



# Medals Over Morals

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Although my high school tennis coach produced winning teams, he was an elusive man who abused his power. Though never spoken of, it was long established that your rank on the team was determined not only by your ability, but by whether or not the coach picked you to be a part of his inner circle. My sophomore year, I was ecstatic to be brought into this inner circle and play on the varsity team; however, my excitement was quickly replaced with feelings of unease. After playing well, I no longer received high fives, but bizarre, seemingly sexual gestures. Later in the season my coach gave me a personal gift, which included a card and calendar with my face on it. The most frightening, however, occurred on New Year's Day, when I received a text message from his personal phone at one o'clock in the morning, telling me he was thinking of me and wishing me a year full of love. I immediately reached out to my teammates, and quickly realized I was the only one who had received this message. At the time I was fifteen; not even old enough to drive a car.

Sexual harassment and abuse at the hands of coaches and trainers, especially successful ones, is nothing new. In 2018, USA Gymnastics Medical Coordinator, Larry Nassar, was handed a sentence of up to 175 years in prison after more than 60 young athletes provided heart-wrenching testimony about the sexual abuse they had suffered at the doctor's hands (Astor). Although Michigan State University received complaints about Nassar abusing gymnasts as early as the 1990s, the university failed to take these claims seriously, resulting in the passage of two decades before legal action was taken (Hauser). Another prominent athletic figure-head, Jerry Sandusky, was found guilty of molesting at least eight young athletes over a period of 15 years (Sheinin). In both cases, colleagues of the offenders knew of these men's offenses, but looked the other way to spare the reputations of their institutions. Legendary head coach of Penn State football, Joe Paterno, was fired in the wake of the Sandusky scandal for covering up

Sandusky's abuses (Sheinin). The President and the Athletic Director of Michigan State also faced scrutiny for their mishandling of the Nassar case, and subsequently resigned their positions (Hauser). Commentators have stated these issues reflect a "culture of medals over morals," as our athletic institutions are prioritizing wins over the wellbeing and safety of their athletes (Freeman).

Like the countless athletes that filed reports, my mom and I also approached the school district with evidence of harassment. Also like the athletes assaulted by Nassar and Sandusky, my educational institution did not take my claims seriously, and did everything in their power to protect their championship winning coach. Knowing that I could not safely return to my team, it became clear to my family that our only chance at remedy would be to take legal action.

When my mom and I first considered legal action, I believed the purpose of the law was to punish. Attorneys we consulted confirmed that my coach created a hostile environment which prevented me from playing the sport that I loved. They also confirmed that the school did not reasonably investigate or respond to my complaint against my coach. Because I had already been harmed by the time legal action was considered, it felt only logical that the law was created with the intention of trying to compensate for the pain victims were already put through. Should my coach and the school district be found in violation of Title IX, I believed the law would promote social welfare by holding both parties accountable for their actions. Still, this backwards-looking understanding of our legal system felt incomplete. It was not enough for the law to punish my coach so he never harasses me in the future, because the underlying injustice had already occurred. If our justice system only acts from the vantage point that harm has already occurred, the law fails at preventing injustice from happening in the first place.

An Economic Approach to the Law resolves this discrepancy by asserting that the purpose of the law is to promote a utilitarian idea of increasing the overall social good. Under this approach, every rational adult has individual preferences and usually knows best what those preferences are. The collective utility of every individuals' preferences is referred to as "the social pie." In order to promote the greatest utility for the greatest number of people within the society, the law should seek to maximize the size of the social pie. To do this, we should aspire to allow every individual to maximize her own utility. Nevertheless, sometimes two or more individuals' preferences are at odds with one another, and one person's preference-maximization would cause a negative externality to another. When this is the case, we must weigh the utility gained by one party maximizing their preferences against the loss of utility this would cause the other party. If the overall gain in utility that would result from party A maximizing their preferences is greater than the loss in utility this would cause party B, party A should maximize their preferences because it increases the size of the social pie. However, if the utility party A would gain is less than the utility lost by party B, we should attempt to disincentivize such behavior, for it creates social waste.

To disincentivize socially wasteful behavior requires an ex ante approach to the law. An ex ante approach to the law forces socially wasteful parties to internalize the cost of their negative externalities, so as to disincentivize waste before it occurs. In other words, an ex ante legal approach asks what sort of incentives would force a party to consider the negative effects their actions would have on others *before* acting in such a way. Some may argue that this framework fails in cases like mine which involve minors, because children and adolescents often lack a clear, rational awareness of their preferences. Especially in regard to long-term interests or interests whose meaning a developing mind cannot fully comprehend, a minor would be unable

to provide proper valuation for the satisfaction or violation of their preferences. In these cases I believe that this broadly utilitarian framework of the law can still be applied, it just requires the law to “think on behalf” of the minor. By this, I mean that the law must consider what the minor’s interest would be if they had fully developed rationality and could carefully consider the long-term effects or implications of their interests being violated.

Using the field of economics, we can thus effectively describe how to practically enforce utilitarian ethics under the law. As a result, I have since reconsidered the way I think about how our legal system addresses sexual assault. It is clear that coaches who harass their players have some interest in acting as they do. High schools and universities are also maximizing their own preferences by not investigating and reporting sexual harassment, because they would prefer to not face the repercussions of employing a predatory coach. Nevertheless, when satisfying their preferences, these coaches and schools are failing to consider the negative effects that fulfilling their interests could have on other people. I believe that had these coaches effectively internalized the cost of their externalities, they would have been disincentivized from acting they did, because the harm to their victims far outweighed any potential benefit to them. The schools involved would have also been incentivized against ignoring complaints filed against their coaches, because the benefit of ignoring the harassment would not offset the harm it caused the victims. In spite of this, these schools and coaches still maximized their own preferences, which caused the size of the social pie to decrease and subsequently harmed *all* members of society.

In contemplating legal action against my coach and school district, the law was to be used not as a punishment, but as a tool to force them to consider and compensate for the social losses their actions would cause. This conception of the law improves the welfare of all, including my coach and school district, because it incentivizes against actualizing interests that would cause a

net harm to society. The same can be said for other instances of sexual harassment at the hands of coaches and trainers, like in the cases of Sandusky and Nassar. Given that the purpose of the law is to promote the social good, I believe that this interdisciplinary legal framework allows us the maximum freedom to actualize our own preferences, while encouraging us to remain mindful of the effect our choices could have on others. By this calculus, we are promoting what is best for *everyone* in our society: not by punishing, but by encouraging better in the future.

It is my hope that the next time a championship winning coach takes advantage of their players, we are now better able to recognize that there are some preferences of greater utility than medals.

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