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## The #MeToo Movement in Comparative Perspective

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# THE #METOO MOVEMENT IN COMPARATIVE PERSPECTIVE

DR. JOANNE SWEENEY\*

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## I. INTRODUCTION

The #MeToo movement is one of the most far-reaching social media movements in history and its impact can still be felt years later. As the hashtag in the name suggests, the #MeToo movement gained the bulk of its momentum on Twitter but the movement's actual origins began on MySpace in 2006.<sup>1</sup> Tarana Burke, a long-time activist, founded the nonprofit organization Just Be Inc., which serves survivors of sexual assault and harassment. Burke came up with the concept of “me too” in 1997 when she was counselling a 13-year-old survivor of sexual abuse at a youth camp. Burke states that when she heard the girl's story, she wanted to tell her “me too” but could not in that moment.<sup>2</sup>

The movement gained significant media attention in 2017 when actress Alyssa Milano tweeted a request that “women who have been sexually harassed or assaulted” write “Me too.”<sup>3</sup> Milano's request came in the wake of the reports that powerful Hollywood producer Harvey Weinstein had sexually harassed and assaulted several women.<sup>4</sup> Milano's tweet quickly went “viral,” resulting in 1.7 million tweets within days that contained the hashtag #MeToo.<sup>5</sup> The hashtag was also picked up internationally, with 85 countries having at least 1,000 tweets with #MeToo within less than a month.<sup>6</sup>

The concept behind “me too” is a simple but powerful one. It creates a “one-issue community”<sup>7</sup> that allows women and other survivors to

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1. Aisha Harris, *She Founded Me Too. Now She Wants to Move Past the Trauma*, N.Y. TIMES (Oct. 15, 2018), <https://www.nytimes.com/2018/10/15/arts/tarana-burke-metoo-anniversary.html>.

2. Elena Nicolaou & Courtney E. Smith, *A #MeToo Timeline To Show How Far We've Come - & How Far We Need To Go*, REFINERY29, <https://www.refinery29.com/en-us/2018/10/212801/me-too-movement-history-timeline-year-https://www.refinery29.com/en-us/2018/10/212801/me-too-movement-history-timeline-year-weinstein> (last updated Oct. 5, 2019) According to Burke: “I didn't have a response or a way to help her in that moment, and I couldn't even say ‘me too.’”

3. Harris, *supra* note 1.

4. *Id.*

5. *Id.*

6. *See id*; *see also* Nicolaou & Smith, *supra* note 2 (observing #MeToo variations shared by millions internationally).

7. *See* Jamila Bowman Williams et al., *#MeToo as Catalyst: A Glimpse into 21<sup>st</sup>*

acknowledge their own trauma and suffering while showing themselves, each other, and the world that every person who has suffered is not alone. This revelation reveals how commonplace sexual harassment and assault are, debunking myths of a “few bad apples” and removing any possibility that women<sup>8</sup> are somehow to blame for the acts of their abusers. As part of the Twitter movement some women simply replied “me too” to Milano’s original tweet but others told their stories, sometimes for the first time. And some women named their abusers. In response to their stories or acknowledgement of the past abuses they suffered, the women who came forward were met with support, sharing of similar stories, and ultimately a sense of belonging and empowerment.<sup>8</sup>

Although it began in the United States, the #MeToo movement quickly crossed the globe and has had significant effects in several countries. In France, for example, the French government responded to the #MeToo movement (using the hashtag “Balancetonporc,” which means “squeal on your pig”) by changing its rape law to include all sex without explicit consent, as well as by passing a law criminalizing some forms of street harassment.<sup>9</sup> The global impact of #MeToo shows the ubiquity of female disempowerment and sheds a light on how the #MeToo movement can be more effective in the United States and abroad. To further study these effects, this article focuses on three European countries – Finland, Portugal, and Germany – which have seen different results from their own #MeToo movements due to their differences in law and culture.

These three countries were chosen because of their differing responses to #MeToo, as well as their different cultures, histories, and scores on the European Union Gender Equality Index.<sup>10</sup> All three countries are part of Western Europe and, therefore, have some similarities in terms of history and cultural influences, such as Christianity. When the Gender Equality Index is examined, however, the differences between these countries begin to emerge. Finland is rated highly on the Gender Equality Index, Portugal is towards the bottom, and Germany is roughly in the middle.<sup>11</sup> This index aggregates several gender equality measurements including violence,

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*Century Activism*, 2019 U. CHI. LEGAL F. 371, 376. (2019).

8. See Anna North, *The #MeToo Movement and its Evolution, Explained*, VOX (Oct. 11, 2018, 3:15 PM), <https://www.vox.com/identities/2018/10/9/17933746/me-too-movement-metoo-brett-kavanaugh-weinstein>.

9. See *#MeToo in Europe: New Laws on Consent and Catcalling*, FRANCE24 (May 10, 2018, 4:37 PM), <https://www.france24.com/en/20181005-metoo-europe-new-laws-consent-catcalling>.

10. *Gender Equality Index 2019*, EUROPEAN INST. FOR GENDER EQUALITY 1, 17 (2019) [https://eige.europa.eu/sites/default/files/documents/mhaf19101enn\\_002.pdf](https://eige.europa.eu/sites/default/files/documents/mhaf19101enn_002.pdf)

11. *Id.* at 19.

health, power, money, and time.<sup>12</sup> However, when only violence against women is examined, the rankings are reversed.<sup>13</sup> It is these variations, which occur in spite of relatively similar cultures and geographic proximity, that present a novel way to delve deeply into what kind of effects #MeToo has had and barriers it has encountered when moving abroad.

More specifically, this article will investigate what happened when the #MeToo movement spread across the United States, Finland, Germany, and Portugal, including the impact on alleged harassers, changes to the law or public opinion, and the backlash suffered by the women who told their stories. This article then looks at each country's law and culture to shine a light on why the #MeToo movement was necessary, what work still needs to be done, and how that work may best be accomplished.

## II. THE UNITED STATES

The United States is the most logical place to begin the study of the impact of the #MeToo movement because that is where the movement is the strongest, although the 2017 iteration was not the first Twitter movement that raised awareness about sexual assault and harassment. This section will discuss the history and impact of the United States' #MeToo movement, including the ramifications for both the accused and their accusers.

The #MeToo movement in the United States has, at its core, revealed the myriad of ways women are mistreated in society. Most of this information is not new, however. For decades, studies have repeatedly shown that the United States is rife with gender inequality, particularly in the workplace. Recent surveys have shown that approximately 42% of women have reported that they experience gender discrimination at work.<sup>14</sup> The most commonly reported workplace gender discrimination is women being paid less than men for the same work and being treated as not competent to do their work.<sup>15</sup> In addition, 57% of women and 42% of men have stated that the United States has not gone far enough to ensure gender equality.<sup>16</sup>

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12. *Id.* at 17.

13. *Id.* at 64 (Violence scores for Portugal were not available for 2019).

14. See John Gramlich, *10 Things We Learned About Gender Issues in the U.S. in 2017*, PEW RES. CTR. (Dec. 28, 2017), <https://www.pewresearch.org/fact-tank/2017/12/28/10-things-we-learned-about-gender-issues-in-the-u-s- in-2017/>. These numbers diverge sharply when political affiliation is taken into account, with the vast majority of Democratic women believing that there is persistent gender inequality and about one third of Republican women agreeing with that sentiment; *see also id.*

15. *Id.*

16. *Id.*

This data follows a historical pattern. Although women entered the workforce in record numbers during and right after World War II, that progress has since stagnated, leading to a wide disparity in both employment numbers and earnings.<sup>17</sup> Today, women make approximately 81% of what men do in the same jobs.<sup>18</sup> When race is added to the calculations, the gap widens: Black women earn approximately 61.7% and Latina women earn approximately 56.6% of what white men do.<sup>19</sup> Women are also burdened with more unpaid work, like childcare and house work. Women spend 67% more time on unpaid work than men do, a fact that men consistently underestimate.<sup>20</sup> Indeed, perceptions of gender equality often differ along gender lines; this same study showed that 25% of men surveyed saw no need to take steps to fight gender inequality at all.<sup>21</sup>

#### A. *Sexual Violence and Sexual Harassment Prevalence and Laws*

Studies show that approximately 14.8% of American women have been a survivor of rape or attempted rape in their lifetime, and 3% of men have experienced the same.<sup>22</sup> However, at less than 30% reporting rate, sexual assault is the most underreported violent crime in the United States.<sup>23</sup> Even

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17. Stephanie Garlow, *Gender Equality Stalls in the U.S., Stanford Report Finds*, STANFORD NEWS (Mar. 16, 2018), <https://news.stanford.edu/2018/03/16/gender-equality-stalls-u-s-stanford-report-finds/>.

18. Emily Barone, *Many American Men Have a Skewed View of Gender Inequality, TIME Poll Finds*, TIME (Sept. 26, 2019, 2:24 PM), <https://time.com/5667397/gender-equality-opinions/>.

19. Inst. For Women's Pol'y Re., *The Gender Wage Gap by Occupation and by Race and Ethnicity, 2017*, <https://iwpr.org/publications/gender-wage-gap-2017/>, (2018), <https://iwpr.org/publications/gender-wage-gap-2017/> (last accessed Aug. 9, 2020).

20. Barone, *supra* note 19.

21. *Id.*

22. See *Scope of the Problem: Statistics*, RAPE, ABUSE & INCEST NAT. NETWORK, (last visited on Oct. 20, 2020), <https://www.rainn.org/statistics/scope-problem>. Sexual assault statistics are, unfortunately, not consistent among reporting agencies. Criminal justice organizations like the National Crime Victimization Survey (NCVS), has a different definition from public health organizations, which have resulted in different measuring techniques and, accordingly, different reports of prevalence of sexual assault. More specifically, "the NCVS reflects the criminal justice perspective, and its purpose is to measure criminal victimizations: 'point-in-time' events that are judged to be criminal. In contrast, surveys that reflect the public health perspective look at victimization as a condition that endures over a period of time and may not necessarily be criminal. These surveys are less focused on identifying point-in-time events." See NAT'L RES. COUNCIL, *Estimating The Incidence of Rape And Sexual Assault* (2014), <https://www.ncbi.nlm.nih.gov/books/NBK202252/>.

23. Williams et al., *supra* note 7, at 373.

when sexually violent crimes are reported, a very small percentage of them result in arrest (4.6%), prosecution (0.9%), felony conviction (0.5%) or incarceration (0.46%).<sup>24</sup> Even offenders who do go to jail may get disproportionately low sentences.<sup>25</sup>

The low rates of prosecutions, convictions, and substantial prison terms for offenders add insult to a legal process that is often traumatic for survivors, despite rape shield laws and other protections that have been put in place.<sup>26</sup> Existing laws criminalizing sexual assault have been criticized as being overly restrictive and not focusing enough on the survivor's lack of consent. Indeed, until 2013, the FBI's definition of rape, which is used in gathering data on the prevalence of that crime, was limited to "forcible rape," which required the perpetrator's use of force and was also limited to a man committing that crime against a woman.<sup>27</sup> However, the FBI now defines rape as sexual penetration without the survivor's consent.<sup>28</sup> Similarly, until the 1960s, states defined rape as requiring the use of force and excluded marital rape.<sup>29</sup> Today, the Model Penal Code still emphasizes force instead of consent and also contains a marital rape exception.<sup>30</sup> The Model Penal Code is currently the subject of intensive reform efforts, most notably by the American Law Institute.<sup>31</sup> Even after extensive legal reform, states still have widely varying definitions of rape and sexual battery. Generally, states define rape as penetration using force, threat or

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24. *The Criminal Justice System: Statistics, RAPE, ABUSE & INCEST NAT'L NETWORK*, <https://www.rainn.org/statistics/criminal-justice-system> (last visited Oct. 20, 2020).

25. Janette Gagnon & Emanuella Grinberg, *Mad About Brock Turner's Sentence? It's Not Uncommon*, CNN (Sept. 4, 2016, 4:28 PM), <https://www.cnn.com/2016/09/02/us/brock-turner-college-athletes-sentence/index.html>.

26. Ronet Bachman & Raymond Paternoster, *A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?* 84 J. CRIM. L. & CRIMINOLOGY 554, 560 (1994).

27. Dara Lind, *The FBI Finally Changed its Narrow, Outdated Definition of Rape*, VOX (Nov. 14, 2014, 11:20 AM), <https://www.vox.com/2014/11/14/7214149/the-fbis-finally-collecting-modern-rape-stats>.

28. *Sexual Assault, RAPE, ABUSE & INCEST NATIONAL NAT'L NETWORK*, <https://www.rainn.org/articles/sexual-assault> (last visited July 16, 2020).

29. Dean G. Kilpatrick, *Rape and Sexual Assault*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., <https://mainweb-v.musc.edu/vawprevention/research/sa.shtml> (last visited July 16, 2020).

30. Matthew R. Lyon, Comment, *No Means No: Withdrawal of Consent During Intercourse and the Continuing Evolution of the Definition of Rape*, 95 J. CRIM. L. & CRIMINOLOGY 277, 283-84 (2004).

31. Stephen J. Schulhofer & Erin E. Murphy, *Model Penal Code: Sexual Assault and Related Provisions*, ALI ADVISOR, <http://www.thealiadviser.org/sexual-assault/> (last accessed Aug. 31, 2020).

incapacitation.<sup>32</sup> Some states also require that the survivor “earnestly resist.”<sup>33</sup>

As with sexual violence, workplace sexual harassment is prevalent in the United States, with twenty-two percent of women saying they have been sexually harassed at work.<sup>34</sup> The EEOC defines sexual harassment as including “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature in the workplace.”<sup>35</sup> Workplace sexual harassment is also underreported: a recent survey showed that 76% of incidents were not reported.<sup>36</sup> Historically, women have been unwilling to report sexual harassment out of fear of retaliation, not being believed, or being seen as victims.<sup>37</sup>

Even those who do report are likely to have a heavy burden to make their case in court. More specifically, the “severe and pervasive” standard required to find a hostile work environment under Title VII has been repeatedly interpreted to not include truly heinous behavior such as groping, forced kissing, and overt sexual propositions.<sup>38</sup> With a legal

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32. Lyon, *supra* note 30, at 290-91.

33. Bethy Squires, *Why Do We Still Have Laws that Say it's Not Rape Unless the Victim Fights Back?*, VICE (July 27, 2017, 1:29 PM), [https://www.vice.com/en\\_us/article/evdedn/earnest-resistance-laws-that-say-its-not-rape-unless-the-victim-fights-back](https://www.vice.com/en_us/article/evdedn/earnest-resistance-laws-that-say-its-not-rape-unless-the-victim-fights-back).

34. *Sexual Harassment, RAPE, ABUSE & INCEST NAT'L NETWORK*, <https://www.rainn.org/articles/sexual-harassment> (last visited July 16, 2020).

35. Gramlich, *supra* note 15.

36. Williams, et al, *supra* note 7, at 373.

37. See Deborah Tuerkheimer, *Beyond #MeToo*, 94 N.Y.U. L. REV. 1146, 1150 (2019); see also Mimi A. Akel, note, *The Good, the Bad, and the Evils of the #MeToo Movement's Sexual Harassment Allegations in Today's Society: A Cautionary Tale Regarding the Cost of These Claims to the Victims, the Accused, and Beyond*, 49 CAL. W. INT'L L.J. 103, 108 (2018).

38. See, e.g., *Brooks v. City of San Mateo*, 229 F.3d 917 (9th Cir. 2000) (no hostile work environment where coworker cornered plaintiff, groped her stomach, put his hands up her dress, and fondled her naked breast); see also *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1243, 1247(11th Cir. 1999) (no hostile work environment where high-level executive repeatedly followed plaintiff around, leered at her, “sniffed” while looking at her crotch, and once rubbed his hip against her hip); see also *Baskerville v. Culligan Int'l Co.*, 50 F.3d 428 (7th Cir. 1995) (no hostile work environment where manager repeatedly made sexually charged jokes and mimicked masturbating in front of plaintiff). *Brooks* is particularly noteworthy because it was written by Judge Kozinski, who later resigned from the Ninth Circuit amid accusations of sexual harassment of his own employees. See Matt Zapotosky, *Judge Who Quit Over Harassment Allegations Reemerges, Dismaying Those Who Accused Him*, WASHINGTON POST (July 24, 2018 at 7:07 PM), <https://www.washingtonpost.com/world/national-security/judge-who-quit-over-harassment-allegations-reemerges-dismaying-those-who-accused-him.html>.



system that had repeatedly failed them, women have turned to non-legal measures: social media and public pressure.

### *B. The #MeToo Movement*

At first, the #MeToo movement was simply a way for women to acknowledge their trauma in front of a supportive audience. As they began telling their stories and using the “me too” hashtag, women were finally being listened to and believed; at first, just by other women, but later by the media and others in power.<sup>39</sup> As the movement grew, the sense of empowerment also grew, and even more women came forward. Some women simply added their voices to the chorus of “me too,” but others told stories in detail, including the name of the man responsible for their abuse. The naming of powerful offenders and the resulting public disapproval was a very important development for the #MeToo movement. By naming these powerful men, the women telling their stories all but ensured that the media would continue investigating and reporting their allegations, thereby keeping the story in the public eye and giving the movement momentum.<sup>40</sup>

And then came repercussions for the men who had been named. Powerful men—actors, directors, celebrity chefs, politicians—were fired, lost elections, were removed from projects, or voluntarily resigned and left the public spotlight.<sup>41</sup> Some even faced criminal prosecutions for the abuse they had been perpetuating for decades.<sup>42</sup> Recently, Harvey Weinstein, the man who inspired the #MeToo Twitter movement, was sentenced to twenty-three years in prison for sexually assaulting multiple women in New York, and California is in the process of extraditing him to face criminal prosecution there.<sup>43</sup> Bill Cosby is currently serving a three to ten

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39. North, *supra* note 9.

40. It is, of course, impossible to know what would have happened to #metoo absent the naming aspect of the movement. It is possible that the sheer volume of women simply saying “me too” would have made headlines. However, the later consequences for the accused harassers likely encouraged more women to talk, leading to a snowballing effect that likely would not have existed if no alleged harassers had been named. North, *supra* note 9.

41. See North, *supra* note 9; Nicolaou & Smith, *supra* note 2. See also Anna North, et al., *Sexual Harassment & Assault Allegations List*, VOX, <https://www.vox.com/a/sexual-harassment-assault-allegations-list> (last updated Jan. 9, 2019) (providing a helpful infographic on the 263 celebrities, CEOs, and politicians who were accused of sexual misconduct as part of the #MeToo movement).

