

ONLINE SHAMING AND THE POWER OF INFORMAL JUSTICE

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In recent years, survivors of sexual assault began disclosing identifying details about their alleged assailants while sharing their stories online. The practice has been termed “online shaming.” Some survivors have engaged in online shaming in addition to reporting their cases to the police, while others have employed it as an alternative to taking legal action. This Article reveals, for the first time, how sexual assault survivors who participate in online discourse on sexual assault perceive the practice of shaming their alleged assailants online.

This Article relies on in-depth interviews with survivors who have shared their stories on Facebook to uncover their justifications for and objections to online shaming. According to survivors, online shaming serves to achieve not only personal and feminist objectives, such as undermining gender and social hierarchies and giving voice to survivors, but also classic criminal justice-oriented goals, such as deterrence and incapacitation. Indeed, they hold the belief that online shaming can outperform the criminal legal system in achieving these goals. At the same time, survivors stressed that the online channel has its perils if victims use it to attain informal justice.

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This Article sheds light on the dynamics and tensions between two “competing” platforms of justice—the mainstream, formal criminal legal system and the online, informal one—and suggests essential lessons for the criminal legal system. Survivors need both formal and informal channels to be open and accessible to make an informed choice between them according to their preferences, needs, and circumstances.

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INTRODUCTION

In October 2017, following groundbreaking reports detailing Harvey Weinstein’s rampant sexual assault and harassment of women in the American entertainment industry,¹ the #MeToo movement came into its own. During the #MeToo campaign, women revealed in press interviews and social media posts the sexual harassment that they experienced while working in the

¹ Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [<https://perma.cc/67ES-VFCA>]; Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein’s Accusers Tell Their Stories*, NEW YORKER (Oct. 10, 2017), <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories> [<https://perma.cc/K2QK-9KJJ>].

film industry and the media. It was not just celebrities. Women from a range of different industries posted under #MeToo to describe, for the first time, their sexual assault experiences.² A year later, in October 2018, another online campaign was launched in the U.S. following the publication of Dr. Christine Blasey Ford's sexual assault accusations against Supreme Court nominee Brett Kavanaugh and in response to President Trump's tweets questioning why the allegations against Kavanaugh had been withheld for many years.³ Under the hashtag #WhyIDidntReport, survivors⁴ explained why they did not file a complaint with the criminal legal system immediately in real time about the sexual assaults committed against them.⁵

At the height of the #MeToo movement, many politicians, actors, and well-known intellectuals and media personalities stepped down from public life in response to sexual assault allegations that survivors posted on social media.⁶ The global wave of online disclosure of the survivors' names and their

² For a description of how the #MeToo campaign erupted in the U.S., see Margo Kaplan, *Reconciling #MeToo and Criminal Justice*, 17 OHIO ST. J. CRIM. L. 361, 361–64 (2020); Alison Gash & Ryan Harding, *#MeToo? Legal Discourse and Everyday Responses to Sexual Violence*, 7 LAWS 1, 1–2 (2018); Deborah Tuerkheimer, *Beyond #MeToo*, 94 N.Y.U. L. REV. 1146, 1147–49 (2019); see also Nadia Khomami, *#MeToo: How a Hashtag Became a Rallying Cry Against Sexual Harassment*, GUARDIAN (Oct. 20, 2017), <https://www.theguardian.com/world/2017/oct/20/women-worldwide-use-hashtag-metoo-against-sexual-harassment> [<https://perma.cc/NEC5-AFQY>] (detailing how #MeToo spread both in the U.S. and internationally); Cristela Guerra, *Where Did 'Me Too' Come From? Activist Tarana Burke, Long Before Hashtags*, BOS. GLOBE (Oct. 17, 2017), <https://www.bostonglobe.com/lifestyle/2017/10/17/alyssa-milano-credits-activist-tarana-burke-with-founding-metoo-movement-years-ago/o2Jv29v6ljObkKPTPB9KGP/story.html> [<https://perma.cc/3XPN-X8A8>] (describing how #MeToo originated with activist Tarana Burke). The movement went viral on social media and the #MeToo hashtag was used over 19 million times in a year. See Dalvin Brown, *19 Million Tweets Later: A Look at #MeToo a Year After the Hashtag Went Viral*, USA TODAY (Oct. 13, 2018), <https://www.usatoday.com/story/news/2018/10/13/metoo-impact-hashtag-made-online/1633570002/> [<https://perma.cc/WFV2-ED7B>]. For a fascinating analysis of the emergence of the #MeToo movement, which has yielded two contradicting tendencies—one calling for an increased use of carceral measures and the other calling for non-carceral responses—see generally Aya Gruber, *A Tale of Two Me Toos*, 2023 U. ILL. L. REV. 1675 (2023).

³ Jacey Fortin, *#WhyIDidntReport: Survivors of Sexual Assault Share Their Stories After Trump Tweet*, N.Y. TIMES (Sept. 23, 2018), <https://www.nytimes.com/2018/09/23/us/why-i-didnt-report-assault-stories.html> [<https://perma.cc/7CC3-2VWL>].

⁴ We use the term “survivors” to refer to women and men who were sexually assaulted. This term emphasizes their resilience following the trauma they experienced. Some prefer to use the term “victims” to emphasize the vulnerability and helplessness that the crime created. We respect each of these terms and recognize the importance of letting victims/survivors themselves decide which they prefer. In this Article, we mainly chose to use the term “survivor.” There is no normative preference underlying our choice. For an analysis of the pros and cons of using each term, see generally Hadar Dancig-Rosenberg & Noa Yosef, *Crime Victimhood and Intersectionality*, 47 FORDHAM URB. L. J. 85 (2019).

⁵ See Vanessa Woodward Griffin, Ericka Wentz & Emily Meinert, *Explaining the Why in #WhyIDidntReport: An Examination of Common Barriers to Formal Disclosure of Sexual Assault in College Students*, 37 J. INTERPERSONAL VIOLENCE 1, 3 (2022).

⁶ See Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html?nl=top-stories&nid=72995439ries&ref=cta> [<https://perma.cc/L86B-8YHF>].

alleged assailants has provoked a wide-ranging and polarized public debate in traditional and social media worldwide.⁷

On one hand, the new phenomenon appears to be a welcome turning point: the beginning of a revolution that seeks to create an egalitarian culture in gender relations and a safe public space for women.⁸ On the other, these publications have been described as amounting to a public “flogging” in the town square, the “privatization” of punishment, and its placement in the hands of survivors, without a fair trial, causing severe social labeling and economic harm to the shamed person.⁹

⁷ The early signs of this worldwide techno-social phenomenon were apparent in the West even earlier. *See, e.g.*, Beth Slovic, *Trial by Facebook*, WILLAMETTE WEEK (Jan. 8, 2008), <https://www.wweek.com/portland/article-8263-trial-by-facebook.html> [<https://perma.cc/Q8CP-5SMC>] (discussing the case of students who in 2008 disclosed on Facebook the identity of a fellow student who was accused of rape); Michael Salter, *Justice and Revenge in Online Counter-Publics: Emerging Responses to Sexual Violence in the Age of Social Media*, 9 CRIME, MEDIA, CULTURE 225, 229–32 (2013) (analyzing the case of Savannah Dietrich, who in 2012, made international headlines when she defied a gag order by tweeting the names of two teenagers convicted of sexually abusing her at a party in Kentucky). In Israel, sexual assault allegations against men in powerful positions have been published on Facebook since 2013. For example, testimonies published on Facebook accused journalist Emmanuel Rosen, who was not criminally prosecuted but was fired from his senior position at Channel 10, of sexual harassment. *See Emmanuel Rosen*, WIKIPEDIA, https://en.wikipedia.org/wiki/Emmanuel_Rosen [<https://perma.cc/HVV8-D8LW>]. In another case, Liran Hagbi, a senior military officer, was convicted of inappropriate behavior, demoted, and dismissed from the military after a female officer under his command revealed on Facebook the story of how he sexually harassed her. *See* <https://www.ynet.co.il/articles/0,7340,L-4651184,00.html> [Heb.] [<https://perma.cc/Q3SB-Y7PJ>]. In an additional case, Yinon Magal, a journalist who entered politics, joined the Jewish Home party, and was elected to the Parliament, announced his resignation from Parliament following sexual harassment allegations that were published on Facebook by a journalist who was his former colleague. Eventually, the criminal file against him was closed. *See Yinon Magal*, WIKIPEDIA, https://en.wikipedia.org/wiki/Yinon_Magal [<https://perma.cc/M9EB-GGMN>].

⁸ *See, e.g.*, Jessica Valenti, *#MeToo Named the Victims. Now, Let's List the Perpetrators*, GUARDIAN (Oct. 17, 2017), <https://www.theguardian.com/commentisfree/2017/oct/16/me-too-victims-perpetrators-sexual-assault> [<https://perma.cc/PNE5-K3UU>] (“Why have a list of victims when a list of perpetrators could be so much more useful?”); Amanda Petrusich, *One Year of #MeToo: A Younger Generation's Remedy for Rage*, NEW YORKER (Oct. 10, 2018), <https://www.newyorker.com/culture/culture-desk/one-year-of-metoo-a-younger-generations-remedy-for-rage> [<https://perma.cc/S4SZ-UDPL>] (“[T]he #MeToo movement has made new spaces for women's accusations The number of women who came forward to directly address their abusers forced an immediate reckoning[.]”).

⁹ *See, e.g.*, Shira A. Scheindlin & Joel Cohen, *After #MeToo, We Can't Ditch Due Process*, GUARDIAN (Jan. 8, 2018), <https://www.theguardian.com/commentisfree/2018/jan/08/metoo-due-process-televictions> [<https://perma.cc/4BNQ-V5RH>] (“There has recently been a groundswell of high-profile ‘televictions’ of men accused of workplace harassment. We must find a better way to deliver justice [W]e must find a way to ensure that everyone . . . is given a fair shake through a swift and fair process.”); Caitlin Flanagan, *The Conversation #MeToo Needs to Have*, ATLANTIC (Jan. 29, 2018), <https://www.theatlantic.com/politics/archive/2018/01/the-right-conversation-for-metoo/551732/> [<https://perma.cc/9JRL-7BNP>] (“Zero tolerance should go hand in hand with two other things: due process and proportionality. These words . . . seemed not to register within the larger, ‘burn it down’ spirit animating the mob.”) (internal quotations omitted); *see also* Tatjana Hörnle, *#MeToo—Implications for Criminal Law?*, 6 BERGEN J. OF CRIM. L. & CRIM. JUSTICE 115, 122 (2018) (“Using social media for detailed accusations of individuals is a deeply ambivalent mode of exercising social control. I would strongly advi[s]e anyone who considers

The debate has turned the spotlight on the online collaborative discourse space that allows survivors of sexual violence to expose the assaults they have experienced, share with the public the consequences of sexual assault for them, stimulate public discourse on the functioning of the criminal legal system, and, at times, punish the assailants without a legal process.

Testimonies on Facebook pages suggest that some survivors chose this platform to supplement going to rape crisis centers or after their criminal proceedings against the assailants concluded. Other survivors turned to social or traditional media after they failed to obtain relief from the criminal legal system. Some survivors did not turn to the criminal legal system at all because they did not trust it and hoped to use social media instead. In all these cases, social media appeared to function not only as a space where those who have experienced sexual abuse could heal but also as a means to circumvent the classic gatekeepers who shape the public discourse on sexual assault: legal actors and journalists.¹⁰

A review of posts published by survivors on social media before and after the outbreak of #MeToo shows that some survivors shared their stories of victimization with or without publicly disclosing the identity of their assailants. The practice of a survivor revealing on social media the identifying details of her assailant has been termed “online shaming.”¹¹ To date, studies have analyzed online shaming from philosophical, psychological, cultural, feminist, and media studies perspectives.¹² A few studies have investigated the legal issues related to this phenomenon.¹³ Yet, despite the prevalence of online

taking part in this movement to seriously think about matters such as fairness and proportionality, and to critically self-assess one’s motives for participation.”)

¹⁰ For an analysis of the function of social media as an alternative, informal platform for the healing of sexual assault survivors and the shaping of public discourse on sexual violence, see, for example, Anastasia Powell, *Seeking Rape Justice: Formal and Informal Responses to Sexual Violence Through Technosocial Counter-publics*, 19 *THEORETICAL CRIMINOLOGY* 571, 573 (2015); Lena Wänggren, *Our Stories Matter: Storytelling and Social Justice in the Hollaback! Movement*, 28 *GENDER & EDUC.* 401, 406 (2016); Bianca Fileborn, *Justice 2.0: Street Harassment Victims’ Use of Social Media and Online Activism as Sites of Informal Justice*, 57 *BRIT. J. CRIMINOLOGY* 1482, 1485–86 (2017); Salter, *supra* note 7, at 231.

¹¹ We used the terms “survivor” and “assailant” to refer to the interviewees’ narratives. We note, however, that some of the alleged assailants have not been charged or convicted in criminal proceedings. In general statements, we also chose to refer to the survivors with the pronoun “she” and to the assailant with the pronoun “he” to reflect the gender of the survivors and the assailants in most of the cases in our study.

¹² For a sample list, see generally Krista K. Thomason, *The Moral Risks of Online Shaming*, in *THE OXFORD HANDBOOK OF DIGITAL ETHICS* (Carissa Véliz ed., 2021) (identifying the moral and political risks of online shaming and arguing that shaming threatens to undermine our commitment to the co-deliberative practices of morality); Thomas S. Mueller, *Blame, Then Shame? Psychological Predictors in Cancel Culture Behavior*, *SOC. SCI. J.* 1 (2021) (creating a profile of psychological behaviors related to cancel culture on social media); Jamie E. Shenton, *Divided We Tweet: The Social Media Poetics of Public Online Shaming*, 32 *CULTURAL DYNAMICS* 170 (2020) (analyzing contemporary politicized social media to demonstrate how antagonists criticize one another by using public online shaming and create their own identities in the process); Salter, *supra* note 7 (noting the potential for social media to foster and disseminate counter-hegemonic discourses).

¹³ See generally Kate Klonick, *Re-Shaming the Debate: Social Norms, Shame, and Regulation in an Internet Age*, 75 *MD. L. REV.* 1029 (2016) (discussing the viability of

shaming, studies so far have neglected to address the meaning that survivors ascribe to it and the reasons underlying their choice to resort to this practice in light of their needs and expectations of achieving justice.

