Workplace Harassment

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Learning Objectives

Having read this chapter, you should be able to understand:

- Key terms in the study of workplace harassment and some of the consequences of workplace harassment for individuals and organisations.
- Theoretical ideas about the causes and impacts of workplace harassment.
- The legal framework around workplace harassment in the UK.

Introduction

The purpose of this chapter is to introduce the concept of workplace harassment; it draws on both legal and sociological work in order to do so. The following sections will help you understand some of the key terms and language used around workplace harassment and the impacts of workplace harassment and consider which demographics are most likely to be at risk of harassment in the workplaces. Thereafter, an overview of the history of workplace harassment (that is, how we came to understand it as a social phenomenon) is provided followed by an exploration of some of the theoretical frameworks for understanding and explaining how

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and why workplace harassment occurs. Lastly, existing laws around harassment in the UK are discussed. Several case studies are presented to illustrate some of the theoretical, sociological, and political concepts.

Defining and Explaining Workplace Harassment

The term 'workplace harassment' is commonly used in journalistic, professional, and academic writing; however, trying to pin down a concrete definition is harder than it would initially seem. This is in large part because there is no one definitive definition of workplace harassment (Ehrenreich 1999). In many cases, especially in media discussions, workplace harassment is a term often used to refer to sexual harassment or unwanted sexual attention in the workplace—this conflation of the two is, perhaps, more prevalent in recent years due to the cultural and social impact of the #MeToo movement, though as demonstrated in the following section, much academic attention has been given to sexual harassment in the workplace. However, while sexual harassment is a form of workplace harassment, workplace harassment itself is a much broader phenomenon, and some studies suggest that non-sexual forms of workplace harassment are more common than sexual harassment (Richman et al. 1999).

There are a few things to note before reading further—many of the examples and laws discussed in this chapter originate from the UK since this is the framework most familiar to the author. To fully cover the nuances of laws and policies around workplace harassment around the world would be beyond the scope of this chapter. Additionally, while much of the harassment discussed in this chapter will relate to sex and gender (as befits the overall volume in which this chapter is situated), it will be situated in a broader understanding that harassment can occur which does not have a direct connection to sex or gender; equally, this chapter will try to highlight how workplace harassment affects men, women, and transgender people in the examples it provides.

Understanding the Key Terms

If you read any academic text, article, or even a news article about workplace harassment, you will immediately notice that a lot of the terminology within the topic is used interchangeably. Terms like 'harassment', 'bullying', and 'mobbing' will often appear in accounts of inappropriate behaviour in the workplace, but it is important to understand that there are subtle differences between all of these concepts, both in terms of their definitions, but also, importantly, in terms of the legal implications of each action or set of actions.

Bullying refers to an act, or series of acts, which can be perpetrated by an individual or group of individuals, which intimidates, dominates, or threatens the victim (Juvonen and Graham 2014). Bullying is most commonly understood as a

phenomenon in school children, though there has been a lot of work done on bullying in the workplace. A few key features of 'bullying' are important to bear in mind: firstly, 'bullying' implies a direct and vicious intent to harm—as discussed below, this can cause difficulties with dealing with workplace harassment as malicious intent can be tricky to prove. As Einarsen notes, only a perpetrator can verify their intent, and intentions can change throughout a series of actions (Zapf and Einarsen 2001). Secondly, bullying tends to be seen as an individualised phenomenon—while the reasons for bullying may link to concepts of structural oppressions (i.e. racism, sexism, homophobia, etc.) bullying implies that harmful actions are conducted by individuals or small groups of individuals, rather than tied to institutional practises (Besag 1989). It is, however, worth nuancing this claim slightly, as there is a concept called 'bullying culture' which is explored more in Case study 1.

