Taking the Sex out of Sexual Harassment: How the “Equal Opportunity Harasser” Defense Threatens to Change the Contours of Sexual Harassment Under Title VII, and Why it Should be Eliminated

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I. Introduction

The “equal opportunity harasser” defense to a sexual harassment claim—allowing for an employer to escape liability under Title VII by showing that members of both sexes were sexually harassed—is problematic on its face. Intuitively, it seems both wrong and right: it appears to be a bizarre loophole that more harassment can be a defense to a sexual harassment claim; and yet, at the same time, it is seems that it must be true that an action cannot constitute sex-based discrimination if it is taken toward both men and women. This paper explores the “equal opportunity harasser” defense in order to pinpoint the source of the tension described above. The paper begins by tracing the origins of the defense in Title VII case law and proceeds by following its evolution including courts’ responses to its employ. Through grappling with the conceptual difficulties it presents, this paper argues that recognizing the “equal opportunity harasser” defense not only runs contrary to courts’ core assumptions regarding the nature of sexual harassment claims, but also threatens to undermine the effectiveness of sexual harassment litigation overall. In order to avoid these problems, either the “equal opportunity harasser” defense must be eliminated altogether or legislation must be enacted outlawsing sexual harassment outside of the Title VII framework.
II. Exploring the “Equal Opportunity Harasser” Defense and its Implications

A. Sexual Harassment as Discrimination “because of . . . sex.”

In order to understand the “equal opportunity harasser” defense, we must first understand what makes sexual harassment illegal under Title VII. Title VII of the Civil Rights Act makes it unlawful for an employer “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such an individual’s race, color, religion, sex, or national origin.”\(^1\) Within this paradigm, sexual harassment has been recognized as a form of discrimination “because of . . . sex.” Cognizing sexual harassment as a form of sex-based discrimination, however, has not been a completely straightforward affair. In *Barnes v. Costle*, the D.C. Circuit explained the chain of reasoning it employed to make this determination:

>[A]ppellee has argued that ‘(a)ppellant was allegedly denied employment enhancement not because she was a woman, but rather because she decided not to furnish the sexual consideration claimed to have been demanded.’ We cannot accept this analysis of the situation charged by appellant. But for her womanhood . . . her participation in sexual activity would never have been solicited . . . [S]he became the target of her superior's sexual desires because she was a woman.\(^2\)

Thus, the *Barnes* court describes sexual harassment as a form of sex-based discrimination both because the employer’s behavior targets the employee because of her sex, and because the behavior has detrimental consequences in terms of her employment. While the District Court had found that plaintiff’s treatment was not sex-based but rather “underpinned by the subtleties of an inharmonious personal relationship,”\(^3\) the D.C. Circuit still determined that the detrimental treatment would not have occurred if the plaintiff had not been a woman. Thus, because the harassment negatively affected the terms of her employment and would not have occurred but for

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\(^3\) *Id.* at 986.
her sex, the claim is cognizable under Title VII as discrimination based on sex. In an influential footnote, however, the Court notes that the analysis would not have been the same if the alleged harasser had been bisexual: “[i]n the case of the bisexual superior, the insistence upon sexual favors would not constitute gender discrimination because it would apply to male and female employers alike.”\(^4\) According to the Court, then, the victim’s claim of discrimination based on sex is only viable insofar as the harasser is targeting members of one sex only. The sexual nature of the harassment functions as evidence that the plaintiff was treated discriminatorily based on her sex.

   The Title VII analysis is similar in a claim of hostile work environment based on sexual harassment. In *Henson v. City of Dundee*, the Eleventh Circuit—likening a hostile environment based on sexual harassment to one based on racial harassment—explained, “[a] pattern of sexual harassment inflicted upon an employee because of her sex is a pattern of behavior that inflicts disparate treatment upon a member of one sex with respect to terms, conditions, or privileges of employment.”\(^5\) As in *Barnes*—indeed relying in part upon that case—the Court qualified:

   “[i]n the typical case in which a male supervisor makes sexual overtures to a female worker, it is obvious that the supervisor did not treat male employees in a similar fashion . . . . However there may be cases in which a supervisor makes sexual overtures to workers of both sexes or where the conduct complained of is equally offensive to male and female coworkers. In such cases, the sexual harassment would not be based upon sex because men and women are accorded like treatment.”\(^6\)

