Sexual Harassment: Why the Corporate World Still Doesn’t “Get It”  

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ABSTRACT. This paper shows that in order to understand and to resolve the problem of sexual harassment in the workplace, the corporate world will have to relinquish some myths. Sexual harassment does not result from ignorance about fact or law. It is not merely a cultural, gender, or communication problem. It is a problem which will be resolved only when the corporate world recognizes that sexual harassment is a moral problem and provides moral education for employees. Until then, it will remain an explosive problem for communication specialists.

Introduction

With the widely publicized charges of sexual harassment brought by neurosurgeon Dr. Frances Conley against Stanford Medical School, the electrifying allegations of Professor Anita Hill against Judge Clarence Thomas, and the sordid Tailhook scandal involving sexual misconduct in the military, the problem of sexual harassment finally exploded into the headlines. As yesterday’s silent victims began joining a swelling chorus of protest from today’s working women, corporate America suddenly began admitting that sexual harassment is an explosive communication problem. Yet despite all the recent ballyhoo over sexual harassment in the workplace, corporate America still doesn’t really “get it” much less understand how to put an end to it.

If sexual harassment in the workplace is to be understood and eliminated, then not only corporate America, but the entire international business community must recognize and discard some old myths about the nature of ethics, and about the relationship between ethics, law and business, as well as some newer myths about sexual harassment, itself. It must recognize that sexual harassment in the workplace is not simply a snag in communication resulting from factual ignorance or factual disagreement, or from cultural or gender differences, or from confusions about an especially murky concept. Sexual harassment is not merely a communication problem. It is a moral problem for everyone in the corporate world and, to recognize this, is finally to get to the root of the problem and to understand what measures need to be taken to eliminate it.

Sexual harassment as a widespread moral problem

Why has the business community taken so long to admit that sexual harassment in the workplace is a serious problem? The reason seems to be that it still believes Myth Number One — the tired old joke that business ethics is an oxymoron; business should not really take ethics seriously.

There are numerous statistical studies which show that sexual harassment is an old problem. One of the earliest surveys, conducted by Redbook magazine in 1976, found that nine out of ten women responding to the survey had encountered sexual harassment on the job.1 In 1978, Cornell University found that 70% of women workers surveyed reported sexual harassment. In 1981, The National Merit Systems Protection Board conducted the largest study of sexual harassment yet available and found that 42% of 23,000 people surveyed believed they had been

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sexually harassed. In 1981, another study conducted by Redbook, in collaboration with Harvard Business Review, found that 63% of managers responding to the survey reported sexual harassment at their companies. In 1984, Dzieh and Weiner reported that 30% of undergraduate women experience sexual harassment during their college careers (a staggering 2,000,000 students) and Gutek (1985) reported that 53.1% of private sector workers surveyed believed that they had suffered economic hardship because of refusing to satisfy sexual demands. In 1991, there was little improvement. In October of that year, following the Thomas hearings, a Time magazine poll found that 34% of the women polled had experienced sexual harassment at work. Such findings corroborated the findings of another recent poll conducted by the National Association for Female Executives which found that 53% of the members surveyed had been sexually harassed, or knew of someone who had been harassed. A Working Woman survey published in June, 1992 found that 60% of the respondents had been victimized; it attributed this still higher percentage to the fact that the women polled held positions as executives, for “women in managerial and professional positions, as well as those working in male dominated companies are more likely to experience harassment.”

Although studies show that some women are more likely to be harassed than others, they also confirm that no group of women (or men) has remained wholly exempt from sexual harassment. One tenth of sexual harassment complaints are now being filed by men. Studies also show that workers may be victimized by supervisors or peers, individuals or groups. The most recent June 1992 Working Woman study, however, found that 83% of the harassers enjoy more powerful positions than the victim.

Finally, no work environment seems to be immune. Sexual harassment is a problem in government, in the military, in corporations, in small businesses, and in academe.

Despite all the evidence indicating that sexual harassment was a major problem in the workplace, the business community remained largely indifferent. Although a 1988 Working Woman survey of sexual harassment found that 86% of the respondents believed that mandatory training programs would alleviate the problem, only 58% yet offered such programs. In 1988, the United States Merit Systems Protection Board also issued an update on sexual harassment with a series of recommendations for employers which included such topics as training, policy statements, enforcement action, complaint and investigation procedures, and additional preventative efforts (e.g., random surveys and follow up interviews with parties involved in harassment claims). A few companies such as Corning, which began its attempts to combat sexual harassment as early as the 1970s, and DuPont which has long held workshops designed to sensitize managers to the problem, were responsive. Few other companies followed their leadership. It took the Thomas hearings to finally galvanize the business community into recognizing that sexual harassment was rapidly becoming the communication problem of the '90s.

If the business community had not been as busy repeating the same tired jokes and had taken business ethics seriously, it would not have been caught napping. If business leaders had done their ethics homework, they would have recognized that when women reported being sexually harassed they were not merely supplying factual reports about the conduct of their supervisors or describing the features of their work environment. “Sexual harassment” like the term “rude” is not merely a descriptive term. It is a quasi-moral term. To say “X has been sexually harassed” is not merely to imply that certain descriptive conditions have been met, but also to contextually imply that some moral standard has been violated and that the victim disapproves of the action on moral grounds. Moral claims, unlike purely factual claims, are prescriptive in character, which is to say that they are tied to action in ways that purely descriptive claims are not. Thus to say “X is being sexually harassed” is also to contextually imply that something ought to be done about it. This explains why business leaders should discard Myth Number One. Moral problems do not fade away in a whimper. As the Thomas hearings indicated, they tend to erupt with a bang.