This Article seeks to fill this gap. It explores how sexual assault survivors who shared their stories on Facebook perceived the practice of shaming their assailants, the meaning they attached to online shaming, and its consequences. The Article presents findings we collected as part of a longitudinal qualitative study based on semi-structured in-depth interviews with twenty survivors of sexual assault in Israel, primarily women, who chose to share their stories of victimization on Facebook. About half the survivors disclosed identifying details of the assailant. The interviews were conducted at two points in time, before and after the outbreak of the #MeToo campaign. We finished the first wave of interviews in September 2017. About two months later, when the #MeToo movement went viral, we decided to re-interview the same survivors in the summer of 2018 to examine whether the campaign influenced their attitudes toward the research questions and, if so, how. Capturing the before and after perspectives of the survivors provided a rare opportunity to examine how the #MeToo campaign affected their attitudes toward online shaming.

The study's findings reveal various reasons why survivors shame their assailants online or avoid doing so.¹⁴ The reasons survivors mentioned can be generally classified into two, often overlapping, broad categories: those that reflect the need to achieve either public or personal goals and those that reflect the need to attain criminal justice-oriented or other goals.

Among the reasons provided in favor of online shaming were a desire to warn assailants and protect other potential victims, a desire to assist the police in collecting evidence by creating an incentive for additional survivors to file complaints after they see the name of their assailant online and understand that they are not the only ones who have been abused, the perception that online shaming is a mechanism for socially punishing the perpetrators that compensates for a criminal legal system that fails to provide adequate responses to sexual assault, a desire to exercise the public's right to know about the misconduct of public figures who abuse their power in cases that do not amount to a criminal offense, a perception of shaming as a tool for undermining existing power relations and reversing the current social hierarchy between assailants and survivors, and the desire to give survivors a voice and restore their sense of control. By contrast, the interviewees listed a few reasons for opposing online shaming: a fear of diverting the feminist struggle from its goals by focusing on individual cases rather than on sexual violence as a systemic problem, fear of the assailant's physical retaliation, concern

legal, normative, private, and state solutions to control online shaming); Emily B. Laidlaw, *Online Shaming and the Right to Privacy*, 6 *LAWS* 1 (2017) (examining the privacy implications of online shaming). Other studies, however, have primarily focused on the reasons for imposing shaming penalties in criminal proceedings and the consequences of various state shaming practices for the offender and society. See *infra* Part I.

¹⁴ See *infra* Parts III.A, III.B.

about defamation suits against survivors, fear of violating the assailants' right to a fair legal process, and compassion for the assailant and his family.

The findings also reveal how survivors perceived the results of using shaming on their well-being, social status, and the broader struggle against rape culture.¹⁵ While some survivors experienced relief from finally disclosing their oppressive secrets and satisfaction from seeing some celebrities retire from public life following the publication of the shaming post, most survivors also reported negative consequences on their own lives, including their social status and their relationship with criminal legal system officials, such as prosecutors. A few survivors even thought that the mass humiliation carried out as part of the #MeToo campaign harmed the effort to mobilize public opinion in the fight against rape culture and harmed the principle of due process. Overall, although the quantity of reasons survivors provided in support of online shaming was greater than the number of reasons against it, survivors mentioned more negative than positive consequences of using this practice.

Analysis of the findings sheds light on sexual assault survivors' needs and expectations concerning what they perceive as "doing justice." Their perceptions demonstrate the nature of the techno-social channel as a platform for achieving alternative justice and reveal the new power relations constructed between survivors, assailants, community members, and the State, outside the formal sphere of the criminal legal system and in the virtual sphere.

Although our study presents the perspective of sexual assault survivors in Israel, its lessons can be extended beyond its original geographic boundaries. Given the democratic value of free speech, the principles of the rule of law, and the protection of individual rights that Israel shares with other Western democracies, the lessons of the study appear to be relevant to these countries as well. The common features of sexual assault crimes as well as the post-traumatic symptoms and shared consequences for survivors cross geographic borders and highlight the universal experience of sexual assault despite the various idiosyncratic characteristics it may display in different societies. Shame, self-blame, social stereotypes, fear of social rejection, and difficulty rebuilding trust are only some features that sexual assault victims

¹⁵ See *infra* Part III.C. "Rape culture" is a term that describes how "sexual violence against women is implicitly and explicitly condoned, excused, tolerated and normalized." Powell, *supra* note 10, at 575. This term was used in sources beginning at least in the 1970s. See, e.g., SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975); Dianne F. Herman, *The Rape Culture*, in *WOMEN: A FEMINIST PERSPECTIVE* 38–39 (Jo Freeman ed., 4th ed. 1989); Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 *J. PERSONALITY & SOC. PSYCH.* 217, 219 (1980). For a discussion of social media as a site where rape culture and sexism are normalized, but also criticized and combatted, see generally Sophie Sills et al., *Rape Culture and Social Media: Young Critics and a Feminist Counterpublic*, 16 *FEMINIST MEDIA STUD.* 935 (2016).

might have.¹⁶ Victims share similar psychological effects worldwide.¹⁷ Despite differences between legal systems, the global spread of #MeToo suggests that victims of sexual assault in Western democracies share many similar misgivings with the criminal legal system, irrespective of its specific structure.

This Article has important implications for the criminal legal system. Today, online techno-social spaces often respond better to survivors' needs than the criminal legal system.¹⁸ Therefore, the latter must become more attentive and accessible to survivors to retain its function as an optional channel for those who desire proper legal responses. Our findings reveal that, according to some survivors, online shaming not only meets their personal needs but can also outperform the criminal legal system in achieving classic goals of criminal law, such as prevention, deterrence, incapacitation, and denunciation.¹⁹ In this reality, survivors no longer feel that turning to the formal system has a significant added value, especially given the personal price they pay in their tense, often traumatic encounters with system officials. Although the criminal legal process is not suitable for every survivor, it should turn itself into a good option, so survivors can make an informed choice between good-enough alternatives rather than turn to the online channel *only* because they perceive the formal system as incapable of meeting their needs.

However, making the formal system better attuned to survivors' needs does not mean increased punitivism or undermining the value of non-punitive, community-based alternative channels. Instead, recognizing that survivors differ from one another in their preferences and needs means that there is a great social interest in keeping open as many channels as possible to which survivors can turn. In some cases, informal, non-punitive channels may be suitable platforms for seeking justice; in others, the formal channel may be more suitable. Each platform has its strengths and weaknesses, creating a richer toolset from which survivors can choose. This Article stresses the urgent need for improvement to make the formal system more attentive to survivors of sexual assault while providing accused assailants the benefit of a fair legal process and preserving the value of formal investigative procedures.²⁰

¹⁶ See Hadar Dancig-Rosenberg, *Sexual Assault Victims — Empowerment or Revictimization? The Need for a Therapeutic Jurisprudence Model*, in TRENDS AND ISSUES IN VICTIMOLOGY 150, 165 (Natti Ronel., K. Jaishankar, & Moshe Bensimon eds., 2008).

¹⁷ See Naeemah Abrahams et al., *Worldwide Prevalence of Non-partner Sexual Violence: A Systematic Review*, 383 LANCET 1648, 1653 (2014) (“The psychological effects of sexual violence and the high prevalence we found confirm that it is a pressing health and human rights concern requiring serious attention.”).

¹⁸ 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, 1560 (2023) (presenting findings of an empirical study based on 499 responses of sexual assault survivors who participated in social discourse about sexual assault on Facebook, showing that survivors perceived the capacity of Facebook to address their needs to be higher than that of the criminal legal system in fourteen out of eighteen categories).

¹⁹ See *infra* Part III.A.

²⁰ See Tuerkheimer, *supra* note 2, at 1189 (“At least with respect to contested allegations of abuse, processes triggered by the formal reporting of abuse, assuming they are fair, are generally preferable to adjudication in the Courts of Public Opinion.”).

At the same time, it recognizes the benefits of the online techno-social platform as a potential channel for achieving alternative justice.

The Article proceeds as follows. Part I describes how shaming practices are manifest in two areas relevant to this study: criminal law and the media. Part II outlines the research method. Part III presents the findings of our study, describing survivors' attitudes toward online shaming and what they perceived as the consequences of disclosing the assailants' identities on their personal, social, and professional lives. Part IV discusses the significance of the findings concerning survivors' perception of justice.

I. SHAMING PUNISHMENTS IN CRIMINAL LAW AND THE MEDIA

The literature about shaming presented in this section examines the nature of shaming punishments in general, the pros and cons of shaming punishments, and the distinction between integrative and disintegrative shaming.

Shaming is defined as an action that causes people to feel a painful emotion, especially by public exposure, due to the awareness that they have committed a shameful or disrespectful act.²¹ Psychologists point to three elements necessary for shaming: "(1) public criticism that has to do with (2) a breach of accepted norms . . . and (3) that is carried out by someone in a position of legitimate authority."²² The shamed person experiences feelings of low self-esteem and helplessness.²³ Anne-Marie McAlinden notes that "[h]istory is littered with examples of the public spectacle of punishment where shaming and public humiliation were used . . . to exact punishment."²⁴ For instance, humiliation was integral to Michel Foucault's description of torture, a process that was part of the punishment ritual and was carried out brutally in public.²⁵ Foucault explained that torture's purpose was twofold: it was supposed to both humiliate the accused by leaving marks on the perpetrator's body and signify the victory of the legal system by showing everyone the torture and its outcome: the marks.²⁶ The overuse of violence was part of the glory of the

²¹ For definitions of the term "shaming," see COLLINS ENGLISH DICTIONARY, <https://www.collinsdictionary.com/dictionary/english/shaming> [<https://perma.cc/NK2W-CW6E>] ("the act or practice of attempting to embarrass a person or group by drawing attention to their perceived offence, esp[ecially] on social media"); MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/shaming> [<https://perma.cc/MSG5-RZY3>] ("the act or activity of subjecting someone to shame, disgrace, humiliation, or disrepute especially by public exposure or criticism"); JOHN BRAITHWAITE, CRIME, SHAME, AND RE-INTEGRATION 100 (1989) ("all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming").

²² Joan F. Goodman, *The Shame of Shaming*, 99 PHI DELTA KAPPAN 26, 26 (2017).

²³ See June Price Tangney et al., *Are Shame, Guilt, and Embarrassment Distinct Emotions?*, 70 J. PERSONALITY & SOC. PSYCH. 1256, 1257 (1996).

²⁴ Anne-Marie McAlinden, *The Use of 'Shame' with Sexual Offenders*, 45 BRIT. J. CRIMINOLOGY 373, 376-77 (2005).

²⁵ MICHEL M. FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 3-72 (1977).

²⁶ *Id.*

system—the cries of the guilty under the blows were considered part of the ritual of the trial itself in Western countries until the middle of the twentieth century.²⁷

Scholars have debated the pros and cons of shaming punishments. Proponents argue that shaming could be a significant incentive for behavior change because it reminds offenders of the common social norms. This form of punishment expresses a moral condemnation of the behavior that society is interested in denouncing.²⁸ Some point to the cost-effectiveness of shaming penalties relative to incarceration costs.²⁹ Others argue that these punishments are particularly effective because public humiliation infringes on one of the most essential values in contemporary society: privacy.³⁰

Today, in the digital era, this debate has intensified. Some scholars note that using online platforms for shaming purposes may be an effective step toward justice and the enforcement of social norms.³¹ By contrast, many criticize shaming as punishment and point out its unfairness.³² The ineffectiveness of shaming punishments has also been noted when social cohesion is lacking

²⁷ *Id.*

²⁸ Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 635 (1996); David R. Karp, *The Judicial and Judicious Use of Shame Penalties*, 44 CRIME & DELINQUENCY 277, 279 (1998) (“Shame penalties . . . are justified by their intent to convey the same moral condemnation as incarceration. They are meant to satisfy the retributive impulse. The symbolic power, however, does not come from the denial of liberty but . . . from the reduction of social status.”).

²⁹ See Kahan, *supra* note 28, at 630 (“[S]ociety is certainly better off if it can substitute a cheaper pairing of sensibilities and institutions for a costly pairing.”); Lauren M. Goldman, *Trending Now: The Use of Social Media Websites in Public Shaming Punishments*, 52 AM. CRIM. L. REV. 415, 429 (2015) (“Although not much data exists on the cost of public shaming sanctions, the cost of publishing one’s picture in the newspaper or making a sign and wearing it for eight hours certainly is much less than \$31,286 a year per person.”).

³⁰ See Goldman, *supra* note 29, at 431 (“Because they deprive individuals of their privacy, which is highly valued in today’s society, public shaming punishments could be supported as an appropriate form of punishment.”); Barbara Clare Morton, Note, *Bringing Skeletons Out of the Closet and into the Light—“Scarlet Letter” Sentencing Can Meet the Goals of Probation in Modern America Because It Deprives Offenders of Privacy*, 35 SUFFOLK U.L. REV. 97, 100 (2001) (“[S]carlet letter sentencing may effectively deter and rehabilitate wrongdoers today because it deprives offenders of privacy.”); *id.* at 122–23.

³¹ See, e.g., Goldman, *supra* note 29, at 450 (“Because people create their own communities via the Internet, public shaming sanctions that utilize an offender’s online presence could be particularly effective.”).

³² See Jon A. Brilliant, Note, *The Modern Day Scarlet Letter: A Critical Analysis of Modern Probation Conditions*, 1989 DUKE L.J. 1357, 1381–84 (1989) (arguing that probation conditions consisting of punishment practices “can and should be struck down as cruel and unusual punishment”); Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1937 (1991) (arguing that the way in which shaming sanctions have developed, and the serious harm to human dignity they can cause, suggest that the fairness objections to official shaming are compelling); James Q. Whitman, *What Is Wrong with Inflicting Shame Sanctions?*, 107 YALE L.J. 1055, 1059 (1998) (arguing that shame sanctions are wrong because they involve “a species of official lynch justice”). See also *Flogging?*, NEWSWEEK (Apr. 21, 1991), <https://www.newsweek.com/flogging-202156> [<https://perma.cc/FMT5-RGQW>] (characterizing apology advertisements as “a scarlet letter for the 1990’s” and pointing to a comparison drawn by opponents between “public flogging” and these shaming practices).

because social ties that were strong in small, local communities have loosened with the transition to the modern, urban, individualized life.³³ Psychological studies show that shaming may not achieve a deterrent or rehabilitative effect and may even aggravate the defendant's behavior.³⁴

Social shaming has been conceptualized and discussed in the literature not only as a punitive social response. John Braithwaite distinguished between reintegrative and disintegrative shaming.³⁵ Reintegrative shaming is based on conveying a censuring message toward the act in a way that respects the actor, who is perceived as a good person who has done an evil deed.³⁶ By contrast, disintegrative shaming identifies the actor with the act—that is, it regards the actor as an irremediable person. The “key element” separating reintegrative from disintegrative shaming is “the labelling of delinquents.”³⁷ Whereas reintegrative shaming has the potential to transform the offender because it is accompanied by a willingness to accept the perpetrator, disintegrative shaming is liable to increase the wrong internalization of the act because it is accompanied by messages of social rejection and humiliation.³⁸ Proponents of restorative justice have adopted the reintegrative shaming theory because the practice is perceived to be more effective in preventing repeat offenses, as opposed to the ineffectiveness of prison sentences, which are accompanied by stigmatizing shaming.³⁹ In the U.S., shaming punishments are not regulated by law but

³³ See Massaro, *supra* note 32, at 1922.

