

Sweatshop Free but Still Exploitative: Sexual Harassment at American Apparel

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The politically conscious are generally quite proud of their consciousness as it relates to consumerism. The movement to avoid clothing produced in sweatshops has stemmed from this consciousness and resulted in the creation of one of the most famous sweatshop free manufacturers in the United States: American Apparel. The company's website lists a multitude of facts about American Apparel's philosophy including affordable dental care for employees, English classes for non-English speaking employees, and its commitment to recycling all leftover clothing scraps. The company describes itself as "striving to pioneer a movement in human rights and environmental responsibility through groundbreaking methods and policies." The company's founder and CEO, Dov Charney, initiated the progressive policies at American Apparel. Charney has proven to be a paradoxical figure in a movement that celebrates the abolishment of exploitation—he prides himself on his ethical behavior towards his garment-workers, but he has also been charged with multiple counts of sexual harassment by former employees.

The sexual harassment cases against Charney illustrate the differences in how people view a sexually charged workplace. Charney's behaviors and comments show that he feels society has entered a "post-sex" era. The term "post-sex" stems from the popular idea of a "post-feminist" society in which the social structures of sexism have been overcome. Many popular media publications have been proclaiming a "post-feminist" era for the past ten years, implying that sexism no longer exists and equal political and social rights for women have been totally

Chrestomathy: Annual Review of Undergraduate Research, School of Humanities and Social Sciences, School of Languages, Cultures, and World Affairs, College of Charleston
Volume 5, 2006: pp. 153-167

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achieved. Similarly, a post-sex society is one in which discussions and images of sex no longer have a deep meaning about gender and power because sexism no longer exists. In a post-sex society, sexual harassment is not problematic because most actions considered to be sexual harassment lack meaning — for example, a boss who propositions his secretary is simply attracted to her, there is no larger meaning for the boss' behavior in the social structures of society. There is still sex in a post-sex society, but it is sex that has no bearing on gender relations and no connection to power. Those who adhere to the post-sex viewpoint see sexual talk and images as ironic, not as an unwanted display of sexism or power. This view negates the inequality argument of Catharine MacKinnon, in which sexual harassment is a means of subordinating women.

Believing that popular culture reflects the values of a post-sex culture, Charney argues that his behavior does not subordinate or offend anyone and thus does not constitute sexual harassment. To Charney, comments about sex are simply ironic or commonplace; they have no different meaning for women than for men. Assuming this reflects a prevailing social attitude, he claims, “You can't expect people to operate in a vacuum outside of popular culture” (qtd. in Wolf 58). The issue of the post-sex viewpoint connects to the phenomenon of victim-blaming, which has also occurred frequently in the American Apparel cases. Because the post-sex view assumes that sexual comments are harmless, anyone who is offended by those comments is wrong to feel that way. Much of the victim-blaming in the cases against Charney has come from other workers at American Apparel, many of whom are women. Blog posts about the sexual harassment cases have received multiple replies from female American Apparel workers who defend Charney, as well as women who are not his employees but still defend his actions. In a blog posting on the subject, one woman dismisses a woman filing suit against Charney as “just another gold digger jumping at the opportunity to use Dov's reputation to make a few bucks.” In reference to a particular claim in a suit, another commenter states that “any woman who goes in for an interview with a man who is in his underwear deserves what she gets.”

The post-sex view demonstrated by Charney is shared by many women and men. The plaintiffs have frequently been called “prudes” and have been spoken of as being offended over normal sexualized talk

that is common for the fashion and garment-making industries. Charney as well as many women have accused the plaintiffs of being part of “victim culture” in which women seek to gain money and sympathy by claiming to be offended by sexualized talk. All in all, the post-sex view makes it much more difficult to prove sexual harassment because it purports that most sexualized comments and behaviors occurring in the workplace are harmless. The American Apparel cases demonstrate the conflict between Charney’s post-sex ideas and sexual harassment theory, which embodies the belief that women can in fact be harmed by sexual harassment. Charney admits that he has engaged in behaviors that many women feel could constitute sexual harassment, but he claims that these behaviors are meant to be ironic or are simply the status quo in the garment-making industry. According to sexual harassment theory, however, Charney’s actions reinforce the subjugation of women and relate to social structures of gender and power.