Sexual harassment in the workplace – an historical overview

In the wake of the Thomas hearings, the corporate world has been forced to acknowledge that sexual
harassment is a serious problem. Unfortunately, however, this epiphany is no harbinger of increased moral sensitivity in corporate America. The source of the change is best explained as a natural outgrowth of Myth Number Two — the belief that the only time moral problems are business problems is when they become legal problems.

Given the business community’s allegiance to Myth Number Two, it is understandable that corporations have been lethargic in responding to the problem of sexual harassment. Law has moved very slowly in this area. Although Title VII of the Civil Rights Act of 1964 prohibited discrimination on the basis of sex, it was not until 1972 that an amendment was added to explicitly prohibit sexual harassment. Even then, women were reluctant to complain or sue.13 When women did sue, they were initially unsuccessful, probably because many judges concurred with the view expressed by Judge Frey who remarked, in finding against the plaintiff in a sexual harassment case, that he was unwilling to set a precedent which would encourage a flood of lawsuits because “the only way an employer could avoid such charges would be to have employees who were asexual.”14

It was not until Barnes v. Train 13 Fair Empl. Prac. Cas. (BNA) 123 (D.D.C) 1974, rev’d sub nom. Barnes v. Costle, 561 F. 2d 983 (D.C. Cir. 1977) that the court agreed that sexual harassment was prohibited under Title VII. The judge found in favor of the plaintiff who had complained of discrimination on the grounds that she had been belittled, harassed, and ultimately fired because she had refused to have sex with her supervisor.15 The case was important in finding that what was defined in the EEOC guidelines as “quid pro quo sexual harassment” (cases of “unwelcome sexual conduct” in which “submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment”) was prohibited under Title VII and by establishing some precedent for vicarious employer responsibility for the conduct of a supervisor, at least where the employer was aware of the harassment and took no action.

In most cases, however, the emotional, professional, and financial costs of conducting even a successful suit seemed sufficiently high to insure that few women would even sue, particularly as general compensatory and punitive damages are not avail-

able to plaintiffs under Title VII.16 Despite Judge Frey’s assumption that providing legal recognition of sexual harassment would put employers at risk of incurring a flood of suits, in 1980, fully three years after Barnes, only 75 charges were filed.17

It was not until Meritor Saving Bank v. Vinson 447 U.S. 57 (1986), a case in which the plaintiff alleged that she had been harassed, raped, threatened, and forced to acquiesce to further sexual contacts for fear of losing her job, that the Supreme Court, relying heavily upon the 1980 EEOC guidelines, affirmed that “quid pro quo sexual harassment” AND “environmental harassment” ("unwelcome" sexual conduct that "unreasonably interferes with an individual's job performance" or sustains an "intimidating, hostile or offensive working environment") both constitute violations of Title VII. Meritor was important in reaffirming the decision in Barnes that quid pro quo harassment is illegal and in establishing, for the first time, that sexual harassment which creates a hostile work environment (even in the absence of quid pro quo harassment) is sufficient to make such conduct illegal under Title VII. It was also important because it emphasized that the crucial issue in deciding whether conduct constitutes sexual harassment is whether it is “unwelcome,” rather than whether it is “voluntary."18

Following Meritor, subsequent cases continued a trend (begun even before Meritor) of expanding the scope of illegal sexual harassment. A series of decisions extended sexual harassment to cover harassment by coworkers, non-employees (e.g., clients) and third parties (e.g., cases in which employees complain because they are denied benefits accorded to others who acquiesce to sexual harassment).19 Further decisions extended protection from sexual harassment to homosexuals and to heterosexual men.20 Other decisions have clarified and extended employer liability. EEOC guidelines, revised in 1988, summarized and incorporated these developments.21

Still more significantly, although state and federal anti discrimination laws were the initial vehicle for legal change vis-à-vis sexual harassment, significant cases have been considered under common law on such grounds as: tort claims based on sexual harassment, worker compensation statutes, intentional infliction of emotional distress, assault and battery, tortious interference with contracts, invasion of privacy, false imprisonment, wrongful discharge, and
even on the peculiar grounds of loss of consortium (the loss of a husband's ability to protect his right to his wife's sexual services).\textsuperscript{22} The advantage of claims brought under common law is that they may result in heavy punitive damages for employers.

Finally law began to give recognition to prevention, as well as remediation, and to assess higher punitive damages. As an AP release in the October 18, 1991 \textit{Wall Street Journal} noted, at the time of the allegations against Judge Thomas, Maine had just passed a law requiring employers to educate workers about sexual harassment. The first state law of its kind, it may serve as model for other states. Maine also raised fines for violations of the Maine Human Rights Act to $10,000 for the first offense, to $25,000 for the second and to $50,000 for a third offense.

Theoretically, given the legal developments just cited, sexual harassment should have become an explosive communication problem in the '80s. Only two catalysts were missing: power and politics. Despite the much ballyhooed progress of women during the past decades, women still have significantly less political and economic power than men. In 1990, women between the ages of 35–44 (their prime earning years), working full time, only garnered 69\% of what men earned, and 37\% of female heads of households had incomes in the bottom fifth of the income distribution.\textsuperscript{23} At the time of the Thomas hearings, there were still only two women in the U.S. Senate. Finally, as Susan Faludi (author of \textit{Backlash, The Undeclared War Against American Women}) also pointed out, in a biting article in \textit{The Wall Street Journal} following the Thomas fiasco, Thomas' reign at the EEOC during the Reagan years insured that the issue of sexual harassment, as well as sexual discrimination, would be kept firmly under political wraps.\textsuperscript{24}

In the wake of the furor created by the Thomas hearings, the corporate world belatedly recognized that the legal machinery for a full fledged assault on the problem was now in place and that political winds had shifted. Women still lack economic power and adequate political representation, but in a close election, they will wield considerable political power at the ballot box. Women's issues are likely to be at the forefront of national politics for some time to come.\textsuperscript{25}

The lesson to be learned from all this is that Myth Number Two — the idea that moral problems are serious only when they become legal problems — should have been relinquished a long time ago. Morality and legality are not coextensive; only the most harmful forms of immoral conduct are illegal. If corporations are anxious to avoid public relations fiascos and expensive litigation, they must make moral education part of their business.

