



Griffith Journal
of Law & Human Dignity
Women & Violence
2014 Special Issue

GRIFFITH JOURNAL
OF LAW & HUMAN DIGNITY

Editor-in-Chief
Kelli Lemass

Managing Editors
Jessica Armao
Daniel Marcantelli

IT Administrator & Editor
Neerav Gorasia

SPECIAL ISSUE

Special Issue Editor
Jessica Armao

Deputy Editors
Michelle Gunawan
Felicia Lal

Shane Berkery
Georgia Danks-Brown
Tasnova Chowdhury
Mignote Hannaford
Beau Hanson

Editors

GENERAL ISSUE

General Issue Editor
Kelli Lemass

Deputy Editor
Danielle Warren

Eleesa Panton
Lana Ristic
Michelle St. Ange
Josephine Vernon

Consulting & Executive Editor
Dr Allan Ardill

Volume 2(1) 2014

Published in May 2014, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*

ISSN: 2203-3114

CONTENTS

SPECIAL ISSUE

JESSICA ARMAO	<i>EDITORIAL</i>	1
DR ADRIAN HOWE	<i>FATAL LOVE</i>	4
ANONYMOUS	<i>DOMESTIC VIOLENCE: TODAY I SPEAK OUT</i>	25
DR BIANCA FILEBORN	<i>ONLINE ACTIVISM AND STREET HARASSMENT: DIGITAL JUSTICE OR SHOUTING INTO THE ETHER?</i>	32
JANE CULLEN	<i>WA'S 'ONE PUNCH' LAW: SOLUTION TO A COMPLEX SOCIAL PROBLEM OR EASY WAY OUT FOR PERPETRATORS OF DOMESTIC VIOLENCE</i>	52
FELICITY GERRY QC	<i>LET'S TALK ABOUT VAGINAS ... FEMALE GENITAL MUTILATION: THE FAILURE OF INTERNATIONAL OBLIGATIONS AND HOW TO END AN ABUSIVE CULTURAL TRADITION</i>	78

GENERAL ISSUE

ANNA CAPPELLANO	<i>QUEENSLAND'S NEW LEGAL REALITY: FOUR WAYS IN WHICH WE ARE NO LONGER EQUAL UNDER THE LAW</i>	109
WILLIAM ISDALE & DR GRAEME ORR	<i>PATHOLOGIES IN QUEENSLAND LAW-MAKING: REPAIRING POLITICAL CONSTITUTIONALISM</i>	126
FIONA MCLEOD SC	<i>HUMAN TRAFFICKING AND MODERN DAY SLAVERY – AN AFFRONT TO HUMAN DIGNITY</i>	144
DR TERRY GOLDSWORTHY & MATTHEW RAJ	<i>STOPPING THE STALKER: VICTIM RESPONSES TO STALKING</i>	174
SUSAN ARBON & ZACH DUNCALFE	<i>FOOD, ANIMALS, AND THE LAW: DO WE HAVE A MORAL OBLIGATION TO PROTECT THEM FROM THE SUFFERING THAT THE LAW DOES NOT?</i>	199
ADELE DE MESNARD	<i>ENVIRONMENTAL MIGRATIONS: RETHINKING THE NEED TO TAKE INTO ACCOUNT LOCAL CONTEXTS IN LEGAL AND POLICY RESPONSES</i>	221

ONLINE ACTIVISM AND STREET HARASSMENT: DIGITAL JUSTICE OR SHOUTING INTO THE ETHER?

DR BIANCA FILEBORN*

Street harassment is a common, pervasive experience in the lives of many women. Despite both anecdotal and research evidence confirming its prevalence, and the harm caused by street harassment, it is rarely responded to by the criminal justice system — particularly in its more “minor” incarnations. Online activist sites such as Hollaback have emerged in recent years in response to this legal silence regarding street harassment. While the aim of these sites is to draw attention to women’s experiences and work towards achieving legal responses to street harassment, this article considers the extent to which online activist sites could function as an informal justice mechanism for victims of street harassment. Drawing on the literature on sexual assault victim/survivors’ justice needs, this article firstly approximates what street harassment victims’ justice needs may be. It then moves on to consider the ways in which the online activist site Hollaback Melbourne may function as an avenue for street harassment victims’ needs to be met. Ultimately, while it is clear there is much potential for online activist sites to act as an informal justice mechanism, further work is required to identify street harassment victims’ actual justice needs.

* Dr Bianca Fileborn is currently a Research Officer at the Australian Research Centre for Sex, Health, and Society at La Trobe University. Her research is concerned with the intersections between space, culture, identity, and violence. She would like to express her thanks to Dr Haley Clark, Dr Natalia Hanley, Rachel Loney-Howes, and the two anonymous referees for their helpful and insightful feedback on earlier versions of this work. Society at La Trobe University. Her research is concerned with the intersections between space, culture, identity, and violence. She would like to express her thanks to Dr Haley Clark, Dr Natalia Hanley, Rachel Loney-Howes, and the two anonymous referees for their helpful and insightful feedback on earlier versions of this work.

CONTENTS

I	INTRODUCTION.....	33
II	THE STREETS ARE A BATTLEGROUND: CONCEPTUALISING WOMEN'S EXPERIENCES OF STREET HARASSMENT.....	35
III	APPROXIMATING VICTIMS' JUSTICE NEEDS.....	39
	<i>A Information</i>	42
	<i>B Validation</i>	43
	<i>C Voice</i>	44
	<i>D Control</i>	46
IV	JUSTICE FOR WHOM? CONSIDERING THE BOUNDARIES OF ONLINE JUSTICE.....	47
V	CONCLUDING REMARKS.....	48

I INTRODUCTION

Street harassment is one of the most pervasive forms of sexualised violence experienced by the majority of, if not all, women.¹ Yet, street harassment remains relatively under-examined, and is often excluded from official justice responses to sexual violence against women. There is little, if any, recourse for women who have experienced street harassment. A range of feminist activist websites and blogs have emerged in response to this lack of focus on street harassment by official justice actors and institutions, most notably the international *Hollaback* sites.² Such sites, by opening up an online space for women to share their experiences,³ provide a counter-narrative to the mainstream silencing and exclusion of women's experiences of street harassment.⁴ In doing so, women are able to challenge dominant understandings and tolerance of street harassment. Importantly in the context of street harassment and other forms of sexual

¹ It is acknowledged that gay, lesbian, bisexual, transgender/sexual, intersex and queer (LGBTIQ), same-sex attracted, and gender-diverse individuals also face considerable levels of heterosexist harassment, abuse, and violence on the streets. However, the focus of this article is on street harassment as a form of gender-based violence and abuse.