Three women have charged Dov Charney with sexual harassment and the creation of a sexually hostile work environment. One plaintiff, Heather Pithie, worked for American Apparel for less than a year, during which she served as an employment recruiter (Navarro 1). Pithie claims that “Mr. Charney referred to women in vulgar derogatory and sexual terms,” and also instructed her to hire female employees based on their physical attractiveness (Navarro 1). A second plaintiff, Rebecca Brinegar, who worked for American Apparel from 2002 to 2005, has filed a joint suit with Pithie against Charney (Navarro 1). A third plaintiff, Mary Nelson, who worked for American Apparel from 2003-2005, claims that she was fired after Charney learned that she had intentions of seeing a lawyer about his actions (Navarro 1). A fourth case, now dropped, involved charges of a sexually hostile work environment based on pornography that was used to decorate the store (Selvin 2). The plaintiff, Julie Carrozzi, was a manager at a Chicago American Apparel store. She decided to drop the charges without monetary compensation (Selvin 2). Carrozzi alleges that she was “fired after complaining that Charney had created a hostile working environment” (Selvin 2). In the face of all of these charges, American Apparel’s former insurer is also now suing the company, claiming that the company lied about having a zero-tolerance sexual harassment policy (English).

The suit against Charney came about shortly after an interview with the CEO was published in *Jane* magazine. The reporter, Claudine Ko, describes Charney as “engaging in oral sex with a female employee and masturbating in front of [her]” (Palmeri 88). Both Charney and Ko assert that the acts were consensual, but they do show a bizarre amount of sexual activity in the American Apparel workplace (Palmeri 88). In addition to the employees who have filed sexual harassment charges, at least “seven former workers [said] they were offended by what they called a highly sexual atmosphere at American Apparel” (Palmeri 88). One former stock person calls it “a company built on lechery” and notes that senior managers often imitate Charney’s behavior and are not punished (Palmeri 88).

Charney’s responses to the plaintiffs’ allegations dismiss his former employees’ claims as well as of the idea that sexual activities in the work place are offensive. He also states that none of the plaintiffs complained of harassment before leaving their jobs, although all of the plaintiffs’ lawsuits refute this (Navarro 1). Charney is also unashamed of engaging in consensual sexual relationships with his employees, saying, “I think it’s a First Amendment right to pursue one’s affection for another human being” (Palmeri 88). Charney claims the right to use potentially offensive language. “When I’m working with creative people,” he says, “I use the language of the street. It can get pretty salty” (Palmeri 88).

Charney is a paradoxical figure. Some see him as a progressive savior of the garment-making industry, an industry that profits from sweatshop labor at the expense of foreign women (Edmondson). The garment-making industry has long been inherently sexist, employing women and children in developing countries to work for long hours with little pay and no benefits (Edmondson). It seems that Charney’s idea to found a garment-making company that treats workers fairly resulted from recognition of this problem. The policies Charney has developed are some of the first in the garment-making industry to alleviate the exploitation of workers. Yet those women who have filed complaints about him see him in a very different light. To them, Charney’s behaviors resulted in a hostile work environment in which they were not treated with respect as workers or as women. In many cases, especially in the press, Charney’s anti-sweatshop stance overshadows the multiple sexual harassment charges levied against him.

Unfortunately, Charney's alleged harassment of female workers in the US is viewed as a small price to pay by consumers who are concerned about the unfair sweatshop practices of most garment-making companies. Much of the information given by American Apparel about their mission relates to the treatment of their workers who actually produce garments, not the workers in positions such as those held by Pithie, Brinegar, and Nelson. American Apparel has some of the highest-paid garment-makers in the country, and also attempts to provide full-time work for employees, which is a huge change from the garment-making industry's usual seasonal work schedule (Palmeri 88). Garment-making employees are also provided with two 15-minute breaks a day as well as a 30-minute lunch break (Palmeri 88). The workers do not work over 10 hours per day, averaging around 8 hours a day (Palmeri 88). In comparison with the typical practices of sweatshops, American Apparel's garment-makers are benefiting from revolutionary policies.

