

**THE EMOTIONAL AND AFFECTIVE LIVES OF
SEXUAL VIOLENCE SURVIVORS: A COMMENT
ON DANCIG-ROSENBERG AND PELEG**

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What do survivors of sexualized injury want and need from the legal system? This is a question that feminist scholars, advocates, and organizers have struggled with for years as we have witnessed failures of criminal law, as well as anti-discrimination law, to significantly curtail pervasive practices of sexual violence and to earn the trust of those who have been targeted. In their article, “Online Shaming and the Power of Informal Justice,” Hadar Dancig-Rosenberg and Anat Peleg approach this question in a novel and illuminating way.¹ They focus on a group of women and men who have responded to their sexualized injury by posting online a narrative about their experience and often, though not always, naming their offender. This strategy, which is undertaken sometimes in conjunction with and sometimes as an alternative to the criminal legal system, is described by the authors as “online shaming.”² The core of the authors’ effort is twenty extended, semi-structured interviews with survivors that aim to elicit from them the reasons they resorted or declined to resort to online shaming, and how that response related to any efforts to engage the criminal legal system. Dancig-Rosenberg and Peleg then use those responses to challenge popular understandings of online disclosure

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

² Analytically, the authors connect this online shaming to practices such as those detailed by Foucault, which have been used historically to expose and discipline departures from socially normative behavior. Dancig-Rosenberg & Peleg, *supra* note 1, at 9–15.

strategies, and to propose changes that might make the criminal legal system more responsive to the wants and needs of survivors.

This is a rich and attentive study that exposes important heterogeneity among survivors, both to their motivations for resorting (or not) to online disclosure and to their perceptions of the criminal legal system. In this essay, however, I focus on a striking similarity among those who chose these informal remedies: in explaining their decision to name offenders, these survivors not only focus on public-regarding or other-regarding, largely impersonal goals,³ but survivors also strongly emphasize the cognitive dimension of their choice, an emphasis which may seem surprising for those who have experienced, at the very least, sharp devaluation and more often serious trauma. Among those who have chosen to name their perpetrators, there is little focus on any identifiable or ambivalent emotions, inchoate desires, or bodily responses⁴ that might have borne on their decision about naming their offenders. In fact, some subjects explicitly deny the influence of such emotions or affects.

The authors' focus on public-regarding, cognitive rationales may well respond to a dominant public view of online reporting of sexualized violence as motivated by a desire for punishment or revenge. But the focus on such rationales also reflects and participates in a longstanding, though increasingly embattled,⁵ premise of the legal system: that "reason" is normative and emotional motivations are generally suspect, surely for decision-makers, but also for litigants who aim to be credible in their efforts to secure relief. I argue that by reading these interviews in a way that is more alert to undercurrents of emotion and affect, we may arrive at a more complete understanding of the legal subjects of sexualized injury. In fact, such subjects often have powerful, if sometimes ambivalent, emotional responses to their experience: these responses may remain below the level of full apprehension, even by the subject themselves; or may be difficult to disaggregate or understand. Some subjects respond to these feelings with an impetus to narrativize their injury—to tell a story that explains the event to themselves and others—and sometimes to name their offender. Understanding this dimension of subjectivity may help us to better understand the position from which survivors approach the law,

³ In this response, I will use the term "online naming" or "online identification" of offenders. I appreciate the efforts of the authors to contextualize this practice in relation to longstanding state and private efforts to shame perpetrators, and this term may well describe the motivation of some who engage in the practice. However, given the heterogeneity of the subjects' explanations—and resistance among a number of them to association with a shaming motivation—I will use terms that reflect greater agnosticism as to the motivation of the practice.

⁴ For a discussion of the distinction between emotion and affect, *see infra* Part III (*text at notes 31–35*).

⁵ A growing literature on law and emotions has challenged this premise. *See generally* Kathryn Abrams & Hila Keren, *Who's Afraid of Law and the Emotions*, 94 MINN. L. REV. 1997 (2010) (exploring the value of studying law and emotions and its application to legal problems); RESEARCH HANDBOOK OF LAW AND THE EMOTIONS (Susan A. Bandes et al. eds., 2021) (analyzing the role of emotion in legal reasoning).

and to gain greater insight into the shortfalls, benefits, and opportunities for change, in both formal legal and alternative regimes.

In this essay, I explore the above argument in three sections. I first discuss the authors' findings and contributions regarding survivors' decision to name their assailants. Amidst the heterogeneity of motivation that underlies survivors' response, particularly as to the role of the criminal legal system, the authors excavate a surprising commonality: survivors often disclose the name of their assailant for other-regarding, rather than personal reasons, such as to help other women who might encounter the same offender, or to encourage more reports to police, facilitating legal enforcement. I then shift focus to a second commonality, revisiting the survivor statements reported by the authors and finding that they are in fact strongly inflected by both emotions and a broader range of affects about the assault or harassment they survived. I identify responses that have palpable emotional dimensions—from a pointed denial of emotion, to the expression of specific emotions, such as anger or indignation, to the experience of emotional ambivalence. I also highlight survivors' manifestations of affect—experiences of bodily intensity or incompletely apprehended feeling or impulsion—that shape their decision to disclose, either their violation or the name of the offender. I use two highly-publicized feminist narratives of sexualized injury to illustrate prominent affects shared by a number of the authors' interview subjects: impulses toward the reclaiming and assertion of agency, and toward solidarity and shared effort with other survivors. Finally, I ask what this more encompassing account of the subject of sexualized injury means for the design of the legal system as to criminal law and alternative remedies such as restorative justice.

I. HETEROGENEOUS, PUBLIC-REGARDING DECISIONS TO NAME

The authors' interviews with seventeen women and three men who have suffered various forms of sexualized injury are heterogeneous in their substance. Though all have considered recourse to online shaming, not all have actually undertaken it: eight of the twenty ultimately decided not to name their assailant online. Those who did vary also in their relation to the criminal legal system (which, in the Israeli system on which the authors focus, appears to be the law of choice for responding to such complaints).⁶ Some never complained to the police; some took legal and informal recourse simultaneously; some resorted to online shaming when the criminal legal system failed them. Of the last group, some felt authorized by that failure to take informal action,

⁶ This emphasis may reflect a difference in the way that sexual injuries are handled in Israeli law as opposed to American law. In the United States, complaints based on sexual harassment would most likely be addressed under Title VII; some of the acts of physical violence might be addressed through civil law as well, depending on the context, although criminal law would also be a possibility.

while others named their assailants in hopes that others, who had suffered similar encounters with the offender, would go to police.

Beyond exposing the decisional heterogeneity that underlies the practice, the authors offer two noteworthy, even surprising, insights regarding online shaming. The first is that, based on these interviews, one of the most prevalent and damning understandings of online shaming may be unfounded. Perhaps before #MeToo, but certainly in its wake, a prominent cultural understanding has been that women who use online narration to name (or otherwise conclusively identify) their offenders are motivated by punitive urges that threaten feminist-inspired change through their excesses.⁷ Yet the authors' subjects reveal reactions and motivations that contrast sharply with those highlighted by this interpretation. Decisions to name offenders are often public-regarding rather than personal: they aim to warn and protect other women; to vindicate the public's right to know about offenses by public figures, some of whom portray themselves as supporters of women; and to combat gender hierarchy and precipitate transformation.⁸

Second, while critics characterize online shaming as extra-legal "vigilantism," even "public lynching,"⁹ the action of these subjects is shaped in varying ways by the operation of the criminal legal system. Some survivors aim to assist the criminal law by enabling additional victims to report sexualized offenses, while others decline to act independently until it is clear that resort to law will be unavailing. Even those who view the criminal law with distrust or conclude that it has failed them take independent action according to quasi-legal norms: they engage in "rational consideration of [] dangerous[ness]"¹⁰ or "conduct[] inquir[ies] into the [defendant's] conduct, which they perceive[] as factual."¹¹ They respect the criminal law in its aspirations, if not always in its operation, and they want it to do better.

