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Massachusetts Institute of Technology
Department of Economics
Working Paper Series

SEXUAL HARASSMENT
IN THE WORKPLACE

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Working Paper 02-11
February 2002

Room E52 - 251
50 Memorial Drive
Cambridge, MA 02142

Massachusetts Institute of Technology
Department of Economics
Working Paper Series

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An Economic Analysis with Implications for Worker Rights and Labor Standards Policy

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Abstract

Suppose a firm has a widespread reputation for sexually harassing its workers (or it follows the practice of telling workers that if they wish to work for the firm they must be prepared for sexual harassment). When a worker offers to work for such a firm and is accepted, there is, therefore, a Pareto improvement. Is there a case for banning such 'contractual' sexual harassment? This paper argues that the answer is yes, and that we can be both Paretian and ask for a ban. A general principle, called the large-numbers argument, is developed to justify this and it is shown that there are other areas, such as occupational safety where this principle can be applied. That is, there may be a case for preventing firms from exposing its workers to excessive hazards even when each worker finds the pay attractive enough to want to submit to this. Hence, this argument provides a general principle for deciding which market transactions ought to be banned as obnoxious, instead of relying on *ad hoc* judgments. The paper goes onto discuss how our sexual harassment laws ought to be reformed so as to be more receptive to the needs of society.

SEXUAL HARASSMENT IN THE WORKPLACE:
A Theoretical Analysis with Implications for Worker Rights and Labor Standards Policy

1. The Question

Commending the initiative in Britain to legitimize prostitution, the *Economist* (January 6, 2001, p. 18) argues, "One reason why the government should support these moves is moral. In a liberal society, buying sex for money should be regarded as a legitimate commercial transaction, where it takes place between two consenting adults." I agree with this view, though I would state it a bit more elaborately and generally: A contract or an action agreed to or undertaken by a group of consenting adults and with no negative externality on any uninvolved 'outsider' ought not to be prohibited by government. Let me call this the 'principle of free contract'. This is one of the most important basic principles that has guided economists in developing specific policy recommendations. Thus when a landlord and a tenant agree to sign a contract which says that the rent will be low but the tenant must agree to vacate the apartment at short notice (perhaps because the tenant is poor and wants to save on rent even if that means frequent moves and the landlord anticipates that he may suddenly have to move back to the city, where the apartment is located and need the apartment for himself) most economists would argue that government should not block such a transaction.

Economists have warned government that to disregard the principle of free contract and to give in to its knee-jerk tendency to intervene in markets is to hurt the well-being of the very people it wants to help. Appeals to this or similar principles cropped up repeatedly in the writings of John Stuart Mill (see, for instance, Mill, 1848, 1859).

> "As soon as any part of a person's conduct affects prejudicially the
> interests of others, society has jurisdiction over it …. But there is no
> room for entertaining any such question when a person's conduct affects
> the interests of no persons besides himself, or needs not affect them unless
> they like (all the persons concerned being of full age, and the ordinary
> amount of understanding). In all such cases, there should be perfect

freedom, legal and social, to do the action and stand the consequences".
(Mill, 1859, p. 132).

With the principle of free contract in the background, let us now consider the problem of sexual harassment in the workplace. Tomes have been written trying to define 'sexual harassment' but for our present purpose it is enough to treat this as a case of unwanted sexual advance made by a person of power, for instance, an employer, towards an employee.[1] If, for instance, an employer engages in sexual advances on an employee by threatening to block her promotion ("*quid pro quo*") or make life generally miserable for her ("hostile environment") if she resists, then this would be a case of sexual harassment.

Can sexual harassment be justified by an appeal to the principle of free contract? At first blush, the answer seems to be an obvious "no" because harassment entails coercion. The harassee is coerced into something she does not want. So the precondition, that it be a *voluntary* contract for the principle of free contract to uphold it, does not get fulfilled here.

But this does not *have to* happen with sexual harassment. To see this consider a firm that puts up a sign outside its recruitment office that says, "We pay well, but we sexually harass our workers. Please take this into account when you apply to our firm". Now, when an employee sees this and then decides to work for this firm, the employment decision becomes a voluntary one and so comes under the purview of the principle of free contract. It seems therefore that government should not object when this employee is harassed. Of course, at the time when she is being harassed she does not like it. But that does not make it a case of coercion, just as someone who takes money from an employer to do a day's work but does not like it when he has to work during long afternoon hours cannot claim that he is being coerced to work.

To see that this argument has a wider reach than might appear at first sight, note that the firm does not really have to put a notice up on the door. If it has a reputation for sexual harassment so that it is known to the new employee that this is part of her job

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[1] For a recent collection of essays on the subject, see LeMonchek and Sterba (2001). An excellent survey of the subject, including discussion of alternative theoretical perspectives, occur in Crouch (2001). The classic and influential work on the subject is MacKinnon (1979).

description, it can be argued that both parties (the employer and the employee) must be better off if they choose to sign the contract; and so this kind of sexual harassment seems to be protected under the principle of free contract.

Do we then not have any grounds for outlawing (contractual) sexual harassment? One way in which economists react to this and other contracts they do not like is to simply *assert* that these are exceptions, and then quickly change the topic. At times we try to be less arbitrary by providing some *ad hoc* justification for the exception. John Stuart Mill, in his **Principles of Political Economy** (1848), after making a persuasive case for the principle of free contract, immediately recognized that there must be exceptions to the principle. He was troubled by the fact that some people, driven by their immediate poverty, may be willing to become slaves for life. This dilemma has subsequently come to be known as the problem of 'voluntary slavery', or 'waranteeism' (Engerman, 1973). While slavery is usually rooted in an initial act of coercion (such as taking prisoners or taking away people by force) or enslavement at birth or in childhood (such as when it is decreed that a child of a slave will be a slave, or when a poor parent sells his or her children), this is not necessary. In certain times and in some places, where slavery was allowed, it was possible for a person to choose to enslave oneself. In Louisiana, for instance, legislation was passed in 1859 which "allowed" free persons of color to "voluntarily select masters and become slaves for life" (Ellerman, 1995, p. 73). In Roman law, self-sale was a legally recognized mode of becoming a slave. And even though this was not common practice, manumission was both acceptable and widely practiced in the early Roman empire (Temin, 2001). It is therefore arguable that slaves who opted not to be manumitted were opting for voluntary slavery[2].

It seems natural that the question would arise whether voluntary slavery should be included in the class of voluntary contracts that individuals have a right to undertake. From the rest of Mill's analysis[3] it seemed to follow that the answer to this would be yes.

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[2] A model of the slave's decision to purchase his own freedom occurs in Findlay (2001).
[3] Much of Mill's concern pertains to individual decisions, such as a person's right to die. But this extends naturally to matters of contract between two or more people, and raises the same philosophical question concerning the state's domain over decisions that do not have a net negative effect on those uninvolved in the decision (Sunstein, 1997).

But that was troubling to Mill, as it would be to most of us.[4] So he argued that very long-term contracts – ones in which a person commits to do "something forever or for a prolonged period" (p. 325) must not be allowed[5].

The trouble with such an *ad hoc* exception is that it is too blunt an instrument, one likely to threaten many useful institutions. If we were to take Mill's injunction against very long-term contracts seriously, that would put an end to the ubiquitous 30-year mortgage for buying houses. Poor people, for whom the only way to buy a house is to take a long-maturity mortgage, would no longer be able to buy houses.

Moreover, if the exemptions to the principle of free contract are too *ad hoc*, the advice of economists to governments and to policymakers in transition economies and Third World nations, that they should respect the principle of free contract, loses force. These governments can justify their violations of the principle on equally *ad hoc* grounds.

There is evidently a need to provide deeper analytical foundations for the exceptions to the principle of free contract[6]. That is what the present paper attempts. The problem is approached contextually, the context being that of sexual harassment. I construct an argument why sexual harassment, even when it is made clear to prospective employees and is therefore 'voluntary', may deserve to be legally banned and considered punishable when violated. I am aware that such harassment is already banned in most industrialized nations (and many developing ones). What is however ill-founded is the

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[4] Faced with this question some writers have taken the logic to its natural limit and said yes. Nozick (1974) is an example of this but by no means the only one (see Ellerman, 1995, Chapter 3, for discussion). There are others who have virtually taken this position but not explicitly, arguing that voluntary slavery is so rare that we do not really need to take a position on this (see Epstein, 1985, p. 335, n. 7). There are others who have taken the position that we should take the policymaker's values into account. Since the policymaker may not like to see voluntary slavery, we may be Paretians and still ban it. The trouble with this argument is that it could be used to justify any action that a policymaker wishes to undertake on the simple ground that he wishes to undertake it. I would dismiss this by distinguishing between a policy maker's moral judgement and his or her utility or happiness, and by taking account of only the latter in deciding what constitutes a Pareto improvement.

[5] Later, in **On Liberty**, Mill (1859) took a more sophisticated position on this arguing that the alienation of individual freedom undermines civic and political equality and for that reason this should not be allowed. Satz (2001) has recently argued for something similar, claiming that certain rights are necessary for "democratic equality". However, these approaches take us beyond the Paretian framework, arguing for the upholding of certain societal values that go beyond the valuation of the own welfares by individuals. This is an avenue that I am however not allowing myself to take, easy though that would make my task.

[6] Several economists and other social scientists have been concerned about the conditions (if there be any) under which voluntary contracts ought to be banned (see, for instance, Trebilcock, 1993; Kanbur, 2001)

reason for such a ban. The present paper tries to provide a reason based on a crucial distinction between 'individual' contracts and a *class* of contracts. The argument is based on a somewhat paradoxical claim that for certain kinds of contract (for instance, sexual harassment) the welfare implications for allowing a single or a limited number of instances of it may be very different, even contrary, to allowing a 'large' number of such contracts. I shall call this the 'large-numbers argument' for limiting free contract[7]. Though I start with sexual harassment, the idea is to produce a general argument.

