

Opinion

BRINGING BACK THE F WORD: FEMINISM¹

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Since October 2017, we are engulfed with the topic of sexual harassment, originating from the USA. By now, almost everyone is familiar with the infamous producer, the countless actresses and the hashtags that have initiated this wave, so I shall set those aside. Where I do want to focus on are a few subjects present in the current discussions about #MeToo that, from my legal point of view, caught my attention, mostly because of their traditional or because of their innovative character.

Starting, as I deem appropriate with tradition, we can see that a collection of, in my opinion, the most important conventional views is present in the statement of the European Commission, published on March 6, 2018 on the occasion of International Women's Day. In this declaration the following is stated:

“Equality between women and men is one of the fundamental values of the European Union enshrined in our treaties. (...) The path to full equality in practice is still a long one. (...) We want girls and women to achieve *equality* in all aspects of life: *access to education, equal pay for equal work, access to top positions* in companies and politics as well as *protection from violence*.”²

The first topic ‘equality’ was always an important one, maybe even the most important, on the issue of women's rights. However, it is also one that caused the necessary discussions and did so in legal theory as well. Some philosophers and (legal) authors for instance promote an equality in rights (sameness approach³), while others argue for a substantive equality between men and women (difference approach⁴). Other topics, ‘access to education’, ‘equal pay for equal work’ and ‘access to top positions’ presented by the European Commission as pillars for the desired full equality are also certainly not unknown in the history of women's emancipation. They already can be noticed in the first and second feminist wave.⁵ Finally, the topic of ‘protection from violence’, although traces of it also could be noticed in the second wave of feminism (for example the action group Dolle Mina⁶), seems to have made a revival as it has quite recently been brought to our attention by the Council of Europe in a renewed form.

¹ Inspired by Guerrilla Girls, *Reinventing the 'F' word: feminism*, www.guerrillagirls.com, search on title.

² European Commission, *Joint statement on the occasion of International Women's Day 2018*, http://europa.eu/rapid/press-release_STATEMENT-18-1601_en.htm, Statement/18/1601, and European Commission, *Questions and Answers: What is the EU doing for women's rights and gender equality?*, http://europa.eu/rapid/press-release_MEMO-18-1602_en.htm.

³ J.S. Mill, *The subjection of women*, London: Longmans, Green, Reader and Dyer 1869.

⁴ C. Gilligan, *In a different voice: psychological theory and women's development*, Cambridge Massachusetts: Harvard University Press 1993. V. Shiva, ‘Women's indigenous knowledge and biodiversity conservation’, in E. Hackett en S. Haslanger, *Theorizing feminism: A reader*, New York: Oxford University Press 2006.

⁵ M. Rampton, ‘Four Waves of Feminism’, in *Pacific Magazine*, 2008 (Fall issue).

⁶ ‘Blijf van mijn lijf’ slogan from Dolle Mina and Wij Vrouwen Eisen.

From amidst the Council, early 2011 the Istanbul Convention⁷ was concluded, which is, according to the Gender Equality Commission the most comprehensive treaty so far to combat violence against women.⁸ What makes this Convention special in this context is that, as stated in the preamble, sexual harassment within the framework of the treaty can be seen as a serious form of violence. This is a legal novelty and could offer new perspectives in the legal treatment of sexual harassment, which insofar is described in our national legislation as ‘(direct) discrimination’⁹ or ‘psychosocial workload’¹⁰.

Another striking and innovative point can be found in Article 12(4) of the Convention by which national governments are obliged to take necessary measures to encourage in particular men and boys to actively contribute to the prevention of all forms of violence falling within the scope of the Convention.¹¹ Now, they were not the only ones who chose to look in this direction. A group of American activists and actors gave this modern view last March, without being aware of it, some support with #AskMoreOfHim. In their open letter they indicate:

“As men, we have a special responsibility to prevent abuse from happening in the first place. After all, the vast majority of sexual harassment, abuse and violence is perpetrated by men, (...). And in entertainment – like many industries – men continue to hold most of the decision-making power. Therefore, one of the most powerful things that men can and must do is make it clear to other men – including their friends, colleagues and co-workers – that sexual harassment and abuse are never acceptable.”¹²

In a guest column (on the same website) a question is rightly asked: “*Is it really too much to ask men to match women’s courage with courage of their own?*”¹³ My answer: absolutely not, then “(...) *show that courage has no gender.*”

You would think that the contribution of men is not so far-fetched when you consider that, after all, the term ‘feminism’ was coined in 1837 by a male philosopher, Charles Fourier.¹⁴ He stated already so early: “(...) *that the level of development of any civilization could be determined by the extent to which its women were liberated.*”¹⁵ Do you hear me applaud?! Bearing this in mind, it is good to stress that contrary to what is often assumed, the notion feminism – “*The advocacy of women’s right on the ground of the equality of the sexes*”¹⁶ – is neutral and thus it is not bounded to women only. Is it perhaps time to bring feminism back to its gender-neutral roots, one might ask.