Legal guidelines which regulate the work place should emerge, in part, from concern and debate in the business community itself. Simply because sexual harassment has so recently emerged from the shadows of corporate inertia into the glare of judicial scrutiny, it is unlikely that the courts have yet shed any final light upon this matter. Now that sexual harassment has become a subject of public moral and political debate, new cases will be heard, new precedents set, and new laws will be forthcoming. Already punitive damages are soaring. In 1986, an Ohio woman won a 3.1 million dollar verdict against her employer whose quid pro quo offer involved oral sex in order to retain her job.\textsuperscript{30} In September 1991, a California court awarded another 3.1 million to two women police officers for being subjected to a hostile work environment.\textsuperscript{27} Still more legal problems are emerging because now even alleged perpetrators are suing on the grounds of wrongful discharge. Corporations who have faced, or are facing, such suits include: Polaroid, Newsday, General Motors, AT & T, DuPont, Boeing, and Rockwell International.\textsuperscript{28} According to the most recent 1992 \textit{Working Woman} survey, it may cost corporate America more than $1 billion over the next five years to settle existing lawsuits. The business community has paid a high price for its allegiance to outworn myths, not only in punitive damages, but also in marred corporate images. Any lessons learned, have been learned at too high a cost.

Why corporations still don't get it

As \textit{Business Week} proclaimed in its 1991 October issue, sexual harassment is finally “Top of the News.” Corporations STILL don't get it, but they are trying. Most corporations have adopted the recommendations of the United States Merit Systems Protections Board, enunciated in 1988. As a headline in \textit{The Wall Street Journal} December 2, 1991 points out, “Sexual Harassment is Topping Agenda in Many Executive
Education Programs. According to that article, of 495 companies surveyed, 40.2% now provide training programs about sexual harassment. One management consultant in the field estimates that 90% of Fortune 500 companies will offer such programs within the year — despite the fact that her package can cost as much as $100,000. Ironically, sexual harassment has now become a thriving business.

Unfortunately, it is doubtful that most of the existing types of sexual harassment education currently being offered by human resource consultants are likely to be very effective because such programs overlook the role of power in organizations and the potential for the abuse of organizational power in today’s job market. An effective educational program should result in the reduction and eventual elimination of harassing behaviors without inflicting further damage upon the groups most likely to be victimized, but it is doubtful that even where there is a clearly defined corporate policy about sexual harassment, a formal grievance procedure, and strictly enforced sanctions for non-compliance that incidents of sexual harassment will be fully reported or greatly reduced.

Managers wield enormous power over subordinates through their ability to hire, fire, demote, or promote employees and through their authority (based upon the law of agency) which recognizes and enforces their managerial decisions. As I will show in the concluding sections of this paper, sexual harassment is a flagrant abuse of power because it violates the moral rights of employees. In practice, however, it is very difficult for employees in subordinate positions to insist upon their rights. Sexual harassment is often subtle and difficult to prove. Even if victims do prove their case, they have every reason to fear subtle forms of retaliation in their current positions and subtle forms of discrimination if they attempt to secure other positions. Claims about unfair hiring and promotion decisions are difficult to substantiate, especially in a climate where there are too many equally well qualified applicants for the few positions available. In a recessionary economy almost all employees are desperate to retain the jobs they have and to avoid even the semblance of “making waves”. Under such conditions, it is almost impossible for those most likely to be victimized to protect themselves without incurring further harms. As a consequence, an effective educational program must focus not only upon educating the potential victim, but also upon the task of deterring the potential victimizers. In sum, it must educate those who hold and exercise the power in the business community about the reasons why sexual harassment is morally wrong and why they have ethical responsibilities to eliminate it.

The kinds of sexual harassment education currently being offered in most corporations are not likely to deter potential victimizers because they are still based on old myths. Myth Number Three — the belief that most moral problems result from ignorance about facts, explains why corporations are hiring consultants to deluge employees with facts about sexual harassment. Of course we need to know the facts, but a lot of this information is old news, and educating people about facts is simply not enough. Moral problems occur not only when there is ignorance or disagreement about facts, but also when there is disagreement about values. There is no logical inconsistency between acknowledging legal and statistical facts about sexual harassment and refusing to take a moral stand. Only moral education can bridge the gap by providing reasons for giving up deeply entrenched ideas that, at best, the issue of sexual harassment is “much ado about nothing” or, at worst, a “legal menace” to which many managers may deeply resent being subjected.

Myth Number Four — the belief that the problem of sexual harassment results primarily from either cultural differences, or from differences in the way men and women feel and communicate, also accounts, in part, for the current influx of psychologists and management consultants into the workplace to conduct trendy little workshops designed to educate people about cultural and gender difference. Thanks to Deborah Tannen et al., we are all supposed to believe that “You Just Don’t Understand,” and that a little psychodrama will clear up the problem. It won’t.

Of course there is some truth in old myths or they wouldn’t retain such a tenacious hold on our thinking. There may be cultural differences in attitudes about sex and there may be differences between the way the two genders feel and communicate about sex, and some of these differences may serve to causally explain the incidence of sexual harassment — and probably rape as well.