42. See North, *supra* note 9; see also Nicolaou & Smith, *supra* note 2.

43. Eric Levenson, et al., *Harvey Weinstein Sentenced to 23 Years in Prison After Addressing His Accusers in Court*, CNN (Mar. 11, 2020, 4:26), <https://www.cnn.com/2020/03/11/us/harvey-weinstein-sentence/index.html>.

year sentence for drugging and sexually assaulting a woman.<sup>44</sup> Former USA Gymnastics team doctor, Larry Nassar, was sentenced to forty to one hundred and seventy five years in prison for sexually abusing more than 100 young athletes.<sup>45</sup>

As these results show, #MeToo is more than a conversation or source of gossip; it is a form of activism.<sup>46</sup> Moreover, other movements have spun off of #MeToo, such as the “Time’s Up” movement in Hollywood, which resulted in a media splash at the Golden Globes and the creation of a legal defense fund for sexual assault and harassment survivors.<sup>47</sup> As of February 2019, the defense fund has already connected over 3,500 people with attorneys to pursue possible legal action for sexual assault and harassment, and it raised over \$24 million to assist survivors with legal fees.<sup>48</sup>

In the world of politics, the #MeToo movement convinced several women to run for office and the 2018 midterm elections saw the largest percentage of women in the House of Representatives.<sup>49</sup> In other industries, such as food service and tech, women have banded together to file class action lawsuits and publicly protest the rampant workplace harassment and discrimination they had been suffering for decades.<sup>50</sup>

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44. Bill Chappel, *Bill Cosby Loses Appeal of Sexual Assault Conviction*, NPR (Dec. 10, 2019, 10:48 AM), <https://www.npr.org/2019/12/10/786678567/bill-cosby-loses-appeal-of-sexual-assault-conviction>.

45. Anna North, *7 Positive Changes That Have Come From the #MeToo Movement*, VOX (Oct. 4, 2019, 7:00 AM), <https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019>.

46. See Williams, et al., *supra* note 7, at 379-82.

47. Nicolaou & Smith, *supra* note 2.

48. See Williams, et al., *supra* note 7, at 384; see also North, *7 Positive Changes That Have Come From the #MeToo Movement*, *supra* note 45.

49. See Alex Seitz-Wald, *Meet the Women Candidates Taking #MeToo to the Ballot Box*, NBC NEWS (July 24, 2018, 1:57 PM), <https://www.nbcnews.com/politics/elections/meet-women-candidates-taking-metoo-ballot-box-n894106> Much of increase in women candidates was also prompted by the 2016 election and the creation of organizations like “She Should Run,” which provide guidance and resources to women seeking public office. See Courtney Connley, *Meet the Woman Who’s Working to Get 250,000 Women to Run for Office By 2030*, CNBC (July 29, 2019, 10:47 AM), <https://www.cnbc.com/2019/07/29/she-should-run-plans-to-get-250000-women-to-run-for-office-by-2030.html>.

50. See Williams, et al., *supra* note 7, at 383; Nicolaou & Smith, *supra* note 2; North, *The #MeToo Movement and its Evolution, Explained*, *supra* note 9. See also Hannah Giorgis, *The Simple Request of the McDonald’s Anti-Sexual Harassment Protests*, The ATLANTIC (Sept. 20, 2018), <https://www.theatlantic.com/entertainment/archive/2018/09/the-simple-request-of-the-mcdonalds-antisexual-harassment-protests/570775/>; Susan Chira & Catrin Einhorn, *How Tough Is It to Change a Culture of Harassment at Work? Ask Women at*

Several industries have changed their sexual harassment policies in response to the pressure from workers and the public.<sup>51</sup>

The #MeToo movement has also been credited with other smaller but far-reaching legal effects. For example, as the result of the lobbying efforts of the Time's Up movement, some states have passed laws that ban the use of nondisclosure agreements in sexual misconduct cases, which were a major part of Harvey Weinstein's strategy.<sup>52</sup> A similar 2018 tax law included what has been called a "Harvey Weinstein" provision that prevents employers from claiming a tax deduction for sexual harassment settlement payments.<sup>53</sup> In addition, Maryland passed a law that requires K-12 schools to teach consent-centered sex education.<sup>54</sup>

Perhaps the most sweeping changes took place in California where, in addition to prohibiting overly restrictive confidentiality provisions in settlement agreements and requiring employers with five or more employees to provide sexual harassment training every two years, the legislature changed the standard for sexual harassment to allow a "single incident of harassing conduct" to sustain a claim if the incident made it more difficult for the employee to do their job.<sup>55</sup> The law also discourages judges from disposing of sexual harassment cases at the summary judgment stage.<sup>56</sup> Further, even without this law, there is evidence that courts are scrutinizing harassment cases more closely, particularly employers' efforts to prevent harassment.<sup>57</sup>

On the ground, the EEOC, human resource employees, and survivor resource hotlines have seen a sharp increase in sexual harassment reporting.<sup>58</sup> These reports are bearing fruit: the EEOC has noted a 20%

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Ford, N.Y. TIMES (Dec. 19, 2017), <https://www.nytimes.com/interactive/2017/12/19/us/ford-chicago-sexual-harassment.html>.

51. Williams, et al., *supra* note 7, at 383-84.

52. See Lesley Wexler, et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45, 58-59 (2019); see also North, 7 *Positive Changes That Have Come From the #MeToo Movement*, *supra* note 45.

53. *Id.* at 156.

54. Michael Z. Green, *A New #MeToo Result: Rejecting Notions of Romantic Consent with Executives*, 23 EMPLOYEE RTS. & EMP. POL'Y J. 115, 119 (2019).

55. Holly R. Lake, *#MeToo Movement's Impact on Law and Policy in Hollywood*, 42 L.A. LAW 52, 52 (2019).

56. *Id.*

57. Bobbi K. Dominick, *The Increasing Complexity of Workplace Harassment Investigations After #MeToo*, 62 ADVOCATE 22, 22 (2019).

58. Nigel Chiwaya, *New Data on #MeToo's First Year Shows 'Undeniable' Impact*, NBC NEWS (Oct. 11, 2018, 1:54 PM), <https://www.nbcnews.com/news/us-news/new-data-metoo-s-first-year-shows-undeniable-impact-n918821>.

increase in finding “reasonable cause” to believe that sexual harassment has occurred from 2017 to 2018.<sup>59</sup> As a result, the EEOC has brought more cases and recovered more damages for survivors - \$70 million in 2018 compared to \$47 million in 2017.<sup>60</sup> Similarly, there has been a wave of shareholder derivative class action lawsuits against companies whose upper management have been reported by the media as engaging in sexual harassment.<sup>61</sup> Perhaps unsurprisingly, there has also been an increase in employers seeking sexual harassment training for their employees.<sup>62</sup> With regard to sexual assault, reporting rates to the police have also risen.<sup>63</sup>

But the positive results have not been consistent. Even with prolific media coverage and public outcry, some men, like Supreme Court Justice Brett Kavanaugh, faced no repercussions (other than delays in his confirmation hearings and some emotional testimony) for being accused of attempted sexual assault.<sup>64</sup> Most accused men have not and will not face legal repercussions for their behavior. For example, charges of sexual assault have been dropped against high-profile actors and performers, such as Nick Carter, Steven Segal, and Anthony Anderson.<sup>65</sup> For some

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59. Green, *supra* note 53, at 127.

60. Williams, et al., *supra* note 7, at 385.

61. Scott Carlton, *The #MeToo Movement and the Shareholder Derivative Action*, A.B.A. (Apr. 24, 2019), <https://www.americanbar.org/groups/litigation/committees/class-actions/practice/2019/me-too-movement-lawsuits-shareholder-derivative-action/>.

62. Sheila B. Gladstone, *The #MeToo Movement's Effect on Workplace Harassment Law*, 2018 ADVANCED GOV'T L. 13-1 (2018).

63. Anna North, *Study: More People Reported Sex Crimes Around the World in the Wake of Me Too*, VOX (Dec. 11, 2019, 9:50 AM), <https://www.vox.com/2019/12/11/21003592/me-too-movement-sexual-assault-crimes-reporting>.

64. Alia E. Dastagir, *It's Been Two Years Since the #MeToo Movement Exploded. Now What?*, USA TODAY (Sept. 30, 2019, 6:00 AM), <https://www.usatoday.com/story/news/nation/2019/09/30/me-too-movement-women-sexual-assault-harvey-weinstein-brett-kavanaugh/1966463001/>. Some have argued that Kavanaugh's hearings weakened the #MeToo movement. See Tiana Lowe, *The Kavanaugh Hearings Are Hurting #MeToo*, POLITICO (Oct. 2, 2018), <https://www.politico.com/magazine/story/2018/10/02/kavanaugh-hearings-me-too-220840>; Julia Manchester, *Kavanaugh Controversy Has Led To Politicization of 'Me Too,' Says Analyst*, THE HILL (Oct. 4, 2018), <https://thehill.com/hilltv/what-americas-thinking/409978-kavanaugh-controversy-has-led-to-politicization-of-me-too>.

65. See Orion Rummier, *Global #MeToo movement has Movement Has Resulted in 7 Convictions, 5 charges of Influential Figures*, AXIOS (July 3, 2020), <https://www.axios.com/global-metoo-movement-convictions-charges-382ff226-7ad3-4b26-ac89-451788192578.html>; see also Sarah Mervosh, *Prosecutors Decline to Charge Kevin Spacey and Steven Seagal in Sex Abuse Cases*, N.Y. TIMES (Sept. 4, 2018), <https://www.nytimes.com/2018/09/04/us/charges-kevin-spacey-seagal-anderson.html>; see also Sara Hendricks, *Anthony Anderson Is Being Investigated by the*

celebrities, even social and employment consequences have been short-lived. Louis C.K., Matt Lauer, and Aziz Ansari have all been staging comebacks, either ignoring the scandal (Lauer),<sup>66</sup> feigning ignorance of the damage they had done (C.K.),<sup>67</sup> offering apologies combined with attacks on “political correctness” (Ansari),<sup>68</sup> or refusing to apologize at all (Weinstein).<sup>69</sup>

On a wider scale, of the 417 high-profile cases identified in one study, 69 perpetrators faced no consequences for their actions.<sup>70</sup> For the cases not in the public eye, it is unclear what impact the #MeToo movement has had on them. In industries dominated by women of color, for example, there was much less media attention and less change.<sup>71</sup> Further, even though the reporting rate is up, there is no evidence that the men being accused are more likely to be punished, particularly in the criminal justice system, which has shown by itself to be ill-equipped to deal with the surge of complaints.<sup>72</sup> And there has also been a sizeable backlash.

### C. Backlash

Even as the #MeToo movement was beginning to gain momentum, there were cries of concern that the movement had gone or would go “too far.” In October 2018, roughly a year after the movement began, a national poll found that 40% of those surveyed believed that the movement had already

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*LAPD For Assault*, REFINERY29 (July 21, 2018), <https://www.refinery29.com/en-us/2018/07/205017/anthony-anderson-blackish-assault-investigation>.

66. See generally Jesse Barnhill, *Matt Lauer Just Proved That Nobody Wants Him to Make a Comeback*, SHOWBIZ CHEATSHEET (Oct. 27, 2019), <https://www.cheatsheet.com/entertainment/matt-lauer-just-proved-that-nobody-wants-hime-to-make-a-comeback.html/>.

67. *Louis C.K.’s Full Statement*, CNN (Nov. 10, 2017 2:42 PM ET), <https://www.cnn.com/2017/11/10/entertainment/louis-ck-full-statement/index.html>.

68. Aja Romano, *Aziz Ansari Says He’s “Become a Better Person” Since Being Accused of Sexual Misconduct*, VOX (Feb. 12, 2019, 6:30 PM), <https://www.vox.com/culture/2019/2/12/18222390/aziz-ansari-responds-sexual-misconduct-village-underground-comedy-set>.

69. See Chris Reinders Folmer, *Sorry, Not Sorry: Apologies and Denials in the #MeToo Movement*, 39 THE INQUISITIVE MIND (2019), <https://www.in-mind.org/article/sorry-not-sorry-apologies-and-denials-in-the-metoo-movement>; Glenn Whipp, *Louis C. K. Is on a Bizarre Comeback Tour. But He’s Afraid You’ll Find Out About His Post- #MeToo Jokes*, L.A. TIMES (Nov. 15, 2019, 4:00 AM), <https://www.latimes.com/entertainment-arts/story/2019-11-15/louis-ck-comeback-comedy-tour>.

70. Nicolaou & Smith, *supra* note 2.

71. North, *The #MeToo Movement and its Evolution, Explained*, *supra* note 9.

72. North, *Study: More People Reported Sex Crimes Around the World in the Wake of Me Too*, *supra* note 63.

gone “too far.”<sup>73</sup> But what does “too far” mean? For those surveyed, it meant fears of “a rush to judgment, the prospect of unproven accusations ruining peoples’ careers or reputations, and a bandwagon effect that may prompt some to claim sexual misconduct for a behavior that doesn’t quite rise to that level.”<sup>74</sup> These concerns have been echoed by scholars and the media.<sup>75</sup>

The first concern of false claims of abuse and harassment is an old one. Stories of false claims of rape go back to the Bible where Potiphar’s wife falsely accused Joseph of rape because he spurned her advances.<sup>76</sup> In the 1970s, when people finally became aware of the existence of sexual harassment, women’s complaints, particularly about powerful men, were dismissed as exaggerations or remorse after a consensual encounter.<sup>77</sup> As noted by famed feminist scholar, Catharine Mackinnon, who coined the phrase “sexual harassment” in her 1979 book *Sexual Harassment of Working Women: A Case of Sex Discrimination*

“A social burden of proof effectively presumed that if anything sexual happened, the woman involved desired it and probably telegraphed wanting it. She was legally and socially required to prove the contrary. In campus settings, in my observation, it typically took three to four women testifying that they had been violated by the same man in the same way to even begin to make a dent in his denial. That made a woman, for credibility purposes, one quarter of a person.”<sup>78</sup>

Men’s rights advocates have argued for decades that false rape allegations are commonplace and unfairly ruin men’s lives,<sup>79</sup> and the idea

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73. Tovia Smith, *On #MeToo, Americans More Divided By Party Than Gender*, NPR (Oct. 31, 2018, 5:00 AM), <https://www.npr.org/2018/10/31/662178315/on-metoo-americans-more-divided-by-party-than-gender>.

74. *Id.*

75. See Green, *supra* note 53, at 131; Jia Tolentino, *The Rising Pressure of the #MeToo Backlash*, NEW YORKER (Jan. 24, 2018), <https://www.newyorker.com/culture/culture-desk/the-rising-pressure-of-the-metoo-backlash>.

76. See Donna Zuckerberg, *He Said, She Said: The Mythical History of the False Rape Allegation*, JEZEBEL (July 30, 2015, 10:50 AM), <https://jezebel.com/he-said-she-said-the-mythical-history-of-the-false-ra-1720945752.mythical-history-of-the-false-ra-1720945752> (citing Genesis (39:6-20) (stating that similar stories exist in Greek mythology)).

77. Catherine A. MacKinnon, *Where #MeToo Came From and Where It’s Going*, THE ATLANTIC (Mar. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313/>.

78. *Id.*

79. Lisa Gotell & Emily Dutton, *Sexual Violence in the ‘Manosphere’: Antifeminist Men’s Rights Discourses on Rape*, 5 INT’L J. FOR CRIME, JUST. & SOC.

that false allegations of rape are commonplace has fully infiltrated the criminal justice system.<sup>80</sup> Surveys of police officers in various jurisdictions have shown that officers typically estimate that at least 33% (and often as high as 66%) of rape cases they receive are false.<sup>81</sup> Moreover, police are more likely to disbelieve a claim of sexual assault if the survivor knew (or was in a relationship with) her assailant, was intoxicated, or delayed reporting, even though sexual assaults with those factors are the most common.<sup>82</sup>

Although there are certainly false claims of sexual assault or harassment, those numbers are low.<sup>83</sup> Because sexual assault is chronically underreported,<sup>84</sup> it is difficult to discern what percentage of sexual assault claims are false. Moreover, because, as studies have repeatedly shown, the police typically disbelieve sexual assault survivors, the police are also much more likely to under-investigate claims of sexual assault than any other violent crime,<sup>85</sup> which leads to them bringing fewer charges due to lack of evidence and, even worse, deciding that the claims are false without ever attempting to corroborate the survivor's claims or interview the accused.<sup>86</sup> Some women are even coerced by police into retracting their claims and then criminally charged with filing a false report, all because the police have decided—often after less than two days of investigation—that the survivor is lying.<sup>87</sup> Despite these factors, research has repeatedly shown that the prevalence of false claims of rape ranges between 2% and 10% and is most likely (due to the factors listed above) much closer to the 2%

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DEMOCRACY 65, 72 (2016).

80. Annelise Mennicke, et al., *Law Enforcement Officers' Perception of Rape and Rape Victims: A Multimethod Study*, 29 VIOLENCE & VICTIMS, 814, 817 (2014).

81. See Lisa R. Avalos, *Policing Rape Complainants: When Reporting Rape Becomes a Crime*, 20 J. GENDER RACE & JUST. 459, 467 (2017); see also Rachel M. Venema, *Police Officers' Rape Myth Acceptance: Examining the Role of Officer Characteristics, Estimates of False Reporting, and Social Desirability Bias*, 33 VIOLENCE & VICTIMS 176, 178, 187 (2018).

82. Kimberly A. Lonsway, et al., *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-stranger Sexual Assault*, 16 VIOLENCE AGAINST WOMEN 1318, 1321-22 (2010).

83. *False Reporting*, NAT'L SEXUAL VIOLENCE RESOURCE CENTERCTR. (2012),

[https://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Overview\\_False-Reporting.pdf](https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf) at 3.

