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Elizabeth Rapaport

University of New Mexico - School of Law, rapaport@law.unm.eduFollow this and additional works at: https://digitalrepository.unm.edu/law_facbookdisplay Part of the [Law Commons](#)

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Aftermath

The Clinton Impeachment and the Presidency in the Age of Political Spectacle

EDITED BY

*Leonard V. Kaplan and
Beverly I. Moran*



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Elizabeth Rapaport

When the Lewinsky scandal was fresh, when we were all still wondering how far the press would go, and whether this bimbo eruption would have political legs, the reaction of feminists to the President's Predicament was eagerly anticipated. In time it became clear that feminism had found its place in the Democratic Party, and would defend the party and the President. Not surprisingly, feminists were criticized for abandoning principle and putting the past and potential achievements of the movement at risk.

While the feminist defense of Clinton *is* tenable, the case on the record has weaknesses that render it susceptible to charges of opportunism. How *ought* a principled feminist movement respond to a consensual liaison between a powerful ally and a young subordinate? Of course no unique feminist response should be expected. Although feminists have found a home in the Democratic Party, feminists within and outside the party differed in their responses to the Clinton-Lewinsky affair, and in their judgments as to whether feminists should support impeachment and removal from office.

There was a bright optimism among the founding generation of feminists and others of the sixties generation, Clinton's generation, that profound and liberating changes in sexual life could be achieved by feminists and their male allies, that new truths and new ways of living were to be discovered. There was also a fierce rejection of these aspirations by social conservatives. The impeachment season gave us an opportunity to hear from both sides about what they had learned in the last thirty years.

I

In January 1998 reports that the Independent Counsel was investigating an alleged affair of President Clinton's with a White House intern appeared in the respectable news media. The President denied having "sexual relations with that woman, Miss Lewinsky."¹ Almost eight months later, in August, after Lewinsky had testified before a grand jury and turned over a semen-stained dress, Clinton was forced to acknowledge an intimate relationship with the then twenty-two-year-old intern. There followed a period of intense speculation about whether the President would resign. President Clinton was condemned for morally reprehensible and politically reckless behavior. His ability to withstand pressure to resign from political and media elites, including the leadership of his own party and members of his own administration, was dissected. A constant feature of the scandal was the mildness of public reaction; although the public was having fun, it couldn't be persuaded that the scandal was the stuff of national political crisis. As the story devolved, the President would not brook resignation, and his ardent detractors would not allow the scandal and the President's second term to run its course. In October, the House of Representatives voted for an impeachment investigation; in December, Clinton was impeached; in February 1999, the Senate trial ended in an acquittal.²

Mainstream and official feminists, by which I mean national feminist organizations associated with the Democratic Party and women Democratic Party officeholders, tended to be restrained in their comments before Clinton's admission; after his admission they responded with moral condemnation of the President's conduct. "It was wrong."³ They then joined the effort to dissuade Congress from investigating and ultimately impeaching the President. But the lineaments of the position solidified in August and September, which mirrored that of the Democratic Party, had been on offer from some prominent feminists from much earlier days. In January Susan Estrich sketched the position: The President had shown "bad judgment" in engaging in sex with an intern, his conduct was "deeply troubling"; but a consensual relationship does not constitute sexual harassment, much less is it criminal, much less does it rise to the level of an impeachable offense.⁴ In March Gloria Steinem contributed an op-ed piece to the *New York Times* in which she echoed this position. But while Estrich used the language of conventional moral rebuke, Steinem did not condemn the sex or the man. She absolved Clinton of any moral

or political blame because the sex was consensual. Thirty years ago, she wrote, the women's movement had developed a "common sense guideline to sexual behavior . . . no means no, yes means yes." With women who have made accusations, like Paula Jones or Kathleen Willey, Clinton took "no" for an answer. He may have been guilty of indecorousness, some passes were "clumsy" or even "gross," but nothing more. Thus Steinem offered an explicitly feminist criterion for judgment of sexual relationships, including those between the powerful and the humble, which she also believed was shared by the American public and especially women.⁵ After Clinton's admission in August, National Organization of Women president Patricia Ireland, and other feminist leaders, brought the issue of power imbalance into her reading of the Clinton-Lewinsky affair. She found Clinton's conduct to be an "abuse of power" but not one that would lead feminists to call for resignation or impeachment:

Consensual sex with a White House intern is an abuse of power by the president, but consensual sex is not illegal harassment and it is not an impeachable offense . . . Nor is it in the best interests of our country for the president to resign.⁶

Little public attention was paid to another relevant and available model for critique of Clinton's affair with the intern, namely, antifraternalization regulations imposed in hierarchical organizations like the armed forces, some civilian workplaces, and schools and universities. (Apparently the Clinton White House did not adopt such policies.) These regulations, which have goals similar to those of sexual harassment law, typically ban relationships between persons of disparate rank regardless of consent. Sexual harassment law distinguishes between unwelcome but consensual sex, which violates the law, and welcome contact, which does not.⁷ Antifraternalization policies ban both welcome and unwelcome sex. Invocation of the antifraternalization model could have been the occasion for a public discussion of complex and wide-ranging questions involving competing claims to sexual freedom and the case for protection against exploitation in different kinds of workplaces and organizational settings. This might have constituted a feminist agenda for the Clinton scandal. Nothing like this happened.

Instead, feminists responded to the President's affair with the intern by concluding that (1) it was merely a breach of private morality, or (2) it was neither morally nor politically problematic for feminists (consensual sex), or (3) it was exploitation not barred by law, and lacking sufficient

gravity inherently or when measured against the value of the President to his feminist allies (Which? Why?) to justify casting the President out of office.

Those who successfully sought to impeach the President and subsequently failed to remove him from office were obliged to proceed in the face of a broad American consensus that sex with the intern did not merit loss of the presidency. The congressional Republican right and Independent Counsel Starr found this a bitter lesson and could never quite believe that it was so. But because it was so, the impeachment could only go forward on the basis that what mattered was not the sex but the lies—to the public, his family, and members of his administration and staff—and the alleged perjury and obstruction of justice.⁸ No doubt there were some Americans for whom perjury and obstruction issues were indeed the heart of the matter, but for the majority of Clinton's supporters and opponents the impeachment and trial were about sex.

II

That feminists would be part of this consensus, though, requires some explanation. For thirty years feminists have insisted that the personal was also political. Feminists have striven to combat the hysterical blindness that had kept women as well as men from publicly naming wrongs suffered by women at home and on the job. Common but formerly unacknowledged expressions of male privilege came to be seen as incongruous and unacceptable in a genuinely democratic society.

Many feminists had certainly long condemned the kind of conduct the President sought to conceal, whether perjuringly or lawfully: President Clinton took advantage of a young woman, who, like so many before her, was intoxicated by the musk of power. He told her, she told her interrogators, that he had had hundreds of such "affairs."⁹ The Lewinsky scandal came to light because another foray of the President's eventually gave rise to a sexual harassment lawsuit, undoubtedly politically motivated, in which Ms. Lewinsky became embroiled. Then-Governor Clinton encountered Paula Jones at a hotel while both were there on Arkansas State business; she was working at the registration desk for a conference sponsored by the state agency that employed her. Clinton had Jones escorted to his hotel room by a state trooper, his bodyguard and procurer. While the trooper guarded the door, the Governor allegedly dropped his pants

and groped his dubiously voluntary guest, a stranger to him, who, unlike Lewinsky, had not sought his attentions.¹⁰

Since the blood of feminists, and many other Americans, is made to boil by the exploitation of the young and vulnerable (even the young of Beverly Hills), and since the Jones episode looks like nothing if not criminal assault, why do we defend this President?

A summary of the reasons we defended the President's tenure in office:

The Constitutional Argument: The Starr investigation, the impeachment, and the trial were politically motivated, and not rooted in any threat to the integrity of national government.

The Political Argument: In order to pursue justice and equality for women, feminists must ally with the Democratic Party. Realistically, feminists have nowhere else to go and will lose if the Republicans, and especially the Republican right, defeat President Clinton. ("He's a SOB, but he is our SOB.")

