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High Crimes and Misdemeanors: A View From the #MeToo Era

By Elizabeth Rapaport

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In 1998 and 1999, President Bill Clinton was impeached by the U.S. House of Representative and acquitted by the U.S. Senate on charges of perjury and obstruction of justice. The charges arose from his efforts to conceal his consensual affair with 22-year-old White House intern Monica Lewinsky.

Allegations of sexual misconduct were a theme that ran throughout Clinton's tenures as governor of Arkansas and as president. There were allegations of groping (Kathleen Willey), rape (Juanita Broaddrick), sexual harassment (Paula Jones) and philandering.

He owned up to the philandering ("I have caused pain in my marriage") but not to the abuse of power alleged in "Troopergate:" the use of his gubernatorial security detail for logistical support in conducting his forays during 12 years as governor. Allegations were aired before and during each of his successful campaigns for president. When it came to sex, Clinton's public reputation was quite similar to Donald Trump's. Mainstream feminists aligned with the Democratic Party defended Clinton. Did feminists get it wrong?

Almost 20 years ago, I wrote an essay on feminists' takes on the Clinton impeachment.[1] My conclusions then were that mainstream liberal feminists were correct in opposing impeachment, but had served feminism and women badly with the arguments on which they relied. Looking back through the lens of #MeToo, my dissatisfaction with mainstream feminists' defense of Clinton is greater. In the light of #MeToo, my own support of Clinton would be more qualified.

Many of the reasons why liberal feminists defended Clinton remain valid. He was an ally on women's issues. His opponents were hypocrites twice over: Many men in the political class treated women as perks of office. And his opponents, no champions of women, were seizing on a pretext to drive out their popular and capable foe.

His feminist defenders, however, were willing to gloss over issues of sex in the workplace, the better to defend Clinton. #MeToo is about women not getting a fair shake at work because workplace laws, norms and institutions are inadequate to protect women when power short-circuits the boss's moral and critical faculties.

Prominent liberal feminists made a bad bargain. They defended their ally at the cost of the strength of their commitment to workplace gender issues.

Sexual harassment law was a recent innovation 20 years ago; but the confirmation hearings for [U.S. Supreme Court Justice Clarence Thomas](#) in 1991 had demonstrated the depth of feeling women shared a generation ago about men's sexual license in the workplace. We witnessed the Senate's — and the whole political establishment's — befuddled protective crouch when American women responded viscerally to Anita Hill's accusations against Thomas.

Some mainstream feminists defended Clinton as guilty of immoral conduct offensive to his marriage, not conduct that implicated his ability to discharge his public duties. Gloria Steinem agreed that Clinton ought not to be impeached. But she was unwilling to hitch feminism to the defense of monogamy. She found no basis for moral or political blame where sex was consensual. The president, she said, had always respected that “no means no,” the feminist criterion for worthy sex.[3]

Other mainstream feminists drew a little closer to the spirit of #MeToo. Patricia Ireland, then president of the National Organization of Women, was troubled by the power imbalance between the intern and the president:

Consensual sex with ... a[n] intern is an abuse of power by the president, but consensual sex is not illegal harassment and it is not an impeachable offense.

#MeToo has called attention to two things that Steinem and other feminists avoided during the Clinton impeachment season. One of these is something the law is not very good at capturing: “Consent” may be obtained under varying kinds and degrees of coercive conditions. And it can be refused at a high cost.

Consider a single mother with few employment opportunities facing an importunate supervisor. Add that she has good reason to believe that filing a complaint will make her worse off on the job, or put her out of a job entirely. This is the story of legions of blue and pink collar women.

She can of course just quit. So can the lawyer or Ph.D. candidate or junior executive. #MeToo is about the outrageousness of this choice — employment/opportunity or dignity, safety and sexual autonomy. #MeToo has given us the iconic representation of women's constrained choices on the job — the important man with the immunity of high status taking a business meeting in the buff.



HIGH CRIMES & MISDEMEANORS

*Looking Back At The
Clinton Impeachment*

Second, #MeToo has exposed the serial and compulsive nature of abuse of power by the Harvey Weinstens and Charlie Roses. Such men are a running menace to the women who work for them.

The mechanism that triggered the impeachment of Bill Clinton was an action brought by Arkansas state employee Paula Jones. She sued Clinton for civil damages for sexual harassment and sexual assault.[2] The initial suit was filed in 1994. Her lawyer sought to demonstrate a pattern of similar wrongdoing, and thus deposed Clinton about his relationship with Monica Lewinsky. Clinton lied under oath and subsequently sought to conceal evidence of the affair. Clinton's perjury was a predicate offense of his impeachment.

To the dismay of his opponents, Americans did not favor impeachment of a president for having an affair and lying about it. His feminist defenders made the case that his affair was at worst a moral lapse and not an indication of unfitness for office.