84. David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE & VICTIMS 73, 73 (2002).

85. Venema, *supra* note 81, at 177.

86. Avalos, *supra* note 81, at 469-71, 477.

87. *Id.* at 477.

estimate.<sup>88</sup>

Some have argued that because the #MeToo movement has increased visibility for sexual assault and harassment claims, false claims will become more likely, particularly in the realm of politics where public approval is essential.<sup>89</sup> The #HimToo movement was created in response to #MeToo in order to highlight the issue of false rape and harassment claims, with the implication that #MeToo will increase these false claims.<sup>90</sup> Still, although there have been a few headline-making cases of false claims,<sup>91</sup> there is no evidence that there has been an increase in false claims of sexual assault and harassment since #MeToo began. Despite these facts, as recent surveys have shown, even a majority of women are afraid that men will be falsely accused of sexual assault or harassment.<sup>92</sup> Terry Gilliam, for example, called #MeToo a “witch-hunt.”<sup>93</sup> Fears of false accusations have also recently infiltrated public policy. The Trump administration seemed particularly concerned with false claims and has made several alterations to Title IX regulations to protect (predominantly male) students accused of sexual assault.<sup>94</sup>

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88. Kimberly A. Lonsway, *Trying to Move the Elephant in the Living Room: Responding to the Challenge of False Rape Reports*, 16 VIOLENCE AGAINST WOMEN 1356, 1366 (2010); see also Avalos, *supra* note 81, at 468.

89. Nancy Rommelmann, *She Said Anthony Fauci Sexually Assaulted Her. Now She Says Jacob Wohl and Jack Burkman Paid Her to Lie.*, REASON (May 7, 2020, 11:00 AM), <https://reason.com/2020/05/07/she-said-anthony-fauci-sexually-assaulted-her-now-she-says-jacob-wohl-and-jack-burkman-paid-her-to-lie/>.

90. See *Id.* A recent famous case involves the allegations of sexual harassment against Georgia Tech basketball coach Josh Paster by the girlfriend of his former friend, which were determined by the university to be false). See Akel, *supra* note 37, at 117. Although the author of the above article claimed that “his reputation is permanently harmed” despite the truth coming out, Paster still retains his position at the university and there is no evidence that he has been harmed professionally. Both parties brought civil lawsuits against each other and then settled their cases with no money changing hands. See Mark Schlabach, *Pastner, Couple Agree to Drop Lawsuits in ‘16 Case*, ESPN (Aug. 7, 2019), [https://www.espn.com/mens-college-basketball/story/\\_/id/27343027/pastner-couple-agree-drop-lawsuits-16-case](https://www.espn.com/mens-college-basketball/story/_/id/27343027/pastner-couple-agree-drop-lawsuits-16-case).

91. North, *supra* note 9.

92. Anna North, *#HimToo, the Online Movement Spreading Myths About False Rape Allegations, Explained*, VOX (Oct. 10, 2018), <https://lin6.org/2018/10/himtoo-online-movement-spreading-myths-false-rape-allegations-explained/>.

93. See Edward Helmore, *Terry Gilliam Faces Backlash After Labeling #MeToo a ‘Witch-Hunt’*, GUARDIAN (Jan. 4, 2020, 1:03 PM), <https://www.theguardian.com/film/2020/jan/04/terry-gilliam-metoo-witch-hunt-backlash>; see also Mary Ann Franks, *Witch Hunts: Free Speech, #MeToo, and the Fear of Women’s Words*, 2019 U. CHI. LEGAL F. 123, 125-26 (2019).

94. Ruth Lawlor, *How the Trump Administration’s Title IX Proposals Threaten to Undo #MeToo*, WASH. POST (Feb. 4, 2019, 6:00 AM),



A large part of the fear of false allegations is the criticism that #MeToo can “ruin someone’s life” without proper due process “.”<sup>95</sup> As some critics have noted, repercussions for men accused of sexual assault and harassment often come from public opinion and employers instead of the judicial system.<sup>96</sup> In particular, criticism has been leveled at the ability of women to make anonymous allegations via social media or other platforms, as well as the tendency of employers to make quick, unilateral decisions to terminate accused employees without allowing the accused to defend himself.<sup>97</sup>

There is also a concern that men will refuse to work with women for fear of being falsely accused.<sup>98</sup> In the wake of #MeToo, the “Mike Pence” rule—refusing to eat alone with another woman, even in a work setting—has apparently gained popularity, despite the negative effects this policy could have on women in the workplace,<sup>99</sup> and the potential liability it could create for claims of sex discrimination.<sup>100</sup> A 2019 poll showed that 60% of men surveyed are afraid to mentor women due to concerns of being accused of sexual harassment.<sup>101</sup>

In addition to fears of false allegations, #MeToo has been accused of being “too broad” and including acts from sexual assault to verbal harassment.<sup>102</sup> Some have argued that #MeToo should only include the most egregious behavior, like that of Harvey Weinstein. Tarana Burke herself has said she wants the movement to return to its roots—to focus on survivors and give a voice to women who have been subjected to sexual

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<https://www.washingtonpost.com/outlook/2019/02/04/how-trump-administrations-title-ix-proposals-threaten-undo-metoo/>.

95. See Rachel Arnow-Richman, *Finding Balance, Forging a Legacy: Harassers’ Rights and Employer Best Practices in the Era of MeToo*, 54 U.S.F. L. REV. 1, 6 (2019); see also Mike Tunison, ‘Being Wrongly #MeToo’d Has Ruined My Life’, N.Y. POST (Feb. 1, 2020, 5:41 PM), <https://nypost.com/2020/02/01/being-wrongly-metoo-has-ruined-my-life/>.

96. Wexler, et al., *supra* note 52, at 66.

97. Green, *supra* note 53, at 132-33.

98. North, *supra* note 9.

99. Joanna L. Grossman, *Vice President Pence’s “Never Dine Alone with a Woman” Rule Isn’t Honorable. It’s Probably Illegal.*, VOX (Dec. 4, 2017, 10:32 AM), <https://www.vox.com/the-big-idea/2017/3/31/15132730/pence-women-alone-rule-graham-discrimination>.

100. Gladstone, *supra* note 62.

101. Rob Bailey-Millado, *Men Are Afraid to Mentor Women After #MeToo and It Hurts Us All: Study*, N.Y. POST (May 17, 2019), <https://nypost.com/2019/05/17/men-are-afraid-to-mentor-women-after-metoo-and-it-hurts-us-all-study/>.

102. Wexler, et al., *supra* note 52, at 56.

violence.<sup>103</sup>

The idea of #MeToo going too far was highlighted in two major cases: Moira Donegan's "Shitty Media Men" list, and the accusations against Aziz Ansari. Donegan created an anonymous Google spreadsheet that allowed people to add their stories of sexual misconduct perpetrated by men in the media industry.<sup>104</sup> This list was essentially a digital version of a so-called "whisper network" like the Glass Ceiling Club, which was a group of female investment bankers who met regularly to discuss how to improve their workplaces for women.<sup>105</sup> These informal, often-secret groups were the only place women could go to share their stories and find support in their male-dominated workplaces.<sup>106</sup> Similarly, the Shitty Media Men list was initially meant to be private but was quickly shared, became public and, when it did so, faced an immediate backlash.<sup>107</sup> Andrew Sullivan at New York magazine criticized the list for including "flirting," "inappropriate conversation," and taking "credit for ideas for women of color" in the same document as incidents of rape and other acts of violence.<sup>108</sup>

Similar criticisms were levelled at Babe.net, which published a story of a woman who claimed to have gone on a date with Aziz Ansari and felt pressured to engage in sexual acts with him.<sup>109</sup> The article noted that, although he did stop when she told him no, Ansari would then instigate sexual activity again until she again told him no.<sup>110</sup> This story was criticized for trying to capitalize on #MeToo and impugning Ansari's

103. *Id.* at 51; *see also* Megan Garber, *Is #MeToo Too Big?*, *The ATLANTIC* (July 4, 2018), <https://www.theatlantic.com/entertainment/archive/2018/07/is-metoo-too-big/564275/>.

104. Moira Donegan, *I Started the Media Men List. My Name Is Moira Donegan.*, N.Y. MAG.: THE CUT (Jan. 10, 2018), <https://www.thecut.com/2018/01/moira-donegan-i-started-the-media-men-list.html>.

105. Deborah Tuerkheimer, *Unofficial Reporting in the #MeToo Era*, 2019 U. CHI. LEGAL F. 273, 278-79 (2019).

106. *Id.*

107. *See* Andrew Sullivan, *It's Time to Resist the Excesses of #MeToo*, N.Y. MAG.: INTELLIGENCER (Jan. 12, 2018), <https://nymag.com/intelligencer/2018/01/andrew-sullivan-time-to-resist-excesses-of-metoo.html>. (stating a similar spreadsheet was created by Karen Kelsky for academia but does not name alleged perpetrators and so has avoided the repercussions Donegan is now facing); *see also* Tuerkheimer, *supra* note 105, at 281-82.

108. *Id.*

109. Caroline Framke, *The Controversy Around Babe.net's Aziz Ansari Story, Explained*, VOX (Jan. 18, 2018, 10:09 AM), <https://www.vox.com/culture/2018/1/17/16897440/aziz-ansari-allegations-babe-me-too>.

110. *Id.*

reputation for what was essentially a “bad date.”<sup>111</sup> Like Donegan, Ansari proved to be a dividing line for the #MeToo movement, highlighting key areas of disagreement among the movement’s proponents, and serving as a lightning rod for its critics. These criticisms of what should “count” for #MeToo echo many judges’ refusal to find a hostile work environment absent a showing that a co-worker or supervisor had actually committed rape against the plaintiff.<sup>112</sup>

These criticisms also reveal the underlying gender issues prevalent in the United States that have led to the country’s high incidence of sexual assault and harassment, as well as the country’s low reporting rates. That critics emphasize concerns for men whose lives are “ruined” (even by truthful accusations) shows that “himpathy”—a term coined by feminist philosopher Kate Manne<sup>113</sup>—is alive and well. As noted by MacKinnon, the all-consuming concern for the future of the accused man was clearly evident in the discussions surrounding the confirmation of Brett Kavanaugh to the Supreme Court.<sup>114</sup> Moreover, despite what women have endured, it is their words that are perceived to create the true injury in sexual harassment and assault cases.<sup>115</sup>

Even those sympathetic to the #MeToo movement’s goals have found fault with its focus on the plight of powerful white women.<sup>116</sup> Black women and women of color, other than Tarana Burke herself, have been less involved in the #MeToo movement and have argued that the movement has made strides only in protecting white women in high-visibility professions who are already privileged.<sup>117</sup> The exclusion of Black women and women of color is particularly troubling because these women are more likely to be victimized and less likely to be believed when they

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111. See Sonny Bunch, *A Bad Date or Sexual Harassment? Babe’s Aziz Ansari Piece Harms #MeToo Movement*, CHICAGOCHIC. TRIB., <https://www.chicagotribune.com/lifestyles/ct-aziz-ansari-metoo-movement-20180116-story.html>. One commentator called the story about Ansari as “3,000 words of revenge porn.”; see also Caitlin Flanagan, *The Humiliation of Aziz Ansari*, THE ATLANTIC (Jan. 14, 2018), <https://www.theatlantic.com/entertainment/archive/2018/01/the-humiliation-of-aziz-ansari/550541/>.

112. Joan C. Williams, et al., *What’s Reasonable Now? Sexual Harassment Law After the Norm Cascade*, 2019 MICH. ST. L. REV. 139, 156 (2019).

113. Kate Manne, *Response to Critics*, 18 FEMINISM & PHILOSOPHY 25, 25 (2019).

114. MacKinnon, *supra* note 77.

115. Franks, *supra* note 93, at 124.

116. Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 YALE L. J. F. 105, 107 (2018).

117. *Id.* at 111; Green, *supra* note 53, at 133-34.

report their experiences.<sup>118</sup> Similarly, #MeToo has been criticized for focusing too much on women's experiences, thereby ignoring those of men and members of the LGBTQ community.<sup>119</sup> Finally, scholars have criticized the movement's current focus on shaming perpetrators rather than creating systemic changes.<sup>120</sup>

In addition to the backlash suffered by the movement itself, the women who have come forward under the #MeToo movement have suffered terrible repercussions. Christine Blasey Ford, in response to her testimony against Justice Kavanaugh, has suffered repeated death threats and doxing, forcing her and her family into hiding.<sup>121</sup> Donegan, for creating the Shitty Media Men list, was coerced into revealing her identity in anticipation of being publicly outed in the media, and she was later sued for defamation by one of the men on the list.<sup>122</sup> Indeed, defamation lawsuits against women who name their alleged abusers have apparently increased, led by several high-profile cases.<sup>123</sup> For example, music producer Lukasz Gottwald recently won a defamation lawsuit against singer Kesha for a text she sent to singer Lady Gaga that said that he raped both Kesha and singer Katy Perry.<sup>124</sup> Perry later stated in a deposition that Gottwald never raped her.<sup>125</sup> Kesha's claim that Gottwald raped her has not been adjudicated yet, but

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118. *Id.*

119. Wexler, et al., *supra* note 52, at 54.

120. *Id.*

121. See Robin Abcarian, *Christine Blasey Ford's Courage Was in the Spotlight Again. So Were Brett Kavanaugh's Tears.*, L.A. TIMES (Nov. 19, 2019), <https://www.latimes.com/opinion/story/2019-11-19/column-abcarian-wednesday-aclu>; see also North, *The #MeToo Movement and its Evolution, Explained*, *supra* note 9.

122. See Hannah Gold, *Is This the End of the Sh\*tty Media Men Lawsuit?*, N.Y. MAG.: THE CUT (May 8, 2019), <https://www.thecut.com/2019/05/is-this-the-end-of-the-sh-tty-media-men-lawsuit.html>; see also Eriq Gardner, *"Sh\*tty Media Men" List Creator Unable to Escape Libel Suit*, HOLLYWOOD REP. (June 30, 2020, 3:37 PM), <https://www.hollywoodreporter.com/thr-esq/shitty-media-men-list-creator-unable-escape-libel-suit-1301238> (stating that the lawsuit is still ongoing).

123. Madison Pauly, *She Said, He Sued*, MOTHER JONES, (Mar.-.-.- Apr. 2020), <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/>. These suits can cut both ways, though. Multiple women have filed defamation lawsuits against their alleged harassers, including Bill Cosby, Bill O'Reilly, Roy Moore, and Donald Trump, for calling them liars. See Daniel Jackson, *Sex-Assault Accusers Turn to Defamation Lawsuits in #MeToo Era*, COURTHOUSE NEWS SERV. (Jan. 25, 2018), <https://www.courthousenews.com/sex-assault-accusers-turn-to-defamation-lawsuits-in-metoo-era/>.

124. Katie Shepard, *Kesha Defamed Her Producer in a Text Message to Lady Gaga, Judge Rules*, WASH. POST (Feb. 7, 2020, 6:35 AM), <https://www.washingtonpost.com/nation/2020/02/07/kesha-luke-defamation/>.

125. *Id.*

Katy Perry's denial was enough to rule the statement defamatory.<sup>126</sup> Kesha's case shows the risks of accusing an alleged harasser. Even if a defamation case is ultimately unsuccessful—truth is still a defense, after all—the financial cost of being sued and the stress of potentially facing a former harasser in court may be a strong deterrent for women who would otherwise come forward. Accordingly, although there have been positive developments under the #MeToo movement in the United States, the road has been far from smooth and has carried serious consequences for its reporters.

### III. #METOO INTERNATIONALLY

When #MeToo went viral, it did so globally.<sup>127</sup> Shortly after #MeToo spread across the United States, 85 countries had at least 1,000 tweets with that hashtag.<sup>128</sup> However, each country's response to #MeToo has not been uniform. Some countries have built on the publicity and awareness #MeToo generated in the United States, and other countries largely ignored or even rejected what #MeToo stands for.<sup>129</sup> On a positive note, #MeToo has led to the recent adoption of the "Convention Concerning the Elimination of Violence in the World of Work" at the General Conference of the International Labour Organization (ILO) on June 10, 2019.<sup>130</sup> This convention creates "international labour standards [that] recognize the right of everyone to a world of work free from violence and harassment, including gender based violence and harassment."<sup>131</sup> Four countries have

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126. Gene Maddaus, *Dr. Luke Scores Big Victory in Ongoing Defamation Lawsuit with Kesha*, VARIETY (Feb. 6, 2020, 5:17 PM), <https://variety.com/2020/biz/news/dr-luke-kesha-ruling-defamation-1203495957/>.

127. Meighan Stone & Rachel Vogelstein, *Celebrating #MeToo's Global Impact*, FOREIGN POL'Y (Mar. 7, 2019, 7:40 PM), <https://foreignpolicy.com/2019/03/07/metoo-global-impact-international-womens-day/>.

128. Andrea Park, *#MeToo Reaches 85 Countries with 1.7M Tweets*, CBS NEWS (Oct. 24, 2017), <https://www.cbsnews.com/news/metoo-reaches-85-countries-with-1-7-million-tweets/>.

129. Devex Editor, *What #MeToo has Meant Around the World*, DEVEX (Nov. 26, 2018), <https://www.devex.com/news/what-metoo-has-meant-around-the-world-93871>.

130. See C190 - VIOLENCE AND HARASSMENT CONVENTION, 2019 (NO. 190) (June 21, 2019), INT'L LABOR ORG. (hereinafter "ILO") [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190). (last visited Aug. 27, 2020). The ILO is comprised of "labor ministers and other government officials from countries around the world, national and international trade unions, and employers' associations." See Nisha Varia, *Rewriting the Rules on #MeToo Globally*, HUMAN RIGHTS WATCH (Apr. 30, 2019 2:00PM EDT), <https://www.hrw.org/news/2019/04/30/rewriting-rules-metoo-globally>.

131. ILO Welcomes Commitments to Ratify Convention on Violence and

already committed to ratifying the treaty and two have formally ratified it, which means that it will enter into force in June 2021.<sup>132</sup>

In Europe, #MeToo was met with outwards signs of enthusiasm among the European Union institutions. The European Parliament resolution of October 26, 2017, which addressed sexual harassment and abuse, explicitly welcomed #MeToo and the movement's encouragement of women and girls to talk about being abused and even name their perpetrators.<sup>133</sup> However, the impact on individual European countries has varied widely, particularly with regard to the movement's focus on specific industries, types of offenses, and even the movement's goals.<sup>134</sup> More specifically, a 2019 study that examined tweets from five European countries found that different countries had different reactions to #MeToo depending on the country's existing "legislative frameworks, pervasive gender inequalities and inadequate awareness campaign[s]."<sup>135</sup>

A similar 2020 study examined multiple European countries' Google searches of "metoo" and "sexual assault" as the movement began.<sup>136</sup> Based on the data collected, the three countries that are the focus of this article – Finland, Germany, and Portugal – had different reactions to #MeToo.<sup>137</sup> The data collected shows that Finland had a "strong" reaction to the #MeToo movement, *i.e.*, a surge in searches using the phrase "#MeToo" beginning in October 2017.<sup>138</sup> Finland was also coded as having a surge in Google searches regarding sexual assault and harassment at that time.<sup>139</sup> In contrast, Germany was coded as having a "strong" reaction to the #MeToo movement due to the number of "#MeToo" searches in October 2017, but it did not have a corresponding surge in searches regarding sexual assault and harassment.<sup>140</sup> Moreover, the data showed that Finland's surge of

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*Harassment*, ILO (Mar. 3, 2020), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_737414/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_737414/lang--en/index.htm).