The Hypocrisy Argument: Every member of the Republican right, and indeed the whole Congress, have condoned the exploitation of women and the lying about it on the part of other members of the club. That condonation makes liars of those who cry liar now. Moreover, these hypocrites have opposed every advance for women. They come to the bar of justice with unclean hands.

The Liberal Argument: The President's lies, even if perjury, were about merely private conduct. Neither the conduct nor the lies implicate his ability to conduct the public's business.

The *Kulturkampf* Argument: For Clinton-haters the President represents a detested value system—call it sixties culture, call it baby-boomer morality. The disgrace of Clinton and his rout from office is part of a campaign to restore patriarchal sexual and familial values. Those who identify as targets of that reaction—proponents of a secular, pluralist state, feminists included, are frightened and repelled by what they see underlying the impeachment drive: Sexual McCarthyism,¹¹ a "Savarnolan purity crusade,"¹² an American version of the Taliban.¹³ To defend the President, then, is to defend the ultimate target of his committed detractors, ourselves. United front politics against a common enemy is clearly indicated. (A no-brainer.)¹⁴

It is the liberal argument which is problematic for feminists. While political expediency is sometimes justifiable, and feminists have as much right to compromise as any other constituency, feminists presumably do not

want to abandon the insights that have driven the movement. Women have suffered precisely because the forms of exploitation to which we are subject have been dismissed as merely personal, and therefore both trivial and not susceptible to legal or political redress. Therefore, when mainstream and official feminists defend Clinton on the grounds that because his conduct is not reached by current law it should be consigned to the realm of private morality (it's between Bill and Hillary) their work is at best unfinished and at worst seriously flawed. Have feminists given up too much and compromised too far in defending the President?

The weakness in the feminist critique of Clinton's affair with Lewinsky was the unwillingness of those representing mainstream feminism forthrightly and unambiguously to apply feminist principle to Clinton's affair with Lewinsky. The issue of principle is not marital fidelity. Feminism is not dedicated to the defense of monogamy. Nor does it turn on whether Lewinsky consented to or initiated the affair. Consent could be relevant in a case involving a woman who can fend for herself, where some modicum of equality is evident. (We all have our guesses about Monica Lewinsky: I see a neurotic kid.) Feminism is not dedicated to the defense of chastity. The issue is exploitation of office. When the powerful persist in trolling for susceptible interns, fresh cohorts of young women are forced to fight the battle that feminists of my generation hoped to win for our daughters: the battle to be taken seriously rather than reduced to sexual assets or perks. Bill Clinton, in a pattern of conduct with women expressed with Lewinsky, hurt our cause.

The weakness then in the mainstream defense of Clinton was to dilute or muffle a feminist critique of his affair with Lewinsky, and to adopt instead the liberal dichotomy between private and politically significant action. Acknowledging Clinton's failures as an ally, however, does not create a bar of principle against support of the President's continued tenure in office. At the close of the century, feminists have a share of power and influence we lacked thirty years ago, and like any other constituency we make political accommodations. And, as with other constituencies, we can hurt as well as help ourselves by so doing. Politics does make strange bedfellows. To cite a striking but hardly unique example, the black voters of Alabama embraced George Wallace, contrite, and willing to work with them and for them, when he sought to reenter Alabama politics; this was despite his civil rights era history in Alabama and his racist bid for the Democratic Party nomination for the presidency in 1968. The Clinton Administration's and the Democratic Party's positions on such issues of critical importance to feminists as reproductive rights and the patriarchal

yearnings of his socially conservative opponents need little rehearsal. In context, the question of this alliance is not a difficult one; costs to feminists of maintaining the alliance are lessened by forthright recognition that we support the President despite his exploitative record and not because we don't think sexual exploitation is the stuff of politics.

III

Feminists have been taken to task for failure to render consistent responses to the Clinton scandal and the allegations of sexual harassment made against Justice Clarence Thomas by Anita Hill during his Senate confirmation hearings in 1991.¹⁵ These are the two highest profile sex scandals of the contemporary feminist era.

