

Domains Theory and the Rawlsian Social Contract View of the Impermissibility of Sexual Harassment: The Case of Sexual Harassment by Harvey Weinstein

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Abstract: This study examines the sexual predator case of Harvey Weinstein utilizing Erdynast's Domains Theory (Erdynast & Chen, 2014) and a Rawlsian social contract view to analyze the *moral* issues emanating from sexual harassment. Employing four task-domains and fourteen moral developmental levels (or, stages) (Erdynast, Chen, & Ikin, 2016), the paper analyzes pertinent moral issues in a case study of Harvey Weinstein. Weinstein's claim that *all* sexual acts were consensual is starkly contrasted by the 80+ victims' competing claims about his sexual harassment of them, sexual assault, sex trafficking, and rape. Evidence in Domain I – factual judgment – is evaluated to assess whether *all* claimants were acting as free and equal moral persons (Rawls, 1993) as are whether their rights were violated by abuser-protecting laws, statutes and policies. Domain II is the domain of worthwhile interests – in short, conceptions of the good (Rawls, 1993). Using a Rawlsian concept of original position (Rawls, 1971; Rawls, 1999), Domain III – conceptions of justice and right – places a Rawlsian constraint on the pursuit of conceptions of good when such pursuits violate the equal rights of others. Weinstein's initial claim that "all acts were consensual" was an attempt to displace the issues into Domain II – pursuit of joint conceptions of good. This study also examines whether Harvey Weinstein's requirements, that female employees cater to his aesthetic tastes of wardrobe and fragrances – in Domain IV, conceptions of the beautiful – violate Domain III laws and statutes. Kohlberg's 6 stages of moral development are discussed as 14 stages that incorporate Kohlberg's mystical Stage 7 and Rawls' moral development of the love of humankind as supererogatory conceptions of right according to the MJI theory and scoring manual (Colby & Kohlberg, 1987a). Further, Rawls' identification of Vices at the Level of the Morality of Association (Rawls, 1971) and Erdynast's Relational Vices (Erdynast & Chen, 2014) are examined.

Keywords: Domains, Harvey Weinstein, Moral Development, Rawlsian, sexual harassment.

The five discrete cases against Harvey Weinstein for sexual harassment and rape, and the one hundred and twenty-six current accusations in support of those cases, evoked a social response of unprecedented magnitude with cries for justice. In New York, in addition to charges of sexual harassment, Harvey Weinstein, faced a jury trial for rape and other sexual misconduct, and that

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jury found him guilty of rape in the third degree and a criminal sexual act on February 24, 2020.² In March 2020, he was sentenced to 23 years of imprisonment.

A person of global power and influence, Harvey Weinstein certainly represents unrestrained, incomprehensible cruelty towards vulnerable women and girls, but the moment also presents the opportunity for greater scientific illumination and clarity. Through the merged lenses of Domains Theory and Rawlsian Social Contract Theory,³ the nature and ramifications of this extreme behavior may be addressed to illuminate more useful concepts of morality and human development.

Among the disparities in Harvey Weinstein sexual harassment cases arise the question of whether the sexual acts were consensual, or that he “sometimes [don’t] know when it’s consensual” (Twohey & Kantor, 2020, para. 38), or in contrast, whether victims were manipulated, coaxed, cajoled, exploited or coerced. Harvey Weinstein’s accusers have claimed suffering and injury to their careers as a result of his sexual harassment (Farrow, 2017); however, Weinstein publicly denies all allegations of nonconsensual sex. In fact, at the jury’s guilty verdict for sexual harassment and third degree rape, Weinstein responded “But I’m innocent” three times.⁴ Despite his public denial, victims filed subsequent legal suits for damage claims, but those suits have met with obstacles, not the least of which has been the Weinstein Company’s bankruptcy case which enriched the representing lawyers by \$26 million in fees, compared to the \$17 million fund set aside for victims (Maddaus, 2021). In short: Weinstein’s victims have yet to find closure in cases that, for some, recede at least twenty years.

In examining the path toward providing closure for victims, Domains Theory is surprisingly useful to address and resolve several categories of actions. Domain I, factual reality, is necessary to establish that sexual harassment actually took place. Domain II, issues of conceptions of the good and values, is necessary to negate Harvey Weinstein’s claim that all sexual relations were consensual. Domain III, conceptions of the just and right, is necessary to establish that work-place human rights and legal rights were violated. Domain IV, conceptions of the beautiful, wherein aesthetic tastes of the employer violated the legal liberty permissions of the employees.