Mobbing overlaps with bullying to an extent; put simply, mobbing refers to the bullying of an individual by a group, be that in a school environment, a family, or a workplace. Originating from studies of animal behaviour (Lorenz 2002), it has been used in the context of the workplace to describe situations where an individual is 'ganged up on' by other employees/their employers (Leymann 1996). Mobbing comes with the clear implication of a kind of mindless, animalistic aggression, a collective burst of violence or will to harm. Some theorists argue that this suggests a total *lack* of intention, which, again, provides difficulties in trying to tackle workplace harassment (Davenport et al. 1999).

Harassment is a rather nebulous concept, and there is no one set definition of harassment. As feminist theorist Catharine Mackinnon (speaking specifically of sexual harassment) remarked in 1979, 'it is not surprising…that women would not complain of an experience for which there has been no name' (MacKinnon 1979, p. 27). Within the UK, harassment is broadly defined as when 'someone behaves in a way which makes you feel distressed, humiliated or threatened'; this behaviour can be from someone you know or a total stranger (Bureau 2021). A slightly more concrete definition of workplace harassment, from the non-governmental public body Advisory, Conciliation and Arbitration Service (ACAS), goes as follows:

> [Harassment is] …Spreading malicious rumours, exclusion or victimisation, unfair treatment, overbearing supervision, misuse of power and position, unwelcome sexual advances, making threats and comments about job security without foundation, deliberately undermining a competent worker, preventing individuals from progressing by intentionally blocking promotion or training opportunities. (Leaver 2019)

Harassment is often seen as a sustained series of actions or conduct and can include online as well as offline conduct. Harassment in the UK is most commonly associated with the targeting of someone with 'protected characteristics' under the Equality Act 2010, yet overall harassment remains something of a vague term, as we will discuss in more detail in the section on Workplace Harassment and the Law.

There are a few unifying features of these various terms—firstly, there is a power imbalance between the perpetrator and victim (Juvonen and Graham 2014). However, the exact nature of that power imbalance can be difficult to pin down. As

Leaver, and others, argue, most legalistic and academic frameworks for understanding workplace harassment tend to focus on the individual dynamic between the harasser and the harassed, without always tying said harassment to structural oppressions such as sexism, racism, and so on (Leaver 2019).

> **Alternative Terminology: Workplace Harassment**
> Bullying, mobbing, bashing, hounding, intimidation, persecution, bullying culture, workplace abuse, workplace molestation, workplace aggression, workplace mistreatment, discrimination at work.

Impacts of Workplace Bullying

It will come as little surprise that workplace bullying and harassment have profoundly negative impacts on the victims. Workplace bullying and harassment can affect the victim's mental health, resulting in depression, anxiety, and in some cases, post-traumatic stress disorder or suicide (Bartlett and Bartlett 2011). Victims can also suffer significant physical health impacts, including cardiovascular disease, weight gain, and a decline in overall physical health (Johnson and Rea 2009). In addition, victims are more likely to develop issues around alcohol and drug misuse as a coping mechanism, sleep disruption, and high use of sleep medication (Yildiz 2007). Furthermore, existing physical and mental health conditions increase the risk that an individual will be subject to workplace bullying or harassment (Nielsen et al. 2014). As well as the health impacts, victims of workplace bullying/harassment can suffer negative career prospects, such as absenteeism or quitting work, which can have an impact on future employability (Gardner and Johnson 2001; Yildiz 2007).

Conversely, it remains the case that despite legal and policy frameworks (which are discussed in more detail below), the perpetrators of workplace harassment rarely lose their jobs (Glambek et al. 2016). Especially around sexual harassment, there exists a culture of silencing, whereby victims often feel unable to speak out for fear of losing their jobs—a 2018 survey of 4000 women found that 16% had experienced sexual harassment but not reported it due to fear of being sacked or having hours reduced (Trust 2018). According to a 2017 report, in France individuals who made a complaint of sexual harassment at work were either reprimanded or fired in 40% of cases (Rubin 2017). More broadly, many workplaces require the signing of non-disclosure agreements as a condition of employment (despite this practice being illegal in the UK, USA, and most of Europe), which makes complaints of workplace harassment, especially sexual harassment, difficult or impossible for the victims. While some high-profile perpetrators of sexual harassment have lost their jobs, more often than not, perpetrators of harassment will face lesser penalties—see the Avital Ronel case study later in this chapter for an example.

