

M O R A L
J U D G M E N T

AN ETHICAL PROBLEM

Teresa Harris was a rental manager for a Nashville, Tennessee company called Forklift Systems, Inc. On October 1, 1987, she quit her job and sued Forklift's owner, Charles Hardy, for sexual harassment. As any storyteller must, she told her tale selectively, mentioning only a few of the countless events and statements that had occurred during her two years of employment at Forklift Systems. She characterized these incidents in strongly negative terms and linked them into a coherent narrative. She thereby supported her claim that a specific crime, sexual harassment, had occurred. Her story gained coherence, in part, because she attributed various incidents to one man who had consistently bigoted motives. Thus she constructed a moral as well as a legal case against Charles Hardy, characterizing him (in effect) as a sexist boor.

Hardy told quite another story. He challenged none of Teresa Harris's important facts, but his selection of incidents, his choice of context, his descriptive adjectives, and his conclusion were all quite different from hers. He testified that he had never harassed Harris; he had merely joked with her and treated her "like one of the boys."

When we make moral and legal judgments, we must often assess actions that come to us in the form of stories. We want to put names on these actions—names (such as "harmless joke" or "offensive slur") that carry moral

connotations. In many cases, several stories can be told about the same events. How then should we morally assess narratives? What is the relationship between stories and moral concepts? And how, in general, do ethical claims gain their meaning and justification? Sexual harassment is such a new and controversial moral concept that people often draw radically different conclusions about the same events. Since we are still in the early stages of defining this offense, it provides illuminating examples of moral definition, interpretation, and judgment. But the same problems frequently arise in more settled areas of moral and legal debate.

According to Teresa Harris, the following incidents were relevant to her case. On at least one occasion, Charles Hardy told her to bring coffee to a meeting, although he never asked this of male managers. In the presence of other employees, Hardy several times told Harris: "You're a woman, what do you know," "You're a dumb ass woman," and, "We need a man as the rental manager." Once, in front of several colleagues, Hardy suggested to Harris: "Let's go to the Holiday Inn to negotiate your raise." More than once, he told Harris that she had a "racehorse ass," and could not wear a bikini "because your ass is so big, if you did there would be an eclipse and nobody could get any sun." He also suggested that he and Harris should start "screwing around."

Charles Hardy asked Harris and her female colleagues to remove coins from the front pocket of his trousers. He left objects on the ground in front of his female employees and asked them to pick them up, commenting on their clothes in the process. He often used sexual innuendo in describing his female employees' attire.²

Harris testified that she became miserable both at work and at home because of Hardy's behavior. On August 18, 1987, she met with her boss, intending to resign after the meeting (which she secretly taped). As her tapes show, Hardy admitted to making the statements that she had described, but he said that he had meant them as jokes and had not expected them to give offense. He apologized and promised to act better in the future. On this basis, Harris agreed not to resign. However, early the following month, another incident occurred. Harris had just won a contract for Forklift, and Hardy asked her, in the presence of several colleagues: "What did you do, promise the guy at ASI (Aladdin Synergetics, Inc.) some 'bugger' Saturday night?" At this point, Harris resigned and filed her sexual harassment suit.³

Hardy did not dispute any of these facts, but he argued at trial that his statements were harmless and that no other employees had taken them seriously. Indeed, according to court papers, "Several [female] clerical employees formerly employed at Forklift testified that Hardy's frequent jokes and sexual comments were just part of the joking work environment at Forklift. They were not offended, nor did they know that plaintiff was offended. Angela Hicks, formerly a receptionist at Forklift, aptly expressed

her feelings about comments Hardy may have made about her body. Ms. Hicks jauntily testified, 'lots of people make comments about my breasts.'⁴ Hardy also provided a specific explanation for his remark about negotiating Harris's raise at the Holiday Inn. He said that the company often conducted management meetings at that hotel, so Harris knew that he was joking.

Furthermore, according to papers filed by the defense, Harris "was the only woman who participated in regular, voluntary after-work gatherings in the office, and at these gatherings she drank beer, joked and used coarse language." Hardy said that he and his wife had often socialized with Harris and her husband outside of work. She had waited two years before complaining about his behavior. Even then, she had complained most seriously about alleged discrimination in salary, bonuses, and car allowance—complaints that the court found unmerited. Finally, Hardy stressed that he and Harris's husband were business partners; the collapse of their business relationship was the real cause of her anger at Forklift Systems.⁵

The federal magistrate who was assigned to hear this case listened to both sides, resolved a few minor factual issues, and drew a conclusion. "I believe," he wrote, "that Hardy is a vulgar man and demeans the female employees at his workplace." He offered specific moral judgments about each of Hardy's sexist remarks: "Most of Hardy's wisecracks about females' clothes and anatomy were merely inane and adolescent, such as the running joke that large-breasted women are that way because they eat a lot of corn. Hardy's coin dropping and coin-in-the-pocket tricks also fall into this category. [But] Hardy's comment to plaintiff suggesting that she promised sexual favors to a customer in order to secure an account was truly gross and offensive." Thus the magistrate drew most of the moral judgments that Harris had intended. Nevertheless, he denied Harris's claim that Hardy had committed sexual harassment. "I believe that this is a close case, but that Charles Hardy's comments cannot be characterized as much more than annoying and insensitive. The other women working at Forklift considered Hardy a joker. . . . A reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance."⁶

