

Discussion

Sexual Harassment and the “Repetition Requirement”

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In his “Reply to Iddo Landau,” Edmund Wall responds to the author’s critique of some of the views expressed in his “Sexual Harassment and Wrongful Communication.” The present article concentrates on what the author takes to be the main problem in Wall’s definition: by requiring that any act, even if intentional and cruel in nature, needs to be repeated to count as sexual harassment, Wall allows too much leeway and renders permissible a wide range of intentional, mean, and harmful actions that most, including, the author believes, Wall himself, would like to outlaw. The article considers Wall’s linguistic and nonlinguistic responses to this critique and finds them problematic.

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In his “Reply to Iddo Landau,” Edmund Wall (2003) responds to my critique (Landau 2003) of some of the views expressed in his article, “Sexual Harassment and Wrongful Communication” (Wall 2001). I would like to concentrate here on one issue that I take to be the most important point of disagreement, namely, Wall’s suggested definition for sexual harassment. I believe that this definition allows a large number of severe cases of sexual harassment to remain unhindered. According to Wall (2001), sexual harassment hinges on the following four requirements:

1. X successfully communicates to Y, X’s or someone else’s purported sexual interest in someone (whether Y or someone else).
2. Y does not consent to discuss or consider such a message about X’s or someone else’s purported sexual interest in someone.

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3. Disregarding the absence of Y's consent, X repeats a message of this form to Y.
4. Y feels emotionally distressed because of X's disregard for the absence of Y's consent to discuss or consider such a message and/or because Y objects to the content of X's sexual comments. (p. 531)

The main problem in Wall's definition, in my opinion, is that to be considered sexual harassment, the offending action has to be repeated. According to condition 3, acts performed only once—whatever their nature and their consequences—do not count as sexual harassment. For example, sexual blackmail does not count as a sexual harassment if the perpetrator does not try to blackmail (the same person) again. The same is true of sexual bribery.

Some of Wall's responses to this critique relate to linguistic issues. Thus, he argues that sexual bribes and sexual blackmails should not be considered as cases of sexual harassment since "the fact that Landau and the rest of us refer to 'sexual blackmail' and 'sexual bribery' suggests that we find them to be distinguishable from harassment" (Wall 2003, 240). However, this is a problematic argument. The terms *chairs* and *tables* also differ from the term *furniture*, and we indeed find chairs and tables to be distinguishable from furniture. But this does not show that tables and chairs are not types of furniture. Similarly, the terms *cats* and *dogs* differ from the term *animals*, but this in itself does not show that cats and dogs are not animals. The argument is problematic also because, according to its logic, apart from sexual blackmail and sexual bribery, other behaviors that Wall himself takes to be examples of sexual harassment should also be excluded; for instance, sexually offensive remarks repeated despite addressees' objections.

Wall's (2003) other linguistic argument against seeing unrepeatable sexual blackmail as sexual harassment is that "harassment" suggests that a victim is bothered repeatedly . . . that someone is 'hounded'" (pp. 239-40). However, notwithstanding (some) connotations or (some) dictionary definitions of the word *harassment*, which allude to repetition, the phrase *sexual harassment* has become a technical term and an idiom. Its appropriate legal, moral, and philosophical uses are not limited to the original meanings of its components.

The problem of once-repeated behaviors appears also with other acts. Wall's definition does not capture cases in which one employee, Jack, makes an offensive sexual remark to another employee, Jill, if Jack is careful not to repeat the offensive sexual remark to Jill. The offensive sexual remark may be extremely unpleasant. For example, Jack may communicate to Jill the details of a dream in which he forces Jill to take off her clothes at knifepoint, ties her up, and so forth. However, if Wall's definition is to be accepted, Jill cannot be considered as having been sexually harassed. Nor can she be legally defended from this sexual harassment.¹ Moreover, Jack's friends at the work-

1. Wall (2001, 527-28) also mentions the need in a satisfactory definition in relation to the legal context, and he writes that "to help ensure basic justice we ought to implement legal remedies fairly" (p. 529).

place can also freely approach Jill and share with her their favorite sexual fantasies if they are careful not to do it more than once. And although they cannot do so more than once with *Jill*, they can now approach Jane or other workers with their favorite sexual fantasies.

Wall presents two answers to this difficulty for his definition. The first states that the suppositions "that there are very many employees in a workplace, and that each of them makes an offensive sexual remark to Jill," and that "none of the employees makes an offensive remark to her more than once" are "especially today . . . in fact, unrealistic" (Wall 2003, 240). Wall is probably right that it is unrealistic *today* (in many workplaces). However, this is so because the widely accepted Equal Employment Opportunities Commission definition (which Wall criticizes and wants to replace with his own definition) and other definitions of sexual harassment that are wider than Wall's see the actions of Jack and his friends as sexual harassment and proscribe them. If Wall's definition were to be accepted in place of the Equal Employment Opportunities Commission and other, wider definitions than his, such events would be likely to be far more common. I am sure that Wall would agree that there are many unpleasant people in our world (cf. Wall 2001, 529-30). It is probable that once they understand that they are immune to legal charges if they are careful not to repeat an unpleasant sexual remark to the same person, they will take advantage of this situation, and nothing can (legally) protect Jill from them. Hence, although Wall is right when he states that such cases are unrealistic today, they would become both realistic and probable if his definition were to be accepted.