There may also be considerable truth in all three
popular models for understanding sexual harassment. According to the natural/biological model, sexual harassment is attributable to biological differences between genders. Men have stronger sexual drives and feel differently about sexual interaction than women do. According to the sociocultural model, sexual harassment is a product of a patriarchal system in which men learn to use and to enjoy the exercise of personal power based on sex. According to the organizational model sexual harassment results from asymmetrical relationships of power and authority which derive from hierarchical organizational structures.31

Taken together, culture and gender based approaches to sexual harassment do a great deal to causally explain the widespread incidence of sexual harassment. Unfortunately, they do not provide any rational moral reasons which might convince potential victimizers to make any commitment to changing attitudes, beliefs, communication styles, or behavior which perpetuate it.

The almost exclusive emphasis on culture, gender, or communication can also have damagorous side effects. Hiring women consultants to explain facts and to explore differences in feelings and communication styles between the genders can only encourage the notion that sexual harassment is a woman’s problem and that all women understand it. It can only reinforce old stereotypes that women form some monolithic group who think and feel alike. This is simply not the case. Moral problems are everyone’s problem and everyone, including women, needs to understand their character. Sexual harassment stress syndrome results, in part, from the fact that women, themselves, don’t always understand, which is why they lose self confidence and why they feel worthless and at fault. Some women like feminist attorney, Catherine MacKinnon, do understand that “objection to sexual harassment is not a neo-puritan protest”; other women like revisionist Camille Paglia, who believes “this psychodrama is puritanism reborn,” don’t understand at all.32 Analogously, emphasizing cultural differences in communication styles may reinforce old stereotypes, or create new ones encouraging the mistake idea that all members of ethnic groups supposedly think and behave alike.

The problem of sexual harassment is a moral problem and moral problems do not merely result from differences in feelings or cultural values, nor should human behavior and communication in this area (or any other) properly be understood as mere knee jerk reactions to biological or cultural drives. Biological drives can be restrained and cultures, including corporate cultures, can be changed. The changes we need are not merely changes in the way people feel and communicate, but rather changes in the way people think about what constitutes appropriate moral conduct.

The definition of sexual harassment

Undoubtedly one of the biggest obstacles to “getting” sexual harassment is Myth Number Five — the belief that the concept of sexual harassment (like most moral concepts) is “murky.” Some people worry that there are such deep cultural and gender based differences about the topic that no satisfactory definition can ever be provided. It is now fashionable for Europeans to laugh and talk condescendingly about American puritanism, and for people in our own country to act as if the goal of combatting sexual harassment is equivalent to some Machiavellian scheme to “desexualize the workplace” and to deny fellow employees dating and courtship rites.33 Some people claim to be completely bewildered by what the term means and worry hystically that a sympathetic hug might be misconstrued as “sexual touching.”34 As one attorney for an employer remarked, “If one woman’s interpretation sets the legal standard, then it is virtually up to every woman in the workplace to define if she’s been sexually harassed.”35 A great deal of this popular wisdom, however, seems to stem from ignorance about the sophistication of EEOC guidelines, or from deliberate attempts on the part of some members of the political, business, or legal communities to prey on such ignorance and to create a backlash.

Surprisingly, some philosophers have encouraged the supposition that sexual harassment is a murky concept by treating the whole problem of defining it as a complex philosophical problem. Two recent philosophical articles devoted to defining sexual harassment deserve special comment. Both articles, one would presume, offer definitions which their respective authors believe to be superior to existing EEOC definitions, but although both articles men-
tion EEOC guidelines in passing, neither supply any exhaustive criticism or sustained argument to show why their definitions constitute any improvement.

Susan M. Dodds, Lucy Frost, Robert Pargetter and Elizabeth W. Prior (1988) and Edmund Wall (1991) represent diametrically opposed views about how sexual harassment should be defined. Dodds et al. propose a behavioral definition, because they believe that sexual harassment can occur even when an individual woman is not offended (e.g., as in cases of women who just shrug off being propositioned). According to Dodds et al., there are no mental states on the part of the victim which are necessary conditions of sexual harassment. They seem to believe that this sharply differentiates their view from the view expressed in EEOC guidelines, and they insist that a behavioral definition is necessary for the administration of public policy.

Wall, by contrast with Dodds et al., believes that the mental states of both the perpetrator and the victim are essential defining elements of sexual harassment. He believes that subjective features are essential in defining sexual harassment because, although a range of behaviors can, on occasion, be identified as sexual harassment, almost any of the behaviors, given different mental states of alleged victimizers and victims, may not qualify as sexual harassment at all. Perhaps a quid pro quo offer was only "banter" or perhaps the alleged victim really welcomed the offer as a "career opportunity." Wall appears very concerned with preventing the much popularized innocent man/paranoid woman scenario. Certainly, his inclusion of the perpetrator's mental states differs from EEOC guidelines which focus on the mental states of a victim, or more accurately, a reasonable victimized person.

Both Dodds et al. and Wall agree, however, that certain features which have been proposed as necessary and sufficient conditions of sexual harassment do not so qualify. Some theorists, such as Larry May and John C. Hughes, as well as EEOC guidelines, hold that sexual harassment always constitutes discrimination. Both Dodds et al. and Wall disagree because, they argue, a bisexual might sexually harass both sexes without the action being discriminatory. This line of argument seems rather silly as an objection to EEOC guidelines and does nothing to establish that sexual harassment is not discriminatory.

The whole purpose of Title VII was to prevent invidious discrimination against any employee in the workplace, not merely women. Where sexual issues (gender, sexual preferences, sexual orientation, sexual bias, willingness to succumb to sexual advances etc.) are used as a basis for making hiring, firing, or promotion decisions, or for any differences in treatment in the workplace, there is invidious discrimination among employees, because sex (in any of the senses just indicated) constitutes a morally inappropriate basis for such decisions.