It should be clarified that my argument for exempting certain kinds of free contract from protection under the principle of free contract is not founded on positive propositions alone. A full statement based on the large numbers argument is one which has to be bolstered by a normative requirement, as explained later. Secondly, the large-numbers argument can, like all practical rules of formulating policy, be misused. As Friedman and Friedman (1980) remark, the widely-used principle that government can intervene in markets when there are externalities can easily be misused since in reality there are hardly any actions which do not have *any* externality. Hence, the principle can be used to justify virtually any intervention if we are bent upon so doing. Likewise for the large-numbers argument that is developed here. If we want to misuse it and make it into an *alibi* for intervention, we can do so. But that does not detract from the fact that it is a serious argument that tries to delineate one class of exceptions to the principle of free contract.

The large-numbers argument has implications that go beyond sexual harassment. It provides a foundation for a variety of labor standards and labor rights policy in general. One matter that has come up recently in the international labor standards debate and bears a close resemblance to the sexual harassment problem discussed above is the practice, followed by some developing nations, of requiring workers to forego their collective-bargaining rights and the right to join trade unions, when they choose to work in an

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and a few have even tried to formally model this (Neeman, 1999; Genicot, 2001). But this still remains an unsettled issue.

[7] One of the most important works, which tries to distinguish between the moral status of single acts and the moral status of sets of acts, is Parfit (1984). He dubs the common human tendency to morally evaluate a set of acts on the basis of our judgement about each act contained in the set a mistake in "moral mathematics". In a sense this paper may be viewed as a formalization (in the context of economic problems) of what Parfit attempted but never really 'proved'.

export processing zone. This is true of laborers opting to work in Malaysia's electronics export sector or in Mexico's 'maquiladora' free trade zones. Proponents of the 'social clause' in the WTO want this practice to be abolished because it amounts to a denial of a basic right of the worker. On the other hand, it may be argued that when a worker chooses to work in such a zone, the worker does so by comparing *freely* with the alternative of staying out, and so cannot be thought of as being exploited or compelled. The analysis in this paper provides a way of thinking about such policy conflicts.

Many of us feel that workers should not be exposed to excessive hazards, that workers should have a right to basic occupational safety, that women workers should get maternity leave. Usually, when we make these arguments for workplace legislative interventions, we do so hurriedly, saying a few things about externalities. We are afraid to probe deeply into such interventions precisely because we fear that they may conflict with principles that we, on other occasions, claim to adhere to. The large-numbers argument provides a foundation, a kind of litmus test, for such interventions. It is a test that can be used to determine, which interventions are potentially justifiable, which not.

A crucial element of this paper is that it constructs the argument for intervention while maintaining the sanctity of the Pareto criterion[8]. There are people who argue that certain practices and contracts (for instance, ones which lead workers to being exposed to excessive occupational hazards or involves a diminution of a person's dignity) should not be allowed. The argument in this paper is however rooted more firmly in conventional neoclassical economics, in particular, the Paretian paradigm. In other words I take the position that a person has the right to judge whether the hazard that he or she is exposed to is being more than made up by the financial compensation he or she receives for this. The planner must not over-rule the individual's own assessment of this. I take this line not because of any belief that all policy interventions should be thus rooted, but to demonstrate that some of these interventions can be justified *even* without venturing beyond the neoclassical framework.

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[8] In related fields, such as the study of conflict between Paretianism and liberty, the possibility of disregarding the Pareto criterion has been suggested and debated (Sen, 1970; Suzumura, 1983; Basu, 1984;

2. Sexual Harassment in Competitive Markets

The first step in constructing the argument is to note that there can be a certain kind of contract, which, when it is implemented once, has no negative spillover, but when it is implemented a 'large' number of times, leave some individuals worse off. This turns out to be true for sexual harassment in competitive labor markets when we make the eminently reasonable assumption that (1) the degree of aversion to harassment differs across individuals and (2) the labor supply curve is upward sloping. This result I call the 'harassment lemma' (Basu, 1999; 2000).

It should be mentioned that there is nothing novel about this result. It is a case of what is often referred to as "pecuniary externalities". It is a special instance of what is well-known, namely, that, starting from a competitive equilibrium, if we banned a certain class of transactions or trade, then the new equilibrium, even if it were Pareto sub-optimal[9], need not be Pareto inferior to the original equilibrium. Hence, if our only policy choice was whether to have this ban or not, then on purely Paretian grounds we would have no unequivocal answer. We will in this case manage to get a policy conclusion by combining this theoretical result with a normative criterion that I spell out later.

The reason why I formally derive the harassment lemma is therefore not because of its novelty, but to draw attention to certain features of the result and in order to prepare the ground for the use of the normative criterion. There is another reason. While this result is well-known in equilibrium analysis, its *economic* foundations are not well-understood, or so I will argue. In fact sections 3 and 4 are devoted to a formal game-theoretic scrutiny of whether and under what kinds of circumstances can we realistically claim that a collection of individual, desirable acts can be undesirable. Thus the harassment lemma provides motivation for the next sections.

Since this is a competitive model all agents are assumed to be price takers. I shall assume, without loss of generality, that there is one employer (and so only one firm). His production function is given by

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Gaertner, Pattanaik and Suzumura, 1992). In this paper the Pareto-inclusiveness of social welfare judgments is adhered to in all cases except when the Pareto criterion is *self*-contradictory.

$$x = f(n), \quad f'(n) > 0, f''(n) < 0, \tag{1}$$

where n is the number of laborers employed and x the amount of output produced.

Let us begin by considering the case where sexual harassment[10] is allowed. In that case it is reasonable to expect that two kinds of wages will come to prevail in the labor market, w_N and w_H, where w_N is the wage that a worker who signs a no-harassment contract will receive and w_H is the wage that a worker who is willing to submit to harassment will receive.

Let θ be the amount of benefit or 'perverse gratification', measured in output units, that the employer gets from being able to harass each employee. We focus on the case where $\theta > 0$, since the interesting issues concerning harassment arise when this is true. Hence, faced with the above market wages, if the employer gets n_N employees under the no-harassment contract (N-contract, in brief) and n_H under the harassment contract (H-contract) then his total payoff, π, is given by:

$$\pi(n_N, n_H) = f(n_N + n_H) - n_N w_N - n_H w_H + n_H \theta \tag{2}$$

In solving this, note that if and only if

$$w_H = w_N + \theta \tag{3}$$

holds will the firm be willing to employ laborers under H and N contracts. In fact under (3) the employer is indifferent between the two kinds of contracts. If, on the other hand, $w_H > w_N + \theta$, the N-contract is strictly preferable to him. If the inequality goes the other way, then the H-contract will be preferred. In this example we will assume that the parameters are such that (3) holds *in equilibrium*. So let us assume that the market wages are such that (3) holds[11] and check that the firm's first order condition will be given by

$$f'(n_N + n_H) = w_N. \tag{4}$$

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[9] Which it need not be, especially since the economy may have several competitive equilibria and a ban on a certain kind of trade could merely deflect the economy to a different equilibrium.

[10] It is worth reminding ourselves that what we are speaking of throughout is contractual or 'voluntary' sexual harassment, that is, one where the fact that workers will be harassed is commonly known or is made clear to prospective employees before they join work. And all references, henceforth, to 'sexual harassment', are to be taken as references to 'contractual sexual harassment'.

[11] It is shown below that this is not really an assumption but will turn out to be so in equilibrium.

Hence the firm will be willing to employ any combination of N-contract workers and H-contract workers as long as the numbers sum to $n_N + n_H$ which satisfy (4).[12]

Let us now turn to modeling the employees. Assume that the population of workers is given by the integer P. We shall think of each worker i to be an element of the interval [0, P]. Let $c(i) \geq 0$ denote the cost of harassment to worker i. If $c(j) > c(i)$ then it means that employee j finds harassment more painful than i. It will be assumed, with only a slight loss of generality, that, for all i, j $\in$ [0, P], if j < i, then $c(j) > c(i)$.

For each worker i, faced with the market wages, w_N and w_H, the *net* wages she faces are, respectively, w_N and $w_H - c(i)$. In other words, a 'net wage' is a wage minus the pain of harassment associated with that wage contract. Each worker will take the job that offers a higher net wage.

I shall use $s(\cdot)$ to denote each worker's supply curve of labor. If employee i takes a job with net wage w, the amount of labor she will supply is given by s(w). It will be assumed that $s'(w) > 0$.

If the market wages are given by w_N and w_H, it is now easy to work out the aggregate supply of labor. Define $\iota(c)$ as the inverse of the function c(i). Note that every worker i $\in$ [0, $\iota(w_H - w_N)$] will opt for the N-contract and every worker i $\in$ ($\iota(w_H - w_N)$, P] will opt for the H-contract. Hence, the aggregate supply of workers seeking no-harassment jobs is given by:

$$\iota(w_H - w_N)s(w_N) \equiv A$$

And the aggregate supply of workers seeking harassment jobs is given by:

$$\int_{i=\iota(w_H - w_B)}^{P} s(w_H - c(i))di \equiv B.$$

We are now in a position to fully characterize the labor market equilibrium. Assume θ is such that $0 < \iota(\theta) < P$. This assumption guarantees that there will be a separating equilibrium (with (3) being true in it).

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[12] If we had begun with a market with several employers we could have had an equilibrium in which some firms employ only no-harassment employees. Given our current concern it is, however, harmless to assume that there is only one firm and it offers both kinds of contracts.

(w_H^*, w_N^*) is an *equilibrium* if, given these wages, demand equals supply for each type of work (that is, with and without harassment). This translates into the following formal condition.

(w_H^*, w_N^*) is an *equilibrium* if w_H^* and w_N^* satisfy:

$$w_H^* = w_N^* + \theta \tag{5}$$

and

$$d(w_N^*) = \iota(\theta)s(w_N^*) + \int_{i=\iota(\theta)}^{P} s(w_N^* + \theta - c(i))di, \tag{6}$$

where $d(\cdot)$ is the inverse of $f'(\cdot)$.

To understand (6) note that the left-hand term is the aggregate demand for labor, since $d(w_N^*) = f'^{-1}(w_N^*) = n_N + n_H$, by equation (4). The right-hand side is the aggregate supply of labor and is derived by summing A and B, defined above, while making use of the fact that $w_H^* - w_N^* = \theta$, by (5). Since the employer is indifferent between the two kinds of contract, as long as aggregate demand equals aggregate supply, we know that demand and supply for both N-contracts and H-contracts will be equal.