³⁴ Ryan J. Huschka, Comment, *Sorry for the Jackass Sentence: A Critical Analysis of the Constitutionality of Contemporary Shaming Punishments*, 54 U. KAN. L. REV. 803, 831–32 (2006).

³⁵ See BRAITHWAITE, *supra* note 21, at 100–01.

³⁶ See *id.* at 55, 101. Shaming creates a reintegrative effect when (a) it maintains respect between the person doing the shaming and the shamed person; (b) it focuses on the wrongdoing and not on the wrongdoers; (c) it is accompanied by social approval; and (d) it ceases with ritual of reacceptance into the community. See *id.*; see also McAlinden, *supra* note 24, at 376 (“[S]haming is reintegrative when it reinforces an offender’s membership in civil society.”).

³⁷ Jon Vagg, *Delinquency and Shame*, 38 BRIT. J. CRIMINOLOGY 247, 254 (1998).

³⁸ For a further discussion of reintegrative and disintegrative shaming, see McAlinden, *supra* note 24, at 375–76; Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 CARDOZO L. REV. 2313, 2327 (2013).

³⁹ Restorative justice processes summon the perpetrator and the victim, their supporters, and community members to discuss the harm, its consequences, and ways to repair it. As part of the dialogue between the stakeholders, it is possible to combine shaming of the assailant about the act committed with acceptance of the assailant as a person. The shaming that assailants experience during restorative justice processes engenders in them a process of internalizing the act and encourages them to take responsibility. Thus, instead of the coercive incentive that underlies stigmatizing and shameful public punishment, properly conducted restorative justice proceedings produce an internal incentive to instigate change in the assailants, who know that despite their wrongdoing they still belong to the community. See Dancig-Rosenberg & Gal, *supra* note 38, at 2327; McAlinden, *supra* note 24, at 375–76. For empirical evidence supporting the effectiveness of restorative justice, see generally HEATHER STRANG, *REPAIR OR REVENGE: VICTIMS AND RESTORATIVE JUSTICE* (2002) (presenting findings from the Reintegrative Shaming Experiments comparing cases randomly assigned to either court or conference in Canberra, Australia); LAWRENCE W. SHERMAN & HEATHER STRANG, *THE SMITH INST., RESTORATIVE JUSTICE: THE EVIDENCE* 68–71 (2007) (a systematic review of evidence derived from reasonably unbiased tests comparing restorative justice

result from judges' rulings and can create a slippery slope of abuse of power at the expense of human dignity.⁴⁰ U.S. case law from the 1980s reveals shaming penalties as part of modern probation conditions, which include publishing the names of offenders in newspapers or on billboards,⁴¹ requiring convicted sex offenders to hang signs on their property attesting to their offense,⁴² placing advertisements in the local newspaper, publicizing their offenses,⁴³ and requiring offenders to confess and publicly apologize for their crimes.⁴⁴ In some U.S. states, sex offenders are registered and the information is passed on to the authorities of the local communities where the offenders reside to warn the public about them.⁴⁵ In other U.S. states, sex offenders released from prison must wear the letter S on the front lapel of their clothing to mark themselves as sex offenders.⁴⁶ They even have to distribute flyers featuring their pictures and details of their past offenses.⁴⁷ U.S. law allows law enforcement agencies to disseminate information about sex offenders online as well.⁴⁸ However, these forms of punishment, while utilized by state courts, are less commonly meted out by federal courts.⁴⁹

with conventional criminal justice, revealing that several rigorous tests of restorative justice showed significant reductions in recidivism rates).

⁴⁰ See Huschka, *supra* note 34, at 834.

⁴¹ For a long list of examples, see Kahan, *supra* note 28, at 632 n.158.

⁴² See, e.g., *State v. Bateman*, 771 P.2d 314, 316, 319 (Or. Ct. App. 1989) (upholding the requirement that a man post a sign on his property and vehicle stating "Dangerous Sex Offender"); *State v. Burdin*, 924 S.W.2d 82, 84, 87 (Tenn. 1996) (invalidating a condition of probation that was imposed by the trial court, requiring the defendant to place a sign in the front yard of the residence where he lived, reading "Warning, all children. Wayne Burdin is an admitted and convicted child molester. Parents beware."); Michael G. Petrunik, *Managing Unacceptable Risk: Sex Offenders, Community Response, and Social Policy in the United States and Canada*, 46 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 483, 493 (2002) ("A dramatic use of the scarlet letter approach has recently taken place in Texas, where a judge ordered 14 sex offenders on probation to place bumper stickers or portable plastic placards on their vehicles reading, 'Danger! Registered Sex Offender in Vehicle' and signs in front of their residences reading 'Danger! Registered Sex Offender Lives Here[.]'").

⁴³ Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1881 (1991) (reporting on a Rhode Island Superior Court judge who required an offender to purchase an advertisement in a newspaper stating: "I am Stephen Germershausen. I am 29 years old . . . I was convicted of child molestation . . . If you are a child molester, get professional help immediately, or you may find your picture and name in the paper, and your life under control of the state.").

⁴⁴ See Kahan, *supra* note 28, at 634 n.170 (referring to various articles, such as that of Kerry Elizabeth Knobelsdorff, *Choosing Between Public Humiliation and Jail*, CHRISTIAN SCI. MONITOR (Jan. 2, 1987), which describes the "widespread use of [these] penalties in Oregon, Oklahoma, and Washington"); Massaro, *supra* note 32, at 1888 (referring to various cases in which these penalties were used in Ohio, Tennessee, and Oregon).

⁴⁵ See NATIONAL SEX OFFENDER PUBLIC WEBSITE, <https://www.nsopw.gov/> [<https://perma.cc/BT5M-2SXX>]; see also Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67 (2005) (discussing the collateral consequences of sex offender registration, including social stigmatization, loss of relationships, employment, and housing, as well as verbal and physical assaults).

⁴⁶ McAlinden, *supra* note 24, at 377.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Goldman, *supra* note 29, at 423.

By contrast, formal shaming punishments in Israel have not been part of the legal culture, not even against sex offenders. Nevertheless, since the late 1990s, Israeli law has adopted legislation that includes imposing restrictions on sex offenders who have served their sentences⁵⁰ and taking measures to protect the public from recidivist sex offenders.⁵¹ This legislation aims to address the dangerousness of sex offenders without resorting to shaming practices.⁵²

In Western countries, the phenomenon of shaming did not remain within the confines of the criminal legal system. The literature points to how the media cooperates with the justice system and intensifies the shaming ceremonies conducted in criminal legal proceedings.⁵³ Some scholars have argued that because, in modern societies, the public arena is conducted primarily in the media, with the advent of newspapers, the well-known social rituals of banishment and humiliation have ceased to be public events managed by state authorities.⁵⁴ Instead, the media serves as an alternative channel for quasi-judicial events, in which alleged assailants are shamed and socially denounced at times, before guilt has been determined. Some have argued that, by these acts, the media reinforces the unifying and desirable values of maintaining “law and order” in society.⁵⁵

In the last decade, the public discourse on legal proceedings has expanded from traditional media to social media, where readers interact directly

⁵⁰ See Limitations on the Return of Sex Offenders to the Victim’s Environment Act, 2004 [Heb] (Isr.) to protect survivors from the mental damage that may be caused to them by encountering the sex offender who assaulted them. The law imposes restrictions on the places where sex offenders may live and work after they have finished serving their punishment. See also Prevention of the Employment of Sex Offenders in Certain Institutions Act, 2001, which requires employers at certain institutions to verify that they do not hire a person convicted of committing a sexual offense.

⁵¹ See the Public Protection from Sex Offenses Act, 2006 [hereinafter the Protection Law]. Three tools are used in combination to provide protection: a registry of sex offenders, basing various judicial decisions on the assessment of the danger posed by sex offenders, and authorizing the court to issue a supervision and monitoring order after the offender’s release from prison or after he has served another sentence.

⁵² The Protection Law establishes a national registry of sex offenders to enable their monitoring and supervision. But Israeli law maintains the confidentiality of the registry and protects the privacy interest of the sex offenders, so as not to excessively harm the possibility of their integration into society. See the Protection Law §19.

⁵³ See McAlinden, *supra* note 24, at 378–79 (describing the *News of the World’s* “name and shame” campaign, following the abduction and murder of eight-year-old Sarah Payne in Sussex, U.K. in July 2000: “The campaign centered on the ‘outing’ of suspected and known pedophiles by printing their photographs, names, and addresses, along with brief details of their offending history. The newspaper promised to continue publishing such details until they had ‘named and shamed’ all of the child sex offenders in Britain.”).

⁵⁴ See Steven A. Kohm, *Naming, Shaming and Criminal Justice: Mass-Mediated Humiliation as Entertainment and Punishment*, 5 CRIME, MEDIA, CULTURE 188, 188 (2009); see also James W. Carey, *Political Ritual on Television: Episodes in the History of Shame, Degradation and Excommunication*, in MEDIA, RITUAL AND IDENTITY 42, 59–60 (Tamar Liebes & James Curran eds., 1998) (describing how Senate hearings of U.S. Supreme Court nominee Robert Bork became a particular kind of media event).

⁵⁵ See Kohm, *supra* note 54, at 193; DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 193–98 (2002).

without any journalistic filtering or editorial mechanisms.⁵⁶ Online channels publish posts by people who do not have connections in the traditional media, including groups that have previously been excluded from public discourse.⁵⁷ Social media users gather in online communities around a common social interest. Many survivors of sexual assault, for example, have started actively participating in the discourse about sexual assault in various online groups and pages.⁵⁸ Even before the #MeToo campaign outbreak, these groups and pages allowed survivors to participate, make their voices heard, receive confirmation and validation of their claims, provide direct evidence of sexual assaults, and even disclose the identifying details of their assailants.⁵⁹ On occasion, online shaming was used after guilt was determined by trial. In other cases, survivors named and shamed their alleged assailants before guilt was legally determined and even without initiating criminal proceedings. Yet despite the hope that online platforms would increase awareness of violence against women and function as a feminist space, the hatred of women, in the form of threats, humiliating comments, and victim blaming, has continued even on these forums.⁶⁰

Scholars have highlighted a few channels of action on social media for achieving informal justice for survivors of sexual assaults.⁶¹ Criminologist

⁵⁶ See KELLY OLIVER, *WITNESSING: BEYOND RECOGNITION* (2001) (coining the term “response-ability” to describe the capacity to respond to others and developing a politics of communicability based on a dual capacity to respond to others and be responded to).

⁵⁷ See Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 8 *SOC. TEXT* 56, 67 (1990) (noting that subordinated groups have created their own platforms in which “members of subordinated social groups invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs”).

⁵⁸ See Carrie A. Rentschler, *Rape Culture and the Feminist Politics of Social Media*, 7 *GIRLHOOD STUD.* 65, 66 (2014) (analyzing participation in the online discourse on sexual violence as “an affective and technological deployment of the testimonial tradition, in which girls and young women digitally record and transcribe personal stories based in their experiences of sexual violence and harassment, and in their roles as witnesses to others’ harassment and experience of sexual violence. They then post and re-distribute them on feminist blogs, YouTube, Instagram, Facebook, and Tumblr sites. . .”); Tuerkheimer, *supra* note 2, at 1168–73 (proposing a taxonomy comprised of four types of unofficial online channels for reporting sexual misconduct, which is categorized along two key dimensions: whether the accuser is anonymous or not; and whether access to the channel is restricted or open to the public).

⁵⁹ Salter, *supra* note 7, at 238.

⁶⁰ For the ways social media can serve as a forum for such victimizing activities as stalking, harassing, humiliating survivors through the distribution of their intimate photographs, blaming, and slut-shaming, see, e.g., Jordan Fairbairn, *Rape Threats and Revenge Porn: Defining Sexual Violence in the Digital Age*, in *eGIRLS, eCITIZENS: PUTTING TECHNOLOGY, THEORY AND POLICY INTO DIALOGUE WITH GIRLS’ AND YOUNG WOMEN’S VOICES* 229, 233–35 (Jane Bailey & Valerie Steeves eds., 2015); Roni Rosenberg & Hadar Dancig-Rosenberg, *Reconceptualizing Revenge Porn*, 63 *ARIZ. L. REV.* 199, 204–06 (2021). See also Rachel Loney-Howes, *Beyond the Spectacle of Suffering: Representations of Rape in Online Anti-Rape Activism*, 33 *OUTSKIRTS* 1, 1, 12–13 (2015) (arguing that even online platforms designated for public discussion on sexual violence can work to perpetuate, rather than refute, stereotypes and myths about sexual violence).

⁶¹ By “informal justice,” we mean the various forms and ways through which survivors feel they can achieve what they perceive as “justice,” without turning directly to the

Anastasia Powell described sites that offer mechanisms for sex workers to achieve informal justice through anonymous reporting and apps that alert sex workers if they are receiving communications from someone who has assaulted another sex worker.⁶² Other sites disclose the assailant's name and embarrass them in public by shaming them. Powell also turned the spotlight on the survivors who could document their assaults in photographs.⁶³ Some uploaded the videos in anonymous reports of assaults to the police and provided information that helped the police identify geographic areas of risk where sexual assaults occur more frequently. Other survivors uploaded the videos on social media to get support in their recovery journey and raise public awareness of domestic sexual violence.

Despite the growing attention to the informal channels available to sexual assault survivors and the awareness of online shaming as a tool for achieving various justice goals, studies have almost entirely overlooked the perceptions and reflections of those who actually use online shaming. A study conducted in Australia, based on an online survey, examined the attitudes of young Tasmanian adults who used Facebook for online naming and shaming by presenting them with various hypothetical situations.⁶⁴ However, to the best of our knowledge, no study to date has explored sexual assault survivors' reasons for shaming their assailants online or refraining from doing so. Such an exploration can reveal the needs and expectations of survivors for achieving both feminist and personal goals as well as criminal justice-oriented goals.