Did the magistrate make the correct choice in this "close case"? Did he choose the correct moral characterizations when he described Hardy's behavior as "gross and offensive," but refused to call it "sexual harassment"? Conceivably, the magistrate was guided by precise definitions of such terms. Perhaps he even subscribed to an elaborate moral theory—one that explained why certain acts were acceptable; others, objectionable; and still others, illegal. In his report, he certainly espoused a few general principles, arguing, for example, that offensive conduct is only illegal if it is so bad that it would interfere with the "work performance" of a "reasonable woman manager in like circumstances."⁷ On the other hand, the magistrate left most of his

important terms undefined, and he offered no comprehensive moral or legal theory. For instance, he did not explain what makes someone a "reasonable woman," nor why it was unreasonable for Harris to be overwhelmed by Hardy's statements. Instead, throughout most of his report, the magistrate simply characterized behavior as "inane," "gross," "annoying," and so on. He based these concrete judgments on the particularities of the case as he described it in his own narrative.

In presenting his version of the story and drawing his conclusions, the magistrate may well have been influenced by the details of each party's presentation: their choice of incidents and descriptive vocabulary. Consider, for example, Teresa Harris's testimony about her reaction to Charles Hardy's offensive behavior:

The comments about how I looked embarrassed me, but the comments about my ability to do my job and that I was stupid and I was dumb devastated me. I hated walking in there. He embarrassed me. Everybody made fun of me because Charles Hardy did that. And I was supposed to laugh about it, and it wasn't funny. . . .

I cried all the time. I was having shortness of breath. I wasn't sleeping at all. I was drinking heavily. I drank a lot. I would get drunk every night so I would go to sleep so I could get up and go to work the next day, and I hated it. I shook. I would sit in my office and I would shake. I hate it. I just hated it. . . .

I was ugly to my children. My children would call me and I would be ugly to them and I would say terrible things to them and hang up on them. I always did that for Mr. Hardy's benefit because he made remarks to me about that too: "Your kids call all the damn time."⁸

Here Teresa Hardy uses a first-person narrative to describe her own emotional state. She describes the relevant facts in terse sentences, now and then using arresting words like "devastated" and "dumb." She repeats phrases to emphasize them. And she tries to capture the listener's sympathy by portraying herself as a mother who drank and was mean to her children—all because of "Mr. Hardy." (By using his title, she demonstrates an enduringly courteous and respectful attitude.) Her demeanor and tone are not described in the transcript, but we might guess that she was tense, solemn, and self-conscious as she gave her sworn testimony.

All of these things—point of view, vocabulary, sentence structure, tone—constitute rhetoric, which has often had a bad reputation, especially among philosophers. John Locke expressed a classic conviction when he wrote:

all the art of rhetoric, besides order and clearness; all the artificial and figurative application of words eloquence hath invented, are for nothing else but to insinuate wrong ideas, move the passions, and thereby mislead the judgment; and so indeed are perfect cheats: and therefore, however laudable or allowable oratory may render them in harangues or popular addresses, they are certainly in all discourses that pretend to inform or instruct, wholly to be avoided; and where truth and knowledge are concerned cannot but be thought a great fault.⁹

The metaphor of rhetoric as a “cheat” is itself a rhetorical trope. Indeed, literary theorists have argued that no language is utterly devoid of style, tone, allusion, and metaphor; there is no “writing degree zero.”¹⁰ Nevertheless, we know that particularly clever speakers and good actors can persuade audiences to condone acts of profound evil, while innocent people are sometimes condemned merely because their rhetoric is clumsy. Perhaps if Teresa Harris had made different stylistic choices, she would have won her lawsuit on first hearing. Therefore, rhetoric alone can seem an unreliable method of moral judgment, too dependent upon personal skill. Philosophy, with its promise of rigorous methods and principles, is an attractive alternative.

THE MEANING OF MORAL WORDS

Moral philosophy—at least in the relatively narrow form that concerns me—always relies upon general principles or procedures. Some philosophers believe that anyone who knows the difference between right and wrong has correct principles in mind, either consciously or unconsciously. For instance, having pointed out that society lacks “any distinct recognition of an ultimate standard” of morality, John Stuart Mill claims that, nevertheless, our ability to act morally “has been mainly due to the tacit influence of a standard not recognized.” This standard, Mill claims, is the principle of utilitarianism, which “has had a large share in forming the moral doctrines even of those who most scornfully reject its authority.”¹¹ Kant says much the same thing about his Categorical Imperative, which (he claims) is an implicit possession of all rational creatures.¹²

Since our ideas about abstract universals are often jumbled and contradictory, philosophers sometimes advise us to analyze our opinions in order to reveal our core abstract beliefs, and then treat these critically, judging them against the true definitions that philosophy can provide. For example, Socrates asks Meno: “What do you say that virtue is, you and your

friends?"¹³ His intention is to analyze the multiple and contradictory answers of ordinary Athenians until he has arrived at a clear definition by means of dialectic. The ultimate in clarity would be a *single* ethical principle, such as Mill's doctrine of utility or Kant's Categorical Imperative. In fact, a single principle seems necessary, because if there were several valid criteria of moral choice, then we would need a "single-consideration procedure" (in Charles Taylor's phrase) to adjudicate among them when they disagreed.¹⁴ According to many philosophers, a plurality of incommensurable principles would leave us in the situation of the classic tragic hero, unable to choose a morally satisfactory course of action.¹⁵ Kant writes:

It seems arrogant, egotistical, and . . . dismissive to maintain that there was not philosophy before the birth of [Kant's] Critical Philosophy. . . . But there can surely be only one human reason, considered objectively, and so there cannot be many philosophies: that is, only one true system derived from principles is possible, no matter how variously and often antagonistically people may have philosophized about one and the same subject. So the moralist says with reason: there is only one virtue and one doctrine of virtue, that is, a unified system that unites all the duties of virtue under one principle.¹⁶

He even says, notoriously, that a "conflict of duties and obligations is unthinkable (*obligationes non colliduntur*)."¹⁷ If two obligations appear to conflict, then a higher principle will resolve the dilemma.

Mill agrees that we need a clear and unified theory of the good in order to make rational judgments; and he attributes this view to all past philosophers:

From the dawn of philosophy, the question concerning the *summum bonum*, or, what is the same thing, concerning the foundation of morality, has been accounted the main problem in speculative thought. . . . And after more than two thousand years the same discussions still continue, philosophers are still ranged under the same contending banners, and neither thinkers nor mankind at large seem nearer to being unanimous on the subject, than when the youth Socrates listened to the old Protagoras.¹⁸

Mill then proposes his own theory of the *summum bonum*, a definition of the good in terms of utility. Like Kant and Socrates, he assumes that the ethical value of any concrete narrative can only be seen by comparing it against the

general principles that are given by philosophy. Thus Mill states that all philosophers are agreed about one thing: "the morality of an individual action is . . . the application of a law to an individual case."¹⁹

More recently, William K. Frankena has argued:

Moral and value judgments imply reasons, and reasons cannot apply in a particular case only. If they apply in a particular case, they apply in all similar cases. Moreover, in order to give a reason in a particular case, one must presuppose a general proposition. If Jones answers your question "Why?" by saying "Because you promised to," or "Because it gives pleasure," he presupposes that it is right to keep promises or that what gives pleasure is good.²⁰

If this is true, then we soon have to decide the debate between Kantians (who always forbid promise-breaking) and hedonists (who emphasize pleasure). In order to justify a particular action, we need a principle; and in order to test the principle, we need an overall theory about justice, the good, or fairness. We may also have to decide whether the good takes priority over fairness (or vice versa), and other highly abstract questions.

This approach requires an intermediate step between particulars and principles. Moral rules cannot be applied directly to individual cases any more than scientific laws can tell us how ordinary objects will behave. In science, we must measure phenomena and classify data before we can apply theories to them. For example, Newtonian physics does not explain how my alarm clock will behave—at least not until I have measured its mass, velocity, position, and so on. By the same token, utilitarians cannot simply judge stories; they have to analyze them first to see how much happiness or unhappiness each action has caused. Kantians must classify behavior under general rules before they can test whether these rules are permitted by the Categorical Imperative. Virtue theorists must analyze narratives to see what virtues and vices each character exemplifies. And so on.

Thus it seems that moral theorists who are faced with a concrete story will almost always begin by analyzing it; they will then form moral judgments by applying principles or procedures to the analyzed data. Utilitarians, for instance, would measure the effects of Hardy's sexist statements on the total quantity of happiness in the world, subtracting Harris's misery from his pleasure to produce a figure representing the moral value of his alleged acts. But Harris offered no measurements of her own unhappiness; she told a story. Therefore, utilitarian theory cannot be applied directly to her narrative; first her statements must be replaced with a series of numbers. Ever since Mill, most utilitarians have doubted that precise measurements of happiness are available. Nevertheless, they believe that such measurements

would settle moral disputes, if only we could obtain them. The methods of moral assessment that they use are *proxies* for precise measurements.

Kant's moral theory does not involve measurements, but rather correct and precise classifications. His first ethical principle is: "I shall never act otherwise than *so that I could also will that my maxim should become a universal law.*"²¹ Thus I can only allow myself to harass someone if I could want everyone else to do the same thing in the same circumstances. But no individual can desire to be harassed, since harassment seems to mean some kind of *unwelcome* sexual behavior. (If the behavior were welcome, then it would be a case of "joking" or "flirting.") Since we cannot will that harassment be made a universal law, without willing ourselves to be harassed (which is a contradiction), harassment is immoral. On the other hand, "flirting" or "joking around" with one's co-workers could be made a universal law without contradiction.

Kant analyzes actions by identifying the maxims (subjective principles) of the person who acts. Thus a Kantian would ask whether Hardy behaved according to the principle, "I will harass my female employees," or rather according to the maxim, "I will engage in harmless banter." Hardy's understanding of his own maxim could be incorrect; he could misconstrue the principle that guided his actions. Therefore, we have to decide whether Hardy's intentional behavior constituted harassment, rather than "harmless joking" or some other innocuous category. Harris's rhetoric, on this view, is irrelevant to our moral judgment. To judge her case, we must examine the facts that she and Hardy described, analyzing them to see if they constitute harassment.

