

# **Defining Sexual Harassment In France and the United States**

## **Arguments of Activists and Public Figures**

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## **Introduction**

Concepts of human rights have been expanding in recent years. Practices that were until recently accepted are now the object of moral outrage, political protest, and fresh policy. New vocabulary has emerged to designate what was earlier tolerated under other names. What used to be parents' "right" to punish their child with a spanking or more is now censored as "child abuse." A man exercising his "right" to have sexual access to his wife at any time is today condemned as "marital rape." A boss who made sexual jokes to his female employees, "stole" an occasional pinch, or even demanded sexual relations with them was winked at, silently endured, or quietly resisted but now he is openly criticized for "sexual harassment." Stakes are more than symbolic, since parents, husbands, and bosses can be sued, fined, or face jail sentences for these acts. The politicization of many "new crimes" reflects evolution in concepts of rights, in a larger context of shifting values and ethics. This process marks a broadening of the public sphere, and a growing expectation that the state will intervene in places like the family, workplace or in sexual interactions, which were until recently considered "private" and therefore off limits.

How do groups and individuals use, expand, and/or reject discourses about these "new crimes"? Do their arguments reflect the public definitions embodied in law? Alternatively, do people draw on a larger spectrum of cultural and political traditions? This chapter explores these questions in the case of sexual harassment. Specifically, it compares how French and American<sup>1</sup> activists and public figures assert and *justify their distinctions* about what should or should not constitute sexual harassment.<sup>2</sup> Since the legal definition of sexual harassment is in a state of

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<sup>1</sup>For lack of a better word, I use "American" to refer to citizens of the United States of America.

<sup>2</sup>This chapter is part of a larger study of how and why sexual harassment is defined dramatically differently in France and the United States in law, internal regulation, media reports, and in interviews conducted by the author with: activists, public figures, lawyers, human resource personnel, and union representatives. A central concern of the larger study is the extent to which representations of sexual harassment are consistent or contradictory across these different levels of discourse.

uncertainty in both countries, one can assume that distinctions about what constitutes sexual harassment will not be taken for granted among respondents.<sup>3</sup> Rather, I expect that when people discuss this topic, they do extensive interpretative work to legitimize their claims. This makes the definition of sexual harassment a strategic subject for exploring how cultural systems of meaning inform the way in which people make claims and legitimizations, a common concern of this volume.

The influence of institutions, political tradition, legal precedent, and cultural heritage on the way in which people defend their point of view, which tend to be taken for granted as invisible context in one-nation studies, can be studied as independent variables in cross-national work. Examining how sexual harassment is defined in France and the United States also serves as a prism for understanding national variation in broader cultural categories, such as those of the “workplace,” “political sphere,” or “public/private” realms. The comparative perspective of this study also sheds light on research on gender, whose inquiry about how concepts of “maleness” and “femaleness” are socially constructed, rather than pre-ordained, natural, or inevitable, has been limited by its predominantly national focus.

France and the United States are particularly strategic case studies since their definitions of sexual harassment in laws in the workplace represent two opposite extremes. The United States has adapted one of the most *inclusive* definitions of sexual harassment in its EEOC guidelines, which designate any “conduct of a sexual nature” that creates an “intimidating, hostile, or offensive working environment” (C.F.R. 1604.11(a)). In contrast, French sexual harassment law adapts a more *restrictive* definition, which designates only situations in which a hierarchical superior “abuses his official power” using “orders, threats, force” with “the intent of obtaining

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<sup>3</sup>Interviews by the author with French and American lawyers concentrating in sexual harassment law point to an extremely high level of disagreement over what the sexual harassment laws entail in each country.

sexual favors” from another.<sup>4</sup> Moreover, in the United States costly sexual harassment lawsuits are common and awareness of this problem seems to be growing while in France compensatory damages are tiny and public concern in this area remains relatively low.

This chapter draws on in-depth interviews with twelve activists and six public figures, divided evenly between the two countries. Opinions of activists and public figures are particularly interesting since they are among the principal groups defining this issue in the public arena, through lobbying, media representation, and publications. The activists work in comparable national associations combating sexual harassment. The public figures were chosen among people who have taken position on this issue in the media and who were expected to represent a spectrum of opinions. During the interview, respondents were presented general questions about how sexual harassment should be defined and were asked to explain whether behavior described in a series of vignettes should or should not be considered sexual harassment (see Appendix). This technique served to capture several nuances in the logic governing the way in which people make sense of this issue.

This study differs from the bulk of social psychology literature on sexual harassment that presumes the existence of “objective” sexual harassment and focuses on how individual factors influence “subjective” perceptions (e.g. Ellis et al. 1991; Gutek et al. 1983; Powell 1986; Fitzgerald et al. 1991; Ormerod 1987; Pryor 1985). Since the so-called “objective” definitions of sexual harassment, such as those of the EEOC guidelines or French sexual harassment law, vary nationally, I argue that they too are arbitrary and subjective. Rather than examine how individual factors explain how “correct” people’s interpretations are, this paper points to how individual

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<sup>4</sup>Art. 222-33 of the *Code Pénal* and Art. L. 122-46 of the *Code de Travail*.

claims about sexual harassment are shaped by macro institutional and cultural factors, neglected by most social psychologists.

One of the central questions of this chapter concerns the relative influence of law as compared to that of other cultural resources. In other words, it asks: When individuals decide what kinds of behavior should be called “sexual harassment,” are their judgments influenced by national law or directly by broader cultural conceptions that also inform law? I contend that sexual harassment law has an independent effect on both which types of behavior are labeled sexual harassment and how people position “sexual harassment” in relation to other categories of behavior, such as gender discrimination, sexual assault, or rape. I will show how law sometimes restricts the types of behavior respondents conceptualize as constitutive of sexual harassment. On the other hand, I will also argue that individuals can draw on foreign law and theory or alternative cultural concepts to challenge dominant legal definitions.

This chapter also speaks to a recent debate in sociology of culture about the degree of coherence and contradiction among different kinds of cultural representations. According to DiMaggio (1997) and Swidler (1997), earlier models suggested that culture was like a “seamless web,” unitary and internally coherent across groups and situations. In contrast, newer work has argued that culture should be viewed as a “tool kit” (Swidler 1986) or “repertoire” (Tilly 1992), offering a collection of heterogeneous resources, often fragmented across groups and inconsistent across manifestations (Martin 1992), that can be put to strategic use (Bourdieu 1990; Sewell 1992; Swidler 1986). According to the coherent model of culture, one would expect to find a high degree of consistency between national sexual harassment law and other manifestations of national culture. This model would suggest that national differences in sexual harassment law reflect deeper cultural structures or logics ingrained in “national character,” which should also inform the way in which individuals makes sense of this issue. In fact, the interview data show

that respondents define sexual harassment and legitimize such judgments in dramatically different ways, even when they are from the same country or the same activist association. This provides evidence for the “tool kit” model of culture. National law, foreign law, media representations, and personal experience seem to provide a variety of sometimes contradictory cultural resources for making sense of sexual harassment. Respondents draw upon these eclectically and sometimes strategically.

While the “tool kit” model implies that people have a variety of cultural resources at their disposition, the metaphor also suggests that the content of tool kits is both limited and variable. One should expect the collection of accessible cultural schemes to vary across groups. I will demonstrate that different sets of cultural schemes related to sexual harassment are available depending on whether a person is French or American. Some of the differences in perspective are consistent with the distinct national legal definitions of sexual harassment. For instance, in general, American respondents label a larger range of behavior as sexual harassment than do the French. They are particularly more likely to call peer harassment and behavior like insults, jeers, or pornography, which creates a “hostile environment” but does not aim at obtaining sexual relations, sexual harassment. Furthermore, the cultural category of gender discrimination dominates the American interviews while the frame of sexual violence predominates in the French responses.

Differences in legal definitions also seem to influence the extent to which respondents draw on national law, rather than other resources, to support their arguments. American respondents who defend broad definitions of sexual harassment tend to draw on national law more heavily than any other group interviewed. I argue that they do this because the U.S. definition of “hostile environment sexual harassment” is extremely elastic and is easily applicable to a wide range of behavior. French respondents favoring broad definitions of sexual harassment

tend to draw on foreign (particularly American) law and theory. I contend that this represents an effort to broaden the French legal definition of sexual harassment by drawing on alternative cultural models.

In other instances, national variation appears grounded in larger cultural differences. For instance, arguments about employees' right to their *vie privée* (a concept that has no real equivalent in the United States but means that the intimate parts of people's lives – for instance, their sex life – should be protected from public scrutiny) represent a common theme in France that does not emerge in the American interviews. French *proponents* of inclusive sexual harassment law condemn sexual comments or demands for sex because they violate employees *vie privée*. French *opponents* of inclusive definitions argue that extensive sexual harassment policy is itself an infringement on workers' *vie privée* because it interferes in their personal relationships in the workplace. In other words, arguments about *vie privée* are used both in favor and against broad sexual harassment laws. In contrast, in the United States, *proponents* of inclusive sexual harassment law condemn demands for sex or sexual comments because they consider that these serve to *discriminate* against a particular *group* (usually women) because of their gender. Rather than argue that certain aspect of people's lives should be shielded from public scrutiny, this line of reasoning stresses the rights to “equality” of particular *groups*. As I will explore further in the discussion of the findings and in the conclusion, these differences in argumentation reveal very different national assumptions about the political sphere and civil rights. While in France, political legitimacy implies being free from “particular” attachments or identity, in the United States particularities, like gender, race, and religion, are accorded a role at the heart of political life.

