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#MeToo: A Tentacular Movement of Positionality and Legal Powers

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Abstract: Kraken theory aims at showing that legal theory and practice are not built as a single block, but are more a kind of tentacular movement of positionality and legal powers, offering competing theoretical and practical angles from which Kraken and Octopus can choose their distinctive moves to act for and/or against #MeToo. It shows how these varieties of rumors are distributed in #MeToo, when they may scrutinize their next strategic moves (be it at the surface or for purposes of defamation), and why the mechanism of distinctiveness inherent in this hashtag is explored within the spatio-temporal perspectives of U.S.A. and France.

Keywords: #MeToo, Kraken theory, law, rumors, sexual misconduct, dissemination

1 Pestilent invasion of rumors in social media

Law does not know rumors as such, because this phenomenon does not have any real legal existence or rooting, be it in case law or statutory law. While rumors can be defined and are widely studied, they do not correspond to sufficiently factual situations to incorporate them into their own legal framework. Accordingly, before making the right connections between law and rumors in social media, we need to consider common definitions given for rumors, based more on a linguistic perspective. So with this idea in mind, we could then lay the foundations of rumors and the ways their dissemination and/or propagation invade social media platforms. Common dictionaries give many different and complementary definitions of rumors. By analyzing these different layers, we will then be in the capacity of better screening this pestilent invasion.

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First of all, rumors can be perceived as “sounds, especially when they are unwanted, unpleasant, or loud” (Cambridge Dictionary).\(^1\) For Webster’s Dictionary, rumors are defined as a “murmur”, “a soft low indistinct sound” but also as a “talk or opinion widely disseminated with no discernible source” (Webster’s Dictionary). Psychologist Robert H. Knapp defines rumor as “a proposition for belief of topical reference disseminated without official verification” (Knapp 1944: 22). Here there seems to be a loose and fragile connection with this kind of pernicious invasion, as rumors just create a kind of noise interference between a class of people, a sort of soft low indistinct sound, which could lead rumors to be as poisonous and diffuse as the Kraken legend was in its sea environment.

The Kraken legend, being part of the Scandinavian folklore, refers to a kind of giant sea monster that lived near seacoasts of Norway and Greenland. It comes to the surface, and hurls itself through the waves to terrorize or even kill sailors. Besides rumors just spread and disseminate through the air in just any direction,\(^2\) like pollen landing on pistils, the female reproductive parts of flowers. The lure of the pistil for drifting pollen correlates to female actions serving as rumors, or highly repetitive statements with an allusive perception of the #MeToo movement. This rumor or sound is almost indistinct, and so we could touch on the legend of killer mermaids, soundlessly transforming the sea in a dead and hostile environment where no one would even dare come or question the foundations of rumors.

Then rumors, still in their linguistic definitions, are “talks or opinions widely disseminated with no discernible sources”\(^3\). It clearly emphasizes the facts that rumors spread in society through social medias under various communication forms and layers of realities: fake information, propaganda, hoax, etc.

To summarize the relevance of rumors in the #MeToo, we could easily say that they are key facilitators of this pestilent invasion, where the Kraken is quick to strike, cause many prejudices and/or lead to ultimate solutions (suicide, revenge, killing, etc.).

## 2 Kraken theory

Kraken theory is based on a “living monster” (Burns and Hart 1977) having massive and unlimited communication powers to promote and improve social recognition and transparency of the #MeToo with its own dictated and

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1 https://dictionary.cambridge.org.
unquestionable vision. Kraken makes every move possible to jeopardize one single perspective in the communication strategy. However, he can still adapt himself under three kinds of scenarios (depth, tide and wind) and transmogrifies into a female octopus for very specific reasons.