For the authors, this latter insight signals the possibility that disengagement from the legal system, even when resorting to informal online remedies occurs, is likely to be temporary. It suggests, moreover, that legal decision-makers can use these subjects' observations to make the criminal legal system,

⁷ Michelle Goldberg, *Amber Heard and the Death of #MeToo*, N.Y. TIMES (May 18, 2022), <https://www.nytimes.com/2022/05/18/opinion/amber-heard-metoo.html> [<https://perma.cc/T9HQ-F3S3>] (describing Amber Heard, who was not a "perfect victim," as "the perfect object of a #MeToo backlash" and of "the broader misogynist frenzy . . . [characteristic of] the deeply reactionary moment we are living in"); Kate Manne, *Brett Kavanaugh and America's 'Himpathy' Reckoning*, N.Y. TIMES (Sept. 26, 2018), <https://www.nytimes.com/2018/09/26/opinion/brett-kavanaugh-hearing-himpathy.html> [<https://perma.cc/J63N-FX9U>] (describing "himpathy" as a "moral tendency to feel sorry exclusively for the alleged male perpetrator—it was too long ago; he was just a boy; it was a case of mistaken identity—while relentlessly casting suspicion upon the female accusers").

⁸ Dancig-Rosenberg & Peleg, *supra* note 1, at 20–27.

⁹ *Id.* at 21–22. See generally Stavroula Pipyrou, *#MeToo is little more than mob rule // vs // #MeToo is a legitimate form of social justice*, 8 J. ETHNOGRAPHIC THEORY 415, 416 (2018) (noting that in the view of some observers, "#MeToo is little more than mob rule premised on vigilantism that forgoes judicial procedure in favor of public shaming").

¹⁰ Dancig-Rosenberg & Peleg, *supra* note 1, at 21.

¹¹ *Id.* at 22.

as one among several options available to victims of sexualized injury, more “survivor-friendly” through sensitive interrogation and professional support of witnesses, transparency about operative procedures, and more.¹²

Although the authors draw many important insights from taking their subjects’ turn to predominantly public-facing justifications as their primary object of focus, I propose to approach these subjects’ statements differently. I concur with the authors in seeing in them not simply a plausible denial of punitive motivation but a centering of public-facing explanations for their actions. I also glimpse a subtler remainder in the language through which these women and men explain their choices that exceeds, and occasionally even resists, the predominantly cognitive frame that they offer and the authors highlight.¹³ This excess may be visible in an explicit denial of or turn from emotion; in an expression of ambivalent, conflicting, or unresolved emotions; or in currents of identifiable emotion or affect that undergird, but remain unremarked within, ostensibly cognitive justifications.

Survivors have many reasons for turning from emotion or affect in their explanation of their resort to online shaming. They may fear that referring to their own goals or feelings surrounding the violation and the offender might be assimilated to dominant narratives of feminist retribution. They may feel that a justification that registers as emotional may be less credible within the legal system, or that affective responses most likely to be credited by legal decision-makers or online readers—those of unresolved pain from which survivors struggle to heal—do not match their own feeling states in the wake of the offense.¹⁴ They may be only slowly coming to terms with their own emotions, which are bound to be complex and unruly in the face of unacknowledged or unremedied sexualized injury. But whatever the explanations—and those explanations are themselves an interesting question—highlighting and interrogating these elusive responses may provide vital, additional data as we approach the criminal legal system and its possible alternatives. Centering these emotional and affective currents may suggest that survivors’ wants and needs—understood not simply as public-regarding, rationalist goals, but as identifiable emotions and more inchoate desires and inclinations—may be more difficult to satisfy within the criminal legal system even with the

¹² *Id.* at 44–45.

¹³ There are obvious methodological difficulties in interpreting subjects’ responses based on the relatively brief interview excerpts that the authors offer in making their argument. Professors Dancig-Rosenberg and Peleg clearly understand far more than I do, as they interviewed the survivors and had ongoing access to the complete transcripts of those interviews. But my point here is not to contest the authors’ interpretations—which bring vital insight to our understanding of the resort to online naming of assailants—but to supplement them by offering additional reflections on what strikes me as a submerged or secondary theme in those observations. My broader goal is to encourage a more explicit sociolegal focus on the emotions and affects registered by legal subjects—in this case, the legal subjects of sexualized violence—against which the emotion-evasive character of the legal system tends to militate.

¹⁴ One survivor makes this comment about online sites for survivor narration or disclosure. Dancig-Rosenberg & Peleg, *supra* note 1, at 33–34.

“survivor-friendly” modifications that the authors endorse. It may point to elements of that system that are particularly troublesome for survivors, or to responses on the part of survivors that may make them better candidates for alternative processes, such as restorative justice. It may also enable a more complete encounter of the criminal legal system with the full legal subject of sexualized injury, an encounter that has enabled slow steps forward in fields such as domestic violence and sexual harassment.

In the following sections, I highlight signs that the emotions of survivors constitute an often uncomfortable and under-acknowledged undercurrent in their discussion of naming assailants. I then examine the more specific emotions and affects that undergird and help to explain the subjects’ ostensibly cognitive motivations, and I conclude with a discussion of how this excavation of emotional and affective responses might help legal scholars and decision-makers as we consider the criminal legal system and its alternatives.

II. GLIMPING THE EMOTIONAL UNDERCURRENTS IN SURVIVOR EXPLANATIONS

One current that appears among survivors who choose to name their assailants online is a degree of discomfort with their emotions. Many survivors quoted by the authors contest the idea that “shaming” or intending any ill-effect on the offender was part of their motivation.¹⁵ Not only are they quick to deny that their motivations were punitive or intentionally stigmatizing, they also express ambivalence about having emotional responses to their assault or seek to separate those emotions from their decision to name their offender. One survivor notes: “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.”¹⁶ The statement “it was important for me to be as matter-of-fact as possible” is ambiguous as to whether, in fact, her decision “didn’t come from an emotional place” or whether she did not want to present herself, or to be understood, as if her decision had come from an emotional place. Another subject reflects more openly on her uncomfortable feelings but rejects the idea that they shaped her decision:

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.*¹⁷

¹⁵ In some respects, this frequent attestation seems to challenge the authors’ efforts, in Part I of the article, to present online exposure of offenders as part of a broad, historical spectrum of shaming penalties. Dancig-Rosenberg & Peleg, *supra* note 1, at 9–15.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 25 (emphasis added).