Workplace bullying/harassment can have considerable consequences for the organisation, as well as the individual. Consequences can include missed deadlines,

lower morale among staff, a breakdown in relationships between supervisors and peers, and if allegations become public, potential loss of reputation with customer bases and clients (Bartlett and Bartlett 2011) or even the collapse of the organisation. Notably, the online content service UNILAD suffered a major crisis after considerable evidence of historic misconduct on the part of managers against employees (including, but not limited to, sexual harassment) was made public, leading to a loss of advert revenue, a sharp decline in readership, and eventual collapse into administration (Kale 2020). Even if allegations of workplace bullying/harassment do not result in the collapse of a company, it can result in damning and often fatal consequences (see Box 1).

Box 1 The Francis Report
Case study #1—the Francis Report

The 2013 Francis Report exposed serious concerns about workplace culture and bullying within the National Health Service in the UK (Francis 2013). Focussing on Stafford Hospital, the report noted the shocking figure of between 400 and 1200 unnecessary patient deaths between 2005 and 2008. The report attributed this state of affairs to two factors: firstly, a preoccupation among management with national targets at the expense of quality of care (Leaver 2019), and secondly, a 'culture of secrecy, where problems in maintaining the quality of patient care were caused by front-line staff working within an "endemic culture of bullying"' (Francis 2013). Staff members would be bullied into remaining silent about the diminishing quality of care, for fear of being victimised if they spoke up. The report went on to conclude that the culture within Stafford Hospital was mirrored in other areas of the NHS (Francis 2013).

Three important points can be drawn from this case study: first, that workplace cultures that sustain harassment can have real, and often tragic, impacts on service delivery for an organisation; second, that harassment can arise without direct malice aimed at the victims of that harassment (the Francis Report notes that the management of Stafford Hospital did not intend to harm patients or staff, instead believing their actions were helping the hospital fit statistical and target-based goals); and, third, that both workplace bullying and workplace harassment are systemic issues, rather than simply being the malicious action of an individual or group of individuals against a worker or group of workers.

Who Are the Targets of Workplace Harassment?

In theory, anyone can be subject to harassment in the workplace, regardless of age, religion, gender, sexuality, etc. However, statistical evidence suggests that certain groups are more likely to be targeted within the workplace than others. Data from

2019 suggests that 54% of women experience sexual harassment in the workplace, ranging from inappropriate comments and messages to unwanted touching and pressuring into sexual favours, with a further 20% reporting that the harassment was perpetrated by a manager or senior colleague (Government Equalities Office 2019). According to the trade union Unison, some 50% of transgender people have reported harassment at work (Unison 2019). While the majority of those affected by sexual harassment identify as women, this is by no means to suggest that men are not victims of such harassment. A 2018 survey by the BBC found that 20% of men in the workforce had experienced some form of sexual harassment, ranging from inappropriate comments to sexual assaults; the same survey found that 79% of those men had not reported their experiences of harassment due to shame, fear of ridicule, or that aspersions would be cast on their masculinity (Charles 2018). Indeed, some researchers have argued that men who oppose other men's sexual harassment can sometimes become the targets of sexual harassment themselves (Holland et al. 2016). Again, this suggests that the current understanding of sexual harassment among working people tends to be closely tied to power dynamics around gender.

Workplace Harassment: A Brief History

The following section provides a history of the concept of workplace harassment in both academic and legal literature. It is meant to provide an overview, rather than a comprehensive summary, and it is worth remembering that this draws on literature and law predominantly from the Anglosphere (i.e. the English-speaking and developed world). The need for further analysis of definitions and understandings of workplace harassment from outside of this sphere is apparent.