2.1 Kraken as masculinity – 1st scenario: Depth

Kraken and his tentacles are similar to a gigantic and deadly net, arising from open seas and depth. He is composed of different types of tentacles being used to defeat others with a deviant communication repository (frequency, anonymity, exposure, insecurity), which could lead to prejudice and ultimate solutions (Wagner 2019: 304). Kraken under this scenario is unwilling to collaborate, exchange, modify, or even make any compromises of his strategy for the benefits of others. This idea of shipwreck, being a single-view communication, is also part of the folklore legend as shown in Figure 1:


This image shows a massive, floating animal that comes to the surface to break law and rules and to cause harm, prejudice, and destruction to people for its own benefit, having more resemblance to a masculine communication move.
than a feminine one. Kraken is in a mode of fighting, using all his poisonous and lethal materials to dismantle the strategies of others.

As such, to win the moves and pull back people into the depth and make them invisible again, Kraken needs finely honed skills such as agility and strength. Even though he can become visible, his gigantic tentacles and armor ensure none will be in the capacity of understanding and eclipsing his move, especially when he thrusts an ink cloud through the abyss to further complicate his search deep into the ocean, while confusing how to legally defeat him.

### 2.2 Octopus transmogrification – 2nd scenario: Tide

The whole strategy is then to find Kraken’s weaknesses in order to defeat him and expel the wrongfull moves he may have generated. Accordingly, Kraken can transmogrify into a female octopus having different and more adaptive abilities than the Kraken. These abilities make Octopus wiser, more curious and sensible to her environment. Indeed, she can better communicate and blend with her social surroundings, leading to better communication strategies, and able to deflect misleading information.

Furthermore, she will have the ability to contend with social reality. This adaptive move is part of her camouflage strategy. Indeed, she then could become visible whenever and wherever she needs to improve her communication social skills and expand her strategy, or just disappear again in the ocean should there be incorrect and/or illegal moves. As such she can creep over hard surfaces whenever tides come in and out. So tides are usually predictable, even though there could still be unknown maneuvers, like a kind of space in-between where predictability is almost impossible to achieve.

The transmogrification process takes into consideration both types of scenarios: the depth and the tide. If Scenario 1 comes back, it means that Kraken has reappeared through the online communication strategy and that there is no way of negotiating with him, while if Scenario 2 is elected, then the mediation process can start to find the optimal solution for most of the people concerned. As such, Scenario 1 leads to individuality whereas Scenario 2 leads to collectivism, with an orientation towards the #MeToo Movement.

### 2.3 Pistil dissemination – wind: 3rd scenario

The last move of Kraken theory is to disseminate and propagate rumors into two types of directions. Similar to pollen, rumors are lifted in the air, transported
through the wind (3rd Scenario) and deposited on the sea or land. These two types of environment (sea and land) are quite distinctive.

If the pistil dissemination happens on the sea, it regenerates again into Kraken. Therefore to better lure these pistils into its hostile environment, Kraken can employ other means like sounds to capture and strangle those possible communication moves, which he does not willfully and wrongfully promote. The sounds are part of his disguise, with killer mermaids there to make sure that his communication strategy remains the strongest and the fittest to survive into this open sea environment (ref. the world wide/wild web) as he dilutes the moves of others. As such, Kraken seizes the pistil dissemination into his deadly net, and then just disappears again deep in the ocean with his prey, making any legal actions impossible to complete, as there is no more visibility able to detect those responsible for wrongful acts.

If the pistil dissemination lands on the ground, rumors will blossom, and become visible and detectable to everyone. Even as they propagate, they can still go into two directions – a declaratory move that rests on the surface (sub-Scenario 1) and a more accusatory move that has deeper implications (sub-Scenario 2). If sub-Scenario 1 is taken into consideration, it means that rumors spread, become pervasive, and somehow are viewed as real facts without having any evidence to show as proof. If sub-Scenario 2 is observed, rumors are really oriented in a way to destroy others while creating as much damage as possible for the environment. While these two sub-Scenarios could each happen, they could also both end up in court for legal proceedings.

