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# What Italian Sexual Violence Law Can Teach US Law in the #MeToo Era

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What Italian Sexual Violence Law Can Teach US Law in the #MeToo Era

By Rachel A. Van Cleave | March 07, 2019 at 04:50 PM



Rachel Van Cleave, former Golden Gate University School of Law dean

On International Women’s Day, with women facing challenges on equal pay, reproductive rights, sexual harassment and violent sexual assault, the topic of sudden, forced and unwanted kisses initially seems trivial, unworthy of consideration. However, Alva Johnson’s recent civil complaint against Donald Trump for kissing her on the side of her mouth, raises the question of whether such conduct should be criminal in the United States.

#MeToo reports have revealed instances of similar conduct across numerous sectors, industries and contexts. Several women have reported comparable incidents with Trump, who has stated he “just starts kissing women ... Just kiss ... I don’t even wait.” At least eight women have reported being subjected to sudden kisses by former CBS head Les Moonves. At least three women have reported being pinned to a wall by Nobel Laureate Óscar Arias Sánchez while he tried to kiss them.

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Similar scenarios have resulted in criminal convictions in Italy.

Italian law has progressed since the infamous “jeans case” holding that a woman could not have been raped because she was wearing jeans which are difficult to remove without the wearer’s assistance. The Italian Supreme Court overruled this case in 2001.

Since the 1996 reform of sex crimes law the Italian Supreme Court has upheld several convictions for sudden, forced, unwanted kisses. In a 2015 case the court upheld a doctor’s conviction for sexual violence after he entered a break room, strode briskly to a nurse who was sitting at a table and suddenly kissed her mouth.

Before 1996, the purpose of the archaic offenses “violent acts of lust” and “violent carnal intercourse” was to protect public morals, decency and honor with little to no consideration of the harm to survivors. Indeed, in a 1995 decision the Italian Supreme Court reversed a conviction for “violent acts of lust” in which an employer blocked his employee’s path and attempted to kiss her mouth. She managed to move and he kissed her cheek and neck instead. The court devoted no attention to the victim’s harm, but stated that kisses have lost their immodest character since men and women freely kiss in public and movies and billboards often display intimate parts. Thus, a fleeting kiss not on the mouth did not manifest the sort of sexual desire that harms public morals.

The 1996 reform changed the goal of the law to that of protecting individual sexual autonomy.

Guided by this purpose, in applying the law to sudden forced kisses in several cases since 1996, the Italian Supreme Court has reached three important conclusions that jurisdictions in the United States should consider.

First, sexual autonomy is more important than physical anatomy. That is, many states limit lesser sex offenses, such as sexual battery, to instances in which the offender has touched “intimate parts” and statutory definitions do not include the victim’s mouth, cheek or neck. The law is not so narrow in Italy.

For example, in a 1996 case under the new law, the Italian Supreme Court upheld a conviction where the offender held his employee by the shoulders, pulled her toward him, saying amore (love) and tried to kiss her mouth. She was able to move and he kissed her cheek before she pulled away. The court explained that the offender invaded the victim’s sexual sphere sufficiently to support a conviction for sexual violence.

Second, under Italian law it is not necessary to prove that the offender had the specific intent to achieve sexual arousal or gratification, as required by laws in the United States. The Italian Supreme Court has concluded that focusing on whether the offender exhibited sexual urges is too similar to the pre-1996 approach, which sought to protect societal modesty and decency from such lustful displays.

Third, the Italian Supreme Court has determined that the sudden and unexpected nature of these types of kisses can satisfy the “violence” element of the offense since the victim is unable to avoid the kiss. Laws in the United States typically require force or violence, in addition to the contact, to establish even the lesser offense of sexual battery.

Many in the United States object to any expansion of criminal law and would object laws covering sudden, forced and unwanted kisses. This is because the United States imposes draconian sentences, has overly expansive sex offender registration laws, and is rife with explicit and implicit bias against people of color. I completely agree with these criticisms and fully support and encourage reforms that address these issues. However, I believe it is *also* possible to address sudden kisses. Using these criticisms to ignore the harm to people like Johnson, and many others in the #MeToo Era does a disservice.

Johnson was a member of Trump's election campaign. She described that upon arriving at a rally in an RV, Trump approached her, grabbed her hand and tried to kiss her mouth. She moved and he kissed the side of her mouth. She stated this was "super creepy" and she "felt violated immediately."

Other #MeToo reports include victims feeling "humiliated," "ashamed" and their skin "crawled" at how the offender felt "entitled" to engage in such behavior, believing the victim "was so insignificant that he could do that [to her]."

These are not trivial instances of bumbling passes, or ambiguous situations between intimates. Nor are these misinterpretations of cultural norms. Rather, these situations harm people and should not be ignored. Yes, Italy has something to teach us about protecting sexual autonomy and how to address sudden forced kisses.

**Rachel A. Van Cleave** is former dean and Professor of Law at Golden Gate University School of Law where she teaches gender-based violence law. She studied Italian criminal law and procedure as a Fulbright Research Scholar in Rome and has published several articles on Italian sexual violence law. She is presenting a scholarly article on this topic at the Detroit Mercy School of Law, Women and the Law Symposium on March 8.

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