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ARTICLE

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Evaluating #MeToo: The Perspective of Criminal Law Theory

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Abstract
The article describes the #MeToo-movement in the United States and Germany and discusses the merits and problems of this social phenomenon. It highlights the fact that some features of #MeToo (blaming and sanctioning wrongdoers) resemble those of criminal punishment and thus require careful justification. In the final part, the author examines the impact of the #MeToo-movement on criminal law reform.

Keywords: #MeToo; sexual assault; blame; sanctioning; criminal law reform

A. Introduction

The purpose of this Article is to evaluate #MeToo as a social movement characterized by blaming and sanctioning features and to consider possible influences of the movement on substantive criminal law and future developments in criminal justice systems. The evaluation relies on basic premises from the field of criminal law theory, that is, on normative concepts such as wrongdoing and proportionate responses to wrongdoing, fairness, and justice. Most of the literature on #MeToo is written by authors who have no background in legal disciplines. References to criminal law theory in this context are not too common. Most contributions from media studies, cultural studies, and critical social studies,[1] some with an explicitly political, activist agenda,[2] tend to evaluate #MeToo in a straightforwardly positive way, emphasizing its relevance as an empowerment movement and applauding its social effects. Articles discussing criminal law issues in relation to #MeToo have focused on social reality—deficiencies in the performance of law enforcement officials[3]—rather than normative criminal law theory.

[1]*See, e.g.,* KAREN BOYLE, #METOO, WEINSTEIN AND FEMINISM (2019); #METOO AND THE POLITICS OF SOCIAL CHANGE (Bianca Fileborn & Rachel Loney-Howes eds., 2019); CARLY GIESELER, THE VOICES OF #METOO: FROM GRASSROOTS ACTIVISM TO A VIRAL ROAR (2019); ME TOO POLITICAL SCIENCE (Nadia Brown ed., 2020); HEATHER SAVIGNY, CULTURAL SEXISM: WHY #METOO ISN'T ENOUGH (2020); Michelle Rodino-Colocino, *Me too, #MeToo: countering cruelty with empathy*, 15 COMMC'N CRITICAL/CULTURAL STUD. 96 (2018); Kaitlynn Mendes, Jessica Ringrose & Jessalynn Keller, *#MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism*, 25 EUR. J. WOMEN'S STUD. 236 (2018).

[2]*See, e.g.,* KELLY WILZ, "Introduction" *in*, RESISTING RAPE CULTURE THROUGH POP CULTURE: SEX AFTER #METOO (2020).

[3]Deborah Tuerkheimer, *Beyond #MeToo*, 94 N.Y.U. L. REV. 1146 (2019).

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Why might it be useful to assess the events that precipitated the #MeToo movement from the perspective of criminal law, and more specifically, why might it be useful to do so on the basis of the normative concepts at the core of criminal law theory? My answer will point to parallels between formalized criminal law responses to wrongdoing, on the one hand, and the efforts of individuals that serve similar functions, on the other.[4] Some aspects of #MeToo as an informal system of social control and blame resemble state punishment: Individuals are blamed for their past wrongdoing and subjected to hard treatment,[5] such as the loss of jobs and the forced termination of careers. The following analysis assumes that blame and sanctions must be based on a solid apprehension of the past wrong that justifies a negative response. Blame and sanctions can only be morally justified if, first, facts have been established in a comprehensive and fair way; second, the criteria that support the assessment of acts as wrongdoing are well-considered; and third, the relative degree of wrongdoing and thus the appropriate amount of blame are calibrated to arrive at just outcomes. These three steps for dealing with accusations are requirements not only for state punishment; they should guide any and all kinds of informal or formal negative responses to past misconduct.

The more serious the blame and sanctions are, the more attention must be paid to issues of fairness and justice. The question of how #MeToo fares with regard to fairness and justice deserves serious scholarly attention. Application of concepts from the academic field of criminal law theory can facilitate efforts to get beyond the partisan views that dominate public debate. Opinions about #MeToo and #MeToo cases in the traditional media and in the newer social media outlets are positioned along fault lines that entrench differences in political views or emphasize gender. The expression of skepticism about aspects of #MeToo in these debates often triggers the label "conservative" or "anti-feminist," while commitment to feminist causes or other progressive movements seems to require the outpouring of unreserved praise. A detached, evaluative approach, however, requires evaluators to keep their distance from partisan perspectives.

This statement might invite epistemic objections: Is a truly detached look, the "view from nowhere,"[6] ever possible? Admittedly, criminal law theorists cannot claim that our core concepts such as "degree of wrongdoing" can be applied to individual cases as if they were mathematical formulas. Judgments about wrongdoing and the normative criteria underlying them are often controversial, particularly in borderline cases. Different viewpoints related to gender and political orientation[7] sneak in when human beings assess wrongdoing. Nonetheless, it makes a difference whether the starting point is an undisguised and openly embraced partisan position or whether it is a conscious effort to be aware of and reflect on one's own embeddedness. Beyond the level of individual self-reflection, the point of criminal law theory as an academic discipline is to open a forum within which to think in a more systematic way about the assessment of wrongdoing and the determination of appropriate sanctions.

Anyone familiar with criminal law as a scholar or as a prosecutor, defense attorney, juror, or judge is aware that establishing facts can be a challenging task. In many cases, if narratives are contradictory, it is extremely difficult to reconstruct what actually happened. Not only the fact-finding process can be complicated and contested, but normative assessments can be, too. Criteria for the assessment and weighing of wrongdoing must be fine-grained, and their details will be the subject of intense debate. Strong emotions can distort both factual and normative judgments. Sanctioning, in particular, requires a de-emotionalized assessment of wrongdoing; the free

[4]For a description of #MeToo as one version of private efforts to complement and challenge state law, see Melissa Murray, *Consequential Sex: #MeToo, Masterpiece Cakeshop, and Private Sexual Regulation*, 113 Nw. U. L. Rev. 825, 866–70 (2019).

[5]For the common definition of criminal punishment as censure plus hard treatment, see Andrew von Hirsch, Censure And Sanctions 9–14 (1993).

[6]Borrowing the title from Thomas Nagel, The View From Nowhere (1986).

[7]For a closer look on the factors behind gender differences, *see* Jonas R. Kunst, April Bailey, Claire Prendergast & Aleksander Gundersen, *Sexism, rape myths and feminist identification explain gender differences in attitudes toward the #metoo social media campaign in two countries*, 22 Media Psych. 818 (2019).

flow of empathy for victims and the desire for revenge should be quelled. Univocal enthusiasm about the #MeToo movement, as occasionally expressed from the perspective of cultural studies and feminism,[8] is not a likely reaction of someone who knows how difficult it is to achieve fairness and justice. A forceful but unregulated and unrestrained movement needs critical scrutiny.