If not already noticed, Fourier was a *French* philosopher. What would he have thought if he

⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence, *Trbl.* 2012, 233.

⁸ Gender Equality Commission, *Preparation of the Council of Europe Gender Equality Strategy 2018-2023: discussion document*, 2017/2, p. 13, <https://www.coe.int/en/web/genderequality/gender-equality-commission>.

⁹ Article 1a, par. 1 jo. par. 3 Wet gelijke behandeling van mannen en vrouwen. Article 1a, par. 1 jo. par. 3 Algemene wet gelijke behandeling. Article 7:646, par. 6 BW.

¹⁰ Article 3, sub e Arbeidsomstandighedenwet.

¹¹ Article 12, par. 4.

¹² Hollywood Reporter, *David Arquette, David Schwimmer Join Hollywood Men and Activists to Launch #AskMoreOfHim Campaign*, www.hollywoodreporter.com, search on title.

¹³ J. Katz and J. Siebel Newsom, ‘How Hollywood Men Can Lead #AskMoreOfHim Campaign’, in *Hollywood Reporter*, www.hollywoodreporter.com, search on title.

¹⁴ New World Encyclopedia, *Charles Fourier*, www.newworldencyclopedia.org, search on title.

¹⁵ New World Encyclopedia, *Charles Fourier*, www.newworldencyclopedia.org, search on title.

¹⁶ Oxford Dictionaries, entry ‘feminism’, <https://en.oxforddictionaries.com/definition/feminism>.

knew that especially the *femmes libres* from his country, chaired in the media by actress Catherine Deneuve, denounced the #MeToo movement in an open letter with the words: “*witch-hunt*”, “(...) *what we are once again witnessing here is puritanism in the name of a so-called greater good* (...)” and “(...) *we defend a freedom to bother as indispensable to sexual freedom*”¹⁷ Later, when the statements of other signatories took forms, such as “(...) *women were able to ‘orgasm during a rape’*”¹⁸ even Catherine Deneuve had to distance herself from it. Historian Mona Ozouf explains this attitude with i.a. the words: “*For the French woman, her body is a weapon against masculine domination.*”¹⁹ But, isn’t the fact that she needs a weapon precisely the problem?

Fortunately in the Netherlands, we can assume that we are protected by law by which we can leave the use of weapons to only one woman: Lady Justice. However, this doesn’t mean that this protection is not open for discussion as you for instance can conclude from the article “*Dutch courts judge too mildly about sexual harassment in the workplace.*”²⁰ Striking are the examples of cases in which the judge(s) quashed an immediate dismissal with the following motivations: “*The employer should have pointed out clearly about the inadmissibility of the behaviour and should give the supervisor the opportunity to improve his life. (...) the employer had failed to warn the manager in writing that he should not be touching subordinates or other colleagues*”. Sad but true, we apparently must be explicitly reminded what it entails to act as a professional in the workplace. If we think in terms of practical solutions and what we can do now against sexual harassment in the workplace, these are good examples of situations that we hopefully effectively tackle with for instance the obligatory codes of conduct, aided by i.a. the Istanbul Convention.

At the same time, it is necessary that we start thinking in long-term solutions. This April at an expert meeting about MeToo, in conclusion of that meeting, one of the speakers, Govaert²¹, mentioned that the solution may lie in cultural change and to achieve this you need the top to take it (more) seriously. Agreeing with Govaert, when you look at the top, you’ll find it still mainly consists of men so, as mentioned above, the cooperation of men is very welcome and, in my opinion, necessary. At least if we are ready to acknowledge that we need to stop only treating symptoms and we also need to look for the real disease behind those symptoms. To achieve this, we all, men and women, maybe need to dig a bit deeper this time and make a better analysis of sexual harassment, in which we may need a second collaboration of philosophers, psychologists, sociologists and historians (among others). So we can reinvent the F word, whether it stands for feminism or freedom, in something that works for us all.

¹⁷ Le Monde, *Nous défendons une liberté d’importuner, indispensable à la liberté sexuelle*, www.lemonde.fr search on title. For English version: <https://www.worldcrunch.com/opinion-analysis/full-translation-of-french-anti-metoo-manifesto-signed-by-catherine-deneuve>.

¹⁸ NRC Handelsblad, *Excuses Deneuve voor goedpraten verkrachting*, www.nrc.nl search on title.

¹⁹ NRC Handelsblad, *Frankrijk voert eigen #MeToo-discussie*, www.nrc.nl search on title.

²⁰ Het Financieele Dagblad, *Nederlandse rechter oordeelt veel te mild over seksuele intimidatie op de werkvloer*, www.fd.nl, search on title, with contributions from M. Govaert, M. Decoz and S. Sagel.

²¹ Lawyer in Amsterdam.