3 Recreating legal theory into legal practice

Kraken theory integrates mechanisms into legal practice about the (ab)uses of social media whose functions are to either strictly respect, limit or extend the capacity for legal interpretation either with Kraken (the most masculine objective) or Octopus (the most feminine objective). These mechanisms can be understood and further inferred from the interaction of legal theory and practice (Cheng et al. 2019; Sun and Cheng 2017). Understanding their respective roles and/or limits requires an analysis of the simultaneous influences of two series of interferences:

1. The territorialization method (Deleuze and Guattari 1988) to use rumors online and ensure a meaningful strategy for both Kraken and Octopus (ref. to legal theory);
2. The deterritorialization method (Deleuze and Guattari 1988) to find the most adequate interpretative venues in another spatio-temporal legal framework (ref. legal practice)
3.1 Hostile masculine environment

Within the depths of the abyss, Kraken emerges with tentacles flailing and ready to devour. The abyss is a lair for incessant sexual predation as the sea obscures his actions and desires. Recondite surroundings of the depths perpetuate the conditions which feed the insatiability of Kraken for sustained exploitation and abuse. Believing that he is immune to detection, much less exposure, Kraken waits for future victims awaiting in “what is taken for granted as ‘normal practice’ in the kitchen and the bedroom” (Edley and Wetherell 2018: 439). Kraken of 2017 is Harvey Weinstein.4

However, the abyss, seemingly endless, insulating and without limits, is really only an illusion. The seas churn, the wind picks up, and the storm is coming. As Kraken rises to the surface in search of new victims that could be added to his recurrent prey, Kraken is instead forced through accusations to confront his current behavior and past actions. With much vituperation, Kraken attempts to vilify the accusers and chooses to ignore the sirens as rumors of misconduct morph into accusations which in turn are transformed into allegations ripe for legal resolution. Kraken is no longer exceptional, no longer protected by the abyss.

Even as the rumors resonate loudly enough for Kraken to hear, he is confused for he has imagined he was unsusceptible to their rouse, concealed and divulgent through his own power. Yet, the rumors become stronger, less muffled, as reverberations of what is to come as the storm brews and intensifies. Harvey Weinstein and others (Kevin Spacy, Mario Batali, Matt Lauer, James Levine, Louis C.K. and many more) epitomizing Kraken are asphyxiated, one by one, by rumors that target the imperviousness of Kraken and topple these figures of presumed impermeability through national headlines, world news, trials in court, and continued allegation. Kraken must return to abyss.

3.2 Creation of #MeToo

There to witness Kraken’s downfall is Octopus. While Octopus resembles the tentacularity of Kraken, she is not a clone of the subterfuge and harm apropos of Kraken. Rather she is the empowered replacement of Kraken rising out of the

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depths and inhabiting moored foundations that root her to solid ground. Stabilized through her experiences, Octopus authorizes herself to speak louder, to say more, and to bring the hidden into view. Rumors become realism and silence is transformed into action.

#MeToo as Octopus is initially ordained through the public allegations of actresses Ashley Judd and Rose McGowan who announced Weinstein’s sexual misconduct against them to the *New York Times*. Once public, Octopus becomes tentacularly emboldened as indeed more women and men come forward with accounts and accusations of sexual misconduct and trauma. Yet, even as Octopus cultivates a burgeoning presence in social media and public protests, the eye of Octopus transposes from #MeToo to Me Too through the corrective attention of actress Alyssa Milano. Me Too, a movement started by activist Tarana Burke in 2006, resulted in the nonprofit organization, Just Be Inc., to help adolescent girls of color in the United States who were victims of sexual harassment and assault. Unlike the egomaniacal Kraken, Octopus is strengthened through collaborative efforts, such as those of Burke. The discursive awareness of the many forms of sexual misconduct supports the arms of Octopus as the language of sexual misconduct transforms the tentacularity of associated verbiage, i.e. sexual assault, sexual harassment, sexual abuse, sexual deviancy, sexual impropriety, rape, and others. Yet despite the triumphant emergence of Octopus over Kraken, the din of rumor remains.