This paper will also argue that the respondents harbor different assumptions about work. When arguing that sexual harassment should be defined *narrowly*, American respondents tend to refer to employers' right to control their business and to laissez-faire economics, a line of

reasoning that is absent from the French interviews. In contrast, French *opponents* of broad sexual harassment law argue that flirtation and seduction in the workplace should be protected. This position is, in turn, denounced by American activists, who say that work is not a place for flirtation and seduction but one where people should “get the job done” and “be professional.” I contend that, taken together, these responses suggest that Americans expect market logic to be less tempered by social concerns than do the French. Americans consider efficiency and productivity the preeminent goals of the workplace, while, the French consider socio-sexual interactions equally important.

Finally, I will show how proponents of narrow definitions of sexual harassment in both countries discredit opposing viewpoints by drawing “symbolic boundaries” against the groups that defend them. The most targeted groups overall are “American feminists.” French proponents of narrow definitions of sexual harassment also target “Americans” more generally.

### ***Background***

Sexual harassment law in the United States has been slowly evolving for over thirty years. During this time, the legal and social definition of what constitutes sexual harassment has been a topic of heated debate and uncertainty. In the United States, the most important legal debates about how sexual harassment should be defined have occurred in the courts, in the context of Title VII of the Civil Rights Act of 1964, applicable in businesses with 15 or more employees. Title VII states:

It shall be an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.



Title VII was passed primarily to combat employment discrimination against African-Americans, not women. In fact, “sex” was a last-minute addition that made most congressmen at the time snicker (Evans 1989). The addition was pushed by a couple of feminist congresswomen and an ardent segregationist who, according to some, hoped that adding “sex” would kill the bill (Evans 1989). However, Title VII has since proved a precious feminist weapon for challenging various forms of sex discrimination, including sexual harassment.

It took years of struggle before sexual discrimination was taken seriously and before the courts ruled that sexual harassment was sanctionable as sexual discrimination. In the first cases, courts ruled that sexual harassment did not constitute sexual discrimination and was therefore not addressed by Title VII. For example, as late as 1974, in *Barnes v. Train*, a plaintiff claimed she was fired for refusing to engage in “an after-hours affair” with her boss. The court ruled that there was no basis for suit, that this was about “an inharmonious personal relationship” and that the discrimination the victim suffered was not a result of her gender but of the business relationship.<sup>5</sup>

The courts’ rulings shifted in 1976 when the District of Columbia Federal Court ruled in *Williams v. Saxbe* that a male supervisor’s retaliation toward a female employee for refusing sexual advances constituted sex discrimination and was actionable under Title VII. In 1980, prompted by confusion over this issue in the courts, the Equal Employment Opportunity Commission (EEOC)<sup>6</sup>, a Washington-based agency with regional offices entrusted with enforcing Title VII, developed guidelines for analyzing sexual harassment claims. They defined sexual harassment in the workplace as:

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<sup>5</sup>13 FEP 123 (DC D of C 1974).

<sup>6</sup>The EEOC is an independent commission mandated by Title VII, which focuses on acts of discrimination against identifiable victims. Its regulatory and persuasive powers are strong, but limited because it cannot impose strong remedies independent of court action (Gutman 1993: 7).

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature... when any one of three criteria is met:

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.
- 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (C.F.R. 1604.11(a)).

As guidelines, these have served to help the courts define sexual harassment but uncertainty persists.<sup>7</sup>

Among unresolved questions is the following: What kind of sanctions should the plaintiff suffer in order to be deemed a victim of sexual harassment? In 1981 and in 1986, the Court of Appeals for the District of Columbia<sup>8</sup> and the United States Supreme Court<sup>9</sup> ruled that "hostile work environment" sexual harassment, which does not entail "economic" sanctions, is a form of sexual harassment. However, the Supreme Court did insist in 1986 that for conduct to be considered sexual harassment, it must be "sufficiently severe or pervasive so as to become an abusive working environment."<sup>10</sup> Just what constituted "severe or pervasive" has remained uncertain. An important decision was delivered by the Supreme Court in 1993, when it ruled that "Title VII comes into play before the harassing leads to a nervous breakdown"<sup>11</sup>. Justice

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<sup>7</sup>Alone, the EEOC guidelines are not law, but they become case law when the courts invoke them in major decisions.

<sup>8</sup>*Bundy v. Jackson*. 641 F2d 934, 24 EPD Par. 31,439 (CA-DC 1981).

<sup>9</sup>106 SCt 2399, 40 EPD Par. 36,159 (US 1986).

<sup>10</sup>106 SCt 2399, 40 EPD Par. 36,159 (US 1986).

<sup>11</sup>*Harris II*, 114 S. Ct. at 370.

O'Connor rendered the unanimous opinion. She reasoned that psychological harm should not be an element of the claim for relief because a discriminatorily abusive work environment, even one that does not seriously affect employee's psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers.<sup>12</sup> Yet, the Court cautioned that this is a difficult area of law and that there is no precise test to measure hostile environment sexual harassment. Instead, the plaintiff should establish that the conduct objectively creates a hostile or offensive environment, that a "reasonable person" (a theoretical person of average sensibilities) would find it hostile, and that the victim perceives the conditions as such.

Sexual harassment has also been a topic of debate in France. In the 1980s, French feminist activists and representatives of the growing government of the European Union lobbied for French legislation on sexual harassment. The European Community Council proposed non-compulsory recommendations, largely inspired by Anglo-Saxon jurisprudence, as part of a larger effort to stream-line law among European States (Dekeuwer-Defossez 1993). French activists also drafted bills based on the European Council Recommendations. In 1992, France passed two sexual harassment laws, one in criminal law and one in labor law. However, these laws were much more limited than the bills proposed by the European Recommendations or some feminist groups.

The French laws condemn situations in which a hierarchical superior "abuses his official power" using "orders, threats, force" or, in labor law "any other kind of pressure," with "the intent of obtaining sexual favors" from another.<sup>13</sup> Unlike United States Civil Rights law, the French laws apply to all businesses, regardless of how few employees work there. However, both

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<sup>12</sup>*Harris II*, 114 S. Ct. at 371.

<sup>13</sup>Art. 222-33 of the *Code Pénal* and Art. L. 122-46 of the *Code de Travail*.

French laws clearly state that for a situation to be sanctioned as sexual harassment, an “abuse of authority” must be involved. In other words, unlike American law, French law does not recognize sexual harassment among colleagues. Moreover, French law focuses on the harasser’s intent, which must be to “obtain sexual favors.” This contrasts dramatically with the United States Supreme Court decision in 1986, cited above, in which the Court stated that the issue was not whether the sex-related conduct was voluntary but whether it was “welcomed.” Furthermore, unwelcome sexist insults, sexual teasing, or exhibiting pornographic posters, which do not necessarily aim at “obtaining sexual favors,” do not constitute sexual harassment according to French law.

The sexual harassment labor law makes it illegal for an employee to be sanctioned or fired for “having endured, refused to endure,” or for testifying to the sexual harassment of someone else. The sanctions cited in the law involve salary, training, rank, promotions, transfers, ending or renewing a contract, or disciplinary sanctions. This sexual harassment law obeys the general rules of French labor law, which is designed to regulate tangible employment decisions like hiring and firing. Since the sexual harassment labor law serves to reverse job sanctions when they are prompted by sexual harassment, it is essential that a victim demonstrate that she suffered “tangible job harm” in order to use this law. In the French sexual harassment criminal law, the actual harassing behavior is condemned and punishment of either a fine and/or a prison sentence is envisioned for the individual perpetrator (not the company): “harassing another by using orders, threats, or force, with the intent of obtaining sexual favors, by a person abusing the authority of their functions, is punishable by [maximum] one year in prison and a fine of [maximum] 100,000 F (\$20,000).” Economic job sanctions are not as crucial for the criminal sexual harassment law than for its counterpart in labor law. On the other hand, the prosecution has to demonstrate in criminal

court, which provides greater protection for the accused than civil court, that the alleged harasser used extensive pressure and threats to engage in sexual relations.<sup>14</sup>

French criminal law categorizes sexual harassment as a form of *sexual violence*. It is ranked forth after (in order of decreasing severity) rape, sexual assault, and exhibitionism. French criminal law recognizes that hierarchical power can allow bosses to make demands on subordinates that they have difficulty refusing and makes it illegal for individuals to abuse such power. Like criminal law in general, its goal is to enforce moral order among its citizens. Note that this objective is different from American Civil Rights law, which is designed to discipline *employers* who do not promote equal employment opportunity. In fact, the prevailing view among French legal experts is that sexual harassment should not be considered a form of sexual discrimination because hypothetically, a boss could harass both male and female employees (Dekeuwer-Defossez 1993), even though such cases are empirically rare.