While Charney may have instituted progressive policies in his factories, this does not excuse his unethical behavior toward female employees in his offices. This requires an analysis of what Charney's behavior actually means to women — his harassment must be seen as more than a simple personal preference and instead be viewed through the inequality approach developed by Catharine MacKinnon. MacKinnon's inequality approach focuses on social structures of sexism and "understands the sexes to be not simply socially differentiated but socially *unequal*" (5). Conceptualizing sexual harassment through the inequality approach requires the harassment to be viewed as a form of the subordination of women. The type of harassment alleged in the American Apparel cases is more than the typical hostile environment case, which usually occurs in setting where women have not traditionally worked. Instead, the alleged behavior reflects an attitude that only values women as sexual objects and subordinate sexual partners. Even if the allegations against Charney do not prove to be true, many of Charney's statements and actions betray the same view of women — he admits to his propensity to use pornography as decoration in American Apparel stores and dressing rooms and claims that most sexual harassment cases are part of a "victim culture" among women (Wolf 58).

It should also be noted that Charney has only been charged with harassment by a certain type of female employee. These women are usually sales associates or managers who differ from the garment workers he employs. They are of middle-class background and are generally educated or in school. There is a possibility that Charney has only harassed these types of women because he does not come into contact with his garment workers very often; there is also the possibility that garment workers have been harassed but have not reported it because they could not afford legal advice and would not want to leave their jobs. Charney operates under the notion that he is in a post-sex society, and it is possible that he feels his retail workers are more likely to view his behavior along those lines because they come from similar backgrounds. The post-sex viewpoint is much easier to espouse when one comes from privileged background and has not experienced exploitation and sexism in its most obvious forms. The common background shared by Charney and the women he harasses may be part of an attempt on Charney's part to seek out those who will feel that his sexualized behavior is not sexist.

Pithie's allegations suggest that Charney views a certain type of female employee as a sexual object and potential sex partner. Pithie, whose job consisted of hiring new employees for many American Apparel retail locations, claims that Charney told her that "her job was to find him young attractive women to engage in sex" (Pierce). Pithie also claims that Charney used "sexually explicit language to describe the type of women he wanted" (Pierce). According to Pithie, Charney directly stated that he wanted sexually attractive women hired for the purpose of developing sexual relationships. If this is true, it shows that Charney has intentions of finding women with whom he can engage in sexual relationships; this appears to be Charney's definition of the productive female worker. Charney's alleged language indicates future harassment of these employees and also sends a clear message to Pithie herself: her value is in her sex appeal and being an available sexual object is part of being a good employee. Pithie's suit also cites another incident in which Charney "yelled and cursed at her, again using sexually explicit language" (Pierce). Pithie claims this incident took place at a work-related conference in Las Vegas (Pierce). Once again, if Pithie's claim is accurate, the incident demonstrates a different kind of hostility

toward and harassment of a female employee. At the conference, Charney reportedly expressed anger at Pithie using sexually explicit terms, actions which are similar to the complaint made against the defendant in the 1993 case of *Harris v. Forklift*.

In *Harris v. Forklift*, the berating sexual language used by the defendant was found to constitute sexual harassment and has been described by theorists as serving to humiliate female employees and put them in “their place” (Siegel 21). MacKinnon claims that from the perspective of patriarchal authority, such humiliation is necessary to “perpetuate the interlocked structure by which women have been sexually in thrall to men and at the bottom of the labor market” (174). On the inequality approach to sexual harassment, the incident Pithie claims to have experienced reinforced stereotypical notions about women through the use of sexually explicit language and also served to reinforce the social structure of sexism by implying that female employees should be sex objects.

Rebecca Brinegar’s accusations against Charney include actions much closer to physical harassment than the allegations by Pithie. Brinegar claims that Charney exposed himself to her (Navarro 1). Harassment of this nature can have the same intention as the harassment experienced by Pithie — once again, it seems that the true purpose would be to make female employees uncomfortable and to reinforce notions that they are sex objects. It does not appear from Brinegar’s statements that she felt Charney’s actions were meant to proposition her; instead Brinegar claims that Charney’s actions “foster[ed] a widespread offensive working environment intimidating and threatening to women employed at American Apparel” (Pierce). Considering the sheer number of women who have complained about the workplace environment at American Apparel, it seems much more likely that these actions served mostly to make female employees feel subordinated. The alleged actions were perpetrated by a superior, and if one examines them from the inequality approach it appears that they do subordinate the female employees they are leveled at. The actions that Charney allegedly performed could be seen as showing female employees that they must tolerate degrading and offensive behavior because they are financially dependent on their compliance and silence. MacKinnon argues that women’s traditional economic place at the bottom of the social hierarchy is reinforced by

the age-old idea that women must endure sexual conduct in the workplace (11).