Dodds et al. and Wall are also in agreement that the presence of coercion and/or negative consequences resulting from harassment, are not necessary conditions for the existence of sexual harassment because the victim's personality and values contribute to the effect that a sexual offer will have upon that person. Dodds et al. and Wall are no doubt correct, but they fail to appreciate that the revised EEOC guidelines are compatible with their position. EEOC guidelines do not define sexual harassment in terms of coercion. EEOC guidelines hold that for behavior to constitute sexual harassment, it must be "unwelcome," and decisions about whether a victim found conduct to be unwelcome are to be used upon facts about her conduct. Furthermore, where the victim has submitted to the sexual conduct, the pivotal issue in determining whether the conduct was harassment is whether the conduct was unwelcome; the issue of whether the conduct was voluntary has been ruled to have "no materiality" whatever.

EEOC guidelines do not define sexual harassment in terms of negative consequences for actual victims. The section dealing with "hostile work environment" specifically acknowledges that certain conditions constitute sexual harassment even when "they lead to no tangible or economic job consequences." Emotional consequences are an issue in EEOC guidelines in determining whether certain types of conduct create a hostile work environment, but the responses are not those of the particular victim, but the hypothetical responses of a reasonable person. By contrast, Wall believes that distress on the part of the actual victim is one of the necessary conditions for sexual harassment. Wall simply seems to be wrong here. Women have been conditioned to stoically accept a great deal of sexual behavior which
may harm them professionally. Nevertheless, a reasonable person who had not been so conditioned, might be quite justifiably distressed. It is the issue of whether it would be rational to be distressed, rather than the issue of actual distress which seems central to defining sexual harassment, and this issue is already accommodated within EEOC guidelines.

If we examine the definitions finally proposed by Dodds et al. and Wall, we will see that neither definition is any improvement over the definition already proposed by the EEOC. Dodds et al. end up defining sexual harassment as:

behavior which is typically associated with a mental state representing an attitude which seeks sexual ends without any concern for the person from whom those ends are sought, and which typically produces an unwanted and unpleasant response in the person who is the object of that behavior...even if the mental states of the harasser or the harassed (or both) are different from those typically associated with such behavior. The behavior constitutes a necessary and sufficient condition for sexual harassment.47

The definition proposed by Dodds et al. does (as they claim) possess a number of advantages, but most of those advantages can also be claimed for the EEOC definition which invokes a reasonable person standard in deciding whether the victim’s response is appropriate, as well as in deciding the more basic issue of whether challenged conduct is of a sexual nature.48 Moreover, the EEOC definition has a major advantage that Dodds et al.’s definition does not possess. The EEOC definition, by appealing to the attitudes of the reasonable person (i.e., any reasonable victim) escapes the trap of cultural relativism. Dodds et al., by contrast, provide an account which they acknowledge to be culture relative, for they claim that “it will be a culture-relative kind of behavior that determines sexual harassment”. What counts as sexual harassment will vary from society to society and “behavior which may be sexual harassment in one need not be in another.”49 While admittedly the kind of behavior which is recognized as sexual harassment will vary to some extent from culture to culture, and while admittedly employees of multinational corporations should respect the views of those from different cultures who feel harassed, even under conditions under which typically Americans would not feel harassed, there is no reason to think (as Dodds et al. apparently do) that it is the fact that the behavior/attitude correlation is typical in a given culture, or any culture, which justifies classifying the behavior as sexual harassment.

The EEOC guidelines which refer to a “reasonable person” standard avoid the trap of both subjective and cultural relativism; what makes behavior count as sexual harassment is not what a particular woman thinks about the behavior, or even what most people think about the behavior, but rather what a reasonable victim would think about it. No doubt there are some (perhaps even Dodds et al.) who might contend that what is regarded as a “reasonable person” is also culture relative, but this is simply not true. Reasonable people employ rational grounds for making moral judgments, and what constitutes a rational ground cannot be decided simply by invoking cultural standards. Behavior is morally wrong, not merely because it is typically regarded as morally wrong in a particular culture, but because there are rational grounds for contending that it violates human rights, inflicts harm, or contributes to social injustice. Morality, as Lawrence Kohlberg and numerous philosophers have pointed out, is not a descriptive term, Pari passu, the same is true of the terms “reasonable person” and “sexual harassment.”50

Even if sexual harassment were a purely descriptive term, the definition provided by Dodds et al. is too broad, too narrow, and too vague. It is too broad because the definition they provide would apply equally well to selfish sexual behavior on the part of males toward females in many unhappy consensual relationships ranging from affairs to marriages. It also seems too narrow in that it would exclude conduct in which the perpetrator did have some concern for his victim (e.g., he’s in love with her for messianic reasons and thinks that she would be better off succumbing to his advances). It also seems too vague to be any improvement on the EEOC definition. What behaviors in our society would be identified as sexual harassment using their definition? Suppose men and women disagree. How is their definition supposed to help? In particular, how is their definition supposed to serve as a basis for proposing uniform guidelines about sexual harassment for multi-national corporations?