Kant's second formulation of the Categorical Imperative would also be relevant to a case of sexual harassment. This formulation requires us to treat other people as ends in themselves, not merely as means to our ends. If we treat people as ends, then we must respect their plans and desires. We might therefore ask whether Hardy's behavior was consistent with Harris's wishes—and she testified explicitly that it was not. But some unwelcome actions (such as punishments) are moral; and some immoral acts are welcomed. Therefore, Kant holds that we treat people as ends only when we respect the purposes and desires that they would have if they were rational. Thus it is not enough to know that Harris happened to dislike Hardy's actions. We would also need to know whether her reaction was rational. If Hardy's maxim was to use people as opportunities for gratification, then (regardless of his victims' reaction) his behavior was wrong. But "treating people like one of the boys" might pass Kant's test, assuming that this really meant treating them as equal and autonomous human beings. Similarly, there is no contradiction between "joking around" with someone and treating her as an end in herself. Thus the question for a Kantian is always one of classification. Did Hardy engage in "harmless banter" or "sexual harassment"?

It seems clear that once people agree to describe an act as "sexual harassment," they will never countenance it, any more than people will approve of actions that they call "murder." Someone may knowingly harass his colleagues, but he will not consider his behavior moral or defensible if he calls it "harassment"; his defense will be to give it another, less disparaging name. Similarly, anything that we call "cruel" is wrong, unless there is some extenuating circumstance. And if all we know about an act is that it causes "unhappiness," we will disapprove of it. Of course, a particular act can be simultaneously described with many such words, and this is one common source of moral confusion.

Philosophers who belong to certain theoretical schools deliberately employ only limited moral vocabularies. For example, Kantians consider questions of pleasure irrelevant to moral duty. Thus, if particular behavior is both "discriminatory" and "pleasurable," Kantians will condemn it, since pleasure does not have any moral weight in their system. Pluralists, on the other hand, maintain that several moral vocabularies can apply at once: something can be simultaneously cruel, an example of harassment, and a source of net pleasure, and all these terms can be morally salient. Pluralism poses a challenge to moral philosophy, because if a theory says, "Never do A," and "Always do B," and something can be both A and B at once, then the theory has failed to provide moral guidance.²² In fact, Jonathan Dancy argues that pluralism entails a rejection of moral philosophy:

after the discovery that more than one property is morally relevant, we begin to admit a plethora of such properties without there being any way of ordering them. When we face this plethora honestly, we have to adopt a particularist epistemology. . . . As particularists, we give no sense to the notion of a property being generally morally relevant, and hence we fail to understand the possibility of moral principles.²³

On the other hand, philosophers may be able to reduce their moral vocabularies to a few clear and salient terms, or else find ways to rank or weigh moral words when they conflict. In either case, they can salvage moral principles. For the moment, I simply want to observe that descriptive words can carry strong moral connotations—indeed, they can make moral judgments all by themselves. "Sexual harassment" is certainly one such term. We may deny that it applies in a given case; we may call it an irrelevant or ill-defined category; we may argue that another description is more salient—but if we use the phrase to describe an act, we thereby condemn it. The question remains: when are such terms correctly applied to individual cases?

In many of his dialogues, Plato ascribes to Socrates the view that all words (including moral terms) correspond to clearly definable concepts. For example, Theaetetus, a bright young acquaintance of Socrates, wants to know what "knowledge" is, and—by way of answering this question—he enumerates some examples: the sciences, geometry, and crafts. But Socrates objects to his method:

SOCRATES: But you were not asked, Theaetetus, to say what knowledge is about, nor how many kinds of knowledge there are. You did not wish to count them, but to ascertain of knowledge *what it is*. Or do I speak nonsense?

THEAETETUS: No, you are absolutely right.

SOCRATES: Consider this also. If someone asked, "What is it?" about something trivial and easy, such as clay, wouldn't it be laughable if we answered: "The clay of potters, and the clay of ovenmakers, and the clay of brickmakers"?

THEAETETUS: Yes.

SOCRATES: First of all, it is laughable to suppose that the questioner can get any meaning out of our answer, when we mention "clay" whether it is the dollmaker's or any other craftsman's. You do not suppose that anyone can understand the name of something, when he does not know what the thing is?²⁴

According to Socrates, the appropriate method is to "grasp many things with one idea." For example, we would have to understand what defines "knowledge" in general before we could use the term—"naming the many kinds of knowledge with one word."²⁵ Similarly, in a discussion of virtue, he says:

SOCRATES: For if you remember just now when I replied to you about shapes, we rejected any kind of response that attempts to provide an answer by using terms that are still being sought and are not yet agreed upon.

MENO: We did reject that kind of response, Socrates, and rightly.

