

2000

## Book Review of Unwanted Sex: The Culture of Intimidation and the Failure of Law

Susan Grover

*William & Mary Law School*, [ssgrov@wm.edu](mailto:ssgrov@wm.edu)

---

### Repository Citation

Grover, Susan, "Book Review of Unwanted Sex: The Culture of Intimidation and the Failure of Law" (2000). *Faculty Publications*. 1642.

<https://scholarship.law.wm.edu/facpubs/1642>

Copyright c 2000 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/facpubs>

Schulhofer, Stephen J. *Unwanted Sex: The Culture of Intimidation and the Failure of Law*.

Cambridge, Mass.: Harvard University Press, 1998. Pp. 318. \$27.95 (cloth).

The problem with rape law is that it criminalizes sexual coercion only when the coercion involves physical force. Sexual predators who use psychological or economic duress to extract sex enjoy virtual immunity from prosecution. In *Unwanted Sex*, Stephen Schulhofer deplores the law's failure to protect those who are subjected to these other types of sexual coercion.

Schulhofer relies on analogies to property crimes to make his point. The law deems invasions of women's sexual autonomy to be less culpable than interference with property interests. A threat that would be prosecuted as extortionate in the property context may be viewed as part of an aggressive, but permissible, mating ploy when it comes to sex. That, Schulhofer tells us, is wrong.

Yet, Schulhofer accepts without question our culture's acceptance of certain kinds of nonforcible sexual coercion. Our society would not think of criminalizing a man's threat to divorce a spouse who eschews sexual relations. Similarly, the woman who refuses to have sex with her date certainly could not press charges when her date threatens to end the relationship. Schulhofer does not find fault with such duress. He would distinguish such "acceptable cases," however, from others in which he believes that sex coerced without the use of physical force should be prosecuted as fully as forcible sex. Central to the book is his effort to delineate between these two categories.

For Schulhofer, the crucial demarcation is between sex coerced through

*threats* and sex improperly obtained through *offers*. Threats, he argues, are geared to deprive the victim of something to which she is legally entitled. Offers, by contrast, promise the "victim" something that she is not legally entitled to expect. Schulhofer argues that threats used to coerce sex should be prosecuted as "sexual abuse." The use of offers to coerce sex, by contrast, may subject an actor to civil liability but should not subject the offeror to criminal prosecution for a sex crime.

In the statutory proposal that concludes this work, Schulhofer embodies these distinctions in a "Model Criminal Statute for Sexual Offenses." The model statute divides sexually predatory crimes into two categories. "Sexual Assault," a felony of the second degree, involves physical force, use of a weapon, or a victim of less than thirteen years of age. "Sexual Abuse," a felony of the third degree, involves sexual penetration by an actor who knows that he does not have the consent of the victim. Among the factors that can obviate consent are the victim's physical helplessness, her being underage (but older than thirteen), her being incarcerated or hospitalized or otherwise within the authority of the actor, and certain professional relationships. In keeping with Schulhofer's offer/threat distinction, consent is also obviated where the actor employs specified threats or certain deceptions to extract sex from the victim.

With its focus on rights and its refusal to challenge the cultural oppressions that can render women vulnerable to sexual duress, the book may seem incomplete. In fact, though, *Unwanted Sex* does accomplish very effectively what it sets out to do. The book's argument should persuade even the most firmly ensconced patriarchy. Anomalies in current rape laws are an affront to justice. S. G.