The concept of 'bullying' or 'mobbing' (as it is sometimes referred to) within organisations finds its roots in work on bullying in schools conducted in schools in Scandinavia (Olweus 1987). Though this research was in schools, academics involved in organisational studies noted its implications for improper conduct in the workplace (Zapf and Einarsen 2001). However, before this, there was a growing acknowledgement of the issue of harassment within feminist theory (which is discussed in more detail below). Feminist legal scholar Catherine Mackinnon was among the first to draw on legal and theoretical frameworks to discuss the concept of sexual harassment of women in the workplace (MacKinnon 1979). Around the same time, Brodsky's *The Harassed Worker* defined five distinct kinds of harassment—sexual harassment, name-calling, work pressure, physical abuse, and scapegoating (Brodsky 1976). While Brodsky's work offered a more nuanced and detailed take on workplace harassment, it was largely overlooked until the 2000s, and as a result, early work on workplace harassment was somewhat disjointed.

However, within the UK, there was a growing awareness of the problem. Crawford and Adams's book, *Bullying in the Workplace* (which was subsequently followed by a popular BBC Radio 4 programme) proved pivotal in drawing more public attention to the prevalence of the problem (Adams 2014; Zapf and Einarsen 2001). The popularity of the book and radio show led to developments in the

law—while racial and sexual discrimination was already illegal, harassment became illegal under the Protection from Harassment Act 1997, following the Disability Discrimination Act of 1995. At the time of writing, the current UK government framework for dealing with workplace harassment is enshrined in the Equality Act 2010—discussed in more detail below.

This brief history highlights a few key points; first, that academic, and often activist, literature has been a driving force for legal changes in the UK—it is a 'bottom-up' rather than 'top-down' approach to legislation. This is especially true for sexual harassment, as Wise and Stanley note, there was: 'no mention of any such animal as "sexual harassment" in the English press, certainly none that we could find, before the reporting of American sexual harassment cases and the review of feminist and feminist-influenced books on the subject at the end of 1979'. (Wise and Stanley 1987, p. 30). Secondly, while legal frameworks exist, cultural and theoretical understandings of workplace harassment have pointed towards some gaps in existing laws.

One such gap is the concept of a 'bullying culture' (Leaver 2019)—this can refer to the idea that within certain workplaces, there exists a culture that either directly encourages, or turns a blind eye to, the harassment of certain workers or certain groups of workers (Williams 2011). In part, this is due to how research (and, to an extent, law) has focussed on the problem and its impacts, the individual harasser and the harassed, at the expense of developing a conceptual framework for understanding workplace harassment as a social phenomenon (Keashly and Harvey 2005). As a result, this might explain the limited ability of the law, policy, and academia to respond to examples of systemic or structural workplace harassment (See Box 2).

Case study #2: #MeToo and its consequences.

The #MeToo movement is one of the most prolific and recognisable social movements in recent times, seeking to draw attention to sexual harassment—many of which take place in work environments. The term 'MeToo' originates from a 2006 blog post by activist and sexual assault survivor Tarana Burke (Ohlheiser 2017), though it came to more public attention via allegations of sexual abuse of actresses by former Hollywood producer Harvey Weinstein in 2017 around what was called quid pro quo harassment (i.e. the exchanging of sexual favours for job security or advancement) and in particular from an October 2017 tweet by Alyssa Milano concerning Weinstein's behaviour (Milano 2017). The trend spread virally on social media and led to a number of high profile firings in Hollywood and eventual criminal convictions against Weinstein (Pierson 2020). Though the majority of accusers were women, some high-profile men also used the movement to highlight their own experiences of sexual harassment at work, notably *Brooklyn 99* actor Terry Crews. While much media attention focussed on #MeToo in the film industry, and within the United States, the movement had profound impacts internationally