² See Hollaback <<http://www.ihollaback.org/>>.

³ See, eg, Julia Schuster, 'Invisible feminists? Social media and young women's political participation' (2013) 65(1) *Political Science* 18.

⁴ Frances Shaw, 'The politics of blogs: theories of discursive activism online' [2012] 142 *Media International Australia* 41.

violence, women can experience the Internet as ‘a “safe space” for resisting the gender oppression that they encounter in their day-to-day lives offline’.⁵

While it is clear that anti-street harassment websites can function as a space of resistance and consciousness-raising, the extent online activist sites could function as an alternative justice mechanism for women who have experienced street harassment is yet to be considered. There is currently scant research addressing the potential of the online world to provide alternative justice mechanisms. Salter’s recent work is a notable exception to this silence.⁶ Salter explored the use of online activism by sexual assault victim/survivors as a means of achieving justice, and challenging official institutional responses to sexual violence. The Internet, Salter posits, provides sexual assault victim/survivors with access to ‘counter-publics in which allegations of sexual violence are being received, discussed and acted upon in ways contrary to established social and legal norms’,⁷ although there are of course limitations to this which are raised later. Drawing on a range of case studies, he demonstrates the ways in which victim/survivors are able to utilise social media and other Internet forums to publicly expose and punish their perpetrators, voice their experiences, and challenge the official legal narrative of sexual violence, albeit with varying levels of success. Salter’s work demonstrates the potential of online activism to provide a form of justice to victim/survivors of sexual assault, suggesting that such forums may also serve as an informal justice mechanism to the victims of street harassment.

This article will consider the potential of online activism as an alternative justice mechanism for victims of street harassment. In doing so, I will firstly establish the nature, prevalence, and harms of street harassment in order to demonstrate that street harassment necessitates a justice response. However, little is currently known about street harassment victims’ justice needs. Drawing on the literature on sexual assault victim/survivors’ justice needs, I will approximate what street harassment victims’ needs *might* be, with a specific focus on procedural justice needs. Procedural justice needs have been focused on for the purposes of this discussion, as they relate to the processes that need to take place in order for victims’ outcome-orientated and broader

⁵ Jessie Daniels, ‘Rethinking cyberfeminism(s): race, gender, and embodiment’ (2009) 37(1-2) *Women’s Studies Quarterly* 101, 108.

⁶ Michael Salter, ‘Justice and revenge in online counter-publics: emerging responses to sexual violence in the age of social media’ (2013) 9(3) *Crime, Media, Culture* 1.

⁷ *Ibid* 2.

justice needs to be actualised, such as safety, retribution, and vindication, amongst many others.⁸ The remainder of this article considers the potentials and limitations of online activism as an avenue for meeting street harassment victims' procedural justice needs, drawing on the case study of the *Hollaback Melbourne* website.⁹ I argue that, while there are some clear limitations associated with online activist sites as an informal justice mechanism, these sites also present much potential as a vehicle for meeting street harassment victims' justice needs.

II THE STREETS ARE A BATTLEGROUND: CONCEPTUALISING WOMEN'S EXPERIENCES OF STREET HARASSMENT

Street harassment encompasses a broad range of abusive, harassing, and violent behaviours. While street harassment can also occur in other contexts, such as homophobic abuse, the focus of this article is on women's experiences of sexualised street harassment. Behavioural definitions of street harassment are somewhat variable within the literature,¹⁰ however street harassment most typically involves actions such as 'catcalls, whistles, and sexual gestures and comments' that take place in public spaces,¹¹ including streets, public transport, and the semi-public terrain of commercial consumer spaces such as shopping centres and bars.¹² A considerably broader typology

⁸ Haley Clark, "'What is the justice system willing to offer?'" Understanding sexual assault victim/survivors' criminal justice needs' [2010] (85) *Family Matters* 28; Haley Clark, 'Unearthed concepts of justice for women who have experienced sexual violence: possibilities for healing and enhancing criminal justice' [2013] (4) *The International Journal of Narrative Therapy and Community Work* 28; Judith Herman, 'Justice from the victim's perspective' (2005) 11(5) *Violence Against Women* 571.

⁹ See Hollaback Melbourne <<http://melbourne.ihollaback.org/>>. *Hollaback* is an online activist website and social movement that is 'dedicated to ending street harassment' (*About Us* [2014] Hollaback Melbourne <<http://melbourne.ihollaback.org/about-us/>>). The movement originated in New York in 2005, and now has websites based in many major Western cities. The *Hollaback Melbourne* website collates user submissions sharing experiences of street harassment that have occurred in Melbourne, Australia, and allows other site users to comment in response to stories that have been shared. Submitters also have the option of uploading photos of their harassers. This particular activist website was selected on the basis of both its prominence as an activist site on an international scale, but also as a result of the author's familiarity with the Melbourne chapter, which is her hometown.

¹⁰ See Elizabeth Kissling, 'Street harassment: the language of sexual terrorism' (1991) 2(4) *Discourse and Society* 451, 456; Rhonda Lenton et al, 'Sexual harassment in public places: experiences of Canadian women' (1999) 36(4) *Canadian Journal of Anthropology* 517, 521; Ross Macmillan, Annette Nierobisz and Sandy Welsh, 'Experiencing the streets: harassment and perceptions of safety among women' (2000) 37(3) *Journal of Research in Crime and Delinquency* 306, 307.