132. *Id.*; see also C190 - VIOLENCE AND HARASSMENT CONVENTION, *supra* note 130.

133. Giulia Zacchia et al., *The #MeToo Social Media Effect and its Potentials for Social Change in Europe*, FOUND. FOR EUR. PROGRESSIVE STUD. 1, 16-17 (Oct. 2019), [https://www.feps-europe.eu/attachments/publications/metoo\\_web\\_s.pdf](https://www.feps-europe.eu/attachments/publications/metoo_web_s.pdf).

134. *Id.* at 29.

135. *Id.* at 36. The countries studied were Spain, Sweden, France, Germany, and Italy.

136. Roee Levy & Martin Mattsson, *The Effects of Social Movements: Evidence from #MeToo* (Mar. 30, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3496903](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3496903).

137. *Id.*

138. *Id.* at 59

139. *Id.*

140. *Id.*

“#MeToo” searches was much higher than that of Germany’s, even though both were ultimately coded as “strong.”<sup>141</sup> Finally, Portugal did not have a “strong” showing of “#MeToo” searches but did have a surge of searches regarding sexual assault and harassment in October 2017.<sup>142</sup>

This data, though only a small glimpse into how each of these three countries reacted to #MeToo, provides a starting point for the next part of this article, which examines the context in which the #MeToo movement arose, how it has impacted each country, and how each country’s unique culture helped or hindered the movement.

### A. Finland

With regard to feminism and equality, Finland presents a series of contradictions. Finland bills itself as a gender equality pioneer<sup>143</sup> and can boast that it is one of the most equal nations in the world with regard to political representation and pay for women.<sup>144</sup> Finland also has a generous maternity leave policy that was recently extended to fourteen months and, in an effort to improve gender equality, was also expanded to include paternal leave.<sup>145</sup> However, its statistics with regard to sexual violence and sexual harassment paint an entirely different picture.

#### 1. Sexual Violence and Sexual Harassment Prevalence and Laws

Despite the strides Finland has made towards gender equality, it also has the second-highest incidence of violence towards women in the EU.<sup>146</sup> Sexual harassment is quite prevalent in Finland as well; a 2014 Europe-wide survey found that more than 50% of Finnish women had experienced sexual harassment and twenty percent had experienced it in the year prior

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141. See Roe Levy & Martin Mattsson, *The Effects of Social Movements: Evidence from #MeToo* (Mar. 30, 2020), <https://papers.ssrn.com/sol3/papers.cfm?abstractid=3496903> at 32.; see also Giulia Zacchia et al., *The #MeToo Social Media Effect and its Potentials for Social Change in Europe*, FOUND. FOR EUR. PROGRESSIVE STUD. 1, 32 (Oct. 2019), [https://www.feps-europe.eu/attachments/publications/metoo\\_web\\_s.pdf](https://www.feps-europe.eu/attachments/publications/metoo_web_s.pdf).

142. *Id.* at 59.

143. *Suomi on sukupuolten tasa-arvon edelläkävijä [Finland is a Gender Equality Pioneer]*, Sosiaali- ja terveystieteiden ministerio [Ministry of Soc. Affairs & Health], <https://stm.fi/en/finland-is-a-gender-equality-pioneer> (last visited Nov. 4, 2020).

144. Grace A. Schlosser, *Stories of Success from Finnish Women: A Narrative Study*, 12 HIGH ABILITY STUDIES 61, 62 (2001).

145. *Finland to Give Dads Same Parental Leave as Moms*, BBC NEWS (Feb. 5, 2020), <https://www.bbc.com/news/world-europe-51384614>.

146. Ilkka Penttiinen, *A Brief History of Sexual Harassment in Finland in One Hashtag*, YOUNG FEMINIST (Nov. 21, 2016), <http://www.youngfeminist.eu/2016/11/a-brief-history-of-sexual-harassment-in-finland-in-one-hashtag/>.

to the survey.<sup>147</sup> According to this same study, 30% of Finnish women aged 18 to 74 have been subjected to physical or sexual violence by their current or former partner.<sup>148</sup> Yet, domestic violence and other forms of gender violence is a largely invisible problem in Finland.<sup>149</sup>

Historically, men had an advantage in Finnish law with regard to sexual behavior because women often faced stronger penalties under the law, and the law was not generally enforced against men of status.<sup>150</sup> Even today, Finnish criminal law has been criticized for being overly concerned with the mindset of the perpetrator instead of the survivor.<sup>151</sup> Moreover, Finnish law uses the term “family violence” instead of “domestic violence,” which has been criticized for not acknowledging the largely gendered aspect of domestic violence.<sup>152</sup>

Finland has also historically placed a strong distinction between the public and private sphere, with gender being applicable only in the private sphere.<sup>153</sup> Using that rationale, assaults that take place in private rather than public required the request of the survivors to go forward.<sup>154</sup> Until 1994, rape in a marriage was not a crime (in order to protect the sanctity of marriage),<sup>155</sup> and it was not until 1999 that a rape prosecution could go forward without the survivor’s report and request for a prosecution.<sup>156</sup>

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147. Johanna Niemi, *Excluding power from a narrative: Sexual harassment in a criminal law reform*. (forthcoming) (draft on file with author).

148. *Violence Against Women*, AMNESTY INT’L., <https://www.amnesty.fi/tyomme/teemat/naisiin-kohdistuva-vakivalta/> (last updated July 2020).

149. Tuija Virkki, *Gender, Care, and the Normalization of Violence: Similarities between Occupational Violence and Intimate Partner Violence in Finland*, 15 NORDIC J. OF WOMEN’S STUD. 220, 226 (2007).

150. Johanna Niemi-Kiesilainen, *The Reform of Sex Crime Law and the Gender-Neutral Subject*, in NORDIC EQUALITY AT A CROSSROADS: FEMINIST LEGAL STUDIES COPING WITH DIFFERENCE 167, 170-173 (Eva-Maria Svensson et al. eds. 2004).

151. *Id.* at 176177.

152. Jeff Hearn & Linda McKie, *Gendered and Social Hierarchies in Problem Representation and Policy Processes: “Domestic Violence” in Finland and Scotland*, 16 VIOLENCE AGAINST WOMEN 136, 138 (2010).

153. Virkki, *supra* note 149, at 225.

154. Johanna Niemi-Kiesilainen, *Criminal Law or Social Policy as Protection Against Violence*, in RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURE 299 (Kevät Nousiainen et al. eds. 2001).

155. Hearn & McKie, *supra* note 152, at 146; *see also* Niemi-Kiesilainen, *supra* note 150, at 176.

156. Heini Kainulainen, *Raped - Sexual Assault in Criminal Proceedings*, 51 SCANDINAVIAN STUD. L. 263, 265 (2007); *see also* Niemi-Kiesilainen, *supra* note 154, at 299.



Indeed, the eventual criminalization of marital rape reveals the prevalence of rape myths in Finland: when the bill was being debated, Parliamentarians argued (incorrectly) that marital rape was rare, that lack of consent would be difficult to prove, and that the law could be used for extortion.<sup>157</sup> Parliamentarians also expressed reservations regarding using criminal law to intrude upon a marital relationship, which was seen as very private.<sup>158</sup>

This public-private distinction has been internalized by both men and women. Finnish women are expected to “take responsibility for maintaining the[ir] intimate relationships and, consequently, feel responsible for the violence perpetrated by their partners.”<sup>159</sup> Similarly, domestic violence “is considered a gender-neutral individual problem that the survivors themselves should be able to solve.”<sup>160</sup> Indeed, as with marital rape, sexual assault and rape that took place in private were not categorized as “non-compliant offences” until the mid-1990s.<sup>161</sup> For that reason, reporting of sexual assault remains low<sup>162</sup> and less than twenty percent result in convictions.<sup>163</sup>

Finnish police have been criticized for not properly advising survivors or directing them to existing social services.<sup>164</sup> The state of the criminal law may also be partially to blame for low reporting rates. Until very recently, rape was limited to situations where the perpetrator used force or fear and then took advantage of the survivor’s unconscious state.<sup>165</sup> This limited definition led to some court decisions that caused public outcry, including low sentences and a ruling that a 10-year-old was not legally raped because the fact that the survivor was very young and the defendant was a stranger

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157. Niemi-Kiesilainen, *supra* note 154, at 299.

158. *Id.*

159. Virkki, *supra* note 149, at 226.

160. *Id.*

161. Paivi Honkatukia, *Rough sex? Understandings of Rape in Finnish Police Reports*, 2 J. SCANDINAVIAN STUD. CRIMINOLOGY & CRIME PREVENTION 15, 16 (2001).

162. *Case Closed: Rape and Human Rights in the Nordic Countries*, AMNESTY INTERNATIONAL INT’L (Mar. 8, 2010), <https://www.amnesty.org/download/Documents/36000/act770012010eng.pdf>. (Amnesty International has estimated that less than ten percent of rapes are reported to the police).

163. *Reported Sex Crime Up 28% As Activists Criticise Low Conviction Rate*, YLE (Apr. 17, 2019, 4:40 PM), [https://yle.fi/uutiset/osasto/news/reported\\_sex\\_crime\\_up\\_28\\_as\\_activists\\_criticise\\_low\\_conviction\\_rate/10741074](https://yle.fi/uutiset/osasto/news/reported_sex_crime_up_28_as_activists_criticise_low_conviction_rate/10741074).

164. *Id.*

165. Danette C. Cashman, *Negotiating Gender: A Comparison of Rape Laws in Canada, Finland, and Pakistan*, 9 DALHOUSIE J. LEGAL STUD. 120, 147 (2000).

to her was not sufficient evidence that the defendant used force or fear.<sup>166</sup>

As with sexual assault, Finland has a disappointingly low rate of reporting for sexual harassment and a very low rate of conviction. According to statistics from Finland's National Police, there were 536 reported cases of sexual harassment in 2016 but only 31 of the perpetrators were given a direct fine.<sup>167</sup> This low rate of convictions is likely due to both cultural barriers and defects in the law. According to the UN's Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee, Finland has repeatedly been cited as having insufficient legislation and allocated recourses to prevent violence against women or provide adequate support services for survivors.<sup>168</sup>

Although Finland boasts nearly equal rates of employment for men and women, as with other areas of Finnish society, those numbers mask underlying issues of gender inequality. For example, Finland has a highly segregated labor market, with women vastly overrepresented in caring and service professions.<sup>169</sup> Similarly, although employers are legally required to "take measures to remedy" sexual harassment, "there is still no general consensus on what or how much an employer is expected to do, and both in Finland and other countries there is a paucity of research on how organizations actually are responding."<sup>170</sup> Even recent improvements to the law are problematic. Finland recently enacted a law that criminalizes street harassment, but the law applies only to physical harassment, requires a witness to the assault and, in order to be fined, the perpetrator must confess to the crime.<sup>171</sup> These limitations on the law have led to

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166. See Daniel Boffey, *Finland Under Pressure to Criminalise Lack of Consent in Rape Laws*, THE GUARDIAN (Sept. 2, 2019, 9:46 PM), <https://www.theguardian.com/world/2019/sep/02/finland-under-pressure-to-revamp-rape-laws>; see also *Criminalization and Prosecution of Rape in Finland*, AMNESTY INT'L (2020), <https://www.amnesty.org/download/Documents/EUR2024272020ENGLISH.pdf>.

167. Rebecca Rosman, *Finland's Street Harassment Law Imposes Immediate Fines for Harassers Caught in the Act*, THE WORLD (Dec. 27, 2017, 2:45 PM), <https://www.pri.org/stories/2017-12-27/finland-s-street-harassment-law-imposes-immediate-fines-harassers-caught-act>.

168. Emma W., *A Finnish Woman May Only Be Raped by a Finnish Man*, LILY (Jan. 12, 2015), <https://www.lily.fi/blogit/matkalla-perille/suomalaisen-naisen-saa-raiskata-vain-suomalainen-mies>.

169. Marjut Jyrkinen & Linda McKie, *Gender, age and ageism: Age And Ageism: Experiences of Managers in Finland and Scotland*, 26 WORK, EMPLOYMENTEMP. & SOC. 61, 64 (2012).

170. Denise Salin, *Organisational Responses to workplace Harassment: An Exploratory Study*, 38 PERSONNEL REV. 26, 1, 3-4 (2009).

171. Rosman, *supra* note 167.

considerable criticism.<sup>172</sup>

## 2. *History and Culture*

There are several potential reasons for Finland's contradictory treatment of women, which are likely rooted in Finland's unique history and culture. Finland represents a mixture of individualism and collectivism where rights discourse often goes hand in hand with discussion of responsibilities.<sup>173</sup> Historically, any economic or social rights that women have gained were granted in order to further the interests of the family, not women themselves.<sup>174</sup> To that end, women were given increased rights to dispose of property in case their husbands became incapable or neglectful, but only to the extent necessary to protect their families, not as an expression of the woman's individual rights or value.<sup>175</sup> Even Finnish feminists historically saw themselves as championing women's rights for the protection of the home and, therefore, the "flourishing of the nation state."<sup>176</sup> Any gains in rights for women are therefore tied to a woman's responsibility to her family and her nation and not to her intrinsic value.<sup>177</sup> Consequently, any definition of "feminism" that focuses on a woman's value as an individual rejected as being contrary to the needs of Finnish society.<sup>178</sup>

Finland's socialist history has also kept "gender issues secondary to other dividing issues such as class."<sup>179</sup> By focusing on reducing class differences, gender has become an invisible issue, leading most Finns to believe that women have equal status and power.<sup>180</sup> Feminists call this

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<sup>172</sup> *Id.*

<sup>173</sup> Kevat Nousiainen & Johanna Niemi-Kiesilainen, *Introductory Remarks on Nordic Law and Gender Identities*, in RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURE 2, 2 (Kevat Nousiainen et al. eds., 2001).

<sup>174</sup> Eva-Maria Svensson & Anu Pylkkanen, *Contemporary Challenges in Nordic Feminist Legal Studies*, in NORDIC EQUALITY AT A CROSSROADS: FEMINIST LEGAL STUDIES COPING WITH DIFFERENCE 17, 27 (Eva-Maria Svensson et al. eds., 2004).

<sup>175</sup> Anu Pylkkanen, *The Responsible Self: Relational Gender Construction in the History of Finnish Law*, in RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURE 105, 116 (Kevat Nousiainen, et al. eds., 2001).

<sup>176</sup> *Id.* at 118.

<sup>177</sup> Niemi-Kiesilainen, *The Reform of Sex Crime Law and the Gender-Neutral Subject*, *supra* note 150, at 175.

<sup>178</sup> Svensson & Pylkkanen, *supra* note 174, at 30.

<sup>179</sup> Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 2.

<sup>180</sup> Hearn & McKie, *supra* note 152, at 146; *see also* Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 2. Some high-achieving Finnish women who were interviewed actually expressed concern that men could be disadvantaged in Finnish society and distanced themselves from the "feminist" moniker. *See* Schlosser, *supra*

misperception “the myth of equality.”<sup>181</sup>

In addition, Finland’s culture includes the myth of the “strong Nordic woman” whose work is more prized than her appearance.<sup>182</sup> Due to Finland’s history of subsistence agriculture, women were always expected to work, were not kept to typical domestic chores, and were not perceived as the “weaker” sex.<sup>183</sup> Indeed, the myth of the strong Nordic woman is prevalent in Finnish society and has resulted in women being expected to work both inside and outside the home.<sup>184</sup> For example, after World War II, many women who had gone to work during the war stayed in their industries.<sup>185</sup> In fact, because women have historically been heavily involved in workers’ and other political movements in Finland’s history,<sup>186</sup> most Finnish women see themselves as equal to their male peers.<sup>187</sup>

Finnish men have also suffered under Finland’s hidden patriarchy. Older generations of Finns lived through two world wars and the material hardships that came afterwards.<sup>188</sup> Due to a history of hardships, Finnish men put a lot of their self-esteem in their ability to work and succeeded in their solitary “struggle against the harsh outside world” even at the cost of their physical or mental health.<sup>189</sup> The Finns even have a word—*sisu*—that encapsulates the concept of struggle against hardship without complaint, and that trait is a point of pride among Finns.<sup>190</sup> However, the solitary nature of men’s struggles leads to mental health problems, such as anxiety, that men do not feel they can talk to others about and instead self-medicate

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note 144, at 81-82, 84.

181. Svensson & Pylkkanen, *supra* note 174, at 22.

182. Anne Ollila, *Perspectives to Finnish Identity*, 23 SCANDSCANDINAVIAN J. HIST. 127, 135 (1998)) (stating that Finnish proverbs advise a man to choose a wife, not by her looks, “but by her willingness to work hard.”).

183. See Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 11. Despite this, women were still perceived to be natural homemakers. See Svensson & Pylkkanen, *supra* note 174, at 27.

184. Nousiainen & Niemi-Kiesilainen, *supra* note 173 at 11. The severity of the Finnish environment shapes much of the Finnish history and Finn’s sense of identity. See Ollila, *supra* note 182, at 130.

185. Kaisa Nauska, *The Impact of the #MeToo Phenomenon on Working Conditions for Women in Finland*, HELSINKI METROPOLIA UNIVERSITY OF APPLIED SCIENCES, 6 (Apr. 27, 2018) (unpublished B.A. thesis) (on file at <https://www.theseus.fi/handle/10024/148566>)  
://www.theseus.fi/handle/10024/148566).

186. Schlosser, *supra* note 144, at 62.

187. Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 10.

188. Ollila, *supra* note 182, at 133.

189. *Id.* at 135.