As is demonstrated above, some of the differences between French and U.S. sexual harassment law (see figure 1) are a product of their respective positions within larger bodies of French or U.S. legal corpuses. So, sexual harassment law in France concords with the rules of labor law or criminal law, while U.S. sexual harassment law has very different rules to follow – those of the EEO law (see Gutman 1993). In other ways, the differences in the laws are the product of more intentional debates over cultural meaning and national identity.

French deputies actively deployed symbolic boundaries against American culture to restrict the French definition of sexual harassment. In so doing, they juxtaposed the United States, portrayed as a land of gender warfare, with France, where greater harmony and

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<sup>14</sup>In the U.S. criminal court, the prosecution must prove that the defendant is guilty “beyond a reasonable doubt,” whereas in a civil court, it need only be demonstrated that the defendant is more likely than not to be guilty. As in the United States, French criminal cases are marked with a considerable concern – one much greater than in civil cases – about not indicting the innocent (Glendon, Gordon, and Osakwe 1994:179).

conviviality between the sexes was said to reign. Specifically, French lawmakers argued in Assemblée Nationale Debates that restricting the French definition of sexual harassment was necessary in order to “avoid American excesses.” The Official report of the Senate (N° 350, Seconde Session Ordinaire de 1991-1992, p.32), summarized this concern: “It is certain that the excesses due to an exaggerated concern over sexual harassment in North America, inspires the preference of a more restrictive but more realistic definition.” The excesses included an overflowing of lawsuits, an excessive amount of formal rules in what were perceived to be personal matters, and an exaggerated concern men have of offending women that paralyzes social-sexual relations.

Faced with American cultural imperialism, French lawmakers (as well as journalists, academics, and others) performed “boundary work” (Lamont 1992) to reject certain aspects of American culture. As in National Assembly debates, the French media rejected the American model of socio-sexual relations in the workplace, characterized by “a general climate of suspicion,” where “it is unimaginable to talk with a colleague in one’s office without leaving the door wide open,” where “an invitation to dinner without a signed contract from the partner of the opposite sex could entail bankruptcy, imprisonment or more generally blackmail” (*Evènement de Jeudi* April 30 - May 6 1992). According to this same press article, the sexual harassment dilemma can be summarized as: “How to make laws governing relationships between men and women without transforming the most everyday flirtation into a crime and making office life unbearable *for the Latin people that we are*” (*Evènement de Jeudi* April 30 - May 6 1992, emphasis added). These arguments stress that an important part of French *Latin* identity involves playful flirtation. According to this argument, American sexual harassment law kills these very aspects of social life that are so dear to the French, , and therefore should be resisted. In other words, a sexual harassment law was needed, but it should correspond to “French” culture and

values.

In fact, the author of the law, Véronique Neiertz, on a issue of a popular national television talk-show *Ca se Discute* addressing the topic of sexual harassment, proudly presented the law as in tune with the context of France. She explained that the French law restricted sexual harassment to abuse of hierarchical power because employees harassed by coworkers “can defend themselves... especially in France.” She explained how the French law does not “fall into American excesses, which would inhibit relationships between men and women” and that “French seduction can continue, even at work.”<sup>15</sup>

### ***Methodology***

This paper is based on in-depth interviews with six public figures and twelve activists, divided evenly between the United States and France. The public figures were selected among people who have taken position on this issue in the media and who were expected to reflect a spectrum of positions.

The American public figures included feminist theorist, lawyer, and author Catharine MacKinnon; professor of the humanities and author Camille Paglia; and national spokesperson for the conservative movement, lawyer, and author Phyllis Schlafly. French public figures included

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<sup>15</sup>While the French evaluated U.S. sexual harassment law and practice in National Assembly debates over the content of their sexual harassment laws, references to France have been essentially absent from U.S. debate on sexual harassment. I would argue that this asymmetry has two roots. First, French legal debates over sexual harassment took place in the National Assembly, a political forum where debate tends to be ideologically charged. The U.S. Congress, is also a place of often heated, passionate, and ideological, debates but this is not where the major debates over sexual harassment law have taken place. Instead, American debates over sexual harassment have occurred within the courts, a less political and more legalistic forum. Second, in political debates about French national identity and cultural heritage, the United States is an important reference because of perceived and real American cultural imperialism in France (see Lacorne, Rupnik, & Toinet 1986; Kuisel 1993 for a discussion of French anti-Americanism). American politicians do not see their society invaded by mass French culture (even the phrase rings false) in the same way.

feminist activist and author Anne Zelensky, professor of philosophy and author Elisabeth Badinter, and former Secretary of Women's Rights and author Françoise Giroud. Catharine MacKinnon is famous worldwide for her cutting edge feminist writings, especially on sexual harassment – the term she is most responsible for promoting — and pornography. Camille Paglia has received enormous media attention as a self-described “feminist” who is known to disparage American feminism and feminist leaders. Since the 1970s, Phyllis Schlafly has been a more traditional opponent of American feminism, arguing that this movement undermines “traditional values” of the family and female domesticity. In France, Anne Zelensky is known as one of the leaders of the 1970s French women's movement. Also associated with the 1970s women's movement, Elisabeth Badinter is a famous intellectual who studies male-female social relations in France and is often interviewed by the press on this topic. Likewise, Françoise Giroud is a nationally renowned intellectual who has published on the topic of sexual relations and is often cited in the mass media.

The twelve activists work in comparable non-profit associations combating sexual harassment in France and the United States. These associations are the *Association Européenne Contre les Violences Faites aux Femmes au Travail* (AVFT – European Association Against Violence to Women at Work) and *9to5: The Association of Working Women*. The AVFT and 9to5 are both national in scope, maintain “help lines” for victims of sexual harassment, and provide emotional support and legal advice to callers. The largest source of French funding has come from state subsidies for the past six years. The AVFT and 9to5 respond to the needs of sexual harassment victims with a combination of a small staff of paid workers (2-3 in France and about twenty in the United States) and volunteer work. Both associations are also involved in lobbying the government in their country for measures to improve working conditions for women. In France, the association and employees are located in Paris. In the United States, the 9to5



headquarters are in Cleveland but paid employees and volunteers receive hot-line calls in cities throughout the United States. For callers who desire more than just a few words of advice, the French association follows their case closely for several years with extensive confidential files, and even participates in court cases. For American callers who need more guidance, 9to5 workshops are open in many states for legal advice and emotional support.

I interviewed six activists in each country. The sample size is directly constrained by the small number of French activists working at the AVFT over the past two years, all of whom I interviewed. I initially interviewed all of the two 9to5 hot-line volunteers in the NY-NJ-CT-Penn area, since there are no paid employees in this area, and one former 9to5 volunteer who now independently provides counseling for a fee. I then expanded my sample to include three of the five “most important activists” among paid employees in the nation, according to the national headquarters. All of the six French activists were located in the Parisian office; four were paid employees and two were volunteering at the time of the interview.

During the interviews, respondents were presented with vignettes. Some of these clearly constituted sexual harassment according to either French or U.S. law. Some would fall under the category of sexual harassment in U.S. law but not French, and many would be what lawyers call “borderline” cases in one or both of the countries. “Borderline cases” are those for which court precedent is contradictory, so that a lawyer would be particularly unsure of how a judge would rule. Such ambiguous situations were expected to prompt respondents to construct boundaries between what they did or did not consider constitutive of sexual harassment and to actively mobilize cultural resources to legitimize or justify their position. This builds on work by

Boltanski and Thévenot (1991), which studies how people appeal to common principles in justifying their point of view in every day disputes.<sup>16</sup>

Respondents were asked if the behavior described in the vignette was or was not sexual harassment and, in the case of the activists, what advice they would give to a person in such a case. They were asked how their judgment would shift if the hierarchical position, gender, or sexual orientation of the protagonists were inverted. Would they label a situation sexual harassment if the harassed was a man and the harasser a woman? What if a subordinate was badgering a hierarchical superior? Would they feel differently if the alleged harasser and victim had been previously involved in a sexual relationship? Is it important that the two individuals be of different genders? Should all forms of sexual harassment be condemned by law or should some be handled informally? If they do not define a particular behavior as sexual harassment, do they think that it should be legally punished under another name? Using the same vignettes for each person produced definitions that were systematically comparable, both nationally and internationally, yet had the advantage of not obscuring ambiguities and contradictions. All of the vignettes can be found in the Appendix.

## ***Findings***

Analyses of the interview data suggest that reasoning about sexual harassment differs in France and the United States on several levels. Some of these seem to directly parallel legal differences. For instance, while a range of perspectives was expressed in each country, American respondents as a group tended to define sexual harassment more widely than did the French.

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<sup>16</sup> Boltanski and Thévenot (1991) also pay considerable attention to the how people point to *physical* proof to strengthen their position. Unfortunately, this is less likely to occur during an interview than in a more natural setting. Nevertheless, I should note that, during the interviews, activists often took out copies of legal statutes and pointed to relevant passages.

Specifically, sexual jokes, sexist insults, pornography or other kinds of demeaning behavior that do not necessarily aim at obtaining sexual relations were more likely to be labeled as sexual harassment by Americans. Moreover, the cognitive categories of national law also seemed to structure responses to vignettes, so that sexual harassment was thought of in terms of *discrimination* in the United States but as a form of *sexual violence* in France. Another finding is that, depending on how well a person's personal definition coincided with the national legal definition of sexual harassment, she drew on law more or less exclusively to defend her position. The responses to questions about sexual harassment further revealed important national differences in cultural assumptions about issues like privacy, political rights and the workplace. Finally, I found that some respondents drew symbolic boundaries against particular groups in order to discredit both the group and its position on sexual harassment.