This study seeks to fill this gap for the first time. Below we present the findings we have assembled on how survivors of sexual assault who have chosen to share their stories on Facebook perceived and experienced the practice of shaming their assailants on social media.

II. RESEARCH METHODOLOGY

We used a qualitative-phenomenological methodology⁶⁵ to examine the attitudes of survivors toward the reasons for justifying or rejecting the

formal, state-based criminal legal system. For some survivors, "informal justice" manifests in obtaining responses to their therapeutic needs in a therapeutic setting; for others, it might manifest in obtaining responses to either therapeutically-oriented or criminal justice-oriented needs in a public, community setting that does not require them to file a formal complaint.

⁶² Powell, *supra* note 10, at 572–73.

⁶³ *Id.* at 576.

⁶⁴ See Ruth M. Dunsby & Howes M. Loene, *The NEW Adventures of the Digital Vigilante! Facebook Users' Views on Online Naming and Shaming*, 52 *AUSTL. & N.Z. J. CRIMINOLOGY* 41, 41 (2019) ("Whilst Facebook users recognised the potential for online naming and shaming to impede justice, they perceived the practice as appropriate if it would foster community awareness and maintain community welfare.").

⁶⁵ This method is characterized by a holistic approach toward the complexity of the phenomenon under study, and therefore it is suited for research questions like those of this study. For the principles and assumptions underlying the phenomenological research

shaming of their assailants. We conducted semi-structured in-depth interviews with twenty Israeli sexual assault survivors who chose to reveal their stories of assault on Facebook. We chose interviews because interviews provide clear initial information directly from the participants, accommodate extensive descriptions of the participants' experiences, and expose the subjective meaning they ascribed to these experiences.⁶⁶ In order to reveal the full subjective impressions of the study participants, as consistent with the phenomenological tradition, we avoided early hypotheses about their attitudes. We allowed them to describe content that was subjectively meaningful to them.

The study population included seventeen women and three men who reported surviving sexual assaults of varying degrees of severity.⁶⁷ The age of the participants ranged from eighteen to sixty-three years. The range of sexual assaults, as self-described by the participants, included sexual assaults of minors (seven), rape of adult women (eight, three of whom were drugged), sexual assaults by therapists (two), and sexual harassment in the workplace and the public sphere (three). Thirteen of the survivors initiated criminal proceedings and seven refrained from doing so. Eleven of the survivors chose to disclose the identifying details of the assailant, while nine decided not to do so. The time that elapsed from the attack to its exposure on Facebook ranged from immediate exposure to twenty-one years. We made an effort to assemble a theoretical sample that reflects an extensive range of instances of the phenomenon under study.⁶⁸ **Table 1** summarizes the interviewees' profiles.

methods, see generally Donald E. Polkinghorne, *Phenomenological Research Methods*, in *EXISTENTIAL-PHENOMENOLOGICAL PERSPECTIVES IN PSYCHOLOGY* 41, 41-60 (Ronald S. Valle & Steen Halling eds., 1989); Ernesto Spinelli, *The Existential-Phenomenological Paradigm*, in *HANDBOOK OF COUNSELLING PSYCHOLOGY* 180, 180-98 (Ray Woolfe, Windy Dryden & Sheelagh Strawbridge eds., 2d ed., 2003).

⁶⁶ For specifics on interviews as a methodological tool, see generally I.E. SEIDMAN, *INTERVIEWING AS QUALITATIVE RESEARCH: A GUIDE FOR RESEARCHERS IN EDUCATION AND THE SOCIAL SCIENCES* (1991); STEINAR KVALE, *INTERVIEWS: AN INTRODUCTION TO QUALITATIVE RESEARCH INTERVIEWING* (1996).

⁶⁷ We succeeded in including three interviewees who identified themselves as men. One of them was assaulted by a woman. While this does not negate the prevailing pattern of women as survivors and men as perpetrators, we believe it is important to include the experiences of male sexual assault survivors in our study as well. For the importance of revealing stories of men who were sexually assaulted and raising awareness of male rape, see Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1264-65 (2011).

⁶⁸ See generally JULIET CORBIN & ANSELM STRAUSS, *BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY* (3d ed. 2008) (identifying this practice as consistent with the grounded theory).

TABLE 1: INTERVIEWEES' PROFILES

Pseudonym	Age	Gender	Type of offense	Filed a complaint with the police	Used online shaming
Dina	29	F	Sexual harassment by professor	No	Yes
Lily	38	F	Multiple sexual assaults by uncle in childhood and youth	Yes, the case ended with no conviction	No
Sharon	42	F	Rape during military service	No	No
Michelle	26	F	Sexual assaults in childhood	Yes, the case was closed	No
David	63	M	Sexual abuse by a therapist	Yes, the case was closed	Yes
Lara	27	F	Date rape	No	Yes
Hannah	30	F	Rape	Yes, the offender was convicted	Yes
Jane	34	F	Sexual harassment in the workplace	No, but she was questioned after a few other complaints were filed against the assailant	Yes
Clara	33	F	Rape using drug	Yes, the case was closed	Yes
Ellen	27	F	Rape using drug	Yes, a few other complaints were filed against the assailant, but eventually, Ellen's case was not included in the indictment	Yes
Rose	18	F	Rape by a teenager in youth	Yes, the offender was convicted	No
Jacky	27	F	Sexual abuse by a rabbi-therapist	Yes, at the time of the interview, the case was still pending	Yes

Pseudonym	Age	Gender	Type of offense	Filed a complaint with the police	Used online shaming
Dorothy	20	F	Rape by boss	Yes, the offender was convicted	No
Alison	30	F	Sexual harassment by bus passenger	Yes, the case was closed	Yes
Wendy	40	F	Sexual assault by a friend in youth	No	No
Rick	20	M	Sexual assaults by peers at ultra-orthodox Yeshiva in youth	No, parents took Rick to the police, but he did not cooperate, and no complaint was filed	No
Louis	28	M	Sexual assault by a bus driver in childhood	No	Yes
Amanda	22	F	Rape using drug	Yes, the case was closed	No
Romy	49	F	Multiple sexual assaults by a family friend in childhood	Yes, the offender was convicted	Yes
Mimi	36	F	Rape by two assailants	Yes, the case was closed	No

The interviewees were recruited in two ways. The research team contacted thirteen survivors who were active in Israeli Facebook groups dealing with sexual assault and agreed to participate in in-depth interviews on the topic.⁶⁹ Seven additional participants expressed a desire to be interviewed in response to a question in a survey we distributed on Facebook as part of another study. The in-depth interviews were conducted between July 2016 and September 2017, based on an interview guide we compiled for this study. Each interview lasted an average of about an hour and a half and was held

⁶⁹ In 2013, a Facebook group named “One of One” was established and soon became a platform for sexual assault survivors to share their stories of victimization. Later, some survivors established private Facebook pages and other online communities launched Facebook groups, which became additional arenas for an online discourse on sexual assault in Israel.

where each interviewee chose to meet. In November 2017, about two months after the interviews were completed, the #MeToo movement erupted in Israel. We sought to understand whether the interviewees' perceptions of online shaming had changed since the original interviews, and, if yes, in what way. Therefore, in July and August 2018, we conducted supplementary interviews by phone, each lasting about half an hour on average, with seventeen of the participants (three did not wish to be interviewed again). We asked the interviewees to describe how they perceived the implications of the #MeToo movement, whether their perceptions of the shaming practices have changed in the wake of the campaign, and, if yes, how. The methodology of repeat interviews is common in longitudinal qualitative research and is used to understand processes that take place over time in social and cultural contexts, as well as their implications for individuals.⁷⁰

All participants signed informed consent forms before the interview. At the end of the interview, they were asked how they felt and whether they had any comments about the wording of the questions. In the excerpts below, we changed their names and identifying details to ensure confidentiality and privacy. The study was approved by the Faculty of Law Institutional Review Board of Bar-Ilan University.

The questions addressed to the participants during the first set of interviews attempted to identify the reasons the participants had for shaming their assailant online or refraining from taking this step. Participants who chose to shame their assailants were asked about their experiences after the publication of the assailants' identifying details and about their perceptions of the consequences of shaming. In the supplementary interviews, we asked about the effect of the #MeToo campaign on the participants' emotional well-being and attitudes toward shaming. Each interview was recorded and transcribed verbatim to maintain the authentic expressions of the participants.⁷¹ Most of our findings were derived from the first set of interviews. We presented findings from the supplementary interviews when changes in the interviewees' attitudes surfaced in the wake of the #MeToo campaign, and we identified these statements as originating from the supplementary interviews.

We analyzed the data based on the principles of grounded theory.⁷² Each author read through all the interviews and independently conducted initial

⁷⁰ See Rachel Thomson, *The Qualitative Longitudinal Case History: Practical, Methodological and Ethical Reflections*, 6 Soc. POL'Y & SOC'Y 571, 571–72, 580–81 (2007).

⁷¹ The full interviews, including the recordings and transcripts, are on file with the authors.

⁷² Under the traditional model of research, researchers adopt a theoretical framework, develop hypotheses deriving from it and only then collect data to assess the validity of the hypotheses. In contrast, a study based on grounded theory usually begins with a question or even only with a collection of empirical, qualitative data. Researchers review the data, identify repeated ideas or concepts, code them, and over time, as more data is collected and reviewed, they group the codes into higher-level concepts and then categories. These categories, as they emerged from the field, become the basis of theoretical hypotheses or new theories. See generally CORBIN & STRAUSS, *supra* note 68 (outlining the steps involved in the grounded theory methodology).

open coding. Next, we conducted a joint analysis of each interview and, through iterative discussions, identified recurrent ideas, resulting in axial codes. Further discussions and conceptual analyses produced several central themes, detailed below. In the course of the analysis of the interviews and the writing of this Article, we adhered to the scientific standards of validity and reliability. As is customary in qualitative research, the reliability of the study is based, among other things, on its documentation. To this end, we used a detailed data description and direct quotations of the interviewees' original statements. We have included excerpts of these statements to help readers evaluate the research findings.

III. SURVIVORS' PERSPECTIVES ON THE PRACTICE OF ONLINE SHAMING: JUSTIFICATIONS AND OBJECTIONS

The survivors who participated in the in-depth interviews generally revealed ambivalent attitudes toward the practice of shaming. In this part, we present the range of positions expressed by the interviewees regarding the use of shaming, the consequences of shaming, and the reasons for justifying or rejecting the practice. We also describe the effect shaming had on the lives of the survivors who chose to disclose the identity of their assailants on Facebook.

A. Reasons for Justifying Online Shaming

Five interviewees defined themselves as feminist activists who fell victim to sexual assaults and transferred their social action, including the act of shaming their assailants, to the online sphere. Some survivors defined themselves as feminist activists only after they were exposed to the virtual activities of other survivors, after which they decided to shame their assailants. All survivors in the study were motivated to shame their assailants by a sense of social responsibility toward survivors as a group and a desire to bring about comprehensive social change about sexual violence. In studies based on self-reporting, there may be some biases, such as pleasing the interviewer or suggesting narratives that the interviewees try to convince themselves to represent their beliefs even though they have doubts about them. Yet most survivors in this study cited social-altruistic reasons, as opposed to personal ones, as motivations for resorting to shaming. Some justifications reflect a desire to achieve criminal justice-oriented goals, but other justifications seem to align with the survivors' wishes to achieve other personal or communal objectives. Below we present the reasons offered by the interviewees to justify the use of online shaming.

Protect Other Women and Warn against Assailants

Participants who decided to shame their assailants described shaming as an effective practice for protecting the public by warning against sex

offenders. Lara, a student and social activist, has posted several times the names of men who sexually assaulted her during joint recreational activities. Her decision to publicize the names of the assailants was based on a subjective assessment of dangerousness, i.e., her feeling that the man who attacked her posed a danger to other women as well: “There’s a rational consideration of how dangerous, how really dangerous I think a person is.” A similar explanation was presented by Hannah, an educator, who was raped when she was sixteen years old and decided years later to reveal the name and picture of the rapist because of a deep inner belief that he might attack other women. Her goal was to let those close to him know:

I found the picture of that guy straight away, and I wrote: This is the man; this is what he did to me at age sixteen. I listed everything there and found his friends, relatives, and girlfriends, and I just sent them a copy of the picture . . . so that they would watch out for him and know who he was and what he was.

Dorothy, who filed a complaint with the police after being raped by a club manager where she worked as a dancer, also regarded shaming as a means of protecting women: “People deserve to know who he is because he keeps hurting more women.” However, she decided not to reveal the assailant’s name on Facebook for fear that her family would learn about the source of her livelihood. Jane decided not to settle for posting a hint about the identity of a public figure who sexually harassed her and instead revealed his full name on Facebook. In her opinion, shaming those in power to warn others makes possible a public discourse based on facts, not on rumors:

Shaming is a must. Otherwise, an entire group is tarnished There are cases where women are interviewed and tell about a famous actor who beat them or raped them. It annoys me terribly that they don’t say his name. Although I know it’s not my job to judge If you raised it and the person is as dangerous as you say, then you have a social obligation to expose him and warn others.

Jane decided to disclose the name of her assailant six months after the harassment when she learned that other women had been harmed by the conduct of the public figure who harassed her:

Someone told me he knew a woman who, like, one of the reasons she quit her job was because her boss . . . told her very sexual things. Then I discovered that it was the same person who talked to me, and then I said: Okay, so . . . if it’s not a one-time thing, if he says it to other girls, and if they get hurt, and if they even quit their job because of it, then it’s no longer only my issue. Now, if it’s not my personal issue alone, then what do you do with it?

In response to frequent criticism of shaming often voiced in public discourse—for example, that shaming is vigilantism or a form of public

lynching—some survivors stressed that, before publication, they conducted an inquiry into the assailant’s conduct, which they perceived as factual. They did so out of solidarity with other women—sisterhood—and a desire to prevent further harm caused by gender and social hierarchies. Jane gathered more evidence against the celebrity who sexually harassed her: “It was a bit hard to snoop because my whole work environment consisted of women who worked with him and women and men who befriended him . . . but I got a few more girls who told, so I decided to go out with it to protect others.” Lara also checked and found that the man who sexually attacked her had also attacked other women, after which she decided to make his name public. Louis, an artist who was sexually assaulted in his childhood by a school bus driver who has since died, disclosed the assailant’s name only after checking and finding that the man had been previously arrested for sexual offenses: “The reason I made his name public was that I realized he was already known He had been caught at it.”

As part of the effort to justify the practice of shaming and present it as a rational choice for promoting other women’s safety, Jane sought to reduce the emotional dimension, which is common in Facebook posts, and use language that was not emotionally charged: “It was important to me to be as matter-of-fact as possible. It didn’t come from an emotional place It happened a year or so later, and I was prompted by hearing from other girls that he attacked them.”