Thomas and the Senate were passionately denounced by feminists during the confirmation hearings. Feminist outrage on the former occasion was above all directed at the denigration of Anita Hill by the Senate. The hearings were a watershed and Anita Hill a messenger of change. Anita Hill came onto the national stage at a time when powerful men believed it was possible to deny that they and their colleagues routinely exploit or condone the exploitation of subordinates, and to deny without political risk.

Republican Senators excoriated Hill as a liar and Democratic Senators thought that, as in the past, little attention should be paid to accusations like Hill's against a member of the club. Women knew perfectly well that what Republicans said was unimaginable conduct on the part of the nominee happens all the time, and what Democratic Senators dismissed as trivial was painfully important to working women in both human and economic terms.

Hill accused Thomas of sexual harassment while she was a young attorney and he was her supervisor. Thomas persisted in asking Hill out for dates despite her refusals; she told him she did not want to date her supervisor. He also subjected the religious, reserved Hill to lewd and explicit sex talk. This situation lasted for some months while Hill was working for Thomas at the Department of Education, where he was Assistant Secretary for Civil Rights. Then he stopped, but resumed when she went to work for him again after he assumed the chairmanship of the Equal Employment Opportunity Commission.¹⁶

There are two forms of sexual harassment recognized in federal law: quid pro quo—demanding sex under threat of job reprisal, and hostile

work environment—imposing demeaning conditions on women on the job.¹⁷ Hill made no allegations of the former kind. Thomas's alleged conduct may well have been sufficiently "severe or pervasive"¹⁸—the applicable legal standard—to constitute the latter under then existing or current federal sexual harassment law.¹⁹ Regardless of legal sufficiency, Thomas took advantage of his position to humiliate a devout and proper subordinate, knowing that she could not send him packing without paying a high professional price. Long before the hearings brought her unwanted notoriety, her tenure at the EEOC brought on a hospitalization for job-related stress and ended with her abrupt abandonment of Washington to teach law in her native Oklahoma.²⁰

The criticism that feminists are inconsistent in supporting Clinton but opposing the confirmation of Thomas has little purchase on those feminists who condone the sexually exploitative conduct of neither. Thomas's conservative political and legal views would have made him an exceedingly unpalatable nominee to the Supreme Court in a feminist calculus even if Hill's allegations had never come to light. The disquieting features of the politics of the Thomas confirmation hearings arise from other quarters. The prospect of the second black Supreme Court nominee in American history being rebuffed for conduct previously ignored by the Senate was unsettling. In the case of the Clinton impeachment, it was the President's opponents who were subject to charges of hypocrisy; had the Senate failed to confirm Justice Thomas in any part because of Hill's accusations, we would have been treated to the spectacle of a black man being turned away for behavior common and condoned among the Senators who discredited him.²¹ But perhaps because the racial politics of the hearings were so absorbing, I did not give much thought in 1991 to another question to which the Thomas confirmation hearings gave rise: In examining Thomas's relationship with Hill, were we as a nation raising the bar for the conduct of powerful men with the women in their professional orbit, or opening the door to what has been called sexual McCarthyism? The answer to this question, when considered in light of the last near decade and the impeachment trial, is, I think, both.

IV

President Clinton stands accused by social conservatives of amorality or immorality in the conduct of his family and sexual life, and as representa-

tive of the moral failings of his generation of liberals. Further, conservatives regard these adulteries as disqualifying him for the presidency both because they reveal a lack of "personal virtue" that is a necessary if not a sufficient condition for political leadership and because of the failure to provide exemplary leadership as husband and father.²² Social conservatives called for his resignation on these grounds; some thought the libertinage was sufficient grounds for impeachment and removal from office. While liberals congratulated the American public throughout the impeachment season for their good sense in rejecting calls to impeach because of merely private failings, conservatives lamented the degradation of American values.

Liberals predictably responded with alarm about the designs conservatives had upon privacy; the corruption of values that liberals saw was in the media and political culture of scandal. Feminists understood that the conservative defense of the family as the foundation of a healthy society is implicitly a call for the strengthening of patriarchy. It is female chastity that is critical to family virtue; it is the subordination of women to men that is necessary to the operation of the kind of family for which conservatives yearn.