SOCRATES: So now do the same, my excellent friend, and while you are seeking to know what virtue is as a whole, do not try to communicate it to anyone in terms of its parts, or by any similar kind of answer, but rather you must ask the same kind of question about it. You may say what you want about virtue, but what *is it*?²⁶

In another dialogue, Socrates announces that he has two methods for answering questions of the type, "What is virtue?" Together, the two methods constitute "dialectic." The first method, according to Socrates, is to "collect the things that have been dispersed, seeing them all together in one idea, so that, by marking the boundaries of each idea, we can make clear what it is that we are trying to teach. For example, because of what we said just now (whether well or badly) about the boundaries of the term 'love,' our discussion could at least be clear and consistent."⁷⁷ This is the method that philosophers employ when they examine numerous cases of ethical behavior (for example) and declare the common feature to be the essence of justice. They are marking the boundaries of the idea of justice. Socrates' second method is "the reverse [of the other one], in which we can cut things up into ideas, splitting them where their joints lie naturally."⁷⁸ Socrates uses this second method whenever he arrives at a definition by dividing things into groups or categories so that, within each group, everything conforms to a common description. He typically asks yes-or-no questions that allow him to assign things to one of two categories. A group of things that cannot be divided any further has a single definition, a single "form." Whether Socrates proceeds by splitting or by marking boundaries, he always arrives at the same result: a definition.

Following Socrates' suggestion, we could analyze Teresa Harris's testimony to discover what "thing" she was describing. This approach would not commit us to any particular metaphysical theory, because moral concepts such as harassment could be real, rational, natural, socially constructed, *or* subjective—all we have assumed is that they are clearly definable. Regardless of our metaphysics, we might ask whether Harris experienced harassment (which is illegal and also violates most ethical theories), or rather meaningless banter, friendly repartee, or harmless joking. Once we have decided what Harris really experienced, we can discuss its ethical value in the light of a moral theory.

This approach is evident in the philosophical literature on sexual harassment. Edmund Wall, for example, writes: "we need a set of jointly necessary and sufficient conditions of sexual harassment capable of capturing all subtle instances of sexual harassment while filtering out (even overt) sexual behavior which is not harassing." For him, "the mental states of the perpetrator and the victim are the essential defining elements." This, then, is his definition:

1. *X* does not attempt to obtain *Y*'s consent to communicate to *Y*, *X*'s or someone else's purported sexual interest in *Y*.
2. *X* communicates to *Y*, *X*'s or someone else's purported sexual interest in *Y*. *X*'s motive for communicating this is some perceived benefit that he expects to obtain through the communication.

3. Y does not consent to discuss with X , X 's or someone else's purported sexual interest in Y .
4. Y feels emotionally distressed because X did not attempt to obtain Y 's consent to this discussion and/or because Y objects to the content of X 's sexual comments.²⁹

It is not perfectly clear, on this definition, whether Charles Hardy's actions qualified as "harassment." We would need to know the meaning of such terms as "sexual interest," "benefit," "consent," and "distress." Wall adopts the Socratic procedure of drawing logical boundaries; but to complete the job, he would have to provide more definitions. In order to apply his theory, we would also need detailed information about Hardy's motives. Finally, we would want to know why Wall's definition is morally appropriate. If we agree to his definition, then we will automatically judge cases that fall under it as bad, since no one approves of "sexual harassment." But we are entitled to ask whether he has drawn the correct boundaries of the term.

Likewise, Anita M. Superson offers what she calls "an objective definition of SH [sexual harassment] that accounts for the group harms all forms of SH have in common." Like Socrates, she tries to "grasp many things with one idea." Indeed, she claims that her definition "protects all victims in all cases from even the most subtle kinds of SH, since all cases of SH have in common group harm." She defines sexual harassment as "any behavior (verbal or physical) caused by a person, A, in the dominant class directed at another, B, in the subjugated class, that expresses or perpetuates the attitude that B or members of B's class is/are inferior because of their sex, thereby causing harm to either B and/or members of B's sex."³⁰ Presumably, this definition either covers or does not cover the case of *Harris v. Forklift Systems*. Again, much would depend upon the meaning of such terms as "dominant," "class," "inferior," "perpetuates," and "harm"—but these words could probably be defined in much the same way that Superson defines "harassment."

Since Superson's definition is quite different from Wall's, we might turn to moral theory to tell us which one to employ. Wall is interested in motives; Superson, in consequences. Wall looks at individual behavior; Superson, at "group harms." Individualism, communitarianism, and consequentialism are prominent features of certain moral theories, so if we tried to resolve the debate between Wall and Superson, we would soon ask the same kind of metaethical questions that distinguish Kantianism from utilitarianism.

Even F. M. Christensen, a strong critic of the idea of sexual harassment, assumes "that if a *term* exists, there must be a corresponding *category* that is both significant (morally significant, in this instance) and well defined." He considers sexual harassment a "*pseudo-concept*" and "fundamentally illegitimate" because it does not refer to a set of things that share any one important feature:

the indiscriminate lumping of “dirty words” together with assault and extortion is a clear example of the sophistry of guilt by association; organically linking serious felonies with things that are at worst obnoxious causes the latter to partake of some of the horror of the former. Similarly, . . . the fact that sexuality is the only unifying element in an otherwise catch-all category makes sex the focus of attention—and hence turns a morally incidental feature into the core feature involved.³¹

Christensen sees nothing wrong with “sexual frankness”; he thinks that we are puritanical about it. As a result, he denies that “sexual harassment” is a meaningful moral category at all. He would, however, strongly condemn all instances of “rape,” since for him this is a clear and relevant moral category. Similarly, Mane Hajdin “presupposes that the law about sexual harassment . . . ought to provide a workable criterion of demarcation between sexual harassment and those forms of sexual interaction between people who work together that do not constitute sexual harassment.” Unfortunately, Hajdin concludes, the current law “makes no real demarcation at all.”³²