¹¹ Doyanne Darnell and Sarah Cook, 'Investigating the utility of the film *War Zone* in the prevention of street harassment' (2009) 33(3) *Psychology of Women Quarterly* 266.

¹² Kimberly Fairchild and Laurie Rudman, 'Everyday stranger harassment and women's objectification' (2008) 21(3) *Social Justice Research* 338, 339; see also, for a discussion of unwanted sexual attention in licensed venues, Bianca Fileborn, 'Sex and the city: exploring young women's perceptions and experiences of unwanted sexual attention in licensed venues' (2012) 24(2) *Current Issues in Criminal Justice* 241;

is provided by Gardner, who lists ‘pinching, slapping, hitting, shouted remarks, vulgarity, insults, sly innuendo, ogling, and stalking’ through to assault and rape as constituting what she terms public harassment.¹³

Purely behavioural definitions of street harassment disconnect such actions from their gendered reality, and obscure the role of the perpetrator in actively engaging in these behaviours. Perhaps a more apt definition is that provided by Laniya, who encapsulates street harassment as ‘the unsolicited verbal and/or nonverbal act of a male stranger towards a female, solely on the basis of her sex, in a public space’.¹⁴ However, gender-based definitions of street harassment are in themselves problematic, as they obfuscate the experiences of heterosexist street harassment, suggesting a need to work towards developing more inclusive definitions of street harassment. Nevertheless, for the purposes of this article, a gender-based definition is adequate. As Darnell and Cook argue, such experiences share much in common with sexual assault, in that the ‘targets are most often women, initiators are most often men, and targets are forced to endure the often degrading, objectifying, and threatening behaviour’.¹⁵ Clearly, some of the behaviours included within definitions of street harassment are likely to meet current legal definitions of sexual assault, indecent assault, and rape. Many of the behaviours residing in the “lower” end of the street harassment continuum do not clearly fall within the current remit of law, and it is these experiences that are of particular concern here.

Howsoever street harassment is defined, it is clear that experiences of street harassment amongst women in Western countries are extremely common. Lenton and colleagues’ survey of Canadian women’s experiences of street harassment found that approximately 81 per cent of their 1990 participants had experienced street harassment in the form of staring, while 66.1 per cent had encountered verbal forms of harassment.¹⁶ Similarly, 85 per cent of the 12 300 women in Macmillan and colleagues’ Canadian-based study

Phillip Kavanaugh, ‘The continuum of sexual violence: women’s accounts of victimization in urban nightlife’ (2013) 8(1) *Feminist Criminology* 20.

¹³ Carol Gardner, *Passing by: gender and public harassment* (University of California Press, 1995) 4; see also Cynthia Bowman, ‘Street harassment and the informal ghettoization of women’ (1993) 106(3) *Harvard Law Review* 517, 523-4.

¹⁴ Olatokunbo Olukemi Laniya, ‘Street smut: gender, media, and the legal power dynamics of street harassment, or “hey sexy” and other verbal ejaculations’ (2005) 14(1) *Columbia Journal of Gender and Law* 91, 100.

¹⁵ Darnell and Cook, above n 11, 266.

¹⁶ Lenton et al, above n 10, 525.

reported having experienced some type of stranger harassment in their lives.¹⁷ Of the 228 participants in Fairchild and Rudman's examination of stranger harassment, 'catcalls, whistles, or stares' were experienced by 32 per cent of participants once a month, and by 31 per cent of participants *every few days or more*.¹⁸ A further 40 per cent of participants experienced 'unwanted sexual attention' on a monthly basis.¹⁹ What might be considered more "severe" forms of stranger harassment, such as 'direct pressure to cooperate sexually' and 'forceful fondling or grabbing', were experienced once a month by over a quarter of Fairchild and Rudman's respondents.²⁰ Although there is variability in the prevalence rates of street harassment across studies, perhaps due to varying definitions, existing data nonetheless confirms the commonality of such experiences.

While it is clear that street harassment is an experience shared by the vast majority of women, the impact of street harassment is considerably more variable. Certainly, street harassment has the capacity to cause significant harm to victim/survivors. Street harassment contributes towards women's fear in public spaces, and functions to limit women's use of, and access to, public space,²¹ not least of all through its reminder to women of their vulnerability to sexual and physical violence.²² Indeed, the impact of street harassment can be so profound that Macmillan and colleagues concluded it 'is a key determinant of perceptions of safety among women'.²³ It is within this context of fear, Kissling asserts, that street harassment 'produce[s] an environment of sexual terrorism' through which men 'control and dominate' women,²⁴ and reduce women to sexual objects.²⁵ Participants in Lenton and colleagues' study reported feeling fear, anger, violation, repulsion, and shock in response to experiencing street harassment.²⁶ Significantly, approximately one fifth of their participants reported they still

¹⁷ Macmillan, Nierobisz and Welsh, above n 10, 311.

¹⁸ Fairchild and Rudman, above n 12, 348.

¹⁹ Ibid.

²⁰ Ibid 346.

²¹ Bowman, above n 13, 520; Anne Esacove, 'A diminishing of the self: women's experiences of unwanted sexual attention' (1998) 19(3) *Health Care for Women International* 181, 185-6; Lenton et al, above n 10, 536.

²² Bowman, above n 13, 535; Fairchild and Rudman, above n 12, 348; Kissling, above n 10, 454; Laniya, above n 14, 103-4.

²³ Macmillan, Nierobisz and Welsh, above n 10, 319.

²⁴ Kissling, above n 10, 456; see also Esacove, above n 21, 185.

²⁵ Bowman, above n 13, 540; Esacove, above n 21, 188; Fairchild and Rudman, above n 12, 342; Laniya, above n 14.

²⁶ Lenton et al, above n 10, 531.

experienced negative emotional impact from street harassment, with some participants experiencing emotional distress years after their experience occurred.