Observe that in the above equilibrium all laborers in $[0, \iota(\theta)]$ will get paid a wage of w_N (and not be harassed) and all laborers in $[\iota(\theta), P]$ will get paid w_H (and be harassed).

Let us now consider a labor market in which there is a law prohibiting sexual harassment. Then if the firm employs n workers and pays a wage of w to each worker, its profit is given by $f(n) - wn$ and profit-maximization implies

$$f'(n) = w \tag{7}$$

Since there is no harassment, aggregate labor supply is equal to $Ps(w)$.

Hence, w^* is an *equilibrium* in a regime where harassment is prohibited if and only if

$$d(w^*) = Ps(w^*). \tag{8}$$

Now that we have characterized the labor-market equilibria for the two regimes (that is, with and without an harassment law), to complete the proof of the harassment lemma, it is enough to show that

$$w^* > w_N^* \tag{9}$$

Let us assume that this is not so. That is:

$$w_N^* \geq w^*.$$

This implies $d(w_N^*) \leq d(w^*)$, since $f'' < 0$. Hence,

$$\iota(\theta)s(w_N^*) + \int_{i=\iota(\theta)}^{P} s(w_N^* + \theta - c(i)) \cdot di \leq Ps(w^*), \text{ by (6) and (8).}$$

Therefore,

$$\int_{i=\iota(\theta)}^{P} s(w_N^* + \theta - c(i)) \cdot di \leq [P - \iota(\theta)]s(w^*), \tag{10}$$

$$\text{since } \iota(\theta)s(w_N^*) \geq \iota(\theta)s(w^*).$$

Note that, for all $j > \iota(\theta)$, $\theta > c(j)$. Hence $w_N^* + \theta - c(j) > w^*$, and therefore

$$s(w_N^* + \theta - c(j)) > s(w^*), \quad \text{for all } j \geq \iota(\theta).$$

This contradicts (10) and so proves that (9) must be true.

This implies that if we begin with a regime in which sexual harassment is prohibited and then switch to one where there is no such prohibition, all employees belonging to $[0, \iota(\theta)]$ will be worse off. Their wages will change from w^* to w_N^* and by (9) we know that they will be worse off in the latter case. In other words, employees who find sexual harassment strongly painful would be hurt in the labor market if harassment were allowed.

It is worth noting that $[0, \iota(\theta)]$ are not the only people who will be worse off. The exact set of people who will be worse off is given by $[0, \iota(w_H^* - w^*)]$. Since $w^* > w_N^*$, we may write $[0, \iota(w_H^* - w^*)] = [0, \iota(\theta)] \cup [\iota(\theta), \iota(w_H^* - w^*)]$. We have already seen that persons in $[0, \iota(\theta)]$ will be worse off. So now consider $j \in [\iota(\theta), \iota(w_H^* - w^*)]$. In a regime where harassment contract is allowed, j would choose such a contract and so get a net wage of $w_H^* - c(j)$. Since $c(j) \geq w_H^* - w^*$, $w_H^* - c(j) \leq w^*$. Hence, there are two classes of workers who are worse off in a regime that permits harassment. All those who refuse to submit to harassment and some among those who choose the harassment

contract (these are the people who find harassment more painful, from among the people who choose the harassment contract).

Hence, while it is easy to see that permitting harassment results in a Pareto efficient society, it is not the case that permitting harassment results in a society which is Pareto superior to one in which harassment is prohibited.

Now, begin from a regime in which harassment is not permitted, and allow one employee, i, to sign a harassment contract. That is, she and the firm get into an agreement that she will be paid a certain wage (presumably, one that is above the 'market' level) but must be willing to subject herself to sexual harassment. Since each person $i \in [0, P]$ is like an atom in this economy, what i does has no effect on others (Aumann, 1964). Hence, this one person signing an harassment contract must constitute a Pareto improvement over a regime in which sexual harassment is totally forbidden.

This establishes the harassment lemma. Allowing one employee to sign a harassment contract leads to a Pareto improvement but making harassment contracts legal in general does not lead to a Pareto improvement.

Hence, if one is a committed Paretian, one cannot stop single acts of sexual harassment, but, if one has to choose between a law that permits harassment contracts and one that prohibits harassment altogether, one may choose the latter without running into a contradiction. So what the harassment lemma establishes is that we can believe in the Pareto principle *and* defend a legal ban on sexual harassment.[13] This does not mean that we already have a case for banning harassment, but simply that we need not, in this instance, be *committed* to the principle of no government intervention.

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[13] Some may contest this by equating Paretianism with a preference for any Pareto optimal state over a Pareto sub-optimal one. Hence, one may argue that a regime with a ban on harassment is likely to be Pareto sub-optimal and so be worse than a regime with no ban. However, this involves a faulty interpretation of Pareto's criterion, which declares a state x to be preferred to state y if everybody in x is at least as well off as in y and some people in x are better off. The fact that x is Pareto optimal and y is not does not guarantee this. One may try to counter this by pointing out that a regime with no ban will be a *potential* Pareto improvement over a regime with a legal ban on harassment, in the sense that those who gain can compensate the losers and still retain some of their gains. The ethical appeal of a potential Pareto improvement is however not evident to me. If it is the case that the gainers will (voluntarily or through a system of taxation) compensate the losers, then we do not need to invoke the criterion of potential Pareto improvement; we can appeal to Pareto improvement directly. If on the other hand it is the case that the gainers will not compensate the losers, then it is not clear why there should be any comfort in the thought that they can do so (see also Sen, 1970, Ch. 5). I shall therefore equate Paretianism with the criterion that, if x Pareto dominates y, then x must be socially preferred to y.

This should come as no surprise since by Hume's Law we know that normative propositions can never be deduced from purely positive propositions. Hence, we will need to combine the harassment lemma with some normative priors in order to reach such a conclusion.

To develop such a normative criterion we need to attach moral values to individual preferences.[14] This is not an easy task but it is helped by the fact that, unwittingly, we do this quite often. First note that we do speak of certain preferences (and actions following from them) as 'legitimate'. Thus we often say things like: "Hillary has the right to prefer Bill over George" or "Jack has the right to work as a mercenary".[15]

What is germane to my analysis here is to draw a distinction between two kinds of legitimate preferences. I shall say that a particular preference is *maintainable* if a person has the right to that preference, while recognizing that he or she may have to pay a price for having this preference. On the other hand, an *inviolable preference* will be defined as a preference which not only does a person have the right to have, but he or she should not have to pay a price for acting on the basis of that preference. When we say that "It is legitimate for Immanuel to live his entire life in the town of his birth"; we typically mean this in the sense of a maintainable preference. That is, we do not at the same time claim that Immanuel should not have to incur any financial loss as a consequence of this preference. We recognize that he has the right to have this preference but also recognize that he may have to pay some price for this.

On the other hand, when we say that a father has the right to keep his child away from work, we (that is, most of us) mean this in the stronger sense of this being an inviolable preference. Not only can the father have this preference, he should not have to pay a price for having this preference.

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[14] Sen (1972) has argued that morality can be thought of as a meta-ordering – that is, an ordering over all possible preference orderings.

[15] In the discourse on rights we typically do not speak of a person as having rights to 'preferences', but only to 'actions'. But to the extent that we do think of certain preferences as legitimate or morally defensible or, for that matter, not defensible, it is not unnatural to extend the language of rights to preferences as well. I could have stated most of my argument in terms of rights to actions alone, but that would entail convolutions, which seem to me to be unnecessary.

There is no reason to believe that all of us will agree as to which preferences are inviolable. This will differ across individuals and societies. But I expect there will also be a lot of common ground.

Most of us, it seems to me, will agree that one's preference not to be sexually harassed is an inviolable preference. In any case the argument in this paper is meant for those who share this normative position.

The harassment lemma, *coupled with the normative axiom that a person's preference not to be harassed sexually is inviolable*, completes the case for a legal ban on sexual harassment. The harassment lemma establishes that allowing free contract in harassment leaves people *with strong aversion to harassment* worse off than they would be in a regime where harassment was legally banned. In other words, such people have to pay a price for their preference. If we are committed to treating one's aversion to harassment as an inviolable preference, we are committed to having a regime where no one has to pay a price for such aversion[16]. This justifies having a law banning sexual harassment.

It is important to emphasize some special features of the model. First, the case for banning sexual harassment is being justified here only partly by the suffering of those who get harassed. The model draws attention to the suffering of those who refuse to be harassed and therefore do worse on the labor market. It is those who do not submit to harassment and face an inferior labor market condition (along with *some* of the people who submit to harassment but would be better off in a world where no one had to face such a choice) that provide the basis for legal action, according to the argument developed here. In other words, though the ultimate policy action being recommended is the same as that many writers in the law and economics profession would recommend, the basis of the recommendation is very different here. If we were to go further and to consider paying compensation to those who suffer because of sexual harassment in the market, the recommendations stemming from this model would begin to diverge from that which comes from the law and economics literature.

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[16] There is, admittedly, some ambiguity about what it means "to have to pay a price" for having a particular preference. The ambiguity occurs when the set of available policies is arbitrary and one is free to consider

That this is a genuine shift of focus one can see by examining debates in other fields. Consider the problem of hazardous jobs. Should workers be allowed to opt for such jobs (many workers may prefer this because they find their poverty more grueling than the pain of such a job)? In answering or examining this question, the focus is invariably on the workers who take up such jobs. Cohen's (1987) thought-provoking paper on this subject, for instance, has precisely this focus. I am arguing that in considering the general question of whether such jobs should be allowed or whether firms should be compelled by law to take safety measures, a crucial constituency is not the workers who currently have such jobs, but those who do not.

Secondly, what makes our model distinct from a model of prostitution is that the sexual contract and labor market contract are here interlinked. If one could separately contract for labor and sexual services, there would be no reason to expect persons averse to providing sexual services to be underpaid for their labor services. Hence, my argument does not carry over to a case for banning prostitution, nor, as we shall presently see, for banning trade in body parts.

