

LISTENING TO EMOTION AND AFFECT: A REPLY TO PROFESSOR ABRAMS

HADAR DANCIG-ROSENBERG*

INTRODUCTION

Kathryn Abrams provides an illuminating and powerful analysis of the survivors' narratives in "Online Shaming and the Power of Informal Justice,"¹ utilizing emotion and affect as her lens.² Her analysis uncovers the richness and multidimensionality inherent in qualitative research, showing how interpreting the same quotes from a different perspective reveals another layer that sheds light on the survivors' needs and expectations as legal subjects.

Abrams suggests supplementing the interpretations that Anat Peleg and I offered in *Online Shaming*, based on the interviews we had conducted with twenty sexual assault survivors about the reasons they resorted, or declined to resort, to online shaming. She argues that "by reading these interviews in a way that is more alert to undercurrents of emotion and affect, we may arrive at a more complete understanding of the legal subjects of sexualized injury."³ Abrams emphasizes that she does not aim to contest our interpretations but to supplement them by recognizing a secondary theme. She explains that glimpsing the emotional undercurrents in survivors' explanations "may help us better understand the position from which survivors approach the law, and gain greater insight into the shortfalls, benefits, and opportunities for change, in both formal legal and alternative regimes."⁴

In my short response to Abrams's enlightening comment, I would like to make three points. First, I embrace Abrams' call for integrating law and emotion-oriented analysis into our endeavor to better understand survivors' needs and wants and improve their available responses. I will support Abrams's analysis by providing more examples of survivors' interview quotes, which reflect various manifestations of emotions. Moreover, I will build on Abrams's analysis to show how, by listening to survivors' narratives

*Professor of Law and former Associate Dean for Research, Bar-Ilan University; Visiting Professor, Northwestern University Pritzker School of Law (2023–2024); Helen Diller Institute Visiting Professor, University of California, Berkeley School of Law (2021–23); Co-chair of the Israeli Criminal Law Association. I am grateful to Kathryn Abrams for engaging with our study and providing such rich and illuminating insights, and to the Editors-in-Chief of the *Harvard Journal of Law & Gender*, Melissa Morgan and Olivia Hussey, who facilitated and encouraged this fascinating exchange. Thanks to Amit Doktor for superb research assistance.

¹ Hadar Dancig-Rosenberg & Anat Peleg, *Online Shaming and the Power of Informal Justice*, 47 HARV. J. L. & GENDER 1 (2024) [hereinafter *Online Shaming*].

² Kathryn Abrams, *The Emotional and Affective Lives of Sexual Violence Survivors: A Comment on Dancig-Rosenberg and Peleg*, 47 HARV. J. L. & GENDER 49 (2024).

³ *Id.* at 50.

⁴ *Id.* at 50–51.

through the lens of emotions, we will often find that their emotional experiences with the criminal legal system appear to be the opposite of their experiences with social media.

Second, I will suggest a more optimistic yet realistic vision of the potential of the criminal legal system (or, more accurately, a reformed version of it) to address survivors' emotional needs and desires. Using the metaphor of "wine" and "bottle," suggested by therapeutic jurisprudence scholar David Wexler,⁵ I argue that pouring a more survivor-friendly "wine" into the existing "bottle" of the criminal legal process might not be enough to make the criminal process an attentive path for most survivors. As Abrams rightly recognizes, the structural, institutional characteristics of the adversarial, formal, professional-led criminal legal system create inherent barriers for most survivors to feel that they can achieve justice. In other words, the current "bottle" is limited. However, a significant reform that will design a new "bottle"—a criminal procedure explicitly accommodated for sexual assault cases, such as Sex Offenses Courts—might minimize the gap, even if not close it completely, between survivors' needs and the responses currently given in the mainstream criminal courts. A model can be considered a new "bottle" even if it operates within the state-run system, as long as it adopts significant accommodations beyond softened practices to include a designated, special legal procedure.