The idea that the survivor's anger emerged over time is itself plausible: some survivors report that they are unable to feel anger at their assailants in the early days after an assault.¹⁸ But her insistence that it was unrelated to her naming of the assailant feels surprisingly strong, and her distinction between anger and vengeance, and public-regarding justifications for naming, may strike some readers as improbably clean. Some survivors who chose to name their assailants also described themselves as undertaking quasi-legal processes before deciding to do so. These processes emphasize cognitive operations like fact-finding and assessments of dangerousness and seem intended not only to abstract from, but also to safeguard against, any emotional influence on decision-making.¹⁹

Those who declined to name their offenders display a discomfort of a different kind. They are, in many cases, candid and clear about the fear that figures centrally in their decisions not to name: fear of threat—whether legal or bodily—from offenders or fear of judgment from the public or from their friends and allies. They seem more ambivalent, however, about the emotions that a fear-induced refusal to name offenders leaves behind: feelings of continuing pain or trauma, regret, or resentment about the self-effacement that silence may entail. One survivor describes her decision not to name a fellow student, now a rabbi, who violated her as a teenager:

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 . . . 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 . . . [Now] [h]e's a [r]abbi in the Yeshiva . . . I'm afraid of destroying what he built, even though he destroyed me.²⁰

This subject shows compassion, as the authors note, for her offender's youth and apparent ignorance about the meaning or impact of his acts. But this compassion is entwined with a range of other emotions that seem to struggle

¹⁸ See Susan J. Brison, *Everyday Atrocities and Ordinary Miracles, or Why I (Still) Bear Witness to Sexual Violence (But Not Too Often)*, 36 WSQ: WOMEN'S STUD. Q. 188, 188–98 (2008).

¹⁹ Notably, Dancig-Rosenberg and Peleg do not share these subjects' discomfort with emotions. They offer occasional observations about how emotion may interact with predominantly cognitive justifications. For example, as to those subjects whose decision stems from the failure of the criminal legal system to respond to their cases, the authors note: "their disappointment with the malfunctioning of the system strengthened the legitimacy of their personal and feminist involvement in executing informal justice." Dancig-Rosenberg & Peleg, *supra* note 1, at 38. Moreover, where subjects speak more explicitly about emotional motivations—as I explain below, this is more common among those who elect not to name their perpetrators—the authors explicitly name strands of justification that are emotional in character. As one would expect of conscientious, data-gathering, socio-legal scholars, their focus—on the cognitive/affective dimension as well as others—follows that of their interview subjects.

²⁰ Dancig-Rosenberg & Peleg, *supra* note 1, at 29.

for expression in the subject's narrative. There is a respect for, or anxiety about violating, hierarchy ("now he's a rabbi in a Yeshiva") and fear of destabilizing a current life ("what he built") with an older claim. There is also a sense of regret, or even resentment, at the self-abnegation this deference to the needs of the offender entails. The phrase "I'm afraid of destroying what he built, even though he destroyed me" is a powerful testament to an unstable equilibrium achieved by denying the claim of one's pain and suffering. Another survivor observes: "Even at the time of filing the complaint, somewhere I felt compassion and feared [to run] 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."²¹ The unusual combination of "compassion and fear"—compassion, often understood as fellow feeling for someone who is suffering, sits oddly with fear, which connotes little of the same vulnerability in the object of one's response—is raised without further comment or introspection. The subject then reverts to a more characteristic discussion of fear: "I didn't want him to know that it was me." There is a cluster of emotions raised without being fully disentangled or understood, as if subjects were reluctant to make more than glancing contact with the volatile terrain they occupy.

But survivors are not always in flight from their emotions, and they often give voice to these emotions when trying to describe another kind of decision-making entirely. Those who choose to name their assailants may correctly conclude that they are not motivated by vengeance and that helping others and supporting the criminal law system are top of mind in their decision-making. Yet there are other emotions circulating in their explanations: these emotions tend not to be explicitly named, yet they are evoked by survivors' language. Many of the emotions that emerge in the survivors' expositions appear to be in the family of anger: frustration, indignation, outrage.²² These emotions can

²¹ *Id.* at 30.

²² Frustration has long been an emotion connected to the mobilization of social movements. But in the 1930s, it was implicated in a model that viewed frustration as the fuel for aggression by collectivities, a view that ascribed a kind of irrationality and lack of control to concerted action. See JAMES JASPER, *THE EMOTIONS OF PROTEST* 44 (2018). However, subsequent theorists, including Jasper and Randall Collins, have argued that while frustration may be a "reflex emotion" in that it responds to particular acts or events in the environment, its trajectory is not so predictable *ex ante*. Collins describes anger as "the capacity to mobilize energy to overcome a barrier to one's ongoing efforts." RANDALL COLLINS, *INTERACTION RITUAL CHAINS* 126 (2004) (citing NICO H. FRIJDA, *THE EMOTIONS* 19, 77 (1986)). If the energy generated is too low, or the power of the frustrated person or group too limited, frustration may lead to fear rather than anger. And the extent to which frustration leads to aggressive forms of anger may depend on many factors, including the available means and fora for expressing it, or its mediation—intuitive or explicit—by moral judgments. When anger is infused by a sense of righteousness or moral offense, which may arise simultaneously with the anger or take longer to develop (see JASPER, *supra* note 22, at 148), it is no longer considered purely reflexive and is often characterized as indignation or outrage. *Id.* at 148–51. Indignation or outrage combine elements of moral judgment and emotional impetus that lead some theorists to call them "hot cognitions"; they are often described as providing the "fire in the belly" that animates collective action or social movements. See WILLIAM A. GAMSON, *TALKING POLITICS* 132 (1992); JASPER, *supra* note 22, at 148–49.

signal a perception of injustice, which may be connected to other feelings about its perpetrators.

In survivors' statements, these emotions seem to be directed to several different targets, which they hold responsible in some way for their predicament. For example, multiple survivors who disclaim a desire to punish nonetheless express feelings of frustration, anger, or indignation when they describe a decision to name a perpetrator. Although their focus may be on a cognitive, public-regarding justification, such as undermining power relations, subjects express feelings of indignation—an emotion combining anger with a sense of moral justification²³—about the hypocrisy of public figures who perpetrate sexual violence. One survivor observed: “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.”²⁴ The use of the word “shocking” combined with “simply overlooked” conveys a sense of righteous anger at a moral lapse that has been (perhaps willfully) ignored.

For others, emotions of frustration or anger seem to be aroused by or directed at failures of the legal system. As one survivor noted, with evident frustration: “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?”²⁵ Or as another insisted, verging into indignation or outrage: “There is a law that enables anyone to rape, and then know that the case will be closed because of lack of evidence.”²⁶ For others, the anger, tinged with a sense of erasure or devaluation,²⁷ responds to a lack of accountability on the part of an assailant. One survivor who named her assailant following a criminal trial noted: “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.”²⁸ The dramatic words “stood facing him at trial” convey the survivor’s resolve and the feeling of injustice that carried her through a public ordeal, while her statement “apologize and I’ll get up and leave”—a surprising combination of command and bargain—signaled her powerful desire for accountability, affirmed by her statement that “it was the

²³ See JASPER, *supra* note 22, at 149.

²⁴ Dancig-Rosenberg & Peleg, *supra* note 1, at 25.

²⁵ *Id.* at 24.

²⁶ *Id.* (emphasis added).

²⁷ Jasper notes that a sense of devaluation on the part of the subject can turn reflexive anger into the moral anger reflected in indignation and outrage. He gives the example of whistle blowers, whose initial anger at the offense acquires a moral inflection when they are treated devaluatively or punitively in internal processes. See JASPER, *supra* note 22, at 148.

²⁸ Dancig-Rosenberg & Peleg, *supra* note 1, at 26. Here, the authors do note the emotional valence of the statement but ascribe it to “disappointment.” *Id.* Although the full transcript may reveal a reason for that ascription, to my mind, the partially cognitive valence of disappointment—a response to a failure to meet expectations—does not seem fully to capture the more powerful, almost bodily response to wrong (encompassed by the woman’s references to standing and leaving) conjured by the survivors’ words.

most important thing to hear.”²⁹ This expression of anger or indignation may be directed to a moral failing of the offender (he failed to take responsibility for his act or signal his awareness of the need to address the injury of the survivor) or a structural failure of the criminal legal system (it is not concerned with the accountability of the defendant to the complaining witness).