190. *Id.*

with alcohol.<sup>191</sup>

As in the United States, Finnish women are responsible for the home but, uniquely, also responsible for what happens in their relationships with their partners.<sup>192</sup> In fact, any marital problems are typically perceived as a woman's failure to properly manage the couple's life or "civilize" her husband.<sup>193</sup> Moreover, "at a very early age girls are socialized to assume responsibility for handling harassment by men as quietly as possible."<sup>194</sup> Indeed, survivors often state that they do not report incidents of sexual harassment because "they encounter these situations almost daily and they're used to it."<sup>195</sup> The myth of the strong Nordic woman combines with the dictates of "sisu's" stoic acceptance of life's circumstances to require Finnish women in particular to be "strong and independent," which likely makes them extremely ashamed when they are sexually victimized and unlikely to report crimes like domestic violence.<sup>196</sup>

The combination of invisible gender disparities, and the myth of the strong Nordic woman, has led to criticism from Finnish feminist scholars that Finland pays too little attention to the problems of violence against women and that many gender issues were not fully brought to the public's attention until they were discussed by the UN's CEDAW committee.<sup>197</sup> Finnish politicians rarely engage with problems of gender discrimination and, even when official committees are supposed to analyze the consequences of a legislative reform on gender equality, such analyses are not always made.<sup>198</sup> Any efforts to center gender inequality has typically either been deprioritized compared to some other need that is perceived as

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191. Ollila, *supra* note 182, at 136. Alcohol has been identified as a primary cause of the increase in recorded assaults in Finland after World War II; *see also* Reino Sirén, *Trends in Assault: On the Relationship between the Assault Rate and Selected Social Indicators in Post-War Finland*, 3 J. SCANDINAVIAN STUD. CRIMINOLOGY & CRIME PREVENTION 22, 25-26 (2002), (noting it is routinely noted in police reports as a factor in the crime committed). *See* Honkatukia, *supra* note 161, at 21.

192. Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 11.

193. Pylkkanen, *supra* note 175, at 120, 123.

194. Niemi-Kiesilainen, *The Reform of Sex Crime Law and the Gender-Neutral Subject*, *supra* note 150, at 188.

195. Rosman, *supra* note 167.

196. *See* Honkatukia, *supra* note 161, at 20; Johanna Niemi-Kiesilainen, *Criminal Law or Social Policy as Protection Against Violence*, in RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURE 289, 303 (Kevät Nousiainen, et al. eds., 2001); *see also* Hearn & McKie, *supra* note 152, at 148.

197. *See* Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 1313; *see also* Niemi-Kiesilainen, *Criminal Law or Social Policy as Protection against Violence*, *supra* note 156, at 302.

198. Svensson & Pylkkanen, *supra* note 174, at 21-22.

more important, or dismissed in view of Finland's already existing gender equality.<sup>199</sup>

For example, Finland's emphasis on gender neutrality has also made it difficult for politicians to acknowledge that sexual and physical abuse is largely a problem of men victimizing women.<sup>200</sup> For that reason, although gender equality has made strides in Finland in equality of pay for the same work, there has been next to nothing done to combat Finland's gender-segregated occupations; male occupations pay better than female ones and it is difficult for women to enter male dominated professions.<sup>201</sup> In other words, women are expected to pick up a man's work if necessary, but men cannot be humiliated by being forced to do "women's work."<sup>202</sup>

Likewise, Finland's focus on economics and class has had a mixed impact on women. With increased autonomy over their bodies through socialized reproductive health care, women are also perceived as being more responsible for reproduction and, ultimately, sexual behavior.<sup>203</sup> This perception has led to women being held responsible for gender-related sexual crimes, even as they have lost protection from their kinship groups.<sup>204</sup> Moreover, young women are still "expected to control their sexuality and the sexuality of their male peers."<sup>205</sup>

Finnish laws reflect the various myths prevalent in society. Finnish law regarding sexual relations presupposes rationality, self-sufficiency and equality between the two participants, with an emphasis on sexual self-determination.<sup>206</sup> To that end, sexual legal reform has focused on gender neutrality and using sex-neutral language.<sup>207</sup> This narrative, Finnish feminists have argued, ignores existing power dynamics between the sexes<sup>208</sup> and the violation of physical and sexual integrity that often underlies a survivor's experience of sex-based harassment or assault.<sup>209</sup>

Due to this confluence of factors, Finland, like the United States, shows underreporting of sexual assault and harassment and, accordingly,

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199. *Id.* at 17, 28.

200. Hearn & McKie, *supra* note 152, at 142.

201. Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 9.

202. Pylkkanen, *supra* note 175, at 113-14.

203. Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 15.

204. Pylkkanen, *supra* note 175, at 114.

205. Nousiainen & Niemi-Kiesilainen, *supra* note 173, at 1415.

206. Niemi-Kiesilainen, *The Reform of Sex Crime Law and the Gender-Neutral Subject*, *supra* note 150, at 169, 176.

207. *Id.* at 175.

208. *Id.* at 169, 177.

209. *Id.* at 181-82.

misperceptions about the prevalence of these crimes. Indeed, a recent survey shows that a majority of young people believe that sexual harassment can happen by accident, and what should be considered sexual harassment varies drastically by age and gender, with young women having the most expansive definition.<sup>210</sup> To complicate this issue further, the conflation of sexual assault and immigration is a common refrain in Finland. Although the incidence is low, media reporting and debates in the Finnish Parliament have repeatedly emphasized the need to combat sexual assault by restricting immigration.<sup>211</sup> With such a misplaced focus, a #MeToo movement was therefore perhaps inevitable and Finland's first movement came before #MeToo in the United States.

### 3. #MeToo in Finland – Multiple Movements

Before the #MeToo movement in the United States, Finland had the #lääppiä movement, which began in 2016. “Lääppiä” roughly translates into “groper.”<sup>212</sup> The hashtag was started in response to the Helsinki deputy chief of police's statement that the threatened “mass harassment” by asylum seekers on New Year's Eve was a “new” phenomenon because Finland had “never before had this kind of sexual harassment happening at New Year's Eve.”<sup>213</sup> The twitter hashtag was started by Satu Lapinlammi, the CEO of a tech company in Oulu, Finland, and she used the hashtag to refute the deputy police chief's statements.<sup>214</sup>

The hashtag quickly went viral, producing over 20,000 messages over the next two days that briefly caused Lapinlammi's Twitter account to effectively shut down due to the amount of traffic.<sup>215</sup> The messages Lapinlammi received consisted of women's stories of harassment at the hands of native Finns, some going back decades and some starting at very young ages.<sup>216</sup> The outpouring of stories came as a surprise to the male followers of the hashtag, partially because they discovered, seemingly for

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210. Eero Mantymaa, “Sexual Harassment Can be a Pity” – *This is How More Than Half of Finns Think*, YLE (Nov. 16, 2017, 6:17 AM), <https://yle.fi/uutiset/3-9932150>.

211. See Rosman, *supra* note 167. According to one blogger, “[t]he unspoken idea present in this kind of thinking is that ‘Only Finnish men are allowed to rape Finnish women.’” See Penttinen, *supra* note 146.

212. Penttinen, *supra* note 146.

213. *Id.*

214. See *id.*; see also Jari Strömberg, *Before the #MeToo Campaign, There Was Already a Finnish Phenomenon*, YLE (Oct. 17, 2017), <https://yle.fi/uutiset/3-9888154>.

215. *Id.*

216. *Id.*; Penttinen, *supra* note 146.

the first time, that they knew women who had been victimized.<sup>217</sup> Although women were apparently aware of the pervasiveness of sexual harassment and assault in Finland, men were just learning of it.<sup>218</sup> The main message – that it was native Finns who were the perpetrators – added a unique spin to the movement.<sup>219</sup> As these women noted, harassment comes from co-workers, friends, neighbors, and acquaintances, not a random group of asylum-seekers.

Once #MeToo began in the United States in 2017, Finland adopted that hashtag as well.<sup>220</sup> At the same time, the hashtag #dammenbrister (“the dam is breaking”) went viral for the minority Swedish-speaking population in Finland. The dam metaphor is particularly apt in Swedish-Finnish culture because it refers to the “ankdammen” or “duck pond” – a colloquial term for the small circles in which Swedish-speaking Finns move.<sup>221</sup> This hashtag also spawned a Facebook group, which quickly gained 20,000 members.<sup>222</sup> The members of this group seek to “break the culture of silence” around sexual harassment and assault.<sup>223</sup>

Similar to the United States, the #MeToo movement in Finland made the most progress in the entertainment industry.<sup>224</sup> For example, over 1,000 women in the Finnish entertainment industry signed a petition calling for an end to sexual harassment.<sup>225</sup> As noted by Nordic scholars, actors have a unique position in the #MeToo movement; although younger, less experienced actors may be more vulnerable to advances from directors and producers to pursue their careers, once they are well-known, they are also more likely to capture media attention and public sympathy with their stories.<sup>226</sup> This effect was certainly prevalent in Finland, but #MeToo has not been limited to the entertainment industry. Other areas, such as

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217. Strömberg, *supra* note 213.

218. *Id.*

219. *Id.*

220. Nauska, *supra* note 185, at 6.

221. *Swedish-Speaking Finnish Women Make Stand Against Harassment*, YLE (Nov. 29, 2017, 11:55 AM), [https://yle.fi/uutiset/osasto/news/swedish-speaking\\_finnish\\_women\\_make\\_stand\\_against\\_harassment/9953744](https://yle.fi/uutiset/osasto/news/swedish-speaking_finnish_women_make_stand_against_harassment/9953744).

222. *Id.*

223. *Id.*

224. Niemi, *supra* note 147, at 1.

225. Marcus Floman, *From Opera to Slush – How #MeToo is Changing the Nordics*, NORDIC LAB. J. (Dec. 8, 2017), <http://www.nordiclabourjournal.org/nyheter/news-2017/article.2017-12-08.5010509378>.

226. Bård Kleppe & Sigrid Røyseng, *Sexual Harassment in the Norwegian Theatre World*, 46 J. ARTS MGMT., LAW, & SOC’Y 282, 293-94 (2016).



schools,<sup>227</sup> universities, and legal institutions have also begun investigations into claims that those areas have high incidences of sexual harassment.<sup>228</sup>

As in the United States, some Finnish women named their abusers as part of their #MeToo stories, and those stories were reported in the mainstream media. The largest scandal involved Lauri Törhönen, an award-winning film director and film narrator. As part of the #MeToo movement in Finland, he was accused by multiple women of sexual assault occurring between the 1980s and 2000s.<sup>229</sup> As a result of these accusations, the Koht Teema television channel refused to present a previously-scheduled Törhönen-directed film, and Törhönen made a public apology and resigned as chair of the Cable Factory and SuviLahti arts and cultural centers.<sup>230</sup> Similarly, singer Tomi Metsäketo was summarily fired from his role on a dancing show and a production of the musical “Mamma Mia!” when claims emerged on social media linking him to sexual harassment.<sup>231</sup> In response, Metsäketo filed multiple lawsuits.<sup>232</sup>

In the world of politics, Finnish Vice President Teuvo Hakkarainen was criminally prosecuted for grabbing Member of Parliament Veera Ruoho’s neck and jaw in order to forcibly kiss her at 2018 Christmas party.<sup>233</sup> Hakkarainen was fined 80 days’ salary but was not imprisoned, despite the prosecutor’s argument that he should be because of how forceful his acts

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227. *Students at West Coast Finnish School Expose Sexual Harassment by Faculty, Peers*, YLE (Nov. 28, 2017, 12:39), [https://yle.fi/uutiset/osasto/news/students\\_at\\_west\\_coast\\_finnish\\_school\\_expose\\_sexual\\_harassment\\_by\\_faculty\\_peers/9951726](https://yle.fi/uutiset/osasto/news/students_at_west_coast_finnish_school_expose_sexual_harassment_by_faculty_peers/9951726).

228. Niemi, *supra* note 147, at 1.

229. *See #MeToo: Finnish Film Industry Women Accuse Ex-Professor of Years of Harassment*, YLE (Jan. 2, 2018, 8:01 AM), [https://yle.fi/uutiset/osasto/news/metoo\\_finnish\\_film\\_industry\\_women\\_accuse\\_exprofessor\\_of\\_years\\_of\\_harassment/10052746](https://yle.fi/uutiset/osasto/news/metoo_finnish_film_industry_women_accuse_exprofessor_of_years_of_harassment/10052746); *see also Film Director Accused of Sexual Harassment Quits Position as Chair of Arts and Culture Centres*, YLE (Feb. 2, 2018, 5:01 PM), [https://yle.fi/uutiset/osasto/news/film\\_director\\_accusedof\\_sexual\\_harassment\\_quits\\_position\\_as\\_chair\\_of\\_arts\\_and\\_culture\\_centres/10056555](https://yle.fi/uutiset/osasto/news/film_director_accusedof_sexual_harassment_quits_position_as_chair_of_arts_and_culture_centres/10056555).

230. *Film Director Accused of Sexual Harassment Quits Position as Chair of Arts and Culture Centres*, YLE (Feb. 2, 2018, 5:01 PM), [https://yle.fi/uutiset/osasto/news/film\\_director\\_accused\\_of\\_sexual\\_harassment\\_quits\\_position\\_as\\_chair\\_of\\_arts\\_and\\_culture\\_centres/10056555](https://yle.fi/uutiset/osasto/news/film_director_accused_of_sexual_harassment_quits_position_as_chair_of_arts_and_culture_centres/10056555).

231. *Sacked Singer Sues Production Firm Over Dismissed #MeToo Claims*, YLE (Oct. 11, 2018, 1:52 PM), [https://yle.fi/uutiset/osasto/news/sacked\\_singer\\_sues\\_production\\_firm\\_over\\_dismissed\\_metoo\\_claims/10451756](https://yle.fi/uutiset/osasto/news/sacked_singer_sues_production_firm_over_dismissed_metoo_claims/10451756).

232. *Id.*

233. *The Court of Appeal Upheld Teuvo Hakkarainen’s Punishment for Beating and Harassing Veera Ruoho*, YLE (Mar. 22, 2019, 9:07 AM), <https://yle.fi/uutiset/3-10701673>.

were.<sup>234</sup> However, the court found that Hakkarainen had not actually “strangled” Ruoho as the prosecutor had claimed because his gesture was too brief, even though there was a witness to the assault and Ruoho experienced physical trauma.<sup>235</sup>

Finland did see some positive political and legal developments as a result of #MeToo. #MeToo was the subject of a 90-minute parliamentary debate<sup>236</sup> and later led to the revision of Finland’s rape laws. Under the new laws, the definition of rape no longer requires the use of force or threat and instead requires lack of consent. These legal and political changes are promising, but only time will tell if the #MeToo movement in Finland will continue to have momentum, particularly considering its backlash.

#### 4. *Resistance and Backlash*

Like the #MeToo movement in the United States, Finland’s #MeToo movements received a substantial backlash. Men’s rights activists blamed women for causing the actual problems.<sup>237</sup> In addition, many of the women who shared their stories were attacked and bullied online.<sup>238</sup> Some of these attacks came from male politicians (usually from right-wing populist parties).<sup>239</sup> Even those politicians who did not attack the women accusers outright still advised caution when naming alleged perpetrators.<sup>240</sup>

Further, as in the United States, one of the named men filed a defamation lawsuit against the women who accused him. In addition to suing the production company who fired him from Mamma Mia, Tomi Metsäketo complained against the four women who made Facebook posts that discussed his reputation as a “serial molester” and rapist.<sup>241</sup> The women were convicted of slander and sentenced to pay fines and Metsäketo’s legal

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234. *Id.*

235. *Id.*

236. *#MeToo: Finnish MPs Tackle Issue of Sexual Harassment*, YLE (Dec. 12, 2017, 6:59 PM), [https://yle.fi/uutiset/osasto/news/metoo\\_finnish\\_mps\\_tackle\\_issue\\_of\\_sexual\\_harassment/9973999](https://yle.fi/uutiset/osasto/news/metoo_finnish_mps_tackle_issue_of_sexual_harassment/9973999).

237. Penttinen, *supra* note 146.

238. *Id.*

239. *Id.*

240. *#MeToo: Finnish MPs Tackle Issue of Sexual Harassment*, YLE (Dec. 12, 2017, 6:59 PM), [https://yle.fi/uutiset/osasto/news/metoo\\_finnish\\_mps\\_tackle\\_issue\\_of\\_sexual\\_harassment/9973999](https://yle.fi/uutiset/osasto/news/metoo_finnish_mps_tackle_issue_of_sexual_harassment/9973999).

241. *Four Women Convicted, Fined for Slandering Singer in #MeToo-Related Social Media Posts*, YLE (Oct. 5, 2018, 4:55 PM), [https://yle.fi/uutiset/osasto/news/four\\_women\\_convicted\\_fined\\_for\\_slandering\\_singer\\_in\\_metoorelated\\_social\\_media\\_posts/10442632](https://yle.fi/uutiset/osasto/news/four_women_convicted_fined_for_slandering_singer_in_metoorelated_social_media_posts/10442632).

fees, which were over seven thousand Euros.<sup>242</sup> With such severe penalties available for accusers, Finland's #MeToo movements will have to overcome substantial barriers to continue.

### B. Germany

With regard to gender equality, Germany presents an enigma, just like Finland. Despite having a female Chancellor and a requirement that large companies' supervisory boards be at least 30% female, Germany has fewer women in corporate positions of power than the United States or other Western countries.<sup>243</sup> Similarly, although free daycare is now mandated for all children over twelve months, women still suffer a large motherhood penalty.<sup>244</sup> Women, on average, earn 21% less than men, making Germany's gender pay gap one of the largest in Europe.<sup>245</sup> These statistics are complicated by the disparity of treatment of women in what was East Germany compared to West Germany.<sup>246</sup> East Germany's communist policies emphasized women working outside the home and equal pay for all workers, so the states that once comprised East Germany show very little gender pay disparity.<sup>247</sup> In contrast, the former West German states have a large amount of technology businesses that provide high-paying jobs disproportionately to men.<sup>248</sup> In addition to these broader gender disparities, Germany lags behind most of Europe in its handling of sexual violence and workplace sexual harassment.

#### 1. Sexual Violence and Sexual Harassment Prevalence and Laws

German law regarding rape and sexual assault has been modernized only very recently. Prior to 2016, criminal sexual offenses, such as rape and sexual abuse, required use of force or coercion, leading judges to acquit men who had touched a woman's genitals or breasts as long as she was wearing clothes, unless the man used "brute force."<sup>249</sup> In 2016, Germany,

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<sup>242</sup> *Id.*

<sup>243</sup> *Despite Quotas, Germany's Boardrooms Still 'Male-Dominated'*, LOCAL (Jan. 9, 2017, 5:39 PM), <https://www.thelocal.de/20170109/despite-quotas-few-women-make-the-boards-of-top-german-companies>.