After a brief, descriptive look at #MeToo events in the United States and Germany in Section A I will analyze their positive and their problematic features in Section B and the impact of the movement on substantive criminal law and criminal justice practices in Section C. If one were to examine the impact of #MeToo on legal discussions in general, labor law and torts would deserve another, central chapter. In the fields of labor law, tort law and corporate law, ideas and strategies are needed to facilitate the effective prevention of sexual harassment and sexual misconduct in the workplace and to respond adequately to sexual misconduct when it does occur, although prohibition of non-disclosure clauses in settlements seem to be a promising measure.[9] For political activism, the focus today lies in these areas. Discussions and the search for legal remedies have moved beyond #MeToo celebrity cases to the more mundane world of ordinary employment.[10] Soon after #MeToo went viral, the "Time's Up" initiative was founded to collect funds, provide legal aid to victims of sexual abuse and discrimination and promote equity in the workplace.[11] In this Article, I will set labor and civil law aside, for the sole reason that my field of expertise is criminal law.

B. The #MeToo Movement in the United States and Germany

The expression "#MeToo" describes a number of distinct but closely related social movements. In a wider sense, it is used as an umbrella term for accusations against powerful men—most of them prominent figures in the world of media, arts, and politics—said to have committed sexual harassment, sexual assault, or rape. Often, the alleged wrongdoing dates back many years, and in many cases, a pattern of behavior emerges, particularly if the accused had considerable power over the careers of employees, actors, or artists. In a narrower sense, #MeToo is an example of a *social cyber movement*—a movement that relies on digital communication to create awareness of a social problem. In this sense, #MeToo can go beyond, and need not necessarily refer to, individual criminal offenses; in this context, it aims to speak openly and to raise awareness about sexual harassment and sexual transgressions as widespread social problems. The two dimensions of #MeToo are intertwined: The attention paid to a more abstract discourse about sexual harassment and assault increased as a result of strong emotional reactions to individual stories. Disgust at serious misconduct and outrage regarding the fact that powerful men could engage in sexual corruption for many years without consequences fueled the debates.

#MeToo gained a great deal of attention in all kinds of media, including newspapers and television, and it quickly became an international movement. For our purposes, I will restrict the short descriptive sketch to developments in the United States and Germany.[12] The most prominent cases, including the accusations against Harvey Weinstein, are probably familiar to most readers;

[8] *See, e.g.*, Michelle Rodino-Colocino, *Me too, #MeToo: countering cruelty with empathy*, 15 COMMC'N CRITICAL/CULTURAL STUD. 96 (2018).

[9] For issues in labor law, *see* Elizabeth C. Tippett, *The Legal Implications of the MeToo Movement*, 103 MINN. L. REV. 229 (2018); Joan C. Williams & Suzanne Lebsock, *Now What?*, HARV. BUS. REV. (Feb. 9, 2018), https://hbr.org/cover-story/2018/01/now-what; Joan C. Williams, Jodi Short, Margot Brooks, Hillary Hardcastle, Tiffanie Ellis & Rayna Saron, *What's Reasonable Now? Sexual Harassment Law After the Norm Cascade*, 2019 MICH. ST. L. REV. 139 (2019).

[10] Jean R. Sternlight, *Mandatory Arbitration Stymies Progress Towards Justice in Employment Law: Where To, #MeToo?*, 54 HARV. C.R.-C.L. L. REV. 155, 195–96 (2019).

[11] For a description of their work, see *Our Work*, TIME'S UP NOW, https://timesupnow.org/work/.

[12] For the international dimension, *see* Meighan Stone & Rachel Vogelstein, *Celebrating #MeToo's Global Impact*, FOREIGN POLICY (Mar. 7, 2019), https://foreignpolicy.com/2019/03/07/metooglobalimpactinternationalwomens-day/.

thus, a brief summary should suffice. At the beginning of October 2017, both the *New York Times* and the *New Yorker* published articles accusing Weinstein of sexual assault and sexual harassment against a multitude of female actors.[13] Weinstein was fired by his company on October 8, 2017.[14] The Weinstein Company filed for bankruptcy the following spring.[15] He was arrested in March 2018. Two years later, in March 2020, he was convicted of sexual offenses against two women and sentenced to 23 years in prison; at the same time, he was acquitted of a number of even more serious charges, including predatory sexual assault.[16] Additional criminal proceedings in California are currently under way.[17] In response to the accusations against Weinstein, Alyssa Milano, an actor, propagated #MeToo as a hashtag.[18] On October 15, 2017 she posted a Tweet asking women who have been sexually harassed or assaulted to reply with the words 'MeToo.' The idea was, as she explained, that this "might give people a sense of the magnitude of the problem." The number of responses to this call was astonishing: Within one day, the term appeared in millions of Facebook posts and Tweets.[19] The #MeToo movement, including the "naming and shaming" version, spread rapidly. A large number of men were accused of sexual misconduct, allegations that led to the ruining of both their personal and professional lives.[20] There is now an entry in Wikipedia for the "Weinstein effect,"[21] which is defined as "a global trend in which people come forward to accuse famous or powerful men of sexual misconduct." It would be misleading, however, to focus solely on male culprits. In one of the most controversial cases, Avital Ronnell, a professor of literature, was accused by her male mentee,[22] and in another case, Asia Argento, an actress and #MeToo activist, admitted that money was paid to a young man who claimed that she sexually assaulted him.[23]

The wave of accusations was larger in the United States than in Germany.[24] In Germany, the press and other media reported at length about the Weinstein case and other prominent cases in the U.S. entertainment industry. However, active participation in the #MeToo movement was limited. Only a few accusations brought prominent German men—and no women—into the public spotlight. In 2016, even before the label #MeToo defined the movement, criminal proceedings were initiated against Siegfried Mauser, the rector of the University of Music and Performing Arts in Munich. He was convicted in two separate trials of sexual assault against female colleagues

[13] *The New Yorker and the New York Times Win the Pulitzer Prize for Public Service*, The New Yorker (Apr. 16, 2018), https://www.newyorker.com/news/news-desk/the-new-yorker-and-the-new-york-times-win-the-pulitzer-prize-for-public-service.

[14] Megan Twohey, *Harvey Weinstein Is Fired After Sexual Harassment Reports*, The New York Times (Oct. 8, 2017), https://www.nytimes.com/2017/10/08/business/harvey-weinstein-fired.html.

[15] *See In re* TWX Liquidation Trust, LLC, No. 18-10601, (Bankr. D. De., Mar. 19 2018) https://dm.epiq11.com/case/twc/info.