The attempt to settle sexual harassment claims commenced after a judge found that the investigated claims filed by the Attorney General of Manhattan support settled law. Domains theory is necessary to address and resolve several categories of actions. Domain I – factual judgment – evidence was established that sexual harassment (against which social codes are agreed) had occurred. These violated Domain III work environment laws, codes, and corporate policies. In part, however, the battle between victims and Harvey Weinstein and the Harvey Weinstein Company (HWC) is an effort to ascribe behaviors to various task domains. Joint consensual interests, aims, expressed affections and associational interests are Domain II issues of conceptions of the good (Erdynast et al., 2016) that stand in opposition to Domain III competing claims, justice and right, that violate the free and equal moral persons of some parties. A Rawlsian constraint of the good by the just and right to limit or forbid them (Weinstein’s claims of imagined consensual good), and distinct hierarchical developmental levels, from Level 1 to Level 14, serve

² Full coverage, *The New York Times*, 24 February, 2020

³ Erdynast & Chen, 2017; Rawls, 1971

⁴ Full Coverage, 24 February, 2020

to specify the pertinent issues in the case of Harvey Weinstein (Erdynast & Chen, 2014; Rawls, 1983; Colby & Kohlberg, 1987). Here, Domains Theory has the capacity to separate the elements of Weinstein's behavior within the realm of the social contract in order to preserve the reality in which it exists.

Bringing the Case Against Harvey Weinstein

To date, there are approximately 106 known accusations by women who have publicly claimed that Harvey Weinstein sexually harassed, masturbated in front of, inappropriately touched, forcibly kissed, verbally abused, raped, assaulted, groped, professionally punished, spied on, or systemically silenced them; the list continues to grow (Saad, 2018). Sufficiently so that the former New York Attorney General Schneiderman, presented overwhelming evidence in the civil case charging that Harvey Weinstein and the HW Corporation perpetrated quid-pro-quo sexual harassment on and created hostile environments for female employees and associates. Harvey Weinstein's statement, however, contested that the acts were consensual; while this may have been a desired assertion, it was a fraudulent assertion. Domains Theory presents three fundamental categories of questions that apply. The first type of question is "what happened?" Was the act consensual or was it coerced? In the second type of question, forensic evidential principles apply to the fundamental question of intimidation: If it was a consensual sexual event or relationship, was the sexual event or the sexual relationship a choice freely made? The third question is to determine whether a wrongful conduct occurred, and if so, what category was it: criminally wrong such as sexual harassment, sexual battery, sexual assault or rape?

Hierarchical theories of moral development as proposed by Lawrence Kohlberg ascribe the specified lower behaviors as objectively low levels (Commons & Richards, 1984; Erdynast & Chen, 2014). These preliminary stages of development indicate his lack of moral attunement that matches perfectly with the egoistic behavior Rawls delineates in his social contract view and the impermissibility of sexual harassment.

Weinstein's attempt to settle sexual harassment claims occurred after a judge had found claims filed by the Attorney General of Manhattan supported the allegations of sexual harassment (State of NY AG, 2018) using evidence in Domain I (factual judgment), criminal acts which violated work environment laws, codes, and corporate policies in Domain III (Table I Erdynast & Chen, 2017; Erdynast & Chen, 2014; Erdynast et al., 2016). In part, the battle between victims and Harvey Weinstein and The Weinstein Company [TWC] can be read as the conflict between attempts to ascribe behaviors to different task domains. Joint consensual interests, aims, affections and associational interests reside in Domain II – conceptions of the good (Erdynast et al., 2016) – whereas competing claims regarding justice and right reside in Domain III (Rawls, 1983; Erdynast & Chen, 2017).

Harvey Weinstein behaved as an egoist, an individual consumed by self-interest. Rawls (1971) delineated the inability of the egoist to entertain a concept such as altruism when confronted with the wishes and needs of others. Such apparently is the case with Weinstein. Rawls explicates this difference:

One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say, in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests. (p. 13)

Weinstein more than amply demonstrated his lack of interest in any other person's interests besides his own. To further illustrate, Weinstein exhibited several types of egoism in his alleged sexual harassment (Erdynast et al., 2016).

Table 1. Six common egoisms exhibited within sexual harassment

Free - rider	Everyone is to act justly, except for myself, if I choose not to
First person dictatorship	Everyone is to serve my interests
General Egoism	Everyone is permitted to advance his interests as he pleases
Exclusive Egoism	Others' interests are disregarded or disparaged
Morality of the con man	Gaining someone's trust and persuading them to believe something that is not true
Morality of opportunism	Contractual proviso permitting conditions for sexual harassment

Six distinct egoistic conceptions involved in sexual harassment:

1. **Free rider:** Everyone is to act justly, except for myself, if I choose not to.
 - a. Examples: Harvey Weinstein, Matt Lauer, Les Moonves, Charlie Rose, Roger Ailes.
2. **First-person dictatorship:** Everyone is to serve my interests.
 - a. Illustrative examples:
 - i. Harvey Weinstein, everyone is to serve my will, including Bob Weinstein's admonishment to victims: "You should do everything he says"
 - ii. Sex-trafficking, including menacing and threatening the victims and families with bodily harm if they ever disclose what *actually* happened.
3. **General Egoism:** Everyone is permitted to advance his interests as he pleases.
4. **Exclusive Egoism:** Others' interests are disregarded or subordinated or disparaged. Harvey Weinstein excludes the points of view of 90+ women who claim their rights and liberties were violated; he excludes their suffering from regret, shame and guilt. Weinstein used his immense power in the entertainment industry to directly and indirectly threaten women into submitting to his sexual demands, and as such, they were violated as free and equal moral persons who hold their own conceptions of the good as well as their own conceptions of justice and right.