In this way, the Court again asserts that, in order for the sexual harassment claim to constitute discrimination “because of . . . sex,” the harasser must not treat members of both sexes the same way. The sexual nature of the harassment remains evidence of disparate treatment. Yet distinct from the approach articulated in *Barnes*, the Court here looks to the harasser’s actions rather than

\(^4\) *Id.* at 990, n. 55.  
\(^5\) *Henson v. City of Dundee*, 682 F.2d 897, 902 (11th Cir. 1982) (citations omitted).  
\(^6\) *Id.* at 904.
to his motivations. Thus, where Barnes asks whether the supervisor is sexually attracted to both males and females, the Henson Court looks at the behavior of the harasser and whether the conduct is “equally offensive to male and female coworkers.”

B. The Equal Opportunity Harasser Defense Emerges

As the Barnes and Henson courts predicted, the defense of non-discriminatory harassment emerged from the depths of the footnotes and dicta of early sexual harassment cases into the central holdings of subsequent cases. In Holman v. Indiana, the Seventh Circuit confronted a case of a married couple—man and woman—who were coworkers, and who filed sexual harassment suits under Title VII alleging “their supervisor . . . had sexually harassed each of them individually and on separate occasions, and because they had rejected his sexual solicitations the supervisor retaliated against each of them with certain deprivations.”7 Taking a decisive stance, the Seventh Circuit affirmed the dismissal of the case under a 12(b)(6) motion for failure to state a claim of sex discrimination. Relying on cases that cite to the Henson and Barnes language quoted above,8 the Court reiterated:

Title VII does not cover the ‘equal opportunity’ or ‘bisexual’ harasser, then, because such a person is not discriminating on the basis of sex. He is not treating one sex better (or worse) than the other; he is treating both sexes the same (albeit badly),9 and ultimately agreed with the District Court’s conclusion that “the Holmans could not claim discrimination because they had alleged that their supervisor had been sexually harassing both of them by soliciting sex from each of them.”10 Going further still, the Court rejected the Holmans’ insistence that their complaint should be construed as “pleading in the alternative,”—relying on

7 Holman v. Indiana, 211 F. 3d 399, 400-01 (7th Cir. 2000).
8 See Shepherd v. Slater Steels Corp., 168 F. 3d 998 (7th Cir. 1999); see also Pasqua v. Metropolitan Life Insurance Co., 101 F. 3d. 514 (7th Cir. 1996).
9 Holman v. Indiana, supra note 7, at 403.
10 Id. at 405.
the “any set of facts” pleading standard—allowing them to defeat the motion if the complaint alleged facts sufficient to prove the supervisor harassed either of them. The Court held that, “[b]ecause the complaint clearly pleaded that [the supervisor] had been separately sexually harassing both [plaintiffs] by propositioning them, it is inconsistent (and thus improper) for the Holmans now essentially to propose that he did not.”\(^{11}\) Thus, the Court held that allegations of harassment of both sexes—despite their clearly sexual nature—amounted to a failure to state a claim of sex discrimination under Title VII, resulting in pre-trial dismissal.

In *Connell v. Principi*,\(^ {12}\) the Western District of Pennsylvania again affirmed the use of an “equal opportunity harasser” defense, but this time on a summary judgment motion. In *Connell*, five male plaintiffs brought suit against their employer claiming a hostile work environment caused by sexual harassment by their female co-worker in violation of Title VII. In this case, the alleged harassment was particularly widespread both in terms of range of conduct and individuals targeted. The acts of harassment alleged included threatening to kick one of the plaintiffs in the testicles, complaining that all of the women in the department were “fat cows,” threatening to call the spouses of employees to report alleged cheating, and myriad other acts of harassment or threats of violence. Here, however, the very range of harassment was found to defeat the claim. Finding a “classic instance of an ‘equal opportunity’ harasser,”\(^ {13}\) the Court reasoned, “[the alleged harasser] harassed co-workers without discrimination, even though some of the instances of harassment involved sexual content or connotations.”\(^ {14}\) Going through the catalog of alleged instances of harassment, the Court explained why each one did not constitute

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11 *Id.* at 405-06.
13 *Id.* at 11.
14 *Id.*
discrimination based on sex, or is further evidence of overall harassment of both sexes.15 Thus, at the summary judgment stage, the Court found that the harasser’s conduct did not constitute sex-based discrimination but rather an example of a rampant, indiscriminate harasser, thereby defeating the Title VII claim through an “equal opportunity harasser” defense.