Some may balk at the use of this normative criterion that is not founded in any compelling rule. But that is a criticism that would hold for *any* policy prescription. Consider the standard economist's ploy of using externality as a reason for intervening in the market. Note that the existence of a negative externality associated with an action does not automatically amount to a case for stopping that action. What the negative externality does is to ensure that banning that action does not result in a Pareto inferior society. In fact the two worlds that are created by banning that action and not banning that action are neither Pareto dominant over the other. The externality therefore makes *room* for a possible intervention. But to justify the intervention we cannot escape having to combine the observation of the externality with the use some normative criterion for deciding which of the two worlds is better. And this is exactly what I have tried to achieve here. The case against a legal intervention in the labor market that economists make by using the Pareto criterion alone gets destroyed by the large numbers argument. From there to actually make a case *for* intervention, we need more normative

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any imagined policy. In this context, however, we assume that the only two policy options are to ban

ammunition. The subjective element in this part is unavoidable. In brief, all I have tried to do in this section is simply to whittle down the 'adhocness' of earlier arguments to a more limited zone, by separating out a positive component (which cannot be contested) and a normative one.

Note that the normative prescription that comes out of this model is somewhat paradoxical. It maintains that each single instance of sexual harassment results in a Pareto improvement but a large number of sexual harassments is not a Pareto improvement. Hence, if a government has to choose between permitting harassment or not, it must choose the latter. This last result is a bit of a quirk of competitive general equilibrium theory. It is not totally clear under what conditions it is valid. It is therefore worthwhile scrutinizing closely the kinds of settings where single acts affect social welfare in directions contrary to what collectivities of such single acts do, a problem that has been discussed in the classic study of Parfit (1984) (see also Neeman, 1999).

The next sections attempt precisely this by constructing game-theoretic models. While game models lack some of the richness of competitive equilibrium models, they have the advantage of being more transparent when it comes to examining the conflict between single acts and many acts. I will explore how the conflict can be explained via two very distinct routes – one that relies on the properties of an infinity of decisions (Section 3) and another on the intransitivity of indifference (Section 4).

3. Acts and Rules

3.1 Introduction

A question that is central to my analysis but gets only cursory attention in competitive equilibrium analysis is this: Is it possible, or more minimally, at least logically possible, that if a single pair (any pair, that is) of individuals sign a contract there is a Pareto improvement, but when a class of pairs of people sign such contracts, we

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harassment or not, and therefore the procedure I am describing is unambiguous.

do not have a Pareto improvement (that is, at least some individuals are worse off)? And if the answer is yes, can we make transparent the assumptions under which this is so?

We know that the answer to the first question is yes if we conceive of the economy as having a 'large' number of players or agents (see Hildenbrand and Kirman, 1988). My aim in this and the next sections is to provide a formal game-theoretic understanding of why and how this conflict between a series of individual actions and the *set* of them can occur. One version of this idea is developed in subsections 3.2 and 3.3. What this version needs is that there be a countably infinite number of individuals (the set of players does not have to have the power of the continuum). The assumption of an infinity of agents is of course unrealistic. I can offer three remarks in response.

First, this is a fairly standard way to describe a competitive economy in economic theory (see Aumann, 1964; Mas-Colell, Whinston and Green, 1995). Secondly, it is possible to show that the same argument holds if instead of an infinite number of individuals we have an infinite number of possible contracts that a finite number of individuals can potentially sign. Thirdly, and most importantly, we can get a similar result with a fully finite society provided that we allow individuals to have preference relations which may not be representable by a real-valued utility function. This is the subject matter of the next section.

3.2 A Simple Game

The simplest way to illustrate the different normative status of (i) allowing *a* sexual harassment contract and (ii) allowing sexual harassment contracts *in general*, in a formal game-theory model is to consider a game among potential harassees. That is, we ignore harassers in this game (or keep them in the background). Barring this, the story I will tell here is similar to that in Section 2. The important difference is that this is a formal *game* model.

Suppose there is a countably infinite set, N, of potential harassees. Without loss of generality assume N is the set of natural numbers. Each harassee or, henceforth, player has to decide whether to sign a sexual harassment contract (strategy 1) or not

(strategy 0).[17] If a player accepts a harassment contract, this means that she is agreeing to work for a firm knowing that the employer will sexually harass her at the workplace.

Hence, a *strategy tuple* is an infinite vector $x \equiv (x_1, x_2, \ldots)$, where, for all $i \in N$, $x_i \in \{0,1\}$ and the value of x_i denotes whether or not i signs a harassment contract. I shall use Δ to denote the set of all strategy tuples.

Given a strategy tuple x and a strategy x_i', I will write $x/(x_i = x_i')$ to denote a strategy tuple identical to x excepting that the ith element is replaced with x_i'. Note that $(x/(x_i = x_i)) = x$.

Next, we define player i's payoff or utility function to be a mapping

$$u_i : \Delta \rightarrow \Re,$$

where $\Re$ is the set of real numbers.

The game that we are looking for must have the following properties:

First, whether or not j decides to sign the harassment contract this has no externality on player $i(\neq j)$. Formally,

Property 1. For all $i, j \in N$, $i \neq j$, and for all $x \in \Delta$,

$$u_i(x/(x_j = 1)) = u_i(x/(x_j = 0)).$$

Next we want the game to illustrate the large numbers argument. That is, we want it to have the property that if a 'large' number of people sign the contract then others (the non-signers) will be worse off. Formally,

Property 2. There exists a set $S \subset N$ and $i \in N - S$, such that if x, y $\in \Delta$ such that, for all $j \in S$, $x_j = 0$ and $y_j = 1$ and, for all $k \in N-S$, $x_k = y_k = 0$, then $u_i(y) < u_i(x)$.

At first sight Properties 1 and 2 seem irreconcilable. However what follows is a description of a game that satisfies both these properties.

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[17] To elaborate further, strategy 1 entails agreeing to work for a firm knowing that the employer may harass her. Strategy 0 can mean two things, the distinction is unimportant for this game: It could represent

Let ℓ, h $\in \Re$ be such that $\ell < h$. Now, for all i $\in$ N, define u_i as follows:

$$u_i(x) = \begin{cases} \ell + g_i(x_i), & \text{if } \sum_{j=1}^{\infty} x_j = \infty \\ h + g_i(x_i), & \text{if } \sum_{j=1}^{\infty} x_j < \infty \end{cases} \qquad (11)$$

where $g_i = \{0,1\} \to \Re$. It is easy to check that if players have payoff functions, as just defined, then Properties 1 and 2 will be satisfied[18]: Consider the utility function of a player i, and some x $\in \ell$ $\sum x_j < \infty$. Hence, (11) implies Property 1 must be true. Next, let S be the set of all odd numbers; and i be an

To see some of the policy dilemmas that can arise in this game, consider the case where the payoff functions are as just defined (i.e. by (11)) and, in addition,

$$g_i(1) > g_i(0) \quad \text{if i is odd}$$

and

$$g_i(1) < g_i(0) \quad \text{if i is even.}$$

Now suppose the players are made to play this game. Clearly the game has a unique Nash equilibrium (which happens to be strict), where only and all odd-numbered players accept jobs which expose them to sexual harassment.

What are the welfare properties of this Nash equilibrium? That depends on the parameters. In particular, the following proposition is easy to verify.

The Nash equilibrium in the above game is Pareto optimal if for every I that is an odd number

$$\ell + g_i(1) > h + g_i(0) \qquad (12)$$

Consider now the outcome in the above game when there is a law that prohibits sexual harassment. Evidently, every player i will now get a utility of $h + g_i(0)$. Suppose now that for every I the inequality in (12) is reversed. Then not only is the Nash equilibrium in a regime where there is no legal prohibition on sexual harassment Pareto sub-optimal but it is Pareto dominated by a regime where sexual harassment is prohibited.

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choosing to work for a firm that pays a lower wage but guarantees no harassment or it could denote being unemployed.

[18] This game has some structural similarity to what was described as 'Escher's Waterfall' game in Basu (1994).

Hence, if we were deciding on whether to prohibit sexual harassment or not, by using *any* social welfare criterion which happened to be Pareto inclusive, we would prohibit sexual harassment. Of course, if, starting from such a prohibition, we allowed one odd-numbered agent to sign a harassment contract, we would achieve a further Pareto improvement; but if we started this 'opportunistic' adjustment of the law to allow for 'exceptions' whenever such an exception resulted in a Pareto improvement, we would end up in a state which is Pareto inferior to what would prevail in a regime of a total prohibition. This is a paradoxical sounding result but it is germane to the construction of a principle for banning sexual harassment and some other labor market practices, such as exposure to excessive hazards.

3.3 Judgment by Social Welfare Function

In the previous section I spoke of policy interventions and the Pareto criterion, without explicitly invoking the notion of a social welfare function (SWF). At one level, this causes no problem because there does exist a Pareto-inclusive SWF for which all the remarks made in section 3.2 are valid. The trouble arises as soon as we try to throw in some other reasonable axioms that we expect an SWF to satisfy. In this section I shall investigate the possibility of using an SWF that satisfies the Pareto and anonymity axioms. We know from earlier works (see, for example, Diamond, 1965; Segerberg and Akademi, 1976) that these axioms can easily run into inconsistencies. However, it will be shown here that there does exist an SWF that satisfies some minimal versions of these axioms and under which the large numbers problem can arise.

Using the same motivation as in section 3.2, note that $\{r_j\}_{j \in N}$ is a possible sequence of welfare as long as $r_j \in u_j(\Delta)$, for all $j \in N$. Let Ω be the collection of all possible sequences of welfare. Then a SWF, W, is a mapping

$$W: \Omega \to \Re.$$

Given two vectors, r and r', I shall write $r > r'$, if $r_i \geq r_i'$, for all i, and $r_j > r_j'$, for some j; and write $r >> r'$, if $r_i > r_i'$, for all i.

The next property states the standard Pareto axiom.

Property 3 (Pareto): For all $r, r' \in \Omega$, $r > r'$ implies $W(r) > W(r')$.

It is easy to show that there exists a game satisfying Properties 1 and 2 and a SWF satisfying Property 3. Suppose that individual utility functions are given by (11) and the SWF is defined as follows:

$$\text{For all } r \in \Omega,\ W(r) = \sum_{t=0}^{\infty} \delta^t r_{t+1}, \text{ where } \delta \in (0,1).$$

Hence, we have a game and an SWF satisfying Properties 1-3, thereby establishing the possibility of the large numbers problem.