However, not all women experience all forms of street harassment as harmful, and women may interpret similar types of street harassment in diverse ways.²⁷ Indeed, some women purportedly encounter street harassment as a “positive” experience. As Lenton et al note, both men and women position street harassment ‘as trivial or even construe it as flattery’.²⁸ Of course, such accounts of street harassment should not be viewed uncritically. This minimisation of street harassment may variably function as a coping mechanism for women,²⁹ and as a means of normalising and downplaying the otherwise harmful behaviours of men.³⁰ It also reflects the entrenched, “everyday” nature of street harassment for many women. The context of street harassment has been shown to play a central role in mediating its perceived harmfulness. As Fairchild notes, ‘harassment is in the eye of the beholder’.³¹ That is, there is a degree of subjectivity in terms of whether a behaviour is experienced as harassment or not, with the context the behaviour occurs in playing a strong mediating role. Contextual factors such as the attractiveness and age of the harasser, being alone, location, and the time of day the harassment occurs, all influence the perceived seriousness of street harassment.³² The form street harassment takes can also influence perceived severity. Lenton et al found that behaviours that ‘imply a greater risk of assault’, such as following and touching, were encountered by their participants as more severe.³³

Despite this variability in the harm caused by street harassment, overall the current body of research on street harassment depicts this phenomenon as a pervasive, often harmful experience, that is encountered frequently by women. Yet, there is minimal scope for redress through legal avenues, with most forms of street harassment not clearly addressed within current legislation. In her seminal work on street harassment, Bowman argues that this legal silence around street harassment is unsurprising when

²⁷ See, eg, Kimberly Fairchild, ‘Context effects on women’s perceptions of stranger harassment’ (2010) 14(3) *Sexuality and Culture* 191, 192; Kissling, above n 10, 453.

²⁸ Lenton et al, above n 10, 518; see also Esacove, above n 21, 182; Kissling, above n 10, 452.

²⁹ See, eg, Fairchild and Rudman, above n 12, 353.

³⁰ See also Laniya, above n 14, for a detailed discussion of the process of recognising and labeling harm as such.

³¹ Fairchild, above n 27, 193.

³² Esacove, above n 21, 186; Fairchild, above n 27, 200-1.

³³ Lenton et al, above n 10, 527.

viewed through a feminist lens.³⁴ Considerable legal gains have been made since the publication of Bowman's work, particularly in regards to sexual harassment within the workplace — a comparable form of harassment in a number of respects, for example in the scope of the behaviours they entail, and their tendency to be dismissed as “minor” forms of sexualised harm.³⁵ There is no apparent reason for street harassment not to be responded to within a legal context, and the failure of the liberal law to respond indicates the continued dismissal of the sexual harms experienced by women.³⁶ The similarities between street harassment and both sexual harassment and sexual assault suggest that victims of street harassment are also likely to desire some form of justice response in relation to their experience, although this article is specifically concerned with forms of street harassment that currently fall outside of legal definitions of sexual violence. To what extent might existing informal mechanisms provide an avenue for addressing street harassment victims' justice needs?

III APPROXIMATING VICTIMS' JUSTICE NEEDS

Street harassment is, as the previous discussion established, capable of causing much harm to women. While women's experiences of street harassment are diverse, and not all women are significantly impacted by all experiences of street harassment, it is nonetheless clear that this form of abuse can result in significant harm to its victims, as well as contributing towards the maintenance of broader gender inequalities. This suggests that street harassment is worthy of a justice response, whether formal or informal. What is less clear is what street harassment victims' justice needs may be. That is, how do victims of street harassment understand justice, and what needs to occur for them to feel as though “justice” has been achieved?³⁷

To date, there is no identified research examining what street harassment victims' justice needs are, although a smaller body of work has considered street harassment victims' attitudes towards, and desire for, formal justice responses. Research conducted by Nielsen

³⁴ Bowman, above n 13.

³⁵ See, eg, Fairchild, above n 27; Bianca Fileborn, 'Conceptual understandings and prevalence of sexual harassment and street harassment' (2013) *ACSSA Resource Sheet* (Australian Institute of Family Studies); Laniya, above n 14; Eric Wesselmann and Janice Kelly, 'Cat-calls and culpability: investigating the frequency and functions of stranger harassment' (2010) 63(7-8) *Sex Roles* 451.

³⁶ It is beyond the scope of this paper to discuss precisely what these official justice responses to street harassment should be. Bowman, above n 13, can be referred to for a discussion of potential legal responses, albeit within an American legal context.

³⁷ And, indeed, how do street harassment victims define and conceptualise “justice” itself.

in the United States found that victims of street harassment were highly resistant to the legal regulation of this behaviour, despite also acknowledging the social harm caused by street harassment.³⁸ Notably, women interviewed by Nielsen identified street harassment as significantly harmful, yet ‘as “equal” members of society, they do not have and do not want legal recourse for this harm’.³⁹ These women framed street harassment as a “private” matter that they should be able to respond to on an individual level. Such responses suggest that informal justice mechanisms may be desirable for street harassment, although Nielsen asserts that there is still a role for formal legal regulation of street harassment. It is not clear from this work what the specific justice needs of street harassment victims are, or what must take place for their needs to be met.

The research on sexual assault victim/survivors’ justice needs will be drawn on here to *approximate* what street harassment victims’ needs may be. This is not to suggest that the experiences and needs of sexual assault and street harassment victims are the same, or that these categories of sexualised violence are equivalent in form and harm. However, street harassment and sexualised violence can be viewed as interrelated, and as being situated along the continuum of sexual violence.⁴⁰ Given this, it is not unreasonable to assume that victims of street harassment and sexual assault may share some common justice needs, although further research is clearly required to establish what street harassment victims’ needs (and what is required to meet them) *actually* are.⁴¹ Where these needs are the same, it is not necessarily the case that victims of sexual harassment would require the same type or extent of justice response as sexual assault victim/survivors in order to feel that their needs have been met.⁴² Nonetheless, at the current point in time this research stands as the closest reference point for identifying street harassment victims’ likely justice needs.

³⁸ Laura Nielsen, ‘Situating legal consciousness: experiences and attitudes of ordinary citizens about law and street harassment’ (2000) 34(4) *Law and Society Review* 1055, 1070.

³⁹ *Ibid* 1080.