(see (Green 2021) and in other sectors, including with churches, schools and universities, the military, and government (Hillstrom 2018). While some countries made small legal reforms in response to the movement (Caldwell 2018), the MeToo movement had mixed impacts on general workplace culture, with 58% of American workers surveyed by SurveyMonkey reporting that they did not feel that the movement had improved their workplace, even though 24% of respondents felt that their workplace could have a 'MeToo' situation (Gitlin 2018). This is indicative of some of the criticisms of MeToo [footnote], namely, that the movement's overall goals are not clear and as a result do not have consistent legal or policy aims (Wilhelm 2017). Equally, the movement has been accused of ignoring the risks of sexual harassment for certain demographics of worker, specifically workers in the sex industry (Thrasher 2019).

Power, Privilege, and Posturing: Theories of Workplace Harassment

Thus far, this chapter has explored what workplace harassment is, what its consequences are, and how our understanding of the concept has developed in both legal and academic terms. However, one key question remains: *why* are people harassed at work?

There are various theoretical models of workplace harassment, and a detailed definition of all of these would be outside of the scope of this chapter. What follows is a very brief overview of the major trends in research into workplace harassment up to the present. Subsequently, this chapter will focus on two major frameworks that are most relevant to current discussions around workplace harassment: feminist frameworks and Michel Foucault's work around power and its relationship to knowledge.

Feminist approaches to workplace harassment have largely focused on understandings of sexual harassment and harassment related to gender and have had considerable impacts on modern academic and organisational understandings of the topic. As Wise and Stanley note, the very term 'sexual harassment' had no real use in the English language before early feminist work on the subject in the 1970s (Wise and Stanley 1987). Feminist frameworks on workplace harassment tried to shift the focus away from the idea that harassment is in any sense a one-off, individualised set of actions, but needs to be seen in the light of patriarchy and patriarchal power structures (Wood 1994). Gutek explains the harassment of women in the workplace as the result of when the patriarchal idea of women as a sex object spills over into the workplace (Gutek 1985). In other words, ideas about women's value, informed by patriarchal culture, lead to women being harassed at work, especially, as Gutek (1985) argues, if a role normally occupied by a man is occupied by a woman, thus making her gender more noticeable. Other feminist writers, such as Paglia, argue

that harassment is driven by an innate issue with male sexual desire, which is always 'hunting and scanning….Everywhere the beautiful woman is scrutinized and harassed' (Paglia 1992).

Feminist theorising has informed organisational studies into harassment as well—Hearn and Parkin, for example, argue that sexuality pervades the workplace, impacting the roles individuals hold, the relationships between employees, and how they communicate with one another. They write that 'Organizations construct sexuality and yet contradictorily sexuality constructs organizations' (Hearn and Parkin 1987, p. 3). In this sense, harassment can occur as an extension of human sexuality under patriarchy, but also because organisations enable the perpetuation of normative gender and power relations, thus employees can be harassed for sexual favours, etc. Cockburn, in her study of three workplaces, argues that harassment arises from a patriarchal backlash against efforts to get more women into the workplace, similar to how women would often be excluded or sidelined from networking and social events in bigger organisations; as a result 'heterosexual and sexist culture generated by men within the workplace…this culture includes women but marginalizes and controls them' (Cockburn 2018, p. 142).

> **Key Concept: Patriarchy**
> Patriarchy refers to a social system where men hold a disproportionate amount of power and occupy the majority of positions of intellectual, political, and social influence. As a result of this, men tend to have power over women and have access to certain privileges that women cannot.

What unites these various feminist approaches is the appreciation of power dynamics within workplaces under patriarchy. As Mackinnon writes: 'The way the sexual subordination of women interacts with other forms of social power men have can now be more precisely delineated. Economic power is to sexual harassment as physical force is to rape' (MacKinnon 1979, p. 217). At this stage, it is worth trying to pin down a more precise understanding of the meaning of power. A simplistic understanding of power would be that a person (A) has the power over another person (B) to the extent that A can get B to do something that B would otherwise not do out of their own free choice (Dahl 1957). In this sense, power is something that can be gained by an individual and wielded like a tool or a weapon against another person.