One problem with the SWF just specified is that it does not treat all individually equally. Since person 1's utility is multiplied by 1 and 2's utility by $\delta(<1)$, a change in person 1's utility has a larger impact on social welfare than person 2's and much larger than person 100's. An SWF with such interpersonal inequity is not very attractive. What we should minimally require is the property of finite anonymity.

Property 4 (Finite Anonymity): If $r,\ r' \in \Omega$ are such that there exists a finite set S N and a permutation function, : S$\rightarrow$ S, so that for all j$\in$N-S, $r_j = r'_j$ and for all $i \in$ S, $r_i = r'_{i(\ )}$, then $W(r) = W(r')$.

Finite Anonymity is equivalent to Diamond's (1965) axiom of "equal treatment for all generations". When summing over infinite streams this assumption turns out to be very strong, easily yielding impossibility results. This has been known for a long time. What I will do here is to pare down the Pareto axiom to something more minimal (essentially, just what I need to sustain the large numbers argument) and then demonstrate existence.

Property 5 (Weak Pareto): For all $r,\ r' \in \Omega$, if $r \gg r'$ or there exists a finite set S N such that for all $j \in$S, $r_j = 1$ and $r'_j = $ o, and for all $i \in$N-S, $r_i = r'_i$, then $W(r) > W(r')$.

The question we are interested in is whether there exists a game satisfying Properties 1 and 2 and a SWF satisfying Properties 4 and 5. Note that the question of the

existence of such a game and the existence of an SWF are connected by the fact that it is the game that determines the domain, Ω, of the SWF. The answer to the above question is yes.

To prove this first consider a game in which the player's payoff function is defined by (11) and, further let $l + g_i(0) = 0$, $l + g_i(1) = 1$, $h + g_i(0) = 2$ and $h + g_i(1) = 3$, for all $i \in N$. Hence the domain of the SWF, $\Omega \equiv \{0, 1, 2, 4\}^N$. The game just described satisfies Properties 1 and 2. What remains to be proved is that there exists a SWF on $\{1, 2, 3\}^N$ satisfying Properties 4 and 5. The next lemma, which is a direct corollary of a result proved in Basu and Mitra (2002) establishes this and thereby completes the proof of my claim.

Lemma: There exists a SWF, W: $\{0, 1, 2, 3\}^N \rightarrow \Re$, which satisfies Properties 4 and 5 (i.e., finite anonymity and weak Pareto).

What happens to the existence result if we strengthen the weak Pareto axiom (Property 5) to the full strength Pareto axiom (Property 3)? It is shown in Basu and Mitra (2002) that we get a non-existence result, even without requiring the SWF to fulfill any continuity property as was imposed by Diamond (1965). However, the non-existence happens to be a consequence of the real-valuedness property of the SWF. If instead of a SWF we seek a social welfare *relation*, that is, a binary relation, R, on Ω (representing "socially as desirable as"), which is complete, reflexive, and transitive, then the existence problem disappears (Svensson, 1980). In other words, the well-known problem of reconciling Pareto and Anonymity arises because of the representability property of SWFs. Once we drop that representability requirement these axioms turn out to be mutually compatible. A more detailed enquiry into the compatibility of anonymity and different variants of the Pareto axiom is undertaken in Basu and Mitra (2002).

In sum, we have established the technical validity of the large numbers argument, thereby providing a formal foundation to some of the claims made by Parfit (1984). All this is, however, established when the number of potential contracts is assumed to be infinite.

4. Games with Quasi-Transitive Preference

It was demonstrated in Section 3 that the moral status of each single act or contract may be different from the moral status of a class of such acts or contracts. Some may however object to this demonstration on the ground that it was based on the existence of an *infinite* number of potential contracts. Indeed some may consider the realism of the economist's model of competitive general equilibrium to be suspect because of the assumption that the action of each individual has no effect on market variables, such as prices, but the action of a collection of individuals does have an effect.[19]

It will be argued here that the problem of infinity is avoidable if we relax the usual assumption of human preferences being transitive and allow individuals to have quasi-transitive preference, instead. A person's preference is said to be 'quasi-transitive' if, whenever he prefers x to y and prefers y to z, it is also the case that he prefers x to z. The important aspect in which transitivity of preference differs from quasi-transitivity is that the latter does not require the indifference relation to be transitive. Hence, a person with quasi-transitive preference may be indifferent between x and y and between y and z but prefer x to z.

Though most social scientists are trained to believe otherwise, a little introspection shows that the transitivity of indifference is a remarkably unrealistic assumption.[20] Most people will be indifferent between a cup of coffee with 1 grain of sugar and a cup of coffee with 2 grains of sugar; and, more generally between a cup with n grains and a cup with n + 1 grains. But they will not be indifferent between n grains and n + m grains, when m is sufficiently large.

Recognizing this is a good way to reconcile two standard assumptions of the competitive market model, namely, that an individual's action does not affect another person's welfare and that the actions of a collection of individuals may well effect the welfare of someone not belonging to this collection.

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[19] For an interesting discussion of the philosophical basis of this assumption, especially its relation to methodological individualism, see Arrow (1994). Philosophical objections to the use of infinity to model 'large number' was stressed to me by David Lewis (personal communication dated January 15, 1990).

I shall however here use the assumption of quasi-transitivity not in a competitive model but in a game model.

Return to Section 3.2 and all the way to the definition of a strategy tuple. But now assume, first, that the set of players is $\overline{N}$ and this is finite and second that, instead of a utility function, individuals are endowed with preference relations. Let $\#\overline{N} = k$ and $\overline{\Delta}$ be the collection of all k-tuple of strategies. Hence, $(x_1,....,x_k) \in \overline{\Delta}$, where $x_i \in \{0,1\}$.

Formally, every player $i \in \overline{N}$ is endowed with a binary preference relation $\succsim_i$ on $\overline{\Delta}$. That is, $\succsim_i \subset \overline{\Delta} \times \overline{\Delta}$ and $(x,y) \in \succsim_i$, which may also be written as $x \succsim_i y$, is to be interpreted as 'player i finds strategy tuple x to be at least as good as strategy tuple y. For notational simplicity I shall, henceforth, denote the symmetric and asymmetric parts of $\succsim_i$ by, respectively, $\sim_i$ and $\succ_i$. It is assumed throughout that, for all $i \in \overline{N}$, $\succsim_i$ is reflexive ($\forall x \in \overline{\Delta}$, $x \succsim_i x$), complete ($\forall x, y \in \overline{\Delta}$, where $x \neq y$, $x \succsim_i y$ or $y \succsim_i x$) and quasi-transitive ($\forall x, y, z \in \overline{\Delta}$, $x \succ_i y$ and $y \succ_i z$ implies $x \succ_i z$).

For all $i \in \overline{N}$, let us use $D_i \subset \overline{\Delta} \times \overline{\Delta}$ to denote the set of all pairs (x,y) which are 'i-variants'. That is, $(x,y) \in D_i$ if and only if $\forall j \neq i$, $x_j = y_j$.

Now, we are ready to impose some properties on individual preferences.

Property 6. If $(x,y) \in D_i$ and $j \neq i$, then $x \sim_j y$.

This simply formalizes the standard assumption of no externality in competitive markets. That is, whether or not i signs a harassment contract, person j ($\neq i$) perceives no welfare change for herself. Property 6 is the counterpart of property 1 in the absence of a utility function.

Next consider:

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[20] There is a small literature that points this out. See, for instance, Armstrong (1951), Majumdar (1958).

Property 7. There exist an integer $n > 1$, $i \in N$ and $\{x^1, x^2, \ldots, x^{n+1}\} \subset \overline{\Delta}$ such that,

$\forall \, m \in \{1, \ldots, n\}$, $(x^m, x^{m+1}) \in D_j$, for some $j \in \overline{N} - \{i\}$, where $x_j^m = 0$, $x_j^{m+1} = 1$, and

$x^1 \succ_i x^{n+1}$.

     If $\underset{\sim \, i}{\succ}$ were transitive Properties 6 and 7 would not be compatible; but the quasi-transitivity of $\underset{\sim \, i}{\succ}$ makes the two properties compatible in an obvious way.

     What property 7 says is that if a large number of people sign harassment contracts this can cause a perceptible difference for the worse in the economic environment for some individuals i. A demonstration of this in a standard economic model occurred in Section 2.

     Let us now analyze the possible outcomes of this 'game'. I write 'game' within inverted commas to remind the reader that these are games with no payoff functions but binary preference relations over the outcomes, where the preference relations are reflexive, complete and quasi-transitive. There is a substantial literature in economics on aggregating quasi-transitive individual preferences (see, for instance, Sen and Pattanaik, 1969; Pattanaik, 1970; Fishburn, 1970). But there is very little on 'games' with quasi-transitive individual preferences.

     To see the kind of results we can get, consider the case where $k = 3$ and property 7 is true for $n = 2$. In addition to Properties 6 and 7, assume the following is true: For all $i \in \overline{N}$, if $(x,y) \in D_i$, and $x_i = 1$, $y_i = 0$, then $x \succ_i y$.

     In this 'game', the Nash equilibrium is clearly given by $(1,1,1)$. However, we can think of individual preferences compatible with Properties 6 and 7, which imply that each individual prefers $(0,0,0)$ to $(1,1,1)$. Let us assume that this is the case. Then $(0,0,0)$ Pareto dominates $(1,1,1)$. Hence, if a government committed to the Pareto criterion has to choose between a law disallowing sexual harassment and no such law, it should opt for having such a law.

     Suppose such a law is in place and so the outcome is $(0,0,0)$. It is easy to see (by Property 3) that $(1,0,0)$ is Pareto superior to $(0,0,0)$; $(1,1,0)$ is Pareto superior to $(1,0,0)$; and $(1,1,1)$ is Pareto superior to $(1,1,0)$. Hence, this game has no Pareto optimal

outcome. Therefore, we no longer have a compelling case that if a change is a Pareto improvement, it must be allowed. By the Pareto improvement criterion we would never reach a conclusion.