⁴⁰ See, eg, Liz Kelly, *Surviving sexual violence* (Polity Press, 1988) in relation to the continuum of sexual violence; Bowman, above n 13, 536; Darnell and Cook, above n 11, 266; Fileborn, above n 35; Kissling, above n 10, 456; Laniya, above n 14, 119, in relation to the intersections between sexual assault and street harassment.

⁴¹ See also Clare McGlynn, ‘Feminism, rape and the search for justice’ (2011) 31(4) *Oxford Journal of Legal Studies* 825, 833, which advocates for the need to approach different ‘categories’ of violence against women ‘with some degree of separation’ when considering justice needs.

⁴² See Nielsen, above n 38. The resistance of Nielsen’s participants to formal justice responses to street harassment would tend to support this.

Research on victim/survivors' justice needs is also relatively sparse. A nascent body of literature has emerged in recent years that has begun to establish what these needs are. Clark identifies four key procedural justice needs based upon interviews with sexual assault victim/survivors: 'information, validation, voice and control'.⁴³ There is, of course, much variation in both the individual needs of victims, and their understandings of what it means to achieve a sense of justice.⁴⁴ Not all of these needs will be relevant for all victims at all times. Nonetheless, together they represent the more commonly experienced procedural needs of victim/survivors. These needs are all of potential relevance in relation to street harassment victims and online activism. While they are discussed in the literature primarily in relation to procedural justice within the formal justice system, they can be extrapolated to apply to online justice mechanisms, as the ensuing discussion will demonstrate.

A distinction also needs to be made here between victims' procedural justice needs and their understandings of broader, outcome-orientated justice needs. Procedural justice needs can be understood as the *processes* that must take place alongside victims' higher-level, outcome-oriented justice needs, such as retribution, safety, or for victim/survivors to feel as though a sense of justice has been achieved. Procedural justice needs may need to be met in order for victim/survivors' outcome-orientated justice needs to be fulfilled. In this way, anti-street harassment sites are viewed for the purposes of this article as a process through which victims may work towards achieving outcome-orientated justice. Procedural justice needs are focused on here in order to necessarily limit the scope of this discussion. Victim/survivors may seek justice at both an individual and a social level.⁴⁵ Social justice is used here to refer to victim/survivors' justice goals that extend beyond their own immediate needs, such as the desire to protect others in the community or to contribute towards the elimination of sexual violence. Individual justice refers to victim/survivors' needs that pertain only to their personal experience, for example to obtain retribution against their perpetrator or to gain recognition of their own suffering and harm.

Before continuing, it is worth making a brief caveat in regards to the use of informal justice mechanisms for street harassment. There is considerable debate regarding the

⁴³ Clark, 'What is the justice system willing to offer?', above n 8, 29.

⁴⁴ See, eg, Clark, 'What is the justice system willing to offer?', above n 8, 30; McGlynn, above n 41.

⁴⁵ See Clark, 'What is the justice system willing to offer?', above n 8, 30.

appropriateness of informal justice mechanisms for sexual violence.⁴⁶ In particular, critics of their use suggest that they reaffirm sexual violence as “trivial” and contribute towards the historical dismissal of sexual violence by the justice system.⁴⁷ Yet, the formal justice system acts as a site of re-victimisation for many victim/survivors, and its arguably limited concept of justice often falls short of meeting victim/survivors’ diverse needs.⁴⁸ A detailed discussion of this debate is well beyond the scope of this paper. However, in discussing the merits of an informal justice mechanism for victims of street harassment it is not my intention to suggest that this is the *only* justice mechanism that should be made available. There is arguably a clear role for the formal justice system to play in responding to street harassment *in conjunction with* informal mechanisms.⁴⁹ Street harassment is not, however, at the current point in time responded to by the formal justice system — either because such behaviour is not legislated against, or, where it does fall within the remit of the justice system it is rarely reported or progressed through the system.⁵⁰ Informal justice mechanisms, therefore, represent the primary justice avenue available to victims of street harassment, and subsequently form the focus of my analysis.

A Information

The need for “information” broadly refers to victims requiring communication from criminal justice personnel regarding the status and progress of their case. Given that street harassment is generally not reported to the police, or progressed through the justice system where it is reported, the need for “information” in the sense it is used here is not directly relevant for victims of street harassment. However, street

⁴⁶ See, eg, Clark, ‘Unearthed concepts of justice’, above n 8; Herman, above n 8; Mary Koss, ‘Restoring rape survivors: justice advocacy’ (2006) 1087(1) *Annals of the New York Academy of Sciences* 206; McGlynn, above n 41; Gitana Proietti-Scifoni and Kathleen Daly, ‘Gendered violence and restorative justice: the views of New Zealand opinion leaders (2011) 14(3) *Contemporary Justice Review* 269; Katherine Van Wormer, ‘Restorative justice as social justice for victims of gendered violence: a standpoint feminist perspective’ (2009) 54(2) *Social Work* 107.

⁴⁷ See Koss, above n 42, 224, for an overview of some of these critiques.

⁴⁸ Clark, ‘Unearthed concepts of justice’, above n 8; Herman, above n 8; Barbara Hudson, ‘Restorative justice the challenge of sexual and racial violence’ (1998) 25(2) *Journal of Law and Society* 237; McGlynn, above n 41; Clare McGlynn, Nicole Westmarland and Nikki Godden, ‘“I just wanted him to hear me”: sexual violence and the possibilities of restorative justice’ (2012) 39(2) *Journal of Law and Society* 213; Van Wormer, above n 42.

⁴⁹ See, eg, Bowman, above n 13; Laniya, above n 14; Macmillan, Nierobisz and Welsh above n 10, 320; McGlynn, Westmarland and Godden, above n 48, 214; Nielsen, above n 38, 1082.

⁵⁰ Bowman, above n 13; Fairchild and Rudman, above n 12, 339; Laniya, above n 14, 92; Lenton et al, above n 10, 523.

harassment victims may well value other forms of information in relation to their experience that online activist sites can provide. Through the collective disclosure of experiences of street harassment, activist sites such as *Hollaback* provide a source of information communicating to women that they are not alone in their experiences, and function as a means of evidence-gathering that documents the commonality of these experiences, as well as the geographical location in which they occur.