C. Courts Challenge the “Equal Opportunity Harasser” Defense

Despite the examples above, courts have not always been so stringent in response to cases presenting the possibility of an “equal opportunity harasser.” A number of courts have reacted to cases involving allegations of harassment of both sexes by determining that whether the harassment is “because of . . . sex” is a question of fact that turns on the degree and quality of the harassment. Indeed, despite its decision in Holman, the Seventh Circuit itself began to hint at this more nuanced approach in later cases. In Gleason v. Mesirow Financial, Inc. the Seventh Circuit described a supervisor whose allegedly “overbearing behavior—yelling, slamming down the phone, making nasty comments about clients, talking down to his fellow workers—was the source of complaints to higher levels of management by both male and female coworkers.”16 The Court affirmed the grant of summary judgment in favor of the defendant based on the observation that “there may very well have been a hostile work environment for both sexes in Novak’s department. However, that environment was not more hostile for women than for men.”17 Thus, the Court suggests that even when the supervisor’s conduct is offensive or hostile to members of both sexes, a plaintiff could make a cognizable Title VII sex discrimination claim if the work environment is more hostile for one sex than for the other.

15 The Court reasoned, for example, that certain harassing comments were “made in the presence of persons of both gender [sic]” or were not directed specifically at members of either sex. Id. at 12.
16 Gleason v. Mesirow Financial, Inc., 118 F. 3d 1134, 1136 (7th Cir. 1997).
17 Id. at 1145.
The fact-based analysis the Court alluded to has been applied by subsequent courts. In *Bowers v. Radiological Society*, the court addressed a summary judgment motion in a case in which the facts taken in the light most favorable to the female plaintiff certainly painted a work environment that was offensive to both men and women. The Court summarizes:

> At work, Ms. Davis harassed Ms. Bowers physically, pressing up against her in an unwanted way. She would talk dirty at the office, announcing to all, for example, that if Mr. Laubert behaved himself, she would let him play “hide the weenie”; she referred to a “Gravitron” machine at the gym as the “Gravitwat,” and drafted rules for the 1995 office Christmas party that said participants could earn points for giving a blowjob. Other women employees testified that Ms. Davies’ speech was embellished with terms such as “fuck,” “blowjob,” “pussy,” “cunt,” and “bitch”; she recounted lewd jokes, and inquired into “who got laid this weekend,” she initiated tongue kissing games at the 1995 office Christmas party, and encouraged a woman employee to moon a male employee.  

Yet even in light of this mixed set of facts, the Court denied the motion for summary judgment brought by the defendant. The Court noted that some of the most egregious and most sexual conduct engaged in by the harasser was directed at the plaintiff but not at male employees. Additionally, the Court observes that “[a]lthough Ms. Davis used neutral terms applicable to both sexes . . . there is no evidence that Ms. Davis used male gendered profanity nearly as much as she used its female gendered counterparts.” The Court ultimately concluded that this fact pattern raised a genuine issue of material fact as to whether the plaintiff was harassed because of her sex, denying the defendant’s motion for summary judgment.

Other courts have also validated this approach to a sexual harassment claim under Title VII. In an action brought by a female plaintiff—despite claims that the alleged harasser had touched men inappropriately and allegedly propositioned one male employee—the Court found that “the harassment that [the plaintiff] allegedly endured was far more severe and prevalent than the alleged conduct endured by the male employees . . . . At the least [the plaintiff] has raised a

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19 *Id.* at 695.
20 *Id.*
genuine issue of material fact as to whether [the] alleged harassment was because of [the plaintiff’s] sex.”  

Similarly, the Ninth Circuit applied this qualitative fact-based inquiry to determining whether a workplace in which both sexes were harassed amounted to discrimination “because of . . . sex” under Title VII when it reversed the grant of a motion for summary judgment in favor of the defendant in *Steiner v. Showboat Operating Co* based on details regarding the severity of the harassment of each sex.  