Focus on the consensual affair worked to Clinton's advantage. Inevitably, the lens would be wider in the #MeToo era. Today, Clinton's defenders would have a much harder row to hoe in dismissing sexual misconduct allegations against the president as a mélange of partisanship and hypocritical moralism spiced with the stories of opportunistic women. These stories were known to Clinton apparatchiks as "bimbo eruptions," i.e., women claiming affairs with Clinton, or unwanted behavior. Clinton's feminist defenders avoided questions about the scope of nonconsensual and predatory sex seeking in Clinton's history. And they put issues of power and sex in the workplace on hold.

The prime case in point is Paula Jones' suit. The scenario that led to this suit looks an awful lot like Harvey Weinstein or Charlie Rose in action, except that neither man had state troopers to assist him, and Clinton did not wear a bathrobe.

Paula Jones' Allegations

Paula Jones was one of two female state employees acting as registrars at a conference attended by then-Governor Clinton at the Excelsior Hotel in Little Rock. A state trooper invited Jones, but not her companion, to the governor's hotel room, without any indication as to why she was summoned. That much is undisputed. Jones alleges that once alone in the governor's room, Clinton grabbed her, kissed her, ran his hand up her leg, took his pants down and exposed himself. Jones and Clinton agree that he took no for an answer and allowed her to leave.

Gloria Steinem described this episode as a clumsy pass. Federal district Judge Susan Webber Wright dismissed this alleged conduct as "boorish" in contrast to the requirements of the sexual assault statute. Jones made no allegation of "forcible compulsion," or of "any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, or buttocks, or anus of a person or the breast of a female."

It takes considerable forbearance of men in power not to see the elements of a lesser assault charge in unwanted kissing, fondling and exposure, with a state trooper posted on the other side of a closed door. Today Paula Jones would tweet #MeToo.

Paula Jones' sexual harassment claim was premised on the same Excelsior Hotel room allegations. There are two varieties of illegal sexual harassment: hostile work environment and quid pro quo. Hostile work environment requires that the conduct complained of be pervasive and recurrent. The Jones Excelsior scenario is a nonstarter for this claim.

Quid pro quo requires that there be a tangible job detriment for refusing sex. Jones was not the victim of a reprisal (although a woman taking her leave of the governor in the circumstances alleged might well have harbored some uncertainty about her future in government employment). Many #MeToo stories in circulation sound in this range, from boorishness to assault.

The Jones case begs the question: Was Clinton in the habit of leveraging his office and his security detail in this fashion? The undisputed facts are at least suggestive. This was not an impulsive clutch at an attractive woman in a weak moment. This was selection of a target, extracting her from her workday and transporting her to a place screened and guarded by troopers. But there was no parade of Paula Joneses. The record is rather of women claiming to be lovers and a few unproven allegations of assault.

The Monica Lewinsky Allegations

I was also more critical then, and remain so now, of President Clinton's affair with Monica Lewinsky. Clinton's White House apparently had no formal antifraternization rules. Institutions such as universities and the armed services have antifraternization policies to help avoid the twin evils of abuse of power and blindness to the merits and talents of women other than as bedmates.

Maybe Monica Lewinsky was an adventuress and not a neurotic kid Clinton took advantage of. Either way, the next intern would be assessed for availability rather than ability. She would be at a familiar disadvantage. With all due regard for the many varieties of sexual interests and relationships, these must find a way despite norms and practices that serve most people well most of the time.

Today the #MeToo generation has brought a new kind of commitment to workplace sex issues. They are demanding a reckoning and stepping forward in solidarity. To a greater extent than my generation, they have this critical precinct of patriarchy in their sights. Perhaps 20 or 30 years ago, it was harder to imagine substantial change.

Clinton was worth feminists defending to combat the misogynistic agenda, rank hypocrisy and opportunism of his opponents. Clinton's history with women was not worth defending. These two strategic judgments were in my opinion the best response of the feminist movement to the impeachment of Bill Clinton. This stance would defend the alliance without backpedaling on workplace issues.

Donald Trump was besieged during the 2016 campaign by a litany of allegations of philandering and assault. The Hillary Clinton campaign anticipated a windfall of Republican women's votes in the wake of these allegations. Republican women stuck by their candidate. Some denied or minimized the allegations, difficult as this may be in our contemporary media environment. Some did not, but voted for an ally who would cut taxes or support a pro-life agenda.

No one should have been surprised by these results. The pull of partisanship in 2016, as during the Clinton impeachment, is powerful enough for some supporters to make a silk purse out of a sow's ear. Citizen or statesman, man or woman, feminist or antifeminist, politics is alliance-building, for better or worse.

[1] Sex and Politics at the Close of the Twentieth Century: A Feminist Looks Back at the Clinton Impeachment and the Thomas Confirmation Hearings, in "Aftermath: The Clinton Impeachment and the Presidency in the Age of Political Spectacle" (2001).

[2] Jones v. Clinton, 990 F. Supp. 656 (E.D. Ark 1998).

[3] <https://www.nytimes.com/2010/09/26/opinion/eq-steinem.html>.

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