5. **Morality of the con-man:** Harvey Weinstein invited women to a presumed business meeting which was actually an arrangement for sex, using language such as ‘come to my hotel room for a business meeting,’ but he was clothed only in a bathrobe and asked for a massage or offered one. “Weinstein’s assistants and others served as a “honeypot” – they would initially join a meeting along with a woman Weinstein was interested in, but then Weinstein would dismiss them, leaving him alone with the woman” (Farrow, 2017, “1,” para.6).

Within 14 hierarchical levels of Erdynast and Chen (2014) (formerly 5 levels), free-rider egoism and first-person dictatorship are placed at the lower levels, within or between Levels 1 and 4. Notorious violations include: free-rider egoism, which exhibits abusive power in retribution and ruining others’ careers. It is interesting to note that *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) was the first case of its kind litigating sexual harassment and decided under Title VII of the Civil Rights Act of 1964, although it was adjudicated that economic loss was not required to find for the plaintiff, Mechelle Vinson.⁵ The quest of justice in this kind of activity is relatively recent in settled law.

The point which makes *Meritor Savings Bank v. Vinson* a landmark case is the established code that when two individuals work together, they do not have complete liberty to have a sexual relationship. Settled law now established protection to all parties, mandating that their sexual interests are constrained by ordinances and company policies that specifically prohibit sexual harassment. Reasonable citizens should be aware at this point – some thirty-four years later – that sexual harassment is prohibited by federal, state and city laws, and administrative codes. Ignorance, as Harvey Weinstein has attempted to claim, of mutual consent to engage in sexual activity has complicated the cases against him, but has not prevailed, for the most part. Additionally, the requirement that Harvey Weinstein’s assistants should dress and smell more attractive to him is also impermissible.

Free-rider morality may manifest in several ways. Free-rider morality will likely also manifest in con-man morality, exclusive egoism, and general egoism. Con-man morality was exhibited by Harvey Weinstein in scheduling “business meetings” where he appeared in a bathrobe only, or requested a massage, a joint shower, or to be watched showering. Exhibitions of loss of temper, rage and bullying are to be suspect of characteristics of first-person dictatorship or free-rider egoism, as sub-aspects of types of egoisms. Harvey Weinstein cajoled, badgered, and insisted vulnerable actresses succumb to his will until they relented, providing him with sex, against their interests. His actions clearly demonstrated that Harvey Weinstein deliberately intended to induce intimidation and fear. Weinstein told several employees, in substance, “I will kill you,” “I will kill your family,” and “You don’t know what I can do” (State of NY AG, 2018, para.6). Weinstein touted his connection to powerful political figures and asserted that he had contacts within the Secret Service that could take care of problems, implying Weinstein could generate information that would embarrass, degrade, or in other ways undermine the individual’s professional career at will.

⁵ Ibid.

Weinstein Operates at Low Levels of Moral Development

Certain low-level characteristics – or lack of human empathy attributes – set egoists apart from other individuals operating at higher levels of justice reasoning. For example, egoists do not experience guilt nor shame owing to their egregious behavior, nor do they experience anticipatory guilt nor shame that might prevent their misconduct; they only experience regrets for their losses, for which they proceed to blame others (Rawls, 1971).

Domains theory also captures all behaviors – those conducted at higher level capacities based on moral principles, as well as instances of behaviors that descend to lower-levels, such as creating hostile work environments – violating Level 8, Title VII, Civil Rights Act of 1964 – or *quid pro quo* sex (both examples of Level 2). Finally, there is Level 1 conduct such as sexual assault, rape and sex-trafficking, all examples of the lowest level moral conduct.

Federal judges ruled that all charges filed against Weinstein were valid, based on the factual evidence presented to a grand jury, so it followed that Harvey Weinstein was pressed to defend himself in court, before a jury. By way of the indictment, Attorney General Eric Schneiderman and the federal judges both invoked violations of Domain III liberties, duties, and rights for violating a federal sex trafficking statute, specifically by coercing a young actress to engage in sex acts with him in exchange for a false promise of a movie role (State of NY AG, 2018).

