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Abstract

Any sexual offer by a professor to a student is morally problematic. An explicit disclaimer about grading issues will not change the fact that the professor has power over the student's grades, and no assurance that the student can offer can evade the communicative difficulties created by the power differential. It is possible that there will be a sufficient development of trust that these communication problems are superseded, but it is again extremely difficult to be sure that this is so. Given this difficulty, the criterion for whether the sexual offer is permissible should be whether it is in fact misinterpreted, and the risk that it will be is entirely assumed by the offeror. Even if a fully voluntary sexual relationship is possible, duties to third parties make it improper to enter into such a relationship where the professor has power over a student's grades or career prospects.

It is uncontroversial that a threat by a professor to lower a student's grade if she refuses a sexual encounter is morally unacceptable (and legally constitutes sexual harassment). In contrast, it seems to many that a fully voluntary sexual relationship between professor and student is permissible. In this paper, I argue that the entanglement of personal and professional relationships makes almost any sexual offer by a professor to a student morally problematic.

I Sexual Offers

Much discussion has focused on the question of whether consent can ever be truly voluntary, given power differentials between professor and student.¹ Larry May brings a new level of complexity to the discussion by focusing instead on how the offer itself changes the dynamics between the two. He argues that an offer by a male professor² to improve a student's grade if she engages in sex with him would constitute a "coercive offer," in the sense that it makes the student worse off in the post-offer than in the pre-offer situation.³ The student is worse off, May suggests, because she can no longer think of herself simply as a student, but must also consider herself a sex object in her relations with the professor. The well is poisoned, and the pre-offer situation can never be recovered. But a parallel phenomenon can also occur on a more subtle level. Suppose that the professor simply suggests to the student that she have sex with him, making no mention of a connection with grading. Assuming that the student is not sexually attracted to the professor, she will, I think, be overwhelmed, confused, and more than a little upset. Following May's analysis, we can see that the introduction of sex into the educational context has irredeemably poisoned the well; there is no going back to the pre-offer situation, and the student must now see herself, through the professor's eyes, as a sex object as well as as a student. She may well suspect that the way she treats

the offer will affect the professor's attitude towards her, and her grade as well -- even if she assumes that there was no intent on the part of the professor to tie the offer to grading.

Now, let us carry the situation one step further. Suppose that the professor explicitly says to the student that he realizes his offer may raise issues about grading, and that he wants to reassure her that how she responds to his offer will have no effect on his grading practices. Nicholas Dixon has suggested that such reassurances will normally reduce doubts about the voluntariness of her consent to a low enough level that the presumption in favor of allowing her to choose her own relationships should prevail.⁴ But it seems to me that the professor's words do not change the situation at all. The fact that he has power over the student's grade remains, as does the fact that he has now introduced sexual possibilities into the situation. Indeed, I would say there are no words the professor can say that will succeed in removing the situation from that context, or in mitigating the well-poisoning effect.

This, I think, is part of a more general problem concerning dual, and incompatible, roles. My personal experience as a law student with a Ph.D. in philosophy is an example. In my private relations with law school faculty members whose age, education, and social status would otherwise have made them my peers, I found my second role as a law student immensely constraining. For example, how should one interpret an invitation to "stop by (my office) any time"? Does it indicate a genuine interest in conversation, or is it merely the required politeness of a faculty member to a student? Conversely, how should one respond to remarks such as, "Students always want more than I am willing to give them" -- a remark that would be commonplace among peers but if made to a "student" would be a pointed indication to ask for less. What is most interesting about this type of role conflict is that there is no reassurance that can be offered -- in words at least -- that will abolish the conflict. There is always the issue of what role the words are being spoken in. The power relationship often requires the polite pretense that one considers the less powerful person one's equal, or at least that one is willing to provide all the time, interest, and consideration that the person wishes. At the same time, the peer relationship presupposes a degree of frankness about the negative aspects of one's attitudes toward students that crosses over into deliberate insult in the teacher-student role. Often, time and the development of trust will mitigate these problems, as they did in my case. Nevertheless, at the end of my third year of law school, I still managed to cross the invisible line by making an extremely negative comment about one faculty member to another. The professor, who I by then considered a close personal friend (and who, I later learned, thoroughly agreed with my assessment of his colleague), responded with evident agitation, "You can't say that to me!" My role as a student precluded him from giving the response of agreement that he would have given a peer; but the honesty required by friendship precluded the response of disagreement he would have given a more typical student.