Wall’s proposed definition seems equally unlikely to be an improvement upon that already available in
EEOC guidelines. Wall believes that the essence of sexual harassment is wrongful communication which violates the privacy rights of the victim. These rights are violated "not by the content of the offender's proposal, but in the inappropriateness of the approach to the victim".51

Wall proposes that:

Wherein X is the sexual harasser and Y the victim, the following are offered as jointly necessary and sufficient conditions of sexual harassment:

1. X does not attempt to obtain Y's consent to communicate to Y, X's or someone else's purported sexual interest in Y.
2. X communicates to Y, X's or someone else's purported sexual interest in Y. X's motives for communicating this is some perceived benefit that he expects to obtain through the communication.
3. Y does not consent to discuss with X, X's or someone else's purported sexual interest in Y.
4. Y feels emotionally distressed because X did not attempt to obtain Y's consent to this discussion and/or because Y objected to the content of X's sexual comments.52

There seem to be a number of difficulties with Wall's definition. The worst difficulty is that it is too narrow. It excludes sexist harassment (e.g., dehumanizing remarks about women in general) and a great deal of environmental harassment (e.g., the display of objectionable sexual objects, discussions of sexual matters unrelated to work, etc.) which most people would want to include. Certainly excluding those elements requires considerably more argument that the perfunctory claim that "girlie" posters probably are better classified as bad taste rather than sexual harassment.53 Wall's definition does not seem to accord with our basic intuitions. If indeed Judge Thomas did discuss the kinds of topics (e.g., his sexual endowments and prowess, pornographic movies, and the coke can incident) with Professor Hill that she alleges he did, most people would agree that she was certainly being subjected to a hostile work environment, even if he never said that he had an interest in engaging in sex with her or suggested that anyone else had such an interest. This seems to contradict Wall's belief that the content of what is communicated is immaterial.

There could also be cases of even quid pro quo sexual harassment in which few of the four conditions Wall specifies obtain. Wall simply fails to recognize that, in the case of sexual harassment, communication fails, not merely because the message is not communicated in an appropriate manner, but because, given the inequalities in status and income between employees, many employees (most of them women) do not feel at liberty to communicate honestly; few can afford to pay the price of honest communication.54

If Dodds' et al. and Wall's definitions won't do, how should sexual harassment be defined? Don't their difficulties provide still more justification for all the current ballyhoo about the "murkiness" of sexual harassment and the new dangers perfectly well intentioned men and employers may face now that the problem of sexual harassment is being publicly acknowledged? Quite the contrary, defining sexual harassment for the purposes of business ethics is NOT a major philosophical problem. Although, given the difficulty of honest communication, one can hope that the courts will ultimately employ the reasonable person standards in deciding whether conduct is "welcome," the meaning of sexual harassment is reasonably well defined in EEOC guidelines.

Sexual harassment seems to be one of those concepts like the concept "game," to use Wittgenstein's famous example, which form a family.55 Family members have family resemblances, but there is no shared feature all members of a family necessarily have in common. As a consequence, trying to set out necessary and sufficient conditions for sexual harassment is a thoroughly futile enterprise. The futility of that enterprise, however, does nothing to support the myth that the concept of sexual harassment is hopelessly murky. We are clear enough in paradigm cases about what people mean when they claim they are being sexually harassed. The paradigm cases have already been clearly spelled out by the revised 1985 EEOC guidelines which comprise a twenty page document incorporating references to cases up to that year. In the absence of some better definition, or in the absence of some sustained philosophical argument for adding or subtracting from the sorts of paradigms those guidelines include, they seem to provide better definitions than those Dodds et al. and Wall have suggested to replace them.

Of course, in addition to paradigmatic cases of sexual harassment identified by law, there are also borderline cases about which corporations, and in
some cases the courts, will have to make decisions. As sexual harassment is a quasi-moral term, legal decisions about borderline cases will almost certainly be based upon whether the questionable behavior is sufficiently morally objectionable to count as sexual harassment in the legal sense. All of this suggests that, for the purpose of business ethics, corporations would be well advised not only to be to educate their employees about EEOC guidelines, but also to educate them about the moral reasons which justify the belief that sexual harassment is genuinely immoral and ought to be legally prohibited. Given that education, employees will be encouraged not only to refrain from sexual harassment in the paradigm sense defined by law, but also to identify the sorts of borderline cases which the courts may find to be illegal in the future, and to refrain from subtle forms of sexual harassment which violate the spirit, if not the letter of existing law.

Why sexual harassment in the workplace is morally wrong and why it ought to be legally prohibited

Sexual harassment is not a murky concept, but in the absence of an adequate theory which provides rational grounds for concluding that sexual harassment is morally wrong, many members of the business community will continue to believe that sexual harassment is "much ado about nothing" from the moral point of view. Moreover, given the difficulty of proving the truth of sexual harassment claims, they may believe that courts would have been well advised to treat the problem with benign neglect. In order to show that the corporate world must make some genuine moral commitment to ending sexual harassment in the workplace, one final myth must be discarded. Myth Number Six (the Neutrality Myth) — is the mistaken belief, still widely held by corporate America, that moral beliefs are based upon feelings or cultural values, and therefore one moral theory is as good as any other moral theory and equally deserving of respect. Allegiance to this outworn myth explains why corporations are reluctant to bring in professional philosophers to provide a moral education for their employees. It's all right to bring in business consultants to teach facts and to bring in psychologists to explore feelings, but in a multi-cultural society, moral education and moral stands are supposedly inappropriate.

The neutrality myth is a piece of outmoded nonsense. Moral education is now a part of the public school curriculum and an essential part of correctional education. Philosophers disagree among themselves about numerous ethical issues, but there is almost universal agreement about the following elementary points of meta-ethics. A moral theory does not merely express feelings nor is it based merely upon cultural values. A good moral theory provides good moral reasons for actions and beliefs and it must meet certain requirements: (1) Logical coherence — it must be clear and not generate contradictions; (2) Impartiality — any moral decision one person makes for himself on the basis of the theory must be a decision that person would be willing for others to make in similar circumstances; (3) Consistency with Basic Moral Intuitions — the use of the theory should not generate consequences any reasonable person would regard as morally objectionable (e.g., increased physical harm and suffering); (4) Explanatory Adequacy — the theory should provide reasons for moral judgements and serve as a basis for resolving conflicts; and (5) Concern for the Facts — the theory should take into account relevant facts about people, society, and existing circumstances. Inadequate moral theories do not satisfy these requirements, and some moral theories are better than others because they satisfy these requirements better than other theories. People are equally deserving of respect, but their moral views are not equally deserving of respect. The purpose of moral education is to teach people why some moral theories, and a lot of popular wisdom, simply don't hold water.