Charney responded to Brinegar's allegations by saying that she misconstrued actions that had "a valid explanation" (Navarro 1). According to Charney, he is often "seen in his underwear in his office because he tries out products before they are introduced" (Navarro 1). Charney further stated, "We're a manufacturer. We make underwear" (Navarro 1). Charney does not seem to realize that this may not be the practice of most underwear manufacturers, or at least not in a place where their employees are present. Charney dismisses most sexual harassment cases, saying "most of these kinds of cases, it's always bullshit" (Glaister 10). Once again, Charney's post-sex viewpoint is evident in his ideas about sexual harassment. The idea of the "victim culture," as Charney terms it, invalidates women's experiences with sexual harassment and instead posits that his behaviors were only demonstrative of his views of sex as an ironic or entertaining topic of discussion. The victim culture statement shows that Charney does not care if his employees actually felt harmed; all that matters is his own opinion on the subject. By this logic, Charney's experiences and thoughts outweigh those of his employees.

Mary Nelson's allegations against Charney involve content of a sexual nature and a sexual proposition. Nelson alleges that Charney frequently discussed vibrators and sex with her and other employees, and that Charney invited her to masturbate with him (Navarro 1). Once again, Charney denies the allegations, although a later incident involving reporter Claudine Ko gives Nelson's charges more weight. In Nelson's case, the proposition by Charney was not characterized as the typical quid pro quo proposition. Nelson does not claim that Charney offered her any incentive to accept the proposition, nor does she imply that she feared for her job security when considering it (Navarro 1). Nelson's allegations, if true, once again demonstrate Charney's attitude toward his female employees. It appears that Charney expects his female employees to be potential sex partners and that he is not concerned about whether his behavior makes them uncomfortable. To Charney, whether or not sexual propositions and comments are welcome is irrelevant — he prides himself on his sexually charged workplace.

Julie Carrozzi alleges not only that Charney created a hostile working environment but also that he fired her when she complained about it. Carrozzi's hostile environment allegation stemmed from the decorations found in the American Apparel store in which she worked, most notably a collage of *Penthouse* magazine covers which hangs in most American Apparel stores (Selvin 2). There have been many cases in Canada where sexual harassment has been charged through the display of pornography in the workplace, although it appears that in Carrozzi's case either Carrozzi herself or her counsel had the idea that the display of pornography was not enough to build a strong case. In Canada, the Canadian Human Rights Commission "has included the display of pornography as a type of sexual harassment in its Guidelines" (Benedet 421). In one case, a Canadian tribunal concluded that "the presence in a workplace of posters from *Playboy* magazines or of posters of naked women...causes embarrassment and lowers the status of women" (Benedet 422). Benedet finds that the display of pornography in the workplace occurs more often in male-dominated workplaces and that it "is an act of domination that is carried out both on the women who are there and the women who are used to make it" (432). While Charney seems to view the *Penthouse* collage as advertising or artwork for his stores, it is clear that it made Carrozzi uncomfortable and possibly led to a workplace atmosphere that was conducive to sexual harassment.

Carrozzi claims that she complained about the collage and that she was consequently fired by Charney (Selvin 2). The Equal Employment Opportunity Commission's guidelines were written in part to prevent employers from firing employees for complaining about sexual harassment, a common occurrence as evident in the 1977 case *Tomkins v. PSE & G*. Carrozzi's allegation, if true, would have made her suit a clear case of sexual harassment as sex discrimination, or at least one that would be visible as such in a court of law. Charney has not denied Carrozzi's claims, but Carrozzi requested that the case be dismissed (Selvin 2). It is likely that one of the reasons Carrozzi may have doubted the strength of her case is the presence of the *Penthouse* collage in nearly all American Apparel stores (Palmeri 88). This raises another interesting issue that will be addressed later: the possibility that many employees of American Apparel knew of Charney's reputation before they began their jobs. Carrozzi's allegations against Charney also appear to be

accurate because of a subsequent case filed by American Apparel's insurance company, which has filed a suit against American Apparel for its apparently untrue claim of having a zero-tolerance sexual harassment policy (Selvin 2). Although Carrozzi's case has been dropped, the insurance company seems to have evidence that Carrozzi's complaints about a hostile environment were not pursued or resulted in her dismissal, as they are continuing their case against American Apparel.