[16] Jan Ransom, *Harvey Weinstein's Stunning Downfall: 23 Years in Prison*, The New York Times (Mar. 11, 2020), https://www.nytimes.com/2020/03/11/nyregion/harvey-weinstein-sentencing.html.

[17] James Queally, *Harvey Weinstein verdict: The case now moves to Los Angeles*, L.A. Times (Feb. 24, 2020), https://www.latimes.com/california/story/2020-02-24/harvey-weinstein-verdict-the-case-now-moves-to-los-angeles.

[18] With "MeToo," Milano chose a phrase that activist Tarana Burke had introduced several years before, focusing mainly on people of color. For this background, see Rodino-Colocino, *supra* note 8, at 97–98; Lesley Wexler, Jennifer K. Robbennolt & Colleen Murphy, *#MeToo, Time's up, and Theories of Justice*, 2019 U. Ill. L. Rev. 45, 51–52 (2019).

[19] *See* Karen Boyle, #Metoo, Weinstein and Feminism 3 (2019).

[20] For the names of prominent men in the media world and politicians who were accused in the United States Tippett, see *supra* note 9, 231–33. The Wikipedia entry for "2017–18 United States political sexual scandals" contains a long list of names.

[21] *Weinstein effect*, Wikipedia https://en.wikipedia.org/wiki/Weinstein_effect (last visited June 1, 2021). *See* also *Powerful men confronted as "Weinstein Effect" goes global*, CBS News (Nov. 14, 2017), https://www.cbsnews.com/news/harvey-weinstein-effect-goes-global-powerful-men-confronted/.

[22] *See* Zoe Greenberg, *What Happens to #MeToo When a Feminist Is the Accused?*, N.Y. Times (Aug. 13, 2018), https://www.nytimes.com/2018/08/13/nyregion/sexual-harassment-nyu-female-professor.html.

[23] Kim Severson, *Asia Argento, A #MeToo Leader, Made a Deal With Her Own Accuser*, N.Y. Times (Aug. 19, 2018), https://www.nytimes.com/2018/08/19/us/asia-argento-assault-jimmy-bennett.html.

[24] For a description of cases up to 2019, see Wexler, Robbennolt & Murphy, *supra* note 18, at 50–57.

and other women in his professional environment.[25] Another prominent German case concerned movie and TV director Dieter Wedel. In 2018, several women accused him of having brutally raped and assaulted them in years past.[26] The criminal investigation is still ongoing— Wedel is 81 years old. These two cases sparked a highly controversial debate, including public statements in support of the accused. In Germany, these types of statements played a substantial role—a greater role, as far as I can judge, than in the United States—and included some highly polemic and explicitly anti-feminist attacks. Prominent writers suggested that Mauser was the victim of a conspiracy,[27] the victim of "ladies whose advances had been rejected" and who are "as dangerous as contact mines."[28] In the case of Wedel, Thomas Fischer, a well-known retired judge of the German Federal Court of Justice and author of the most widely used commentary on the German Criminal Code, expressed scorn for the actresses who accused Wedel and for the female journalists who published their stories and carried on at length about the functions of "Sternchen" (starlets).[29] For the benefit of observers from the United States, it might be useful to note that such anti-feminist statements in Germany are not restricted to conservative, right-wing or fringe media. They appeared in major newspapers and media who define themselves and are perceived as liberal on the political spectrum.[30]

An analysis of the events could focus on the factors that explain why the #MeToo movement gained such momentum in the United States and how the term #MeToo became known around the world so quickly.[31] What factors promoted the transmission of a grassroots cyber movement and private initiatives into intense debates in the traditional media such as newspapers and television? Observers who focus on the role and the impact of media stressed that the interest shown by newspapers and other long-established media and their framing of the issue was decisive.[32] Public attention was enhanced by the fact that the #MeToo campaign was started by actresses. The celebrity and Hollywood factor, that is, the fact that the lives of celebrities and people in the film business are a source of fascination for a significant segment of the population, contributed to the success. And even beyond the avid consumers of celebrity magazines and celebrity news, stories garner more attention if they are illustrated with photos of good-looking individuals trained in public relations and image cultivation.

Another interesting question is how to explain the differences between the United States and Germany regarding the number of #MeToo accusations. Female observers in the United States have pointed, among other factors, to the election of Donald Trump, suspecting that "many women were probably simmering in isolation with silent anguish and anger" about Trump making light of sexually harassing women.[33] From this starting point, one might also conjecture that

[25]Oliver Moody, *Music lecturer Siegfried Mauser on the run after sex cases in Austria,* TIMES (Feb. 27, 2020), https://www.thetimes.co.uk/article/music-lecturer-siegfried-mauser-on-the-run-after-sex-cases-in-austria-pzmvx2t2v. Mauser fled to Austria after the last criminal verdicts became final and he had to expect imprisonment.

[26]Jana Simon & Anabel Wahba, *Im Zwielicht,* ZEITmagazin Nr. 02/2018 (Jan. 3, 2018).

[27]Letter from Michael Krüger to Süddeutsche Zeitung, SÜDDEUTSCHE ZEITUNG, (June 26, 2016), https://www.sueddeutsche.de/muenchen/nach-dem-urteil-gegen-ex-rektor-der-musikhochschule-muenchens-kulturwelt-ist-entsetzt-1.3009189.

[28]Letter from Hans Magnus Enzensberger to the Süddeutsche Zeitung, SÜDDEUTSCHE ZEITUNG, (June 26, 2016), https://www.sueddeutsche.de/muenchen/nach-dem-urteil-gegen-ex-rektor-der-musikhochschule-muenchens-kulturwelt-ist-entsetzt-1.3009189.

[29]*Das Sternchen-System: Thomas Fischers Zeit-kritische Anmerkungen zum Medien-"Tribunal" gegen Dieter Wedel*, MEEDIA (Jan. 29, 2018), https://meedia.de/2018/01/29/das-sternchen-system-thomas-fischers-zeit-kritische-anmerkungen-zum-medien-tribunal-gegen-dieter-wedel/.

[30]See Krüger, *supra* note 27; Enzensberger, *supra* note 28; MEEDIA, *supra* note 29.

[31]*See* Camille Gibson, Shannon Davenport, Tina Fowler, Colette B. Harris, Melanie Prudhomme, Serita Whiting & Sherri Simmons-Horton, *Understanding the 2017 "MeToo" Movement's Timing*, 43 HUMAN. & SOC'Y 217, 221 (2019).

[32]Sara De Benedictis, Shani Orgad & Catherine Rottenberg, *#MeToo, popular feminism and the news: A content analysis of UK newspaper coverage*, 22 EUR. J. CULTURAL STUD. 718 (2019).

