

## Is there a place for continuum thinking in criminal law? On sexual harassment and criminalization

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About 40 years ago two important pieces of work were published: Liz Kelly's *Surviving Sexual Violence* (1988) and Carol Smart's *Feminism and the Power of Law* (1989). From Kelly we learned, in short, to understand sexual harassment as part of the continuum of women's experiences of sexual violence. Smart taught us, among many other things, to be aware of law's truth telling power and to be attentive to possible pitfalls in feminists' involvement with legal reform.

Now, in the aftermath of the #metoo momentum, there are good reasons to come back to Kelly and Smart's work. Through the #metoo movement, women's narratives of sexual violence became visible and demands were raised for justice, equality and freedom from sexual harassment. The heightened awareness of the problem of sexual harassment following #metoo leads us to consider this question: To what extent can/should the criminal justice system be used as a means to combat sexual harassment?

In this paper, I explore that issue by drawing on research from several fields. Firstly, I build upon research by feminist legal scholars that has shown how the criminal justice system fails to take social and economic inequalities, in specific gendered power relations, into consideration. Secondly, I use criminological research on developments in crime policy. In many Western countries, among them Sweden, crime policy has taken a punitive turn where symbolic politics is one important aspect. In relation to this, criminal law theorists have been concerned with the issue of over-criminalization and developed normative principles for limiting the scope of criminal law. A third angle is the carceral feminism debate, that is, to what extent feminism has been a part of law and order crime politics.

Against this backdrop, the aim with this paper is to engage in a discussion on the scope of criminalization regarding sexual harassment, using Swedish criminal law as an example. My focus is on what criteria should be used to decide if a violation amounts to a wrongdoing that deserves to be punished, but also on how well the specific features of criminal law (e.g. rule of law principles) correspond with a continuum view of sexual harassment.

I conclude that when discussing criminalization as a means to deal with sexual harassment, we need to pay close attention to the principles and structure of criminal law, but also to the current crime policy discourse. In that way, we can make sound decisions on whether we should rely on criminal law telling us the truth about sexual harassment.