

Sexual Harassment and Objectivity:

Why We Need Not Ask Women If They Are Victims

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Abstract: Sexual harassment is often understood as a subjective notion that asks the woman if she has been victimized. This paper argues that we need not ask women if they are victims by conceptualizing sexual harassment as an objective notion that holds the perpetrator accountable for his actions. In making my case, I will apply an objective conception of sexual harassment to the U.S. Supreme Court case *Meritor Savings Bank v. Vinson* by drawing on the feminist view of sexual harassment given by Anita Superson and the role of equality and autonomy as motivated by Ronald Dworkin and James Griffin, respectively.

Subjective vs. Objective Distinction

Sexual harassment is often identified as a problem only after a woman comes forward to reveal that she has been victimized.¹ I find this conception problematic because it relies on an overly *subjective*² interpretation of events rather than *objective*³ justification. It seems reasonable to suppose that sexual harassment can make women feel uncomfortable or threatened and thus it seems reasonable to suppose that a woman will know when she has been sexually harassed. For this reason, sexual harassment has come to be understood by many as something that can only be subjectively determined. However, I will argue that sexual harassment can and should be objectively determined. In making my case, I will draw on the feminist view of sexual harassment given by Anita Superson and the role of equality and autonomy as motivated by the views of Ronald Dworkin and James Griffin, respectively.

In her paper titled “A Feminist Definition of Sexual Harassment,” Anita Superson provides an objective definition of sexual harassment that is counter to the common subjective view. Rather than defining it as annoying, disturbing, or unwanted gestures, actions, threats, or demands, Superson defines sexual harassment as “a form of sexism . . . about the domination of the group of men over the group of women.”⁴ The subjective definition “puts the burden on the

¹ This paper focuses on sexual harassment that is done to women by men not only because it is by far the most common form, but because this form is fundamentally different from women on men, men on men, and women on women harassment. This difference will be explained in more detail towards the end of the paper.

² Subjectivity refers to an individual’s perspective, feeling, or belief on a given matter.

³ Objectivity refers to the reality or truth about a given matter independent of an individual’s perspective.

⁴ Anita Superson, “A Feminist Definition of Sexual Harassment,” *Journal of Social Philosophy*, 24, no. 2 (1993): 400.



victim” to establish whether she was sexually harassed, whereas the objective definition asks “whether the behavior . . . expresses and perpetuates the attitude that the victim and members of her sex are inferior.”⁵ In other words, the subjective version asks the victim whether she has been harassed, while the objective version suggests that a woman could be harassed and not know it. Using moral concepts like equality and autonomy, this paper argues for an objective conception of sexual harassment in order to hold the perpetrator accountable for his actions, rather than place the burden of proof on the victim.

To illustrate the difference between the subjective and objective conception of sexual harassment, consider the case of *Meritor Savings Bank v. Vinson*. Mechelle Vinson filed suit against her former employer, claiming that over the course of the four years she worked there, she was repeatedly harassed by her supervisor Sidney Taylor. Vinson brought forth five accusations against Taylor. The first incident occurred shortly after she was hired when Taylor invited Vinson out to dinner and while out, suggested they go to a motel to have sex. Vinson initially refused, but eventually agreed for fear of losing her job. After the motel incident, Taylor made repeated demands for sexual favors both during and after business hours in which Vinson estimated that she had intercourse with him some 40 or 50 times. Later, Taylor fondled Vinson in front of other employees. Taylor also followed Vinson into the women’s restroom and exposed himself to her. And finally, while alone in the women’s bathroom, Taylor forcibly raped Vinson on several occasions. Taylor denied all the allegations, claiming that he never made suggestive remarks, fondled, had sexual intercourse, or even asked Vinson to do so. These accusations that were brought forth ultimately influenced the trial court’s subjective reasoning in determining the ruling of this case.

The trial court found that Vinson was not a victim of sexual harassment because her sexual “relationship” with Taylor was “voluntary” based on her “willingness” to participate in the sexual acts. The trial court seems to be appealing to the myth that women “welcome, ask for, or deserve” harassment.⁶ On this view, men are justified in catcalling, fondling, or making suggestive sexual remarks because women who flirt or dress “provocatively” should expect such harassing treatment. This myth arises out of a flawed subjective conception of sexual harassment because it questions the behavior of the victim rather than the actions of the perpetrator. Presumably, a woman who playfully tosses her hair or wears a short, formfitting dress cannot find sexual remarks annoying or be disturbed by grabbing because she has invited men to act in that way. Since the subjective version asks the victim whether the treatment was welcomed, sexual harassment becomes a question of whether a woman has good reason to feel victimized.