<sup>244</sup> *Why the Pay Gap in Germany is So Large*, ECONOMIST (Mar. 14, 2020), <https://www.economist.com/europe/2020/03/14/why-the-pay-gap-in-germany-is-so-large>.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Tatjana Hörnle, *The New German Law on Sexual Assault and Sexual Harassment*, 18 GERMAN L. J. 1309, 1310-11, 1327 (2017).

as a response to the 2015 New Year's Eve events, passed laws changing the definition of rape to focus on consent and also enacted a law criminalizing physical sexual harassment.<sup>250</sup> This new sexual harassment law applies to offenders who "touch another person's body in a sexually determined way and thus offend the other person."<sup>251</sup> However, Germany has no criminal sexual harassment law for verbal harassment,<sup>252</sup> instead relying on laws that criminalize defamation, which traditionally affect only false statements that may "negatively affect public opinion" about that person.<sup>253</sup> However, Germany also criminalizes "insults," which can include calling someone names or giving them the middle finger.<sup>254</sup> Although the law was enacted in 1871, it is still used today to give fines to those who have been convicted of "insulting" another person.<sup>255</sup>

Despite the laws in place, Germany has poor numbers in terms of prevalence, reporting rates, and conviction rates for sexual violence. In 2017, Germany reported 8,310 cases of rape and 26,505 cases of sexual assault, putting it third in terms of absolute numbers and fourteenth in terms of percentages compared to other EU countries.<sup>256</sup> A 2004 survey found that "13% of the women, that is, almost 1 woman in 7, responded that she had experienced some form of sexual violence since the age of 16."<sup>257</sup> When the definition of rape was expanded to include unwanted sex

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250. *Id.* at 1328; Angela Waters, *How German Men are Learning to Keep Their Hands to Themselves*, HIGH SNOBIETY (June 9, 2017), <https://www.highsnobiety.com/2017/06/09/sexual-harassment-laws/>.

251. Hörnle, *supra* note 250, at 1327.

252. *Id.*

253. *Germany – Sexual Harassment*, EUR. INST. FOR GENDER EQUALITY, <https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/germany-sexual-harassment>.

254. Erik Kirschbaum, *In Germany, It Can be a Crime to Insult Someone in Public*, L.A. TIMES (Sept. 6, 2016, 6:37 AM), <https://www.latimes.com/world/europe/la-fg-germany-insult-law-snap-story.html> In Germany, giving someone the middle finger is called the *Stinkefinger*. It means what you think it does.

255. *Id.*

256. *Recorded Offences by Offence Category– Police Data*, EUROSTAT, <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do> (follow hyperlink; then change the ICCS to "Rape" and change the unit of measure to "Number"; repeat process for "Sexual Assault"). A German report puts the number of cases of rape, sexual coercion, and sexual assault "in especially serious cases" at 11, 282 in 2017. *See* FEDERAL REPUBLIC OF GERMANY, FEDERAL MINISTRY OF THE INTERIOR, BUILDING AND COMMUNITY, *Police Crime Statistics 2018*, <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2019/pks-2018-%20flyer.pdf?%20blob=publicationFile&v=4>.

257. FEDERAL REPUBLIC OF GERMANY, FEDERAL MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH, *Health, Well-*

that resulted from sexual harassment or coercion, the rate went up to 34%.<sup>258</sup>

That survey also showed that the rate of reporting sexual violence to the police was only 8%.<sup>259</sup> Some researchers have argued that German women are reluctant to involve the police unless their attacker is very violent.<sup>260</sup> Women's reluctance to report comes from a variety of factors, including their fear that the police will "misjudge the situation."<sup>261</sup> Those fears appear to be well-founded, as victimized women have reported that the police did not take them seriously, or even treated them with "disrespect or scorn, irony or distance."<sup>262</sup> Moreover, if they do go to court, which happens only three to four percent of the time, survivors of sexual assault are typically disappointed with the courtroom experience.<sup>263</sup>

Sexual harassment in Germany tells a similar story. Almost half of German women say they have been sexually harassed.<sup>264</sup> Most often, this harassment involves unwanted touching, and it is more likely to take place in public, rather than workplace.<sup>265</sup> German law defines sexual harassment in the workplace as

"unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, [that] takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment."<sup>266</sup>

Germany's General Equal Treatment Act, which was passed in 2006, allows employees to sue their employers for sexual harassment, both

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*Being and Personal Safety of Women in Germany*, <https://www.bmfsfj.de/blob/93906/9c0076fc66b1be6d0eb28258fe0aa569/frauenstudie-englisch-gewalt-gegen-frauen-data.pdf> at 9.

258. *Id.* at 11.

259. *Id.* at 19.

260. *Id.* at 33.

261. *Id.*

262. *Id.* at 33, 35 (including female officers in this critique).

263. *Id.* at 19.

264. Jean-Michel Hauteville, *Too Close for Comfort*, HANDELSBLATT TODAY (Oct. 27, 2017, 3:26 PM), <https://www.handelsblatt.com/today/sexual-harassment-too-close-for-comfort/23572788.html?ticket=ST-2967398-WWQWLISpWcVapFqYoUk1-ap6>; Ashutosh Pandey, *Half of Women in Germany Victim of Sexual Harassment, Survey*, DEUTSCHE WELLE (Oct. 28, 2017), <https://www.dw.com/en/half-of-women-in-germany-victim-of-sexual-harassment-survey/a-41149234>.

265. See Hauteville, *supra* note 265; see also Pandey, *supra* note 265.

266. Germany – Sexual Harassment, *supra* note 254.

physical and verbal.<sup>267</sup> However, the employee must file a written complaint within two months, which some have criticized as too short of a period of time.<sup>268</sup> Moreover, a recent survey showed that German employees are largely unaware of their rights, with eight out of ten people surveyed stating that they did not know that their employer was required to protect them from sexual harassment.<sup>269</sup> Another survey showed that less than half of the respondent workers who had been subjected to sexual harassment sought any help to solve their harassment issue.<sup>270</sup>

Fear of repercussions or skepticism regarding the utility of the reporting appears to play a large role in the fact that so few German women speak about their experiences of sexual harassment.<sup>271</sup> Perhaps that is the reason that, from 2006 (the year of its founding) to 2017, the Federal Anti-Discrimination Agency disclosed that it had received only 400 complaints of sexual harassment, even though the reports can be anonymous.<sup>272</sup>

## 2. *History and Culture*

As this data shows, like the United States and other countries, German women experience sexual violence at a relatively high rate and yet are unwilling to report the crimes due to well-founded fears that their cases will not be handled appropriately. Similarly, the vast majority of women who experience workplace sexual harassment do not report it. Several historical and cultural factors have combined to create this environment of silence.

Traditionally, Germany has emphasized the virtues of “diligence, duty, and obedience.”<sup>273</sup> For women in Nazi Germany, these values were

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267. FEDERAL REPUBLIC OF GERMANY, FEDERAL ANTI-DISCRIMINATION AGENCY, *Guide to the General Equal Treatment Act*, [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg\\_wegweiser\\_engl\\_guide\\_to\\_the\\_general\\_equal\\_treatment\\_act.pdf?blob=publicationFile](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg_wegweiser_engl_guide_to_the_general_equal_treatment_act.pdf?blob=publicationFile) at 13.

268. Arthur Sullivan, *You Too? Sexual Harassment in the German Workplace*, DEUTCHE WELLE (Nov. 11, 2017), <https://www.dw.com/en/you-too-sexual-harassment-in-the-german-workplace/a-41215231>.

269. *Id.*

270. *Sexual Harassment on the Rise in German Workplace: Study*, DEUTCHE WELLE (Oct. 25, 2019), <https://www.dw.com/en/sexual-harassment-on-the-rise-in-german-workplace-study/a-50979194>.

271. Shelley Pascual, *What Does the #MeToo Campaign Reveal About Work Culture in Germany?* LOCAL (Dec. 20, 2017, 3:28 PM), <https://www.thelocal.de/20171220/metoo-campaign-workplace-germany>.

272. *Id.*

273. Teresa Kulawik, *Autonomous Mothers? West German Feminism Reconsidered*, 24 & 25 GERMAN POL. & SOC’Y, 67, 70-71 (Winter 1991-1992).

combined with the “desirability of motherhood,” which placed women at the center of the private home sphere.<sup>274</sup> The resulting separation of the genders was combined with broader “sexual polarity” in which men were seen as public, dominant, and strong, and women were private, subordinate, and weak.<sup>275</sup> With regards to sexuality, women in Nazi Germany were expected to maintain pure bloodlines, both by bearing multiple children and by choosing their potential partners carefully.<sup>276</sup> To that end, women were expected to protect their chastity and were therefore punished more for their affairs than men were.<sup>277</sup>

After World War II, both East and West Germany struggled with providing for their citizens and finding a way to cope with the large loss of male life in the war. West Germany carried on with the “classical” model of a gendered division of labor where women were subordinate to a male head of the household.<sup>278</sup> East Germany, in contrast, originally emphasized women entering the labor force with the government providing childcare and other resources to assist women in these endeavors.<sup>279</sup> However, over time, the government introduced new policies, called “mommy politics,” which encouraged women to have children and work, thus creating a “double burden” for them.<sup>280</sup> East German women were told that the formal equality that existed meant that any struggles they had were due to their own deficiencies.<sup>281</sup> Because women were still responsible for childcare, the “extra benefits” they received to help them work both justified being relegated to less desirable positions and industries, and created resentment from men who did not have those benefits (but also did not have childcare responsibilities).<sup>282</sup>

Today, critics argue that German society still perpetuates the myth of the “strong man,” which posits that men “are more aggressive and have

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274. Charu Gupta, *Politics of Gender: Women in Nazi Germany*, 26 ECON. & POL. WKLY. WS-40, W-40 (1991).

275. *Id.*

276. Leila J. Rupp, *Mother of the “Volk”: The Image of Women in Nazi Ideology*, 3 SIGNS 362, 371 (Winter 1977).

277. Birthe Kundrus, *Forbidden Company: Romantic Relationships between Germans and Foreigners, 1939 to 1945*, 11 J. HIST. SEXUALITY 201, 213 (January-April 2002).

278. Kulawik, *supra* note 274, at 70.

279. Myra Marx Ferree, *The Rise and Fall of “Mommy Politics”: Feminism and Unification in (East) Germany*, 19 FEMINIST STUD. 89, 92 (1993).

280. *Id.* at 95; Katrin Sieg, *Sex, Subjectivity, and Socialism: Feminist Discourses in East Germany*, 22 GENDERS 105 (1995).

281. Ferree, *supra* note 280, at 110.

282. *Id.* at 95; Sieg, *supra* note 281, at 105.

uncontrollable sexual desires, while women's desires are secondary to men's or not even considered at all."<sup>283</sup> German culture, potentially bolstered by male-dominated businesses, still regards verbal sexual harassment as overblown and "there is still a widespread view that those who report it are 'weak' or 'over-sensitive.'"<sup>284</sup>

Germany's belated modernization of its sex crime laws also shows how German culture minimizes the harms of those crimes to women. For example, marital rape was not criminalized until 1997, making Germany one of the last European countries to do so.<sup>285</sup> Similarly, as noted above, it was not until 2016 and the New Year's Eve attacks that rape laws changed from requiring threat or force to focusing on lack of consent.<sup>286</sup>

Another cultural factor that contributes to Germany's low reporting rate for sexual assault and harassment is what some have called Germany's "cartel of silence" that protects assailants and deters women from reporting their abuse.<sup>287</sup> Survivors of workplace sexual harassment fear repercussions in Germany's male-dominated businesses.<sup>288</sup> In addition, because discussing sexual assault or harassment is considered a social taboo in Germany,<sup>289</sup> survivors must overcome many barriers to be heard, which Germany's multiple #MeToo movements may help to address.

### 3. #MeToo in Germany - #aufschrei and #MeToo

As in Finland, Germany had its own earlier #MeToo movements. The first movement took place in 2013, when #aufschrei ("yelp" or "outcry") went viral in response to a news article written by reporter Laura Himmelreich.<sup>290</sup> Himmelreich wrote about an interview she conducted with politician Rainer Brüderle, a leading member of the Free Democratic

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283. Miriam Mona Müller, *#MeToo's Echo in Germany: Has German Society Finally Overcome the Power of Silence?*, FUTURELAB EURO: EQUAL OPPORTUNITIES (Mar. 8, 2018), <https://futurelabeurope.eu/2018/03/08/metoos-echo-in-germany-has-german-society-finally-overcome-the-power-of-silence/>.

284. Sullivan, *supra* note 269.

285. *Germany Rape Law: 'No Means No' Law Passed*, BBC NEWS (July 7, 2016), <https://www.bbc.com/news/world-europe-36726095>.

286. *Id.*

287. Müller, *supra* note 284.

288. *Sexual Harassment on the Rise in German Workplace: Study*, DEUTSCHE WELLE (Oct. 25, 2019), <https://www.dw.com/en/sexual-harassment-on-the-rise-in-german-workplace-study/a-50979194>.

289. Müller, *supra* note 284.

290. *Id.*; Severin Weiland, *Journalist Accuses Politician of Inappropriate Advances*, DER SPIEGEL: INT'L (Jan. 24, 2013, 12:31 PM), <https://www.spiegel.de/international/germany/leading-german-politicians-accused-of-inappropriate-advances-a-879417.html>.



Party, and included inappropriate comments he made about her figure to her while she was interviewing him.<sup>291</sup> In response to that story, feminist activist Anne Wizorek started the “aufschrei” hashtag, which generated 49,000 tweets in three days and later won the Grimme Online Award for online journalism.<sup>292</sup> It was the first time in Germany that a hashtag went so viral that it made it into mainstream media.<sup>293</sup> As a result of the Twitter movement, other female journalists told similar stories of their interactions with male politicians.<sup>294</sup> Brüderle and his party ultimately lost in the next election.<sup>295</sup>

However, after this initial wave of publicity, #aufschrei faded from public discourse,<sup>296</sup> and the topic lost steam until the 2015 New Year’s Eve scandal that also rocked Finland. On December 31, 2015, there were over 1200 incident reports across Germany, and over 500 reports of sexual assault, mostly committed by Middle Eastern or North African men.<sup>297</sup> But the takeaway from that night was not about sexism, it was about protecting women from foreigners and refugees.<sup>298</sup> In response to that distortion of the night’s events, the hashtag #ausnahmslos was born.<sup>299</sup> Meaning

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291. Weiland, *supra* note 291.

292. See Hannah Beitzer, *An Action that Trolls Despair Of*, SÜDDEUTSCHE ZEITUNG (SOUTH GER. NEWSPAPER) (June 22, 2013, 4:55 PM), <https://www.sueddeutsche.de/leben/grimme-online-award-fuer-aufschrei-eine-aktion-an-der-trolle-verzweifeln-1.1703155>; see also *Hashtag Outcry Leads to Twitter Record*, DER SPIEGEL: NETWORK WORLD (Feb. 8, 2013, 12:14 PM), <https://www.spiegel.de/netzwelt/web/aufschrei-fuehrt-zu-twitter-rekord-a-882207.html>. The Grimme Online award “honors outstanding contributions that demonstrate how the Internet or apps are used for current forms of online journalism and the provision of information, for in-depth analyzes and reports, but also for journalistic criticism.” See *About the PricePrize*, GRIMME ONLINE AWARD, <https://www.grimme-online-award.de/ueber-den-preis/informationen/> (last accessed Aug. 30, 2020).

293. Beitzer, *supra* note 293.

294. Weiland, *supra* note 291.

295. *Five Years After the Hashtag Outcry in Germany*, RHEINISCHE POST ONLINE (Jan. 23, 2018, 5:02 AM), [https://rp-online.de/panorama/deutschland/fuenf-jahre-nach-dem-aufschrei-ueber-sexismus-in-deutschland\\_aid-17550419](https://rp-online.de/panorama/deutschland/fuenf-jahre-nach-dem-aufschrei-ueber-sexismus-in-deutschland_aid-17550419)

296. Julia Hoffman, *#MeToo in Germany: The Hashtag Campaign in the Issue-Attention Cycle* (Sept. 18, 2018) (unpublished M.A. thesis, Malmo University) (on file at <https://muep.mau.se/bitstream/handle/2043/26503/Final%20Master%20Thesis%20Julia%20Hoffmann.pdf?sequence=1&isAllowed=y>).

297. Michelle Fitzpatrick, *How Cologne Sexual Assaults ‘Changed German Mood Completely’*, LOCAL (Dec. 15, 2016, 10:01 AM), <https://www.thelocal.de/20161215/year-after-cologne-sex-assaults-germany-frets-over-integration>.

298. *Id.*

299. Hoffman, *supra* note 297, at 7.

“without exception,” #ausnahmslos was, like the Finnish hashtag, created by activists (including Wizorek)<sup>300</sup> to combat the misperceptions circulating after the sexual harassment and rape incidents that took place in multiple German cities on New Year’s Eve in 2015.<sup>301</sup> The purpose of the hashtag was to decouple sexual offenses from immigration criticisms and to highlight that these offenses take place throughout German society.<sup>302</sup>

Another major incident, which launched the hashtag #neinheißtnein (“no means no”) occurred in 2016 when German model Gina-Lisa Lohfink accused two men of rape.<sup>303</sup> The act was captured on film and showed Lohfink saying “no” but due to the lack of force or coercion captured on film the two men were acquitted and Lohfink was fined for making a false claim of rape.<sup>304</sup> As a result of these two verdicts, #neinheißtnein went viral, eventually leading to calls for legal changes in Parliament.<sup>305</sup> In response, Germany changed some of its sexual assault and harassment laws in June 2017 to make it easier to bring rape charges and criminalizing “groping.”<sup>306</sup>

When #MeToo itself came to Germany, there were more tangible effects: in an article in *Die Zeit*, German director Dieter Wedel was accused by several women of rape or pressuring them to have sex with him.<sup>307</sup> The first reports about these allegations were tinged with skepticism and victim-blaming but, as more reports came in, the public’s opinion changed.<sup>308</sup> It later came out that the state-funded television channel Saarländischer Rundfunk was aware of accusations as far back as the 1980s but continued to work with Wedel.<sup>309</sup> Wedel, although he denied the allegations, resigned his position with the Bad Hersfeld Festival.<sup>310</sup>

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300. Müller, *supra* note 284.