Third, building on Abrams's analysis of restorative justice as a potential path for accommodating survivors' emotional needs, I suggest a tentative overview comparison between four alternative settings for survivors—the current criminal legal process, specialized sex offense courts, restorative justice, and social media channels—according to central parameters emerging from Abrams's emotion-oriented analysis and my own studies.

I. DELVING INTO SURVIVORS' EMOTIONAL WORLD

In *Online Shaming*, Peleg and I explore the question of how survivors who decided to share their stories of victimization online perceive the practice of online shaming their alleged assailants, whether or not they engaged in it. We analyzed survivors' rich explanations and suggested some interpretations without framing the discussion through the lens of emotions.

Abrams's analysis reveals how additional valuable insights can be elicited from survivors' narratives when adopting the additional perspective of affects and emotions. Through reading survivors' words, she uncovers a broad spectrum of "emotional undercurrents"⁶ that are reflected in their explanations regarding their decision to resort, or not, to online shaming. Such emotions and affects include anger, outrage, frustration, indignation, resentment, fear,

⁵ David B. Wexler, *New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence Code of Proposed Criminal Processes and Practices*, 7 ARIZ. SUMMIT L. REV. 463, 464 (2014).

⁶ Abrams, *supra* note 2, at 54.

alienation, feelings of continuing pain and trauma, and more.⁷ As she points out, some emotions emerge in the wake of the sexual injury resulting from the attack on the survivor's sense of self; some may be directed at a moral failing of the assailant; and others are brought about by the structural failures of the criminal legal system to address survivors' needs.⁸ Among the range of affects and emotions Abrams recognizes in the survivors' narratives, she emphasizes two prominent impulses that are particularly common in cases of sexual injury. As she explains, the assault on the integrity of the body and the inherent violation of human dignity embedded within sexual violence creates an attack on the survivor's agency and a loss of control.⁹ This experience generates "an urge to re-assert agency: to show that they are capable of moving the world according to their will, or to try to reclaim a sense of self through an exercise of self-direction."¹⁰ It also creates "an urge toward collectivity and solidarity with others as a vehicle for understanding, processing, and resisting such injury."¹¹ Through the work of feminist scholars who experienced sexual injuries, Abrams clarifies how narrating one's injury may satisfy, at least partially, these impulses toward agency and solidarity: constructing the trauma through the survivor's own words may help her reclaim ownership over her sense of self after she experienced an attack on it.¹² Narrating the trauma may also relieve the loneliness and connect her to other survivors, signaling to her that she is not alone and helping her re-establish a renewed sense of belonging.¹³ Abrams identifies these impulses in the narratives of our interviewees. Although she refers to survivors' narratives about online shaming, her argument goes beyond shaming and applies to narrating and revealing a story of sexualized injury on any platform.

I embrace Abrams's stance that a better understanding of survivors' emotional world is necessary for assessing alternative paths for addressing sexual assaults from their perspective. *Online Shaming* is only one piece of a broad empirical project exploring the potential of social media as a justice platform for sexual assault survivors. The project has yielded a series of articles, two placing survivors' needs and emotions at their core, thus directly corresponding to Abrams's analysis.¹⁴

A few findings in our large project specifically support Abrams's observations. One group of findings is derived from the quantitative module of

⁷ For a distinction between emotion and affect, see *id.* at 58.

⁸ *Id.* at 56–57.

⁹ *Id.* at 59.

¹⁰ *Id.*

¹¹ *Id.* at 60.

¹² *Id.*

¹³ *Id.* at 61–62.

¹⁴ See Hadar Dancig-Rosenberg et al., *Post or Prosecute? Facebook, the Criminal Justice System and Sexual Assault Victims' Needs*, 2023 U. ILL. L. REV. 1533 (2023); Hadar Dancig-Rosenberg & Anat Peleg, *Post-Trauma and Post: Emotion Processing of Sexual Assault Victims in Criminal Proceedings and on Facebook*, 3 L., SOC. & CULTURE 343 (2020) (Heb.).