For French philosopher Michel Foucault, this understanding of power was far too limited and only really tried to explain how power functioned on the micro-level—that is, how power might function between two individuals. It failed to address how power worked on the macro-level (i.e. at the level of institutions and national policy) and what later theorists have called the meso-level (i.e. within the workplace) (Messner 2009). According to Foucault, power is also not the homogeneous domination of one person, group, or class over another. Power circulates; it is

discontinuous and uneven. The individual, says Foucault, is, in fact, an effect of power, rather than either the starting point or something that is dominated by power (Foucault 1980).

According to Foucault, not only is power nebulous, and fluid, but there are multiple different forms of power. In *Discipline and Punish*, Foucault maps out the development of various forms of power over the ages. In older forms of society, power mainly took the form of spectacle power—grand, public shows of strength or might, which Foucault calls 'sovereign power'. However, as society progressed, and capitalism developed, a new form of power emerged, which Foucault called 'disciplinary power'. Using the transition from the spectacle of public executions to the heavily regimented lives of prisoners as his example, Foucault argues that discipline—the intense monitoring and regulation of activities, spaces, behaviours, and so on—coerced the bodies of individuals and divorced power from the body, turning that individual into a relation of strict subjugation (Foucault 2012). In simple terms, when an individual finds themselves within an institution with strict regulation (such as a prison, a school, or a workplace), they are either encouraged or coerced into becoming compliant—they become what Foucault calls 'docile bodies', ideal productive and compliant units.

As Leaver puts it, disciplinary power functions when 'institutions are rigidly organised, to encourage workers to be separated from each other rather than form together as a collective' (Leaver 2019, p. 27). It is important to understand that this form of power does not rely so much on laws as it does on normalisation and also on surveillance. In modern society, we are not always under literal surveillance (though there are many workplaces where literal surveillance is very prominent, such as call centres), but we fear that we *might* be under surveillance at any given moment—in the same way as the prisoner in the Panopticon fear that they *might* be being watched by the guards and thus will behave themselves. The individual internalises the idea that they are under surveillance and thus engages in a process of self-regulation—and becomes a docile body. Importantly, this functioning of power fitted within a regime of discourse, a historically contingent social system that produces knowledge and meaning. Dominant discourses produce regimes of truth that regulate how and why people are classified and controlled. Those whose behaviour falls outside of the acceptable boundaries of behaviour are subjected to a process of othering, perceived as deviant and, more often than not, ostracised (Fahie 2014).

Foucault's work, and his understanding of power, can provide a useful framework for understanding workplace harassment. Leaver has drawn on Foucault's understanding of power to explore and explain bullying within the NHS (Leaver 2019); in her study, she identifies how women of colour became targets for harassment due to their visibility within the organisation, echoing Foucault's sentiment that 'discipline and the control of the subject could be pursued through compulsory visibility on its subjects' (Foucault 2012, p. 778). Fahie, in their analysis of workplace harassment within school settings, draws on Foucault to explain how bullying and harassment can involve creating discourses around the victim—that they are a 'troublemaker' or 'lazy', for example; such discourses come with expectations of (a) how the employee will behave (even if this is based on a prejudice) and (b)

justifies a process of othering and ostracism (Fahie 2014). Seen through a Foucauldian lens, workplace harassment can also be seen as a mean of enforcing the 'docility' or productivity of workers—where a worker might be seen to not being sufficiently docile (say, for example, as a female worker who takes time off for caring responsibilities or a Muslim employee who requests time to pray during Ramadan), this becomes more visible; they defy a dominant discourse and become subjected to harassment and ostracism if they do not conform.