[33]Gibson, *supra* note 31; *see also* Ashwini Tambe, *Reckoning with the Silences of #MeToo*, 44 FEMINIST STUD. 197, 198 (2018); Ann Pellegrini, *#MeToo: Before and After*, 19 STUD. GENDER & SEXUALITY 262 (2018).

having a female head of government, such as Chancellor Angela Merkel, placates women who might otherwise be more incensed about experiences with sexual harassment and sexual assault. However, drawing *direct* connections between content or discontent with national governments and the willingness to engage with #MeToo seems to be rather far-fetched. The hypothesis that the degree of fragmentation within societies is a crucial factor is more plausible. Differences in the proliferation and strength of #MeToo in different environments might best be explained in terms of the general degree of fragmentation within societies. The more fragmented a society is in economic, political, and cultural respects, the stronger the emotions if issues are coded along fault lines, and the stronger the emotions, the likelier it becomes that the phenomenon will develop into a mass movement. In highly fragmented societies such as the United States, one can probably expect a higher prevalence of the attitude that is called "hostile sexism" in the psychological literature.[34] At the same time, political campaigns for women's rights and other group rights in highly fragmented societies encourage strong emotions.[35] The demeanor of presidents and other heads of governments might have an *indirect* effect on these developments, as a factor that can deepen pre-existing rifts. I do not want to suggest that contemporary Germany can be described as a truly cohesive, homogenous society—the diagnosis of fragmentation has been made for Germany as well[36]—but as far as the *degree* of fragmentation is concerned, it still seems safe, at least for the time being, to assume some differences between the United States and Germany.

C. Evaluating #MeToo

In order to evaluate #MeToo, it is necessary to distinguish between different constellations. Some reports recount personal experiences with sexual harassment and sexual assault in an anonymous mode, that is, without identifying individual culprits. Others accuse a named individual of actions that are legally or morally wrong. Within this first group, some testimonials resemble a criminal complaint, that is, all relevant facts, including both the identities of the victims and of the alleged perpetrators, are disclosed. The second subgroup consists of detailed accounts that include the name of the alleged wrongdoer but do not disclose the identity of the complainant. Under these conditions, the goal obviously is not to demand legal remedies but rather to blame the named person for morally wrong or questionable behavior. An example of such an account is the allegation made by an anonymous woman against the actor and comedian Aziz Ansari on a no longer operative website called Babe.net. Ansari's conduct on a date with the anonymous woman is described as insensitive, and he is portrayed as uninterested in her discomfort with his sexual acts.[37]

I. Creating Awareness Without Naming Culprits

When she started the Twitter exchange, Alyssa Milano's purpose was to raise awareness of a widespread problem and to show the prevalence of sexual misconduct. The idea of summarizing the experiences that many women and men have had in the past does not elicit serious objections with regard to fairness and justice. Concerns that arise if individuals are blamed and suffer severe consequences (see below II) do not play a role if the identities of possible wrongdoers are not disclosed publicly. Media channels that reach millions, without spatial limits and in very short time, enable their consumers to gain an impression of how many persons have experienced sexual harassment

[34]Peter Glick & Susan T. Fiske, *The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70(3) J. Personality & Soc. Psych. 491 (1996); Kunst, *supra* note 7.

[35]*See, e.g.*, Soraya Chemaly, Rage Becomes Her: The Power of Women's Anger (2018).

[36]*See, e.g.*, Heinz Bude, *Brennpunkte sozialer Spaltung*, *in* (Un-)Gerechte (Un-)Gleichheiten, 16 (Steffen Mau & Nadine M. Schöneck eds., 2015).

[37]*See* Katie Way, Babe.net, *I went on a date with Aziz Ansari. It turned into the worst night of my life.*, https://babe.net/2018/01/13/aziz-ansari-28355 (last visited June 1, 2021).

and sexual assault in their professional and personal lives. Social media provides what has been praised as a "safe space"[38] to join in with one's own experiences. It can be argued that it was perhaps not strictly necessary to rely on Tweets and other channels of social media in order for people to take note of some grim realities. If a realistic view of human nature and social inequalities is taken, the fact that more than a tiny minority of bosses abuse the dependence of their employees should come as no surprise, thus rendering superfluous a tally of "MeToo" responses. It is also obvious that actors and artists are particularly vulnerable: The prevalence of temporary engagements increases personal dependence on those who dispense roles and incomes, that is, on producers and directors. Still, the actual messages of individual victims tend to make deeper impressions than general, more abstract reflections about power and vulnerability.

As a means to collect information, #MeToo reports are particularly valuable when they go beyond the short message "it happened to me as well" and paint more detailed pictures of typical abusive behavior in work and other environments. A focus on patterns and structures rather than on the purely moral assessment of individual transgressions is particularly important in the case of corruption. Power structures enable sexual or financial corruption, that is, the abuse of offices or professional hierarchies[39] to satisfy personal desires. Awareness of widespread incentives and disincentives is the prerequisite for norms and structures that curtail corruptive temptations and practices. Corruption is harmful on several levels: To the individual victim because it threatens equality in the workplace and the right to obtain neutral decisions, but also to the collective of citizens. It is in our shared interest that persons who act on behalf of the state or who lead businesses and other organizations take their decisions in accordance with rules that serve the common interest or the success of the organization rather than on the basis of their own personal whims and desires. Demanding sexual favors is but one subcategory of corrupt practices.[40]

Even those versions of #MeToo that focus on general problems rather than on the naming and sanctioning of individuals might raise some questions with regard to the reliability of the accounts of alleged wrongdoing. If an interest group with a clear position and a clear political agenda, such as promoting the interests of women, solicits stories, this is not necessarily the best way to get as much objectivity as possible. Mass psychology and a tendency to adapt one's own depictions to what one reads may add to the problem. The answer to these concerns might be that the easy and unlimited access to discussions on the internet facilitates the inclusion of different perspectives. Still, further study is necessary as to how group efforts that frame debates in the context of fragmented societies and fragmented cyberspaces can be effectively counteracted—and as to when such action should be taken.[41]

Supporters of the #MeToo movement emphasize not only the value of knowing more about questionable practices and patterns of interactions, but also—and foremost—the value of victims' speaking out, both for the individuals involved and for the visibility and standing of vulnerable groups. #MeToo has been characterized as *networked feminism*,[42] and the use of digital technologies has been praised as a means "to build networks of feminist solidarity, support, and identity."[43] The movement gives those who have had bad experiences the opportunity to overlay

[38]Gibson, *supra* note 31, at 220.

[39]For the introduction of private-to-private corruption into the full picture of corruption, see Antonio Argandoña, *Private-to-Private Corruption*, 47 J. Bus. Ethics 253 (2003).