the project that was based on an online survey in which 499 survivors ranked the subjective and relative importance of eighteen potential survivors' needs, including material, emotional, social, and criminal justice-oriented.¹⁵ In addition, the respondents indicated whether they thought Facebook and the criminal legal system had the potential capacity to address each of those eighteen needs. We found that, generally, survivors' appreciation of the criminal legal system was low and that, on average, it was perceived as unable to adequately address any of their needs.¹⁶ Supporting Abrams' doubt about the criminal legal system's potential capacity to address emotional and affective needs specifically, we found such a capacity was perceived as the lowest by respondents.¹⁷ By contrast, most respondents perceived Facebook as capable of providing adequate responses to their emotional and therapeutic-oriented needs.¹⁸

The second group of findings supporting Abrams's insights refers to the emotional processes that survivors faced in the course of the criminal process compared to those they experienced when resorting to social media and posting their testimonies online. Drawing on the same interviews underlying *Online Shaming*, we found that twelve survivors out of thirteen who filed complaints with the police, in addition to posting their testimonies online, reported experiencing the criminal legal process as re-traumatizing and re-victimizing.¹⁹ They described how several legal practices robbed their sense of control and created a feeling of exclusion, supporting Abrams's point about the inability of the criminal process to satisfy survivors' impulses to re-assert agency and toward solidarity. Jacky described the moment of filing a complaint to the police: "I felt like a puppet on strings. Wherever they want me to go, I go. I already lost control of my body. My body was taken from me. So here, they continue to control me."²⁰ Lily and Dorothy depicted the confrontation with the assailant at the police investigation stage: "It was a tiny room, He is sitting on a chair in front of me [...], it was stressful and humiliating"; "I felt an anxiety, I closed my eyes and started to freak out."²¹ Rose felt unseen and worthless after she figured out that the prosecutor did not bother to update her about her case. She described her frustration due to her loss of control: "I didn't know when hearings were taking place, nobody told me [...], when [the assailant] was released from detention, the prosecutor did not bother to let me know. I don't want to be transparent; I want to be seen."²²

Most interviewees who, in addition to their online participation, also turned to the criminal legal system, did not mention positive feelings about their criminal legal experience. An exception was Romy, who described her

¹⁵ See Dancig-Rosenberg et al., *supra* note 14, at 1537.

¹⁶ *Id.* at 1564–68.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Dancig-Rosenberg & Peleg, *supra* note 14, at 364–69.

²⁰ *Id.* at 366.

²¹ *Id.* at 366–67.

²² *Id.* at 366.

testimony in the courtroom as an empowering experience: “This testimony was a milestone in my life. I felt good that I managed to bring him to court; I forced him to stand in the place where the defendants stood, and I pointed at him and told everyone what he did to me . . . It was more important to me than sending him to jail.”²³ Romy’s words reflect a feeling of agency because she had the opportunity to narrate her story despite the structural, procedural, and evidentiary barriers inherent in the formal criminal process. But her experience seems to be uncommon, if not rare, among survivors. In the reality of the vanishing trial, where pleas become the default, most victims do not have the opportunity to tell their stories in their own words and at their own pace.²⁴ Still, some interviewees emphasized their hope to achieve justice through the formal system.²⁵ They pleaded for a change of attitude in the practices of professionals and expressed their wish for an accommodated process attentive to their emotional needs.

In contrast, most of our interviewees stated that taking part in the online discourse about sexual assaults helped them deal with the physical, social, and emotional invasion they suffered following the sexual injury.²⁶ They described how revealing their story online helped them reclaim their sense of self and provided them with collectivity. Several survivors mentioned that posting their stories online induced a feeling of relief from shame and self-guilt.²⁷ The decision to break the silence and share their trauma drew support and empathy from others, reminding survivors that they are not alone.

A central theme in the interviews relates to the special structural-technological features of social networks that respond to survivors’ impulses regarding regaining control and enhancing solidarity. The ability to reach large relevant audiences by pressing a button facilitated exchanges that created solidarity among survivors. Romy explained: “Many victims, including me, have strong feelings of shame, feelings of being fucked, it’s only me like that. Participating [in the online discourse on social media] creates a feeling of ‘hey, I’m not strange or different.’”²⁸ Dina described: “I felt I got a huge hug. I posted a photo of myself smiling. I win! There was a feeling of community, women who reacted instead of me to hostile posts. I had not been alone anymore.”²⁹ Jane added: “Women feel it is ok to speak about sexual assault without feeling ashamed. The discourse is not only about your injury; the burden falls on everyone’s shoulders, and it’s easier.”³⁰

²³ *Id.* at 370.

