

Catherine A. MacKinnon: Champion for Women's Sexual Rights and Safety in the Workplace

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Sexual assault has plagued women in America since the first settlers interacted with Native Americans. Sexual abuse was and still is used as a form of power over women and especially women of racial minorities. Enslaved women lived in especially horrible conditions as they dealt daily with sexual advances and coercion from their male masters. White women who were filling sentences of indentured servitude also faced sexual harassment and assault in their workplace but had the chance to take their case to the court and see their assailant sentenced. Enslaved women were not able to seek out any such justice, but instead risked their lives even telling anyone of what had happened.²⁵ As the United States industrialized, women working in factories faced verbal and physical sexual abuse from their male supervisors. Most women working as industrial laborers could not afford to leave their jobs, so the abuse was endured. Sexual harassment and assault in the workplace continued into the twentieth century. Black domestic workers in the South experienced especially high rates of sexual assault at the hands of their male employers. Latina women working as migrant farmers experienced sexual abuse by their foremen as well.²⁶ Due to the culture of patriarchy and male domination in the US, sexual abuse in the workplace was not talked about and subsequently was not dealt with. Women were often told to leave their jobs and find new work if they could not handle the sexual harassment in their workplace.²⁷ At the same time, women were encouraged by both men and other women to 'sleep around the office' to improve their likability and chances of promotion.²⁸ These factors combined made for a highly toxic and unstable environment

25. Sharon Block, "Lines of Color, Sex, and Service: Sexual Coercion in the Early Republic," in *Women's America: Refocusing the Past*, edited by Linda Kerber, Jane Sherron De Hart, and Cornelia Hughes Dayton (New York: Oxford University Press, 2011), 164-73.

26. Sascha Cohen, "A Brief History of Sexual Harassment in America Before Anita Hill," *TIME*, April 2016. <http://time.com/4286575/sexual-harassment-before-anita-hill/> (April 25, 2018).

27. Cohen, "A Brief History."

28. Ginia Bellafante, "Before #MeToo, There Was Catherine A. MacKinnon and Her Book 'Sexual Harassment of Working Women,'" *The New York Times*, March 2018. [nytimes.com](https://www.nytimes.com/2018/03/25/us/sex-harassment-catherine-mackinnon.html) (March 25, 2018).

for women to work in.

Up until the passing of the Civil Rights Act of 1964, sex discrimination was completely legal and generally found an acceptable practice. While Title VII is universally known to legally prohibit discrimination on the basis of race, it also legally prohibited discrimination based on sex. As a result, women were no longer barred from certain colleges, no longer banned from certain professions, and could not be fired on the basis of sex. Unfortunately, in 1964, sexual harassment was not considered a part of sex discrimination and was not considered to fall under Title VII's protection.²⁹ It would not be until 1986 that the Supreme Court would rule that sexual harassment in the workplace was in fact a form of sex discrimination and deserved reparation under Title VII. Were it not for the argument of lawyer and feminist Catherine MacKinnon, this decision may not have been reached. Her work with sexual harassment in the workplace led MacKinnon to become a leading force of change in women's rights, particularly sexual rights, and because of her integral and fore-leading work we have the tools to speak out against and seek justice on issues of sexual harassment and discrimination in the workplace today.³⁰

Catherine MacKinnon was born October 7, 1946 in Minneapolis to parents George MacKinnon and Elizabeth Valentine Davis. MacKinnon's father had been a lawyer and was running for Congress at the time of his daughter's birth. He would later be appointed as a judge on the U.S. Court of Appeals. MacKinnon followed in her mother and grandmother's footsteps and attended the all-women's Smith College as part of the graduating class of 1969. She then attended Yale Law School and earned her J.D. in 1977.³¹ Her first book, *Sexual Harassment of Working Women*, was published in 1979 and would become influential in the ground-breaking 1986 Supreme Court case *Meritor Savings Bank vs. Mechelle Vinson*.³²

Sexual Harassment of Working Women declared that the sexual harassment of women in the workplace was not a problem unique to individual women but one that plagued the collective sex of women. Therefore sexual harassment should be classified as sex discrimination and fall under the protection of Title VII. MacKinnon defined two types of sexual harassment: quid pro quo and offensive working environment. Quid pro

29. "Civil Rights Act, Title VII, 1964," in *Women's America: Refocusing the Past*, edited by Linda Kerber, Jane Sherron De Hart, and Cornelia Hughes Dayton (New York: Oxford University Press, 2011), 650-51.

30. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," in *Women's America: Refocusing the Past*, edited by Linda Kerber, Jane Sherron De Hart, and Cornelia Hughes Dayton (New York: Oxford University Press, 2011), 741.

31. "Catherine A. MacKinnon Biography," <https://www.biography.com/people/catharine-a-mackinnon-9393211> (March 28, 2018).

32. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 741-42.

quo harassment refers to a "more or less explicit exchange: the woman must comply sexually or forfeit an employment benefit."³³ MacKinnon explained that while quid pro quo harassment often occurs with the perpetrator explicitly expressing the forfeit of employment or benefits, this type of harassment can be more subtle or euphemistic, including the examples: "If I wasn't going to sleep with him, I wasn't going to get my promotion'...[Her] foreman told her that if she wanted the job she would have to be 'nice.'"³⁴ MacKinnon argued that both women who do and women who do not comply with the sexual advances made in quid pro quo harassment experience negative effects or consequences. MacKinnon's research shows that women who do not comply are often demoted or fired from their position. Women who do comply on the basis that they will receive a promotion or benefit are often not given the benefit promised to them and do not pursue the matter for lack of sympathy and/or legal support.³⁵

MacKinnon also argued that there is a second type of sexual harassment in the workplace. An offensive or hostile work environment is "when the conduct of a supervisor, co-worker, or client unreasonably interferes with an individual's work or creates an intimidating and hostile workplace."³⁶ This type of harassment is arguably more prevalent in work environments and more likely to be brushed off.³⁷ Even so, under MacKinnon's argument neither are acceptable, and in both cases, victims should be entitled to 1) better treatment and 2) compensatory damages under Title VII protection against sex discrimination.³⁸ MacKinnon also argued that sexual harassment is reflective of the disparate places in society that men and women fall into; collectively, women share very little wealth and power compared to men. In the brief version of her argument, MacKinnon pointed out that

sexual harassment is integral and crucial to a social context in which women, as a group, are allocated a disproportionately small share of wealth, power, and advantages compared with men as a group...each incident reproduces, with very little personal variation, the inequitable social structure of male supremacy and female subordination which Titles VII and IX seek to eliminate.³⁹

33. Catherine A. MacKinnon, *Sexual Harassment of Working Women*. (New Haven: Yale University Press, 1979), 32.

34. MacKinnon, *Sexual Harassment of Working Women*, 32-33.

35. MacKinnon, *Sexual Harassment of Working Women*, 32-9.

36. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 741.

37. MacKinnon, *Sexual Harassment of Working Women*, 40.

38. MacKinnon, *Sexual Harassment of Working Women*, 235-7.

39. MacKinnon, *Sexual Harassment of Working Women*, 235.

As stated in MacKinnon's conclusion, sexual harassment reproduces unequal power structures between men and women as collective groups. Therefore, MacKinnon stated that sexual harassment is in fact sex discrimination. As sex discrimination, sexual harassment should be actionable under Title VII.⁴⁰

In 1986, the Supreme Court reviewed the case of *Meritor Savings Bank v. Mechelle Vinson*. Vinson "had been hired in 1974 as a teller-trainee...and was steadily promoted for four years until she became assistant branch manager. During those four years, she had a sexual relationship with the man (Mr. Taylor) who had hired her...However, when she tried to decline his attentions, he exposed himself to her, and even forcibly raped her."⁴¹ Meritor Bank's policy was for harassment to be reported to the victim's supervisor. In Vinson's case, her supervisor was also her assailant, and she did not take the action suggested by the bank for obvious reasons. The bank did not contest that what Taylor had done was incredibly wrong, but because Vinson did not report the continued assault, the bank argued that it should not have to compensate Vinson for her loss. MacKinnon worked with a team of lawyers on Vinson's case and used her argument from *Sexual Harassment of Working Women to defend Vinson*.⁴²