Vinson appealed the decision and her case eventually made it to the United States Supreme Court where the ruling was reversed. The Supreme Court argued that the trial court “erroneously focused on the ‘voluntariness’ of [Vinson’s] participation in the claimed sexual episodes” and should have questioned whether or not the “alleged sexual advancements

⁵ *Ibid.*, 403-5.

⁶ *Ibid.*, 402.

were unwelcomed.”⁷ Contrary to the trial court’s tacit endorsement of the “women ask for it” myth, the Supreme Court ruled that Vinson was a victim of sexual harassment because of the “hostile work environment” created by the “unwelcomed” sexual advances made by Taylor.⁸ Notice here that even though the Supreme Court recognized that the trial court made a mistake by claiming Vinson was a willing participant, the Court still relied on a subjective conception of sexual harassment to arrive at their verdict.

It is important to note that women often know when they have been sexually harassed. However, I am arguing for objective justification of sexual harassment, rather than subjective, because I think there are cases in which women are mistaken. I believe there are cases of women 1) having been sexually harassed and failing to recognize it, 2) having been sexually harassed and recognizing it, but failing to react properly, and 3) perceiving something as sexual harassment when it was not. For example, suppose, for the sake of argument, there are six coworkers (three male and three female) having lunch together in the employee break room. Their boss enters, interjecting into the conversation by telling a sexist joke that is directed at the three women in the room. The first woman laughs along with her boss and the other men in the room, unaware of the problematic nature of the joke. The second woman nervously laughs along and even though she is angry and offended by the joke, decides not to speak up for fear of making the situation even more uncomfortable. The third woman does not laugh because she, like the second woman, is angry and offended by the joke, but does decide to speak up and express why she finds the joke problematic rather than funny. The three different reactions of the women speak to the problem of identifying sexual harassment by evaluating a victim’s reaction. The thought experiment is intended to illustrate that all three women were sexually harassed even though one did not realize, one realized but chose not to respond, and one realized and responded accordingly. It could be inferred by the reactions of the first and second women that sexual harassment did not take place because the sexist joke did not elicit a response indicating that the comment was unwanted. It seems that there are situations in which a woman’s reaction is a poor indicator of sexual harassment, and it is because of those situations that I think a victim’s reaction is not as important or as good of an indicator as the perpetrator’s action.

In sum, *Meritor Savings Bank v. Vinson* is exactly the kind of case that is troublesome because it embodies the problematic nature of the subjective definition of sexual harassment. The trial court held that Vinson was *not* a victim of sexual harassment because of the “voluntariness” of her participation in the repeated sexual incidents. However, the Supreme Court held that Vinson was a victim of sexual harassment because the sexual advances, though they were not involuntary, were “unwanted.” Both courts approached the issue in subjective terms that asked Vinson whether she was a victim of sexual harassment, and neither asked whether Taylor’s actions expressed a view that women are inferior to men. Placing the burden of proof on the victim to prove that she has been sexually harassed perpetuates the existing power structure

⁷ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986): 67-8.

⁸ *Ibid.*, 63-9.



of the sexes and does not explore the possibility that the perpetrator's actions project the false view that the sexes are unequal in worth. Although I concur with the Supreme Court's ruling, I disagree with their reasoning because I believe that an objective conception should have been applied in determining that Vinson was a victim of sexual harassment. Taylor should have been held accountable for his actions, and his accountability should not have relied on Vinson proving that she was a victim to the Court.

The Role of Equality

In order to illustrate how objectivity can and should be applied to sexual harassment cases, a moral component should be introduced. Ronald Dworkin makes a distinction between rules and principles.⁹ Rules are "all or nothing." For example, the legal drinking age is 21, or it is not. It could be the case that the legal drinking age is 18, but it is not because the 'rules' in place state otherwise. Principles, by contrast, lack the precision of a rule. For example, fairness is a fundamental principle that is recognized as valuable, but there is room to disagree about how it applies to a particular case. Rules and principles are both objective concepts; however, rules are sharply defined and principles make up a broad constellation of values.