B Validation

Validation refers broadly to the victim/survivors' need to feel supported and believed.⁵¹ For Clark's participants, this 'was demonstrated by supportive, respectful interactions with officials, as well as mechanisms that held the perpetrator accountable'.⁵² Being believed was an important component of validation for many of Clark's participants and functioned as a "first step" to having other needs met. Validation could also be demonstrated through the actions taken by justice personnel, such as 'police charge, conviction, and the offender being publicly denounced and sentenced'.⁵³ In this last respect, *Hollaback* is arguably limited as a justice mechanism in that offenders are generally not identified individually and publicly shamed (assuming that the offender is able to be identified in the first place, which is often unlikely to be the case in the fleeting interactions that often typify street harassment). Resultantly, there is no direct denunciation of individual offender behaviour, nor is any punishment meted out.⁵⁴

The need for validation may be met in other respects. Readers can express their support for an individual's story through the use of the "got your back" button provided on the site; although whether this action is experienced as meaningful support or rather constitutes a form of "slactivism" is of question here.⁵⁵ Support and belief can be communicated more substantially through the ability to comment on a shared experience. Commenter 'Giovvie'

⁵¹ Clark, 'What is the justice system willing to offer?', above n 8, 33; see also Herman, above n 8, 574.

⁵² Clark, 'What is the justice system willing to offer?', above n 8, 33.

⁵³ Ibid.

⁵⁴ However, neither is the punishment of individual perpetrators the express purpose of *Hollaback*. Other forms of online activism do have the potential to achieve these aims. See, eg, Salter, above n 6; *City of Brotherly Love* <<http://www.hannahcprice.com/cityofbrotherlylove.html>> which is a photography project for examples of the more direct identification and shaming of perpetrators.

⁵⁵ Ryan Budish, 'Click to change: optimism despite online activism's unmet expectations' (2012) 26(2) *Emory International Law Review* 745, 750. 'Slactivism', according to Ryan Budish, involves supporters of a cause taking easy, simplistic actions, such as clicking the "like" button on Facebook, at the expense of 'personal sacrifice and result-oriented activism'. There are clear parallels here with the "got your back" button feature of *Hollaback*.

for example, expresses in response to a submission that 'I feel your pain', and 'I'm sorry you had to go through with that' in response to a post.⁵⁶ Such comments communicate clear belief of the anonymous women's experiences, express a sense of empathy, and reaffirm the offensive and harmful nature of street harassment.

Validation may also be achieved through anti-street harassment sites via their contribution to the labeling and recognition of street harassment as a form of sexualised harm. Laniya suggests that the media serves as a useful 'platform to enlighten and educate the public about this type of sexual harassment' and can play a pivotal role in instigating formal legislative reform and social recognition of harm.⁵⁷ While Laniya makes this point in relation to traditional media formats, such as news and print media, social media is playing an increasingly prevalent and influential role, and thus has the potential to function as an educational platform in the way envisaged by Laniya. By providing a forum for women to collectively recount and share their experiences of street harassment, sites such as *Hollaback* facilitate the process of naming street harassment as a gendered harm. Laniya views this as the fundamental first step towards obtaining recognition and reparation for harm. Naming, according to Laniya, involves 'an articulation and a sharing of experiences ... and a contextuali[s]ation of the occurrence within the larger social and political arenas'.⁵⁸ It transforms an individual harm to a collective one, and provides the impetus for further political action. In creating a space for the collective naming of street harassment as harm, online activism contributes towards an important first step in achieving social and legal recognition of this issue.

C Voice

Having a "voice" has also been identified as a key justice need for victim/survivors. That is, many victims require the opportunity to "voice" or share their experience in a meaningful way: in their own words, and in a forum where what they say is *heard*.⁵⁹ For Clark's participants, this often meant having their "day in court", although her participants were also often disappointed with the marginalised role and *lack* of voice they ultimately experienced in the justice system. Herman highlights victim/survivors'

⁵⁶ Both posts made on November 4, 2013.

⁵⁷ Laniya, above n 14, 94.

⁵⁸ *Ibid* 99.

⁵⁹ Clark, 'What is the justice system willing to offer?', above n 8; Herman, above n 8, 574.

need to share 'their stories in their own way, in a *setting* of their choice'.⁶⁰ Vitaly, victim/survivors need 'to tell their story in a safe forum'.⁶¹ As noted at the outset of this article, online activist sites have been positioned as a "safe space" for women. However, whether this matches the *experiences* of women engaging with these spaces is less clear. The notion that the Internet provides a safe space for women to share their experiences of street harassment is complicated by the fact that online spaces can also function as a site of harm to women, for example through their use in facilitating sexual violence,⁶² and other forms of online harassment.⁶³

Certainly, the potential to provide women with the opportunity to "voice" their experience of street harassment in their own words is a particularly promising aspect of *Hollaback*. Online activist sites allow women to disclose their experience in their own words, without the restrictions on narrative form associated with the traditional justice system. Indeed, while the justice system often seeks to restrict or mold the experience of victim/survivors to fit the system's requirements, *Hollaback* encourages women to recount their experience in as much detail as possible. This allows women to share the aspects of their experience that they deem relevant, and to discuss it in a way that is meaningful to them. Narratives of street harassment can be inclusive of the emotional and affective impact experienced by the recipient, and an assertion of the oppressive nature of the harassment. For example, one anonymous poster asserts that harassing behaviour 'royally shits me because it's subtle, insidious and can be overlooked and passed off as someone trying to be friendly'.⁶⁴ It seems unlikely that this expression of the harms of street harassment would be permitted within the strictures of legal narrative.

What is less clear is whether online activist sites provide a forum for women in which their voices are heard in what they consider a meaningful way. That is, does the recounting of an experience of street harassment online have the impact or effect that the woman hoped it would? How could this impact or effect be measured? For instance,

⁶⁰ Herman, above n 8, 574 (emphasis added).

