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“Sexual Harassment: An Old Problem in a Modern World” forthcoming in Robert Rycroft’s *The American Middle Class: An Economic Encyclopedia of Progress and Poverty*

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“Sexual Harassment: An Old Problem in a Modern World”
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As a legal concept, sexual harassment is defined as inappropriate sexual conduct that is sufficiently “severe, pervasive, and unwelcome” in nature as it occurs in the workplace, or under the auspices of a relationship governed by workplace dynamics, as this was articulated in the landmark case *Meritor v. Vinson* in 1986. Thus, sexual harassment encompasses behavior that entails abusive power relations within the work environment, as defined under Title VII of the Civil Rights Act of 1964 that prohibits “discrimination on the basis of sex.” Sexual harassment is more specifically defined as unwelcome sexual physical or verbal advances and requests that interfere with individual working performance or creates a hostile work environment, depending on the circumstances.

“Quid pro quo” sexual harassment involves a grant or denial of benefits rendered based upon an employee’s response to unwelcome sexual advances, requests for sexual favors, etc. To successfully make this claim, an individual must be able to demonstrate a substantive connection between some type of negative occupational result and his or her refusal to submit to a supervisor’s sexual advances. To assert a claim of “hostile environment” sexual harassment, an employee must be able to demonstrate that his or her working environment was tainted to such an extent that s/he was unable to properly perform their duties of employment. The United States Supreme Court, in *Meritor*, presented a clearly articulated standard of behavior for employers to enforce, and effectively implement, to avoid liability for the behavior of their employees under the auspices of employment contracts pursuant to a claim of sexual harassment.

Ultimately, gender expectations characterize sexual harassment as discriminatory conduct pertaining to power differentials between actors in the workplace. As demonstrated by sex role spillover theory, women are often defined by socially ascribed gender roles and are, thereby, expected to exhibit behaviors common to the domestic sphere as primary caretakers within the public sphere of the workplace (Gutek 1985). This theoretical explanation for sexual harassment behaviors is most applicable to the hostile environment harassment scenario because it highlights the ways in which the actual performance of a woman's job is made more difficult by the very occupational beliefs and practices we have sanctioned as acceptable organizational practices and policies, which arguably exist apart from the workers themselves (Kohlman 2004). It should be noted that the message that women are safer and more productive as caretakers aligns with the objectification of their bodies within the labor force. In this context, women who appear to replace domestic duties with work responsibilities may be sexually objectified. Although women cannot be expected to fully abandon the workforce, they may be pressured to remain in occupations lacking in relative prestige in comparison to their male co-workers and this may even occur when women achieve high paying positions of authority (Kohlman 2006). Indeed, the power of working women, especially as a supervisor or leader, becomes limited by discriminatory practices that result from gendered stereotyping. This discrimination devalues the

working ability of an individual. As a result, sexual harassment is a destructive force in the workplace in that women are perceived as lower in rank regardless of professional title or leadership responsibilities inherent in the occupation at issue. The threat of being harassed while having to execute leadership in male-dominated positions has been shown to isolate women from prestigious jobs despite incredible occupational success (McLaughlin et al. 2012).

Although women may be targeted as sexual objects in the labor market, this is not to be construed as an attempt to provide any form of consensual sexual pleasure. Rather, the motives behind sexual harassment are indicative of the abuse of power and a coercive manner of exercising control over an individual's power and agency in the performance of his or her occupation, which is unrelated to sexual desire. We see this most explicitly when sexual harassment behaviors are meant to elicit female gender expectations emphasizing vulnerability, humiliation and oppression of the victim. Female workers are targeted as proof that they are too vulnerable and inadequate for their specific work environment. It is a deliberate method to communicate disapproval of female presence. As a result, men in male-dominated fields are more likely to harass their female co-workers with the aim of protesting their presence in the occupational position at issue. Thus, the reasoning of the US Supreme Court in *Meritor*, and the cases which have followed it, would seem to have been made with an eye toward articulating a change in the standard of proof with an understanding that occurrences of sexual harassment are, more often than not, a subjective assessment of events because the behavior at issue is most likely to occur in circumstances where there may be few witnesses to the incident(s) except the perpetrator and the victim and individuals may differ as to how one should interpret the events at issue.

Sexual harassment is truly, then, an old problem that continues to plague the modern world of the labor market. In order to effectively deal with cases of sexual harassment, it is important to clarify the difference between a minor breach of etiquette and a discriminatory violation based upon sex. Sexual harassment is not expected to serve as civility code because it requires evidence relating to specific discrimination based on sex. The primary query behind allegations of sexual harassment stems from a concern that some members of the U.S. labor market are more vulnerable to being targets of sexual harassment than others for some identifiable reason such as age, gender, marital status, race, or occupational position.

With this in mind, it has now become commonly understood that both men and women may be the perpetrators of sexual harassment as well as the victims, regardless of sexual orientation. It is often clear, however, that women's probability of reporting incidents of sexual harassment are a function of personal demographics and is related to the predominance of other women or men in their jobs. Although women are more likely to report sexual harassment, in general, it has also been shown that men can also demonstrate that they have been sexually harassed through discriminatory acts on the basis of their sex. For example, in the case of *Rene v. MGM Grand Hotel, Inc.* the Ninth Circuit court considered the issue of same-sex claims of sexual harassment predicated on the basis of sexuality. Medina Rene claimed that male co-workers had sexually harassed him because he was gay. Although a district court judge

summarily dismissed this case, the Ninth Circuit Court of Appeals reversed this decision, ruling that “Title VII forbids offensive touching (a physical assault of a sexual nature) whether the attack is performed by members of the same sex or by members of the opposite sex.” Hence, the elimination of vagaries regarding sexual identity, or any misinterpretation thereof, facilitates the argument for recognizing that incidents of sexual harassment must be determined based upon the behavior of employees within the workplace rather than personal identity politics. Although the United States Supreme Court stated this quite clearly in the 1998 decision *Oncale v. Sundowner Offshore Services, Inc.*, the reasoning of the federal court in *Rene* further clarifies that the objective of sexual harassment behavior, whether or not it is specifically acknowledged by the harasser, is to target certain individuals in order to establish an unequal distribution of power. In this way, misinterpreted intentions do not eliminate the existence of a "hostile environment."

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