There is one instance of sexual harassment perpetrated by Charney about which a case has not been filed. This is the incident involving Claudine Ko, a reporter for *Jane* magazine who interviewed Charney before many of the current sexual harassment suits were filed. Ko interviewed Charney over a long period of time and claims that he masturbated in front of her at least eight times (Graham). Ko claims that Charney also engaged in oral sex with a female employee during one interview (Navarro 1). During a phone conversation with Ko, Charney explained that he thinks "masturbation in front of women is underrated" (Graham). Ko did not complain about the unusual behavior, and Charney explicitly asked for her consent before his actions (Wolf 58). Ko does not plan to file charges, but that does not necessarily excuse Charney's behavior from the charge of sexual harassment.

Charney's actions forced Ko into a sexual situation that she was likely unprepared for if she expected to conduct a normal interview. Forcing Ko into this sexual situation reinforces the subordination of women by forcing her to consent to unwelcome sexual actions in her presence, just as women have been forced throughout the long history of women at work in a patriarchal society. Sexual harassment has long been the type of crime that requires a victim who feels harassed before it is officially meaningful. The incident involving Ko demonstrates this problem well. Though Ko has not spoken of feeling harassed, Charney's behavior still subordinated her by introducing stereotypes about women's sexuality into the workplace. Adele Alexander writes that the history of women at work is filled with stereotypes of women "owing" sexual fulfillment to male superiors. This can be found anywhere from the many instances of rape of women who were slaves in the antebellum South to the acceptability of bosses propositioning their secretaries prior to the sexual harassment legislation of the 1970s. By being in the public sphere, working women have long been subject to the idea that

they are “asking” to be prey to sexual comments and propositions. However, Ko’s lack of complaint about the incident has translated into the media viewing the incident as fully consensual and not as a case of sexual harassment.

The overall message sent by Charney’s actions is twofold: Charney seems to believe that he is living a truly post-sex society where sexual behaviors in the workplace are unobjectionable and his employees’ complaints of sexual harassment are unfounded. It is obvious by Charney’s responses that he does not consider his behavior to be sexual harassment — he often claims that any relationships he has had with employees are consensual and that sex in the workplace boosts morale (Navarro 1). Charney also denies the allegations of many of the plaintiffs who have filed sexual harassment cases against him, although his other views make this denial seem false. Charney clearly believes that his employees consent to his sexual behaviors in the workplace without considering that perhaps they only keep silent in order to keep their jobs. Charney does not view his actions as having any part in subordinating women and appears to operate from the view that men and women are fully equal in society and in the workplace. He views his sexual language as common in the fashion industry and believes that it does not perpetuate sexism or the subordination of women.

A chorus of criticism has erupted against the women who have filed suit against Charney based on the sentiment that his behaviors were well known in the garment-making industry and that the plaintiffs likely knew about them before they decided to work for American Apparel. Ilse Metchek, Executive Director of the California Fashion Association, has said, “If you’re seasick, don’t join the Navy,” and of Charney: “Yes, he’s a bizarre person, but that’s no secret, it’s there for you to see when you sign on for this opportunity” (Navarro 1).

Many in the apparel industry seem to think that Charney’s workers sign on for harassment as if it were part of their work contract. Although there is no real proof that the plaintiffs did know of Charney’s behavior before accepting jobs at American Apparel, there is also no evidence that such knowledge would lessen the harm felt by the plaintiffs. There is a popular conception that many jobs entail “signing on” for sexual harassment — usually jobs within the sex industry or fashion industry — but this view does not address the true harm of sexual harassment.