The Four Task Domains

Four task domains are required – all four cognitive developmental, structural task domains – to address the pertinent issues in analyzing the Harvey Weinstein sexual harassment case, though there are other theories about the number of structural domains (Commons & Richards, 1984; Weston & Turiel, 1980). Each task domain represents a distinct set of problems and a distinct set of normative principles. The following articulates each task domain:

- (1) Task Domain I – factual judgment – is based on evidence, including, in this case, forensic evidence analysis, governed by principles of scientific inquiry.
- (2) Task Domain II – conceptions of the good – that is, worthwhile interests, aims, associations and affections governed by the principle of responsibility to self and deliberate rationality.
- (3) Task Domain III – conceptions of justice and right – principles of liberties for the structure of a well-ordered society and the principle of fairness for individuals, incorporating aspects of free and equal moral persons (Rawls, 1993). Domain III, social conception of justice and right, constrains task Domain II, conceptions of the good; it places limits on pursuing one's conceptions of good and forbids transgressions upon the rights of others and/or their conceptions of good.
- (4) Task Domain IV – conceptions of the beautiful – governed by the Kantian principle of subjective universality (Erdynast & Chen, 2014).

Fourteen Hierarchical Moral Levels

To specify the pertinent issues regarding Harvey Weinstein's violations requires 12 distinct hierarchical levels within two task domains of moral development, from Level 2 types of egoism to Level 10 laws and statutes (Erdynast et al., 2016). There are two additional hierarchical levels that are higher for bases of the structures for social justice Level 13 principles of rational intuitionism and Rawlsian social contract principles (Erdynast et al., 2016; Rawls, 1971). The 12 levels that incorporate Kohlberg's 6 stages of justice reasoning – counted as 12 stages that conceptualize each of the half stages as hard structural stages and not merely transitional ones (Colby & Kohlberg, 1987a; Minnameier, 2015). Classically, there are 6 stages in Kohlberg's theory of justice reasoning (Erdynast, 1974). Though rare to elicit stage 5/6 and stage 6 reasoning, some evidence can be found, and in fact, was found when Erdynast interviewed doctoral students in philosophy as well senior executives at multinational corporations (Erdynast, 1974). There are 12 stages or levels (the terms stages and levels can be used interchangeably) based on Kohlberg's theory of Moral Judgment Instrument [MJI] derived from his *Moral Judgment Scoring Analysis Volume II* (Colby & Kohlberg, 1987b). In that scoring manual there is a stage 1, 1/2, 2, 2/3, 3, 3/4, 4, 4/5, 5, 5/6, and 6. When each transitional stage is counted as a hard stage – and there are rules for asserting what counts as a transition stage versus one that has consolidated – e.g. when an adult has expressed stage 3/4 but stays at that level for 20 years, we can consider that a consolidation.

Table 1: Four Domains of Human Development

I	II	III	IV
THE REAL	THE RATIONAL	THE REASONABLE	THE BEAUTIFUL
Conceptions of the Factual Judgment	Conceptions of the Good	Conceptions of Justice & Right	Conceptions of the Beautiful
<i>The Pursuit of knowledge, the understanding of factual reality</i>	<i>Conceptions of the Worthwhile final Ends, Aims, Interests, Attachments to Persons and Associations</i>	<i>The reasonable terms of social cooperation</i>	<i>Contemplation and Fashioning of Beautiful Objects</i>
Level 14			
Original Theory or Findings e.g., Nobel Prize research or advancement of theory in science or medicine	—	Constructivism, e.g. Kant, Rawls Principles of Social Justice and Principle of Fairness for Individuals	—

Level 13			
Transitional or Consolidated	—	Transitional or Consolidated	—
Level 12			
Evaluative Schools of Thought, e.g., FDA	—	Rational Intuitionism Utilitarianism, Classical Utilitarianism, Average Utilitarianism, Ideal utilitarianism, e.g., Moore, Hedonistic utilitarianism e.g., Bentham	—
Level 11			
Transitional or Consolidated	Rational Intuitionism Perfectionism, e.g., Leibnitz Pluralistic Intuitionism e.g., Sidgwick Psychological naturalism, e.g. Hume, Bentham	Transitional or Consolidated	Content-dependent principled conceptions of the beautiful, e.g., Cubism
Level 10			
Schools of Thought	Transitional or Consolidated	Political liberalism and appellate and Supreme Courts	Transitional or Consolidated
Level 9			
Transitional or Consolidated	Principle of responsibility to self; Principles of Deliberate Rational	Transitional or Consolidated	Principled art analysis
Level 8			
Multiple Theoretical Perspectives	Transitional or Consolidated	The national community	Transitional or Consolidated
Level 7			
Transitional or Consolidated	Heightened acuity in intellectual judgments and finer moral discrimination	Transitional or Consolidated	Formal art analysis