One way of overcoming this problem is to override consumer sovereignty and work with what may be described as each consumer's 'subliminal preference', that is, an ordering which may be thought of as the 'true' preference underlying a person's *self-perceived* preference, that is, the preference that we have been talking about all this time. More formally, given a person's (self-perceived) preference relation, , the set of possible subliminal preferences that could have generated is defined by

S( ) = {R R is an ordering such that, for all x, y, x y xPy},

where is the asymmetric part of and P is the asymmetric part of R.

Since S( ) implies that is an ordering, the (self-perceived) preference relations that we have been considering above cannot be subliminal. Now, if we maintain that social decisions ought to be based on individuals' *subliminal* preferences, then in the above example the Pareto deadlock gets broken. It is now easy to see that in the above example, given individual preferences as described, the only outcome that cannot be Pareto optimal under any subliminal preference triple (that is, for the three players) is (1,1,1). If in addition we prefer to treat players symmetrically, the game being fully symmetric, the preferred outcome must be (0,0,0), justifying once again a ban on harassment, even though consenting adults may knowingly want to sign harassment contracts. It is however, worth emphasizing that this entails over-ruling consumer sovereignty, that is, the expression of individual preferences as perceived by the individuals themselves.

Finally, this game also illustrates the conflict between act-consequentialism and rule-consequentialism. Consider the above 3-player game, and assume that a moral agent, committed to any Pareto-inclusive consequentialist ethic has to recommend each player's choice of action or strategy. If this moral agent were an act-consequentialist, he would recommend to each agent seeking his advice that she choose action 1 over 0. Hence, the social outcome will be (1,1,1).

However, suppose the moral agent, using the same moral principle as the above one but committed to *rule*-consequentialism, has to opt between the following two rules.

Rule 1: Whenever a person faces a choice between signing a sexual harassment contract (action 1) and not signing it (action 0), she should choose action 0. Rule 2: Whenever a person faces a choice between action 1 and action 0, she should choose action 1. Clearly, he will opt for Rule 1. Hence, the social outcome will be $(0,0,0)$.

Since $(0,0,0)$ is strictly Pareto preferred to $(1,1,1)$, the above example shows that not only does rule-consequentialism differ from act-consequentialism but it can lead to a Pareto-superior choice. It is noteworthy that the argument for banning certain voluntary transactions is here founded in consequentialism (albeit rule consequentialism). There is no resort to deontological ethics as such arguments often are.

5. Labor Standards and Obnoxious Markets

The large numbers argument, developed above, has ramifications beyond sexual harassment. It is a general principle why we may want to ban or tax certain kinds of economic activities and voluntary exchanges.[21] The standard justification used by economists to prohibit certain activities is to point to their negative externalities. The large numbers argument is one that can be used in cases where there are no negative externalities *in the conventional sense.*

The purpose of this section is to illustrate other areas where the large numbers argument applies. This should also help caution us where it does *not* apply. Any theoretical principle is prone to misuse in practice. Take, for instance, the case of externality as a justification for intervention. Since in reality there is virtually no activity which has no externality, if we are looking for a pretext for intervention, we can always refer to the externality argument. Similar risks lie ahead for the large numbers argument. So in devising policy one has to combine theory with the criterion of reasonableness.

A debate that has spilled out of academic journals to newspapers and magazines is one concerning labor standards and rights. Should we legislate for minimal labor standards? For instance, should we prohibit long hours of work? Should we mandate

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[21] See Kanbur (2001) for a discussion of 'obnoxious markets', where, despite the exchange being voluntary, there is widespread social opinion against the exchange being allowed. One difference between his

that workers must not be exposed to excessive hazards? Or should we leave these as matters between an employer and an employee? After all, if a worker is willing to work in an hazardous environment because he finds the high wage to be adequate compensation, and the employer finds it worthwhile to pay the high wage, it is not clear why the Occupational Safety and Health Administration should stop this, specially since this transaction between worker i and employer j does not seem to have any obvious negative externality on others.

In checking whether the argument developed in this paper applies, note first that there is indeed an analogy between working in an hazardous environment and working in an office where the employer sexually harasses one without seeking any quid pro quo ('hostile environment', in legal parlance). A single contract has no externality but if a large number of such contracts are allowed, then it may well cause changes in the market wage structure, which hurts some workers. It is easy to write a model, very similar to the one in Section 2, to demonstrate this.

But this alone does not complete the case for intervention. This merely shows that the positive part of the case is valid. There is still the normative part to consider.

What we have established (or, more precisely, can easily establish) is that if workers are allowed to sign contracts to expose themselves to excessive hazards, then workers who are strongly averse to facing such hazards will be worse off. This is because (as in Section 2) some of these workers will now be forced to work in especially low-paid jobs just to ensure no hazards and some workers will work for hazardous jobs but prefer a regime where hazardous jobs are legally ruled out and so the average market wage that comes to prevail is somewhere in the middle of the range of wages that prevail in a market where there is no such law and so wages vary depending on the jobs' hazard tags.

The normative question now crucially hinges on whether we consider a person's preference for not exposing himself to occupational hazards to be an inviolable preference. Like any normative principle there is no right or wrong answer to this. It is likely to vary across societies and over time. It is however arguable that in the

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argument and mine seems to be that he is willing to forego the Pareto principle in some extreme situations,

contemporary world most people would agree that a worker should have the right to prefer not to expose himself to very high levels of hazard and, moreover, no one should have to pay a price for having such a preference.

It is not clear that a similar argument applies to some of the other commonly-discussed labor standards. In brief, the position being taken here is that there are certain labor standards which ought to be upheld by government, but not all the ones commonly recommended.

This does not necessarily mean that globally-enforced international labor standards are warranted. One may legitimately have reservations against such a policy.[22] Even though there may exist an ideal set of such labor-standards intervention, the fact of actually empowering an institution to carry this out is likely to have ramifications which are unwanted. For one, unless such an institution is democratically structured and properly monitored (and, at times, even then) it can be hijacked by powerful lobbies and nations to serve their limited interest. In brief, the existence of an ideal intervention does not automatically translate into a case for intervention.

There are many other areas where individuals and groups have argued for government intervention. One such area concerns trade in body parts. Should a poor man in Turkey or India be allowed to sell his kidney to a rich person in Israel or the U.S., who needs a kidney and has the money to pay for it?[23] This is a mutually advantageous exchange, but many serious writers have recommended against allowing such trade. To them this is an obnoxious market. To allow such a transaction is to offend human dignity (see, for instance, Munzer, 1994).

Yet it does not appear that the argument developed in this paper applies to trade in body parts. Even if such trade is allowed in general it is not clear that a class of people become worse off as a consequence. And, even if by some convoluted argument they do, it is not evident that any of their individual preference is compromised in the process. Hence, the large numbers argument does not apply to such trade. The indignity occurs in the fact of there being so much poverty that some people feel compelled to sell their body

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whereas I violate the Pareto principle only when it is logically impossible not to do so.

[22] For the expression of such reservations, see Bhagwati (1995).

parts. That people actually sell their body parts is a mere manifestation of this systemic indignity. The indignity may cease to hit us in the face if such trades are not allowed. But they do not go away by virtue of this. In sum, if people are so poor that they need to trade their body parts, then we should encourage policies to remove the poverty but not ban the trade. If people are not so poor and trade their body parts because they do not adequately value them, then again there is no reason for the law to ban such a trade.

In general it seems to me (and this is mere conjecture) that the large numbers argument will not apply unless there is an interlinked transaction involved. Hence, it applies to sexual harassment since this involves an interlinked contract for work and sexual conduct, but not to prostitution, which entails a trade in sex alone; it applies to work hazard (which invariably comes tied to work) but not to bungee jumping or selling kidneys.

6. Legislating Against Workplace Harassment

We are now in a position to return to the subject that I started out with: legislating against sexual harassment in the workplace. We have seen that there is a case for banning sexual harassment even when this is based on voluntary contract or happens when a firm's reputation for harassment is so widely known that a worker joining the firm does so being fully cognizant that she will be sexually harassed. And this case for a ban can be based on standard economics, founded in Paretianism and respect for individual freedom. However, this 'economic perspective' on legislation comes with its own suggestion for the kind of law that ought to be used to control harassment in the workplace. And that is the subject matter of this section—to elaborate on this suggestion.

Some of the earliest and most progressive legislation on sexual harassment in the workplace took place in the United States; and so, not surprisingly, the American model has influenced legislation worldwide. The key to the US legislation is to view sexual harassment as a form of discrimination, to wit, gender discrimination. Title VII of the Civil Rights Act of 1964 prohibits gender-based discrimination in the workplace. Over

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[23] This is exactly the question raised (and its accompanying moral implications discussed) in an absorbing

the years, influenced by the pioneering work of Catherine Mackinnon (1979), the US courts have come to view this as the appropriate legislation to punish sexual harassment in the workplace. A similar view is reinforced by the United States Equal Employment Opportunity Commission (EEOC) Guidelines, published in 1980 (see Lipper, 1992; Schultz, 1998; for discussions). The main contribution of the EEOC Guidelines was to emphasize that a hostile sexual environment was a culpable form of sexual harassment. While the EEOC Guidelines is not binding on the federal courts, it has been influential in shaping American case law. The celebrated *Bundy v. Jackson* case, 1981, for the first time recognized 'hostile environment' as sexual harassment and the EEOC Guidelines were influential in this. In *Bundy*, a female employee of the Department of Corrections, Washington, D.C., was repeatedly invited by her supervisor and asked to describe her sexual experience. Another supervisor had invited her to a motel and to go with him to the Bahamas. When she complained about this to a senior manager, he took it lightly saying that the feelings of the two supervisors were understandable. The court upheld Bundy's charge that the innuendo and implicit threats created an intimidating and hostile atmosphere, and were unlawful, *even though she had not suffered any tangible losses*, such as the withholding of salary increments or promotion. The court recognized that to rule otherwise would be to give harassers the opportunity to harass up to the point just short of firing or withholding benefits from the harassee.

The landmark case concerning sexual harassment was, however, that of *Meritor Savings Bank v. Vinson* in 1986. In this case, Vinson, a trainee-teller, was propositioned repeatedly by Taylor, Vice President of Meritor Savings Bank and Branch Manager. After refusing initially, she agreed out of fear of losing her job, and was, over a period of four years, subjected to repeated sexual relations, forcible rape and continuous minor harassment. The court ruled in her favor, for the first time citing Title VII of the Civil Rights Act and recognizing Taylor's behavior as a form of sex discrimination. In this case and in an umpteen number of cases since then Title VII has worked well.

essay in the *New York Times Magazine*: see Finkel (2001).