### More inclusive definitions in the United States

In general, American respondents defined more of the vignettes as sexual harassment. Among supporters of the more inclusive definitions of sexual harassment (i.e. the AVFT and 9to5 activists, Catharine MacKinnon, and Anne Zelensky), French respondents often argued that, in order for there to be sexual harassment, the victim should be able to demonstrate that she suffered tangible job harm, such as being fired or demoted.<sup>17</sup> Some activists framed this as an unfortunate reality in litigation. Others seemed convinced that tangible job harm should be a prerequisite of sexual harassment.

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<sup>17</sup>For the sake of simplicity, the masculine pronoun is often used to designate the harasser and the feminine pronoun used to refer to the victim, since this is usually the case. However, I do acknowledge that women can sexually harass men or other women and that men can be victims of sexual harassment by women or, even more frequently, other men.

Consistent with the emphasis on tangible job sanctions, French activists were less likely to call vignettes involving hierarchical peers sexual harassment, even though they criticized French law for not recognizing peer harassment. In other words, they seemed to simultaneously disagree with and rely on the dominant legal definition. For example, in response to a vignette involving a history of romance, break up, and insistent pleas from one colleague to another that the relationship resume, one French activist responded: *“From the moment that there are not any objective harmful acts, I don’t see how I can ask the employer to act, say to the employer: ‘try to solve the romantic problems between Mr. and Ms. so-in-so.’”* Likewise, none of the French respondents considered a vignette, in which a worker insistently demands that his female boss resume a prior romantic relationship, to be sexual harassment.

In contrast to the French, American respondents often said that it was not necessary for a victim to demonstrate tangible job harm in order for her to prove that she suffered sexual harassment. Rather, it was enough that the behavior, whether instigated by a boss, colleague, or even subordinate create a “hostile environment” or make one feel uncomfortable. For example, when asked if pornographic posters constituted sexual harassment, all of the American activists said they did because they create a “hostile environment.” When provoked with the point of view that pornography is not sexual harassment because people can look the other way, one American activist replied: *“Well, it shouldn't be a condition of your job. And if it makes you uncomfortable, that is the criteria.”* American activists used the concept of hostile environment to define a wide range of behavior as sexual harassment. Vignettes in which a woman calls another female coworker a “slut and a whore” or in which a man calls a male coworker a “woos,” “pussy,” or “pretty boy” were labeled as sexual harassment by several of the American activists according to this logic. Some of the vignettes that American activists defined as “hostile

environment” sexual harassment have not been established as EEOC infractions in case law, which points to the expansive nature of the “hostile environment” concept.

French respondents were more likely to consider behavior sexual harassment if it aimed to obtain sexual relations. Sexual or sexist jeers, jokes, or comments were less likely to be identified as sexual harassment by French respondents. One French activist explained: *“Its true that compared to what goes on in the U.S., we are very impregnated with the notion of... sexual blackmail, obtaining sexual favors, and so [we conceptualize] harassment [as aiming] to obtain sexual favors.”*

Among the public figures defending restrictive definitions of sexual harassment (i.e. Camille Paglia, Phyllis Schlafly, Elisabeth Badinter, and Françoise Giroud), American respondents, while equally hostile to extensive formal regulation, defined a slightly larger range of behavior as sexual harassment or gender discrimination. Sexual jeers, comments, which did not involve tangible job sanctions or constitute sexual blackmail was more likely to be recognized as sexual harassment by Paglia and Schlafly than by Badinter or Giroud. For instance, Paglia said she was opposed to what she called the “hostile environment” definition of sexual harassment. Yet, in response to a vignette about a saleswoman who “complains that her boss calls her by her first name, often undresses her with his eyes, complements her body, has asked if she ever cheated on her husband, suggests they go on a date, puts his hands on her buttocks,” she said: *“Well, it is sexual harassment, but the point is I want to know how all this started. With that many things going on, I'm sorry, you know, I think that she is letting it go on. OK. Of course it's sexual harassment, but the thing is, but for it to have continued, with as many extreme examples as you cite, indicates that she has been behaving in a way that has been compliant, as far as I'm concerned.”* Even though Paglia blamed the woman in this vignette for finding herself in this situation and disagreed that outside mediation should be necessary to resolve the problem, she

nevertheless defined this type of behavior as sexual harassment. Likewise, Schlafly argued that if this behavior were pervasive, it would constitute sexual harassment. In contrast, Badinter dismissed the vignette as ridiculous, “*to die laughing over,*” while Giroud said it would be sexual harassment if the boss was asking her out and if a refusal would provoke job sanctions (which she thought probable). Note that Giroud defined this vignette as sexual harassment by reinterpreting it as an instance of sexual blackmail.

### Cognitive categories

Just as the relative inclusiveness of national law was reflected in the scope of respondents’ definitions of sexual harassment, so national law seemed to structure the cognitive categories through which they made sense of sexual harassment. As was discussed earlier, U.S. law defines sexual harassment as a subset of gender discrimination, which allows for a great deal of overlap between these two cognitive categories. This was reflected by general uncertainty among American activists over where one category ends and the other begins. For instance, half of the American activists labeled a vignette, in which a boss persistently insults only workers of the opposite sex, sexual harassment, while the other half called it gender discrimination. American activists were also divided in their response to two vignettes describing: 1) an employee who frequently makes sexist jokes, and 2) a boss who grants privileges to an employee because he is having an affair with her. In both instances, respondents who called the given behavior sexual harassment argued that it created a “hostile environment,” a direct reference to the EEOC guidelines and/or case law. Those who preferred to call the incident “gender discrimination” claimed that, while it served to single out women for worse treatment, it was not of “sexual nature,” a necessary element of sexual harassment according to the EEOC.

In many cases, respondents admitted that the line between “non-sexual” and “sexual” sexism was not always clear. As one American activist explained in response to a vignette about a fictitious employee Chris, who makes jokes about dumb blondes, bad women drivers, and “bimbos”: *“It depends what he’s saying about bimbos... If the jokes aren’t sexual in nature, then it might be sex discrimination, but... as long as the behavior is not sexual in nature, its not sexual harassment.”*

However, some argued that because sexual harassment is defined in American law as one form of sexist discrimination, some overlap between these categories was to be expected and that this was not extremely disturbing. Whether defined as gender discrimination, sexual harassment, or both, the victim could file claims with the EEOC. *“It could go either way. It could be sex discrimination in that he was belittling women in the workplace. He was holding men there in a higher regard and treating women differently or treating men differently...., but of course you know that sexual harassment is a form of sex discrimination, so she could probably make a really strong case that it is sexual harassment.”*

American activists commonly considered sexual harassment and gender discrimination mutually reinforcing, which may explain why they were more likely to label incidents involving people of different sexes or sexual orientations as sexual harassment. They argued that the element of discrimination involved made these situations more clearly identifiable as sexual harassment. For example, one American activist, who did *not* label as sexual harassment a vignette in which a woman insistently calls a heterosexual female coworker a “slut” and “whore,” explained why she *did* consider a vignette involving homosexual slurs to constitute sexual harassment: *“Because he’s gay I’d say yeah... because she’s using all the derogatory names that refer to gays as.... Its like the same with a woman, calling her a bitch. You know, demeaning names. She’s doing the same thing now with a gay. So its sexual.”* This activist uses “sexual”

here to mean singling out a person for poor treatment because of affiliation to a group marked by its sexual preference, which is closer to what is normally meant by discrimination. She further assumes that people do not discriminate against others from their own social group.

No such blurring between discrimination and sexual harassment emerged from the French interviews, nor did elements of discrimination make French respondents more likely to label behavior sexual harassment. On the contrary, references to discrimination, like sexist insults, often made vignettes *less* clearly identifiable as sexual harassment since the perpetrator in these cases was usually perceived as *not* seeking sexual relations with his victim. As one French activist said after much indecision and hesitation, in response to a vignette describing an employee who constantly makes sexist jokes: “*Would that be called harassment? You see, harassment is thought so much in terms of harassing in order to obtain something. When its harassing to obtain the exclusion of the person, [I don’t know what to call it]... Perhaps what we need is a more varied range of words to designate things.*” When pushed, this activist said that such sexist insults might be considered a form of *discrimination* but maintained that this word was not truly appropriate either because no economic sanctions were involved. The behavior seemed to fall through the cracks of a legal system in which sexual harassment is thought of as using hierarchical power to obtain sexual relations and in which discrimination is conceptualized materially but not socially. This last point is demonstrated clearly in the responses of Giroud and Badinter, who refused to speak of “sexist insults” as an analytical category. As Giroud explained: “*I don’t see why there has to be a specific term. It should simply be recognized as an insult.. [...] because its an insult, regardless of whether or not its sexist.*”

The frame of sexual violence, rather than discrimination, emerged as key for the French respondents. In the context of this frame, boundaries between sexual harassment and other forms of sexual violence were salient in a way that they were not for American respondents. In



particular, the AVFT activists distinguished between “sexual harassment” and “sexual assault.” Behavior was said to constitute sexual assault when physical touching of a sexual nature was involved, while “sexual harassment” designated only verbal conduct. In one vignette involving a boss who put his hands on a saleswoman’s buttocks, several of the French activists argued that the physical touching moves this incident from sexual harassment to both sexual harassment *and* sexual assault. One explained: “*Well, its more than harassment if he puts his hand on her buttocks. That’s ‘other forms of sexual assault’.*” This distinction is consistent with French criminal law, which distinguishing between four types of sexual violence including (in declining order of perceived severity): rape, sexual assault, exhibitionism, and sexual harassment.