Level 6			
Formal Operations: Basic Theoretical Perspective	Transitional or Consolidated	The morality of primary associations involving role responsibilities formed by the approval and disapproval of those in the group	Transitional or Consolidated
Level 5			
Beginning Formal Operations	Concrete Values of Primary Social Groups	Transitional or Consolidated	Cultural views of the beautiful
Level 4			
Concrete Operations	Transitional or Consolidated	First-person dictatorship: Everyone is to serve my interests Free-rider: Everyone is to act justly except for myself, if I choose not to Morality of the Con-man	Transitional or Consolidated
Level 3			
Transitional or Consolidated	General egoism: Everyone is permitted to advance his interests as he pleases Exclusive egoism: Everyone's interests come after mine	Transitional or Consolidated	Egoistic tastes
Level 2			
Pre-logical (Intuitive)	Transitional or Consolidated	Morality of Authority and Paternalism	Transitional or Consolidated
Level 1			
Sensori-motor	Subsistence, Support	Coercive Power	Pre-aesthetic

Instances of behaviors descending to lower levels is evidenced by Level 2 egoistic conduct, such as creating hostile work environments, which violate Level 8, Title VII, Civil Rights Act of 1964 legislation. It is a hostile work environment to subjugate women's conceptions of beauty to Weinstein's egoistic Level 2 conceptions of the beautiful – Domain IV – based on *his* preferences; *such as* prescribing how the women ought to look, the fragrances they should wear, and the style of their attire. Under the Rawlsian constraint of just and right, such acts are not permissible and

violate those women's rights and liberties. Harvey Weinstein has since been expelled from Level 8 professional associations, including The Producers Guild of America, The Screenwriters Guilds and The Directors Guild of America (Rawls, 1971). These associations expect CEOs and other executives to function at Level 4 in Kohlberg's theory of justice reasoning. It is scandalous, shocking and surprising when people, whose peers expect them to have higher level capacities to govern their own behavior, demonstrate actual behaviors are merely Level 2 or the Level 1 of perpetrators (Erdynast & Chen, 2017).

Virtues and Vices at the Level of the Morality of Association

At the level of the morality of association, the typical cooperative virtues are: justice and fairness, fidelity and trust, integrity and impartiality. The typical vices are: graspingness and unfairness, dishonesty and deceit, prejudice and bias. Rawls asserts that "Among associates, giving in to these faults tends to arouse feelings of (association) guilt on the one side and resentment and indignation on the other" (1971, p. 472). In an effort to stay ahead of the ensuing damage in similar cases, Wall Street has incorporated a new "Weinstein Clause" (Poster, 2019), a representation that monetizes Level 2, Domain III misbehavior, by quantifying *anticipated* costs for payments of civil restitution. During the last year of mergers and acquisition [M&A], sellers have been asked to make legal representations about the behavior of their management teams, clauses are being referred to as "the #MeToo rep."⁶ "Social due diligence" is becoming more and more important, particularly for founder-centric businesses, as money is being put aside to address #MeToo issues. The Domain II financial costs can run as high as ten percent of total transaction costs (Ahmed, 2018).

Signature Patterns of Sexual Harassment

Manhattan Assistant District Attorney, Meghan Hast, asserted that Harvey Weinstein's "desire to conquest" sex was claimed to be consensual sex (Melendez, 2020, para.7). It is an attempt to place his conduct exclusively within Domain II – wherein persons are free to pursue their joint interests, plans, associations and affections. Domain III – representing competing claims of just and right – constrains Domain II; Domain III rejects sexual harassment. Individuals should be considered politically *free and equal moral persons* (Rawls, 1993). They are *free* in their self-authenticating claims to say no and decline to have sex against their desires; they are *equal* in affirming or rejecting others' conceptions of the good and in affirming their rights and liberties (Erdynast & Chen, 2014, Table 2.).⁷

Social Contract Justice Versus Utilitarianism and Perfectionism: Rawlsian Social Contract Deontological Over Utilitarian Teleological Hedonistic Views

In Harvey Weinstein's terms of association, women acquiescing to his sexual appetites was simple payment for proximity to the powerful man who could boost their careers. Their sexual

⁶ Ibid.

⁷ Appendix p. 30

favors were part of a business transaction – for him, an unconflicted kind of utilitarianism. However, in his advocacy of distributive justice, Rawls' (1971) perspective would assert that social contract theory must reject utilitarianism that tolerates sexual harassment as a “cost of business” (p. 22). In classical utilitarianism, “The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it” (Rawls, 1971, p. 22). Even more succinctly, “a society is properly arranged when its institutions maximize the net balance of satisfaction” (Rawls, 1971, p. 24). Sexual harassment in the simple, and the extreme as with rape, can only maximize satisfaction for the predator. In classical utilitarianism, if the intensity of Weinstein's pleasure is quantitatively higher than the female victims' unhappiness, his actions are considered to be “right.” Since classical utilitarianism derives right from maximizing the good, it disregards the displeasure independent of a victim's violations. For Rawls, however, “The principles of right, and so of justice, put limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one's good” (1971, p. 31). Weinstein's desires are “restricted from the outset” by the parameters justice establishes (p. 31).