Other countries have followed suit[24]. Britain's Sex Discrimination Act of 1975 closely parallels U.S.'s Title VII. This act recognizes sex discrimination to be unlawful and recognizes that discrimination occurs if a person treats a woman less favorably than he treats or would treat a man. In India, thanks to feminist activism, sexual harassment is for the first time being recognized as unlawful and some women are bringing charges that they would not have dared to even a few years ago (Taneja, 2001). Needless to add, there is still a lot of silent suffering and a lot of ground to be broken. In India most of the anti-discrimination provisions occur in the nation's Constitution, which, according to Nussbaum (2001), "is a more woman-friendly document that that of the U.S.". But as she rightly points out, "India is a relatively anarchic nation […], where many admirable legal guarantees have little chance of being even minimally enforced". The law in India has a serious problem in that, while the nation has a uniform code of criminal law, it has no uniform civil law code, the civil law being characterized by special provisions for different religious groups. This has made it very hard to use civil law to punish sexual harassment. The overwhelming tendency therefore is to use the criminal law, even when that may not be the most appropriate instrument. Interestingly, however, in India, thanks to the progressive Constitution, and precedence in other nations such as the U.S and Britain, sexual harassment is increasingly recognized as a form of sex discrimination.

I would, however, like to argue that this tying up of sexual harassment with sex discrimination, though it has played an important role historically, is now becoming hindrance. While there should be strong laws to prevent discrimination and strong laws to prevent harassment, if it became the case that to establish harassment we would have to invariably take the route of demonstrating that it was a form of discrimination, then this would be unfortunate. And there is evidence that this is beginning to happen.

In the U.S. there is increasing evidence that there is a significant amount of same-sex harassment and in such cases the existing sexual harassment law does not provide adequate protection to sufferers and, when it does, it is only because judges and lawyers collectively interpret the law according to its likely intent rather than what it actually says. The ambiguity in the law was so confusing that in 1998 the U.S. Supreme Court

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[24] A comprehensive account of sexual harassment law in different nations occurs in Husbands (1992).

ruled explicitly that Title VII should be viewed as including same-sex harassment and so should provide protection to those subjected to same-sex harassment. This is because "sexual harassment" should be considered "discrimination because of sex" and thus it did not have to occur across the gender boundary.

This still leaves open the problem of the boss who harasses both men and women with equal vigor and thus does not harass anybody because of his or her sex[25]. But even apart from this there is another problem that was exemplified by the case reported some time ago in the **New York Times** (Abelson, 2001), concerning Mr. Medina Rene, an openly-gay hotel employee, who lost his case against MGM Grand Hotel in Las Vegas in an appeal before the U.S. Court of Appeals of the Ninth Circuit. Mr. Rene, 48, who had worked there as a butler for two years was continuously harassed by co-workers, being pinched and being subjected to inappropriate physical contact and horseplay. Mr. Rene's complaint to the hotel seniors resulted in no action and so he took the matter to the court. But the court ruled that Mr. Rene's harassment was not based on his *sex* but on his sexual *orientation* and so was not covered under Title VII.[26]

According to the same **New York Times** article, reporting from EEOC data, men's claims now account for 13.5% of all sexual harassment charges. And clearly, the coupling of sexual harassment with sex discrimination does not do a good job in protecting people in such cases.[27]

It is interesting to try to understand why the coupling (which is taken so much for granted these days[28]) occurred in the first place. Sexual harassment cases, as already noted, are usually divided into two kinds—those based on *quid pro quo* (when benefits are threatened to be withheld if sexual favors are not granted) and those based on hostile environment. The latter, being more intangible, had historically been ignored and often

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[25] See Paul (1990) and Epstein (1985) for discussion of this problem. For a sensitive account of cases that do not fit comfortably into the categories for which Title VII was designed or at least originally deemed but are nevertheless important, see Abrams (1994).

[26] To be considered a case covered under Title VII the plaintiff is required to fulfill the "but for" requirement. That is, the plaintiff has to show that he or she would not have been treated the way he or she was *but for* the plaintiff's sex.

[27] As Paul (1990, p. 335) argues, the existing law "injects an ideological bias against men".

[28] Here is Farley's (2001, p.30) definition: "Sexual harassment is best described as unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as worker". Clearly she takes the gender roles for granted and this is by no means an uncommon practice.

left sufferers with hardly any legal recourse. As in the *Bundy v. Jackson* case, discussed above, there were often no clear injuries to hold harassers culpable under tort[29]. To view sexual harassment as a form of sex discrimination became the avenue of choice for ensuring that those who inflicted harassment by simply creating an hostile environment could be punished[30]. That is when the recognition that sexual harassment is a kind of sex discrimination and therefore can take subtle, non-demonstrative forms, began to play an important role. In England, for instance, before the Sexual Discrimination Act, came into force, a victim of harassment would have to first resign from her work, and then (using that cost as tangible evidence) bring a charge that could be upheld in court.

It is true that these deficiencies needed to be corrected and the advantage of interpreting sexual harassment as discrimination was that it provided an avenue for correcting this. But once hostile environment is recognized as a wrong, it is not clear why it should not be considered wrong *per se*, that is, even when it is not a case of sex discrimination. Especially for countries that are now in the process of legislating against sexual harassment, it seems what is essential is that the law recognize both *quid pro quo* harassment *and* hostile environment harassment as punishable. Further, there is no reason to require this to be punishable only when its occurrence can be shown to be a form of sex discrimination. The coupling with sex discrimination was the scaffolding which enabled us to construe better what constituted sexual harassment, but now that that function has been achieved there is no reason why we should persist in having the scaffolding. The new law on sexual harassment should consider punishable not only harassment that occurs from discrimination, but also non-discriminatory harassment.

What the economic approach to sexual harassment suggests is that the reason to legislate against workplace sexual harassment is to prevent the pain of sexual harassment from being inflicted on employees. The motivation that leads the harasser to inflict this pain is not important. We may want to have separate legal provision for harassment that is motivated by discrimination, since this is such a pervasive phenomenon, and also because we may want to punish both the harassment and the discrimination. But it would

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[29] As Lipper (1992, p. 301) pointed out, in the past, "while a woman who had been physically assaulted, i.e. grabbed, touched or kissed, might have prevailed under tort theories, one who had been the object of sexual jokes would be unlikely to be compensated for her resulting anguish".

be wrong and inadequate to confine the scope of bringing harassment charges only to cases where the harassment is prompted by discrimination.

One may try to critique the 'economic approach' by asking if it is being suggested that, for instance, a torturer's joy from torturing should be considered to have the same moral status as say a moviegoer's pleasure in watching a new film. Should both enter the SWF as ingredients on the positive side? The answer seems to me, interestingly, to depend on the nature of the SWF. If it is a utilitarian SWF, then the answer is no. A utilitarian SWF entails interpersonal comparisons[31], and when we make interpersonal comparisons, we may have reason to scale up or down a person's utility depending on what happens to be its mainspring. But that does not seem to be significant when we are considering Pareto improvements. In such a case, if the torturer's pleasure from torturing was so much that he could *and did* compensate the tortured, so that the tortured preferred to be tortured rather than not, then it is not clear what moral basis one can have in objecting to this. Watching acrobats perform dangerous feats, having foot-massage, and at times even watching a good comedy, can have similar features. The performer dislikes the activity *per se*, but the total package of the activity plus the compensation is worthwhile. Of course, with many such activities, it is regrettable that there may be such large income differences that one person is *able to* compensate another for her pain, but given that that is so, the exchange in itself should not be deemed wrong. If the banning of such exchanges can reasonably be expected to bring about a whole new outcome, where there are not the inequities of this society, then this becomes another matter, and the ban may be justified. And that would be entirely in keeping with what is being advocated in this paper. It is a special case of the large numbers argument.

One may at this stage consider the case made in Superson's (1993) influential paper for strengthening the 'sex discrimination' interpretation of sexual harassment. She expresses dissatisfaction with the existing law, but a different kind of dissatisfaction from the one expressed in this paper. Her claim is that every instance of sexual harassment is demeaning for *all* women: "The main problem in my view is that the law, reflecting the

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[30] See Juliano (1992) for a discussion of the history of the 'hostile environment' claim.
[31] It entails, in fact, interpersonal comparisons of a very specific kind (see Sen, 1970).

view held by the general public, fails to see SH [sexual harassment] for what it is: an attack on the group of *all* women, not just the immediate victim" (p. 49).

One problem with this argument is that it is not clear why an attack on a single woman is to be viewed as an attack on all women, and not on all moral beings? And if this segmentation is really intentionally based on some notion of identity, what happens to a black gay man who is sexually attacked? Should it be construed as a hurt to all men, all gay men, all black gay men, all black men … ? My response is to think of these as shared affront to all moral beings. Superson's case is predicated on her opinion (p.51): "In my view some forms of SH are related to violence, and they *all* express inferiority whether or not they express hatred." This sentence may be interpreted either as a definition of or a theory concerning SH. In either case, it has weaknesses. If we define SH as harassment that stems from a feeling of contempt towards the harassee, then many cases of harassment will escape notice of the law, just because they do not spring from such a feeling. If, on the other hand, we interpret Superson's remark as a *theory* regarding the psychological basis of harassment, then it is not too persuasive. People have been known to harass and stalk out of feelings of love and even 'worship' towards the harassee. The effect on the harassee is however the same, no matter what prompts the harassment, and so such behavior should be considered illegal.

What is interesting about her argument is the sense in which harassment may affect others who are not directly in the line of fire. She talks of social mechanisms whereby one person's victimization affects others. In this paper we have already seen how this can also happen through the workings of the market. In fact what we saw goes further, because in our model this can happen even when there is no victimization in the sense that the harassment contract was freely accepted by both sides. This 'economic' approach takes us to a new critique of existing sexual harassment laws. It helps us understand that the existing interpretation of sexual harassment, which includes 'hostile environment' and other subtle forms of 'atmospheric' oppression, may not be going far enough. The existing legal provisions are not cognizant of the suffering of those who are not harassed because they may have taken otherwise inferior jobs where there is the assurance of no harassment. In a world where harassment is allowed, many people will naturally take the precaution of such 'safe jobs', often at a perilous price. They cannot

seek compensation under existing sexual harassment laws, because they are not harassed physically *or even environmentally*. But they nevertheless pay a price[32].