Conservatives have fundamentally misread the sexual values of the sixties culture they see embodied in the President. David Frum's diagnosis is typical and revealing:

[W]hat's at stake in the Lewinsky scandal is not the right to privacy, but the central dogma of the baby boomers: the belief that sex, so long as it is consensual, ought never to be subject to moral scrutiny at all.²³

Frum is surely correct that sixties political liberals and radicals valued sexual expression and sexual experimentation. It was a hallmark of the era. But coupled with it was the value placed on sexual honesty. The idea of sexual liberation contained at its core the commitment to be honest about desire and honest with those with whom sexuality was shared. Adultery was part of the package of repression and deception of self and others that was rejected by sixties culture. The plan was to invent and institute sexual relationships in which all interested parties gave, as it were, informed consent, and were willing participants. Thus monogamy was a choice, not an obligation. Neither exclusivity nor heterosexuality were accepted as universal norms. There was ample basis for the moral criticism of practice in sixties sexual culture, which of course is not to say that insight or rectitude were more or less common than in other cultures.

While liberals and radicals of the sixties and younger persons influenced by that culture retain some allegiance to these values, there has in the main been a retreat toward convention. That culture, though, nurtured and took the imprint of the feminist and homosexual rights movements: Among the most enduring influences of the sixties culture, and from the conservative point of view among the most objectionable, are the notions of parity of legitimacy of female and male sexual interests, and straight and gay sexual interests. However, with these signal exceptions, sixties culture has not sustained its innovative momentum and has not developed enduring novel institutions to rival conventional marriage.

Few of Clinton's proponents defended the President on grounds that could be called sixties or sexual liberationist grounds. The dominant response, shared by many feminists, was an assignment of Clinton's affair to the realm of private morality, a matter which, apart from the impact of the scandal itself, did not implicate his ability to faithfully and competently discharge the obligations of his office. The sexual politics of the Clinton impeachment turned on the different meanings assigned to sexual privacy by liberals and conservatives. For conservatives it is a shield for decadence that screens conduct of great relevance to public welfare from moral and political accountability. For liberals it is the paradigm of a domain of life where consenting adults should not have to endure state oversight, where autonomous choice and pluralism should hold sway.

V

Contemporary feminism has a complex relationship with liberal norms. Feminists have good reasons to endorse the liberal value of sexual privacy. Social conservatives in power would certainly have other targets as well but would be dedicated to the repression of women. But feminists have vital interests that have led us to press for reforms that redraw the boundaries between the sphere of private conduct and conduct subject to public scrutiny. The reform of rape law to allow the prosecution of dates, boyfriends, and husbands and the invention of sexual harassment law are critical examples. Each of these reform regimes has disquieted liberal concerns for privacy. Absent the framework provided by sexual harassment law, an event like the Hill-Thomas Senate confrontation could not have occurred. The law and the politics that produced it contributed along with other cultural changes to the climate in which Supreme Court

nominees and presidents, like business executives and factory foremen, are obliged to answer for conduct that would have been politically and legally invisible three decades ago. There have been occasions, notably the campaign to curb pornography by creating civil liability for harm to victims of pornography,²⁴ when many feminists paid insufficient heed to concerns voiced by feminists and others about the dangers of repression when the state is invited to impose censorship.

In 1991 feminists responded viscerally and aggressively to the Hill-Thomas confrontation, forcing liberal allies and conservative opponents to reckon with the impact of sexual harassment on women. In 1998, official and mainstream feminists were on the defensive. They injected little in the way of a distinctive feminist voice or content into the public debate. Feminism was perceived as complicit with the trivialization of sexual exploitation and a defender of conventional marital morality. The issues ducked about sex and power are not easy ones, nor was the conjuncture auspicious—the hard Republican right in full cry, seemingly ready to take any political risk to discredit the President and the Democrats. During the next scandal, there will again be jeremiads about the decline of patriarchal civilization. Feminists will have other chances to focus intellectually and politically on the historical and natural objectives of the movement, which include both combating sexual exploitation and holding out the hope of a better sexual future.