Consider the role equality plays in the *Vinson* case. According to Dworkin, since equality is a fundamental principle that is recognized as valuable, anything that does not adhere to the principle of equality by suggesting, promoting, or allowing inequality is wrong. It could never be the case that suggesting, promoting, or allowing inequality is right, unless equality is in conflict with some other principle and consequently trumped. Therefore, given any dilemma, if there are two or more principles in conflict, one must weigh the significance of each, decide which is most important, and prioritize that principle over the other(s). Vinson was a victim of sexual harassment because the sexual advances made by Taylor contributed to an inequality among men and women and therefore violated this fundamental moral principle. In Superson's words, suggestive sexual remarks, fondling, sexual intercourse, and rape are ways of expressing a "domination of the group of men over the group of women."¹⁰ These forms of harassment express and perpetuate the idea that women are inferior to men and that the sexes are unequal in worth. Since there are no conflicting principles in this case, and because equality is recognized as good, it is clear that Vinson was a victim of sexual harassment. Vinson was a victim not because Taylor's actions were "unwanted"—it is likely they were—rather, Vinson was a victim of sexual harassment because Taylor's actions violated the principle of equality that is objectively recognized as fundamentally valuable.

Dworkin's objective principle demonstrates that Vinson was a victim of sexual harassment. Taylor's actions were wrong not because they caused specific harm to Vinson, but because they reinforced a belief that women are

⁹ Ronald Dworkin, "Is Law a System of Rules?" in *The Philosophy of Law* (Oxford: Oxford University Press, 1977).

¹⁰ Superson, 400.

unequal to men. In Superson's words, "sexual harassment is designed to 'keep women in their place' as men see it."¹¹ Therefore, sexual harassment violates the principle of equality because it suggests that women are inferior to men. Unlike the reasoning of both courts that relied on subjective notions like "willingness" and "unwanted," the analysis of Dworkin's principle of equality offers objective justification. Taylor violated the principle of equality not because his actions were annoying or disturbing, but because they expressed the belief that the sexes are unequal in worth. Such sexist attitudes not only perpetuate sexism that harms women collectively as a group, but it undermines the principle of equality that we all recognize as good.

The Role of Autonomy

In order to further illustrate how sexual harassment cases can and should be objectively determined, I will now shift the discussion from moral principles to human rights. James Griffin explains the concept of human rights as being grounded in two ideas: personhood and practicalities.¹² He believes that the ability to make self-governing choices (i.e., autonomy), not have others interfere with our choices (i.e., liberty), and have minimal provisions guaranteed in order to make choices (i.e., food, water, shelter, etc.) is necessary for personhood. Griffin offers practicalities as a way of "drawing the line" between which rights warrant protection and which do not. For example, according to Griffin, liberty is a right necessary for personhood, and rights derived out of liberty include rights of speech, religion, and assembly. However, in the United States, freedom of press is typically included in the above mentioned list of freedoms, but unlike the other rights, it is not a necessary right for personhood in all places of the world. As a matter of practical consideration, in the first world, freedom of press might be a necessary liberty for personhood, but it is likely not necessary in the third world. This is because what it means to be a functioning human in the third world is very different from what it means to be a functioning human in the first world. Similarly, the health needs of men and women are going to look very different given practicalities. It would not be necessary that all people have access to a pap smear or a prostate examination. Given anatomy and the different health needs of men and women, it would not make sense to provide men with pap smears and women with prostate examinations. This is because what it means to be healthy and functioning as a man is different from what it means to be healthy and functioning as a woman.

According to Griffin, autonomy, liberty, and minimal provision are needed for humans to function as humans. Vinson was a victim of sexual harassment, not because Taylor's actions were "unwanted," but because his actions undermined Vinson's personhood status. Taylor violated Vinson's right to autonomy because his actions had an impact on how she was able to govern her life. Even if Vinson was "willing" to participate in the sexual

¹¹ Ibid., 402.

¹² James Griffin, "First Steps in an Account of Human Rights," in *On Human Rights* (Oxford: Oxford University Press, 2008).



acts with Taylor, her ability to make an autonomous decision was obscured because she was afraid she might lose her job. When a power imbalance exists—as it always does in an employer/employee relationship—there is a level of manipulation available to an employer to abuse. Taylor was able to use his position of power to his advantage because even though Vinson “agreed” to participate in the sexual “relationship,” she was not making a truly autonomous choice to do so. Vinson did not freely choose; rather, she was coerced into the sexual relationship because she had to weigh the consequences of the sexual relationship with the consequences of losing her job. As a matter of practical consideration, Taylor’s actions did not allow for Vinson to freely exercise her autonomy given the needs of a female employee working under the supervision of a male employer. Furthermore, since Vinson was unable to act as an autonomous agent and a right to autonomy is necessary for personhood, it follows that she did not meet Griffin’s minimal requirement for personhood that all people are owed in virtue of being human.