Hence, surprisingly, the economic approach takes us, in some ways, to a more radical conclusion, a more widespread interpretation of what constitutes the harm of sexual harassment. Moreover, it gives us a uniform instrument for analyzing other kinds of labor market problems, such as occupational safety, child labor, and labor rights and standards in general, allowing us to check the validity of the case for intervention in each of these cases in terms of a common analytical yardstick.

Let me end by commenting on a new problem that is hampering the progress of law in this field. Even as efforts continue to strengthen the laws to protect workers from sexual harassment, there is one problem that is threatening to blunt some of the existing legal provisions. This is the use of the First Amendment by defendants in sexual harassment cases. This is a natural concomitant of considering hostile environment as a reason for bringing harassment charges. At times the hostile environment includes speech acts, such as sexually abusive remarks, or the display of sexually explicit material which may leave one particular group feeling uncomfortable in the workplace. In such cases, initial effort by defendants to seek protection behind the First Amendment were dismissed by the courts. But this is changing rapidly with the courts beginning to entertain more and more such defence and this runs the risk of weakening, in effect, the protection of individuals from hostile-environment harassment in the workplace (Schauer, 2001). In 1991, in the *Robinson v. Jacksonville Shipyards, Inc.* case, one of the complaints of Robinson, who worked as a welder, was the display of nude pictures, some from **Playboy** magazine, throughout the workplace. In this case the American Civil Liberties Union, after a contentious debate, took a position in favor of the defendant on

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[32] A matter, which needs no radical revision of the law but needs reiteration and also some activism, concerns sexual harassment in jails and prisons. The situation is dismal in virtually all nations—poor and rich. A person's act of entering into a prison is not a voluntary act (by no reasonable and intuitive notion of voluntariness, that is); and once a person is in prison, the scope for self-protection is very limited. I have thus far not discussed the issue of 'vicarious liability'--the employer's liability for the safety of the worker. In prisons, the prison management ought to have an even greater responsibility for the safety of the prisoner, since the prisoner's scope for self-defense is that much limited. We need to make it much easier for prisoners to bring charges against the *prison authority* for sexual and other unfair harassment they may suffer not only from prison guards but also fellow inmates. If the authorities are made to pay large liability

grounds of the First Amendment, and this was one of the early occasions when the court took such a defense seriously. This has inspired some legal thinkers to view the hostile environment clause as a direct attack on the First Amendment[33].

The way to counter this hazard is, first, to recognize that words and pictures can hurt as much as actions and then to delineate limits on what can be said or displayed in the workplace. This will involve some curtailment of free 'speech'; but there is precedence for this.--The First Amendment's literal interpretation has, time and again, been limited by court rulings; that is, free speech already has plenty of legally recognized restrictions (Fish 1994; Basu, 2000). The trouble with this kind of delimiting exercise is that where the line is drawn is difficult to specify in terms of a general principle, since some may find a Modigliani painting as offensive as a **Playboy** nude. So where the delineation occurs will invariably be somewhat arbitrary and may even shift with the times. But if the law is meant to prevent the hurt of sexual harassment, irrespective of the harasser's motive, then we may have to reconcile with the drawing of a line and refuse the intrusion of First Amendment defense beyond that line.

7. A Comment on Coercion

A question that that is bound to have arisen, more readily in the minds of those not trained in economics than to economists, is whether when a worker signs on the dotted line of an employment contract in which the employer retains the right to sexually harass the worker, he/she does so 'voluntarily'. In section 2 we considered the case where employers are allowed to harass workers as long as this is made clear to them at the time of employment. We saw that in such an economy, typically, two kinds of labor contracts would come into existence--those that involve sexual harassment and those that pay a lower wage but guarantee that there will be no harassment. Workers who need

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compensations to those who suffer sexual harassment in prisons, then such acts will decrease. This is a problem of great urgency since the rights of the prisoners are so egregiously violated in most societies.
[33] Schauer (2001, p.6) points out that one reason *Robinson* became such a pivotal case is because it involved **Playboy** and "if there is anything that prompts a reflexive reaction that the First Amendment is involved, it is **Playboy**. It is hyperbole to suggest that the First Amendment would be raised as a defense if [...] a rolled up copy of **Playboy** was used to commit battery—but not much."

money badly, for instance, those who are poor and are single mothers, may take up the former kind of jobs. That was described as a voluntary contract on the part of two consenting adults—the employer and the employee. The question that is now being raised is whether that description, namely, the 'voluntariness' part of it, is right.

I have argued elsewhere (Basu, 2000) that what is voluntary choice is more contentious than mainstream economics makes it out to be. In particular, there are choices which, on the face of it, look voluntary but are really coercive. The main route through which this happens is when one agent has some control over the other's reservation payoff; and the analysis is predicated on society's view of a person's rightful reservation returns. If a landlord can somehow make a worker be worse off for not accepting his job offer than he otherwise would have been, then this could be a form of coercion. In India, when government used to run food-for-work programs, some landlords had lobbied to stop these programs because they raised the worker's reservation utility and so enabled them to turn down the landlord's offer unless the wages were sufficiently high. Steinfeld and Engerman (1998) have argued persuasively[34] how landlords did lobby and use political economy methods, like the imposition of arbitrary taxes, to keep the workers' alternative incomes low, so as to make them more amenable to accepting the landlords' offer. I would argue that an offer accepted under such circumstances may reasonably be described as coercive and not voluntary.

In the case of my sexual-harassment examples too, harassment contracts get accepted by workers because the alternatives are so poor. However, there is no obvious reason to think that the alternatives are made so poor through anybody's or any group's conscious lobbying or activity. Hence, while it is true that such contracts affect workers adversely, there seems to be little reason to call these contracts 'coercive'.

In any case, in the present context, this debate is of no more than semantic value. Whether or not there is agreement about which contracts are to be described as coercive and which voluntary, this debate has little operational significance if the reader is persuaded that the kinds of labor market contracts that the present paper argues should be banned are indeed the kinds that should be banned.

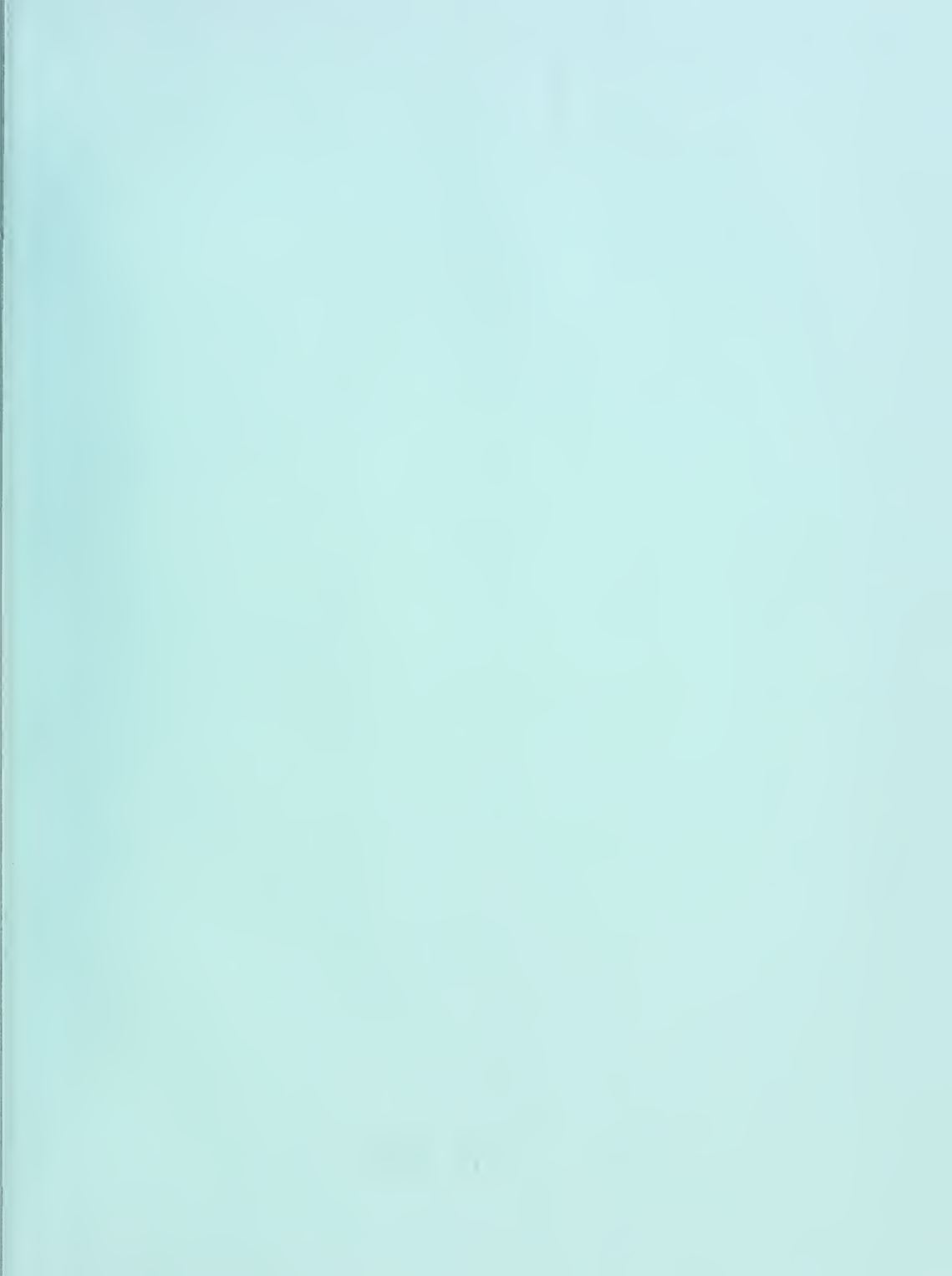[34] Quiggin and Chambers (2000) have formally modeled arguments of this kind.

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Date Due 3/28/03