4 Spread of #MeToo

Emotions guide people, because as human beings we are all corruptible and perfectible. Rumors are more likely to achieve their goal of propagation, if relayed by trusted leadership in whom social media users have full confidence. So being hyper-connected refers to paradoxical relations between real and virtual representations. Indeed it could lead to blurred realities, life intrusiveness, emotional insecurity and discomfort, unlimited audience, limitless time, and a virtual impossibility to erase harmful contents. Pistil dissemination leads to spreading rumors as a phenomenon that occurs along a continuum of severity, ranging from more or less insidious and serious forms (Entman 1989). The spread of rumors is caught in the net of Kraken when he transmogrifies into Octopus. Octopus provides strong guarantees for both security and anonymity as she can detect her attacker to prevent malicious moves while severely limiting her adversary to carry out counter-fighting moves (Wang and Borisov 2012). So, there is a need of adjustment in legal settings to adapt these moves within specific space and time:
Any instance of interpretation always involves a choice and a motive, an element of the “plays of meanings” which denies that there can ever be a single “correct” or valid interpretation (Goodrich 1986: 138).

In law, although all cases of law application refer to some facts, which are brute facts in that sense and at that level, the legal process is one characterized by transformations of these facts into institutional facts, by interpreting them in the light of relevant rules and conventions (MacCormick 1992: 220).

People could then develop their own habitus (Bourdieu 1986: 170), in reference to the respective habitat for both Kraken and Octopus, within a specific temporal framework owing to the way they gaze into the prism (Barthes 2000: 25–30, Barthes 1964) either as Axis 1: Surface Level, or Axis 2: Defamatory Level.

4.1 Surface level

The first sub-Scenario of pistil dissemination is a surface phenomenon involving the collectivized assembly of first-hand accounts from those subject to sexual misconduct. Heretofore, those who have previously endured through individual obscurity are invited to post their accounts online. The pistil is #MeToo which attracts millions of otherwise disparate and unattached voices to coalesce behind a common goal: “join the movement: support survivors and end sexual violence.” The hashtag itself becomes a shared respite for those who suffer in silent isolation wishing to form a cohort of similar experience. As pollinators for the movement, the hashtag serves as the veneer for the materialized appearance of Octopus.

The identity of the individual is subsumed within the group’s identity of the hashtag, even as the hashtag itself represents the new move. Despite “Twitter’s unique intertextuality [that] contains the potential for spurring widespread political activism by encouraging voices from all echelons of society to be heard” (Davis 2013: 16), tangible progress that would follow through with the ultimate goal of #MeToo to bring accountability for sexual misconduct through collective awareness means that substantive legal action happens on a much more limited scale. As one example, financial settlements outside of court that never go to trial are a common recourse of action in response to allegations of sexual misconduct. Furthermore, U.S. federal legal protections such as Title VII simply do not have jurisdictional authority in many areas of sexual misconduct as “much of the headline grabbing conduct would not, in fact, state a legally-viable claim” (White 2018: 1015). Title IX protections also are limited in scope as

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5 #MeToo Movement website: https://metoomvmt.org.
education-based violations must be specific to higher education settings. Additionally, the type of “transitional justice” (Wexler et al. 2019) that stimulates real reform is significantly absent in what might misleadingly be referred to as hashtag justice.

Depending on the right audience, awareness can be transformed into reconsideration of the larger scope of what is possible by fundamentally altering law. Yet, sometimes this approach is contradictory as people engaging with social media gravitate towards ideas rather than substance (Entman 1989). This scope reveals the limitations of the surface, as what might be depth found in substantive change through law is individualized and absent for the larger group benefiting from the rewriting of law itself. The change in a legalized discourse of sexual misconduct is absent in the face of free speech as the hashtag itself is more symbolic than substantive.

Although Weinstein does go to court, justice in the U.S. does not mean that Weinstein can go to court to face all eighty women at once who brought allegations, as each case must be tried separately. Additionally, the statute of limitations in many states restricts the legal ability to resolve sexual misconduct if not occurring within a limited framework of time. Each of these show there is a dearth of legislation which allows accusers to bypass legal due process in a court of law. Insofar as the current political leadership shows, the ability to use Twitter becomes a mockery of free speech by engaging in the public calumny is a daily reality for those who care to read Donald Trump’s bullying Twitter-based tirades against most everyone.