MacKinnon's argument successfully brought a unanimous decision by the Supreme Court. Justice William Rehnquist, speaking on behalf of the rest of the justices, expressed collective agreement: "Without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex."⁴³ Justice Rehnquist went on to explain that the bank was in the wrong for expecting Vinson to follow harassment report procedures when she was being harassed by the person she was supposed to report it to. "It is not altogether surprising that respondent failed to invoke the procedure and reporting her grievance to him....[W]e hold that a claim of 'hostile environment' sex discrimination is actionable under Title VII."⁴⁴ Further legal scholarship has gone on to conclude that male-on-male workplace harassment and harassment based on an employee's actual or perceived sexuality was actionable under Title VII as well.⁴⁵

The decision from *Meritor Savings Bank v. Mechelle Vinson* that sexual harassment in the workplace is a form of sex discrimination led to increased numbers of reported

40. MacKinnon, *Sexual Harassment of Working Women*, 236-7.

41. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 742.

42. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 741-42.

43. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 741.

44. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 741.

45. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 743.

harassment as it encouraged victims to take legal action against their assaulters.⁴⁶ While this case changed the legal structure regarding sexual harassment in the workplace and gave victims the chance for retribution, it did not change social attitudes regarding sexual harassment. The average woman's outlook on sexual harassment would face no significant change until the hearings of Anita Hill and Clarence Thomas. Publicly broadcast on televisions all over the country, ordinary women saw Hill's testimony first-hand and became inspired to take action in their own cases of sexual assault: "After Hill's testimony, sexual harassment claims at the Equal Employment Opportunity Commission...skyrocketed."⁴⁷ While women had already had the legal power to take action against their attackers, Hill brought an attitude of courage and strength to victims of sexual harassment. Of the Hill-Thomas hearings, MacKinnon says the following:

What happened in the Hill-Thomas hearings, among other things, was that sexual harassment became real to the world at large for the first time. My book of 1979, framing the legal claim in the way that it became legally accepted, did not do this...Winning Mechelle Vinson's case in the Supreme Court in 1986 did not do this, although all these helped prepare the way. Anita Hill did this.⁴⁸

MacKinnon recognized that while legal structure to take action against sexual harassers and assaulters is crucial to ending sexual harassment in the workplace, legal framework alone does not solve the epidemic. Social attitudes regarding sexual harassment must change as well. MacKinnon cites Hill as the start to that change—a change that we have seen evolve into modern social movements aimed at fighting sexual assault and harassment.

In 2018, we are more open to or at least on the path to being more open with conversations about sexual harassment in the workplace. The #MeToo movement took off on social media for women to share stories of sexual harassment and assault after many women came forward with allegations against powerful men in Hollywood. Since then many more women and men have shared their stories of sexual abuse in their workplaces. In a recent piece for the New York Times, MacKinnon celebrated the #MeToo movement: "This mass mobilization against sexual abuse...is eroding the two biggest

barriers to ending sexual harassment in law and in life: the disbelief and trivializing

46. "Meritor Savings Bank v. Mechelle Vinson et al., 1986," 743.

47. Eliana Dockterman, "The Legacy of the Confirmation Hearings Was Predicted 25 Years Ago," TIME, April 2016, <http://time.com/4295258/anita-hill-confirmation-legacy/> (April 25, 2018).

48. Catherine A. MacKinnon, "Voice, Heart, Ground," in *I Still Believe Anita Hill*, edited by Amy Richards and Cynthia Greenburg (New York: Feminist Press of the City, 2013), 32.

dehumanization of its victims in law and in life...Sexual harassment law prepared the ground, but it today's movement that is shifting gender hierarchy's tectonic plates."⁴⁹ As MacKinnon points out, the legal framework for fighting sexual harassment in the workplace is absolutely crucial to solving the problem of sexual harassment. However, until attitudes regarding sexual harassment change, nothing will truly get better for subordinated groups in the workplace. #MeToo has created a movement that is changing the attitudes of victims, but the attitudes of those with power who believe they are superior and may commit sexual assault against women and minorities have yet to be changed. While there is still much work to do, there have been great steps taken recently to help destigmatize sexual assault and harassment, and to encourage victims to speak out. Without Catherine MacKinnon's integral work on sexual harassment in the workplace, as a society we would likely not have progressed to a point where we could have a movement like #MeToo. It was MacKinnon's legal work with sexual harassment that laid the foundation for the current fight for women's sexual rights and safety in the workplace.

49. Catherine A. MacKinnon, "#MeToo Has Done What the Law Could Not," *New York Times*, February 2018, <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html> (April 4, 2018).

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