Rawlsian Social Contract Deontological Over Perfectionistic Views

Social contract theory limits or forbids conceptions of the good and conceptions of the beautiful *when* the terms of just and right are violated. Such would be true in the Weinstein case in which the defendant discounts the right of his victims – those who are disadvantaged by Weinstein's immense power and influence over them – through his manipulative behavior. In classical utilitarian theory, concerns for the least-advantaged parties are secondary concerns; their complaints are viewed as subjective “sour grapes” and dismissed in favor of the greater benefits to a majority and/or for the overall good. This teleological, hedonistic utilitarianism would be inhumane if the outcome resulted in Weinstein's pursuit of *his good* (i.e., gratification of his pleasure) subjugating the conceptions of good of over 90+ women as “sour grapes.”

Although Harvey Weinstein's abuse of power and abhorrent behavior dates back decades, he enjoyed the respect and admiration both of those who knew his true nature and those who had no knowledge of his veniality. As Terina Allen (2020) observes in *Forbes*:

Harvey Weinstein was the very definition of success in the movie and entertainment industry. He amassed a huge fortune and built an amazing career. He was considered a brilliant movie mogul, and this was evidenced by the many accolades, key relationships and 81 different Academy Award wins. Weinstein garnered the respect of his colleagues and most of the industry power players, and he established himself as **the** kingmaker of Hollywood. (para. 2)

While an individual's observable career excellence may lead to value conclusions of the highest levels, Rawls is adamant in his vision of justice as fairness to direct one's attention to the necessary considerations in other regards – particularly those that may serve to exclude the rights of others.

Rawls (1971) proposes that two variants (of perfectionism) exist; however, these do not preclude terms of the right. He indicates that, from the perfectionism stance, “the sole principle of a teleological theory” serves to order institutions by “the duties and obligations of individuals so

as to maximize the achievement of human excellence in art, science, and culture,” in absence of scrutiny, a worthy goal (Rawls, 1971, p. 325). However, in that sense, the “higher the relevant ideal is pitched,” the *more obviously demanding is the principle* (p.325). Pointing to Nietzsche’s often ambiguous argument for human ‘greatness,’⁸ Rawls notes that in places, the philosopher attests “...that mankind must continually strive to produce great individuals,” and that “We give value to our lives by working for the good of the highest specimens” (p. 325). In no way, though, does “working for the good” of such persons preclude for Rawls the rights of others, even when they do not outwardly exude a comparative level of excellence.

In helpful reference to Nietzsche’s method of ascertaining a person’s “greatness” arrives the concept of “noble in character,” leading back to the morality of the hero, the individual who risks annihilation for the sake of another. As Joseph Campbell states in his account of the ‘Hero’s Journey’: “The achievement of the hero is one that he is ready for, and it’s really a manifestation of his character.”⁹ Taken, then, as a consideration of character in estimation of greatness, Nietzsche’s great man cannot be a self-serving hedonist – Level 1, an **absolute ego centrist who is absent of consideration for the other to the point of amorality**—and simultaneously operating at Level 5, Morality of the Hero (let alone at Level 6, the Morality of Supererogation) – regardless the excellence achieved.

Utilitarianism permitted NBC to tolerate Matt Lauer’s sexual harassment¹⁰ as long as his Today Show brought in enormous sums; the expenses of settling his known sexual harassment toward multiple women was a tolerated cost. Such a stance of serving the corporate interest at the expense of the dignity and worth of others is no longer tenable, though, and the rightness of that major shift away from classical utilitarianism is established in Rawls (1971). Social contract Rawlsian philosophy rejects sexual harassment because it is not tolerated in an allocative justice choice of moral behavior within an original position under a veil of ignorance, wherein the least advantage individual would reject it. In the movement toward greater social justice, as evidenced by the #MeToo actions holding predators to account, even consensual relationships may be impermissible as companies strengthen anti sexual harassment policies.

Company codes may forbid consensual relationships; violation of company policy regarding consensual relationships led to resignations of CEO executives as in cases of Lockheed-Martin, Boeing, Intel, and most recently, McDonald’s. As Allyn (2019) states: “Misconduct and ethical lapses occurring in the #MeToo era are now the biggest driver behind a chief executive falling from the top” (para. 2).¹¹ Even when there are consensual sexual relationships, CEOs may violate Level 4, Tolerance (or level 8, as per Erdynast) policies; they are violating those conceptions of right and restrictions of liberties. Hence, the disgraced CEOs of Lockheed Martin, Intel and McDonald’s intrapersonal sexual moral conceptions of association violated moral conceptions of policies and regulations of corporations and lost their positions.

⁸ *Beyond Good and Evil*, trans. R.J. Hollingdale, (London: Penguin Books, 1990).

⁹ Ep. 1: Joseph Campbell and the Power of Myth — ‘The Hero’s Adventure’

¹⁰ In Farrow’s 2019, *Lies, Spies, and a Conspiracy to Protect Predators*, the author reveals Weinstein’s knowledge of Lauer’s predation on women used to extort a cover-up of his own.