[40]Even for bullying, researchers see an overlap with corruption. *See* Margaret H. Vickers, *Towards Reducing the Harm: Workplace Bullying as Workplace Corruption—A Critical Review*, 26 Emp. Responsibilities & Rts. J. 95 (2014).

[41]*See generally* William H. Dutton, Bianca Reisdorf, Grant Blank & Elizabeth Dubois, *The Internet and Access to Information About Politics: Searching Through Filter Bubbles, Echo Chambers, and Disinformation*, *in* Society & The Internet 228 (Mark Graham and William H. Dutton eds., 2d ed. 2019).

[42]For the notion of networked feminism, see Boyle, *supra* note 19, at 3–4.

[43]Kaitlynn Mendes & Jessica Ringrose, *Digital Feminist Activism: #MeToo and the Everyday Experiences of Challenging Rape Culture*, *in* #Metoo And The Politics Of Social Change 37, 40 (Bianca Fileborn & Rachel Loney-Howes eds., 2019).

them with individual and collective experiences that are both empowering and comforting.[44] The claim that this was a big advantage of the debates is plausible. "Empowerment through empathy"[45] and mutual expressions of solidarity can be uplifting. Seeing wider patterns of social and economic power can help put a troubling, initially highly personal incident into perspective.

II. Naming and Blaming Wrongdoers

Evaluations of the #MeToo movement become more ambivalent if stories of specific incidents are told and names of alleged wrongdoers disclosed. To start with the benign side: Informal social complaints about the sexual misconduct of named individuals can have positive outcomes. First, #MeToo, in its "naming culprits" version, can function as a valuable source of information for potential victims, similar to, but more effective than, traditional "whisper networks" that provide information about the problematic dispositions of bosses and colleagues.[46] Knowing about a particular individual's prior history of committing sexual harassment or sexual assault is important for those who might be at risk of victimization in the future. Second, sharing experiences and finding mental support in cyberspace can also be the crucial turning point for a hesitant victim of past sexual misconduct finally to decide to file a complaint. Third, spreading information can attract the attention of journalists and others who begin to "connect the dots" and insist on an official investigation.

If a recounting of the story of #MeToo is begun with the accusations against Harvey Weinstein, the merits of critical journalism and increased public attention are obvious. Public reports played a crucial role in the criminal investigations and trials that held Weinstein accountable for his practices of sexual exploitation and sexual assault.[47] Whereas for a long time, powerful men were successful in preventing the occurrence of serious legal consequences, combined efforts and strong public pressure proved to be helpful in stimulating public prosecution. To the extent that #MeToo campaigns led to legal procedures conducted in accordance with sufficiently complex rules of evidence and high standards for conviction and sanctions, there are no objections to be raised against public testimonials. To the contrary, the opportunity to collect and aggregate similar allegations via informal channels has proven to be highly useful.

The assessment is not as straightforwardly positive, however, if allegations are not tested and sanctions are not chosen in a procedure carefully designed for this purpose. #MeToo as an informal, unregulated, emotionally-charged social movement cannot take the place of legal procedures. It can be expected that cases in which blame and sanctions are only administered through informal channels will show deficiencies in terms of fairness and justice.

1. Establishing Facts

Blame and sanctions, regardless of who expresses and imposes them, must be based on accurate fact-finding procedures. Serious attempts to establish accurate retrospective reconstructions of events require an independent authority that collects and scrutinizes testimonials. If different stories are told, as is common in cases of alleged sexual misconduct, the challenging task of establishing the facts can only be carried out by a neutral third party. The idea of simply accepting the complainant's version in such cases, without questioning and without scrutiny, is ludicrous. The slogan "believe women" was spread in September 2018 during the confirmation hearings for Brett Kavanaugh, now a justice on the U.S. Supreme Court, where he faced allegations of sexual

[44]Tuerkheimer, *supra* note 3, at 1176.
[45]Rodino-Colocino, *supra* note 8, at 97.
[46]*See* Tuerkheimer, *supra* note 3, at 1168-1171.
[47]The New Yorker, *supra* note 13.

misconduct.[48] One way to make sense of this statement is to read it as a plea not to disregard women's—or other groups'—narratives *per se*. Read this way, it is a very basic epistemic and evidentiary rule: Group membership does not tell us anything meaningful about the quality of statements. "Believe women" can also be interpreted as a warning against succumbing to biases and rape myths, that is, against buying into distorted assumptions about how females typically behave.[49] However, reflections about evidence rules and human prejudices already presuppose what is lacking in #MeToo accusations, namely, the systematic testing of conflicting narratives by neutral bodies such as juries, judges, or investigative commissions. A diffuse cyber movement is not suited to this task. In a number of cases, complaints by different persons could be aggregated and patterns of behavior could emerge[50]—but even under these circumstances, it is necessary for a neutral third party to test statements and establish patterns. For these reasons, speaking about #MeToo as creating a "court of public opinion" is misleading.[51] The label "court" carries a host of implications: It presupposes a neutral, systematic, and cautious approach to the fact-finding process. An unorganized cyber movement cannot assume the role of a court for reasons both structural—the task of adjudication is assigned to no one—and psychological—spirals of mutually reinforced disgust and anger are not conducive to working carefully and cautiously. One can speak of a tragic tension that cannot be resolved: Being met with a "default of doubt" is painful for victims of sexual misconduct;[52] however, in order to establish a reliable picture of past events, despite conflicting accounts, a skeptical, detached stance towards each and every piece of evidence is necessary.

Investigative journalism is in a better position than a chaotic and emotionalized cyber movement to gather information and to carve out a core of reliable facts. Jodi Kantor and Megan Twohey, the two journalists who wrote about Weinstein and received the Pulitzer prize for their achievements,[53] certainly came very close to the ideal of investigative journalism. However, the immense amount of time required for this task should not be underestimated. With a realistic view of what is ordinarily feasible, especially with regard to the economic pressures in traditional media outlets such as newspapers, we should not assume that journalists can regularly engage in fact finding that is reliable enough to serve as the basis for blaming and sanctioning the identified culprits.

2. Criteria for the Moral Assessment of Behavior

In addition to the need for a neutral body to establish facts, clarity of the moral criteria that apply to sexual behavior can be another difficult issue. Blaming persons for their past behavior requires an assessment of wrongdoing, also in the form of a quantitative judgment of just how wrong the conduct in question was. For serious forms of sexual misconduct, which are clear-cut examples of criminal offenses, moral judgments are not difficult: It is self-evident that violent rape calls for a

[48]It was prominently placed in a one-page ad in the New York Times by the dating app Bumble CEO. *See* Samantha Sharf, *Bumble's Whitney Wolfe Herd Speaks Out On 'Believe Women' Ad*, Forbes Online (Sept. 30, 2018), https://www.forbes.com/sites/samanthasharf/2018/09/30/bumbles-whitney-wolfe-herd-speaks-out-on-believe-women-ad/#70c303327308.