In sum, the interview data suggest that the cultural categories of national sexual harassment law inform the responses of American and French activists and public figures. In the United States, sexual harassment is thought of as a form of gender discrimination. These two concepts are so closely linked that the boundaries between them are often unclear. In France, sexual harassment is not chiefly grouped with gender discrimination. Rather, it is lumped with other forms of sexual violence, so that it becomes important to distinguish how sexual harassment is different from, say, sexual assault or rape.

### Justification techniques

Not only did French and American respondents define sexual harassment differently and according to discrete categories, but they legitimized their distinctions in varied ways. I argue that some of these differences are determined by institutional factors, such as the state of sexual harassment law in each country, while others are due to deeper cultural traditions.

Respondents tended to draw on national law more when it coincided with their personal convictions than when it did not. This meant that Americans defending inclusive definitions of sexual harassment invoked national law as the main justification for their view to a much greater

extent than their French counterparts. For instance, in response to a vignette in which a boss frequently undresses his employee with his eyes, compliments her body, asks if she has ever cheated on her husband, and suggests they go out on a date, Catharine MacKinnon responded: *“Yeah there are about 300 cases that say that's sexual harassment. It's called hostile environment.”* This type of matter-of-fact response was the most common legitimization provided by MacKinnon and the 9to5 activists for why behavior described in the vignettes should be considered sexual harassment. The inclusive EEOC guidelines, which are a direct product of earlier lobbying by MacKinnon and others, allow for such a response.

The lack of such an inclusive formal definition in France seems to force those French respondents who favor broad definitions of sexual harassment to be more resourceful. During interviews, they drew on an eclectic mix of national and foreign law and logic to defend their position. In response to a vignette in which a woman breaks up with her boss only to be badgered by supplications that she return to him, one French activist drew on French criminal law to argue that this was sexual harassment, even though she admitted that it would be difficult to argue in court: *“In fact, it is sexual harassment and it could be addressed by criminal law because there is an intention of pursuing sexual relations and there is persecution because... he does not respect her decision and pursues her. And he exerts pressure because he calls her constantly, he corners her in the hallway, etc.... Now, will the courts pursue it? That's much less certain because for them, there really have to be threats, constraint, a clear pressure. Simply the fact that she's persecuted like that, reiterated demands, I don't think that would be enough for the courts.”*

While French activists drew on national legal definitions when possible, in several instances, the vignettes were clearly not sexual harassment, according to French law. The French activists used several strategies to overcome this problem. One technique consisted of arguing

that the logic of the law implies a certain extension. Another involved drawing on foreign, namely American, legal rhetoric. For instance, when presented with a vignette in which a woman's boss continually compliments her body, if she's ever cheated on her husband, and suggests they go out on a date, one French activist responds: *"That is the environmental harassment [harcèlement de type environnemental] that would not at this time be addressed by the law ... because the law requires that [the behavior have as its] goal, obtaining sexual favors. So the boss can say: 'I did this for the fun of it, not to obtain sexual favors.' But, in my opinion, [the law] could change, because you have to be logical.... First, the employer must guarantee normal work conditions. I do not think that that [type of behavior] constitutes normal working conditions. And, in addition, he's her hierarchical superior. Therefore, he has power over the career of his employee. So, I don't see what she can think besides, 'if I don't laugh when he says his stupid comments, I could be fired at the next down-sizing.' .... Therefore, in my opinion, there is certainly coercion. And, third point, if she says 'yes,' he won't say 'no.' Therefore, implicitly, his remarks aim at obtaining sexual favors."*

This activist admitted that the verbal behavior alone would not be considered sexual harassment by French law, but argued that this could change. She drew on American law to label this "hostile environment" sexual harassment, even though French law does not recognize this concept. Finally, she used logical pleas to make the case that French law denounces this type of behavior because: 1) employers are supposed to guarantee normal working conditions, according to a poorly enforced clause of the sexual harassment labor law, 2) according to her, these conditions are not normal, 3) the employee may feel threatened to put up with the boss's behavior or lose her job, so the boss is using "constraint" and "abusing his official power," and 4) if the employee accepted to have sexual relations with her boss, the latter would not refuse, which implies that he does "intend" on "obtaining sexual favors."

In other ways, arguments by French and American respondents were shaped by distinct cultural traditions of each country. For instance, French activists heavily invoked concepts of *vie privée*, or the idea that the intimate aspects of people's lives – like their sex lives – should be free from public scrutiny, to condemn particular behavior. A lot of the borderline behavior (according to both French and U.S. law) that many American activists labeled “hostile environment” sexual harassment, French activists condemned as “attacks on one's *vie privée*.” For instance, several French activists condemned employees who make crude and hurtful remarks about a coworker's sex lives because they do not respect their coworker's *vie privée*.

Note, however, that arguments about *vie privée* were just as often used by French respondents to *limit* intervention as to call for outside regulation. Badinter and Giroud made such appeals, but so did a few of the French activists at times. In response to a vignette in which a group of employees complain that one of their peers is receiving special privileges from the boss because she is his mistress, Giroud said that it was the employees' complaints, not the privileges, that were reprehensible, indicative of “jealous” and “nasty” behavior. Giroud thereby implied that this was a private affair between the two lovers and that the coworkers should mind their own business. Likewise, in response to a vignette about a male employee who makes incessant sexist jokes, one of the French activists responded: “*That should definitely not be inserted in a legal frame. That should remain on the level of human relations. The person should have enough humor to make fun of the guy and defend herself verbally [with] feminist jokes [like]: ‘God created man first because he needed a rough draft to make woman.’*”

According to one French activist, who is also a professional sociologist, the discourse about *vie privée* in France constitutes an ideology which serves to preclude discussions of social inequality: “*All day long, you hear this discourse about vie privée, which is also a discourse about French specificity in relationship to the United States. Every one takes for granted the theme: ‘In France, we protect the*

vie privée.’ They don’t realize that the *vie privée* is the place of power par excellence... We repeat: ‘The *vie privée* in France is protected,’ which according to me translates into: ‘No-one will check what,’ excuse the term, ‘shit, what awful things our politicians, journalists, etc. are doing.’... But that’s presented as a democratic achievement... as if the *vie privée* were truly the place of absolute liberty.... That’s a myth.... Patriarchal bull!”

Yet, as we saw, appeals to the *vie privée* were used in France to justify both public condemnation and sanction, on one hand, and limiting such formal intervention, on the other. This suggests that discourse on privacy does not necessarily imply a particular stance on outside intervention in workplace relations. Rather, the *vie privée* is an extremely accessible element of the French cultural “tool kit,” which can be invoked differently to argue conflicting positions. In the U.S., claims about group rights to equality, or denunciations of discrimination were more common. This led to a situation in which the woman in a vignette who insults a gay man with anti-homosexual slurs was denounced for different reasons by American and French activists. The Americans condemned her for discriminating against a gay man because he is part of the oppressed social group called “homosexuals.” French activists censored her behavior because it infringed upon the gay man’s *vie privée*.

To summarize, as Boltanski and Thévenot (1991) predict, the people interviewed referred to general principles that transcended the immediate dispute at hand, in order to strengthen their arguments. However, these over-arching principles proved to be nationally specific. In France, the assumption was that people’s *vie privée* should be protected. This is consistent with the French model of political life, since the Third Republic, in which citizens have the right to practice different customs, such as religion or cultural/linguistic difference, in *private* but are expected to refrain from *politicizing* such specificity (Noiriel 1992). According to this political model, capable citizens are supposed to be free from “particular” interests associated with politicized group affiliation

(Rosanvallon 1992). This tradition stresses the autonomy of the private sphere both from legal intervention and social pressures. The American model of associations and “minority groups” vying for political and social power (developed especially since the Civil Rights movement) provides a striking contrast. It has strengthened group identity by calling for legal intervention that would allow for economic and social equal opportunity between groups.

This contrast between the *political individual* in France and the *political group* in the United States may seem counterintuitive in view of popular wisdom about “American individualism” and “French solidarity” (Bellah et al. 1985, Lamont 1992, Tocqueville 1968). However, in a political context, the French emphasis on the *individual* is not *individualistic* any more than the U.S. emphasis on group identity is particularly *collectivistic*. Rather, both models try to foster solidarity in different ways. By emphasizing the individual at the expense of his or her immediate group, the French political model aims to ensure cohesion *above and beyond small communities or cliques*. The American political model acknowledges group inequalities in an effort to *overcome* them, although this can inadvertently deepen group divisions across society as well as strengthen solidarity within small collectivities.