²⁴ See THEA JOHNSON, AM. BAR ASS’N, PLEA BARGAIN TASK FORCE REPORT 6, 36 n.2 (2023), <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf> [<https://perma.cc/BF4H-H5QH>].

²⁵ Dancig-Rosenberg & Peleg, *supra* note 14, at 370–71.

²⁶ *Id.* at 372–75.

²⁷ *Id.* at 372.

²⁸ *Id.* at 373.

²⁹ *Id.*

³⁰ *Id.* at 377.

Several interviewees described a community-building process in which survivors become mentors to others, supporting them in their trauma processing.³¹ The online mentorship cut across age and professional hierarchies. The informal transmission of knowledge and emotional support appeared to be empowering for both the survivor-mentor and the survivor-mentee, and it granted new meaning and hope for life after the trauma.

Relating to the impulse of regaining control, survivors described that they could choose how to narrate their story due to the relatively low-regulated nature of social media. Rick said: “On Facebook, I could choose how to tell the story. For me, it was the easiest way to tell everyone at once, and it freed me.”³² Ellen added: “On Facebook, I didn’t feel taken advantage of. I controlled the materials I put out and what I received.”³³ Rose also found social media as an outlet to rebuild her agency: “[After my rapist was released from jail] I felt helpless, I said that I had to regain control somehow. I have to do something with it. In the middle of the night, 1:00 or 2:00am, I wrote a post in ‘Feminist Discourse’ [An Israeli Facebook group] about everything that happened to me—the legal process, the negligence of the authorities, and I published it.”³⁴ The techno-social features, such as the categories of privacy and the options to block, reply, repost, edit, or delete, enabled survivors to exercise a sense of control within the online space: Jane summarized, “On Facebook, you have control, you can edit it.”³⁵

Yet, this hopeful picture sometimes seemed to be overshadowed by the online abuse experienced by some users.³⁶ Some described how abusive online behavior affected their emotional and social well-being, arousing feelings of shame and self-blame, anxiety and fear, frustration and anger, disappointment and emotional flood. However, even when the online discourse elicited negative emotions, the interviewees emphasized a sense of control that they still had due to the freedom of action made possible by the techno-social features. They could choose, for example, how to respond to hostile posts: “I blocked on Facebook responses of people who are not friends of friends and those who posted bullshit. I didn’t hesitate. This is now our time to be on the front stage. And if this is my wall—nobody will post shit here” (Dina).³⁷ They could also decide whether to continue their online participation.

Overall, most survivors attested that when resorting to social media, they did not feel like mere actors in a play whose plot was narrated by others. They felt like creators or at least co-creators. If we use criminologist Nils Christie’s powerful metaphor, the conflict remained their “property,” at least to some extent, as opposed to the criminal legal process in which they felt the

³¹ *Id.* at 374–75.

³² *Id.* at 374.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 375–76.

³⁷ *Id.*

state expropriated it.³⁸ **Table 1** summarizes the emotional portrayal reflected in survivors' explanations, revealing a mirror image between their central emotions in the criminal legal process vis-à-vis social networks.³⁹ As Abrams observed, by exploring survivors' affective needs and experiences while resorting to various justice settings, we can learn much about the potential of these settings to provide them with appropriate responses.