NOTES

1. "What's News World-Wide," *Wall Street Journal*, January 27, 1998, A1.
2. See Jeffrey Toobin, *A Vast Conspiracy: The Real Story of the Sex Scandal That Nearly Brought Down a President* (New York: Random House, 1999), the fullest account to date of the Clinton scandal and impeachment.
3. Barbara Vobejda, "Key Constituency Reverses Itself; Women's Groups Condemn Clinton Behavior, but Support Tenure," *Washington Post*, August 22, 1998, A08.
4. Susan Estrich, "Unimpeachable Evidence," *Denver Post*, January 27, 1998, B11. Susan Estrich was Michael Dukakis's campaign manager.
5. Gloria Steinem, "Feminists and the Clinton Question," *New York Times*, March 22, 1998, section 4, 1.
6. *Wall Street Journal*, "What's News World-Wide."
7. See *Meritor Savings Bank v. Vinson*, 447 U.S. 57 (1986).
8. See Richard A. Posner, *An Affair of State: The Investigation, Impeachment, and*

Trial of President Clinton (Cambridge: Harvard University Press, 1999) for a defense of the gravity of the legal case against Clinton; and Robert W. Gordon, "Legalizing Outrage," this volume, for a critical assessment of the case's substantiality.

9. Referral from Independent Counsel Kenneth W. Starr to the House of Representatives, 473–74 (September 11, 1998).

10. Clinton claims no recollection of such an encounter with Jones. While the two almost certainly spent time together in a hotel room, Jones's prim account of the meeting has been challenged by Toobin, *A Vast Conspiracy*, 154–59.

11. Alan M. Dershowitz, "Sexual McCarthyism," in *Sexual McCarthyism: Clinton, Starr and the Emerging Constitutional Crisis* (New York: Basic Books, 1998).

12. Gordon, "Legalizing Outrage," this volume.

13. Robin West, "Sex, Harm, and Impeachment," this volume.

14. See Posner, *An Affair of State*, 199–216, and works cited therein, for an enlightening account of the *Kulturkampf* waged during the Clinton impeachment.

15. See, for example, Cynthia Tucker, "Feminism: Clinging to Clinton Costs Women's Movement Its Credibility," *Atlanta Constitution*, September 30, 1998, 12A.

16. See Jane Mayer and Jill Abramson, *Strange Justice: The Selling of Clarence Thomas* (Boston: Houghton Mifflin, 1994).

17. See *Meritor Savings Bank v. Vinson*.

18. *Meritor Savings Bank v. Vinson*, 67, supplies this standard.

19. See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), in which the Court attempts to clarify the "severe or pervasive" standard.

20. Mayer and Abramson, *Strange Justice*, 112.

21. Senator Samuel Metzenbaum, the member of the Senate Judiciary Committee whose staff initiated contact with Hill, candidly told *Time* magazine reporter Hays Gorey soon after he learned of Hill's allegations, "If that's sexual harassment, half the senators on Capitol Hill could be accused." Mayer and Abramson, *Strange Justice*, 235.

22. See Posner's discussion in *An Affair of State*. Also see William J. Bennett, *The Death of Outrage: Bill Clinton and the Assault on American Ideals* (New York: Free Press, 1998); and David Novak, "The Clinton Scandal: Law and Morals," this volume. Novak discusses the relationship between political and "personal virtue."

23. David Frum, "A Generation on Trial," *Weekly Standard*, February 16, 1998 (1998 WL 17902054; page references not available). David Frum is a contributing editor to the *Weekly Standard*.

24. See Judith R. Walkowitz, "Male Vice and Female Virtue: Feminists and the Politics of Prostitution in Nineteenth Century Britain," in Ann Snitow, Christine Stansell, and Sharon Thompson, eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press, 1983), who argues on the basis of historical example that "social purity" alliances between conservatives and feminists to promote state regulation against vice and abuse of women have led to the harsh and repressive regulation of women.