4.2 Defamatory level

The second sub-Scenario of pistil dissemination is more violent than the one we have just tackled. Accordingly, rumors flourish in a civil society that minimizes sexual misconduct in the workplace through a legal framework that is viewed from the outside as ignoring these types of improper behaviors. Indeed it strives to place the blame on the so-called perpetrators of wrongdoings. In the dissemination environment which is social media, people no longer feel satisfied with orthodox methods to find fair treatments to the problems beyond the power of political and legal institutions. Social media are the current key facilitators (Wagner 2019) in spreading rumors to the whole network compared to traditional legal methods.

Furthermore, rumors are part of the tentacles from Kraken theory, because they are the most effective connectors to the deviant elements, i.e. frequency, anonymity, exposure and insecurity (Wagner 2019: 4–5). With the intensive use of social media, rumors could be taken for granted, as a universal truth, even if they are wrong, modified or fake. Thus they are the antithesis of legal reasoning as
they are based on people’s emotions and reactions to emotion, acting as “emotional valves” (Allport and Postman 1947: 503), which means they are linked to one specific group category. So they perform as catalyzers. Nonetheless they do not really relieve and rationalize people’s emotions, as they should otherwise do. Under this scenario, they proliferate and provide “an object for indignation and fury” (Sunstein 2012: 45), and food for thoughts for Kraken.

The French #MeToo, #Balancetonporc, clearly states that time has now come for mass outrage. The whole strategy of responding to sexual misconduct is no longer by feeling guilty and in a certain way responsible for these actions, but instead by shouting loudly and clearly. It is still part of the pistil dissemination concept within Kraken Theory, where rumors are lifted in the air and dispersed through social media platforms. Kraken is emasculated from all his male over-riding powers, whereas the “mass” (referring to any citizens) has the right to freedom of speech in social media (Bourdieu 1989). Somehow it calls attention to these social movements in France as precursors of legal progress. Therefore online “mass outrage” is connected to the Kraken’s transmogrification. Octopus comes to the surface, creeps over the surface, sucks Kraken’s essence to defeat him so as to gain more power, visibility and legitimacy that repel legal justice.

Accordingly, #Balancetonporc is a kind of deviant social space (Roberts and Hunt 2012) with a “culture of proactive disclosure and information promiscuity” (Arntfield 2015: 375). This hashtag is similar to a growing maze (Eco 1976), a “living monster” (Burns and Hart 1977), which is indeed our female Octopus. She (ab)uses her sucking powers of communication for her own benefits, while still having a dark side that can subvert the original concept of #MeToo coming from the U.S. with much more aggravating factors. Indeed, the supposed first usages of #MeToo is then being instrumentalized, in the French space, for the benefits of increasing consciousness, motivation, and social perception of sexual misconducts (Schauer 1992; Jackson 1995). It is all about the third space theory (Soja 1996; Wagner 2018a, Wagner 2018b), which has a coordinating function between the original American setting and the French hybrid understanding of this movement.

The French hashtag was created just after the first revelations about Harvey Weinstein in the United States. Creator Sandra Muller wants to encourage French women to break the law of silence, and to talk openly about the sexual abuse(s) they could have experienced in their workplaces by giving family names, physical addresses and many other details in Twitter’s platform of just 160 characters. Even though it seems, from an outside perspective, similar to the American one, it alludes to darkness that may dilute, question, transform or even suffocate the whole strategy of #MeToo.

Indeed this hashtag uses offensive language. Behind “balance” (equivalent to “throw”) and “porc” (equivalent to “pig”), these signs convey a vulgar French
colloquialism. Men are compared to pigs. The whole idea is to allude to Kraken
where pigs/men have full powers, are greedy, and have forgotten all the needs
of others just to focus on their own wrongful and illegal moves. Furthermore,
with the pistil dissemination within Kraken theory, all their harmful moves are
not disclosed to any kind of e-media to avoid embarrassment, shame, resent-
ment, etc. Like Octopus would do, her strategy is to drop down on her prey,
shoot an inky fluid that darkens the water, and so confuse the aggressor who is
unable to escape anymore from her discerning grip.