TABLE 1: SURVIVORS' EMOTIONS AS MANIFEST IN THE CRIMINAL LEGAL SYSTEM VIS-À-VIS FACEBOOK

Criminal legal process		Social media
Anger, outrage, frustration, disappointment	↔	Relieving anger, satisfaction
Reinforcing shame and blame	↔	Relieving shame and blame
Loss of control, anxiety, fear, hopelessness	↔	Regaining control, restoring self-confidence, relief
Alienation, exclusion	↔	Solidarity, inclusion, collectivity

II. THE CRIMINAL LEGAL PROCESS IN A NEW BOTTLE

In *Online Shaming*, Peleg and I proposed changes to make the criminal legal system more responsive to the wants and needs of survivors. Resourced with her insights about emotions and affects of sexual assault survivors, Abrams expresses doubts about the ability of the “survivor-friendly” reforms Peleg and I envisioned to “significantly affect these mismatches between criminal process and affective needs.”⁴⁰ As she sharply observes: “A survivor might be better informed and encounter more support and less brutality in questioning. But the issues of isolation and lawyer control are deeper and more structural: they go to the nature of the criminal process as a formal, adversary system, which is controlled by specialized professionals in which the survivor is mainly a source of evidence.”⁴¹

Indeed, making amends without changing the fundamental structure and orientation of the criminal legal process may only create cosmetic improvements. However, given its flaws and discrepancies, every step toward making today's system more relevant to more survivors is a welcome step, even if it is far from the radical reform we dream about. This does not mean giving up on pursuing far-reaching and more radical reforms. Being optimistic but also

³⁸ See Nils Christie, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1, 1, 7 (1977) (suggesting that conflicts be seen as “property” of their direct stakeholders and calling for the return of stakeholders' control over the conflict).

³⁹ For a full analysis of this module's findings in our large project, see Dancig-Rosenberg & Peleg, *supra* note 14, at 381.

⁴⁰ Abrams, *supra* note 2, at 67.

⁴¹ *Id.*

realistic, I believe criminal legal reform will be more feasible if it is done as a process (yes, a grueling and exhausting one!) and not as an overnight revolution. Abolitionists and reformists have long debated the best strategies for making a real change.⁴² While I agree with Abrams that, ideally, a comprehensive root change is needed to make the formal state-led process an appealing option for survivors, I do not think it is an “all or nothing” game. I instead suggest a more nuanced approach, recognizing that a desired revolutionary change might not be realistic in the short run.

To make my point, I adopt therapeutic jurisprudence scholar David Wexler’s metaphor of “bottle” and “wine” to distinguish between the category of legal rules and procedures and the category of legal practices and techniques.⁴³ While the former category is more structural and formal, thus harder to change, the latter is flexible, informal, and easier to implement. The criminal law and procedure can be described as the “bottle”: it provides the “legal landscape,”⁴⁴ the substantive, procedural, and evidential framework in which criminal disputes are processed. The practices and techniques that professionals use are the “wine.” Legal actors have the flexibility to pour therapeutic-oriented liquid into the “bottle” through their practices that may enhance stakeholders’ emotional well-being. Such practices, some of which Peleg and I mention,⁴⁵ do not entail dismantling or radically changing the current system. Yet, sometimes, such practices can make a difference, even if such a difference is small or affects a small group of victims. In the non-ideal world we live in, it is still worth something.

Survivors have suggested therapeutically-oriented, victim-friendly liquid. As part of the interviews, we asked them if they had any recommendations to improve the criminal legal system’s attentiveness to their emotional needs. Alison and Hannah recommended creating a comfortable, designated space where the first testimony of those who come to file a complaint in sexual assault cases will be recorded.⁴⁶ Hannah and Michelle recommended providing support to the victim from the moment they filed a complaint, including constantly providing information that would reduce the feelings of anxiety, loss of control, and loneliness.⁴⁷ Other interviewees recommended a new practice of expressing gratitude and appreciation to complainants when they arrive at the police station to file a complaint. They suggested that police

⁴² See, e.g., Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 259 (2018) (distinguishing between two critiques of criminal law, each calling for a different kind of reform—the first focuses on the quantity, namely the scope and intensity of using criminalization and punitive measurements; the second focuses on the quality, namely the socio-cultural structure of criminal law that “exacerbates power imbalances and distributional inequities”).

⁴³ Wexler, *supra* note 5, at 464 (“A useful heuristic is to think of TJ professional practices and techniques as ‘liquid’ . . . and to think of the governing legal rules and legal procedures—the pertinent legal landscape—as ‘bottles.’”).