These lines of cases illustrate the way that courts have responded to the possible “equal opportunity harasser” defense: while a true “equal opportunity harasser” is not in violation of Title VII, the specifics of the harassment determine whether the actions of a harasser are indeed non-discriminatory.

**D. Inadequacy of the Fact-Based Inquiry**

By making the inquiry into a fact-based one that does not alleviate an employer’s responsibility by alleging that more harassment occurred, the approach in the cases above eliminates some of the discomfort with the “equal opportunity harasser defense.” Yet an examination of this approach reveals that it is in conflict with the foundations of sexual harassment law under Title VII. Essentially, the courts in *Bowers, Kampier*, and *Steiner* ask the finder of fact to determine whether particular acts of harassment directed at a particular plaintiff constitute sex-based discrimination. Through comparing the acts of harassment directed toward individuals of one sex with acts directed toward individuals of the other sex, the fact finder can find sex-based discrimination based on a difference in the quality or quantity of the harassment.

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21 Kampier v. Emeritus Corp., 472 F.3d. 930, 941 (7th Cir. 2007).
22 “The district court erred in endorsing Showboat’s argument that Trenkle’s conduct was not sexual harassment because he consistently abused men and women alike . . . The numerous depositions of Showboat employees reveal that Trenkle was indeed abusive to men, but that his abuse of women was different. It relied on sexual epithets, offensive, explicit references to women’s bodies and sexual conduct.” Steiner v. Showboat Corp., 25 F. 3d 1459, 1463 (9th Cir. 1994).
Yet attempting to find discrimination in either quantity or quality of harassment raises significant conceptual problems.

In terms of quantity, the analysis appears straightforward: if one group is targeted with greater frequency and severity than the other group, then the fact finder can find discrimination based on sex. This determination, then, would not depend on the sexual nature of the harassment at all. It would not necessitate a finding that members of one sex were required to “run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living,” as the hostile work environment claim was initially articulated in *Henson* and reaffirmed by the Supreme Court in *Meritor*.\(^{23}\) In this way, the disparate treatment is not “sexual harassment” at all as we understand it; instead, it is a showing of harassment—that may or may not be sexual in nature—directed discriminatorily at members of one sex and thus in violation Title VII. The sexual nature of the harassment, then, is not relevant in the quantitative comparative test.\(^ {24}\)

The qualitative test, however, is very different in nature. It asks the fact finder to pick out what specific acts of harassment constitute harassment based on sex. If the acts of harassment committed against one sex are based on sex but the acts of harassment committed against the other sex are not, then the harasser is not truly an “equal opportunity harasser.” Though this inquiry may also appear straightforward on its face, in practice it becomes impossible to execute in a way that is consistent with the case law.

To illustrate the paradox of this inquiry, let us look to a case that has attempted to employ it. The Ninth Circuit in *Steiner* noted that “[the alleged harasser’s] abuse of women was different [from his abuse of men]. It relied on sexual epithets, offensive, explicit references to women’s

\(^{24}\) The sexual nature of the harassment may play a role in determining whether the treatment of one sex was worse and therefore discriminatory, but this inquiry poses its own problems which are described in Section II.D, *infra.*
bodies and sexual conduct.”  

Underlying this statement is the Court’s view that some acts of harassment—specifically, sexualized acts of harassment—are sex-based while others are not. But why does the sexual nature of the harassment make this discrimination “because of . . . sex” under Title VII?

This question is not as absurd as it may seem. Indeed, it leads us back to the foundational cases of sexual harassment law: the sexual nature of the harassment is a means of proving that the harasser’s actions were based on sex, and therefore discriminatory. Cases like Barnes and Henson take the sexualized nature of the harassment as evidence that the conduct is directed toward members of one sex only. Sexualized harassment does not in itself constitute discriminatory treatment; instead, it is evidence of discriminatory treatment. Because of this, the inquiry in Steiner cannot be fruitful. Determining that some harassment is sexualized while other harassment is not does not negate an “equal opportunity harasser” claim. Although it is true that “[i]t is one thing to call a woman ‘worthless,’ and another to call her a ‘worthless broad,’” this distinction is not relevant to the inquiry as to whether a harasser discriminated based on sex. If both sexes are being harassed and the harassment of one sex is non-sexual in nature, the sexualized harassment of the other sex does not make the harassment into discrimination “because of . . . sex.”