301. Sophia Schirmer & Katharina Holter, *Women Protest: What Happened in Cologne is Not a Problem for Foreigners*, BENTO (Jan. 11, 2016, 6:45 PM), <https://www.bento.de/politik/ausnahmslos-protestkampagne-gegen-sexualisierte-gewalt-und-rassismus-a-00000000-0003-0001-0000-000000253226>.

302. *Id.*

303. See Hoffman, *supra* note 297, at 7; see also *Gina-Lisa Lohfink: German Model Fined for False Rape Claim*, BBC NEWS (Aug. 22, 2016), <https://www.bbc.com/news/world-europe-37158471>.

304. *German Model Fined for False Rape Claim*, *supra* note 304.

305. *Id.*; Hoffman, *supra* note 297, at 7.

306. Hauteville, *supra* note 265.

307. *#MeToo Moment Hits Germany with TV Director Abuse Scandal*, GLOBE POST (Jan. 26, 2018), <https://theglobepost.com/2018/01/26/germany-wedel-scandal/>.

308. *Id.*

309. *Id.*

310. *Dieter Wedel Steps Down as Artistic Director in Bad Hersfeld*, DER SPIEGEL: CULTURE (Jan. 22, 2018, 9:06 PM), <https://www.spiegel.de/kultur/gesellschaft/dieter->

Other actors, such as Nina Brandhoff, talked about issues of sexual harassment and assault in the entertainment industry, but did not name any names and, as such, it is impossible to know if these actors' words had an impact.<sup>311</sup> Similarly, it does not appear that there have been any legal or political changes, at least as a result of the more recent #MeToo movement. However, there seems to be more public awareness of sexual harassment and a greater willingness to report it since #MeToo. In 2018, the Federal Anti-Discrimination Agency reported 193 complaints of workplace sexual harassment in that year alone, which is almost half the amount it received in the prior eleven years combined.<sup>312</sup> The Agency credits an increase of awareness of the problem of sexual harassment, brought about by media coverage of the #MeToo movement for this improvement.<sup>313</sup>

#### 4. *Resistance and Backlash*

Yet, despite these gains, Germany's many #MeToo movements have been consistently met with resistance and backlash. For example, German President Joachim Gauck described the #aufschrei movement as "Tugendfurore" ("virtue frenzy").<sup>314</sup> Similarly, conservative author Birgit Kelle responded to #aufschrei by writing the anti-feminist book *Dann mach doch die Bluse zu* ("Then better fasten up your blouse").<sup>315</sup> Her book won an award from a right-wing weekly newspaper *Junge Freiheit* ("young freedom") in cooperation with the Foundation for Conservative Education and Research.<sup>316</sup> In contrast, feminist activist Wizorek, who started both #aufschrei and #ausnahmslos, and her colleagues were "bullied, insulted and threatened."<sup>317</sup> Moreover, at the height of #MeToo, conservative politicians objected to a proposed European Parliament requirement that

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wedel-tritt-als-intendant-der-bad-hersfelder-festspiele-zurueck-a-1189207.html.

311. Hauteville, *supra* note 265.

312. See Pascual, *supra* note 272; see also FEDERAL REPUBLIC OF GERMANY, FEDERAL ANTI-DISCRIMINATION AGENCY, Annual Report – 2018, [https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Jahresberichte/2018\\_englisch/blob=publicationFile&v=3](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Jahresberichte/2018_englisch/blob=publicationFile&v=3) at 43. pdf?

313. EQUAL RIGHTS, *supra* note 268.

314. Wiebke Eilermann, *Constructing #MeToo* (June 21, 2018) (unpublished M.A. thesis, Malmo University) (on file at <http://muep.mau.se/bitstream/handle/2043/25795/Thesis%20Wiebke%20Eilermann%20MUEP.pdf?sequence=1&isAllowed=y>).

315. Eilermann, *supra* note 315.

316. *Id.*; Birgit Kelle and Karl Feldmeyer Receive the Gerhard Lowenthal Prize, JUNGE FREIHEIT (YOUNG FREEDOM) (Nov. 23, 2013), <https://jungefreiheit.de/kultur/2013/birgit-kelle-und-karl-feldmeyer-erhalten-gerhard-loewenthal-preis/>.

317. Kamper, *supra* note 315.

members sign a code of conduct and engage in yearly sexually harassment training, calling the measures unnecessary.<sup>318</sup>

Media articles that examined the #MeToo movement in Germany used different angles depending on whether the publication was liberal or conservative.<sup>319</sup> Liberal media outlets reported favorably while conservative outlets used similar tropes seen in the United States – questioning the veracity of the reporters or claiming the movement was going “too far.”<sup>320</sup> For example, the three actresses (two of whom chose to be anonymous) who first accused Wedel of rape and attempted rape were criticized for “seeking attention” by taking advantage of the #MeToo movement’s increased publicity, even though (or perhaps because) they had been silent about the alleged assaults for decades.<sup>321</sup>

Indeed, when the accusations against Wedel were first published, the German press gave it limited coverage or focused their stories on the credibility of the accusers.<sup>322</sup> The media quickly drew parallels to a 2010 case where a Swiss weatherman was accused of assault by multiple women, spent some time in jail while their claims were being investigated, and was later released because the chief complainant’s injuries appeared to be self-inflicted.<sup>323</sup> Wedel was also quickly defended by his wife and former lovers as a kind man whose attention was sought by women, which meant he had no need to harass or assault anyone.<sup>324</sup> It was not until more accusations and details were reported that the German press began to openly criticize Wedel.<sup>325</sup>

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318. Maia De La Baume & Philip Kaleta, *German Conservatives Resist #MeToo Measure in European Parliament*, POLITICO (Jan. 29, 2019, 7:20 PM), <https://www.politico.eu/article/german-conservatives-resist-metoo-european-parliament-measure/>. The prevalence of sexual harassment at the European Parliament is captured in heartbreaking detail by *Testimonies of Survivors of Sexual Violence*, METOOEP, <https://metooep.com/> (last updated June 25, 2019), a website that allows current and former EP employees to submit their stories of abuse and harassment.

319. Eilermann, *supra* note 315, at 43-44.

320. *Id.*

321. Pascual, *supra* note 272; *#MeToo Moment Hits Germany with TV Director Abuse Scandal*, *supra* note 309.

322. *See id.* The newspaper that broke the story was also extremely conservative in its reporting. It very thoroughly fact-checked the accusations of several women for fear of the “hysteria” that it saw as being part of the #MeToo movement. *See* Jorg Luyken, *#MeToo Has Arrived in Germany. Here’s Why It’s So Controversial*, LOCAL (Jan. 16, 2018, 2:27 PM), <https://www.thelocal.de/20180116/metoo-has-arrived-in-germany-heres-why-its-so-controversial>.

323. Luyken, *supra* note 323.

324. Müller, *supra* note 283.

325. *#MeToo:TV Channel Accused of Covering Up Sexual Abuse Allegations Against Director*, LOCAL (Jan. 26, 2018, 2:30 PM),

The veracity of Wedel's accusers was not the only thing the press attacked. One reporter argued that about 50% of all rape claims are false, despite official data showing that false claims make up about 4%.<sup>326</sup> The Bild newspaper was also criticized for publishing a story about a crime that could not be prosecuted due to the statute of limitations.<sup>327</sup> Others decried the loss of the "presumption of innocence" and accused the #MeToo movement itself for targeting men who were perceived as womanizers.<sup>328</sup> Moreover, in contrast to the earlier hashtag movements, Germany appears to have had a heightened resistance to #MeToo itself, which may be due to its American origins. There is a trend in Germany to reject cultural trends that originate in the United States, particularly after Trump's election, which may have made Germany less likely to embrace #MeToo.<sup>329</sup>

As a result of German resistance and backlash, these #MeToo movements, after having an initial impact, have weakened over time, sometimes deliberately. For example, #aufschrei quickly expanded from descriptions of sexual harassment to include pregnancy discrimination and workplace microaggressions, whether gender-based or not.<sup>330</sup> The hashtag was later diluted to mean general indignation and was warped by detractors to "denounce the alleged indifference to crimes committed by foreigners."<sup>331</sup> Reporting on sexual harassment after New Year's Eve in 2015 was repeatedly merged with concerns of immigration,<sup>332</sup> and those

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<https://www.thelocal.de/20180126/metoo-moment-hits-germany-with-tv-director-abuse-scandal>.

326. Luyken, *supra* note 323.

327. *#MeToo Moment Hits Germany with TV Director Abuse Scandal*, *supra* note 308.

328. See Luyken, *supra* note 323. Wedel, for example has had several relationships with women and has fathered six children from six different women. See *id.*

329. Erik Kirschbaum, *Germany Had Seemed Immune to the #MeToo Movement. Then a Prominent Director was Accused*, L.A. TIMES (Jan. 31, 2018, 9:10 AM), <https://www.latimes.com/world/europe/la-fg-germany-sexual-harassment-20180130-story.html>.

330. Melissa Eddy & Chris Cottrell, *German Politician's Remark Stirs Outcry Over Sexism*, N.Y. TIMES (Jan. 28, 2013), <https://www.nytimes.com/2013/01/29/world/europe/29iht-germany29.html>.

331. Uta Steinwehr, *Sexism: The Outcry Remains*, DEUTSCHE WELLE (Jan. 23, 2018), <https://www.dw.com/de/sexismus-der-aufschrei-bleibt/a-42278374>.

332. A google search for "Germany sexual assault" links to multiple articles talking about New Year's Eve and immigration. See *Germany sexual assault*, GOOGLE, <https://www.google.com/search?q=76ikiped+sexual+assault&oeq=76ikiped+sexual+assault&aqs=chrome..69i57j0l4j69i60l3.7090j0j4&sourceid=chrome&ie=UTF-8> (last visited October 11, 2020). Even Germany's Wikipedia page has a separate entry for sexual assault and immigration. See *2015–16 New Year's Eve's*

concerns made their way into the very solutions activists were striving for. For example, Germany's new "groping" law includes a provision making it easier to deport non-Germans who have been convicted of a sex offense, thereby inextricably linking sexual harassment and immigration.<sup>333</sup>

Similarly, later #MeToo movements, like the earlier hashtags, were tainted by concerns of immigration. Resistance to the combination of sex-based crimes and immigration culminated in the "#metwo" movement where immigrants in Germany recount tales of everyday racism.<sup>334</sup> As with the various #MeToo movements discussed here, the #metwo movement began in response to a specific event: Mesut Özil's resignation from the German national soccer team due to the racist treatment he received from Reinhard Grindel, the President of the German Soccer Federation.<sup>335</sup>

The conflation of sexual crimes and immigration ignores the realities of sexual assault; immigrants and people of color are more likely to be survivors of sexual assault than perpetrators. In addition, Germany's culture of silence persists, leading to misconceptions about the prevalence of sexual assault and harassment as well as what rights women have in combatting these acts.

### C. Portugal

Like Finland and Germany, Portugal is also a nation of contradictions when it comes to gender equality. While women make up 42.3% of Portugal's labor force, only 6.2 % of women are in leadership roles at the country's 500 biggest companies.<sup>336</sup> However, their Parliament does have gender quotas, which has helped gender equality in government.<sup>337</sup>

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*Eve sexual assaults in Germany*, WIKIPEDIA, [https://en.wikipedia.org/wiki/2015%E2%80%932016\\_New\\_Year%27s\\_Eve\\_sexual\\_assaults\\_in\\_Germany#:~:text=In%20July%202016%2C%20the%20Bundeskriminalamt,Eve%2C%20among%20them%2022%20rapes](https://en.wikipedia.org/wiki/2015%E2%80%932016_New_Year%27s_Eve_sexual_assaults_in_Germany#:~:text=In%20July%202016%2C%20the%20Bundeskriminalamt,Eve%2C%20among%20them%2022%20rapes).

333. Waters, *supra* note 251.

334. Elizabeth Schumacher, *#MeTwo: Germany Shares Stories of Everyday Racism*, DEUTSCHE WELLE (July 26, 2018), <https://www.dw.com/en/metwo-germany-shares-stories-of-everyday-racism/a-44841447>.

335. *See id*; *see also* Jefferson Chase & Louisa Wright, *Mesut Özil Affair: Politicians Slam German FA Over Racism Accusation*, DEUTSCHE WELLE (July 23, 2018), <https://www.dw.com/en/mesut-%C3%B6zil-affair-politicians-slam-german-fa-over-racism-accusation/a-44782672>.

336. Marina Watson Peláez, *Portugal Bans the Verbal Harassment of Women*, EQUAL TIMES (Feb. 19, 2016), <https://www.equaltimes.org/portugal-bans-the-verbal#.XOAINcoviOY>.

337. *Gender Quotas Database – Portugal*, INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, <https://www.idea.int/data-tools/data/gender-quotas/country-view/247/35> (last updated May 19, 2020).

Portugal also suffers from high rates of sexual violence.

### 1. *Sexual Violence and Sexual Harassment Prevalence and Laws*

Sexual violence is prevalent in Portugal; according to a study conducted by the Women Against Violence Europe network, “38 per cent of women in Portugal over the age of 18 have experienced physical, psychological and/or sexual violence.”<sup>338</sup> Moreover, a 2014 study found that 93% of Portuguese women surveyed believe that “violence against women is either very common or fairly common in her country.”<sup>339</sup>

In contrast, sexual assault prosecutions in Portugal are extremely low – only 8% of reported rapes are seen through to conviction.<sup>340</sup> It is also a cultural taboo to discuss rape and sexual violence<sup>341</sup> and, perhaps because of this lack of information, recent empirical studies have found high rates of acceptance of rape myths in both university student<sup>342</sup> and police officer<sup>343</sup> populations. Other research has shown that rape myths are rampant throughout the Portuguese judicial system and society.<sup>344</sup> Women are often assumed to be responsible for their own rapes, or to be lying about being raped.<sup>345</sup> Women also internalize these societal beliefs, which makes them less likely to come forward. Indeed, one researcher has noted that Portuguese women are taught that they must satisfy their partner’s sexual desires no matter what their own desires are, leading them to normalize spousal rape.<sup>346</sup> Perhaps this belief is the reason that spousal

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338. Peláez, *supra* note 337.

339. *Violence Against Women: An EU-wide Survey*, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS 1, 152 (2014), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf).

340. Fiona Gartland, *Just 8% of Reported Rapes Result in Convictions*, IRISH TIMES (Apr. 30, 2009), <https://www.irishtimes.com/news/just-8-of-reported-rapes-result-in-convictions-1.756237>.

341. Maria Clara Ferrão, et al., *Rape-Victim Empathy Scale (REMV): An Exploratory Study in a Portuguese Sample*, 6 PSYCHOL. THOUGHT 283, 290 (2013).

342. Henrique Pereira & Mariana Ornelas Graça, *Date Rape: Prevalence and Attitudes Among Portuguese University Students*, 4 J. OF PSYCHOL. & PSYCHOTHERAPY 161, 161 (2014).

343. Marisalva Fávero, et al., *Rape Myth Acceptance of Police Officers in Portugal*, J. OF INTERPERSONAL VIOLENCE 1, 1 (2020).

344. Vítor Boaventura, *Portugal – Rape is the Violent Crime that has Increased the Most*, GUILHOTINA (Oct. 24, 2018), <https://guilhotina.info/en/2018/10/24/portugal-rape-violent-crime-increase/>.

345. *Id.*

346. *Id.*

rape was not criminalized until 1982.<sup>347</sup>

Moreover, Portugal has allocated scant resources to assist survivors of sexual violence. As of 2018, Portugal had only two centers dedicated to survivor assistance in the entire country.<sup>348</sup> Similarly, delays in prosecuting rapes mean that the evidence production phase can last years, and one study showed that 44% of survivors give up on their cases while that phase is ongoing, possibly due to how they have been treated by the criminal justice system.<sup>349</sup>

In 2015, Portugal's laws regarding rape were amended to add a definition of rape that includes situations where the perpetrator "constrains" his survivor to engage in sexual activity.<sup>350</sup> However, judges still habitually consider whether the survivor resisted, despite there being no legal requirement for resistance.<sup>351</sup> Judges also still consider whether there was force when sentencing defendants.<sup>352</sup> Perhaps it is not surprising, then, that according to a 2019 study, only 37% of people convicted of a crime involving sexual violence were sent to prison.<sup>353</sup> That same year, a rape case was made famous when a judge gave a suspended sentence to four men who raped an unconscious woman at a bar due to the bar's atmosphere of "mutual seduction."<sup>354</sup> The sentence was well-publicized and led to protests against the "machismo" judiciary.<sup>355</sup> In 2019, the laws were finally changed so that rape is solely defined by a lack of consent.<sup>356</sup>

As with sexual violence, workplace sexual harassment is prevalent in Portugal despite existing (and recently reformed) laws. The Portuguese Labor Code defines harassment as "unwanted behavior, namely based on a discriminatory factor, which occurs while applying to work or in the

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347. Mariana Azambuja, et al., *Gender Violence in Portugal: Discourses, Knowledge and Practices*, 20 INDIAN J. GENDER STUD., 31, 36 (2013).

348. Boaventura, *supra* note 345.

349. *Id.*

350. Isabel Ventura, "They Never Talk About a Victim's Feelings: According to Criminal Law, Feelings are Not Facts: - Portuguese Judicial Narratives About Sex Crimes," PALGRAVE COMMUN. 1, 8 (2016).

351. *Id.* at 4.

352. *Id.*

353. Helen Battaglini, *Portugal Finally Expands the Legal Definition of Rape*, AMICUS CURIAE (Feb. 21, 2019), <https://info.amicus-curiae.net/europe/portugal-finally-expands-the-legal-definition-of-rape/>.

354. Amy Chung, *Protesters Rally Against 'Machismo' Court System in Porto*, EURO NEWS, <https://www.euronews.com/2018/09/27/protesters-rally-against-machismo-court-system-in-porto> (last updated Sept. 27, 2018).