The emotions conveyed by these statements suggest more than an act executed on behalf of others: they signal that particular kinds of behavior, or institutional arrangements, have triggered the internal moral compass of the survivor and reflect an affront to the survivor’s personal sense of right and wrong. Moreover, the direction of frustration or anger toward the criminal legal system, sometimes building toward a posture of outrage or cynicism, suggests an alienation from that system that may prove challenging to repair.

III. AFFECTS SURROUNDING NAMING AND DISCLOSURE

The category of “affect” overlaps with emotion, but theorists who focus on affect understand it to be distinct. Sociologist Deborah Gould, for example, describes a spectrum encompassed by the term “feelings,” which comprehends both emotions and affects.³⁰ Emotions, which themselves span a range, occupy the more cognitive part of that spectrum: while distinct from pure cognition, they are “precede[d] and induce[d]” by some level of cognitive processing.³¹ Affects occupy the less cognitive part, which includes, at the far end, “human motivation that is nonconscious, noncognitive, nonlinguistic, noncoherent, [and] nonrational.”³² Gould also frames another relation between the two categories. Referencing the work of philosopher Brian Massumi, she describes affect as “experiences of bodily intensity or energy that arise in response to stimuli impinging on the body,”³³ and observes that emotions are “the expression of affect in gesture and language, its conventional or coded expression.”³⁴ In this analysis, affect begins with a pre-verbal, inchoate sensation in the body, but is given more discrete, recognizable content when it is connected to language and named as an emotion.³⁵

²⁹ *Id.*

³⁰ DEBORAH GOULD, MOVING POLITICS: EMOTION AND ACT UP’S FIGHT AGAINST AIDS 22–23 (2009).

³¹ *Id.* at 23.

³² *Id.*

³³ *Id.* at 19.

³⁴ Brian Massumi, *Navigating Movements: A Conversation with Brian Massumi*, in MARY ZOURNAZI, ED., HOPE: NEW PHILOSOPHIES FOR CHANGE 210–42 (2003). In that emotion is a conventional expression, or concretization of affect, it also fixes its indeterminacy or potential in a particular form or direction.

³⁵ Other theorists, such as legal scholar Noy Naaman, argue that a distinctive feature of affect is the way that its bodily intensity can be transmitted between or among bodies, producing a dynamic of “affecting and being affected.” Noy Naaman, *Affective Reproductive Legality*, 35 YALE J. L. & HUMANITIES (forthcoming 2024).

In what follows, I draw on some features of these understandings of affect to describe an experience that is less fixed and less an object of conscious awareness than emotion, but more concrete and determinate in its operation than the nonconscious, nonlinguistic, noncoherent experience of bodily intensity that some theorists depict. What I describe below as an “affect” is an urge or impulse toward a particular form of behavior or action, or a particular relation to others, which is set in motion by a bodily experience of sexual violence. This impulse, which may not be fully recognized at the time by the subject who is experiencing it, may be satisfied or eased by the taking of action or establishment of relation.

Sexual violence is an assault on the integrity of the body, an unconsented entry into or assertion of control over parts of the body understood as private or consensually shared. Beyond that, it can also be an attack on one’s sense of self and the extent of one’s control or vulnerability to others (in relationships or in the world more broadly), triggering a range of minute judgments about whether one is safe or endangered and what circumstances may be benign or threatening. In the midst of that shattering of expectations—that unfamiliar sense of permeability or precarity—subjects may feel an impulse to hide. But they may also feel a strong urge to re-assert agency: to show that they are capable of moving the world according to their will, or to try to reclaim a sense of self through an exercise of self-direction. Narrating one’s injury—whether in a court, online, or through face-to-face encounters—may be an expression, and at least a partial satisfaction, of that impulse.

This narration may also connect the narrator to others who have had a similar experience, a vital lifeline that can make the world feel less incomprehensible and the survivor less isolated or alone. The process of revealing and narrating one’s injury may satisfy these impulses towards agency and connection or solidarity—which may be intuited without being fully recognized—whether or not one names one’s offender in the course of a narrative. So, while the decision to name the assailant is one question to which these survivors respond, the meaning and consequences of revealing and narrating their experience is another.

To highlight these affective undercurrents in decisions to reveal sexual injury and identify its perpetrator(s), I will turn to the work of two feminist commentators, Susan Brison and Moira Donegan, who reflect on their own decisions to reveal sexualized injury.³⁶ These examples are useful first because

³⁶ It seems important to me here to bring in the work of other feminists who are reflecting on the disclosure of their own victimization. I am alert to the dangers of interpreting survivor’s narratives (i.e., as emotional or affective rather than predominantly cognitive) in ways that they do not themselves: it risks ascribing to them a kind of false consciousness, particularly when I, as a reader, have not experienced the forms of violation they relate. My point is to show that some feminist commentators, reflecting on their own experiences of sexual victimization, highlight these affective dimensions, even as they note that they might not have been fully aware of them at or closer to, the time of their assault. Their narratives point to a process in which they were moved by desires or impulses that they did not fully apprehend at the time (perhaps differently from being moved by anger or frustration)

they exemplify responses to sexualized injury that center the use of experiential narratives in revealing and (in one case) naming the perpetrators of that injury. They are notable, second, for their deft entwinement of the analytic and the emotional or affective—or, put another way, the public-facing and the personal—in characterizing that response. And third, they highlight two features of that response—an impulse to re-assert the agency suppressed or obliterated by the sexual assault, and an urge toward collectivity and solidarity with others as a vehicle for understanding, processing, and resisting such injury—at the same time as they reflect more public-facing justifications for action. I offer these accounts not to compare or judge survivors' narratives. These are the published reflections of feminist commentators who are particularly adept at integrating the personal elements that make a story (a narrative or an article) compelling even as they offer a broader political analysis. I use them because they offer more explicit versions of elements that I see as incompletely articulated, yet present, in these survivors' accounts. Understanding them is important because the satisfaction of these impulses, as well as the more cognitive objectives named by these survivors, will be one measure of the value of both legal and informal processes for addressing sexual violence in the eyes of survivors.

A. *Disclosure and the Impetus Toward Agency*

Feminist philosopher Susan Brison has offered one of the most famous expositions of this process and its consequences, describing her efforts to reclaim her life after being raped, beaten, and left for dead in a French ravine.³⁷ Brison's assailant was a stranger, and while she helped the police to identify him and did not hesitate to provide incriminating details of the attack, her primary impulse was to rebuild the sense of agency and of self that had been shattered by her assault.³⁸ This impulse for agency is one shared by other survivors, including Dancig-Rosenberg and Peleg's subjects. Revealing and narrating her assault were central parts of that process.

The first time Brison narrated her experience was while it was in process: "I told it (mentally) to myself, as it was happening: 'What *is* this? This is a nightmare. No, this is a rape. No, this is a murder.' The purpose of that narrative was to keep me alive, and by sheer luck, it did the trick."³⁹ Brison's concluding statement suggests that narrativizing her predicament preserved her sense of self as someone who could engage in meaning-making, even under her present, horrific circumstances. Although she quickly glimpsed a political

and that in the larger process of responding to sexualized injury, one's understanding of and response to the violation can change over time.

