

UNDERGRADUATE LAWS PROGRAMME BLOG

Video transcript: Sexual Harassment Degrading and humiliating behaviour and the Legal Theory

Professor Jill Marshall, Chief Examiner and Module Convenor for Jurisprudence

Hello, this is Professor Jill Marshall, the Chief Examiner and Convenor for the University of London International Programmes LLB Module on Jurisprudence. Today I am doing a short blog for Jurisprudence Sexual Harassment Degrading and humiliating behaviour and the Legal Theory. This short blog post has been prepared in December 2017.

It has been written to make you think about a variety of issues arising from the Module but talking about a current event. You need to consider it yourself and reflect on what it can tell you about Jurisprudence. You can relate it to various parts of the Study Guide but in particular I was thinking of chapter on Liberalism and the Law and Chapter 15 on Feminist Legal Theory.

In the last few months, allegations of sexual abuse, unwanted sexual innuendos, inappropriate sexual behaviour, sexual assaults and rape have come pouring out first from the Hollywood film industry and the entertainment industry's treatment of particularly young women – often looking for a big break in their demanding and frustrating search for parts in films in an industry of oversupply. The use of the casting couch, the audition – words such as “please take your clothes off” - “let me see what you look like in [some sort of degrading] position”; “come up and see me in my hotel room, I’ll be waiting to talk to you...” - followed by unwanted advances and often abusive and violent discussions and physical approaches. When the media revealed this, more and more allegations came forward.

Then it was the turn of Parliament – in Westminster in the heart of UK democracy, allegations from again often young interns, research assistants and other workers were revealed. These allegations are ongoing and under current investigation.

Questions continue to be asked about the way different types of people are viewed, reflected and protected by and through the law. Legal theory can question different areas of the law to see how girls and women are legally perceived and treated. This includes now consideration of these many cases of sexual harassment and the hashtag METOO campaign on twitter and similar, and reasons given for not coming forward earlier, or of having come forward and been ignored and disbelieved, including your voice was silenced, your point of view was not taken seriously, and your experience was dismissed. Further questions include, in criminal law, what are the experiences of girls and women who have been raped or who have suffered domestic violence? In employment law, how have women who are pregnant, or suffered sexual harassment in the workplace, been protected by law?

Women across the world continue to suffer from gender based violence and unequal life chances: see in general www.un.org for much evidence of this. Let's return specifically to sexual harassment. In the UK, the Trade Union Congress reported in extensive research published in 2016 that:

- More than half (that's fifty two per cent) of all women polled have experienced some form of sexual harassment.

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- 35 per cent of women have heard comments of a sexual nature being made about other women in the workplace.
- 32 per cent of women have been subjected to unwelcome jokes of a sexual nature.
- 28 per cent of women have been subject to comments of a sexual nature about their body or clothes.
- Nearly a quarter of women have experienced unwanted touching (such as a hand on the knee or lower back).
- One fifth of women have experienced unwanted sexual advances.
- More than one in ten women reported experiencing unwanted sexual touching or attempts to kiss them.
- In the vast majority of cases, the perpetrator was a male colleague, with nearly one in five reporting that their direct manager or someone else with direct authority over them was the perpetrator.
- Four out of five women did not report the sexual harassment to their employer.

Here in England and Wales, the Equality Act 2010 defines sexual harassment as unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

It is important to note that a perpetrator's claim that a comment or action was meant in jest or as a compliment is not a defence in a sexual harassment case. Nor does the harassment have to be directed at the person complaining about it. For example, the display of pornography in a work environment or sexual comments directed at others may create a degrading, intimidating or hostile working environment for workers even if they are not intended as the object of the comments. It is also harassment to treat someone less favourably because they have rejected or submitted to unwanted sexual conduct.

Some examples of behaviour that could constitute sexual harassment are:

- indecent or suggestive remarks
- questions, jokes, or suggestions about a colleague's sex life
- the display of pornography in the workplace
- the circulation of pornography (by email, for example)
- unwanted and inappropriate touching, hugging or kissing
- requests or demands for sexual favours
- any unwelcome behaviour of a sexual nature that creates an intimidating, hostile or humiliating working environment.

As is the case in other types of violence against women, sexual harassment is inextricably linked with power.¹ The perpetrator could be abusing a position of power by harassing someone they see as less powerful, or the perpetrator feels powerless and is using sexual harassment as a means to disempower the target of their harassment and thus increase their own power and status in the workplace.²

Law seeks to regulate how we behave towards each other in society. In that regard it can be said to be a matter of fact, because we can empirically test, and socially examine, whether something is a law by testing it against our criteria for validity – think about your work on HLA Hart here- and we can socially observe how people are behaving. But this also involves consideration of what the law should be, how it should be interpreted, and how the law should regulate our behaviour or direct us to behave, or not behave, in ways that are good, or sound, or make sense, or will even make our

¹ The EU Agency for Fundamental Rights notes that "Women with irregular or precarious employment contracts, which are common for many jobs in the services sector, are also more susceptible to sexual harassment"

² See the TUC Report – available at <https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

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lives better. This is traditionally associated with justice. However, what justice means and how it relates to law is contested. Law is supposed to be neutral, objective and impartial, blind to bias, with everyone equal before it. Yet for many – especially feminist legal theorists – law is structurally biased to women’s disadvantage.

This structural bias of law can be said to reflect society’s already existing bias so in that sense the law follows society’s lead. Alternatively, law can be said to help create or shape society’s bias through, for example, its definitions of groups or certain categories of women or men, in a way that disadvantages women. Many of us in our work as lawyers question the structure and underlying purpose of law and investigate whether law itself is gendered in some way. Could such an investigation into the structure of law show that it favours men’s lives? Does law play a role in reflecting, creating and sustaining an unfairly gendered world which is arranged to women’s disadvantage?

When we hear comments like

- “At the job I recently left, a male manager said to me (in front of a female manager) that I would do well in the organization because I have big boobs.”
- “I used to work in a law firm. When I won a case in court, I would be lambasted by a particular male colleague who would leer at me and make such inane comments as ‘How much did you pay the judge to win the case?’, ‘You only won that because you’re wearing a skirt’ and ‘Did you sleep with the judge then?’”
- “I went to HR about sexist and flirty CEO. I was told to put up with it as I’m ‘young and pretty and they’re men, what do you expect?’”

These are all quotes from anonymous testimonies submitted to “the everyday sexism project” (<http://everydaysexism.com/>).

This really does make me conclude that the law must be clearly interpreted in ways that ensure existing discriminatory practices can no longer continue; that the law can be more meaningful and enable better lives. While the law can be, and has been, criticised for reinforcing structural bias of a gendered nature, it can be changed and transformed to increase gender equality and women’s – and correspondingly all men’s – freedom.

Thank you for your attention and I hope that you enjoyed the short blog!