[49]For the widespread acceptance of rape myths, see Jennifer Temkin & Barbara Krahé, Sexual Assault And The Justice Gap, 31–51 (2008); Gerd Bohner, Friederike Eyssel, Afroditi Pina & Frank Siebler, *Rape myth acceptance: Cognitive, affective and behavioral effects of beliefs that blame the victim and exonerate the perpetrator*, *in* Rape: Challenging Contemporary Thinking, 17 (Miranda Horvath & Jennifer Brown eds., 2013); Louise Ellison & Vanessa E. Munro, *Jury deliberation and complainant credibility in rape trials*, *in* Rethinking Rape Law 281 (Claire McGlynn & Vanessa E. Munro eds., 2010).

[50]*See* Tuerkheimer, *supra* note 3, at 1175.

[51]*See* Tuerkheimer, *supra* note 3, at 1168. It was also throughout her paper. Tuerkheimer does concede in the end that formal procedures are preferable, at 1189.

[52]For this expression, see Tuerkheimer, *supra* note 3, at 1181.

[53]They recount their activities in Jodi Kantor & Megan Twohey, She Said: Breaking The Sexual Harassment Story That Helped Ignite A Movement (2019).

very high degree of blame, even if the context is not criminal law but rather an informal judgment about moral wrongs. In other cases, however, it is less evident that all participants in a moral debate would agree as to how human interactions should be evaluated.

While it would certainly be possible to achieve general agreement that bosses should not exploit their opportunities to obtain sexual favors from employees or job applicants, achieving consensus about the degree of wrongdoing involved in such a situation would be more difficult. For instance, to what extent should it count as a mitigating factor if the employee or applicant willingly seizes the opportunity to obtain preferential treatment relative to co-workers or competitors? Or, in cases of misconduct during a date, how should negligence or recklessness regarding the other person's lack of consent be evaluated compared to definite knowledge that that person did not consent? When does a mismatch of perception, that is, conflicting perceptions of situations and communications,[54] amount to negligent disregard of another? What standards of care do we expect from "reasonable persons,"[55] and whose views are to be called "reasonable"? Beyond the most objectionable misconduct, moral judgments require fine-grained and often controversial assessments that reflect different dimensions and categories. In criminal law, courts and criminal law doctrine have developed criteria for assessing degrees of wrongdoing, but we should not expect a parallel system to exist for moral judgments.

Making the required moral judgments presupposes a detached perspective, in other words, such judgments must be made by a decision-maker who does not identify with either the alleged perpetrator or the alleged victim. This is one of the major shortcomings of the #MeToo movement. A diffuse mass movement relies on participants' overlapping, strongly-felt moral intuitions, but if the goal is to blame individuals and to impose social sanctions, the question arises as to whether such intuitions suffice. In many cases, they will not. Holistic intuition expressed in terms of feelings of strong indignation cannot take the place of nuanced moral judgments. Empathy does have its problematic sides: Strong emotional identification with a victim's pain can stand in the way of a structured, principled moral evaluation that requires clarity and comprehensiveness.[56]

3. The Need for Controlled Sanctioning

The consequences of naming and blaming campaigns can be harsh. A public accusation of sexual misconduct is, as such, a form of hard treatment. The effects on an individual's reputation and social standing cannot be reversed, even if no criminal charges are ever brought and even if any subsequent criminal trial ends in acquittal. Other major sanctions include social consequences, chosen and executed not by the complainant but by third parties, such as the loss of employment and the end of an artistic career. Such consequences can have a devastating effect on the entire future life of the alleged perpetrator. It is legitimate to ask whether the severity of the consequences is proportional to the seriousness of wrongdoing. One of the problematic features of the #MeToo movement is a tendency towards sweeping moral judgments—sweeping in the sense that they encompass the entire lives of wrongdoers, including their professional and artistic careers. The chorus of outrage that is characteristic of mass movements with strong moral agendas does not leave room for the distinction between the blameworthy acts of individuals and the accomplishments they have achieved in their professional and artistic lives. If assessed in an unemotional mode, it is possible to acknowledge a person's achievements while at the same time blaming that

[54]John Launer, *Sexual harassment of women in medicine: a problem for men to address*, 94 Postgraduate Med. J. 129 (2018).

[55]For the discussion around the "reasonable person," *see generally* Mayo Moran, Rethinking The Reasonable Person (2003); Tatjana Hörnle, *Social Expectations in the Criminal Law: The "Reasonable Person" in a Comparative Perspective*, 11 New Crim. L. Rev. 1 (2008).

[56]*See* Paul Bloom, Against Empathy: The Case For Rational Compassion (2018).

person for specific acts that show disrespect for others. For instance, while it was most likely appropriate to accuse Kevin Spacey of sexual misconduct against young men, the decision to expunge him from a movie was strange.[57] As far as the German debate about Siegfried Mauser is concerned, paying respect to his career as a pianist is compatible with denouncing his sexual transgressions, but doing the former was interpreted as inappropriate once the transgressions became known.[58] Unfortunately, cyber movements that focus on expressions of anger and collective expressions of morality tend towards holistic judgments rather than assessing human beings in their different social roles.

Even more tragic and unfair are disproportionate negative consequence that strike third persons who are blamed not for their own sexual wrongdoing but rather for giving wrongdoers the opportunity to describe their point of view. One example is the successful pressure on Ian Buruma to resign from his position as editor of the *New York Review of Books* because he published an essay written by the former Canadian radio host Jian Ghomeshi who defended himself against public accusation of sexual misconduct.[59] Another example is the decision of Harvard College to relieve law professor Ronald Sullivan and his wife from their positions as faculty deans of an undergraduate house because Sullivan chose to represent Harvey Weinstein in his sexual assault trial.[60] Consequences of this kind are particularly worrisome outcomes of dynamic, anarchic mass movements that lack mechanisms of self-reflection and emotional restraint, mechanisms that individual human beings are capable of, at least some of the time.

D. The Impact of #MeToo on Substantive Criminal Law and on Criminal Justice Practices

In this final section, I will discuss two questions: How has substantive criminal law been affected by the #MeToo movement? And: Can we observe changes in criminal justice practices? Within the scope of a single Article, it is not possible to examine changes in more than one legal system: A comparative approach would require a much more comprehensive study. Thus, the following remarks are limited to the German criminal justice system.