Wall's other response distinguishes between two ways in which Jack and his friends can make sexually offensive remarks to Jill and other workers. The offenders can act in isolation from each other, or they can conspire to make sexually offensive remarks to Jill and other workers. A third possibility, which Wall does not mention, is that although the offenders know of each other's activities, they do *not* conspire (i.e., do not decide together on a plan to be carried out jointly and do not rely on one another or motivate one another).

Wall (2003) does not believe that if the offenders act in the first way, that is, in isolation from one another, "each of the sixty, or one hundred, or one thousand coworkers would be harassers"; moreover, "it would be unjust to label any of them as harassers, and even more unjust for any of them to be sued successfully based on such a claim" (p. 240). I believe that here Wall is insufficiently sensitive to Jill's fate and to the injustice incurred in leaving her and the other employees unprotected.

Wall believes that if the offenders act in the second way, that is, conspire to degrade Jill and other workers, this would indeed be sexual harassment. However, he argues his definition captures such acts, since condition 3 reads, "Disregarding the absence of Y's consent, X repeats a message of this form to Y." According to Wall, if the workers conspire to harass Jill, then a certain worker X will in fact be repeating the offensive sexual message to Jill, even if that is carried out through another coworker Z, and then through another

coworker W, and so forth. "These individuals, using each other as the vehicles for their mean-spirited communication, repeatedly give Jill a message of the same form" (Wall 2003, 240). Wall compares this to a case in which X repeats the sexual offense through an e-mail message.

But this analysis leaves many questions open. In a conspiracy of, say, five offenders, the first of them (say, Jack) is seen by Wall as stating the offensive message once and then repeating it, through four other workers, four more times. However, if we do not have here a case in which five different people make the offensive remark, each once, but rather a case in which *Jack* makes the offensive remark and then repeats it through others (as if they were mere e-mail messages), how can they, too, be seen as perpetrators? If the other offenders are seen as mere vehicles (i.e., Jack is seen as guilty of making the offensive remark and repeating it), how could they be seen also as initiators and, therefore, as responsible and subject to punishment? Is it possible for the offenders to be initiators and mere vehicles at one and the same time? If they are partly vehicles and partly initiators, are they also only partly guilty? The role played by the last of the offenders is especially problematic in Wall's analysis: assume that Jack states the offensive message once and then repeats it through the four other people four more times. The second of the harassers states the offensive message and then repeats it through the others three more times. However, the last, the fifth of the harassers, does not have anyone else repeating the message. Should he then be acquitted? Note also that usually in cases of conspiracy, we do not see the conspirators as *repeating* their co-conspirators' acts but as having another type of relationship to each other and to the crime.

It is not clear to me how Wall can satisfactorily answer these questions. If he cannot provide satisfactory answers, then his account of the way his definition captures this case (which he, too, sees as sexual harassment) becomes problematic and unconvincing, and alternative definitions, which do accommodate such cases, are needed.

Wall does not discuss the third possibility, in which the offenders do know of one another's actions but do *not* conspire (i.e., do not decide together on a plan to be carried out jointly, do not rely on one another or motivate one another). I have shown that his analysis is problematic even for a conspiracy case, but would it work for a case in which there is no conspiracy? The answer is negative. If the employees do not motivate one another or rely on one another, if they do not act jointly, it would be odd to consider them as one another's vehicles and to see one of them as repeating his action through others he neither motivated nor guided. Similarly, we do not take different people who assault an old person, or loot a business, or vandalize a telephone booth, each on his or her own initiative, to be others' vehicles, even if each person is not ignorant of others' actions.

Of the three ways in which the offenders can act, which are they more likely to opt for? The first seems unlikely because it is improbable that employees would not know of one another's actions (after all, it is one work-

place). The second and third ways seem more likely, unless Wall is correct in suggesting that his definition captures the second way. If it does, the second way would rapidly become far less probable: Jack and his friends would understand that conspiracies are punishable; they would stop conspiring and move to harassing Jill and her friends individually, probably knowing of one another's acts but without prior organization. Perpetrators would opt for the alternative not captured by Wall's definition.

Thus, Wall's "repetition requirement" renders his definition of sexual harassment highly problematic. By requiring that any act, even if intentional and cruel in nature, needs to be repeated to count as sexual harassment, Wall allows too much leeway; he renders permissible a wide range of intentional, mean, and harmful actions that most of us, including, I believe, Wall himself, would like to outlaw.

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