If we discard the old neutrality myth, and suggest good moral reasons why sexual harassment is NOT "much ado about nothing," corporations will have lost their last excuse for refusing to take a stand about sexual harassment and for failing to provide some moral education about the topic for their employees. What follows is a very brief outline of some good moral reasons for taking the problem of sexual harassment in the workplace seriously, for regarding it as morally objectionable, and for believing that it should be illegal.

First, sexual harassment is morally wrong because it physically and psychologically harms victims, and because environments which permit sexual harass-
ment seem to encourage such harms. Even the most liberal moral theories acknowledge that harm to others is our strongest moral reason for restricting liberty. As the majority of victims in the past have been women, most of the evidence in support of the claim that sexual harassment is harmful is based upon evidence about women, but presumably any group which was habitually so victimized would suffer similar effects.

Some sexual harassment cases associated with "intimidating, hostile, or offensive working environment" involve rape or physical assault. Furthermore, both quid pro quo harassment and environmental harassment can cause sexual harassment trauma syndrome. This syndrome involves both physical and psychological symptoms. According to Peggy Crull, a member of the New York Commission on Human Rights, an analysis of case material gathered from clients of Working Women's Institute's Information, Referral and Counseling Service showed that 90% of the cases experienced psychological stress symptoms (nervousness, fear, and anger) while 63% experienced physical symptoms (headaches, nausea, tiredness, etc.). State common law claims of intentional infliction of emotional distress often accompany suits under Title VI; both require medical and psychiatric testimony to substantiate such claims.

Some sexual touching which qualifies as sexual harassment under EEOC guidelines (even when it is confined to a single severe incident) may not inflict any direct physical harm on women, but permitting unwanted touching may encourage physical violence against women. As feminist philosopher, Carole Sheffield has pointed out, America's women live with sexual terrorism. There were 103,000 reported rapes in 1990. As most rapes are unreported, the actual number may have been fifteen times that figure. Every year over one million children are physically abused and the average number of assaults per year is 10.5. The majority of teenage victims are female. The incidence of sexual abuse is difficult to determine, but one survey of women found that 38% had experienced intra- or extra-familial sexual abuse by the time they reached age 18. Finally 60–70% of evening calls to police departments concern domestic violence. One study found that 16% of the families surveyed had experienced husband/wife assaults. John Makepeace, in a survey of college students, found that 20% of female college students had experienced violence during dating and courtship. Common sense suggests that, as physical violence against women is already a national disgrace, unwanted sexual touching in the workplace should be prohibited by law, and that cultures and institutions which fail to set limits upon unwanted sexual touching (i.e., touching parts of the body associated with sexual response) are encouraging further physical abuse and disrespect for women.

EEOC guidelines also hold that non physical conduct (e.g., sexual jokes, sexual conversation, the display of pornographic materials, etc.) in cases where it forms a repeated pattern does qualify as sexual harassment. The courts have been divided about this matter. The 1986 Attorney General's Commission on Pornography did conclude that, although there is no general connection between pornography and violence, exposure to sexually degrading and violent materials does contribute to sexual violence against women. The EEOC guidelines can be justified, in part, on the grounds of preventing physical harm to women.

Second, Wall is quite correct in emphasizing that sexual harassment violates privacy rights. Privacy, like pornography is a controversial subject. Suffice it to say here that there is a constitutional right to privacy first recognized by the Supreme Court in Griswold v. State of Connecticut 381 US 479,85 SCt. 1678 (1965), a case involving the sale of contraceptives. In that case the Court found that there is a right to privacy emanating from penumbras surrounding the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments which create zones of privacy. Presumably unwanted sexual touching would violate zones of privacy emanating from the Third and Fourth Amendments; if our homes cannot be invaded, presumably our bodies should be doubly sacrosanct. There are also moral rights to specific types of privacy in the workplace. William Brequert, for example, analyzes privacy as a "three place relationship between a person A, some information X, and another person Z, such that the right to privacy is violated only when Z comes to possess information X and no relationship exists between A and Z which would justify Z's coming to know X." Given this conception of privacy, Brequert, as well as Joseph DeJardins, argue that the information a person (or institution) is entitled to know about an employee is confined to the sort of information
which pertains to the employee’s ability to perform his job. Given that sexual matters are irrelevant in assessing an individual’s ability to perform a job, privacy rights seem to preclude any inquiries by managers about the sexual lives of their employees outside of the workplace, and to provide a clear moral justification for discouraging sexual conversations within it.

Third, there are certainly historical and causal correlations between sexual harassment and discrimination. It was no accident that the issue was catapulted into national prominence by a black man and a black woman. While sexual harassment is an emotionally charged issue in every community, it is especially charged in those which have suffered from discrimination. Judge Thomas quite justifiably invoked the lynching metaphor to remind his accusers that black men have been victims of vicious sexual stereotypes which have lead to lynchings resulting from wholly unjustified sexual allegations. Professor Hill might equally well have invoked “The Color Purple” to remind skeptics that historically black women have been targets of sexual abuse not only by white men, but also by men of their own race perhaps because, as William Oliver has suggested, black on black sexual violence may be a “function of minority males adopting a ‘tough guy, player of women’ image in order to deal with the pressure of urban problems.”