It seems that Socratic analysis is alive and well, at least in law and applied ethics. The correct definition of “sexual harassment” is a matter of great concern to ethicists, and when their definitions differ, systematic moral principles are required to help them choose. Deborah Wells and Beverly J. Kracher even appeal to “the natural duty of persons and the natural duty not to harm the innocent” in order to ground their definition of sexual harassment.³³ This is a clear example of a very general principle being used to generate a more specific moral rule. By the same token, Wall’s definition of “harassment” shows that he is more Kantian than consequentialist in his metaethical orientation. All of these authors adopt the view of moral philosophy that was shared by Socrates, Kant, and Mill—general rules can settle particular cases, but only once the raw data of narratives have been appropriately categorized.

My own view is that neither abstract principles nor moral definitions of the Socratic kind will get us very far in judging actual cases. I want to advance that argument by criticizing one comprehensive moral philosophy that employs clear definitions: Kantianism. But first I must anticipate an objection—that several major moral systems do not rely on definitions of the Socratic kind.

One such system is utilitarianism. At first glance, at least, it seems possible to observe and measure happiness, and its allegedly empirical status has appealed to some philosophers who think that terms like “harassment,” “cruelty,” and “injustice” are fatally vague or subjective. The idea that morality should be based upon the maximization of pleasure is proposed by

Socrates in the *Protagoras*.³⁴ Since a celebration of pleasure seems out of character for Socrates, the best explanation for his strategy is methodological: he wants to replace vague talk about virtues and the good with a single measurable quantity, and pleasure seems a likely candidate. If utilitarians were right, then we could avoid defining categories like sexual harassment. We would simply ask Teresa Harris and Charles Hardy to report how happy or unhappy they felt, examine their stories for possible dishonesty, and then ask whether each person's actions maximized the aggregate happiness.

However, it is unclear how we could measure happiness in a morally useful way. It is difficult enough for one person to compare the precise value of two radically different kinds of happiness—say, the pleasure of ice cream versus that of philosophical contemplation. To measure two people's sensations of happiness on a single scale seems impossible. A purely empirical test could perhaps be devised to measure a physiological response to pleasure, but its results would seem morally irrelevant. Some people might revel in trivial sensations; others might fall into profound depression at minor provocations. We call some feelings "trivial" and "minor" because we do not believe that all sensations of happiness and unhappiness are ethically equal. If utilitarianism really meant the maximization of pleasure-sensations as measured by scientific tests, it would violate our moral intuitions. Indeed, it is difficult to see *any* reason for that kind of utilitarianism, other than its methodological simplicity. A morally relevant account of "happiness" would be more useful—but it would be as controversial as the various existing definitions of "sexual harassment," "the good," and "justice."

Like utilitarians, social-contract theorists avoid arguing about moral categories like sexual harassment. Their approach is to ask what system of rules, rights, and duties would be established voluntarily by autonomous people who were about to form a society. Once these rules were in place, people could decide for themselves what to do about most moral issues. Some social-contract theorists (for example, Rousseau) assert that people outside of society would naturally possess fairly specific concepts of the good. Thus Rousseau and similar philosophers smuggle ideas about moral philosophy into their social-contract doctrines, which are not truly neutral. But contractarians of a liberal bent (Rawls, for example) are genuinely impartial about theories of the good. They concede that people will always hold different and incommensurable conceptions of morality. Since these conceptions are based upon metaphysical presuppositions, it is impossible for people to settle moral disagreements on the basis of evidence. Therefore, liberal social-contract theorists assert that each person should simply be allowed to realize his or her own values to the greatest extent consistent with others doing the same.

Liberal political theorists take philosophy out of the business of defining terms like "sexual harassment." Since I am skeptical of philosophy in

general, I sympathize with this move—but it does not solve our problem. Even if there is no philosophical answer to many moral questions, citizens must still decide whether and how to define their terms. Is sexual harassment, for example, a breach of basic liberal rights, or isn't it? Even if it doesn't violate constitutional principles, governments may still want to ban it. Should they? May they? And how should they define it? Contract theory evades these questions, but they require answers.

I have not shown that Socratic analysis is essential to all forms of moral philosophy, but clearly it plays an important role in current debates. In order to show what is wrong with analysis, I want to focus on the example of Kantianism, a general system that employs clearly defined terms. Needless to say, Kant would have been baffled by the phrase "sexual harassment," but he acted like a good disciple of Socrates when he treated *lying* as a clearly defined entity. Since it is absurd and paradoxical to state that everyone should lie, lying cannot be made into a universal principle, and therefore it is intrinsically immoral.³⁵ We might be tempted to perform the same procedure to determine whether or not *killing* can be made a universal law. The conclusion seems straightforward: no one could will that everyone should kill everyone else. But Kant would probably say that killing in self-defense ought to be treated differently from murder: the first can be made into a universal law, the second not. Thus, for Kant, lying is a thing, but killing is really two things: it is produced by combining cases of justifiable homicide with cases of murder. But if that is true, then why couldn't lying really be the union of two things—fraud and justifiable deception—where one is morally acceptable and the other not?