355. *Id.*

356. Battaglini, *supra* note 354.



workplace, during work or professional training, with the intent or result of disturbing or embarrassing a person, offending a person or creating an intimidating, hostile, degrading, humiliating or disturbing atmosphere.” Workplace harassment is similarly defined under the Portuguese Labor Code as an “unwanted behavior, namely based on a discriminatory factor, which occurs while applying to work or in the workplace, during work or professional training, with the intent or result of disturbing or embarrassing a person, offending a person or creating an intimidating, hostile, degrading, humiliating or disturbing atmosphere.”<sup>357</sup>

Despite these laws, a 2015 survey revealed that 14.4% of women in Portugal have suffered sexual harassment at work, compared to the two percent average for the European Union generally.<sup>358</sup> In 2017, new laws were enacted by the Portuguese Parliament to curtail workplace harassment. In part, these laws placed new obligations on employers to adopt workplace harassment policies and “instigate disciplinary proceedings when the employer is aware of harassment at work.”<sup>359</sup> Survivors were also given the right to receive compensation. Despite these improvements, critics say there is still much more that needs to be done, including creating harsher penalties for harassers and switching the burden of proof so that accusers are assumed to be truthful.<sup>360</sup>

Still, there have been some cultural improvements in relation to workplace harassment. Compared to a 1989 survey, women in 2015 were more willing to call what they experienced sexual harassment and were more willing to object when it happened.<sup>361</sup> For example, in 1989, only about one third of women identified lewd comments about their appearance as harassment, but that figure had risen to two thirds by 2015.<sup>362</sup> Similarly, although almost half of women in 1989 chose to pretend the harassment was not happening, only 22% ignored it in 2015, and over half of women chose to show their annoyance to their harasser.<sup>363</sup>

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357. Rui Vaz Pereira & Roger James, *New Obligations on Employers to Ensure the Prevention of Harassment*, OGLETREE DEAKINS (Feb. 26, 2018), <https://ogletree.com/international-employment-update/articles/march-2018/portugal/2018-02-26/new-obligations-on-employers-to-ensure-the-prevention-of-harassment/>.

358. Analia Torres, et al., *Sexual Harassment and Bullying in the Workplace in Portugal*, INTERDISC. CTR. FOR GENDER STUD. 1, 6-7 (February 2016).

359. Pereira & James, *supra* note 358.

360. *Sexual Harassment on the Streets of Portugal*, EURONEWS, <https://www.euronews.com/2016/07/29/sexual-harassment-on-the-streets-of-portugal> (last updated July 29, 2016).

361. Torres, et al., *supra* note 359, at 7, 10.

362. *Id.* at 7.

363. *Id.* at 10.

In 2015, the government passed Article 170 of the Portuguese Penal Code, which criminalizes physical and verbal sexual abuse with a jail sentence of up to one year, a fine, or community service.<sup>364</sup> This law imposes a penalty of up to 120 Euros for anyone who “harasses another person, practising before her acts exhibitionist in character, formulating proposals of a sexual tenor or embarrassing her with contact of a sexual nature.”<sup>365</sup> However, this law is quite limited in scope. If the harassment does not involve “contact of a sexual nature” and includes only verbal statements, those statements must propose engaging in sexual activity, which is a very narrow definition of verbal sexual harassment.<sup>366</sup> The law’s utility has also been severely undermined in the media. Even before it was enacted into law, it was heavily criticized on social media<sup>367</sup> and misconstrued by the popular media as referring only to “vulgar” flirtatious comments.<sup>368</sup> Today, many women remain unaware of the law’s existence.<sup>369</sup>

Moreover, despite legal improvements, Portuguese women still show a strong reticence to report their harassment; only about 5% of women who have experienced sexual harassment talk about it with a lawyer or institution, such as a union or government agency.<sup>370</sup> The main reason for not reporting was a “fear of negative professional consequences.”<sup>371</sup> Portugal’s patriarchal culture and history are largely to blame for these fears.

## 2. *History and Culture*

Feminism has had a rocky history in Portugal. Although feminists “were very involved with the establishment of the Republic in 1910,” in the fascist regime that took over under the leadership of António de Oliveira Salazar, “feminism was banished from public attention.”<sup>372</sup> Salazar’s regime, also called Estado Novo, emphasized women’s essential role as mothers and effectively relegated them to the home by removing several of

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364. Peláez, *supra* note 337.

365. *Id.*

366. *Id.*

367. Rita Basílio Simões & Maria João Silveirinha *Framing Street Harassment: Legal Developments and Popular Misogyny in Social Media*, FEMINIST MEDIA STUDIES 1, 10 (2019).

368. *Sexual Harassment on the Streets of Portugal*, *supra* note 361.

369. *Id.*

370. Torres, et al., *supra* note 359, at 17-18.

371. *Id.* at 17.

372. Azambuja, et al., *supra* note 348, at 32.

their rights.<sup>373</sup> In the Estado Novo, women were barred from certain professions and were largely unable to vote, have their own bank accounts, passports, or go abroad without their husband or father's permission.<sup>374</sup>

The government, inspired by the historical practices of the Catholic Church,<sup>375</sup> emphasized women and men's "natural" differences (and women's inherent inferiority) and used these differences to justify socially isolating women inside their own "humble but happy" homes.<sup>376</sup> Under Salazar's watchful eye, all Portuguese people were required to show self-discipline and suppress any expression of passion, replacing it with a strong work and spending ethic.<sup>377</sup> In their role as mothers, women were expected to educate their families and ensure the economic welfare of their homes, and, in so doing, ensure the economic welfare of the entire nation.<sup>378</sup>

In addition to political and economic control, the Estado Novo closely supervised women's "bodies and sexual morals."<sup>379</sup> Women were tasked with policing the morals of their own families and were held responsible for their family's behavior, if not their "very thoughts and desires."<sup>380</sup> Women were held up as naturally predisposed to these tasks on a biological, spiritual, and emotional level.<sup>381</sup> Of course, family included a woman's husband and, as the guardian of moral values, women were expected to "ensure her husband's peace of mind and maintain harmony within the family group."<sup>382</sup>

When the Estado Novo came to an end with the Carnation Revolution of 1974, feminists were again part of the movement.<sup>383</sup> After the revolution, the nation democratized and restored many rights to women.<sup>384</sup> Yet, despite these changes, Portugal remains a largely patriarchal nation. As one commentator has noted, the Portuguese people have historically relied

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373. *Id.* at 33.

374. *Id.* at 34.

375. José Carvalho & Maria Silveirinha, *Acting on the Body of the Audience*, 15 FEMINIST MEDIA STUD. 747, 750 (2015).

376. Ana Paula Ferreira, *Home Bound: The Construct of Femininity in the Estado Novo*, 12 PORT. STUD. 133, 134-35 (1996).

377. *Id.* at 135.

378. *Id.*

379. Carvalho & Silveirinha, *supra* note 376, at 750.

380. Ferreira, *supra* note 377, at 135.

381. *Id.* at 142.

382. Carvalho & Silveirinha, *supra* note 376, at 750.

383. Marianne Grünell & Erna Kas, *Modernization and Emancipation from Above: Women's Studies in Portugal*, 2 EUR. J. WOMEN'S STUD. 535, 536 (1995).

384. Azambuja et al., *supra* note 348, at 31, 34.

upon strong male leaders such as King Sebastian and Salazar.<sup>385</sup> Portugal's "conservative tradition" and the continuing influence of the Catholic Church have perpetuated gender disparities even into the modern era.<sup>386</sup> Even with advances in terms of economic and political opportunities, Portuguese women do not experience equality in their most intimate relationships.<sup>387</sup>

In Portugal today, gender stereotypes persist with women being relegated to the domestic sphere.<sup>388</sup> In addition, sexual harassment is often confused in the popular media with the concept of "seduction" or flirting, with women commonly being portrayed as objects of desire.<sup>389</sup> According to one activist, "sexism is ingrained in our culture," so that verbal sexual harassment is perceived by both men and women, as well as large segments of the media, as "piropos" or "compliments."<sup>390</sup> Indeed, street harassment is so prevalent in Portugal that women perceive it as "almost normal"<sup>391</sup> or an important part of men and women's sexuality.<sup>392</sup> For many, sexual harassment and violence are seen as peripheral issues,<sup>393</sup> which is born out in the allocation of government resources. For example, initiatives to improve women's standing are the first to be shelved in the face of economic crisis.<sup>394</sup>

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385. See Grünell & Kas, *supra* note 384, at 540. King Sebastian is an interesting character. He ruled at the end of the 16<sup>th</sup> Century, went on a Crusade in Morocco and never returned and yet, the Portuguese people waited for him for centuries, hoping that his return would bring Portugal out of the decline that it experienced after his death. See *id.* Another leader, the Prince Regent, Dom João, moved his entire court to Brazil in 1807 to avoid being attacked by Napoleon and refused to return until 1821. Even then, his son, Dom Pedro, never returned to Portugal, declared Brazil an independent nation, and named himself its emperor. See Debora Gerstenberger, *Europe in the Tropics? The Transfer of the Portuguese Royal Court to Brazil (1807/08) and the Adaptation of European Ideals in the New Imperial Capital* 25 COMPARATIV 32, 33, 37-38 (2015). Waiting for a male leader to return is apparently a recurring theme in Portuguese history.

386. Azambuja, et al., *supra* note 348, at 37.

387. *Id.*

388. Francisco Costa Pereira, et al., *Gender Stereotyping, Sex and Violence in Portuguese and Spanish Advertisement*, 23 COMUNICACÃO E SOCIEDADE (COMM. & SOC'Y) 274, 277 (2013).

389. See *id.* at 276; see also Peláez, *supra* note 337; see also *Sexual Harassment on the Streets of Portugal*, *supra* note 369.

390. Peláez, *supra* note 337.

391. *Id.*

392. Simões & Silveirinha, *supra* note 368, at 12.

393. *Id.*

394. Ana Cristina Santos & Maria do Mar Pereira, *The Policy on Gender Equality in Portugal*, EUR. PARLIAMENT FOR INTERNAL POLICIES 1, 14 (2013).

Culturally-imposed gender roles are apparent even in the younger generations, where rape myths and double standards persist.<sup>395</sup> Girls are seen as having no sexual desires compared to boys, who cannot control their urges.<sup>396</sup> Due to these perceived differences, boys believe that it is a girl's responsibility and burden to keep her "sexual reputation intact."<sup>397</sup> For that reason, girls commonly report that their male partners pressure them to have sex, which can take the form of emotional blackmail or even physical coercion.<sup>398</sup> This behavior is considered "normal" and is not commonly discussed.<sup>399</sup>

### 3. #MeToo in Portugal

Despite the apparent need for it, the #MeToo movement did not originally have much traction in Portugal. The hashtag was never translated into a Portuguese equivalent, and #MeToo was seen by most people as an American movement that centered around the United States' entertainment industry.<sup>400</sup> A few Portuguese celebrities talked about experiencing harassment but generally did not name names and, unlike in the United States, there was no snowballing effect of other women coming forward with their stories.<sup>401</sup> This resistance is not surprising considering the fact that men opposed earlier legal reforms, like the creation of a law against (some forms of) verbal sexual harassment, arguing that the law offended their freedom of speech and unfairly forced them into silence when they were merely attempting to give compliments.<sup>402</sup>

For Portugal, the real watershed moment in its #MeToo movement was

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395. Sofia A. Santos, et al., *Sex Education and the Views of Young People on Gender and Sexuality in Portuguese Schools*, 35 *EDUCAÇÃO, SOCIEDADE & CULTURAS* (EDUC., SOC'Y & CULTURE) 29, 38 (2012).

396. *Id.*

397. *Id.* at 39.

398. *Id.* at 40.

399. *Id.*

400. Julia Garraio, et al., *The Unimaginable Rapist and the Backlash Against #MeToo in Portugal*, *EUROPENOW* (Mar. 10, 2020), <https://www.europenowjournal.org/2020/03/09/the-unimaginable-rapist-and-the-backlash-against-metoo-in-portugal/>.

401. See Carla Macedo, *Catarina Furtado Reveals: I Was Harassed*, *DELAS* (Feb. 2, 2018), <https://www.delas.pt/catarina-furtado-revela-fui-assediada/pessoas/368360/>; see also Aline Flor, *#MeToo em Portugal? Temos "uma forma mais formiguinha" de fazer a luta* [*#MeToo in Portugal? We Have "A More Tingling Way" to Fight*], *PUBLICO* (Oct. 5, 2018, 6:27 AM), <https://www.publico.pt/2018/10/05/sociedade/noticia/metoo-em-portugal-temos-uma-forma-mais-formiguinha-de-fazer-a-luta-1846328>.

402. Peláez, *supra* note 337.

when Kathryn Mayorga accused Portuguese football (soccer) star Cristiano Ronaldo of raping her in 2009, and then having her sign a confidentiality agreement after paying her \$375,000.<sup>403</sup> Mayorga credited the #MeToo movement for her willingness to come forward and break her confidentiality agreement.<sup>404</sup> Mayorga's accusation was extensively covered in the Portuguese media and was even discussed in Parliament.<sup>405</sup> Overall, her statements were met with disbelief and a backlash against her.<sup>406</sup> Mayorga's credibility was quickly undermined with widely-circulated videos of her dancing with Ronaldo and pointed comments about the money she had received from him.<sup>407</sup>

As a result of the media coverage, this singular case completely subsumed the #MeToo debate. Instead of talking about sexual harassment and assault, the debate centered around the definition of rape and potential extortion of a famous man.<sup>408</sup> The typical criticisms of the #MeToo movement—that #MeToo encourages false claims and that it does not properly focus on “real rape”—were evident in media coverage, as was the concern that the movement was the result of puritanical American values that have no place in Portugal.<sup>409</sup> The fact that Ronaldo is a beloved footballer in a country that reveres football caused many Portuguese to support him as a point of national pride.<sup>410</sup> Moreover, Ronaldo also encompassed an ideal of masculinity and sexual prowess, which meant that, to many, he could not be a rapist.<sup>411</sup> The result was that much of the Portuguese population believed that Ronaldo was the victim that deserved their sympathy, not Mayorga. As the Ronaldo issue died down in the press, so too did the public's engagement with #MeToo.<sup>412</sup> Instead of joining in with the movement's wider aims of gender equality and believing women's

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403. Annabelle Timsit, *The MeToo Movement Inspired Cristiano Ronaldo's Accuser to Break Her NDA*, QUARTZ (Oct. 5, 2018), <https://qz.com/1413749/cristiano-ronaldos-accuser-kathryn-mayorga-says-metoo-inspired-her-to-break-her-nda/>.

404. *Id.*

405. Garraio, et al., *supra* note 401.

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. Garraio, et al., *supra* note 401.

411. *Id.*

412. *Id.*; Mayorga's case against Ronaldo will likely be decided in a confidential arbitration, despite her objections. See Michael McCann, *Cristiano Ronaldo's Rape Case Was Always Likely to End Like This*, SPORTS ILLUSTRATED (Feb. 6, 2020), <https://www.si.com/soccer/2020/02/06/cristiano-ronaldo-rape-case-kathryn-mayorga-arbitration>.

stories, #MeToo in Portugal remained an isolated and unpopular story that quickly faded.<sup>413</sup>

Even without this backlash, #MeToo had a lot to overcome considering Portugal's traditional values and emphasis on keeping intimate relationships private. The culture of silence in Portugal extends to activists who generally do not like public exposure and are reluctant to speak publicly on the issues they care about.<sup>414</sup> However, #MeToo may have helped activists begin to make modest inroads into the popular understanding of sexual assault and harassment. Activists have noted that, since #MeToo, there has been an increase in sexual harassment reports and more women are seeking help from professionals.<sup>415</sup> But still, the numbers of official harassment complaints remain extremely low, and any consequences for harassers remain a very remote possibility.<sup>416</sup>

#### IV. LESSONS FOR THE FUTURE

The comparative examination of the United States, Finland, Germany, and Portugal sheds a light on the impact #MeToo movements can have and the obstacles they face. Although much of the conduct revealed by the #MeToo movement should have been redressable using existing sexual assault and harassment laws, whether criminal or civil, it was not. The law failed women in all four countries, leading them to seek out extra-legal remedies, which had their own shortcomings.

Each of the four countries studied have different histories and cultures, but all four suffered from the same ailment: widespread sexual assault and harassment that was hidden from public discourse and a legal system that perpetuated women's silence and suffering. It was this silence that was broken to different degrees by the #MeToo movements in each country. However, the culture, history, and laws of each country also impacted how effective their #MeToo movements were. By comparing the paths each #MeToo movement has taken, this article shows how such movements can be more successful in the face of structural and cultural barriers.

The four #MeToo movements studied in this article show a few trends that can either be countered or capitalized on to ensure the movement maintains its momentum and becomes an agent of change. First, all of the #MeToo movements had to overcome women's reluctance to discuss what had happened to them. However, once enough stories started coming, they usually quickly snowballed, particularly when women shared details of

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413. Garraio, et al., *supra* note 401.

414. Flor, *supra* note 402.

415. *Id.*

416. *Id.*

their experiences that other women could identify with. Storytelling has, therefore, proven to be a powerful tool in changing people's perspectives on how prevalent sexual assault and harassment actually are, as well as who is likely to commit these acts and under what circumstances. This information is vital to overcome the rape myths that exist in every country studied.

The participation of popular media is also essential for the movement to be successful. Popular media can amplify the message of the movement beyond social media, but only if the popular media is sympathetic to the message. To that end, work must be done in those countries that are less likely to empathize with women on these issues to ensure that the popular media does not undercut the movement before it has the chance to establish itself, as it did in Portugal. Germany shows a path to overcoming media resistance: as more women came forward with details and names, the media began to believe them and present them in a sympathetic light.

These sympathetic stories are essential to counteract the inevitable backlash. Every country studied in this article showed a backlash to their #MeToo movements, no matter how small the movement was in the beginning. These backlashes take the form of resistance to change and attacking the accusers. Without a concerted effort to protect these accusers, the movement's source of information—informal reporting on social media—may dry up due to fears of persecution.

Moreover, in order to have longevity, the movement needs to do more than name perpetrators and insist on their punishment. The movement needs to transition to activism, perhaps through nonprofits dedicated to assisting survivors. This shift towards survivor representation is essential to break through criticisms that the movement is only interested in punishing men and not lifting up women. In addition, activism needs to attack the problem on multiple fronts—changing the law through bringing court cases, lobbying for legislative change, assisting with employer training, and putting pressure on employers to take action against their harassing employees. Relying solely on bringing court cases will not be sufficient because, as seen in the United States and Finland, perpetrators can use the law to their own benefit in the form of defamation lawsuits.

Although not a perfect blueprint, the impact of the #MeToo movement in the United States and the European countries studied in this article show what the movement is really up against: ingrained patriarchy that withstands efforts at reform no matter the country's history and culture. Whether it is due to the myth of the "Strong Nordic Woman," or the "Strong German Man," women around the world have been suffering in silence. #MeToo has created inroads with varying degrees of success around the world but, in order to truly create lasting change internationally,



more must be done, and the efforts made must take into account each country's unique history and culture.