It is in relation to the market that the contrast between “American individualism” and French “solidarity,” so well documented in other work (Lamont 1992, this volume), emerged in this study as well. For instance, in arguing that sexual harassment law should be limited, Camille Paglia and Phyllis Schlafly stressed *laissez-faire* management and owner’s prerogative. As Schlafly explained: “*I just don't think we should have a government inspector at every water cooler to catch some man who's a slob.*” She said that owners and bosses should be allowed a certain degree of freedom, and “*if you don't like the way your boss is treating you, go get another job.*” When asked about women who have difficulty finding jobs, Schlafly responded: “*no-one has a right to a job.*” Paglia also expressed support for owner’s prerogative, arguing

that she “*believes in private property.*” She likened small businesses to fiefdoms and said that a small owner should be free to hire who he chose and even to have a “*harem of women that he wants to sleep with.*”<sup>18</sup> Such arguments are part of the (fiscally) conservative movement in the United States. This movement has no equivalent in France, where the market is expected to be more restricted by social considerations (see Toinet, Kempf, & Lacorne 1989 for a discussion of the different relationship between state and market in France and the U.S.).

Even among the American activists, there was little talk of checking the logic of the market with social considerations. For instance, when asked about a boss who asks a job candidate to spend the weekend with him in San Francisco, several of the American activists argue that this would be sexual harassment if and only if the weekend proposition had a sexual motive. If the weekend were for business, that would be perfectly legitimate. For a French activist, however, the weekend proposition is wrong *even if there are no sexual expectations*, because it goes beyond what should be the scope of employment demands: “*According to me, its sexual harassment from the moment that a job or a promotion, etc. is subordinated to demands that are extra-professional. That’s judging someone on something other than professional competence, having requirements that go beyond professional requirements. A work contract... is an exchange between labor, a certain skill, and a salary. No more than that. Imagine that it was to see a client, to test her on a client. Well, that would still be too much to ask. You can’t demand so much of people during a hire.*” Whereas Americans respondents typically invoked professionalism in terms of bracketing one’s personal desires or agendas to serve the productivity

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<sup>18</sup>Paglia qualified this statement, however, by saying that middle managers are accountable to public interests and should not “sexualize their job.” To do so would be “unprofessional”: “*If [the harasser] is a middle manager, he is like a functionary within a larger corporation, and he works for the corporation, then his behavior is unprofessional.*” Paglia explained that while a family firm is “private” and should be free from government intervention, large firms “have evolved economically into public institutions,” so that outside intervention is appropriate there.

of the firm, this French activist called “extra-professional” requests that go beyond “reasonable” expectations. At stake was the individual’s privacy rather than the public good of the business. This point of view led her to denounce the employer’s weekend proposition not as sexual harassment but still as unreasonable, in the event that he was not implying a romantic get-away..

In sum, while people tend to refer to general principles in order to strengthen claims in everyday disputes, these vary nationally. French respondents assumed that citizens have a right to practice different customs in *private* but should not *politicize* them. American respondents took for granted the fact that group particularities have a legitimate role in political discourse. In the United States, the market was expected to have considerable range, while the French expected it to be “checked” to a far greater extent by social concerns. One would expect to find further national variation in other countries.

### Symbolic boundaries

Lamont (1992, this volume) demonstrates how people draw “symbolic boundaries” against people to whom they feel superior or inferior, a process which maintains and reinforces structures of inequality and exclusion. Many respondents in this study drew symbolic boundaries against specific groups, which served to discredit particular arguments by associating them with collectivities that they simultaneously denigrated. Specifically, proponents of restrictive definitions linked inclusive definitions of sexual harassment to “feminists,” “Americans” or “American feminists” to simultaneously discredit the concept and group. The way they did this varied by nationality.

Paglia’s and Schlafly’s arguments against broad definitions of sexual harassment were infused with criticisms of the women’s movement in the United States. In her written work, Paglia



(1992:66) has called American feminists “desensualized, desexualized, neurotic women.” Rather than argue, as do Badinter (1992) and Giroud, that extensive sexual harassment law is unnecessary because mutual appreciation characterizes men’s and women’s interactions, Paglia claims that “there never was and never will be sexual harmony” and “the sexes are at war with each other.” According to her, people should adjust their expectations to that realization, rather than try to change this with futile legislation (Paglia 1992:52,65). During the interview, Paglia further argued that American feminism and sexual harassment law promoted “*a very outmoded, gentele white lady’s view, Victorian view of proper behavior, of proper language, of any kind of off-color jokes, any kind of sexual innuendo, any kinds of sexual materials.*” In contrast, Schlafly blamed feminists for abolishing older laws against obscene language towards women, which she said would have protected women at work, and said they now have to deal with the consequences of having demanded to be treated like men. According to her, this includes being insulted like men.

In arguing for narrow definitions of sexual harassment, Giroud and Badinter drew symbolic boundaries against Americans and, more specifically, against American feminists. They used the contrast of an American society seized by gender warfare to highlight the harmonious nature of French social relations. They argued, as French lawmakers had in 1991, that lower levels of conflict in France minimize the need for legal intervention. Françoise Giroud explained: “*Two big centuries ago, the French invented a way of speaking amongst each other, of loving each other – I’m talking about men and women – and of making conversation, of having relationships that are a lot softer and sweeter than American relationships. There is no comparison. And that’s felt in the whole history of these last years.*” In this context, Giroud and Badinter argued that French women can negotiate most situations well on their own.

Elisabeth Badinter described American society as a counterexample of asexual and disharmonious social relations: *“Do you see what kind of ideal [of relationships between men and women] shines through your examples? The comrade. Do you see what that means in French? Its a bit like the model in Nordic society. In Sweden, its like that. I find it terrifying, just terrifying!”* She juxtaposed this image with that of the French workplace, which was described as a place of pleasant flirtation and playful seduction, where people meet and get married. She argued that this atmosphere should be preserved: *“You know its at work that people meet their lovers, their mistresses, who sometimes become their wives or husbands and sometimes don’t..... So if you start saying: ‘Oh, but a gaze a bit insistent or a reflection of bad taste is harassment,’ that’s going to rule out the possibility that couples will form, that people will date, court, have adventures. It’ll all be over.”*

In sum, these findings confirm research by Lamont (1992), which has shown that people draw symbolic boundaries against groups to whom they feel superior or inferior. In debates about sexual harassment, people use such symbolic boundaries to concurrently discredit a particular viewpoint and the group that defends it. This is consistent with what Beisel (1993) found in her study of censorship of 19<sup>th</sup> century American Salon art. She discovered that claims attributing purity or obscenity to paintings of nudes referred to the presumed natures of the *consumers* – as either upper-class or common people – rather than to the paintings’ *content* itself. Those who hoped to censure the reproductions claimed that they were being purchased by the uncultured and dangerous masses, implying that the photographs elicited lust and were a social threat. Opponents of censure contended that European cultural sophisticates were the true patrons, which meant that these works constituted art, not obscenity. Beisel’s study and the interview data here suggest that the meaning imputed to events or objects is informed by self identity and assumptions about the social order.

## Cultural Assumptions about the Workplace

While people tend to exaggerate differences and rely on stereotypes when creating symbolic boundaries, there is often some element of truth in their distinctions. This appears to be the case for attitudes about sociability and work. On the whole, the French respondents agreed that the workplace should be a place of social encounters, while American respondents tended to emphasize “professional relations” and productivity. While French activists did not develop arguments about sociability and flirtation at work, they did not denounce them either. Instead, they typically argued that they were not opposed to consensual romance at work but condemned situations involving abuse of power, constraint, or humiliation. In contrast, American activists tended to entirely reject arguments about the importance of flirtation at work, when confronted with them during the interviews. For example one activist, from Atlanta, voiced skepticism about the *utility* of such behavior: “*Why do people have to...? Really they don’t have to have everyday seduction and flirtation in the workplace.... Has it been proven that that helps productivity?*” Another activist from Texas stressed both the importance of being productive and keeping one’s distance from others at work: “*Just as a professional, I think about going to work and getting my work done and having a relationship with a colleague as a professional relationship, but to even go over that line into a real personal relationship, I think that can be dangerous and not wise.*” Moreover, Americans often made off-handed comments, suggesting that it is best to avoid dating people at work altogether both to improve productivity and to avoid interpersonal problems. In general, Americans argued that productivity was the primary workplace goal and that this objective was often incompatible with the type of social-sexual sociability described by Badinter.

Such emphasis on efficiency and economic profit is consistent with Lamont's (1992, this volume) findings that Americans are more likely than French to use material success to measure moral worth. It further concords with Camus' (this volume) study that suggests that Americans tend to view professional success as contributing to civil duty while their French counterparts consider these to be conflicting goals. Likewise, Weber (this volume) shows how French publishers feel much greater ambivalence about the commercial aspects of their job than do Americans, who accept as taken for granted practices like advertising, sales projections, and using brand strategies. Taken together, these studies suggest that the market sphere is less tempered by other concerns in the United States than in France. This has its roots in socio-economic history. In France, pre-Marxist socialists like St. Simon promoted the view that state technocrats were needed to protect society from the exploitation inherent in capitalism (see Ansart 1969, 1970). In the United States, there has not been such advocacy for intervention in the market by technocrats because the market is assumed to be fair.