⁶¹ Shirley Julich, 'Views of justice among survivors of historical child sexual abuse: implications for restorative justice in New Zealand' (2006) 10(1) *Theoretical Criminology* 125, 129.

⁶² Nicole Bluett-Boyd et al, 'The role of emerging communication technologies in experiences of sexual violence: a new legal frontier?' (Research Paper No 13, Australian Institute of Family Studies, 2013).

⁶³ Jessica Brophy, 'Developing a corporeal cyberfeminism: beyond cyberutopia' (2010) 12(6) *New Media & Society* 929, 932.

⁶⁴ Submission made by anonymous user (31 August 2013) *Hollaback Melbourne* <<http://melbourne.ihollaback.org/2013/08/31/he-talked-over-me-and-then-told-me-i-was-being-ridiculous/>>.

would the number of “got your back” button hits, or comments made by other site users serve as a measure of impact? Conversely, are site users impacted on negatively if their posts fail to receive such attention from fellow site users? This assumes, however, that the pursuit of justice is an individualistic one. Given that victim/survivors often cite the protection of others and the prevention of future offending as a motivating factor for engaging in the formal justice system,⁶⁵ it may well be that contributing to a *collective* justice effort aimed at the longer term goal of stopping street harassment brings sufficient fulfilment beyond individual recognition.

D Control

Having control, or at least involvement, over key points of decision-making — and, indeed, over their own lives more generally — is a need expressed by many victim/survivors.⁶⁶ Their positioning as complainants within the formal justice system often denies victim/survivors this need. Victim/survivors are afforded minimal control over their case within the justice system, beyond their initial decision to disclose, and frequently are not consulted on key decisions.⁶⁷ Online activist sites have the potential to afford street harassment victims considerably more control over their experience. At the most basic level, street harassment victims are able to exercise control over whether or not they disclose their experience online; although this is not dissimilar to the level of control afforded to victim/survivors engaging with the formal system. More fundamentally, victims who engage with *Hollaback* have complete control over the content of their narrative and the level of detail they choose to provide. Free from the strictures of the justice system, they have considerably more choice in the form and structure their narrative takes. That said, they are still limited to the expression of their experience in written form, and this may exclude some victims on the basis of literacy skills, or simply not fit with the desired format in which the victim would prefer to share their experience.

Of issue here is that the Internet is a virtual space that can signify a complete lack of control. That is, once a user has submitted their story and it is posted on the site, there is

⁶⁵ See Clark, ‘What is the justice system willing to offer?’, above n 8; Shirley Hung and David Denborough, ‘Unearthing new concepts of justice: women sexual violence survivors seeking healing and justice’ [2013] 3 *The International Journal of Narrative Therapy and Community Work* 18.

⁶⁶ Clark, ‘What is the justice system willing to offer?’, above n 8, 34; Herman, above n 8, 574.

⁶⁷ *Ibid.*

no control over who is able to access and read their submission — although this is counteracted to an extent by the anonymous nature of the submissions. Women posting on sites such as *Hollaback* have minimal control over the ways in which their experience may be utilised by others on the Internet, or reinterpreted for alternative purposes. For example, submissions can be copied by others and posted to other sites, and Internet content can be picked up on by users and go “viral”. While the author is not aware of any instances where this has occurred with submissions to anti-street harassment sites, this nonetheless remains a potential, if unlikely, risk that could negate the sense of control women have over how their story is shared and heard by others.

IV JUSTICE FOR WHOM? CONSIDERING THE BOUNDARIES OF ONLINE JUSTICE

There are a number of limitations associated with the use of online activist sites as an informal justice mechanism that warrant consideration, if only briefly, here. These limitations form the boundaries for whom justice can be achieved, and for which particular justice needs can be met. Victims’ justice needs are diverse, and it is unlikely that online activism is able to meet the varying needs of all street harassment victims. For example, online activism is unable to provide formal punishment of offenders, which is desired by at least some victims. Indeed, if some form of punishment were to occur as a result of disclosures made on online activist sites, which has, indeed happened in relation to sexual assault and online activism,⁶⁸ significant questions would arise relating to due process and the rights of the accused.⁶⁹ As the goal of movements such as *Hollaback* is to achieve a form of broader social justice, the ability of these sites as a space to meet individual justice needs is, perhaps necessarily, limited. Additionally, activist sites lack the symbolic power of the State in labeling behaviour as wrong and harmful, and thus may lack the authority to meet some victims’ needs. Further, the Internet is not a neutral space in terms of who may access it, and who may appropriate it successfully in order to have their needs met. As Salter highlights, ‘some voices are privileged over others in online counter-publics’,⁷⁰ with younger and affluent women in particular more able to successfully utilise online spaces.⁷¹

⁶⁸ See, eg, Salter, above n 6.

⁶⁹ Ibid 5, 7.

⁷⁰ Ibid 5.

⁷¹ Ibid 11; Schuster, above n 4, 20.

There are, of course, limitations associated with virtually all justice mechanisms, whether formal or informal. That there are limitations associated with the use of online activist sites does not suggest that we should abandon their use or discount them as a potential mechanism for achieving justice. Instead, this speaks to the need for ensuring that a range of justice mechanisms are made available to victims of street harassment in order to maximise the likelihood that individual justice needs may be met.

V CONCLUDING REMARKS

This article has considered the potential for online activist sites to function as an informal justice mechanism for victims of street harassment. Drawing on the literature on sexual assault victim/survivors' justice needs, I have attempted to approximate what street harassment victims' procedural justice needs may be. Utilising the street harassment activist site *Hollaback*, I have argued that online activist sites are certainly capable of meeting some of the core procedural justice needs expressed by victims. Although there are also some notable limitations associated with this avenue of justice, this should not discount its use as a potential justice mechanism, particularly given the current lack of justice options currently available to victims of street harassment.