Recent studies verify that women, and especially women of color, are still the group most likely to be victimized by sexual harassment, and that they are usually harassed by men occupying positions of superior authority. Given the complicated connections between discrimination, violence, inequalities in power, and sexual misconduct, corporations have a duty to insist upon sexual propriety in the workplace in order to protect any employee from becoming a victim of further discrimination.

Fourth, sexual harassment violates liberty rights. Many philosophers, like John Rawls, believe that in a just society “Each person is to have an equal right to the most extensive total system of basic liberties compatible with a similar system for all.” Sexual harassment restricts liberty. A 1979 Working Women’s Institute study found that 24% of sexual harassment victims were fired for complaining, while another 42% left their jobs. Bailey and Richards (1985) found that 21% of women graduate students surveyed reported that they had not enrolled in a course in order to avoid sexual harassment. The Merit Board survey found that between 1985 and 1987 approximately 36,647 employees left their jobs because of sexual harassment. To suggest that women should leave their jobs and deviate from their career tracks when confronted with sexual harassment is only to add injury to injury. Worse yet, it plays into vicious stereotypes that victims of sexual abuse “ask for it.”

Fifth, sexual harassment violates rights to fair equality of opportunity. Rawls has argued persuasively that in a just society there should be “roughly equal prospects of culture and achievement for everyone similarly motivated and endowed.” There is a wealth of evidence to suggest that women do not enjoy fair equality in the workplace and that sexual harassment is part of the problem. Sexual harassment stress syndrome, resulting from quid pro quo and environmental harassment, impairs job performance.

A hostile work environment undermines respect for women making it difficult for them to exercise authority and command respect. Pornography, sexual conversation, sexual and sexist jokes, girlie posters, and the like, are morally objectionable because they violate women’s rights to enjoy fair equality of opportunity. They are especially objectionable in any workplace associated with criminal justice; the very life of a woman police or correctional officer may depend upon her ability to command respect from sexually abusive people. To insist that women protest sexual harassment in a public forum, and to fail to institute grievance procedures which protect their privacy only exacerbates the damage already done. It may create resentment among male colleagues, discourage men in positions of authority from serving as mentors to women, irreparably damage victims’ prospects from developing warm working relationships with colleagues and for expanding their professional networks, and impair their prospects for securing employment elsewhere.

Sixth, sexual harassment demonstrates the kind of disrespect for persons which is incompatible with Kantian conceptions of the moral point of view. Respect for persons involves respecting every person’s rights to be unharmed by others, and to enjoy rights to liberty, privacy, and equality of opportunity.

Seventh, sexual harassment is morally objectionable because it undermines utilitarian justifications
for the very free enterprise system upon which the business community depends. The moral justification for such a system is that it supposedly maximizes freedom and efficiency.71 We have already seen that sexual harassment curtails freedom. It is also inefficient. According to the Merit Board survey, sexual harassment cost the federal government at least $267 million dollars in a two year period. The estimate was based upon conservative conclusions about the costs of job turnover, sick leave and loss of productivity. The 1985 Working Woman survey estimated the cost of harassment for a typical Fortune 400 company of 23,784 employees to be nearly $7 million per year. It also estimated that the costs of permitting sexual harassment were over thirty-one times the initial costs of preventing it.72 Finally, the traditional argument for insisting that the socio-economic inequalities of capitalism are morally justifiable consists in claiming that there is fair equality of opportunity and that permitting inequalities ultimately contributes to the benefit of all. Sexual harassment violates rights to fair equality of opportunity and, by doing so, creates inequalities which are disadvantageous to all. Sexual harassment is not merely a woman’s problem. It is a problem for the entire business community.

Conclusion

Sexual harassment is not merely an abuse of power resulting from ignorance about facts or law. It is not merely a legal problem, a cultural problem, a gender problem or a communication problem. Sexual harassment is not “murky” and it is not “much ado about nothing.”

Sexual harassment is a serious moral problem. To get to the root of the problem, the corporate world must begin to reason critically, to relinquish old myths, to take a strong moral stand, and to provide moral education for employees. It must then assess the effectiveness of that education by conducting anonymous surveys of those groups with the least powerful positions or with the most complaints in the past to determine whether there is a reduction of complaints among those respondents. Until then, sexual harassment will be a potentially explosive communication problem.

Notes

3. Conte, p. 2.
8. Conte, p. 4.
13. Ibid., p. 2.
15. Ibid., pp. 20–23.
16. Ibid., p. 212.
17. Ibid., p. 3.
18. Ibid., pp. 52–61.
20. Ibid., pp. 41, 70 and Templin, B3.
22. Ibid., pp. 261–279.
31 Paludi and Barickman, pp. 61–62.
32 Gest and Saltzman with Carpenter and Freidman, p. 40.
35 Leo, p. 26.
37 Dodds et al., pp. 466–468.
38 Wall, p. 371.
39 Ibid., pp. 380–1.
40 Ibid., pp. 376–378.
42 Dodds et al., p. 468 and Wall, p. 381.
43 Conte, p. 446.
44 Ibid., p. 482.
46 Ibid., p. 374.
47 Dodds et al., p. 468.
48 Conte, p. 490.
49 Dodds et al., p. 469.
51 Wall, p. 378.
52 Ibid., p. 374.
53 Ibid., p. 383.
56 Conte, p. 9 and Paludi and Barickman p. 29.
58 Conte, p. 9.
61 Ibid., p. 306.
62 Ibid., p. 308.
63 Conte, pp. 491–493.
64 Siegel, p. 406.
66 Brenkert, p. 229.
67 Siegel, p. 292.
69 Paludi and Barickman, p. 149.
70 Rawls, p. 73.
72 Conte, pp. 8–9.