I am not arguing that this cultural difference is the *cause* of varying views on sexual harassment. Rather, assumptions about the scope of the market provide a context for the way French and Americans discuss the issue, in which certain claims are more socially legitimate than others. For instance, in response to one of the vignettes, MacKinnon said: "*Somebody ought to get worried about the fact that no work is getting done. The workplace is not a place for sexual recruitment exclusively; people are supposed to be getting things done.*" This comment was stated as an after-thought. As MacKinnon herself pointed out in response to an earlier draft of this chapter, she would condemn sexual harassment regardless of whether it thwarted workplace productivity. Rather, it seems that she harnessed the rhetorical force that appeals to efficiency have in the United States to strengthen her pre-established position. In general, American, but not

French, respondents seemed intuitively aware that arguments about workplace efficiency and productivity could strengthen their position.

In sum, the interviews revealed different cultural assumptions about the workplace in France and the United States. Arguments of French respondents Badinter and Giroud suggested that flirtation and seduction should be fostered in the workplace and that people's sexual lives should be shielded from public scrutiny. Combining the two strands of thoughts seems to suggest that the workplace is a site for private behavior or that it is, at least partially, a private sphere. In contrast, American respondents did not consider the workplace a legitimate forum for sexual playfulness. Instead, they argued that people should go to work to be productive and keep their relationships with colleagues "professional." This suggests that, while the boundary between public and private is contested in both countries, the workplace is more likely to be perceived largely as a private place of sociability in France but as public, dedicated to productivity and efficiency, in the United States.<sup>19</sup> These tentative consensus's about what is public or private shape the definition of sexual harassment in France and the United States. Causality also moves in the other direction, in that debates about sexual harassment provide a forum for challenging or defending established notions of public and private.

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<sup>19</sup>My argument might seem to contradict Hochschild's (1997) new book, which argues that the workplace has become more like home for a growing number of Americans, because they feel more validated and successful there than with their families. However, Hochschild argues that the reason why people prefer to arrive early and stay late at the office is because their professional responsibilities and relationships with colleagues are more predictable, regulated, and egalitarian than the emotional and physical neediness of small children. In other words, work is only more like home in that people want to spend their time there, not that people's relationships with their colleagues are more like their relationships with their family. In fact, it is precisely because connections with coworkers are limited in emotional scope and dependency that Hochschild argues people feel so much more at ease at work.

## **Conclusion**

The emergence of sexual harassment as a social problem is part of a larger evolution occurring in industrialized nations to concepts of rights and crimes. This paper has demonstrated the high degree of uncertainty and disagreement that is still involved in defining “sexual harassment.” It has also pointed to some of the national trends that characterize divergence of opinion, among activists and public figures interviewed. Some of these national differences parallel legal definitions. For instance, American respondents tended to label a larger range of behavior as sexual harassment than did the French. Peer harassment and behavior like insults, jeers, or pornography, which creates a “hostile environment” but does not aim at obtaining sexual relations, was particularly more likely to be called “sexual harassment” by Americans. In general, American respondents conceptualized sexual harassment more in terms of gender discrimination while the French discussed it through the prism of sexual violence.

Other patterns seemed to reflect institutional factors in the two countries. Because, the U.S. definition of “hostile environment sexual harassment” is relatively elastic, Americans tended to rely on legal definitions when defining sexual harassment broadly. In what I argued was an effort to compensate for narrow French legal definitions of sexual harassment, French respondents drew more on foreign law and theory (particularly American) when defending broad definitions of sexual harassment.

I further argued that some national differences in claims about sexual harassment reflected deeper cultural assumptions. In the United States, references to laissez-faire economics were an integral part of arguments for *limiting* sexual harassment law, while allusions to workplace productivity and efficiency were commonly used to strengthen arguments for *broad* definitions of sexual harassment. Such references were absent from the French interviews, where pleas to protect employees’ *vie privée* were more common. By delving into the ways in which

respondents defend disparate positions about definitions of sexual harassment, this study has also discovered major cross-national differences in the way in which the workplace is understood in France and the United States. While American respondents assumed that the workplace should be where people “get the job done” and where social relationships should be “professional,” or distant and formal, the French considered that the workplace serves as an important meeting ground, where workers flirt and have affairs that might or might not lead to marriage.

Finally, I showed how respondents used symbolic boundaries (Lamont 1992) to simultaneously discredit a particular viewpoint on sexual harassment and a group identified with this stance. This strategy was used primarily by respondents *opposed* to broad definitions of sexual harassment, for whom the most targeted group, in both countries, were American feminists. This finding suggests that the construction of self and claims based on the social order shape the meaning imputed to events or objects. That opponents of inclusive sexual harassment definitions in both countries drew symbolic boundaries against *American* feminists points to the important cultural impact of the U.S. women’s movement, despite persistent gender inequality.

This study has several theoretical implications. First, building on the work of Boltanski and Thévenot (1991), it finds that people justify claims in interpersonal disputes by making reference to more general ideals or values. The way in which French respondents invoked “rights to privacy” to condemn or excuse particular behavior constitutes one example. However, this study suggests that some respondents feel more obliged to defend their point of view than others. American activists, for example, tended to take their own point of view for granted. After all, they argued, you only need to read the EEOC guidelines to see that they are right. French activists, however, who personally thought that a wider range of behavior than that which is recognized by French law should be legally defined as sexual harassment, went to extensive lengths to defend their inclusive definitions. This points to the fact that disputes do not occur on

an equal playing field. Rather, people compete within particular political contexts and cultural traditions, which put the burden of proof on those who move against the grain of established thought (Brubaker 1992).

Moreover, this study suggests that the “worlds of justification” that are used – often in compromises with other “worlds of justification” – to bolster particular claims, are not as universal as Boltanski and Thévenot (1991) contend. These authors argue that “*civic*” generalizations, or political or democratic ideals, dictate that people should be free from “particular” obligations or interests so as to act for the good of all (Boltanski and Thévenot 1991:143). They explain that women were long excluded from French suffrage because their role as wives and mothers was thought to prevent them from having autonomous judgment.

Yet, as Gordon (1982) and others have shown, 19<sup>th</sup> century demands for women’s suffrage and other rights in the United States were overwhelmingly couched in terms of a greater respect for motherhood. Women argued that giving them the vote would allow them to extend their nurturing to the public sphere through “social housekeeping,” thereby spreading the virtues of an idealized home throughout society. This suggests that freedom from “particular” obligations or interest is less central in the American political model. The interviews further indicate that French and American respondents have different concepts of what is politically legitimate. In the United States, respondents spoke of the rights of “minority *groups*” to social equality, an emphasis that identifies and politicizes group particularities. In contrast, French respondents underscored *individual’s* rights to *vie privée*, or not being socially penalized for private or personal behavior (including religious practice, cultural tradition, sexual practices, etc.) This perspective implies that characteristics like religion or ethnicity are not legitimate focal points for political action, but rather that they should be ignored or discounted. By studying the way in which people define and *legitimize* distinctions about sexual harassment cross-nationally, this



study has revealed crucial differences in the meaning that the political sphere has in different countries.<sup>20</sup>

What has this study taught us about culture? Is it a “seamless web” as was the consensus thirty years ago (Swidler 1997; DiMaggio 1997) or a heterogeneous collection of disparate elements, fragmented across groups and inconsistent across manifestations (Martin 1992)? This study suggests that, while national cultural trends exist, cultural meaning, in this context, functions more like an eclectic “tool kit” than a “seamless web.” The findings in these pages lend support to Moscovici’s (1984) claim that people “anchor” impressions of new phenomenon or issues in pre-existing “social representations” of familiar events or objects. For instance, Moscovici provides the example of how people conceptualized the novel career of psychoanalyst as a modern priest, so as to render this unfamiliar element familiar. Likewise, American respondents interpreted sexual harassment as a new kind of discrimination, while French respondents perceived it as a form of sexual violence. This process, in which sexual harassment is conceptualized in terms of established legal and cultural traditions, suggests some degree of cultural cohesion and consistency. Yet, implicit in this anchoring process is also internal contradiction and the transformation of cultural schemes. In France and the United States, lawmakers, activists, and others have had to choose in which pre-existing concept to “anchor” sexual harassment. Then, by broadening the chosen concept to account for sexual harassment, its original meaning may shift. For example, including sexual harassment as a form of sexual violence, suggests that violence is not only physical, as has traditionally been assumed, but can be verbal as well. Likewise, conceptualizing sexual harassment as a form of discrimination opens the

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<sup>20</sup>According to Boltanski and Thévenot’s (1991) model, American political life represents a “compromise” between the “civil” and “domestic” worlds. While the civil world emphasizes that people be free from particular interests, the domestic world recognizes particular interests and personal relationships. While there is a certain elegance to this logic, it is grounded in ethnocentrism, in that it takes the French approach to politics as the pure or ideal type and then measures other political models against the French example.

door to thinking of other forms of sexuality as situations of inequality. Such shifting meanings are possible because of the polysemic nature of cultural concepts.