Another use of Foucault for the study of workplace harassment is that he offers a framework for critiquing how we think and gain knowledge about workplace harassment. Since Foucault argues that we are subject to, and made by, discourse, we are also complicit in reproducing discourse and the expectations that come with it. Put simply, we reproduce various discourses (and the knowledge and expected behaviours connected to them) as if they are true because we believe them to be true. The job of intellectuals, according to Foucault, is not to reveal the truth, but to challenge established truth and critically consider what aspects of it might connect to power and assumption (Foucault 1980; Foucault 1982). Some academics, such as Brewis, draw on Foucault, to argue that a prevailing attitude in feminist work on sexual harassment suggests that thinkers such as Mackinnon claimed to have 'revealed' the truth about gender roles in the workplace to the world and that sexual harassment, in particular, is a form of 'bad' sex based on an abuse of power, distinct from 'good' sex which is based on mutual attraction (Brewis 2001). Such an attitude also ties the roles of victim and perpetrator to specific genders (man = perpetrator, woman = victim); while this is often the case, it means that when a case arises that conflicts with this knowledge, our responses can often be messy and incoherent, as we will see in the case study below:

Case Study Three: Avital Ronnell

Avital Ronnell, a highly respect American academic in the humanities, was accused by Nimrod Reitman (one of her former PhD students) of sexual harassment in 2018. Reitman's claim alleged that Professor Ronnell had subjected him to sexual harassment over a period of 3 years, including inappropriate touching and name calling to abusing her power as his advisor (Greenberg 2018).

The case provoked fervent debate about gender, power, and harassment in the higher education sector. Liu and Bailey argued that Ronnell's action were enabled by power she wielded as a 'theory star' within the humanities (Liu and Bailey 2018), while others highlighted the prevalence of sexual harassment within universities, with data from 2018 suggesting that 89% of harassers, and Ronnell belonged to the 5% of female harassers (Pitchford et al. 2020). Perhaps the most controversial response was a draft letter—signed by prominent 'celebrity' academics such as Judith Butler and Slavoj Zizek—alleged that the allegations against Ronnell were 'malicious intention' and not actual evidence (despite the fact that the signatories had not seen the 'confidential dossier' of evidence presented to NYU) (Leiter 2018).

The case raises complex questions about workplace harassment in academia—both in terms of defining harassment (both Ronnell and her defenders argued that her conduct fitted in with the dynamics of 'a penchant for florid and campy communications arising from our common academic backgrounds and sensibilities' (Greenberg 2018)) and a departure from 'traditional' power dynamics in circumstances of sexual harassment (the female the aggressor, the male the victim, and both parties identifying as gay)—and also raises questions about the ability, or inability, to achieve justice in matters of sexual harassment (Gessen 2018).

Workplace Harassment and the Law in the UK

Broadly, the UK Government defines workplace harassment as 'behaviour that makes someone feel intimidated or offended' within the workplace; within the UK, harassment is illegal under the Equality Act 2010, if such harassment relates to what UK law defines as 'protected characteristics' of an individual, that is, age, sex, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation (Government 2021).

Within the UK, behaviour that can be perceived as harassment is regulated under several acts of parliament. The 1997 Protection from Harassment Act prohibits conduct and behaviour which amounts to the harassment of another and where the individual concerned knows or should know that their behaviour constitutes harassment. This covers physical actions and verbal and non-verbal actions (Government 1997). UK Legislation was expanded by the Equality Act 2010, which outlined the protected characteristics mentioned above.