If communication problems of this level of complexity can arise in simple friendships, then how much more acute they must be where sexual offers -- or sexual relationships -- are involved. Suppose that the student accepts the professor's sexual proposition. In view of the fact that they are both aware of his control over her grade, how should he interpret her acceptance? How can he ever be sure that she accepted his offer because she wanted to, independent of her desire for a better grade? He cannot ask her, because of course she will respond in either case that she is accepting because she is attracted to him. It is not exactly that the circumstances are not compatible with voluntariness, but rather that the circumstances do not permit uncluttered communication, so that he

cannot know whether her acceptance is voluntary or not.

It may be argued that there are always power inequalities in sexual situations. One partner is, almost necessarily, more powerful than the other -- whether the power arises from differentials in need for the other, or in degree of attraction, or whether they arise from external circumstances, as, typically, wage-earning ability. Communication is thus always contaminated by one partner's greater desire to please the other, and one may accede to conditions that one does not really want to accept. (Indeed, this is the foundation of the famous feminist claim that "sex is seldom truly voluntary.") The more powerful partner would seem then always to be in the same position as the professor -- unable to know whether acceptance is voluntary or not.

Here I think the question becomes one of what kinds of trade-offs are morally permissible. Where the proposed trade-off is morally unproblematic, the partner's use of the power resulting from control over the desired good to obtain consent to sex will not make that acceptance involuntary. It may well be, for example, that a man is much more strongly attracted to a woman than she to him; this creates a power differential, but it is not objectionable on that account for her to offer to have sex with him (purely in exchange for sex). There is a continuum of such trades, with sex for sex, love for love at one end. A trade-off of sexual performance for increased time and attention is commonplace (though it is obviously not ideal, and has also been criticized by some feminists). The trade-off of sex for financial security -- further along the continuum -- is also common; we would be better off if social institutions made it less so.⁵ But it is abundantly clear that a trade of grades for sex is not morally permissible -- in part because others rely on the idea that this kind of trade will not be made, and that grades will be assigned for academic performance. Thus, the implicit possibility that the student's response to the offer will affect her grade may impermissibly influence her response. Yet, interestingly, it is because such a trade is not seen as utterly fantastic that the offer situation is contaminated; the student is likely to find it at least somewhat plausible that the professor would offer higher grades for compliance.

Now I do think that it is possible, and that it does happen, that professor and student become sufficiently good friends that these communication problems are superseded. There can be a gradual development of trust between two people who know each other well, and they may eventually arrive at a level of honesty where a sexual offer may be made and not misinterpreted. It is, however, important to attend to the nuances of the situation. Normally, overt sexual offers are preceded by a testing of the waters, perhaps on both sides. Particularly where one fears rejection, one proceeds gradually -- through increasingly personal conversation, discussions of past relationships, perhaps abstract discussions of sex and sexuality. The potential for the professor who is courting a student to misinterpret the signals given here is immense. The student who is made mildly uncomfortable by personal conversation is not likely to cut it off with a short reply. Having accepted the personal conversation, she will then find it more difficult to express her discomfort at increasingly personal revelations. Her need to maintain the good will of the professor can be a strong motive to dissemble. Misinterpretation of signals is of course always possible; but it is significantly more likely under such circumstances. Is it wrong, then, for the professor to make the offer even when he believes a sufficient level of honesty has been reached? I think the only possible answer is that it is wrong to make the offer if it will in fact be misinterpreted. Here, as elsewhere in moral life, one treads on hazardous ground in trusting one's judgment about another person's beliefs. This is simply a feature of the human condition. If, for example, the professor, believing that he has developed a

friendship with the student in which trust and honesty are possible, makes a sexual offer with appropriate disclaimers about grading, and she accepts the offer, but then later tells him that she felt pressured into acceptance, the fault is his. If he was in fact wrong about her perception of the relationship, then the facts were such that he should not have made the offer at all. He is not excused by the reasonableness of his belief that she shared his perceptions, because the situation is inherently ambiguous, and because he can avoid the moral hazard by not making the offer.