Vinson was a victim of sexual harassment because her personhood was undermined when her right to autonomy was unreasonably restricted. As humans, our autonomy is always restricted to a certain degree to ensure that we do not harm others. For example, I do not have the freedom to murder my ex-lover even though I might want to, because restricting my freedom to kill another person is a reasonable restriction of my autonomy. Murdering my ex-lover is not going to inhibit my ability to function as a human agent. Similarly, employers are able to reasonably restrict the autonomy of their employees by requiring that they show up to work on time, complete their designated tasks, refrain from revealing the business secrets of the company, etc. Notice how not one of these restrictions hinders an employee’s ability to function as a human agent. An unreasonable restriction of an employee’s autonomy would be requiring the employee to work more hours per week than the maximum allotted, perform dangerous tasks unrelated to the job, or participate in a “hostile work environment.” Clearly, any of these restrictions can affect an employee’s ability to function as a human agent, whether the worry is death or abuse in verbal, physical, or sexual forms. This case demonstrates an unreasonable restriction of Vinson’s autonomy because she was forced to weigh the consequences of a sexual relationship to losing her job at the bank. Vinson understood her participation in the sexual acts could ensure or inhibit her ability to function as a human agent because a job is going to ensure that minimal provisions are attainable.

Does Sex Matter?

It is important to consider cases in which women sexually harass men, men harass men, and women harass women. While I am not trying to suggest that such cases do not exist, sexual harassment in which the woman is the victim and the man is the perpetrator is fundamentally different from these other forms. It is true that regardless of Vinson’s sex, the principles of equality and autonomy would have still been violated, but the fact that Vinson was a woman and Taylor was a man is important because it illuminates

the troublesome power structure that exists between the sexes. Superson states “women cannot harm or degrade or dominate men as a group, for it is impossible to send the message that one dominates if one does not dominate.”¹³ While I agree with Superson that women cannot remind men that they are inferior because of their sex since society is not structured in such a way, I do not want to discount other forms of sexual harassment.

Individuals, regardless of their sex and the sex of the harasser, can be sexually harassed. Superson’s feminist definition of sexual harassment defines it as the “the domination of the group of men over the group of women.”¹⁴ Her definition highlights that sexual harassment of women by men has a profoundly negative impact on women as a group. Not only does sexual harassment harm the individual, it harms all women because it perpetuates the false belief that women are inferior to men. The *Vinson* case highlights how Taylor’s actions not only caused specific harm to Vinson by undermining her autonomy, but also expressed an inequality among the sexes that suggests men are superior to women. Other forms of sexual harassment do not have this same impact. Yes, the individual being harassed is harmed, but the group to which the individual belongs is not being harmed because the harassment does not derive from the sexist attitudes associated with one’s membership in a particular group. Superson acknowledges that “if the sexist roles predominant in our society were reversed, women could sexually harass men.”¹⁵ Therefore, the reason she denies other forms of sexual harassment is because they are not going to have the same impact given the sexist roles that exist in society. Ultimately, what is most important about Superson’s definition of sexual harassment is that it is based in the ability for one group to dominate another group, rather than the ability for one individual to harm another individual.

In sum, sex does matter in this case because the type of sexual harassment that is done to women by men is significantly different from other forms due to the impact it has on women collectively as a group. While that is not to say other forms do not exist, it is important to note that these forms do not elicit harm beyond what is faced by the individual being harassed. This is because society is not structured to evoke the domination of the group of women over the group of men or the domination of either sex on themselves.

Conclusion

Sexual harassment is typically understood as a subjective notion that asks the victim whether she has been harassed. More often than not, a woman is aware when she is a victim of sexual harassment, but then the burden rests on her to prove that she has been victimized. In Mechelle Vinson’s case, both the trial court and the Supreme Court relied on a subjective notion of sexual harassment to arrive at their verdicts. Unlike the trial court, the Supreme Court was right to rule in favor of Vinson, but an objective conception of

¹³ Superson, 403.

¹⁴ *Ibid.*, 400.

¹⁵ *Ibid.*, 403.



14 *Sexual Harassment and Objectivity*

sexual harassment should have been applied. Together, Superson's feminist definition of sexual harassment, Dworkin's moral principle of equality, and Griffin's right to autonomy demonstrate how an objective understanding of sexual harassment should have been applied in determining the verdict of the *Vinson* case. Sexual harassment can be determined independent of subjective interpretation, and this is why an objective conception suggests that we need not ask women if they are victims. ❖