

Where the “Normal” Is Gendered and Unjust

Author : Robert Leckey

Date : October 14, 2016

Kaitlyn Matulewicz, [Law’s Gendered Subtext: The Gender Order of Restaurant Work and Making Sexual Harassment Normal](#), 24 **Feminist Legal Stud.** 127 (2016).

Do you want that with fries, salad, or a side order of sexual harassment? Kaitlyn Matulewicz’s paper on sexual harassment in the restaurant industry prodded me to look differently at interactions with servers and to reflect more broadly on the burdens placed on those who experience harassment. Her starting point is the legal standard by which, to qualify as sexual harassment, workplace conduct must be objectively “unwelcome” and outside the “normal.” Drawing on interviews with women full-service restaurant workers, Matulewicz argues that the organization of restaurant work makes women vulnerable to enduring sexual harassment. Structuring elements of restaurant work – hiring and dressing practices, the focus on customer service, and the legally approved wage-tip relation – normalize women workers’ subjection to unwanted sexualized experiences.

Matulewicz gives plenty of space to the women interviewed, allowing us to hear their voices. I appreciated her methodological decision not to ask the participants outright whether they had experienced sexual harassment. Instead, she asked them to talk about their work and to describe their interactions with customers, co-workers, and management. That decision was crucial to the project because her participants “often struggled in defining sexual harassment and thinking about their own experiences in relation to it.” (P. 135.) One reason for this struggle is that sexualized conduct is so “normal” in their workplaces – and that the workers need to please their customers.

While the paper’s primary aim is presenting the women’s accounts, Matulewicz connects her inquiry to legal literature on equality, such as work by my colleague [Colleen Sheppard](#), and to legal and sociological research on labour and gender. Matulewicz cites data on the composition of the restaurant industry: women, the young, and visible minorities are disproportionately present in the “front of the house,” serving customers, while men are disproportionately present in the “back of the house,” in the kitchen and the manager’s office.

Matulewicz shows that, in a workplace where sexualized interactions are common, the prevailing legal approach can lay on the recipient of unwanted attention the burden of communicating that conduct is “unwelcome.” That a worker’s remuneration depends on tips, within the client’s discretion, stacks the deck against doing so. Participants reported learning strategies of “laughing it off” to get through the shift.

While the problem isn’t new, this paper pressed me to keep reflecting on the challenges of addressing systemic injustice using complaint-driven mechanisms – ones that work best for egregious individual incidents. I have been thinking of this problem in the context of my service as an assessor for my university’s policy on harassment, sexual harassment, and prohibited discrimination. The paradigm case for such mechanisms probably involves outrageous statements made before witnesses agog, but reliable. Meanwhile, a gamut of conduct and workplace decision-making remains, to use Matulewicz’s term, “more ‘subtle’” and harder to challenge.

A quick Web search tells me that Kaitlyn Matulewicz is a doctoral candidate in the Faculty of Law at the

University of Victoria, an organizer with the Retail Action Network in Victoria, and has extensive experience as a server in the food and beverage industry. It's an impressive combination of scholarly research, activism, and lived experience – and I look forward to reading her work again before long.

Cite as: Robert Leckey, *Where the "Normal" Is Gendered and Unjust*, JOTWELL (October 14, 2016) (reviewing Kaitlyn Matulewicz, *Law's Gendered Subtext: The Gender Order of Restaurant Work and Making Sexual Harassment Normal*, 24 **Feminist Legal Stud.** 127 (2016)), <https://equality.jotwell.com/where-the-normal-is-gendered-and-unjust/>.