II Sex and friendship

But suppose that the professor and student have in fact developed a relationship in which trust and honesty have superseded the communication problem. And suppose that the professor and student go on to have a fully voluntary sexual relationship. Here I agree with Dixon that that this relationship still raises serious issues -- not with regard to their duties to each other, but with regard to their duties to third parties. Assuming the most sincere good faith on all sides, how will it be possible for the professor to give a fair evaluation of the student's work after the development of an intimate relationship? If the professor does indeed have power over the student, that power is premised upon his ability to help or harm her career through his evaluation of her work. If that evaluation is at all subjective, it is simply too much to hope that his perceptions will not be colored by the state of their personal relations -- and despite his sincere efforts to avoid such coloring.

It may be argued that, once such a close and trusting relationship has developed, little is added by sexual involvement; objectivity is already compromised. Moreover, friendships of comparable depth may develop independently of sexual attraction, as between heterosexuals of the same gender. It would therefore seem that the same problem with respect to professional objectivity arises in any professor-student friendship, as Peter Markie has suggested.⁶ It seems to me, however, that such friendships are substantially less problematic than sexual relationships.

In the case of a non-sexual friendship, it is easier to distance oneself from the emotions associated with it and to regard the student's work objectively; that is, to "forget" while reading it that it is the work of that particular person. In a typical sexual relationship⁷ (at least in the early stages), the emotions aroused are qualitatively more overwhelming and more difficult to compartmentalize. Compare the feelings that one has for a lover before, as opposed to after, the first few sexual encounters. Another way to compare the depths of these feelings is to consider the emotions aroused on departure of the friend or lover to live far away. In the case of the friend, these feelings may well be non-trivial; but they are again qualitatively different from the truly overwhelming feelings aroused by the departure of one's lover in similar circumstances.

It is nevertheless true that in the case of deep friendships there are also significant issues about objectivity and one's duty to third parties. Would it be better if, as Markie suggests, professors took care not to form such relationships with their students? Here, there are countervailing values to be weighed. These friendships have a value of their own that cannot be dismissed. There are few enough people one encounters in life with whom such relationships are possible; restricting them further seems intolerable. And it appears plausible that some loss of objectivity in grading is a small price to pay for such an important aspect of human flourishing. Furthermore, particularly in the case of individually supervised graduate students, the tradeoff is not quite so simple. A certain depth of involvement with the student on a personal level may spur the professor to put an extraordinary

amount of effort into aspects of teaching such as providing paper comments, entering into lengthy discussions, etc. These efforts unambiguously serve the teaching purpose. Fortunately, the effort put into teaching activities of this kind is not a fixed quantity, such that effort expended on one student must be taken away from another; friendship is a human good precisely because it serves to increase the total effort that one is willing to expend on others. It would thus seem that there are reasons to encourage such relationships even from the point of view of furthering education.

Markie argues that such friendships are morally objectionable because the professor has an obligation to treat all his students equally, which he violates precisely in providing better instruction to his friend. Even if all the other students receive the consideration that is due them, Markie argues, providing more than is due to students selected on the basis of friendship is comparable to giving each of them an extra ten points on exams otherwise fairly graded. Being a friend of the professor, he suggests, is not an appropriate criterion for the distribution of teaching effort. But it seems to me there is a significant difference between awarding unearned points on an exam and providing the help that enables a student to earn those points. Let us suppose that all of the students have received an amount of help that fully satisfies the normal obligations of a professor to his students. Let us further suppose that some of the students receive no additional help, but some are wealthy enough to hire personal tutors, others have parents who are particularly knowledgeable in the subject, and still others have friends who are willing to help them. While it is true that none of these differences among the students – wealth or knowledgeability of parents or friends – is by itself an appropriate criterion for awarding more points, it is also true that there is nothing objectionable in students' obtaining any of these kinds of help in order to earn additional points. Similarly, if the professor has fully met all of his obligations to the other students, he may then turn to helping his friends, as friends, gain the knowledge that will enable them to earn the additional points, whether in his own class or in someone else's. It seems to me there is no important difference between this case and the case in which the student receives that help from any other friend.⁸

Evaluation tasks such as grading and writing letters of recommendation raise different problems. As Markie points out, the student who is the friend of a professor will enjoy advantages beyond those of possible loss of objectivity – such as the simple fact that the professor will know more about the student who is his friend than about other students. It does not follow, however, that refraining from becoming friends is the required course of action, particularly in view of the significant goods that friendship can produce. Other steps can instead be taken to preserve fairness to others. These might consist, depending on the circumstances, of revealing (e.g., in letters of recommendation or to other members of the dissertation committee) the nature of his relationship with the student, turning over evaluation and recommendation tasks to others, deferring more than usual to the views of others with respect to the student's progress, or using blind grading procedures. On the part of the student, it might mean choosing, where possible, to enrol in someone else's class, or refraining from any discussion of grading. Where the student is on any kind of academic borderline, greater caution is appropriate. It may thus be possible for the student to reap the benefits of enhanced instruction that she might receive from any knowledgeable friend without obtaining an unfair advantage over other students in various kinds of evaluations.

