Moving From "Hostile Environment" Sexual "Harassment" Law to "Sexual Discomfort" Law: A Call for Terminological and Ideological Change

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Though Catharine MacKinnon was well-intentioned when she exposed *quid pro quo* sexual harassment and formulated the "hostile environment" clause, the latter has had terrible unforeseen consequences of scapegoating. I advocate a terminological change in the Supreme Court's "hostile environment" clause to "sexual discomfort," and eliminating firings and "zero tolerance" policies. The term "sexual discomfort" retains the ambiguity good law needs, yet hopefully without stigma toward a "perpetrator." "Hostile environment" law has become a weapon for human cruelty. I will show where the law has gone wrong, and where it can change for the better. It is time to add Foucault to this discussion, both in terms of content and as a methodological model. Foucault, especially in *Abnormal*, takes us through case after case; in a similar way, I will show "hostile environment" is too broad, and has opened the door to abuses. There are many other factors that distort these cases: misandry, misogyny, racism, cultural intolerance, queer-phobia, and able-ism. Laws meant to curtail human cruelty have ironically further enabled cruelty. I advocate requiring companies to listen to both sides of a "sexual discomfort" case in a compassionate manner and to *separate* the parties involved, rather than branding someone a "harasser" and *firing* that person. Also, hopefully such changes will help people to engage in the difficult work, yet necessary for us as social creatures, of dealing with one another more compassionately, rather than bashing each other. Since human interaction is ambiguous, thorny, and difficult, I advocate the removal of loaded terms such as "perpetrator" and "victim" from our discourse. No one should be fired when the institution first addresses a natural, though uncomfortable, part of human existence: *unwanted advances*.