¹¹ Allyn, 2019. “Top Reason For CEO Departures Among Largest Companies Is Now Misconduct, Study Finds”

Morality of Associational Vices

At the level of the morality of association, the typical cooperative virtues are: Justice and fairness, fidelity and trust, integrity and impartiality. The typical vices are graspingness and unfairness, dishonesty and deceit, prejudice and bias. Consequently: “Among associates, giving in to these faults tends to arouse feelings of (association) guilt on the one side and resentment and indignation on the other” (Rawls, 1971, p. 472).

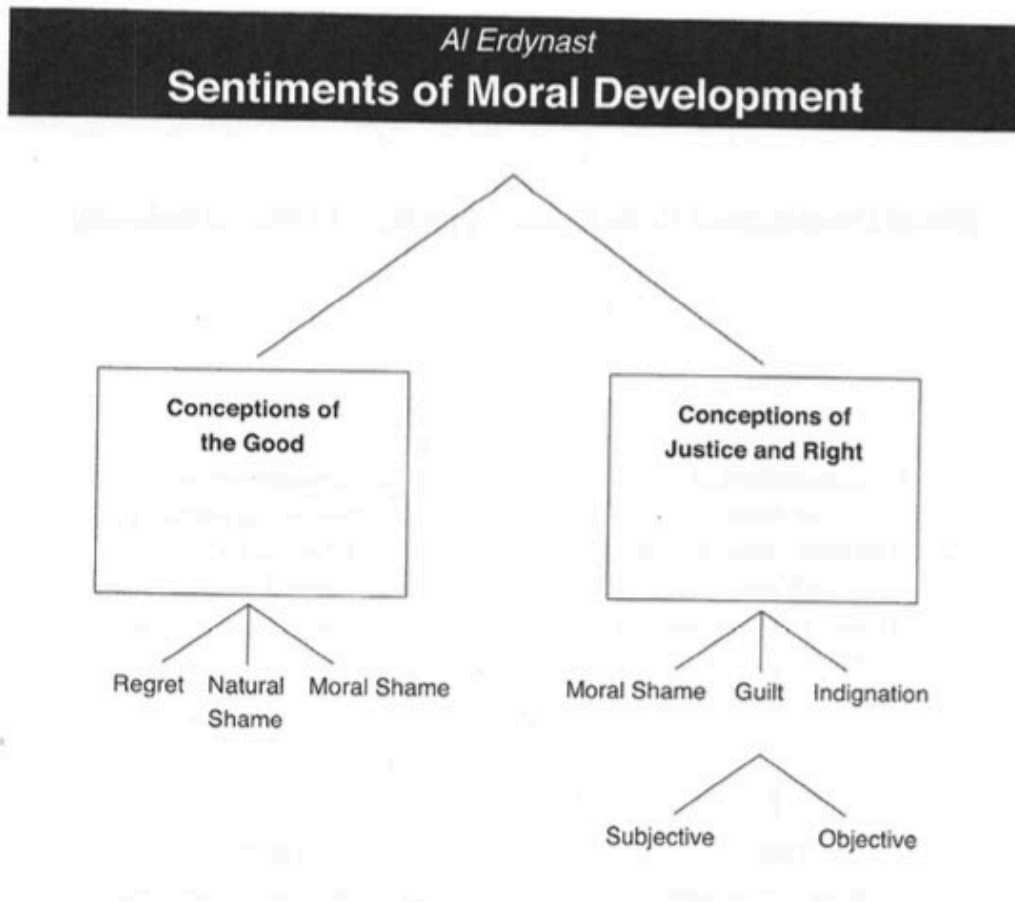


Figure 1: Sentiments of Moral Development

Effects of Weinstein’s Actions on the Victims: A Rawlsian Perspective

The applicable domain or the plural domains that sexual harassment affects are very important. The violated women suffered sexual harassment that affected their self-respect (or self-esteem) which drove them to apathy when they stopped pursuing their conception of the good, based on Weinstein’s sexual harassment or sexual assault or rape or sex trafficking. In many cases they acquiesced to further violations in order to keep their careers, and in extreme cases, out of fear of violent retribution.¹² The damage consequent to his behavior reaches back decades and ramifies into the future.

¹² Nestel, 2018. Weinstein: “I will kill you.”

While Kohlberg (1984) and other theorists promote and prize rising to and behaving at the level of moral principles, some philosophical principles do not rule out sexual harassment as impermissible. For example, some philosophies such as utilitarianism tolerate Bentham egoism, which can consider sexual harassment as a potential cost of business – as in the Matt Lauer case. Or perfectionist philosophies would permit free-rider egoism such as the former opera star Placido Domingo, who may have used the “perfectionist psychology” argument that those who are “higher specimens” should be served by individuals with lower-level capacities. To subscribe to perfectionism and utilitarianism means one can tolerate sexual harassment as “cost of operations.” In contrast, content-dependent social contract principles give priority to rights, absolutely reject sexual harassment, and in fact forbids it. Using the limits and the point, the relations of the right has priority.