³⁷ The most complete account is published in SUSAN J. BRISON, *AFTERMATH: VIOLENCE AND THE REMAKING OF A SELF* (2002). A shorter version that encapsulates her early account and reflects on the further trajectory of her recovery is in Brison, *supra* note 18.

³⁸ See Brison, *supra* note 18, at 190.

³⁹ *Id.* at 189.

purpose to sharing her story (highlighting not only her assault, but “the countless other gender-based crimes that occur daily around the world”⁴⁰), she observed: “Before I could bear witness in any politically significant way, I needed to tell doctors and law enforcement officers the story of what had happened to me. It came as a huge relief when I was able to do so.”⁴¹ This relief affirmed that Brison’s powers of narration had survived the assault, and that she was able to counter, however partially, her sense of a world turned unaccountably upside down by sharing an event that had first struck her as unassimilable with her sense of reality with other people. When officials questioned her subsequently about the assault, apologizing for subjecting her to the experience of recounting it, she responded “No, you don’t understand, I feel so much better when I’m *talking* about what happened.”⁴² This was partly because the telling temporarily interrupted the flow of “sensory images of the assault,” but it was also because “narrat[ing] it out loud, to a present listener . . . at least temporarily, gave me some small feeling of agency and control, since I was the one deciding what to tell and how to tell it. That was the first time I recognized the healing potential of bearing witness.”⁴³ Although Brison recounts the barriers she encountered with many listeners to the comprehension of her experience—barriers which affirmed for her the urgent need to testify not just to her experience but to the pervasiveness of sexualized violence—she also appreciated the role that narrative played in the reconstruction of her fractured self. Distinguishing between “living to tell (staying alive to bear witness at a trial or, in some other way, to see that justice is done)” and “telling to live,” she elaborates on the latter, noting that “constructing a narrative about a traumatic assault . . . enables one to project oneself into the future with some degree of hope and optimism.”⁴⁴ Once again, narrative reveals an active, agentic self whose powers of construction and imagination might survive or re-emerge from the fracturing of the self that was imposed through violence.

Brison also notes the power of narrating one’s injury to connect a survivor to others. Vital to her gradual recovery through evolving narration were friends or therapists who listened with empathy and patience, audiences who grasped connections between her injury and those of scores of other women, and, perhaps most important, other survivors. “It can make a survivor of sexual violence feel less isolated and less crazy to realize that she is not alone, not the only one to have had her life shattered in this way,”⁴⁵ Brison notes. Part of the reason she continues to tell her story—though she no longer needs it to help her experience a coherent sense of self or a forward-looking sense of possibility—is “to show other survivors that it is possible to thrive even after

⁴⁰ *Id.* at 190.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Brison, *supra* note 18, at 195 (citing BRISON, *supra* note 37, at 106–17).

⁴⁵ *Id.* at 193.

being subjected to such extreme abuse and humiliation . . . to help others get through this, as other survivors helped me by telling their stories.”⁴⁶

B. Disclosure and the Urge Toward Solidarity

This sense of connection, solidarity, and agency reclaimed through shared accounts of sexual violation infuses a second example, that of feminist journalist Moira Donegan. While Brison wrote in the early 2000s, Donegan achieved visibility at the height of the #MeToo movement, focusing not simply on revealing violative experiences but also on naming perpetrators. Donegan was the originator of the “Shitty Media Men List,”⁴⁷ a compilation of the names of prominent men in the media industry who had been accused of sexually coercive acts by women employees. Donegan’s list is not precisely analogous to the survivors’ decisions to shame. Unlike the subjects interviewed by the authors, Donegan did not initially expect that her list of offenders would be made public (although “public” in Donegan’s case meant visibility in the mainstream media because the offenders were highly visible individuals; the list had already been shared online among female journalists). In addition, the list reflected a collective effort rather than the action of an individual, so the sense of solidarity born of acting together may have been more prominent in participants’ experience. Yet Donegan’s goals in sharing experience and assembling the list bear important similarities to those of Dancig-Rosenberg and Peleg’s subjects: “The hope was to create an alternate avenue to report this kind of behavior and warn others without fear of retaliation.”⁴⁸ Moreover, because she was the initiator and organizer of the list, Donegan’s internal process may have been more analogous to those of the individual survivors the authors interviewed than those of subsequent contributors to the list. Because Donegan writes with a striking interpretation of individual emotional experience and analytic perspectives on gender oppression, her reflections highlight more explicitly the affective currents that are present in more inchoate form in the subjects’ comments.

Donegan emphasizes the feelings of connection, mutual support, and empowerment—which Jasper would place under the general umbrella of solidarity or affection—that both informed and arose from the experience. She recounts, “Watching the cells [of names] populate, it rapidly became clear that many of us had weathered more than we had been willing to admit to one another. There was the sense that the capacity for honesty, long suppressed, had finally been unleashed.”⁴⁹ Donegan says of this realization:

⁴⁶ *Id.* at 194–95.

⁴⁷ See Moira Donegan, *I Started the Media Men List: My Name is Moira Donegan*, THE CUT (Jan. 10, 2018), <https://www.thecut.com/2018/01/moira-donegan-i-started-the-media-men-list.html> [<https://perma.cc/L3AS-ZN7V>].

⁴⁸ *Id.*

⁴⁹ *Id.*

This solidarity was thrilling, but the stories were devastating. I realized that the behavior of a few men I had wanted women to be warned about was far more common than I had ever imagined ... What was going on there was clearly cathartic for the women who were using it, telling their stories, encouraging one another, saying that it had happened to them too.

Donegan here names an inchoate desire, in each individual, for the recognition and support of their experience by similarly situated others and an impulse to have one's power bolstered and multiplied by a collective. These are urges or desires that many survivors may have sensed, but only recognized explicitly as these inchoate urges began to be satisfied. She describes the list not simply as an example of "how women can build power, help one another, and work toward justice," but also as an example of how women might "wield the power we already have."⁵⁰ This was an effort that had no small cost for Donegan herself. She acknowledged:

In the weeks after the spreadsheet was exposed [on a public media site], my life changed dramatically. I lost friends: some who thought I had been overzealous, others who thought I had not been zealous enough. I lost my job, too. The fear of being exposed, and of the harassment that will inevitably follow, has dominated my life since. I've learned that protecting women is a position that comes with few protections itself.

Nonetheless, giving voice to the sense of solidarity that arose from that distinctive effort, Donegan concludes: "The women who used the spreadsheet, and who spread it to others, used this power in a special way, and I'm thankful to all of them."⁵¹

Many survivors interviewed by the authors reflect, in inchoate form, the impulses, leanings, or desires explicitly identified by Brison and Donegan. For example, the impulse to assert agency or re-establish control, not simply over an offender but over a life that has become suddenly unrecognizable (or as in the case of workplace harassment, beyond one's power to direct or manage)⁵² is manifested by some of the authors' interview subjects. One woman says, for example, "I described things that happened to me. It was a very great relief."⁵³ The authors describe this relief as a response to ending secrecy about an assault, which is surely part of the unreality of unexpected

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Although the authors describe some of these responses under the heading of "[p]ositive [c]onsequences" of "personal relief to the survivor" from an affective perspective, they may be more than incidental effects. Dancig-Rosenberg & Peleg, *supra* note 1, at 32. They may be experiences toward which the survivor feels drawn or impelled, even if they are not fully apprehended as objectives or goals. And they may be a source of great satisfaction—in whatever process through which they arise—when they are achieved.