Indeed, Kant distinguishes between "untruth" (*falsiloquium*) and "lie" (*mendacium*), claiming that an untruth is not necessarily condemnable as a lie.³⁶ Nevertheless, Kant believes that we face no difficulty in judging particular actions. "A lie is a lie, and is in itself intrinsically base whether it be told with good or evil intent. For formally a lie is always evil."³⁷ Yet if a particular statement is merely an untruth, and not a lie, then it is excusable. Without contradiction, we can will that everyone should express "harmless falsehoods." Therefore, Kant concedes that we need "the power of judgment sharpened by experience" to tell us how to apply moral laws to particular cases.³⁸ For instance, our judgment tells us that we ought to describe some homicides as examples of self-defense, and others as murder; some false statements as untruths, and others as lies. After we decide how to categorize a particular act, then we can apply general moral laws to it.

Analysis is undoubtedly a useful cognitive process, but (as Kant concedes) we also have to know how and what to analyze. If someone kills another person with a handgun, then the salient issue is whether murder is permissible, not whether it is acceptable to squeeze metal objects (such as the triggers of guns). Rote analysis can never help us to decide which of these

analyses is appropriate or relevant. We also need something like judgment as a guide.³⁹ For example, to call something “murder” rather than “squeezing a metal object” is an exercise in judgment. Even the decision to isolate an act (firing a gun) as the object of moral assessment is a matter of judgment, since we could have focused instead on characters or institutions. Besides, most acts are so deeply entangled with other events that there are many ways to divide the stream of phenomena into discrete elements. Although judgment is difficult, it often does the whole work of ethics. Once we have decided to focus on an act that we call “justifiable homicide” or “a white lie,” then it is a tautology to claim that the act is morally acceptable. But if we had instead described it as “murder” or “fraud,” it would have been wrong by definition. In short, our moral conclusions often result automatically from our initial categorization of events, but these categorizations can be controversial.

In his epistemological writings, Kant assigns an important role to judgment, the faculty by which we decide “whether something does or does not stand under a given rule.”⁴⁰ Further, he notes that we cannot be guided by rules when we use the faculty of judgment, for if there were rules, then we would have to use judgment to know how to apply *them*. Therefore, judgment must be an autonomous faculty, not guided by rules or logic, but capable of being cultivated through examples.⁴¹ Someone is “stupid” (*dumm*) who lacks good judgment; he or she “may understand the universal in the abstract, but cannot distinguish whether a concrete case comes under it.”⁴² However, Kant does not emphasize or discuss the role of judgment in moral reasoning, noting that judgment is an issue for applied ethics (*Ethik*), whereas he is writing about theory. A theory of law, he writes, “needs as much general instruction (method) as to how we should proceed in judgment as does pure mathematics [i.e., none] for it realizes itself in action.”⁴³ But even if he is justified in treating the issue of judgment as irrelevant to his rather formal project, we still have to discuss it. For if moral judgment is a difficult and necessary mental task, then we have not understood ethics until we have developed an account of it.

Perhaps Kant’s silence on this topic results from his theory of language. Like Socrates, Kant believes that, if a term has meaning, there must be a clearly delineated range of cases to which it applies. Correct judgment therefore means recognizing the objective boundaries of the concept—and there is not much more that can or ought to be said about it. A wise person sees boundaries correctly; a fool does not. In cases of ethical judgment, we analyze particular events or situations until we discover general *moral* concepts, such as “lying.” Our goal is to determine whether the particular case is covered by a given moral concept—whether it falls within the boundaries of that idea. Thus, for Kant, judgment is just a species of analysis: it is the correct identification of an object’s moral essence. For example, while a given act could simultaneously be called “a speech,” “an exercise of the

larynx," "a mental process," or "a lie," its *moral* essence would be only one of those things. Thus the results of an act of judgment are either true or false; we have either named the correct moral essence of a particular case, or else we have made a mistake.⁴¹

But, as Wittgenstein shows, there may not be any clear boundary to something like lying or sexual harassment.⁴⁵ Starting with a case of clearly objectionable behavior, we can work our way through related hypothetical cases until we arrive at one that is pretty clearly not an example of discrimination. According to Socrates, this latter case must lack some essential quality that the objectionable case possessed; there must be a precise point at which examples of sexual harassment cease. But Wittgenstein believes that we often notice a "family resemblance" among a class of actions, in which the first act shares many qualities with the second, the second with the third, and so on. These acts can legitimately be grouped together as a class and given a name, even though no single essence necessarily runs through all the cases. Instead, a large number of individual cases within a given family often share many common features with many of the other cases, and these myriad resemblances produce an overall idea of similarity that does not depend upon any common denominator. Thus, for Wittgenstein, mere analysis will not allow us to identify a class of objects; and judgment must be a fundamentally different process from analysis.