⁴⁴ *Id.* at 463.

⁴⁵ Dancig-Rosenberg & Peleg, *supra* note 1, at 43–45.

⁴⁶ Dancig-Rosenberg & Peleg, *supra* note 14, at 371.

⁴⁷ *Id.*

officers convey to survivors that even if the case is eventually dismissed, society appreciates their bravery and good citizenship in coming to report the case. Dorothy explained that such practice would help survivors develop a sense of worth and feeling of solidarity: “[the police officers should] explain sensitively that nothing may come of it, but you are a hero, just because of the fact that you were able to [report].”⁴⁸ Clara added: “Let the police say: ‘We are with you ... and thank you for sharing with us.’”⁴⁹

Of course, pouring survivor-friendly “wine” into the existing “bottle” is not enough to make the criminal process relevant to most survivors on a large scale. Although I believe small steps matter, I share Professor Abrams’ recognition that the current criminal legal system’s capacity to address survivors’ emotional needs is limited due to the structural and institutional traits she mentions. But what if we adopt a designated criminal legal process accommodated for sexual offense cases? What if we replace the existing bottle with a new one, adopting a particular procedure? More specifically, what about such a new bottle that would still operate within a state-run, professional-led criminal legal system, which would not require us to wait for hard-to-achieve fundamental reform?

An interesting example to explore is the model of sexual violence courts. Variants of these courts have been operating worldwide, varying between those operating as specialized courts separated from the mainstream criminal courts and those operating as a department within the District Courts according to the adversarial model.⁵⁰ South Africa was a pioneer in establishing Sexual Offences Courts in 1993.⁵¹ The goals of these courts were to (1) minimize the insensitivity to sexual assault survivors within the criminal legal system, adopting a manifested approach of “putting the victims in the center”; (2) advance the collaboration between various professionals and experts in sexual assault trauma; and (3) improve procedures relating to criminal investigation and prosecution, and increase report rates in sexual violence cases.⁵² Despite success in achieving its goals, including reducing the secondary trauma of survivors, these courts were closed at some point,

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Such courts operate, for instance, in New York, New Zealand, South Africa, India, and Australia. For an example of a court operating as a department within the District Courts, see *Sexual Violence Court Pilot – Frequently Asked Questions*, DIST. CT N.Z., <https://www.districtcourts.govt.nz/assets/Uploads/FAQS-Sexual-Violence-Court-Pilot.pdf> [<https://perma.cc/P6AA-B4AC>]. For an example of sexual offenses courts operating separately from the mainstream court, see SYLVIA WALBY ET AL., EUROPEAN PARLIAMENT: POLICY DEPARTMENT CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS, OVERVIEW OF THE WORLDWIDE BEST PRACTICES FOR RAPE PREVENTION AND FOR ASSISTING WOMEN VICTIMS OF RAPE 162 (2013).

⁵¹ WALBY ET AL., *supra* note 50, at 161.

⁵² SHARON STANTON ET AL., IMPROVED JUSTICE FOR SURVIVORS OF SEXUAL VIOLENCE? ADULT SURVIVORS’ EXPERIENCES OF THE WYNBERG SEXUAL OFFENCES COURT AND ASSOCIATED SERVICES 148 (1997); WALBY ET AL., *supra* note 50, at 163–64.

primarily because of budgetary issues and a lack of legislative regulation.⁵³ However, twenty-two courts were re-established in 2014, and recommendations were made for improvement to enhance survivors' sense of control and make the process more accessible. Recommendations included, for example, designing the courtroom space to prevent an encounter between the survivor and the defendant, recruiting professionals who are trained and experienced to work with sexual assault victims, redefining the roles of professionals to include two prosecutors (one focusing on interacting with the victim and preparing her to testify in court and the other taking care of the different legal aspects), a social worker, a translator, and a supportive officer as part of a collaborative team.⁵⁴