25 Steiner v. Showboat Operating Co, supra note 22.
26 Recall the “bisexual harasser” whose harassment would not constitute discrimination based on sex.
28 It is worthwhile—and perhaps surprising—to note here that the Supreme Court has provided little guidance on what it means for sexual harassment to be sex-based treatment. Indeed in Meritor, the foundational hostile work environment case, the Supreme Court says only “when a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor ‘discriminate[s] on the basis of sex’”—which provides virtually no clarification. Meritor, supra note 23, at 64. And in Oncale—which presented a situation potentially ripe for exploring this question given that the allegation was of sexual harassment in a single-sex work environment—the Court decides only the legal question of whether same-sex harassment can ever constitute sex discrimination under Title VII and therefore finds “the precise details are irrelevant to the legal point we must decide.” Oncale v. Sundowner Offshore Systems, Inc., 523 U.S. 77, 76-77 (1998).
In this way, the responses to the “equal opportunity harasser” defense to a sexual harassment claim—calling for a more nuanced fact-based inquiry—fail to address the problem. The quantitative comparative test is not based on sexual harassment at all, but rather general disparate treatment; and the qualitative analysis test sets up an impossible inquiry. The “equal opportunity harasser”—who actually harasses members of both sexes, regardless of whether the harassment is sexual in nature—does not give rise to a cause of action under Title VII. Additionally, the harasser that uses sexualized conduct against one sex but a different type of harassment against another is also an “equal opportunity harasser” who escapes liability.

E. Implications of the Problem

In some ways, this problem seems only to point out a fact about which courts have already been adamant: the sexual nature of the actions of the harasser does not in itself make the actions into sex discrimination. Instead, it is disparate treatment between the sexes that creates a claim of sex discrimination under Title VII. As the Supreme Court stated:

> We have never held that workplace harassment, even harassment between men and women, is automatically discrimination because of sex merely because the words used have sexual content or connotations. The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.\(^{29}\)

Yet the analysis of the equal opportunity harasser defense suggests that, in order to use the defense of equal harassment, a defendant must demonstrate only that the harasser’s treatment of the plaintiff—regardless of whether the treatment was sexual in nature—was no worse than the harasser’s treatment of a members of the other sex—again, regardless of whether the treatment was sexual in nature. Thus, the fact that a male supervisor threatened a male employee in a non-sexual way could be used as a defense to a claim of quid pro quo sexual harassment of a female.

\(^{29}\) Oncale, *supra* note 28, at 80 (citations omitted).
subordinate. In this type of situation, a fact finder would be asked to compare the non-sexualized harassment with the sexual harassment to determine which was worse. A plaintiff, therefore, could only prevail if the finder of fact could determine that the sexual harassment was worse than all other harassment in the workplace.\textsuperscript{30} Indeed even a showing that a supervisor harassed a female employee sexually, but another female employee non-sexually could defeat the claim of the sexually harassed plaintiff.\textsuperscript{31}

This possibility would not only open an arsenal of defenses to an employer defending a claim of discrimination under Title VII, but also pose serious practical problems for courts attempting to engage in this type of weighing. Are courts equipped to make these determinations about which instance of harassment is qualitatively worse, including comparing sexual to non-sexual harassment? At this point, the most-developed conceptual tool for evaluating gravity in a sexual harassment case is the two-pronged test articulated by the Supreme Court in \textit{Harris v. Forklift Systems} requiring that the harassment meet requirements of both objectivity and subjectivity:

\begin{quote}
Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.\textsuperscript{32}
\end{quote}