Moreover, the interview data suggests that respondents draw on multiple cultural resources during the interview. Respondents adroitly used national and foreign sexual harassment law as well as popular wisdom to elaborate and defend claims about sexual harassment. Because sexual harassment has been defined as a legal issue in both countries, legal definitions emerged as particularly salient. Law seemed to offer a ready-made answer to many of the vignettes. Instead of creating a definition from scratch, respondents – especially American activists – could simply use the fully-formed cultural schemes which the law provided. In this sense, the law functioned more as a finished “piece,” like a doorknob or tubing than a “tool” like a hammer or wrench. But while legal definitions appeared to have an independent and substantial impact on responses, activists and public figures – especially French activists – sometimes rejected, augmented, or circumvented available legal definitions.<sup>21</sup> French activists also drew on foreign law – especially American – to defend marginal positions, highlighting the “transnational connections” of culture (Hannerz 1996).

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<sup>21</sup>One might expect that a random sample of French and Americans would yield more heterogeneous responses because these people would have less working knowledge of sexual harassment law. Indeed, the public figures, who admitted to not having intimate knowledge of sexual harassment law, did not make some of the distinctions characteristic of both the law and the activists’ responses, such as distinguishing between sexual assault and sexual harassment in France. On the other hand, if and when a person, who knew little about sexual harassment, became personally involved with this issue, he or she would be likely to turn to activists, lawyers, or other specialists, and the law itself for information. This process would probably serve to modify their initial thoughts on the subject. In fact, several of the French activists said that their thinking about this and related issues changed dramatically once they became part of the AVFT. This is an instance of “distributive cognition,” or the social division of cognition (Resnick, Levine & Teasley 1991, Salomon 1993). Not only do people know more culture than they use (Swidler 1986) but they know less than they might, because they know where to go when they need it. This further suggests that not all cultural representations are created equal but that some may be considered more legitimate and be more likely to be employed.

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**APPENDIX**

**FIGURE I**

**Legal definition of Sexual Harassment in France and the United States**

	<b>U.S.</b>	<b>FRANCE</b>
<b>extent of definition</b>	quid-pro-quo and hostile environment	quid-pro-quo only
<b>site of definition</b>	Title VII of the 1964 Civil Rights Act, EEOC guidelines, jurisprudence, state laws	Criminal law, Labor law
<b>penalties</b>	potentially serious	minor
<b>responsibility</b>	perpetrator and employer	perpetrator only
<b>minimum number of employees required in company for law to apply</b>	15 according to federal law, no minimum in some states	No minimum
<b>frame</b>	sexual discrimination	sexual violence

**FIGURE II**

**Intersection Between Personal and National Perspective**

	<b>INCLUSIVE COUNTRY DEFINITION</b>	<b>RESTRICTIVE COUNTRY DEFINITION</b>
<b>Inclusive personal definition</b>	American 9to5 activists, MacKinnon	French AVFT activists, Zelensky
<b>Restrictive personal definition</b>	Schlafly, Paglia (American)	Badinter, Giroud (French)

## ***Interview Guide***

1. Do you think sexual harassment exists? How would you define it?
2. Are American (French) sexual harassment laws sufficient? Why or why not?
3. Are the settlements sufficient?

(FOR ACTIVISTS ONLY:)

4. How did you become involved in 9to5 (AVFT)?
5. In working for this association, have you encountered cases that are difficult to define as sexual harassment? What did you do in this type of situation ?

To understand better how you define sexual harassment, I would like to explore a few scenarios. In each case, I will describe a situation. I would like you to tell me if you would consider this situation an instance of sexual harassment and why. If it is not, should the behavior be sanctioned by another law? Finally, what types of sanctions would you consider appropriate for each case?

### **VIGNETTE 1**

During a job interview for a position as sales representative, the boss invites the applicant to spend the weekend with him in San Francisco. He says he'll give his answer after the weekend.

### **VIGNETTE 2**

A boss only hires those job candidates, whether men or women, who agree to sleep with him.

### **VIGNETTE 3**

A saleswoman complains that her boss calls her by her first name, often undresses her with his eyes, compliments her body, has asked her if she ever cheated on her husband, suggests they go out on a date, puts his hands on her buttocks.

Probe: And if he does not touch her?

And if he tells her: "You should be nice to your boss if you want to have a good career."?

If it is between two colleagues?

And if the sales rep is a man and the boss a woman (sexes reversed)?

And if it is two colleagues but the one who stares, proposes, touches, etc. is a woman and the stared at, proposed to, touched is a man?

### **VIGNETTE 4**

The boss has been dating one of his subordinates. She is entirely consenting. But the other employees complain that the boss's mistress has privileges. They decide that they are penalized by virtue of the fact that they are not the boss's mistress. They say this is a form of sexual harassment.

### **VIGNETTE 5**

Pornographic posters are hanging behind the desk of an executive. One of his colleagues complains that she feels very uncomfortable every time she walks in his office. However, no other employee has ever complained.

Probe : And if the complainer is under the executive's orders?

And if many women complain?

And if many women complain and the executive is their hierarchical superior?

## **VIGNETTE 6**

Chris is known as a joker. Among other subjects, he often jokes about “dumb blondes,” bad women drivers, or “bimbos”. Despite these jokes, he claims to love women. He says they are closer to nature, more tender, give life... He sometimes says, in the tone of a joke, things like “Its up to the women to save the firm”. Most of his colleagues laugh at his jokes but Sue finds them unbearable. She says that even his supposed compliments are generalizations that confine women to very limited roles and considers this a form of sexual harassment. She expresses her point of view but is not taken seriously because she is considered a “feminist”.

## **VIGNETTE 7a**

A woman has been dating her boss. The relationship was completely consensual but now the woman wants to break up. She lets him know, but he does not want to end the relationship. He calls her several times a day on the phone, sends her letters, stops her in the hallway to discuss his suffering. She says that she can't work under these circumstances and complains that she is being sexually harassed.

## **VIGNETTE 7b**

Same as 7a, but they are colleagues.

## **VIGNETTE 7c**

Same as 7a, but the boss is a woman and the subordinate is a man.

## **VIGNETTE 7d**

Same situation as 7a but the two are colleagues, the man broke up with the woman and the woman can not accept his decision.

## **VIGNETTE 7e**

Same as 7a but the two are lesbians.

## **VIGNETTE 7f**

Same as 7a but the two are gay men.

## **VIGNETTE 8a**

A woman complains that her male hierarchical superior calls her “stupid,” “incompetent,” “slow”. He doesn't make any sexual propositions, but she says that he does not have this attitude with male employees.

Probe : And if he is more explicit, saying things like: “what a typical stupid female”?

And if the two are colleagues?

## **VIGNETTE 8b**

A man complains that his female hierarchical superior calls him “stupid,” “incompetent,” “slow”. She doesn't make any sexual propositions, but he says that she does not have this attitude with female employees.

Probe : And if she says “what a typical stupid male”?

And if the two are colleagues?

## **VIGNETTE 9a**

A female boss of a firm dates one of her employees. The relationship is completely consensual. However, when the female boss decides she wants to break up with him, her male subordinate refuses to accept her decision. He calls her incessantly on the phone. He sends her letters and flowers. He stops her in the hall to discuss his sorrow. She claims that not only is he not doing his work and preventing others from doing theirs, but that his behavior is disturbing and frightening. She says that he is sexually harassing her.

Probe : She fires him. Does she have the right?

Probe: In general, do you think that it is possible for a boss to be harassed by a subordinate?

### **VIGNETTE 9b**

same as 2a but the boss is a man and the employee is a woman.  
probe : He fires her. Justified?

### **VIGNETTE 10a**

A male boss of a firm dates one of his female employees. He breaks up with her to go out with another female employee in the same firm. The ex-lover is hurt and insults the new lover. She makes allusions to the other's sexual contact with the boss, humiliating her in front of their colleagues all of the time: "You slut, whore, you know he's only interested in one thing"... "You'd do anything to get ahead, wouldn't you?"...  
Probe : The boss considers this behavior intolerable and harmful for the firm. He fires his ex. Justified?

### **VIGNETTE 10b**

A male boss of a firm dates one of his female employees. He breaks up with her to go out with another employee, a young man, in the same firm. The ex-lover is hurt. She is a very self-assured and strong woman, about forty years old. The young man, on the other hand is very shy. She humiliates him in front of others, calling him, "fag," "bugger," "doll". She includes him with a nod of her head when she says "hey girls".  
Probe : The boss fires his ex. Justified?

### **VIGNETTE 10c**

A female boss of a firm dates one of her employees. She is a very domineering woman who begins to find her lover a bit cocky. She breaks up with him to go out with another employee in the same firm, a younger man who is in complete admiration of her. All of the employees are treated equally on a professional level. However, the ex-lover is hurt. He insults the new lover constantly in front of the others: "woos," "pussy," "pretty boy," "poor excuse for a man," "you're no real man," "where's your self-respect?" "she's just using your baby ass to satisfy her desires," "You have no balls".  
Probe : She fires him. Justified?

### **VIGNETTE 10d**

Anne, a female boss of a firm dates one of her employees. She breaks up with him to go out with another employee in the same firm, a young woman. All of the employees are treated equally on a professional level. However, the ex-lover is hurt. He insults the new lover: "With that ass you have, I see why Anne wants you, but its not fair to waste that on a woman..." "You'd be better with men." "Wouldn't you rather have a real man in your bed? Come on baby, what do you say? I know I can make you happy. You're getting excited just thinking about it, aren't you?" He's not really interested in her. He's just saying this stuff to humiliate her, but she complains that it is sexual harassment.  
Probe : The boss fires her ex. Justified?