the reason for gender inclusion into the CRA, Title VII now stipulated that any employer with 15 or more employees could not "refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his [sic] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." Despite the clear incorporation of gender into the legislation, most of the debate and legal application in the first decade of the law revolved around racial issues.

Still, the framework for legal action against gender discrimination was in place. It led to an early and often overlooked development. Title IX of the Education Amendments of 1972 required that an institution receiving federal funds provide an environment free of discrimination. Title IX specifically sought to address the educational needs of minorities and women. "It was believed," Fineran and Bennett (1998: 57) report, "that equal access to education was a necessary compliment to Title VII of the Civil Rights Act and imperative for women to gain the skills and training necessary for access to higher-paying jobs … ." This early application of gender concerns to education helps explain the large body of research that deals with sex discrimination and sexual harassment in academe. Those in institutions of higher learning were quick to embrace gender equality, at least in part because this is where second-wave feminists found their base (see Fassin, 2006).

Second Wave Feminism: A Radical Idea Emerges

First-wave feminism evolved in the late nineteenth century and after achieving its primary goal, which culminated in the Twentieth Amendment to the Constitution giving women the right to vote in 1920, began a long