Instead, it assumes that the objection against sexual harassment is simply that it is not part of a job description. This idea of harm is far too simple; it does not examine any of the social structures that form the context of sexual harassment. It also does not analyze why sexual harassment is sex discrimination. If sexual harassment is really only something that must be consented to in a contract, it appears as if there is no discrimination and no gendered structure of power present. However, if sexual harassment is something more than a job expectation it must be seen as sex discrimination that is part of a larger context of sexist social structures. In this view the harm of sexual harassment is in no way lessened by the possibility of knowing it would occur before accepting a job. The comments by Metchek also illustrate the phenomenon of victim-blaming that is prevalent in sexual harassment and rape cases. By Metchek's logic, the plaintiffs are responsible for any harm they suffer because they should have known that Charney would sexually harass them. According to this view, as opposed to feeling that Charney should try to change his behavior, it is the plaintiffs who should attempt to avoid it.

The victim-blaming phenomenon in the American Apparel cases confirms MacKinnon's argument about the social constructions of male and female sexuality. MacKinnon argues that women are generally perceived as either pure and fragile or "brazen temptress[es], from whose seductive blandishments the innocent male must be protected" (184). According to this construction, women are either innocent and must make the effort to ensure that they do not lose that quality or they are asking to be constantly treated as sexual objects. MacKinnon contends that male sexuality is defined in opposition to female sexuality as naturally aggressive and forceful (220). Examining the social constructions of male and female sexuality shows the context of Metchek's statement: Charney's behaviors are natural for men and the plaintiffs must fit into the construction of female sexuality by avoiding his behavior or asking for it. Conventional ideas about male and female sexuality seem to be the root of the victim-blaming that has occurred in the cases against Charney.

The lawsuits against Charney have resulted in something similar to a contract allowing hostile environment sexual harassment. Employees are now required to agree to a portion of their contract that states:

American Apparel is in the business of designing and manufacturing sexually charged T-shirts and intimate apparel, and uses sexually charged visual and oral communications in its marketing and sales activities. Employees working in the design, sales, marketing and other creative areas of the company will come into contact with sexually charged language and visual images. This is a part of the job for employees working in these areas. (Wolf 58)

This contract is based on the fact that most of the cases against Charney cite sexually offensive language and images as the form of the harassment. While the contract does not bar employees from suing American Apparel because of such language or images, it does serve as an insurance policy for future lawsuits. It is obvious in the views of Charney's supporters that many people feel that sexual harassment is not objectionable if an employee is aware that it might occur before she or he accepts a job. The contract may appear to be a warning to people who already know that certain language and images may offend them, but its real purpose is to nullify objections to sexual harassment without changing the fact that it occurs. Simply because no one is offended does not mean that sexual harassment is not happening. To consider an analogous case, a person making a racist comment is not said to have not been racist if no one present happens to be offended. The goal of sexual harassment legislation is to define sexual harassment in similar terms, as a crime that occurs regardless of whether or not a person claims to have been offended. The goal of every workplace should be to change attitudes about sexual harassment and make it clear that such behavior is harmful and wrong, not to imply that such behavior is normal by means of a contract.

The allegations against Dov Charney bring up multiple issues about sexual harassment: a supposedly progressive perpetrator, the possibility of a post-sex society, the subordination of women, victim-blaming, and the true harm of sexual harassment. Although Charney continues to deny the allegations of the women who have filed suit against him, his open expression of his views about sexual behavior in the workplace and his confirmation of the incidents with Claudine Ko make his denials dubious. It may be enough to assume that Charney's practices create a

hostile working environment for women when one considers how earnestly he promotes sexual relationships and sexual content in the workplace. This also brings to mind the possibility of the post-sex workplace. It appears that Charney and many of his employees feel they exist in such a place, but this does not make the claims against Charney any less meaningful to the women who were actually offended and subordinated by his behavior. While Charney's progressive labor practices certainly lessen the harm many female garment workers experience, his views about women in general are not progressive at all. If the allegations against Charney are true, he has contributed greatly to the subordination of the women working at American Apparel by placing their worth in their sexuality and not in their ability to work. Unfortunately, it does not seem that Charney's behavior is getting as much attention as his effort to combat sweatshop labor, and until it does American Apparel is likely to retain its image as a progressive business with an admirable founder.

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