One immediate element that is apparent in UK harassment law is that it is broad and laws do not explicitly forbid explicit forms of harassment. For example, sexual harassment is not formally against UK Law; a UK court would instead interpret sexual harassment as breaching the Equality Act, as it constitutes an individual being treated negatively because of their sex (Clarke 2007). While this broadness of existing law, in theory, makes legislation adaptable, it can raise some issues. For instance, the above way of understanding sexual harassment equates 'sex' with 'sexual'—that is to say, it presumes a sexual element in sex discrimination. As Franke argues, this results in courts sometimes focussing on the sexual elements of a case (i.e. was there evidence that the perpetrator was sexually attracted to the victim) at the expense of the sex discrimination element (i.e. was the perpetrators harassing behaviour motivated by wanting to subjugate the victim because of their sex or sexuality) (Franke 1997). As such, potential power dynamics and patterns of discrimination can, potentially, be overlooked, and a perpetrator could potentially avoid consequences by claiming that there was a lack of sexual desire underpinning their actions. This vagueness as well, it could be argued, raises for employers a concern that the presence of sexual expression can open a company to risk of enable

sexual harassment; as Schultz puts it, 'if the presence of sex is a problem, then one way to deal with it is to segregate "the sexes"' (Schultz 2003, p.2134). As a result, some companies can engage in a process of informal segregation of sexes in the workplace, which prevents women (and other minorities) from achieving equity in work (Clarke 2007).[1]

Similarly, other elements of vagueness in the law present challenges for both UK workers and UK employers. This is particularly prescient for the rights of transgender workers. According to research conducted by Crossland Solicitors, around 74% of employers claim to have never knowingly worked with a transgender person, suggesting that many transgender workers will conceal their gender identity from their employer. Similarly, 23% of employers were unaware of laws that protected transgender workers; in part, this could be a result of the ambiguity of the Equality Act, which prohibits discrimination on grounds of gender reassignment—thus implying (falsely) that only transgender workers who have gone through gender reassignment surgery are protected (Solictors 2018). It is worth remembering that while the aforementioned legislation does put a duty on employers to safeguard the rights of employees with protected characteristics, this does not often equate to workplace policies to achieve those aims being put into place. Only 12% of UK workplaces reported having a specific policy around transgender rights in the workplace, and in certain UK sectors, such as the tech sector, only 7% of employers reported having such policies (Ibid). This is not just a matter of concern for transgender individuals, as many workplaces, especially universities, tend to opt towards catch-all policies such as Dignity at Work, rather than specific policies to tackle expressions of harassment.[2] This raises the question of how effective any macro-level anti-harassment legislation can be if there is an absence of policies that empower workers at the meso-level. The building of a strong workers' rights or trade union presence, along with collaborative approaches by management, could go some way towards addressing these issues (Carbo 2009).

Summary

- While there is a history of work that has tried to explain and understand the causes of workplace harassment, it remains a real and lived phenomena for many individuals and groups within the workforce—and, more often than not, the existence of workplace harassment links to existing hierarchies of oppression around gender.

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[1] Here, it's worth thinking back to where we discussed Foucault earlier—the various practises outlined here are based upon a kind of discourse around sex and the expectations that are attached to that discourse. You may find it peculiar that sexual harassment laws presume that there is an element of sexual desire on the part of the perpetrator, but that is built on a kind of 'knowledge' (to use Foucault's language) about sex and the way that humans relate to one another sexually. Of course, it is possible to argue that this is not knowledge as much as an assumption—however, according to Foucault, because that assumption is seen as true it is treated as true.

[2] For example, my alma mater, Cambridge University, did not bring in specific policies against sexual harassment until 2018.

- The same, equally, could be said about race, disability, religion, and so on. However, when we think about gender harassment, it's important to remember that men can also be the victims of harassment as well as the perpetrators.
- Harassment can often be understood as the actions of one individual against another, enabled by a power imbalance in the workplace, but in many cases, workplace harassment can be systemic and enabled by a culture of bullying and silencing.
- Legal frameworks do exist to protect the victims of harassment and (in theory at least) prevent it in the first place, but there are considerable gaps and disconnects, especially between laws and workplace policies.
- While theoretical work has gone some way towards explaining how and why people are harassed at work, such work has also highlighted as much that we don't know about workplace harassment, as much as what we do.

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