⁵³ Dancig-Rosenberg & Peleg, *supra* note 1, at 32.

sexual violence. But there is also a dimension of putting words to an experience that may initially feel as if it is beyond expression, or being the one to name an experience in which one's subjectivity had been erased or obliterated ("I described things that happened to *me*") that reflect an impulse to recover subjectivity and assert agency. The impulse toward agency may be expressed through narration itself (in Brison's words, by being the one "deciding what to tell and how to tell it") and not directed toward any particular human subject, explaining why the ability to reveal and narrate one's injury may be satisfying wholly apart from the naming of one's assailant.

Impulse toward agency may also be asserted over the assailant or a category of individuals he represents. This urge toward self-assertion appears in several survivors' discussion of their decision to name their assailants. In one example, a man whose offender was their therapist said "what sets me free and makes me feel good is that in the relationship between us, control has passed to me."⁵⁴ Another woman explains that naming may serve a deterrent function because "a lot of men see that women are no longer silent," but she also describes a more personal aspect of her choice: "we find another way of protecting ourselves . . . it's also a kind of punishment to regain control."⁵⁵ Finally, some survivors project their re-emergent agency toward other women and survivors. One woman who chose to disclose a settlement she had received for sexualized injury declared: "I was the first to say: I received NIS 90,000 [approx. \$26,000] as part of the compensation . . . I wanted to show women: demand this, this is the law, we deserve it, we can do it, and we have nothing to be ashamed of."⁵⁶ This complex statement reflects pride in her assertion against her offender ("I was the first to say") and defiance against the stigma imposed both on this form of injury and its legal settlement, while also reflecting a desire to support the initiatives of other survivors and model agency for them.

This last quote also reflects a second affective strand in survivors' reflections: a desire not simply to help other women, but to be heard, supported, and assisted by them, and to achieve, through the joining of efforts, forms of empowerment that could not be achieved through individual action. This joining of forces, with the appreciation of shared experience, aspirations, and affection that may come with it, is what emotion theorist James Jasper refers to as the emotion of "solidarity."⁵⁷ He describes it as a "reciprocal emotion" that fuels the activity of social movements. The sense of a felt connection to other survivors, and impulse toward a full, solidaristic relation with them—whether or not fully apprehended—inflects many of these survivors' reflections.

⁵⁴ *Id.* at 32.

⁵⁵ *Id.* at 24.

⁵⁶ *Id.* at 23.

⁵⁷ See James M. Jasper, *The Emotions of Protest: Affective and Reactive Emotions In and Around Social Movements*, 13 SOCIO. FORUM 397, 406 (1998) (describing solidarity as a "positive [feeling] toward others [that] can lead to action on behalf of that group or category").

Several survivors voice a feeling of collectivity, or at least of shared plight, with women in immediate or similar environments to them. One survivor reflects, “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.”⁵⁸ Another observes, “I constantly hear stories from girls who say he wanted all sorts of horribly disgusting things,”⁵⁹ effectively describing herself as a member of a community that shares information, if not mutual protection. A third survivor, who published the name of her assailant close to a decade after filing a complaint with the police, describes her decision as assuaging the guilt she felt toward other women (“if I had not been silent all these years, there are girls to whom this would not have happened today.”⁶⁰). This expression of perceived responsibility envisions a kind of mutual relationship that requires fidelity. But the relation toward which survivors reach often entails more. Some survivors manifest a desire to be sustained and supported by others to whom they feel connected. The woman who described herself as having assuaged her guilt through naming her assailant also describes Facebook, in comparative terms, as a place where survivors can receive empathy: “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 [readers] don’t completely agree with you.”⁶¹ Another interviewee reflects that the reasons for disclosure have more to do with the needs of the woman attacked than any potential consequences for the future of her assailant. She notes, of a survivor who disclosed the name of the neighbor who raped her at age 3: “She doesn’t write this so that they can find the neighbor 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”⁶² Some survivors look beyond empathy, glimpsing collectivity as a vehicle for mutual empowerment, much in the way Moira Donegan celebrated the way participants were buoyed by their shared work on the “Shitty Media Men List.” This seems to be the impulse of the woman who shared information about her settlement, exhorting other survivors, “we deserve it, we can do it.”⁶³

IV. EMOTIONS, AFFECTS AND THE RESORT TO LAW

How does understanding the emotional and affective dimensions of survivors’ responses shape the ways that we approach the criminal legal system and its alternatives? To begin with, I share the authors’ view that the

⁵⁸ Dancig-Rosenberg & Peleg, *supra* note 1, at 21.

⁵⁹ *Id.* at 25.

⁶⁰ *Id.* at 32.

⁶¹ *Id.* at 26.

⁶² *Id.*

⁶³ *Id.* at 23.

heterogeneity of survivor response itself makes clear the benefit of having several different routes—including criminal claims,⁶⁴ restorative processes, and online venues—for remedying their injuries and satisfying their related political and personal needs. But resourced with insights about the emotions and affects of the subjects of sexual violence, we should approach these processes with different expectations.

The survivors interviewed by the authors display varied views of the criminal legal system, ranging from hope and a desire to fortify the process by empowering other complainants, to despair and even cynicism. For example, survivors who are drawn to online disclosure as a means of reasserting agency by narrativizing their injury may struggle to find satisfaction in formal criminal legal processes. In such a process, the survivor is not a party to the action that is brought on behalf of the state, and the survivor's narrative is likely to be heavily structured by the prosecutor's theory of the case and to be painfully disrupted by processes of cross-examination.⁶⁵ More generally, a survivor's impulse toward the reassertion of agency as a mode of recovery is likely to be thwarted—and a sense of losing control perhaps reignited—by the many procedural and discretionary contingencies that occur between filing a police complaint and achieving a guilty verdict for one's assailant.

Similarly, those who favor online naming because it satisfies a desire for solidarity and mutual empowerment with other survivors may be dismayed by the sense of isolation produced not simply by the criminal legal system, but by the experience of being a litigant in general. Not only are vanishingly few cases litigated collectively (criminal cases may reject many victims even of a serial offender in search of the most compelling and invulnerable witnesses⁶⁶), but the process of litigation, which may feel isolating, hierarchical, and often incomprehensible to individual litigants, is unlikely to fulfill impulses toward collaboration, mutual support, and mutual empowerment with others who have suffered similar injuries. Nor is it clear, with either of these problems, that reforms envisioned by the authors to increase “survivor-friendliness” of the criminal legal system would significantly affect these

⁶⁴ In this consideration, I acknowledge, as do the authors, that there might be other reasons for critique or reservation about the criminal law system, including its racialized treatment of both complaining witnesses and defendants, and its punitive consequences (both carceral and collateral) for those found guilty.

⁶⁵ Cf. KATHRYN ABRAMS, *OPEN HAND, CLOSED FIST: PRACTICES OF UNDOCUMENTED ORGANIZING IN A HOSTILE STATE* 159–180 (2022). In an empirical research project grounded in a different context—the organizing and rights-claiming of undocumented immigrants—even named plaintiffs in a class action lawsuit that brought them an unequivocal victory expressed frustration because they felt that their power to tell their own stories had been compromised by their lawyers as they selected class representatives and tailored the plaintiffs' narratives to fit their theory of the case.