An Original Position Under a Veil of Ignorance – Indispensable Tools for Allocative Justice

Using a Rawlsian “original position” to select principles for governing work environments and personal relationships, and the “veil of ignorance” in allocating justice to resolve competing claims, the egoists’ actions and behaviors – such as Weinstein’s, Lauer’s, Ailes, and others – would be rejected. No one would unilaterally accept being subjected to someone’s sexual advances. For purposes of allocative justice, the Rawlsian “original position” and “veil of ignorance” are indispensable tools for conceptualizing the permissibility of conduct between parties or groups of parties.¹³ A crucial component in Rawls social contract theory is the overarching natural duty of mutual respect. If self-respect is *the primary good* of a just society, the duty of mutual respect naturally follows as it ensures that “self-respect is reciprocally self-supporting” (Rawls, 1971, p. 178). It would follow, then, that mutual respect is only possible for individual maintaining self-respect as their primary good, and would never be possible in cases of sexual harassment.

Terms of relations should be considered within an allocative original position under a veil of ignorance without the necessity of establishing the party’s gender or sexual disposition in behavioral decision making (Rawls, 1971). Such is the basis of mutual respect, with the primary requirement of self-respect. So it follows that no sexual harassment would take place if a Rawlsian duty of mutual respect were observed. The first component of the duty of mutual respect is to understand and respect the other party’s conception of the good.¹⁴ It follows as well that belittling the other’s conception of the good, depreciating it, ridiculing it, and disparaging the person is impermissible. The second component of the duty of mutual respect is to not violate the other’s rights; failure to observe other’s rights can result in regret, shame and guilt.

Individuals should be thought of in their public institutional roles and work environments as free and equal moral persons. There are four aspects of free and equal persons: independence, self-authenticating source of moral claims, taking responsibility for ends, and the reasonable terms between them. Under a “veil of ignorance,” persons do not know to which party they belong in the instance of competing claims – they do not know their position in society, their proclivities, their wealth, power, status or education, nor their sexual disposition; they know *only* that they are

¹³ Rawls, 1971. 23, Formal Constraints of the Concept of the Right, p. 130.

¹⁴ Rawls, 1971, p.396: “self respect is...the most important primary good”

creating the rules which govern the society they will then live in without prior insight as to which position in that society they will occupy.¹⁵

The “original position” is a position of equality between and amongst rational persons in which persons construct and accept the basic terms of their association under a “veil of ignorance.”¹⁶ It is assumed that each party will wish to pursue his conceptions of good (though he does not yet know what the content of those conceptions of good are) and that agreement to the principle terms of association will enable and secure his ends given the available alternatives. Rational persons would understand that the mere existence of other persons pursuing their own conceptions of good will naturally present conflicts or competing claims.

Conclusion

Not only are there two moral domains – the domain of the good and the domain of just and right, which are distinct – it is strategically crucial for Harvey Weinstein to push the scandalous conduct in violation of vulnerable others into Domain II; that is, he is compelled to claim all events were consensual, his only recourse. When claims between counter parties’ conflict – when individuals feel that their rights, liberties and duties to them have been violated – the conduct shifts into Domain III, the domain of justice and right. In the Rawlsian social contract and Kantian conception, whenever issues regarding values in Domain II conflict with those values in Domain III, the Domain of conceptions of justice and right constrain and forbid activities within Domain II.

In their institutional political conception of persons, women are to be treated as fully equals. From a Rawlsian *original position* under a *veil of ignorance* which naturally incorporates the duty of mutual respect, sexual harassment, sexual assault and rape would never occur because parties do not know which side of the conflict they will occupy and must consider whether actions are *permissible* – thus, sexual assault, sexual harassment would be rejected.

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¹⁵ Rawls, 1971. The Veil of Ignorance, pp. 137-142

¹⁶ Ibid.

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Appendix

Erdynast & Chen, 2014, Table 2

Table 2. the elements and norms for classifying content

the elements					the norms
modal elements	value elements				
	egoistic consequences	utilitarian consequences	ideal or harmony-serving consequences	fairness	
obeying (consulting) persons or deity; should obey, get consent (should consult, persuade)	good reputation (bad reputation)	good individual consequences (bad individual consequences)	upholding character upholding self-respect	balancing perspectives or role taking	life a. preservation b. quality/quantity
blaming (approving). should be blamed for, disapproved (should be approved)	seeking reward (avoiding punishment)	good group consequences (bad group consequences)	serving social ideal or harmony	reciprocity or positive desert	property
retributing (exonerating); should retribute against (should exonerate)			serving human dignity and autonomy	maintaining equity and procedural fairness	truth
having a right (having no right)				maintaining social contract or freely agreeing	affiliation (erotic love and sex)
having a duty (having no duty)					authority
					law
					contract
					(civil rights)
					(religion)
					conscience
					punishment

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