But this tool is only able to determine whether or not the harassment alters the “terms, conditions, or privileges of employment” under Title VII. The test cannot assist in comparing two different instances of harassment. If anything, the test itself highlights the complexity of the

\begin{footnotesize}
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\item \textsuperscript{30} In fact, the Court in \textit{Connell} stands on the brink of making this type of determination because the fact pattern consists of harassment so wide-spread, and varied that it could not rationally be seen as motivated by sex. Yet instead of weighing different types of conduct against each other, the Court rests its decision on an analysis consisting of determinations that each individual allegation of harassment was not based on sex (either because it was directed at members of both sexes, or was not sexual in nature). \textit{Connell v. Principi}, \textit{supra} note 12.
\item \textsuperscript{31} This is because evidence that another female co-worker was harassed non-sexually would render the sexual nature of the harassment of the victim irrelevant.
\item \textsuperscript{32} \textit{Harris v. Forklift Systems, Inc.} 510 US 17, 21-22 (1993).
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subjective and objective factors that form a claim of sexual harassment, and the intricacies that a comparison might involve. Courts would need to ask whether the subjective or the objective element is most relevant to the determination of the gravity of the harassment, and how to comparatively quantify experiences that are very qualitatively different. Courts do not have a mechanism by which to weigh the experience of sexual harassment against other forms of harassment—sexual or otherwise—posing serious problems of proof. Indeed, developing this type of mechanism appears to be an unwieldy and impractical task if not actually conceptually impossible.

III. Eliminating the “Equal Opportunity Harasser” Defense

Because the “equal opportunity harasser” defense has the potential to alter the inquiry in sexual harassment cases, and because it creates an inquiry that asks the fact-finder to compare facts and experiences that may not actually be comparable, the “equal opportunity harasser” defense is counterproductive and should be eliminated. Indeed, courts have questioned the viability of the defense at all. In its dicta in Steiner, the Ninth Circuit writes: “we do not rule out the possibility that both men and women working at Showboat have viable claims against [the harasser] for sexual harassment.”

Similarly, the District Court of Wyoming explains, “[t]he principal flaw in the defendant’s argument is that it assumes that if a harasser harasses both genders equally, it necessarily follows that the harasser did not harass the employees ‘but for’ their gender.” Thus, the “equal opportunity harasser” defense has not been recognized by all courts that have confronted the possibility of its application.

33 Steiner v. Showboat Operating Co., supra note 22, at 1464.
An alternative method of circumventing the conceptual and practical difficulties created by the “equal opportunity harasser” defense is through legislation creating a cause of action for sexual harassment independent of whether or not it is discriminatory. Such legislation need not create the “general civility code for the American workplace” about which courts have expressed concern. Instead, legislation could create a cause of action mirroring the Harris two-pronged subjective/objective test, finding sexualized harassment to be actionable only when it alters the “terms, conditions, or privileges of employment.” This type of legislation would be consistent with the EEOC guidelines explaining that sexual harassment itself is a form of sex discrimination, and the many courts that have given significant weight to this view. It is also consistent with the views of courts such as the Stenier, Connell, and Bowers court that treat sexual harassment as more serious than and inherently different from non-sexualized harassment.

IV. Conclusion

This paper has traced the history of the “equal opportunity harasser” defense to a sexual harassment claim under Title VII. Though the conceptual quandary was initially buried in the footnotes of early cases, it subsequently became a genuine barrier to success in claims of sexual harassment under Title VII. Courts attempted to circumvent this barrier by rendering the “equal opportunity harasser” defense a fact-based inquiry, requiring comparison of the quantitative and

35 See, e.g., Oncale, supra note 28, at 80.
36 See, e.g., Meritor, supra note 23, at 65.
37 It would be fruitful to explore to what degree legal remedies provide relief for conduct defined as sexual harassment outside of the Title VII context. Potential causes of action might include battery, intentional infliction of emotional distress, and sexual misconduct. Evaluating the effectiveness of these causes of actions would entail examining the types of relief available, and how they would apply to the employment context. This analysis, however, is outside of the scope of this paper.
qualitative aspects of harassment by the fact-finder. Yet, as this paper has attempted to highlight, the approach raises deep conceptual and practical difficulties that extend to cases even outside of the purview originally contemplated by the “equal opportunity harasser” defense. Because of these difficulties, this paper has argued for the elimination of the defense or, alternatively, the establishment of equivalent remedies for sexual harassment outside of Title VII. These solutions serve to maintain the consistency and integrity of the sexual harassment doctrine in theory and in practice, ensuring that sexual harassment does not remain a barrier to employment.