Significantly, there is an absence of current research on street harassment victims' justice needs, and more generally a dearth of information relating to the prevalence and impact of street harassment within an Australian context. The emergence of online activist sites such as *Hollaback Melbourne* indicates that, anecdotally, street harassment is a significant form of sexualised violence encountered by Australian women. While this article has initiated a nascent discussion that approximates street harassment victims' needs, there is clear scope for further research that: documents Australian women's experiences of street harassment; investigates what justice needs arise from their experience(s), and; considers in what ways these needs can be met, whether through formal or informal means. Justice responses to street harassment should be informed by the voices and experiences of victims, allowing for this harm to begin to be addressed, and for women's justice needs to be actualised rather than approximated.

REFERENCE LIST

A Articles/Books/Reports

Bluett-Boyd, Nicole, Bianca Fileborn, Antonia Quadara and Sharnee Moore, 'The role of emerging communication technologies in experiences of sexual violence: a new legal frontier?' (Research Paper No 13, Australian Institute of Family Studies, 2013)

Bowman, Cynthia, 'Street harassment and the informal ghettoization of women' (1993) 106(3) *Harvard Law Review* 517

Brophy, Jessica, 'Developing a corporeal cyberfeminism: beyond cyberutopia' (2010) 12(6) *New Media and Society* 929

Budish, Ryan, 'Click to change: optimism despite online activism's unmet expectations' (2012) 26 *Emory International Law Review* 745

Clark, Haley, "'What is the justice system willing to offer?'" Understanding sexual assault victim/survivors' criminal justice needs' [2010] (85) *Family Matters* 28

Clark, Haley, 'Unearthed concepts of justice for women who have experienced sexual violence: possibilities for healing and enhancing criminal justice' [2013] (4) *The International Journal of Narrative Therapy and Community Work* 28

Daniels, Jessie, 'Rethinking cyberfeminism(s): race, gender, and embodiment' (2009) 37(1-2) *Women's Studies Quarterly* 101

Darnell, Doyanne and Sarah Cook, 'Investigating the utility of the film *War Zone* in the prevention of street harassment' (2009) 33(3) *Psychology of Women Quarterly* 266

Esacove, Anne, 'A diminishing of the self: women's experiences of unwanted sexual attention' (1998) 19(3) *Health Care for Women International* 181

Fairchild, Kimberly, 'Context effects on women's perceptions of stranger harassment' (2010) 14(3) *Sexuality and Culture* 191

Fairchild, Kimberly and Laurie Rudman, 'Everyday stranger harassment and women's objectification' (2008) 21(3) *Social Justice Research* 338

- Fileborn, Bianca, 'Sex and the city: exploring young women's perceptions and experiences of unwanted sexual attention in licensed venues' (2012) 24(2) *Current Issues in Criminal Justice* 241
- Fileborn, Bianca, 'Conceptual understandings and prevalence of sexual harassment and street harassment' (2013) *ACSSA Resource Sheet* (Australian Institute of Family Studies)
- Gardner, Carol, *Passing by: gender and public harassment* (University of California Press, 1995) 4
- Herman, Judith, 'Justice from the victim's perspective' (2005) 11(5) *Violence Against Women* 571
- Hudson, Barbara, 'Restorative justice the challenge of sexual and racial violence' (1998) 25(2) *Journal of Law and Society* 237
- Hung, Shirley and David Denborough, 'Unearthing new concepts of justice: women sexual violence survivors seeking healing and justice' [2013] 3 *The International Journal of Narrative Therapy and Community Work* 18
- Julich, Shirley, 'Views of justice among survivors of historical child sexual abuse: implications for restorative justice in New Zealand' (2006) 10(1) *Theoretical Criminology* 125
- Kavanaugh, Phillip, 'The continuum of sexual violence: women's accounts of victimization in urban nightlife' (2013) 8(1) *Feminist Criminology* 20
- Kelly, Liz, *Surviving sexual violence* (Polity Press, 1988)
- Kissling, Elizabeth, 'Street harassment: the language of sexual terrorism' (1991) 2(4) *Discourse and Society* 451
- Laniya, Olatokunbo Olukemi, 'Street smut: gender, media, and the legal power dynamics of street harassment, or "hey sexy" and other verbal ejaculations' (2005) 14(1) *Columbia Journal of Gender and Law* 91
- Lenton, Rhonda, Michael Smith, John Fox and Norman Morra, 'Sexual harassment in public places: experiences of Canadian women' (1999) 36(4) *Canadian Journal of Anthropology* 517

- Macmillan, Ross, Annette Nierobisz and Sandy Welsh, 'Experiencing the streets: harassment and perceptions of safety among women' (2000) 37(3) *Journal of Research in Crime and Delinquency* 306
- McGlynn, Clare, 'Feminism, rape and the search for justice' (2011) 31(4) *Oxford Journal of Legal Studies* 825
- McGlynn, Clare, Nicole Westmarland and Nikki Godden, "'I just wanted him to hear me": sexual violence and the possibilities of restorative justice' (2012) 39(2) *Journal of Law and Society* 213
- Nielsen, Laura, 'Situating legal consciousness: experiences and attitudes of ordinary citizens about law and street harassment' (2000) 34(4) *Law and Society Review* 1055
- Proietti-Scifoni, Gitana and Kathleen Daly, 'Gendered violence and restorative justice: the views of New Zealand opinion leaders' (2011) 14(3) *Contemporary Justice Review* 269
- Salter, Michael, 'Justice and revenge in online counter-publics: emerging responses to sexual violence in the age of social media' (2013) 9(3) *Crime, Media, Culture* 1
- Schuster, Julia, 'Invisible feminists? Social media and young women's political participation' (2013) 65(1) *Political Science* 18
- Shaw, Frances, 'The politics of blogs: theories of discursive activism online' [2012] 142 *Media International Australia* 41
- Van Wormer, Katherine, 'Restorative justice as social justice for victims of gendered violence: a standpoint feminist perspective' (2009) 54(2) *Social Work* 107
- Wesselmann, Eric and Janice Kelly, 'Cat-calls and culpability: investigating the frequency and functions of stranger harassment' (2010) 63(7-8) *Sex Roles* 451