Most of the advantages, fair and unfair, of friendship between professor and student, and the measures that can be taken to minimize the latter, are also applicable to (non-casual) sexual relationships. There are, however, several important differences. First, the level of interest and

attention in a friendship that is about to ripen into a sexual relationship is, perhaps, already as high as one could wish, with respect to its ability to foster better teaching. Secondly, non-sexual friendship is obviously a matter of degree; there is a smooth continuum of increasingly friendly relations that cannot be sharply differentiated at the point where it becomes a truly intimate friendship. Thus a rule that one should not develop intimate friendships would be impractical; the rule would have to be that one should have no friendships at all with students. (This, indeed, is Markie's position.) Contrastingly, in the case of sexual relationships, there is a very clear line to be crossed, and one that it is always possible to avoid crossing. Given the marked increase in feeling that exactly results from crossing that particular line, it would seem that here is a good place to draw it. Finally, a sexual relationship is more volatile than a non-sexual friendship; it is both more likely to rupture badly and more likely to leave a disruptive emotional aftermath. These considerations are, I think, sufficient to make sexual relationships significantly more problematic than even the closest friendships.

It thus seems to me that it is almost always the morally better course for a professor to refrain from making a sexual offer to any student over whom he has, or expects to have, power. Where a sexual relationship develops after the formal professor-student relationship is terminated, it must be in the knowledge -- on both sides -- that the professor thereby forfeits some of his say over the student's career. To a lesser degree, this latter is also true where professor and student are friends rather than lovers; but even a close friendship is significantly less problematic than a sexual relationship.*

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Notes

1. See., e.g., Nicholas Dixon, "The Morality of Intimate Faculty-Student Relationships," *Monist*, vol. 79, No. 4, pp. 521-26; Thomas Mappes, "Sexual Morality and the Concept of Using Another Person," in Thomas Mappes and Jane Zembaty, eds., *Social Ethics: Morality and Social Policy*, 4th ed. (New York: McGraw-Hill, 1992), pp. 211-212.
2. Larry May, *Masculinity and Morality* (Ithaca, New York: Cornell University Press, 1998), ch. 6. May draws this example from a lawsuit, *Alexander v. Yale University*, 459 F. Supp. 1 (D. Conn. 1977), 631 F.2d 178 (2d Cir. 1980). I have adhered throughout to the male professor-female student example, not merely for simplicity but also because, as a result of social attitudes too well-known to require recital, this is by far the most common occasion for a sexual offer. My observations would, I think, apply to other gender combinations, at least insofar as the same imbalance of power obtains.
3. Larry May, *op. cit.*
4. Dixon, *op. cit.*, pp. 523-525.
5. For a discussion of the subtle harms that are done by engaging in sex which one does not desire for itself, see Robin West, "The Harms of Consensual Sex," in *APA Newsletters*, vol. 94, Spring 1995, pp. 52-55.

6. Peter Markie, "Professors, Students, and Friendship," in Steven M. Cahn, ed., *Morality, Responsibility, and the University: Studies in Academic Ethics*. New York: Temple University Press, 1990, pp. 134-149.

7. In referring to a "typical sexual relationship," I mean to exclude the sort of case in which one or both parties engage in sex without emotional involvement. To the extent that I may be wrong about what is typical, my remarks will apply to a smaller set of cases. But it is improbable that the parties can both achieve the depth of honesty discussed here and avoid emotional involvement.

8. It may be argued that the professor has special knowledge of his own course requirements and grading proclivities that other helpers would not have. But I think for this to make a significant difference his standards would have to be so idiosyncratic as to be indefensible. He would of course be obligated not to offer improper kinds of help such as advance notice of exam questions, etc.

* An earlier version of this paper was presented as a response to a paper by Larry May at the American Section of the International Association for Philosophy of Law and Social Philosophy (AMINTAPHIL), Lexington, Kentucky, October 1996. I am indebted to the conference participants, and to an anonymous reviewer for *Essays in Philosophy*, for their comments.

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