Assist the Police in Collecting Evidence

Two interviewees, who shamed their assailants online while also initiating criminal proceedings, stressed the potential inherent in publicizing the assailant’s name to encourage other survivors to file a complaint against him, thus assisting the police investigators. Clara complained to the police about a serial rapist who took advantage of his status and the rape drug in his possession. She stressed that publicizing the assailant’s name after filing a complaint against him with the police was not shaming but a step designed to advance the police investigation:

If you don’t file a complaint and you publicize it on Facebook, you can say it’s shaming. But if I post it when I file a complaint with the police, I don’t see it as shaming. Shaming is actually a substitute for the law. My agenda was: I post it so that people go to the police.

Dina, a student who was sexually harassed by an academic and revealed his name only after she signed a compensation agreement with the university, added: “Often people say about my case that it’s shaming. It isn’t shaming. I spoke the truth; I didn’t shame him. It is his actions that shame him. Let other women know about him and complain to the police.”

Exercising the Public’s Right to Know

Dina decided to publish the compensation agreement the university signed with her after she complained about being sexually harassed by a faculty member to exercise the public’s right to know about possible

compensation for survivors who choose not to initiate criminal proceedings: “I was the first to say: I received NIS 90,000 [approximately \$26,000] as part of the compensation, and I’m not ashamed. I wanted to show women: demand it, this is the law, we deserve it, we can do it, and we have nothing to be ashamed of.” Jacky, who was attacked by the rabbi who treated her following previous sexual traumas, also saw in shaming a mechanism for exercising the public’s right to know about the frequency of sexual assaults in Orthodox communities. For this reason, she was furious that an Orthodox man accused of sexually abusing young girls sought to silence the media and safeguard the reputation of his family:

Recently, [the prosecution] asked to remove the restraining order on a case of sexual offenses in a [ultra-Orthodox] family, and [the defendant] asked: Give me a few more weeks because I have two children I’m trying to marry off What? Who’s ever heard of such a thing?

Jane described the importance of shaming as a mechanism for exercising the public’s right to know about the bad behavior of public figures, even if it does not add up to a criminal offense. According to her, informing the public about the moral failings of elected officials is a tool for sustaining democracy:

If things happen that are related to the image of a person, and public opinion and reputation, then it’s more appropriate for shaming because there’s nothing criminal here [Even if it is not possible to take this to the police,] the voters must know that this is how he talks It’s not shaming . . . it’s the person leading us, and we want to know that this is what he thinks.

The importance of shaming as a mechanism for exercising the public’s right to know is also apparent in Lily’s remarks. Although in real time she decided not to disclose the identity of the rapist who drugged her, when we contacted her for the supplementary interview in the summer of 2018, after the #MeToo campaign broke out, Lily said that she regretted not revealing his name in real time because, in retrospect, she felt that it was her social duty: “The campaign strengthened the feeling that it was a shame I didn’t reveal the name of the assailant in the past. I think their names should be revealed to inform the public.”

Shaming as a Mechanism of Social Punishment Given Distrust in the Criminal Legal System

Some interviewees stressed that online shaming is a punitive tool designed to deter men from sexual assault and serves as a form of non-legal public punishment. According to this view, the use of shaming reflects survivors’ distrust of criminal justice authorities and the latter’s inability to punish sex offenders effectively and fairly. Online shaming serves as a substitute for punishment by the state. Ellen, who complained to the police about a celebrity rapist who sexually assaulted her and other women, reported that the

dysfunction of the criminal legal system itself forced her and other complainants to take this step:

What other tool do we have when the police generally don't function, when the legal system doesn't function, and the prosecutor's office is on its last leg? What other tool is there except shaming? And I know that some will say: But you don't know if it happened or not, and things should be allowed to go to court, and they turn it into a 'Facebook court' and a drumhead court-martial. I kept hearing all these expressions until I was there [at the police and prosecutor's office], and then I knew what I was saying was true. I see how it's conducted, and I'm on the inside, and suddenly I understand the importance of shaming.

Rose, raped in her youth, also connected the loss of trust in the law enforcement system to her decision to undertake shaming. She added that shaming's potential to deter serves to restore a sense of control, which is essential for survivors but lost in legal proceedings:

Survivors of sexual violence have no trust in the authorities. So there's nothing else to do. We find another way of protecting ourselves; as I said, it's also a kind of punishment to regain control, to deter, to deter other offenders, and to deter that particular person because a lot of men see that women are no longer silent because they were used to women being silent. When you see that women are not silent and that it comes out when someone is liable to inflict harm next time, he'll think about whether or not to do it because maybe if he's married, they'll let his wife know. Posting on Facebook is more of a deterrent and scarier [than turning to the criminal legal system].

Amanda, who turned to the police and decided to share her story online without disclosing the identity of the assailant, explained that at the time, her aim was only to raise public awareness and not to shame the assailant, but after her traumatic experience with the police, she changed her mind: "There is a law that enables anyone to rape and then know that the case will be closed because of lack of evidence. Therefore, it is better to shame [the assailant online]."

Shaming as a Tool for Undermining Power Relations and Gender Hierarchies

Some interviewees regarded shaming as a mechanism for undermining the power dynamics that allow men in senior positions, who use their power to molest women under their professional authority, to evade justice. According to them, shaming makes it possible to remove the masks of the assailants who have managed to climb the social ladder and leverage the culture of silence around sexual assaults to continue to harm women.

Ellen, who was raped by a celebrity, explained that she was motivated to reveal the assailant's name not by a desire for revenge but by the desire to expose the gap between his public image and his real character:

He's an outwardly sociable person, everyone loves him, and he seems very harmless. You understand what happened to you, you know he did it to you, but it's hard for you to put everything together with the anger. The anger only came later; the desire for revenge came later. I exposed [the assailant's identity and his actions] and complained [to the police] not to take revenge in any form at first. It was to support other women and try to make a real social change.

Dina also stressed that for social correction, the shaming mechanism should be activated only against assailants in a high social position and not against underprivileged assailants:

To shame someone is to embarrass him. It can often be a good tool, and I'm not against shaming, but if, for example, the cashier at the supermarket talks to you like this, and you record it and upload it to Facebook . . . you're now putting this cashier's life before the whole world, go figure what will happen to her tomorrow . . . she's already at the bottom of the hierarchy . . . there is something else to do, and that is to talk to her manager.

Jane, who revealed the name of a celebrity who resigned from his job following accusations posted against him on Facebook, objected to the word "punishment" to describe the goals of shaming. In her view, shaming is a mechanism for exposing the hypocritical image that celebrities project in the public arena:

I think that if I distill this concept, because 'punishment' feels a little harsh to me, although he did suffer and was punished, I think it was more like bursting a bubble. I constantly hear stories from girls who say he wanted all sorts of horribly disgusting things. And it's not about punishing him; it's about wanting to burst this thing open already.

Jane saw shaming on social media as a more effective mechanism for kickstarting change in the face of society's lenient attitude toward the behavior of public figures: "There are very vague standards for public behavior There are shocking things that politicians say or do, and it's like they're simply overlooked They write about it a bit on Twitter, but they stay on and still have their fans."

Shaming Gives a Voice to the Silenced and Encourages Support for the Survivors

The survivors who chose to shame their assailants claimed that the shaming was a way of making the voices of the survivors heard. Jane stated that shaming makes it possible for survivors who did not meet the standard of

evidence required in criminal cases, and lost their confidence as a result, to make their voices heard:

Sexual harassment is often a gray and tough area. Someone told you something sexual, now go drag him to the police station. He's a 'normal' person, he's your boss. You start thinking: Maybe I just misinterpreted it? It's kind of a gray area of 'unpleasant' and 'not sure I understood' and 'maybe I'm wrong' and 'they'll do nothing.' It's not like someone snatching your wallet in the street, and then you say, 'Okay, it's my wallet, not his wallet, obviously, I've been robbed.' Then on Facebook, there's a place that says: For someone to misbehave, he doesn't have to break the law XYZ. It can just be an unpleasant story for you, and we'll judge.

Jane added that shaming allows survivors whose cases did not evolve into a criminal indictment to gain trust and compassion:

It's justice that is more open to interpretation. You can tell your story; those who believe you, fine; those who don't believe you, don't. It's not like if you take it to the police and they don't believe you, then it doesn't exist. Facebook has a place for perspective, for empathy, you can get empathy even though they don't completely agree with you. The place is much more flexible.

Jane clarified that in contrast to the criminal justice process, shaming is not judged in the consequential sense; rather, it is a way of obtaining vindication, recognition, and support:

Someone tells on Facebook that when she was three, her neighbor raped her. She doesn't write this so that they can find the neighbor. You don't have to find him and throw him in jail. He may have died twenty years ago, who knows? But she gave this a place, she gave it a voice, she got an audience, empathy, she resolved it with herself somehow, it became a kind of correction that I wouldn't necessarily call 'justice,' but there's closure here.

Hannah, who revealed the name of the assailant who raped her in her youth, also saw this step as a personal correction to her disappointment at the offender's refusal to assume responsibility for his actions: "Even when I stood facing him at the trial, I said to him: 'Apologize, and I'll get up and leave.' From my point of view, it was the most important thing to hear. I haven't heard it yet."

To emphasize the meaning of shaming as a tool for providing a platform for the survivors' authentic voices, the interviewees distinguished between shaming the assailant and false complaints. In their view, the fact that these two concepts are mixed in the public discourse harms survivors. Jacky brought up the under-reporting of sexual offenses, which undermines the claim of the prevalence of false complaints: "Ninety percent of the stories you won't hear

at all. They exist, and you won't hear about them, not the name of the assailant or the survivor. So the minute someone comes and provides this [reveals the identity of the assailant], I support it [the shaming]." Ellen stressed that the mental price that women who reveal the name of their assailant are forced to pay restrains false complaints:

I don't see what a woman stands to gain, or at least, let's say, in my opinion, 99.9% of the women who do shaming don't make it up because to put yourself in a situation where you talk about such a thing is so difficult, it's a highly disruptive process. I think a woman who decides to make up and shame someone, there's probably some mental problem there, but I think it's very rare.

In sum, some survivors listed reasons for justifying shaming because it achieves criminal justice-oriented functions by assisting the legal authorities or by circumventing the formal system and promoting these goals in the non-legal, virtual sphere. Survivors justified online shaming both because it might increase public safety by deterring assailants and warning potential victims and because it socially punished assailants. In their opinion, online shaming could outperform the criminal legal system in achieving some of these criminal justice-oriented goals. Other survivors justified online shaming as a means for achieving some non-criminal justice-oriented goals, such as having their voice heard and obtaining social support, vindication, and closure.

B. Reasons for Rejecting Online Shaming

Most reasons for rejecting shaming stemmed from the survivors' fear of the legal and emotional consequences that disclosure would have on their present and future lives. In practice, only the survivors who called themselves feminist social activists even before they were exposed to the online discourse pointed to the public damage that shaming inflicts on the struggle for women's rights as a whole.⁷³

Fear of the Assailant's Reaction

Some participants who decided not to disclose their assailant's name justified their decision by pointing to their fear of how the assailant may react, even when disclosure occurred years after the attack and in cases where the assailant had been tried. Alison, who was sexually harassed by a bus passenger and decided to publish his photo online, explained that physical fear kept her from disclosing the name of a famous assailant who had attacked her in

⁷³ Several reasons were not mentioned by the survivors for rejecting shaming. For example, none of the interviewees expressed a reservation about using shaming because they considered it a "privatization" of punishment. No one mentioned a concern about undermining the balance in the relationship between the State, which has a monopoly on the enforcement of justice, and individuals who are subject to the rule of law and are not allowed to appropriate the right to punish.

the past: “I didn’t dare to go and disseminate it because I was afraid it would reach him, I was afraid of him. So you’re brave when the scum can’t reach you, but then in a situation when it’s really critical, I can’t.” Rose, raped at sixteen, received threats from her rapist’s friends after she complained to the police and the assailant was convicted. The feeling of fear persists in her even today, and she refrained from publicizing his name:

I think it was also because of fear because after I complained, his friends threatened me for a while. One of them had a restraining order from me There was a time when they would come to school to threaten me, so I think [I didn’t disclose] also for fear of what it might cause.

Rose’s fear of her assailant intensified because of her distrust toward criminal justice officials, who failed to inform her about his impending release despite their obligation to do so⁷⁴: “The prison service didn’t inform me that he had been released. He’s my neighbor, he’s gone back to where he lived. I saw him on the way to school I felt a complete loss of control.” Mimi, who was raped by two men whose names she did not know and therefore could not disclose, explained that, in retrospect, it was better that she did not know their names. Otherwise, she might have revealed them, then regretted that decision because of fear of their reactions.

Other survivors feared their assailants would take legal action against them if their names were publicized. Hannah, an educator who made public the name of the man who raped her in her youth, was forced to remove the post following advice from friends that she was exposing herself to a defamation suit given the expiration of the statute of limitations: “Within a week I received many notes like ‘Look out because it expired, and he can now go and complain about you.’ I thought about it for a few days and decided to take it down.” Rick, who experienced sexual abuse at the ultra-Orthodox yeshiva where he studied as a teenager, was careful about publicizing the name of the yeshiva head who silenced his complaint, after learning about the possibility of a defamation suit:

I thought in legal terms . . . I must not ruin a reputation. I knew that once I said something out of place, I’d only screw myself. But it was important to me that whoever knew me and studied with me at the time [will know] . . . as soon as I indicated my age and period of time when it happened, whoever needed to know—knew.

Sharon, who manages a Facebook page and assists survivors who apply for emotional and practical support, also stated that she refrained from publicizing the names of the offenders:

⁷⁴ Article 10 of the Israeli Crime Victims’ Rights Act imposes on State authorities the duty to inform sexual assault or domestic violence survivors who ask to be informed about the imprisonment and release of a defendant from prison or any other custody.

On every post I share, I write ‘suspicion of.’ I’d never write what I think until there’s a conviction. And when there’s a conviction, I wish him an agonizing death, but not before. With all the silencing lawsuits out there today . . . I don’t want to take the risk. I don’t want to write a person’s name without knowing what’s going on.