I. Substantive Criminal Law

In Germany, an important step in substantive criminal law was the reform of Section 177 German Criminal Code (StGB) and the introduction of a new criminal prohibition against sexual harassment in 2016.[61] The new Section 177 StGB abandons the traditional coercion model, which restricted criminal liability for sexual assault and rape to offenders who coerced victims with violence or similar pressure. Today, Section 177 StGB is based on a "no means no" model: If sexual contact happens against the recognizable will of the other person, an additional coercive act such as violence or the threat of violence is no longer necessary for an assessment as criminal wrongdoing. Another important step was to introduce a prohibition against sexual harassment that

[57]Brooks Barns, *The Race to Erase Kevin Spacey*, THE NEW YORK TIMES (Dec. 13, 2017), https://www.nytimes.com/2017/12/13/movies/kevin-spacey-all-the-money-in-the-world-christopher-plummer.html.

[58]The decision to honor the musician Mauser with a "Festschrift" for his 65th birthday sparked criticism. *See* Sabine Reithmaier, *Kein glücklicher Moment*, SÜDDEUTSCHE ZEITUNG (Nov. 18, 2019), https://www.sueddeutsche.de/kultur/causa-siegfried-mauser-kein-gluecklicher-moment-1.4687094.

[59]For a critical analysis, see Laura Kippnis, Opinion, *The Perils of Publishing in a #MeToo Moment*, THE NEW YORK TIMES (Sept. 25, 2018), https://www.nytimes.com/2018/09/25/opinion/ian-buruma-jian-ghomeshi.html.

[60]Kate Taylor, *Harvard's First Black Faculty Deans Let Go Amid Uproar Over Harvey Weinstein Defense*, THE NEW YORK TIMES (May 11, 2019), https://www.nytimes.com/2019/05/11/us/ronald-sullivan-harvard.html.

[61]*See* Fünfzigstes Gesetz zur Änderung des Strafgesetzbuches—Verbesserung des Schutzes der sexuellen Selbstbestimmung, BUNDESGESETZBLATT, Teil I [BGBL I] [Federal Law Gazette], Nov. 4, 2016, at 2460.

involves touching the other person's body.[62] In the public debate, this legal reform is sometimes portrayed as an outcome of the #MeToo movement,[63] a portrayal that is incorrect if #MeToo is seen as a historic event that began in October 2017. By that time, the German Parliament had already passed the law amending the Criminal Code.[64] If references to #MeToo are made in a somewhat fuzzy way to describe changes in prevailing public perceptions and political power constellations in recent years, it makes sense to include the story of legal reforms. The broader underlying current is the growing awareness that the criminal law ought to protect sexual autonomy, that is, individuals' personal choices regarding their sexual lives, rather than morality.[65] Seen against this background, namely, the laudable replacement of moralistic thinking about sex with a clear focus on sexual autonomy, the #MeToo cyber movement can be viewed with ambivalence. On the one hand, it can be described as reinforcing the value of sexual autonomy. On the other hand, the strong moral orientation of the public debate can also be seen as counterproductive from the perspective of criminal law theory or, more precisely, criminalization theory. Liberal criminal law theory emphasizes the rights of individuals and the protection of those rights as the core task of criminal prohibitions.[66] The reemergence of strong moral sentiments in emotional cyber campaigns has the potential to undermine the progress that has been made in this area. The content of moral sentiments has changed, but reliance on emotions and moral intuitions leads away from rationality as a core requirement of criminalization.

II. Criminal Justice Practices

Will the #MeToo movement contribute to the more efficient prosecution of sexual misconduct? Deborah Tuerkheimer, who observes #MeToo from the perspective of criminal law, assumes that the movement will draw our attention to inadequate criminal justice practices. She argues that the appropriate response to the weaknesses exposed by #MeToo lies in strengthening systems of formal redress.[67] Her diagnosis that too many cases drop out of criminal justice systems is true not only for the United States but for Germany as well. The reality of state responses to sexual offenses is far from satisfactory. In both countries, two problems deserve attention. First, only a small percentage of victims file a complaint.[68] Second, there is considerable attrition of cases on the road to criminal conviction. The vast majority of complaints do not even make it into the court system but are discontinued by the police or prosecutors.[69] In Germany, there are no official statistics that would enable scholars to follow cases from complaint to either conviction or dismissal, but there are studies that compute the share of cases that actually result in a criminal conviction. This number is small: On average, only around ten percent of all complaints involving sexual offenses can be expected to end in a conviction.[70]

[62]Section 184i StGB (note that verbal sexual harassment is not a criminal offense). For a description of the old and new law, *see* Tatjana Hörnle, *The New German Law on Sexual Assault and Sexual Harassment*, 18 German L.J. 1309 (2017).

[63]*See, e.g.*, Frankfurter Juristische Gesellschaft, Public Discussion, Feb. 5, 2020: Strafrecht in Zeiten von #metoo", https://webcache.googleusercontent.com/search?q=cache:KGrdlzzY5KUJ:https://www.jura.uni-frankfurt.de/85363044/Fx___Einladung_Podiumsdiskussion_05_02_2020_1.pdf+&cd=3&hl=en&ct=clnk&gl=de&client=firefox-b-d.

[64]The new law was passed on July 7, 2016. For the legislative history, *see* Hörnle, *supra* note 62, at 1315.

[65]*See* David Archard, Sexual Consent (1998); Stuart P. Green, Criminalizing Sex. A Unified Liberal Theory (2020); Tatjana Hörnle, *Sexuelle Selbstbestimmung: Bedeutung, Voraussetzungen und kriminalpolitische Forderungen*, 127 Zeitschrift für die Gesamten Strafrechtswissenschaften 851 (2016).

[66]*See* Tatjana Hörnle, *Theories of Criminalization*, *in* The Oxford Handbook Of Criminal Law 679, 691–92 (Markus Dubber & Tatjana Hörnle eds., 2014).

[67]Tuerkheimer, *supra* note 3, at 1151–59.

[68]Tuerkheimer, *supra* note 3, at 1153.

[69]Tuerkheimer, *supra* note 3, at 1154–59.

[70]Deborah F. Hellmann & Christian Pfeiffer, *Epidemiologie und Strafverfolgung sexueller Gewalt gegen Frauen in Deutschland*, 98 Monatsschrift für Kriminologie 527, 535 (2015); Ralf Kölbel, *Migration und amtlich erfasste Sexualdelinquenz: Eine kriminologische Forschungsnotiz*, 32 Neue Kriminalpolitik 321, 328–29 (2020).