⁶⁶ See, e.g., The Daily, *The Harvey Weinstein Case, Part I*, N.Y. TIMES, at 07:38 (Jan. 9, 2020), <https://www.nytimes.com/2020/01/09/podcasts/the-daily/harvey-weinstein-trial.html> [<https://perma.cc/SD5R-EJHZ>] (discussing how “more than 80 women have come forward with allegations of sexual misconduct against Harvey Weinstein, but as he goes on trial in New York, the criminal charges center on just two” due to prosecutors' concerns about survivor credibility).

mismatches between criminal process and affective needs.⁶⁷ A survivor might be better informed and encounter more support and less brutality in questioning with “simple and neutral language” and “sensitive interrogation.”⁶⁸ But the issues of isolation and lawyer control are deeper and more structural: they go to the nature of the criminal process as a formal, adversary system controlled by specialized professionals in which the survivor is mainly a source of evidence.

The criminal legal process is likely to remain a useful or even appealing option, however, for some survivors of sexual violence. Here, the kinds of emotions expressed by this group of survivors may be a useful guide to its amelioration. Emotional responses, as philosopher Martha Nussbaum has argued, are indications of what we value.⁶⁹ This insight deserves greater recognition within law’s approach to emotions. The features of the criminal legal system that elicit expressions of anger or frustration are places where the shoe rubs against survivors’ moral and political commitments and their personal intuitions about justice. Whether these places of emotional and moral friction are the impunity that the system seems to provide in certain kinds of cases of sexual violence, or the fact that a guilty verdict can be secured without any expression of accountability from the defendant, are issues ripe for reconsideration as we undertake criminal law reform. Moreover, taking the emotional dimension of survivors’ response to the criminal legal system as the focus of inquiry may help us better grasp the reasons or dynamics through which these features elicit emotional response, and to gauge the intensity or intractability of that response. These understandings may be useful in determining the content and viability of efforts at change.

These affective currents in survivor response might also underscore the value of alternative processes such as restorative justice. The point of restorative justice and other alternative processes is to re-center the process on the survivor, the offender, their supporters, and their immediate community, rather than on the state and the professed violation of its norms. Moreover, within that new focus, restorative processes aim to facilitate an exchange between the survivor and the offender that is specifically attentive to emotion and affect: the need of survivors for recognition of their injury and the suffering it has produced; the desire of (some) offenders to explain and contextualize their acts; the desire of survivors for a recognition and expression of accountability by the defendant; and the negotiation of a remedy that speaks to the survivor’s

⁶⁷ See Dancig-Rosenberg & Peleg, *supra* note 1, at 44–45.

⁶⁸ *Id.*

⁶⁹ MARTHA NUSSBAUM, UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS 19 (2001) (“Emotions . . . involve judgments about important things, judgments in which, appraising an external object as salient for our own well-being, we acknowledge our own neediness and incompleteness before parts of the world that we do not fully control”).

perception of healing, and an enlarged understanding and re-established sense of belonging of the offender.⁷⁰

Beyond re-centering the survivor and creating a process in which she is seen and heard as a full human being in a particular social context, alternative remedies may speak specifically to the affects among survivors of sexualized injury explored above. The impetus toward agency may receive greater satisfaction in this kind of process. Control exhibited by the parties over the timing, form, and mediation of their encounter, which is characteristic of restorative processes, may contrast promisingly with the control by police and prosecution over formal criminal processes. Moreover, the dialogic dimension of restorative processes offers opportunities for both the survivor and the offender to narrativize their experience, and supports the attention to, and acknowledgment of, the experience embodied in narrative—a kind of reception that Susan Brison describes as vital to the re-establishment of agency and personhood after sexual violence.⁷¹

The desire for solidarity and mutual support with others may also be better met in restorative processes. The flexible form of such processes may accommodate more than one survivor, which enables solidarity among survivors themselves;⁷² but even a process organized around the injury of a sole survivor encourages the survivor to participate along with representative members of her community, which may itself be understood to be suffering less direct forms of harm as a result of her injury. This structure conceives the survivor as part of a community, enabling her support and accompaniment at all stages of the process. It also allows her to deliberate with her immediate supporters and other community members about what she wants from the process, contrasting sharply with legal processes in which certain outcomes, such as an acknowledgment of accountability or an apology, are confined to restricted and often ritualized roles in the sentencing phase of the few criminal charges that result in a trial-based determination of guilt.⁷³ It enables the offender to contextualize his act within the larger circumstances of his life, and provides

⁷⁰ The authors explicitly discuss the role of restorative justice, and, in the context of their focus on shaming, the distinction between stigmatizing and reintegrative shaming. See Dancig-Rosenberg & Peleg, *supra* note 1 at 11–12, 38–40. For more general discussions of restorative approaches, see generally TONY MARSHALL, RESTORATIVE JUSTICE: AN OVERVIEW (1999) (providing an overview of restorative justice); JOHN BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION (1989) (discussing reintegrative shaming theory). For a thoughtful and paradigm-expanding approach to integrating conventional criminal processes and restorative justice, see Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 CARDOZO L. REV. 2313, 2332 (2013).

⁷¹ See BRISON, *supra* note 37, at 68–71.

⁷² For an interesting account of an effort to improvise a restorative or “accountability-based” process that involved more than one survivor of sexualized abuse, see Communities Against Rape and Abuse (CARA), *Taking Risks: Implementing Grassroots Community Accountability Strategies*, in COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY 250–66 (INCITE! Women of Color Against Violence, eds., 2016).

⁷³ There have however been critiques of restorative processes. See, e.g., ANNALISE ACORN, COMPULSORY COMPASSION (2004) (raising the possibility of ritualized, or worse compelled, expressions of accountability or remorse in these proceedings).

both parties with opportunities for solidarity with their supporting communities, and greater agency in the unfolding of the process. The coordinator's attention to the emotional preparedness and needs of the survivor and offender can be more complete (or less constrained) in a process that entails greater flexibility as to time and structure. This potential alignment with emotional and affective needs suggests the importance of further developing restorative models and programs and investigating the ways that they might be scaled to meet greater needs.

A. *The Subject of Sexualized Injury in the Legal System*

Finally, both criminal legal and alternative processes could be improved by a more complete understanding of the legal subjects before them: in this case, the legal subjects of sexual violence. A more complete view of survivors' emotional and affective responses to sexualized injury might prevent decision-makers from resorting to stereotypes or flawed assumptions (such as a singular vengeful motivation on the part of survivors). Illustrating variation as well emotional and affective depth is a central contribution of work such as Brison's and Donegan's, empirical studies such as the authors', and even more controversial interventions such as that of feminist scholar and commentator Roxane Gay. Writing in the wake of #MeToo, Gay said of her own gang rape, thirty years prior:

I appreciate the idea of restorative justice—that it might be possible to achieve justice through discussing the assault I experienced with the perpetrators and that I might be involved in determining an appropriate punishment for their crime. Restorative justice might afford me the agency they took from me. But I also appreciate the idea of those men spending some time in a prison cell, as problematic as the carceral system is, to think long and hard about the ways in which they violated me. I would like them to face material consequences for their actions because I have been doing so for 30 years. There is a part of me that wants them to endure what I endured. There is a part of me that is not interested in restoration. That part of me is interested in vengeance. . . . And this is what is so difficult about justice and sexual violence—the repercussions of the crime can last a lifetime.⁷⁴

The survivor vividly evoked by Gay's narrative is not the heedless avenger presumed by popular imagery. A part of her seeks punishment for her offenders, although it is incapacitation and perhaps accountability that spur her reflection. She is willing to disentangle and own that part of herself

⁷⁴ Roxane Gay, *Louis C.K. and Men Who Think Justice Takes as Long as They Want It To*, N.Y. TIMES (Aug. 29, 2018), <https://www.nytimes.com/2018/08/29/opinion/louis-ck-comeback-justice.html> [<https://perma.cc/S4S5-G5DF>].

and explain why it views punishment as an answer. But she is also willing to entertain other remedies and consider whether they might help to restore her agency, which seems as important to her as her accountability for her suffering.