Wittgenstein's most famous example of a "family-resemblance" word is "game."⁴⁶ Considering the vast variety of games, it is very difficult to think of any one attribute that they all have in common. They are not all competitive (consider *solitaire* and "catch"); not all of them involve scoring or winning; some have no rules (for instance, "horsing around" with a child); and some are not played for enjoyment (think of Pentagon "war games" and Russian roulette). If we declare that all genuine games necessarily involve one attribute (for instance, enjoyment), not only will this assertion contradict the normal usage, but it will also leave the concept undefined, because something that is enjoyable is not necessarily a game. The dictionary resorts to offering a long series of partial definitions, some of which are mutually incompatible: "activity engaged in for diversion or amusement . . . a procedure or strategy for gaining an end . . . a field of gainful activity . . . a physical or mental competition conducted according to rules," and so on.⁴⁷ Someone who did not already know how to use the word "game" correctly could hardly learn its meaning from the dictionary.

How then do we use the word "game" to communicate with other people? The answer seems to be that there are hundreds of games, each of which has much in common with many other games, although no one substratum runs through all the examples. Thus the word "game" refers to an area of meaning that is somewhat vaguely bordered and that has no logical criterion marking its limits; but it still has a dense core—or perhaps

several adjacent cores—to which we can clearly point. It is like a large and thick forest: we may argue about whether a particular tree near the margin belongs to the woods, but the whole entity is obvious enough. Thus, once people are told that football, chess, bridge, solitaire, lotteries, video games, blood sports, and military exercises are all called games, they can see more or less where the heart of the forest lies. Yet even indisputable examples of games do not all share any common feature.

We can, of course, argue heatedly about whether a particular practice is a game. But the solution to such a debate will not follow analytically from the pure concept of “game,” for there is no such thing. For example, a sign on a park gate might say, “No Games.” Someone might see the sign and decide that he can still play solitaire; this is not forbidden. A park ranger may then approach and point to the sign, saying, “That’s not allowed.” In this kind of situation, a dispute about definitions quickly becomes as futile as an argument about whether a particular star belongs to the Milky Way, or whether a certain temperature is “warm.” Some words actually *are* vague, and understanding their meaning does not help us to discern their borders. Thus, instead of asking what “game” really means in an abstract sense, the two parties ought to discuss the purpose or use of the regulation. For example: What features of certain games are harmful in city parks? Does solitaire involve these features? What did the town council mean to achieve through its regulation? Who has the authority to interpret park rules? Who is responsible for order in the park? In short, the word “game” has an important *function* or *use* in each social context, but no precise definition or Socratic Form; it is indispensable, yet intrinsically vague.

Discussing a similar example, Wittgenstein tries unsuccessfully to discover what common denominator runs through all cases of “deriving.” One instance of deriving occurs when we derive spoken words from written words. Wittgenstein writes:

[W]e told ourselves that this was only a quite special case of deriving; deriving in a quite special garb, which had to be stripped from it if we wanted to see the essence of deriving. So we stripped those particular coverings off; but then deriving itself disappeared.—In order to find the real artichoke, we divested it of its leaves. For certainly [this] was a special case of deriving; what is essential to deriving, however, was not hidden beneath the surface of this case, but this ‘surface’ was one case out of the family of cases of deriving.¹⁸

If Wittgenstein is right about the way that general concepts operate, then when we use terms such as “sexual harassment,” we are not referring to

logically discrete categories; we are rather alluding to a whole family of individual narratives about acts of discrimination, of which no two may be exactly alike—nor must they all share a common denominator. Even if we define the phrase, we still cannot draw a clear line between harassment and nonharassment, because the definition must depend upon other vaguely bordered, family-resemblance words, such as “unwelcome” and “offensive.” We might decide to draw a relatively clear but arbitrary line, in order to help people recognize their legal rights and responsibilities; otherwise, the outcome of lawsuits would be unpredictable and even capricious. However, the limits of sexual harassment could not be drawn by means of general principles (e.g., “Never give offense”), because such principles would always have vague borders. The only way to draw the line would be to provide a long list of specifically permitted and prohibited acts. But this method just reinforces the conclusion that there is no conceptual border to the family of cases that we name with the phrase, “sexual harassment.” The same is true of diverse situations that make people happy, and of acts that manifest a given virtue—they do not necessarily have any common denominator.

“THICK DESCRIPTION” AND ASPECT-SEEING

On the other hand, Socrates’ objection seems to have some force. How, after all, can we use a word like “harassment,” unless we have a clear test in mind to distinguish the cases that constitute harassment from those that do not? Even if “harassment” turns out to have a vague sphere of application, it still must have a clear logical core that gives it its meaning. Otherwise, the faculty (call it “judgment”) that allows us to assign particular cases to general categories is a mysterious, illogical, or arbitrary power. But here again, there is a plausible alternative position. In my view, calling something “sexual harassment”—an act of moral judgment—is an instance of what Gilbert Ryle called “thick description.”⁴⁹ Ryle offers the following example. If I say that someone’s eyelids contracted, then I am offering a “thin” description. But if I say that the person winked conspiratorially, then I have “thickened” the description: I have depicted the contracting eyelid *as* something, by placing it in a narrative context. I have not just added more detail to my description; rather, I have offered additional facts that are morally *salient* (in this case, information about intentions and purposes). This is a very common method of judgment; it allows us to assign particular cases to broader categories without having to postulate an essence or common denominator for the general category.

We cannot morally judge the contraction of an eyelid unless we know that it is a conspiratorial wink; therefore, thick description is a necessary precondition for ethical judgment. Moreover, some thick descriptions are