Even in the supplementary interviews we conducted after the #MeToo outbreak, the interviewees mentioned that survivors who publicize their assailant’s name were increasingly at risk of defamation lawsuits, which were being weaponized to silence them. Clara said: “There have been more threats of silencing lawsuits since the campaign. Women and men think twice about posting an offender’s name.” Michelle, who suffered sexual assaults in her childhood, described a silencing lawsuit against her friend: “A friend of mine, who posted the name and photo of her assailant on Facebook, was hit with a silencing lawsuit, and they also tried to hack into her Facebook account and followed her all the way home. Someone opened a fake Facebook account and sent threats against her.” Dina thought survivors should be instructed on how to deal with silencing lawsuits: “I think that victims should make the name of the assailant public only after consulting with a lawyer. Maybe the rape crisis centers can help them and advise whether to publicize a post with the assailant’s name.”

Feeling Compassion Toward the Assailant

Some survivors refrained from shaming their assailants because they felt compassion toward the assailants. Wendy, a member of the religious community and a survivor of a sexual assault committed by a friend in her youth, presented “mitigating circumstances” for the assailant’s behavior. She argued that because of the lack of sex education in her community, the perpetrator appeared unaware of his actions’ meaning. Wendy did not complain about the friend who attacked her in her youth and did not disclose his name:

It may be a bit strange to say it, but I’m not sure he even knew what he was doing. Not sure he saw it as sexual assault. He was too young to understand . . . I think if it happened today, it would be different. It sounds like I’m too forgiving when it comes to him, but no, I suffered for years because of what he did. But I don’t think he had an understanding; there is a certain age when this is not quite understood . . . especially given the education we came from, where there’s no mention of the whole issue of sex and sexual assault. There wasn’t any of it then.

Wendy feared that belated disclosure of her assailant’s name would ruin his life and cut off his source of livelihood as a rabbi:

If I didn’t do it by now, to suddenly come and pull out a demon from somewhere and turn his whole family upside down, I can’t do it. He’s a Rabbi in the Yeshiva . . . I don’t know whether or not he understood then . . . I’m afraid of destroying what he built, even though he destroyed me.

In the same breath, Wendy emphasized that she would make his name public if it became clear to her that he had assaulted other women: "If a story was suddenly published in the news [that] said, 'A Rabbi at the Yeshiva sexually assaulted students,' and I saw his picture in the newspaper, I'd say: 'I'm in shock, I can't believe it.' So maybe then I would shame him: 'He attacked me too.'"

Ellen, who complained to the police but refrained from making the name of her assailant public, mentioned an unexplainable pity she felt for her aggressor and connected it to her well-justified fear of him:

I was going through an emotional storm concerning him, I even pitied him for a long period of time. I don't know why. Even at the time of filing the complaint, somewhere I felt compassion and feared . . . running into him, feared that he would know that I'm the one who's giving interviews and talking about him. I didn't want him to know that it was me.

Fear of Violating the Principle of Due Process

Some interviewees decided not to publish their perpetrator's identifying details without first resorting to a legal process, due to the fear of violating the principle of due process. Dorothy, a rape survivor who did not reveal the name of the perpetrator, believed that shaming amounted to a violation of the principle of due process and the presumption of innocence: "The problem is that we run a drumhead court-martial, and he doesn't undergo a fair legal process. In my opinion, as long as he's not under investigation, his name must not be publicized. I know someone who was greatly harmed, and he was not guilty." To balance the presumption of innocence with the interest in warning the public about sex assailants, Dorothy suggested that the legal system make public the names of convicted offenders:

I think the names of the offenders should definitely be publicized, and there should be a list of those who did such things, both based on a conviction and anyone who has been on trial or is known to have harassed. But only when you know for sure what happened.

Shaming Diverts the Feminist Struggle from Its Goals

Lara, Rose, and Dina, who refrained from using shaming, claimed that disclosing their assailant's identity would bring attention to the individual instance of assault, shifting the focus away from sexual violence as a broad social phenomenon and turning the discourse into an episodic one. Rose refrained from shaming her assailant and instead chose to discuss the failures of the criminal legal system in protecting women in the public sphere: "I wrote a critique of the authorities and the phenomenon in general. He [the assailant] is less interesting; more interesting is the phenomenon and the attitude of the authorities towards me, [toward] anyone who complains." Lara, a social activist who had previously engaged in shaming but stopped using this practice, argued that shaming that focuses on the assailant sets aside radical

feminists' goals of turning the "personal" into the "political" and expanding the discourse from the individual case to the war on rape culture: "The social change that I saw before my eyes in all these things is actually to [leverage the political value] of my experience by not being silent and not being ashamed and talking about it as a phenomenon." Dina, a social activist, argued that shaming could indeed produce immediate public resonance, but it prevented meaningful social discourse on sexual offenses, which is an important goal:

"I could have jumped on the university [by] saying that they were ignoring my complaint, and it would have caused insane reverberations, but I knew that at that moment the spotlight would be entirely on my personal story . . . but I demanded a fundamental change Let's talk about it as a phenomenon."

Dina also stressed the importance of having an open, in-depth dialogue with men about sexual harassment as a phenomenon, which might be at risk when focusing on specific stories. She said that although some men may have outrageous opinions, dialogue promotes setting the sexual boundaries in the workplace:

There were men there who said, 'Where is the boundary of sexual harassment?' They sometimes raise[d] the question of defaming [namely, which circumstances justify filing a defamation suit], but it opened up [a conversation about] where the boundary is, which was important to me. Not just my story.

In interviews we conducted after the outbreak of the #MeToo campaign, participants expressed disappointment that the mass online shaming of assailants made the content of the feminist struggle shallower. Clara said:

It has flattened the writing about the struggle against sexual violence Women no longer go to the police, no longer struggle to make a change. Women say to themselves: I did my job by saying 'me too.' I exposed him, that's it.⁷⁵

⁷⁵ Interviewees criticized the #MeToo campaign for additional aspects. Sharon, an online social activist, regretted that the campaign had forgotten the contributions of the first women who dared to reveal their stories of victimization and shame those who abused them. Lara also believed that the fact that well-known women joined the campaign as leaders dwarfed the role of the anonymous, brave women who brought about the real upheaval years earlier: "A campaign often starts from the top of the food chain, from celebrities, then the simple women have to support the celebrities, and the celebrities in exchange empower the simple women [T]his is probably how it will appear in the pages of the history of #MeToo, but their courage comes from the radical struggle of ordinary women. And I have a feeling that the nature of this struggle is such that it strengthens only the celebs' struggle and not the feminist struggle as a whole. It's not a struggle, in my opinion."

C. *Consequences of the Use of Shaming*

1. *Positive Consequences*

A few survivors who shamed their assailants online pointed to the positive consequences that resulted from their choice to disclose the identity of their assailants. We identified only one theme that clearly fits into this category of “positive consequences.”

Shaming Provides Personal Relief to the Survivor

The interviewees described the therapeutic effect that shaming had on them as individuals. Lara, a social activist, described how she felt relieved to no longer have this secret: “I described things that happened to me. It was a very great relief.” David, who filed a complaint with the police about his therapist sexually exploiting him, perceived shaming as a way to correct the harm done to his sense of control and self-esteem. When he learned that the case against his therapist was being closed because of a lack of evidence, he decided, after receiving legal advice, to publicize her name online. Despite the failure to prosecute, David described a sense of accomplishment by revealing the therapist’s name:

“This was after a year-and-a-half-long struggle from filing the complaint, and many letters from my lawyer and pressure, and interviews by the prosecution . . . I posted with her full name, also the fact that the case was closed and that I filed an appeal with the State Attorney’s Office for closing the case. I published these two documents that were sent to me.

The post gave David a sense of satisfaction: “The post contributed to my good feeling that her lawyer [will read and inform] her . . . What sets me free and makes me feel good is that in the relationship between us, control has passed to me.”

Clara published the name of a serial rapist online after she filed a complaint with the police nine years after the rape. The rapist was prosecuted. Clara regarded shaming as a cure for the guilt she felt for her long silence, during which the rapist continued to hurt others: “I felt that if I had not been silent all these years, there are girls to whom this would not have happened today, and I may have been able to stop it.” Jane also felt that shaming freed her from troublesome thoughts about the assailant and her silence about his actions: “It was necessary, not for the world but for me. If I didn’t do it, I would still deal with it constantly.”

2. *Negative Consequences*

Some survivors who shamed their assailants online experienced firsthand the replication of rape culture in the virtual sphere. They connected what

they felt in the wake of the public outcry that followed the shaming and what they felt after the sexual trauma they experienced. In both cases, the feelings were of loss of control over their lives, loneliness, anxiety, and rejection by the criminal legal system.

Online Defamation of the Survivor; Making the Assailant a Victim

Most survivors who publicized their assailant's name were surprised by the attacks against them online. Jane realized that the shaming turned her from a victim into an assailant in the eyes of angry web surfers: "This is a huge distraction. I remember in the first days, I reacted to every hostile talkback on Facebook, and it was many comments." Jane tried unsuccessfully to refute false information published about her:

Anyone who just wrote 'she probably started it' or anyone who wrote 'why did she remember years later' I had to come and say that it was a year later, and it was because I met other girls. They started using pictures from my Facebook, distorted in Photoshop . . . it's not something I expected.

Lara also dealt with "victim blaming"⁷⁶: "People started complaining to me: 'Maybe you should ask yourself what made this happen . . . Why are you ruining his life?'" Jane encountered hypocritical norms in the online discourse on sexual assaults. According to her, the survivor must be an "ideal victim": suffering, lacking self-confidence, and having difficulty recovering.⁷⁷ In her opinion, she had no support because she failed to match expectations: "The problem is that my image is very cynical . . . then suddenly I'm in a situation

⁷⁶ "Victim blaming" is a term used to describe social attitudes that perceive survivors as fully or partially responsible for the sexual assaults committed against them. This is one of the manifestations of rape culture. See Sills et al., *supra* note 15, at 936.

⁷⁷ Stereotypes and myths about sexual assault survivors—who they are and how they are supposed to behave—are common in the criminal legal system and other disciplinary settings, producing expectations of an "ideal victim" whose story is believable. For a discussion of how the criminal legal system perpetuates stereotypical versions of victimhood, see, for example, Maybell Romero, *Ruined*, 111 *GEO. L. J.* 237, 270 (2022) ("[O]ne of the difficulties in criminally prosecuting rape and sexual assault, as well as in handling such wrongdoing in other settings such as discipline after sexual assault on college campuses, is that many believe in a 'perfect victim' . . . [however] [t]here are a variety of ways a victim may respond to rape and sexual assault, some of which may seem counterintuitive to those who have never experienced the same."); Tuerkheimer, *supra* note 2, at 1159 ("Framed by an inquiry into how the archetypical juror would assess the complainant's account, prosecutorial decisionmaking transposes the popular acceptance of rape myths into a rationale for declining to pursue charges."); Hadar Dancig-Rosenberg, *Sexual Assault Victims — Empowerment or Re-Victimization? The Need for a Therapeutic Jurisprudence Model*, in *TRENDS AND ISSUES IN VICTIMOLOGY* 150, 165 (Natti Ronel, K. Jaishankar, & Moshe Bensimon eds., 2008) (arguing that the existing legal reality is like a double bind for survivors because if the survivor tells her story in a manner that is inconsistent with common stereotypes, there is a greater risk that she will fail to persuade the jury or the court; if she makes efforts to tell "her story in a manner that is consistent with social myths about rape, then there is a greater likelihood that she will obtain the protection of criminal law," but this will come at the "high price of perpetuating existing stereotypes" of victimhood).

that demands more of a victim language It appears I didn't take it seriously, as if the topic isn't critical to me; I even make things up."

Adverse Social Reactions Within and Outside the Virtual Sphere

Two survivors who shamed their assailants experienced negative social attitudes both in the virtual and physical worlds. Clara, an artist, was disappointed by the lack of solidarity from members of the art community after she disclosed the assailant's identity: "Suddenly here is someone who's one of us, and he's from Tel-Aviv, an enlightened leftist—suddenly it's the silence of the lambs No one even shared the post." Lara was forced to lock herself in her home in the face of the intensity of the reactions and attempts to hold her responsible for the assailant's mental state: "Eventually I stopped leaving the house for a while Many asked me whether I was not afraid that he would commit suicide; he was also in a difficult situation. I felt very lonely."

Our interviews show that, unlike survivors who shared their stories online without disclosing the assailant's identity, those who shamed their assailants were concerned that because of the ability to retrieve information online, the shaming would forever affect their social image and professional career. Dina, a social activist, expressed concern that the shaming she engaged in would be to her detriment on the job market: "I go to job interviews, and I always shut [my Facebook page] down. If they search for me, they immediately find it, then that's it." Jane also pointed to a correlation between the narrowing of her professional opportunities and the shaming she inflicted on the man who harmed her.⁷⁸

Negative Attitudes in the Criminal Legal System Toward Disclosing the Identity of the Assailant

Two of the survivors who filed complaints with the police about a serial rapist who used a rape drug got into a confrontation with the police officers because they posted the name of the rapist on Facebook and granted interviews to conventional media outlets. Ellen asserted that the police perceived the exposure of the survivors in the media as a disruption to the investigation:

[We were] three girls who were exposed, and the three of us were told in all sorts of ways . . . not to give interviews or that it's enough, we caused enough damage . . . they advised me not to mix things up: if I file a complaint with the police, it's better not to expose oneself, not to talk, not to give interviews [because] it disrupts the investigation.

Clara, who was also reprimanded by the police for the exposure, repeated the legal explanation she received about how media exposure interfered with the investigation:

⁷⁸ We omitted the excerpts from Jane's interview so as not to disclose her identity.

[The investigator] told me: “The fact that you wrote it up on Facebook destroyed the whole case, for three reasons: (a) it sabotaged the confrontation because he knew things; (b) [the defense attorneys] will say that it has already caused damage because it has harmed him; and (c) because it shows that you are not ashamed of it.”

Ellen believed that disclosing the assailant’s identity online affected the prosecutor’s decision not to include her case in the indictment against the attacker: “I was not included in the indictment. I think it has to do with the online exposure and the multiple interviews.”

Creating Discourse that Harms the Struggle to Eradicate Rape Culture

In the follow-up interviews we conducted after the outbreak of the #MeToo campaign, two survivors argued that the campaign created too broad an attack on all men, blurring the line between severe and less severe forms of sexual assault. Sharon criticized casual claims of sexual assault: “The campaign took on a shocking turn with celebrity women starting to tell stories about someone who whispered something in their ear twenty years ago, and this is missing the target in a big way.” Jacky, who shamed the therapist who harmed her, also thought that the #MeToo campaign created generalizations against the entire male population and provoked counter-reactions that harmed the survivors’ image: “I was immediately afraid of the antagonism the campaign created because men became defensive. I felt uncomfortable because not all men are harassers. A middle ground needs to be found. It’s like feminism, which once was about burning bras but then [became] attenuated.”