These complex visions of survivors could enable judges, lawyers, and reformers involved in such cases to better grasp the kinds of losses produced by such injury, the varied and non-linear paths to recovery, and the wide-ranging responses of survivors toward their perpetrators. All of these understandings are vital to a more nuanced reading of survivor responses during, immediately following, and long after incidents of violence, and also to fully appreciate what survivors may be seeking from a criminal or alternative process. This strategy is not entirely new to legal change informed by feminists and their allies. Although often framed as exploring the psychological dimensions of survivor subjectivity, these efforts have involved attention to the widely varying and often nuanced roles of emotions such as fear, shame, anger, confidence, solidarity, and even love, in survivor subjectivity.

For example, parties and amici have steered sexual harassment doctrine in the United States away from a premature and restrictive focus on “serious psychological injury” by documenting the more complex range of psychological and emotional responses that can be triggered by incidents of harassment. In the early stages of sexual harassment litigation, courts struggled to determine the indicia of a “hostile environment” when the claim did not require the demonstration of economic harms.⁷⁵ Courts were likely also aware of concerns of defendants that they would face a plethora of claims stemming from de minimis or exaggerated injuries. For a brief period, some courts relied on a demonstration of “serious psychological injury” to document the element of “severity or pervasiveness” necessary to create a hostile or abusive environment.⁷⁶ When the Supreme Court granted certiorari in *Harris v. Forklift Systems*,⁷⁷ the issue became the focus of discussion not only by advocates, but also by amici. The American Psychological Association, for example, observed that psychological injury was conditioned by a variety of factors other than the severity of the harassment, and that victims of harassment suffered many forms of tangible disadvantage—including deterioration of personal relations, confidence and self-esteem as well as job changes resulting in loss of

⁷⁵ Cf. Reva Siegel, *A Short History of Sexual Harassment* in Catharine MacKinnon and Reva Siegel, eds., *DIRECTIONS IN SEXUAL HARASSMENT LAW* 1, 22 (2004) (describing *Harris* as illustrating a “newer form[] of harassment in which economically leveraged sexual coercion does not play the same role”).

⁷⁶ See, e.g., *Andrews v. Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990) (holding a plaintiff can establish a hostile work environment by proving the discrimination was “severe enough to affect the psychological stability of a minority employee”); *Rabidue v. Osceola Refining Company*, 805 F.2d 611, 620 (6th Cir. 1986) (holding that for a plaintiff to prevail on a sexual harassment claim, she must prove the offensive working environment “affected seriously her psychological well-being”).

⁷⁷ 510 U.S. 17 (1993). *Harris* appealed the Sixth Circuit’s finding of a psychological injury requirement following *Rabidue*, 805 F.2d 611 (6th Cir. 1986).

income and seniority—that did not amount to serious psychological harm.⁷⁸ In *Harris*, the Court rejected the “serious psychological injury” requirement, arguing in an opinion authored by Justice O’Connor for a unanimous court that “Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees’ psychological well-being, can, and often will, detract from employees’ job performance, discourage employees from remaining on the job, or keep them from advancing in their careers.”⁷⁹

A more extended evolution of judicial understanding through the elaboration of a complex, affective subject has occurred in cases involving domestic violence and victim self-defense.⁸⁰ Historically, courts struggled to understand how women and other targets who were confined within physical, violent, and emotionally dominating relationships nonetheless summoned the willpower to attack, and in some cases kill, their partners. Evolution of this idea involved the recognition that lay, and indeed judicial understandings, of abusive relationships were insufficient, enabling courts to rely on expert testimony, often from psychologists whose work had focused on the dynamics of abusive (or as they were originally designated “battering”) relationships.⁸¹ This testimony, which responded to the elements of “reasonable perception” of “imminent danger” and “equal or reasonable force to repel serious bodily damage or death” necessary to justify self-defense⁸² explained why those trapped within violent relationships might have distinctly attuned perceptions of danger, and might understand a violent counter-attack as a more viable strategy than departing the home.⁸³ These explanations of the dynamics of abusive relationships have helped meet the standard of self-defense for at least some women charged with assaulting or killing their abusers.⁸⁴ As feminist scholars and advocates became concerned that these explanations tended to neglect non-physical forms of coercion, pathologized women in violent relationships, or presented them as incapable of more conventional forms of agency—such as responsible parenting or professional competence—they broadened the scholarly analysis of violent relationships. Contemporary feminist analysis constructs intimate abuse as a “struggle for power and control,”

⁷⁸ See Brief for Amicus Curiae American Psychological Association in Support of Neither Party, *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993) (No. 92–1168).

⁷⁹ *Harris*, 510 U.S. at 22.

⁸⁰ See Lenore Walker, *Battered Women’s Syndrome and Self-Defense*, 6 NOTRE DAME J. L. ETHICS & PUB. POL’Y 321, 321 (1992).

⁸¹ *Id.* at 321–26.

⁸² *Id.* at 323.

⁸³ *Id.* at 323–26. See generally LENORE WALKER, *THE BATTERED WOMAN SYNDROME* (4th ed., 2016) (discussing the battered woman defense as it continues to be used to explain premeditated assault or murder while reflecting new research on traumatic responses).

⁸⁴ Walker, *supra* note 80, at 322. The author shows that exposition of the dynamics of battering and their effects on the women or others dominated through such relationships also helped triers of fact to understand some of the ambiguous aspects of the testimony of women in such cases. *Id.* This can involve, for example, memory lapses or an inclination to minimize the harms of the violence. *Id.* at 327.

in which abusers may rely on verbal abuse, threats, stalking, sexual abuse, coercion, and economic control as well as physical violence, and targets respond with a range of survival strategies that may not be immediately intelligible to those outside the context of such relationships.⁸⁵

As these examples make clear, fuller understanding of the subject of sexual violence—decoupled from dominant stereotypes, attentive to the accounts of survivors, and informed by careful and perceptive research—is central to crafting legal rules and remedies that make the system responsive and accessible to those who have suffered injury. By amplifying and analyzing the voices of survivors, particularly those who have taken the controversial path of naming their offenders, Dancig-Rosenberg and Peleg have taken a vital step in this direction.⁸⁶ From their innovative study, we learn that the recourse to social media exposure reflects neither the punitive impulse critics condemn, nor the renunciation of legal remedies they fear. Comprehending the unexpected bases of survivors' decisions may help legal actors to shape a more responsive criminal law, or to better grasp the promise of restorative remedies. By attending not only to the cognitive explanations of survivors, but to the emotions and affects that manifest in their speech and animate their choices, scholars can make further progress on the path that the authors set.

⁸⁵ See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5 (1991) (explaining the way that a theory of battering as a struggle for power and control could be utilized to explain varying patterns of victim, or survivor, response. It is also particularly noteworthy because it proceeds through the use of narratives, which highlight the emotional dimensions of survivor's experience); see also, e.g., Elizabeth Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 362 (2008) ("There are still tremendous misunderstandings concerning the dynamics of abuse among lawyers, judges, professionals, and laypeople, and a deep resistance to seeing intimate violence as a multi-faceted problem.").

⁸⁶ See generally Dancig-Rosenberg & Peleg, *supra* note 1.