In New Zealand, Sexual Violence Courts were established as part of a pilot in Whangarei and Auckland.⁵⁵ The background of the pilot was the understanding that sexual assault survivors who turn to the criminal legal system have special needs.⁵⁶ The pilot aimed to improve the treatment survivors receive from professionals and reduce their secondary trauma during their encounters with the criminal legal system.⁵⁷ To achieve this goal, judges who were recruited underwent special training in the field, the case-handling time was shortened, and various professionals worked in collaboration with experts in sexual assault trauma.⁵⁸ An evaluation study found this pilot led to a reduction in the level of anxiety among victims due to the support and information that survivors received and the expedited procedures.⁵⁹ In light of the pilot's success, these courts moved to operate permanently.⁶⁰

Another variant of the model has been operated in New York State, where Sex Offense Courts are a kind of problem-solving court,⁶¹ aiming to

⁵³ See REPUBLIC OF SOUTH AFRICA DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: MINISTERIAL ADVISORY TASK TEAM ON THE ADJUDICATION OF SEXUAL OFFENCE MATTERS, REPORT ON THE RE-ESTABLISHMENT OF SEXUAL OFFENCES COURTS 12, 52 (2013), <https://www.justice.gov.za/reportfiles/other/2013-sxo-courts-report-aug2013.pdf> [<https://perma.cc/HTR7-HXDY>].

⁵⁴ *Id.* at 52–53.

⁵⁵ SUE ALLISON & TANIA BOYER, GRAVITAS RESEARCH AND STRATEGY LIMITED, EVALUATION OF THE SEXUAL VIOLENCE COURT PILOT 1 (2019), https://www.districtcourts.govt.nz/assets/Uploads/2019_Publications/Sexual-Violence-Court-Pilot-Evaluation-Report-FINAL-24.7.19.pdf [<https://perma.cc/E96B-GAJX>].

⁵⁶ LAW COMMISSION, THE JUSTICE RESPONSE TO VICTIMS OF SEXUAL VIOLENCE 10 (2015), <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R136.pdf> [<https://perma.cc/KY4X-GRVP>].

⁵⁷ Press Release, Jan-Marie Doogue, J., Milestone for Sexual Violence Court Pilot (May 23, 2017), <https://www.districtcourts.govt.nz/assets/Uploads/Six-month-milestone-2.pdf> [<https://perma.cc/JC35-8AWC>].

⁵⁸ See ALLISON & BOYER, *supra* note 55, at 2–3, 39–41.

⁵⁹ *Id.* at 2–3, 44.

⁶⁰ Gill Bonnett, *Sexual Violence Courts to Be Permanent After Pilot's Success*, RADIO N.Z. (Aug. 14, 2019), <https://www.rnz.co.nz/news/national/396639/sexual-violence-courts-to-be-permanent-after-pilot-s-success> [<https://perma.cc/ZDC5-8AYA>].

⁶¹ See *Problem Solving Courts – Overview*, NYCOURTS.GOV, https://ww2.nycourts.gov/COURTS/problem_solving/index.shtml [<https://perma.cc/JV5M-L2XX>].

prevent re-offending and thereby enhance victim and community safety.⁶² The working model is based on abandoning the mainstream adversarial strategy for a collaboration of partner agencies.⁶³ These specialized courts adopt principles of early intervention, monitoring, accountability, and victim support.⁶⁴ This mode of operation can enhance solidarity and create feelings of collectivity and social responsibility.⁶⁵

The Policy Department of the European Parliament, which explored the South African model, published a report focusing on specialized sex crime courts with recommendations to other countries considering adopting a similar model.⁶⁶ One principal recommendation is putting the victim in the center: “Victim-centric, specialist courts should place the health, safety, dignity, privacy, and autonomy needs of the victim-survivor at the centre of the practice.”⁶⁷

Whether such courts are new bottles (i.e., replacing the mainstream adversarial procedure with a new set of procedures) or old bottles with new wine (i.e., adopting only new practices and techniques within the mainstream procedures), it seems that they provide a better platform for the legal subjects of sexualized injury. Again, this is not to say that such a model is the best to which we should aspire. Still, within a spectrum in which, on one end, there is the existing mainstream criminal legal process, and on the other end, there is the optimal, imaginary process—there is a range in between where we can make progress without rebuilding everything from scratch.