By contrast, Rose, Rick, Wendy, and David stressed that most of the accusations raised in the campaign had to do with actual sexual assaults. Wendy, for example, said: “Some women have raised trivial things, minor injuries that happened many years ago, and in my opinion, they shouldn’t run to post every little thing on Facebook. But this is a [small] part [of the cases]; the campaign is a blessing.”

Table 2 summarizes the survivors’ positions regarding why they did or did not use shaming and the consequences of their decisions. Some justifications are public-oriented, others are personal-oriented; some are criminal justice goals-oriented, whereas others are non-criminal justice goals-oriented.

TABLE 2: JUSTIFICATIONS AND OBJECTIONS TO ONLINE SHAMING AND ITS CONSEQUENCES

Justifications for Shaming	Objections to Shaming	Positive Consequences of Shaming	Negative Consequences of Shaming
Warning against the assailant and protecting other women	Diverting the feminist struggle from its goals	Personal relief for survivors	Online defamations; turning the assailant into a victim
Assisting the police in collecting evidence	Fearing the assailant's reactions		Adverse social reactions within and outside the virtual sphere
Exercising the public's right to know	Compassion for the assailant		Negative attitudes on the part of the criminal legal system
Mechanism of social punishment in view of distrust in the criminal legal system	Fear of violating the principle of due process		Creating a discourse that harms the struggle against rape culture
Tool for undermining power relations and gender hierarchies			
Giving a voice to survivors; encouraging support for survivors			

IV. ONLINE SHAMING AS A PRACTICE FOR ACHIEVING INFORMAL JUSTICE

The narratives of the sexual assault survivors we interviewed reveal their dialectical perception of justice. These narratives spotlight the tension between two “competing” platforms of justice—the mainstream, formal one and the online, informal one. Some of their narratives reflect the idea of online

shaming as a form of vigilante justice.⁷⁹ Other narratives show the lack of assistance from the criminal legal system. Reflecting on these contradictions, in this section we will shed light on three perceptions of online shaming stemming from the narratives of the survivors. The first is online shaming as a feminist, private justice enforcement mechanism. The second is online shaming as a form of disintegrative shaming, as opposed to reintegrative shaming. The third is online shaming as a rational alternative for achieving informal justice, as opposed to an emotional, spontaneous response. We will then discuss the implications that can be drawn for the criminal legal system.

A. Online Shaming as a Feminist, Private Justice Enforcement Mechanism

Table 2 shows that, according to the interviewees, the shaming mechanism is used simultaneously as a tool in a broad, feminist, public struggle and for personal healing. The value of shaming lies in enhancing or complementing the enforcement and punishment functions of the criminal legal system, giving survivors a voice, and granting them closure. The findings also show that, contrary to a prevailing stereotype according to which the primary justification of shaming is revenge, most survivors' reasons have to do with achieving social and public goals instead of personal ones. This finding illustrates how shaming is a way for some survivors to translate their feminist perception that "the personal is the political" into an action.⁸⁰ Even survivors who previously did not define themselves as feminists or social activists were eager to create some public good and promote gender equality. Table 2 further indicates the dissatisfaction of the survivors with the functioning of the criminal legal system, given that various social goals they mentioned as reasons for shaming—such as protection of potential victims, retribution, and deterrence—are goals that the criminal legal system is expected to pursue.

The interviewees stressed the expectation that the criminal legal system responds effectively and decisively to complaints of sexual assault. Some did not regard shaming as a substitute for the required increase in enforcement by the criminal legal system. On the contrary, they considered shaming a tool that

⁷⁹ For a discussion of vigilante justice as an effective and just tool for achieving justice goals under circumstances of distrust in the criminal legal system, and the connection between vigilantism and experiences of lack of procedural justice, see Justice Tankebe, *Self-Help, Policing, and Procedural Justice: Ghanaian Vigilantism and the Rule of Law*, 43 *LAW & SOC'Y REV.* 245, 248 (2009). For the connection between vigilantism, distrust of state authorities, and support of capital punishment in the United States, see Steven F. Messner, Eric P. Baumer & Richard Rosenfeld, *Distrust of Government, the Vigilante Tradition, and Support for Capital Punishment*, 40 *LAW & SOC'Y REV.* 559 (2006). For arguments highlighting the paradoxical nature of vigilantism given that vigilantes violate the law in the name of law, and thus use methods that contradict their goals, see, for example, Douglas Ivor Brandon et al., *Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 *VAND. L. REV.* 845, 891 (1984); Kelly D. Hine, *Vigilantism Revisited: An Economic Analysis of the Law of Extra-Judicial Self-Help or Why Can't Dick Shoot Henry for Stealing Jane's Truck*, 47 *AM. U. L. REV.* 1221, 1227 (1998).

⁸⁰ Note that one interviewee, Lara, explicitly disagreed with this conclusion.

could improve the functioning of the formal authorities. Disclosing the details of the assailant, for example, may encourage additional survivors to file complaints and strengthen the evidence against him. Shaming can also help by pressing the system to correct its failures and improve its performance.

Some of the survivors considered the failure of the State to protect them as a violation of the social contract, according to which the State has a monopoly on criminal law enforcement. In exchange, citizens renounce their liberty to take the law into their own hands.⁸¹ They interpreted the State's violation as releasing them from their obligation to honor the State's monopoly in the administration of justice. This interpretation undermines the public model of criminal law and reflects a return to the days when crime victims were more significantly involved in the criminal justice-making process against their perpetrators.⁸² At the same time, the narratives of the interviewees show that, in their opinion, the use of shaming does not amount to a declaration of final "disengagement" from the criminal legal system; on the contrary, the survivors sought the help of the criminal legal system and hoped to obtain responses from it. Although many of the interviewees—both those who opposed shaming and those who supported it—claimed to have lost faith in the justice system as a result of their personal experiences as victims, they also hoped that the system would change and believed that their online struggle would advance this process of change. Shaming can symbolize only a *temporary* disengagement until the system improves its performance and meets the survivors' expectations. The survivors had no choice but to become 'private prosecutors' of sorts due to the State's failure to hold their assailants accountable. In their opinion, their disappointment with the malfunctioning of the system strengthened the legitimacy of their personal and feminist involvement in executing informal justice.

B. *Disintegrative vs. Reintegrative Shaming*

Another aspect that emerged from the interviewees' narratives is the disintegrative nature of online shaming, as opposed to reintegrative shaming that is used in other informal justice settings to motivate assailants to change their ways. Such an informal justice setting is restorative justice (RJ). RJ processes are based on a philosophy that regards criminal conflict in the human context

⁸¹ For theories that connect the idea of the social contract with the role of the State and its duties in the criminal justice arena, see Liliya Abramchayev, *A Social Contract Argument for the State's Duty to Protect from Private Violence*, 18 ST. JOHN'S J. LEGAL COMMENT. 849, 853, 863 (2004) (now renamed ST. JOHN'S J. C. R. & ECON. DEV.).

⁸² See HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* 99, 101–04 (1990) ("Until well into the modern era, crime was viewed primarily in an interpersonal context. Most crime essentially represented a wrong toward or a conflict between people The feud was one way of resolving such situations, but so was negotiation, restitution, and reconciliation. Victim and offender as well as kin and community played vital roles in this process.").

of the individual and the community.⁸³ RJ processes seek to restore control to the direct stakeholders over the criminal dispute and the resulting harm.⁸⁴ They allow a more significant space for victims, their relatives, and community members affected by the offense and enable them to participate in decisions about the reparation of the harm as part of a meeting with the offender and his relatives.⁸⁵ The culmination of the meeting is the formulation of a reparation plan that addresses the needs of all parties and provides space for victims to express what is on their minds.⁸⁶

Although RJ processes fundamentally differ from the social media arena, it appears that both the survivors who turn to RJ processes and those who use online shaming on social media are trying to achieve justice through a channel that bypasses the formal, adversarial criminal process. But whereas restorative processes incorporate shaming as a reintegrative tool that addresses the act, not the actor, shaming on social media is often stigmatizing because it associates the act with the actor, namely not only describing what they did but also uncovering their identity. Online shaming addresses the perpetrator, not only his actions. The distinction between reintegrative and disintegrative shaming highlights the difference between survivors' participation in RJ processes and their shaming of assailants online. The findings of the study show that, in some cases, the survivors' decision to describe the harm and its consequences on social media, together with disclosing the perpetrator's identity, blurred the distinction between the act and the actor. Even when the motive for revealing the perpetrator's identity was not revenge but concern for potential victims, the survivors' testimony carried a warning against the perpetrator, labeling him as "dangerous." Although it is not clear that in these cases shaming is disintegrative, as Braithwaite uses the term, it is certainly not reintegrative. A similar conclusion can be drawn from the circumstances in which survivors have decided to refrain from using shaming, either out of fear of the assailant or out of compassion for him. Their choice shows that, in their opinion, disclosing the assailant's identity in a post on social media was perceived as "opening a front" against him or at least as a unilateral attack on him.

While RJ processes are based on dialogue, survivors' choices to shame their assailants are often made unilaterally. Moreover, the goal of RJ is to

⁸³ See *id.* at 184 (comparing retributive justice, which "defines the state as victim, defines wrongful behavior as violations of rules, and sees the relationship between victim and offender as irrelevant," with restorative justice, which "identifies people as victims and recognizes the centrality of the interpersonal dimensions. Offenses are defined as personal harms and interpersonal relationships").

⁸⁴ Dancig-Rosenberg & Gal, *supra* note 38, at 2320 ("In restorative processes, the interested parties themselves . . . are direct parties to the process . . . Each participant's voice is heard in its authentic form without being processed through procedural or evidentiary filters.").

⁸⁵ See TONY F. MARSHALL, RESTORATIVE JUSTICE: AN OVERVIEW 5 (1999) (defining restorative justice as a process "whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future").

⁸⁶ Dancig-Rosenberg & Gal, *supra* note 38, at 2321.

promote reconciliation, recovery, and restoration.⁸⁷ Studies supporting the effectiveness of restorative justice suggests that the feeling of shame created in restorative processes, as a result of the face-to-face confrontation with those affected by the offense, motivates perpetrators internally to take responsibility.⁸⁸ By contrast, the survivor's choice to shame the assailant through the publication of a post on Facebook is not made as part of a dialogue. One of the limitations of using online shaming is the lack of accountability of the assailants because the face-to-face confrontation that occurs in RJ processes is absent.⁸⁹ Some of the survivors indicated, however, that the motive for making the identity of the abuser public was their desire to answer a personal therapeutic need, such as achieving closure and finding a cure for feelings of anger. But contrary to RJ processes, the response to such emotional needs was performed antagonistically.

Will online shaming be able to take on a reintegrative form, or will it always remain stigmatizing by nature? The survivors' narratives uncovered a variety of voices—some punitive and past-oriented, others preventive and future-oriented, and yet others interested in social change by bringing the issue of sexual assault into the focus of public discourse. One of the survivors, Hannah, noted her desire to receive an apology from the abuser. Could the disclosure of the assailant's identity by the survivor mark the beginning of a conciliatory dialogue between the survivor and the assailant, or is shaming always a retaliatory action involving a "judgment without trial" and a "violation" of the principle of due process? Are there circumstances in which the survivor's testimony and the disclosure of the assailant's identity can lead to a process of forgiveness, even without direct contact with the assailant?⁹⁰ Are there circumstances in which using online shaming can make assailants accountable? These questions go beyond the scope of this Article, but they lay the foundation for future studies. Further research should explore the potential of social media to form a platform that could enable not only the fulfillment of stigmatizing, retributive justice but also of reintegrative justice, to the extent that some survivors wish it. In these circumstances, the gain may be enhanced assailant accountability.

⁸⁷ See ZEHR, *supra* note 82, at 186–91.

⁸⁸ See McAlinden, *supra* note 24.

⁸⁹ See Tuerkheimer *supra* note 2, at 1188 (“[T]here are meaningful limits on what unofficial reporting can accomplish, especially with regard to perpetrator accountability.”). Successful restorative justice processes that take place outside the criminal legal system may be a good example of an informal justice pathway that often succeeds in making the assailants accountable.

⁹⁰ See generally Paul McCold & Ted Wachtel, *In Pursuit of Paradigm: A Theory of Restorative Justice* (paper presented at the XIII World Congress of Criminology, 10–15 Aug. 2003), <http://www.iirp.edu/pdf/paradigm.pdf> [<https://perma.cc/NKX9-7DC8>] (describing partial restorative justice processes, which can take place without the presence of the assailant, such as “victims support circles”).

C. *Shaming as a Rational Act for Achieving Informal Justice*

Contrary to a possible hypothesis that survivors resorted to online shaming as an emotional, spontaneous response, our interviewees indicated that in most cases, they had used online shaming through a deliberate and calculated process. The justifications the survivors mentioned for and against resorting to shaming and the ways in which the survivors deployed shaming challenge the binary division between emotional versus rational⁹¹ and private versus public.⁹² For example, most of the survivors' narratives refute the assumption that online shaming represents an emotional urge to retaliate or promote only a narrow, private interest. Instead, it turned out that survivors resorted to shaming after a considered process that took into account wide social interests of promoting the public good. The attempt to achieve informal justice through online shaming arises from the range of justifications the survivors listed for resorting to this practice. Informal justice was not perceived merely as the pursuit of revenge. The survivors' insights reflected what they perceived as injustice in the social and political context. Unlike the criminal process, where the verdict at times affects how survivors assess the success of the legal proceeding, in the online space, the success of the public "proceeding" does not depend on legal considerations. For example, the survivors use online shaming even when it is clear, as in Hannah's case, that the statute of limitations applies, and even when the assailant is no longer alive. In contrast to the criminal justice process, which is imposed only on a perpetrator who is alive and on trial, in the online sphere, even perpetrators who have passed away can be shamed, as Louis did to his assailant. The desire to achieve a broad social correction is evident in these cases.

The interviewees demonstrated awareness that their personal experiences represent gender-based violence and discrimination beyond their individual case. In exposing their pain in the online discourse, they voiced a personal, public, and political protest. Many chose to use shaming because they distrusted the criminal legal system, and some even did so to help the authorities advance their investigation of the case. For most, except those who mentioned online shaming as a cure for feelings of anger, it was not a spontaneous emotion-driven action intended merely to provide an emotional outlet or avenue for ventilation. Many survivors described their choice as an informed, planned, and calculated move, carried out at times after taking "private" investigative steps about other survivors harmed by the same assailant.