Can we hope that the #MeToo movement and the discussion surrounding it will lead to improvements in the way criminal justice systems process cases? Will more victims come forward with complaints, and will a greater number of investigations actually lead to more convictions? It is not far-fetched to assume that intense public discussion about sexual assault and sexual harassment and waves of sympathy for and solidarity with the victims of such crimes will have some kind of a lasting socio-psychological impact. Scientific surveys that investigate how #MeToo affected individual attitudes show that fewer participants than in the past endorse the proposition that false accusations are frequent.[71] Such attitudinal changes might improve the treatment of complainants and thus encourage more victims to initiate criminal prosecutions. Whether or not this is, in fact, the case remains to be seen. The data available in Germany does not enable scholars to test the hypothesis that a higher ratio of victims will decide to report sexual assaults and sexual harassment. On their face, national police statistics could be interpreted this way. These statistics show a rather steep rise in case numbers for the years 2017, 2018, and 2019 after a rather flat line in the five previous years.[72] It cannot be concluded, however, that changes in decisions taken by individual victims caused this rise in reported sexual offenses. The amendments to the German Criminal Code mentioned above broadened the scope of Section 177 StGB, and the prohibition of sexual harassment under Section 184i StGB is new. Thus, an overall increase in the number of reported crimes is to be expected under the new law, and it cannot be detected if perhaps, as an additional factor, the ratio of reported and unreported offenses also changed. Victimization surveys that ask for victims' personal responses would be necessary to disentangle different factors behind the increase of reported crimes. Unfortunately, the last available victimization study in Germany dates from 2017, and it did not include questions about sexual offenses.[73]

Another question is how complaints are processed within the criminal justice system. Will #MeToo also have an influence on the attitudes of law enforcement officers, and will they be more willing to believe complainants when confronted with word-against-word, he-said-she-said scenarios? If the crucial factor behind our present low conviction rates is what Deborah Tuerkheimer has called "credibility discounting,"[74] one might hope for more convictions as a consequence of #MeToo, assuming that a decline in the prevalence of prejudiced disbelief within the general public might also trickle down to the attitudes of police officers and prosecutors. However, the question remains open whether in a few years conviction rates will indeed be higher. Case management decisions should not be reduced to psychology, that is, they should not focus exclusively on the psychological dispositions of police officers and prosecutors that might promote credibility discounting. Both normative and structural factors push strongly towards a highly selective criminal justice system that filters out large numbers of complaints. In our normative framework, choices of the "believe him or believe her?" kind are not symmetrical. In criminal proceedings, the explicit aim of the central principle *in dubio pro reo* (if in doubt, do not charge and convict the accused) is to create an asymmetrical situation and to instill a high degree of skepticism in fact finders. Also, limited resources are a major problem for criminal justice agencies. The propensity of modern legislatures to proliferate criminal laws amplifies pressure on law enforcement. As neither financial support nor the number of qualified applicants for law enforcement jobs can keep pace with legislative activity, sinking conviction rates in many areas of criminal law are an unavoidable

[71] *See* Hanna Szekeres, Eric Shuman & Tamar Saguy, *Views of sexual assault following #MeToo: The role of gender and individual differences*, 166 Personality & Individual Differences (2020), https://www.sciencedirect.com/science/article/pii/S0191886920303925.

[72] *See* Polizeiliche Kriminalstatistik, Jahrbuch 2019, Vol. 4, 17 (Bundeskriminalamt, 2020), https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2019/PKSJahrbuch/pksJahrbuch_node.html.

[73] Christoph Birkel, Daniel Church, Nathalie Leitgöb-Guzy & Dr. Robert Mischkowitz, Deutsche Viktimisierungssurvey 2017 (Bundeskriminalamt ed., 2017). As I was told by the researchers who did the study, they did not include sexual offenses in their item list because it was deemed insensitive to include potentially traumatizing topics in a survey that was conducted by telephone.

[74] Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. Pa. L. Rev. 1 (2017).

outcome. It does not help that large-scale economic and corporate crimes—a contemporary German example is the Diesel emissions scandal[75]—absorb large chunks of law enforcement resources to investigate and keep up with extremely well-funded defense teams. The normative requirement *in dubio pro reo* operates in an environment that encourages, and must encourage, the dismissal of cases. Under these conditions, a plea to avoid credibility discounting might not have much effect, even if the biases of individual law enforcement officials could be smoothed out.

E. Concluding Remarks

#MeToo exhibits highly ambivalent features. Positive effects include both increased public awareness of sexual corruption, sexual harassment, and sexual assault in power relationships, and the fact that some #MeToo-inspired investigations lead to criminal trials and convictions. Problematic sides of an emotionalized cyber movement are seen when accusations against named individuals launch serious social sanctions. The blaming and sanctioning of individuals in response to their past wrongdoing calls for careful procedures and just outcomes, not only in the legal context but also when moral judgments come with tangible sanctions. The three crucial steps that are essential for just outcomes—establishing facts in a comprehensive and fair way, assessing wrongfulness in a well-considered, systematic manner, and choosing blame and sanctions that reflect the relative degree of wrongdoing—require a de-emotionalized, non-partisan attitude. In cyber movements such as #MeToo, these preconditions are often not fulfilled.

What can we learn for the future? Standards of care, fairness, and justice need to be emphasized in public debates. Persons who consider disclosing the identity of potential wrongdoers ought to be reminded to anticipate the consequences of their actions, to reflect carefully about what is released in social media and to do their best to de-emotionalize their communications. As far as those who are positioned to impose sanctions, that is, to remove accused individuals from offices, movies, and other roles, warnings are vitally important. They must carefully and critically examine both facts and moral assessments, and they should never get carried away by the waves of publicly expressed anger and outrage. The scapegoating of persons who are not themselves accused of sexual misconduct but who are accused of associating with those who are must be avoided.

In the area of law reform, careful attention needs to be paid to sexual autonomy as the central right to be protected by criminal laws. Future proposals to extend the scope of criminal prohibitions should be carefully scrutinized as they might be based on moralistic thinking that goes far beyond the goal of protecting individual rights. #MeToo was strongly charged with moral intuitions amplified by strong negative emotions, and this might carry over to the legal debate. We should stay on guard in order not to squander the hard-won achievement of excising moralistic thinking from the criminal law.

With regard to law enforcement agencies, we might, on the one hand, hope for a decrease in the predisposition to discount witness credibility. On the other hand, the public needs to be aware that the conviction rate is not simply a product of the goodwill or bad attitudes of prosecutors, but rather that it can be explained primarily by the normative restrictions imposed by the principle of *in dubio pro reo* and by limited resources.

[75] *Former Audi chief on trial in VW diesel emissions scandal*, Associated Press (Sept. 30, 2020), https://apnews.com/article/environment-trials-germany-archive-munich-5a56e8cbe5e4a36562526b3bee8d54fa.

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