This wave in openness of speech with #Balancetonporc can be catchy.
Indeed, it seems to allow potential victims to denounce an act of violence
while having a network of solidarity enveloping and protecting them. But it
does not mean it can be the safest way out for victims. Breaking the silence
should be just an initial step before going to court for legal proceedings.

In this hostile hashtag context, the central question is where the boundary
line between social media condemnation and defamation lies. So, people claim-
ing to be the victims of rumors have two types of remedies to consider: defama-
tion and violations of privacy. Under this specific French scenario, rumors in law
do not exist per se.

As stipulated here, the Law on Freedom of the Press of July 29, 1881
criminalizes the offences of defamation and insult appearing in the consolidated
version of January 12, 2018.6

− Article 23. – Those who, either by speeches, shouts or threats made in public places or
meetings, or by writings, prints, drawings, engravings, paintings, emblems, images or
any other medium of writing, speech or image sold or distributed, shall be punished as
accomplices to an action qualified as a crime or misdemeanor, offered for sale or
displayed in public places or meetings

“either by placards or posters displayed to the public or by any means of communi-
cation to the public by electronic means, will have directly caused the author or authors
to commit the said action, if the provocation has been followed by effect.”
This provision shall also apply where the provocation has been followed only by an
attempted crime as provided for in Article 2 of the Criminal Code”.

− Article 29. – Any allegation or imputation of a fact that damages the honor or
consideration of the person or body to whom the fact is imputed is defamation. The
direct publication or reproduction of this allegation or imputation is punishable, even
if it is made in doubtful form or if it concerns a person or body not expressly named,
but whose identification is made possible by the terms of the speeches, shouts,
threats, written or printed, placards or posters in question.

6 For more information, please reference further the following: https://www.legifrance.gouv.fr/
affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20180112.
Any offensive expression, terms of contempt or invective that does not contain the
imputation of any fact is an insult.

− Article 32. – Defamation committed against individuals by one of the means set out in
Article 23 shall be punishable by a fine of 12,000 euros.

Defamation committed by the same means against a person or group of persons on
account of their origin or their membership or non-membership of a particular ethnic
group, nation, race or religion shall be punishable by one year’s imprisonment and a
fine of 45,000 euros or only one of these two penalties.

Any defamation committed by the same means against a person or group of persons
on account of their sex, sexual orientation or disability shall be punishable by the
penalties provided for in the preceding paragraph.

In the event of a conviction for one of the acts provided for in the two preceding
paragraphs, the court may also order the posting or dissemination of the decision
handed down under the conditions provided for in Article 131–35 of the Criminal Code.

Even freedom of expression can be restricted by law. The Declaration of the
Rights of Man and of the Citizen (1789) states:

Everyone has the right to freedom of opinion and expression, which implies the right
not to be disturbed for his opinions”, but it also stipulate that this freedom has its
limitations, esp. if it refers to “public provocation, discrimination, hatred or violence
against a person or group because of their origin or membership of an ethnic group,
nation, race or religion.

5 #MeToo myth theory

As we have already discussed throughout the paper, #MeToo dilutes or even
pollutes social media platforms. For this reason, the myth of Octopus is no
longer a myth but becomes a reality, simply because she is acting, abusing,
overriding her powers to make sure that the way she perceives sexual miscon-
duct is taken for granted by all those who may log in to these platforms.

We anticipate that two other areas, freedom of speech and hate speech, are
even more intensified, fragmented and heterogenous in social media platforms,
resembling a multi-faceted Octopus who could willfully and unintentionally use her
weapons to bring to the surface wishes, fears, suspicions, anxieties, and even
hostilities among the larger Internet user society. As such, this environment is no
longer neutral but becomes a kind of binary code where both toxicity and freedom
are at stake.
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