Contrary to the tenet that the law should be enforced equally, the survivors did not necessarily perceive online shaming as a tool that promotes equal enforcement of the law. Instead, for some, the purpose of shaming was to

⁹¹ For the distinction between "emotional" and "rational," see, for example, Michel Tuan Pham, *Emotion and Rationality: A Critical and Interpretation of Empirical Evidence*, 11 REV. GEN. PSYCH. 155, 156–57 (2007).

⁹² For the distinction between "private" and "public," see, for example, Peter Steinberger, *Public and Private*, 47 POL. STUD. 292, 294–96, 307–13 (1999).

promote social and gender equality, to expose the actions and the “true face” of privileged men in the public sphere, who are in positions of power and part of the hegemony, and to break down the social and gender hierarchies. In their view, the shaming that the survivors inflicted was a mechanism for achieving transparency, exercising the public’s right to know about these figures’ authentic character, and subjecting them to public judgment. According to the survivors, the legal sphere purports to treat defendants equally, but these terms do not bind the informal online justice sphere. One of the attendant consequences of setting aside equality in the online space is that shaming is carried out without distinguishing between the degrees of severity of the sexual assaults attributed to the assailant. Some survivors considered shaming to be a means of exposing the true face not only of those who have committed severe acts that are clearly criminal but also of those who have committed inappropriate gender-based wrongdoings that do not cross the criminal threshold. In the online space, shaming marks the beginning of a “trial” held in the virtual town square without clear rules that apply to all similar cases. It is inflicted on the alleged assailant immediately upon opening the online public “procedure,” according to the unilateral decision of a specific survivor. In contrast, stigmatization in the criminal justice process, at least in its official version, intensifies toward the end and is mainly reflected in conviction and punishment that come only after a structured and regulated procedure that applies to all cases.

Although we live today in the “post-truth” era,⁹³ in which appeals to emotion are considered more influential in shaping public opinion than factual discourse, survivors who have shamed their assailants have distinguished between fact-based shaming and false complaints. Many have been careful to validate their claims before shaming their assailants. Survivors’ reasoning challenges the equation of women=emotional=irrational, which traditionally portrayed women as inferior to men.⁹⁴ The justifications raised by the survivors illuminate the rational process that underlies their choice to shame or not to shame online.

⁹³ For a discussion of the meaning of the terms “post-truth” and “alternative facts,” and the way they permeated public discourse after the 2016 election in the U.S., see generally S. I. Strong, *Alternative Facts and the Post-Truth Society: Meeting the Challenge*, 165 U. PA. L. REV. ONLINE 137 (2017), http://scholarship.law.upenn.edu/penn_law_review_online/vol165/iss1/14 [<https://perma.cc/8X6F-FDZD>].

Oxford Dictionaries named “post-truth” the 2016 Word of the Year. See Amy B. Wang, *‘Post-truth’ Named 2016 Word of the Year by Oxford Dictionaries*, WASH. POST (Nov. 16, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/11/16/post-truth-named-2016-word-of-the-year-by-oxford-dictionaries/?utm_term=.ab985bbdefd2 [<https://perma.cc/VM86-3LM9>].

⁹⁴ As feminist scholars have noted, in the Western world the concept of “rationality” has been related to that of “masculinity,” whereas emotions have been traditionally related to “femininity” and perceived as inferior. See generally NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* (1978); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1982).

D. Implications: What Can the Criminal Legal System Learn from this Study?

Our findings reveal what survivors need and what they expect to achieve to satisfy their needs. Some of the justifications they mentioned for shaming or refraining from it indicate that they seek responses to various criminal justice-oriented needs. Social media provides alternative action channels for survivors and sometimes obviates their need to turn to the criminal legal system. Although the criminal legal system and social media are distinct mechanisms that purport to serve different social functions, in practice, survivors found social media to be a competing platform where they might achieve some of the goals of the formal criminal legal system, such as deterrence and incapacitation. Some survivors believed online shaming might be more effective than the criminal legal system in achieving these goals. When survivors perceived social media as a platform where these goals can potentially be achieved more successfully than in the criminal legal system, their incentive to approach the latter diminished, especially given the heavy price they were required to pay to achieve these goals in the criminal legal system. This is not to say that social media was perceived as a perfect platform for survivors to achieve justice. But despite its perils and limitations, survivors recognized and appreciated its potential power, not only in meeting feminist and extra-legal needs but also in achieving pure criminal justice-oriented goals.⁹⁵

By revealing survivors' needs and expectations, our findings shed light on how the criminal legal system should change to serve survivors better, particularly those who signaled their need for proper legal responses. Although the criminal legal process is not a suitable path for every survivor, it must strive to become a relevant and adequate option to consider, offering survivors a viable choice between competent alternatives. Survivors should not be forced to turn to the online channel *only* because they perceive the formal system as inferior. From a social point of view, it is clear why investigating allegations of sexual assault is important. This does not mean that non-punitive alternative channels, such as restorative justice processes and other community-based solutions, are not valuable.⁹⁶ Rather, it means there is a great social interest in giving survivors as many channels as possible to use, including the formal system. Cases of sexual assault differ from each other in their severity and circumstances, and survivors differ from each other in their preferences and needs. In some cases, informal, non-punitive channels may provide suitable platforms for seeking justice; in other cases, the formal, state-based channel may be better suited. Each platform has its perils and promises,⁹⁷ and together

⁹⁵ See Dancig-Rosenberg et al., *supra* note 18, at 1577.

⁹⁶ For support for non-punitive alternatives, such as restorative justice processes, according to the victims' circumstances and wishes, see, for example, Dancig-Rosenberg & Gal, *supra* note 38, at 2320–21.

⁹⁷ Survivors' narratives also revealed the dark side of social media. A recurring narrative of many survivors is the blame still being directed against them in the public sphere.

they provide richer opportunities for survivors. Improving the formal channel by removing its current barriers for survivors is an essential step toward increasing the options available to survivors. Moreover, for assailants, there is an advantage in investigating sexual assault allegations within a formal legal process, where their rights are guaranteed to be upheld.⁹⁸

We would like to clarify that we do not advocate for increased punitivism. The interviewees criticized the criminal legal system for being incapable of deterring assailants and adequately protecting other potential victims. But achieving these goals is not necessarily contingent upon imposing more severe punishments. More critical are the enforcement rates by the criminal justice system and the ability to ensure accountability in sexual assault cases.⁹⁹ Moreover, some distrust survivors expressed toward the criminal legal system stems from the disrespectful and poor treatment they received from officials, unrelated to the legal outcomes.¹⁰⁰

Increasing “survivor-friendliness” is indeed a challenging mission, given the many and unique purposes of the criminal legal system, which does not consider crime victims as formal parties to the criminal process. But this mission is achievable. Studies have shown that when victims are treated with respect, given information and the opportunity to make their voices heard, and

Social media turns out to replicate, to some extent, gender and social dynamics, including victim blaming and misogyny. Using the shaming mechanism online reveals a complicated dynamic between survivors, assailants, and the community. Although ostensibly the power is in the hands of the survivor who chose to shame the assailant, in practice, in some cases (not all), the use of shaming came back as a boomerang to the survivor. She experienced it as weakening and paralyzing. The survivors also revealed their fear of defamation suits. *See also* Tuerkheimer, *supra* note 2, at 1189–90 (“When a person makes an unofficial allegation of sexual misconduct, she becomes the potential target of a defamation claim by the individual accused . . . [o]f course, if an allegation of abuse is truthful, a defamation defendant should ultimately prevail. Even so, the prospect of being sued for libel is—or should be—a meaningful deterrent to publicly accusing one’s abuser.”). Thus, using shaming to gain recognition and support has sometimes come at the cost of silencing and victim blaming. In some cases, the initial fear of counteractions by the assailant had a chilling effect on survivors’ choice to disclose the assailants’ identity in the first place. During the second wave of interviews that we conducted after the spread of the #MeToo campaign, the interviewees emphasized the antagonistic discourse they were exposed to, which was aimed at delegitimizing their narratives. Admittedly, on occasion, shaming was experienced as empowering and led to a change in the power relations between the abuser and the survivor. Overall, however, survivors mentioned more types of negative consequences than positive ones, even though they listed a greater number of reasons for justifying shaming than for rejecting it.

⁹⁸ *See* Tuerkheimer, *supra* note 2, at 1188–89 (“many who tend to sympathize with the accuser also worry about a world in which established procedures for investigating and adjudicating allegations of abuse are supplanted by pervasive public shaming and vigilantism”).

⁹⁹ *See, e.g.,* Kinneret Teodorescu et al., *Frequency of Enforcement is More Important than the Severity of Punishment in Reducing Violation Behaviors*, 118 *PROC. OF NAT’L ACAD. OF SCI.* 1, 8 (2021).

¹⁰⁰ For the importance of trust in providing incentives for stakeholders, including crime victims, to cooperate with the criminal justice authorities, see generally Joshua Kleinfeld & Hadar Dancig-Rosenberg, *Social Trust in Criminal Justice: A Metric*, 98 *NOTRE DAME L. REV.* 815 (2023).

experience the decision-making process of criminal justice officials as neutral and fair, they report satisfaction with the criminal process even when it does not result in an outcome they expected.¹⁰¹ The use of simple, neutral language and sensitive interrogation and court proceedings, can significantly improve the experience of survivors in criminal proceedings. Additionally, courteous treatment by professionals, including support from social workers during the process, and detailed explanations of the structure, aims, and limitations of the proceedings and the role of the survivor within it are other simple steps that are still barely put in practice.¹⁰²

CONCLUSION

In this Article, we uncovered and analyzed how sexual assault survivors who chose to share their stories of victimization online perceive the practice of shaming their alleged assailants. Survivors' narratives reveal rich and diverse voices, reflecting an uneven mix of components, and indicate support for this practice alongside reluctance and fear.

More broadly, the perceptions emerging from the interviewees' narratives correspond to current trends that seek to incorporate into the criminal justice system mechanisms that allow stakeholders to play a more meaningful role. Scholars have called for increasing the involvement and influence of direct stakeholders—defendants, victims of the crime, family members, and community representatives.¹⁰³ Others have suggested abandoning the adversarial criminal process, which conceptualizes the criminal dispute as a matter between the State and the defendant, in favor of justice mechanisms that assign a more meaningful role to stakeholders, especially crime victims and the community.¹⁰⁴ The findings of this study attest to the active role played by sexual assault survivors in what they perceive as “doing justice.” Shaming grants survivors some control over the process, which they lack in the criminal

¹⁰¹ For a collection of studies that found a connection between victims' satisfaction in the criminal justice process and procedural justice components that are unrelated to the outcomes of the process, see generally Malini Laxminarayan et al., *Victim Satisfaction with Criminal Justice: A Systematic Review*, 8 VICTIMS & OFFENDERS 119 (2013). For a study that found that victims of crime place a significant value on procedural justice in contacts with the police, see generally Irina Elliott, Stuart D. M. Thomas & James R. P. Ogloff, *Procedural Justice in Contacts with the Police: The Perspective of Victims of Crime*, 13 POLICE PRAC. & RES. 437 (2012).

¹⁰² Dancig-Rosenberg, *supra* note 77, at 168–69.

¹⁰³ See, e.g., STEPHANOS BIBAS, THE MACHINERY OF CRIMINAL JUSTICE 31 (2012) (criticizing the almost-exclusive control that professionals—“insiders”—exercise over criminal proceedings, at the expense of the involvement of “outsiders,” deprives the latter of participating in the administration of justice, making the enterprise unfair).

¹⁰⁴ Criminologist Nils Christie called for restoring the criminal dispute to its “owners,” as it is their “property.” See Nils Christie, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1, 1, 7 (1977) (coining the term “conflict as property” and arguing that conflicts should be handled largely by the direct stakeholders rather than by the state). Zehr suggested looking at the criminal conflict as harm to people and relationships, not merely as harm to an abstract social value. See ZEHR, *supra* note 82, at 211.

legal arena, and demonstrates the potential of an informal justice platform to provide a more meaningful role for survivors. This can be true not only in the case of survivors who chose not to approach the legal system but also in the case of those who turned to the legal system but soon realized that they had been assigned a marginal role in the process of doing justice.

Although this study explored survivors' perspectives only, it is important to also consider its findings from the standpoint of the assailants and the public. For those who were accused online, social media did not provide due process. As Powell argued, "[t]here are serious due process concerns (such as violations of the right to the presumption of innocence as well as a fair and impartial trial) where alleged offenders are named and shamed through informal justice mechanisms."¹⁰⁵ Moreover, Tuerkheimer noted the independent value of formal investigative procedures.¹⁰⁶ Given the perils and weaknesses of social media, having an orderly and fair formal criminal legal process that acknowledges the importance of preserving the rights of the accused as an adequate optional channel for survivors to turn to may provide a balanced pathway for dealing with the sensitive and vital issue of sexual assault.

This study points to an increased need in the digital age to make the criminal legal process more accessible to survivors, at least for those who expect the State to provide adequate responses to sexual assault. The findings indicate that, according to survivors, the shortcomings of the criminal legal system are not limited to its failure to address survivors' individual needs, motivated by their personal or feminist objectives. The deficiencies are also manifested in the system's incapacity to achieve classic criminal justice goals for the sake of the public good. Many survivors turned to social media to attain some of these goals, such as deterrence and prevention, which the formal criminal legal system was supposed to achieve. Others shamed their assailants online to attain extra-legal goals (e.g., exercising the public's right to know, undermining gender and social hierarchies, and promoting healing). Turning to social media to achieve the latter appears natural, but not so in the case of the former. Seeking justice by shaming assailants online *only* because survivors feel that the formal system is hostile or ineffective in handling sex crimes is not a desirable situation. Survivors need both formal and informal alternatives to be open and accessible in order to make an informed choice based on their preferences, needs, and the circumstances at hand.¹⁰⁷ At the same time, stressing the need for the formal system to improve and become a relevant venue for survivors who wish to turn to it does not mean calling for more punitivism. The criminal legal system can serve as an important channel

¹⁰⁵ Powell, *supra* note 10, at 578.

¹⁰⁶ Tuerkheimer, *supra* note 2, at 1189.

¹⁰⁷ This is not to say that the need to make the formal system more accommodating for survivors eliminates the parallel need to make the system more humane and respectful toward the accused and the defendants. As noted elsewhere, these two needs are not contradictory but complementary, and one should not come at the expense of the other. See Dancig-Rosenberg, *supra* note 77, at 166.

for achieving accountability and preventing sexual assaults by improving its enforcement function without necessarily increasing the severity of punishment. The criminal legal system has the potential to become a more suitable avenue for survivors if it alters its approach toward them. This transformation entails treating them with greater dignity, offering them professional and sensitive guidance as well as providing them simple and accessible information.