III. COMPARING FORMAL AND INFORMAL ALTERNATIVES ACCORDING TO EMOTION-ORIENTED PARAMETERS

Looking outside the formal system, Abrams argues that “alternative remedies may speak specifically to the affects among survivors of sexualized injury.”⁶⁸ Toward the end of her comment, she suggests a fascinating analysis of restorative justice as a process in which feelings “are given pride of place.”⁶⁹ Restorative justice puts survivors in the center and seeks to fulfill the impulses toward solidarity and regaining control.

⁶² See *6th JD – Tompkins County – Sex offense Court*, NYCOURTS.GOV, <https://ww2.nycourts.gov/courts/6jd/tompkins/county/sexoffense.shtml> [<https://perma.cc/TPD3-DBBT>].

⁶³ *Id.*

⁶⁴ See *Sex Offense Courts*, NYCOURTS.GOV, <https://ww2.nycourts.gov/courts/sex-offense/index.shtml> [<https://perma.cc/PR2Q-8PVU>]; REBECCA THOMFORDE-HAUSER & JULI ANA GRANT, CENTER FOR COURT INNOVATION, *SEX OFFENSE COURTS: SUPPORTING VICTIM AND COMMUNITY SAFETY THROUGH COLLABORATION* 6–7 (2010).

⁶⁵ See THE INTER-MINISTERIAL COMMITTEE FOR EXAMINING THE TREATMENT OF SEXUAL CRIME VICTIMS IN CRIMINAL PROCEEDINGS 146 (2019).

⁶⁶ See WALBY ET AL., *supra* note 50, at 160–66.

⁶⁷ *Id.* at 166.

⁶⁸ Abrams, *supra* note 2, at 68.

⁶⁹ *Id.*

To integrate the rich insights derived from Abrams's analysis with the insights Peleg and I suggested in *Online Shaming* and those proposed in my present response, I conclude by suggesting a tentative comparison of the four remedies discussed in this correspondence: the mainstream criminal process, specialized sex offenses courts, restorative justice, and social media.⁷⁰ The parameters underlying the proposed comparison are victim-centric, emotion-oriented, or referring to potential survivors' needs. **Table 2** summarizes the responsiveness of each of these formal and informal alternatives to the emotional and affective aspects relating to survivors' needs and wants, emphasizing the relative strengths and weaknesses of each in the eyes of survivors. Remembering that survivors' emotional needs might vary by individual, having multiple platforms that can fulfill various needs and wants to different extents allows each individual to choose the platform/s that speak/s best to her needs.

TABLE 2: COMPARISON BETWEEN MODELS ACROSS EMOTION-ORIENTED PARAMETERS

Platform Parameter	Mainstream adversarial criminal process	Specialized Sex Offenses Courts	Restorative justice processes	Social media
The survivor is in the center.	No	Yes	Yes	Yes
Encouraging emotional dialogue between survivor-assailant	No	No	Yes	No
Providing survivors with opportunities for support and solidarity	No	Yes	Yes	Yes
Providing opportunities for regaining control, recovering agency	No	Yes	Yes	Yes
Emotions are given pride of place	No	Yes	Yes	Yes
Recognizing and validating sexual harm	Sometimes	Yes	Yes	Yes
Seeking to secure assailant's accountability	Yes	Yes	Yes	Sometimes

⁷⁰ The proposed comparison is tentative because it is based on generalization. It seeks to point at the tendencies of each model in its prototype form.

CONCLUSION

Professor Abrams's comment spotlighted a central and essential, albeit sometimes neglected, aspect vital to understanding survivors' needs and expectations when seeking a platform to achieve what they perceive as justice. In my short reply, I attempted to provide an initial response to the challenge she posed. Future studies should delve more into the exploration of emotions and their role in understanding legal subjects and the potential of justice channels to provide them with adequate responses. Indeed, emotions matter. Let this critical discussion continue.

