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PURSUING ACCOUNTABILITY FOR PERPETRATORS OF INTIMATE PARTNER VIOLENCE: THE PERIL (AND UTILITY?) OF SHAME

A. RACHEL CAMP[*]

ABSTRACT

This Article explores the use of shame as an accountability intervention for perpetrators of intimate partner abuse, urging caution against its legitimization. Shaming interventions—those designed to publicly humiliate, denigrate, or embarrass perpetrators or other criminal wrongdoers—are justified by some as legitimate legal and extralegal interventions. Judges have sentenced perpetrators of Intimate Partner Violence ("IPV") to hold signs reading, "This is the face of domestic abuse," among other publicly humiliating sentences. Culturally, society increasingly uses the Internet and social media to expose perpetrators to public shame for their wrongdoing. On their face, shaming interventions appear rational: perpetrators often belittle, humiliate, and disgrace their partners within a larger pattern of physical abuse, and survivors often report feeling an abiding sense of shame as a result. Further, perpetrators are assigned en masse *a dominant narrative about their motivations and traits as controlling, violent, and beyond reform. Consequently, they are cast into a category of individuals for whom traditional forms of rehabilitation are identified as ineffective and for whom shaming may be particularly apropos.*

However, even if stigmatizing perpetrators to achieve accountability has some legitimate purpose, any benefit is outweighed by the fact that shaming perpetrators undermines the goals of violence reduction and survivor safety. Internalized shame can lead to externalized violence, thereby increasing, rather than decreasing, a survivor's risk of harm. Further, using shame to punish an act that is itself built on shame can blur clarity about socially acceptable behavior, have a profound social and economic impact on the individual shamed, and devastate a person's dignity and sense of self-worth. Moreover, many perpetrators have cumulative shaming experiences in their pasts,

intensifying the negative consequences that can flow from shaming interventions. To understand the unique risks of shaming in the context of IPV, this Article explores shame as a tool for achieving perpetrator accountability.

CONTENT

INTRODUCTION

An eye for an eye makes the whole world blind.[1]

In 2017, a judge in Guilford County, North Carolina convicted three men of domestic violence misdemeanors. Their sentence? To spend hours over the course of several days standing outside the courthouse holding signs that read "This is the face of domestic abuse."[2] Though fervently criticized by some, formal shaming sanctions like this one from North Carolina are steadily used.[3] Judges across the United States impose shaming sentences as an alternative to more traditional sentences in a variety of cases, including cases involving Intimate Partner Violence ("IPV").[4] While shaming wrongdoers may be identified as empowering for victims and may have utilitarian benefits on maladaptive behavior in particular contexts, within the context of IPV nearly all of the benefits are outweighed by shame's tendency to undermine the goals of violence reduction and survivor safety. Shaming perpetrators risks making survivors more vulnerable, not less.

Shaming can be brought about by legal interventions, formally and state-sanctioned, and through extralegal interventions, informally by one individual or a group. In either context, shaming interventions are designed to publicize a wrongdoer's illegal or immoral conduct "in a way intended to reinforce the prevailing social norms that disapprove of such behavior" and to cause an unpleasant emotional experience in the wrongdoer.[5] In the context of IPV,

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[1] Attributed to Mahatma Gandhi.

[2] *See infra* Section II.C.2 (discussing this example and numerous others of courts imposing shaming sentences on perpetrators of IPV).

[3] *See, e.g.*, MARTHA C. NUSSBAUM, HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW 1 (2004) ("Penalties like these, involving public shaming of the offender, are becoming increasingly common as alternatives to fines and imprisonment."); David Karp, *The Judicial and Judicious Use of Shame Penalties*, 44 CRIME & DELINQ. 277, 277 (1998) ("One avenue of experimentation gaining popularity is the use of shame penalties as a judicial sanction."); Toni Massaro, *The Meanings of Shame: Implications for Legal Reform*, 3 PSYCHOL. PUB. POL'Y & L. 645, 646 (1997) (describing revival of public interest in publicly shaming criminal offenders). Some scholars have called on our criminal justice system to revive physical punishments as an alternative to incarceration. *See* PETER MOSKOS, IN DEFENSE OF FLOGGING 2 (2011) (arguing that flogging is less cruel than incarceration as form of punishment). For a discussion on the dominant critiques of shame as a legal sanction, see Dan M. Kahan, *What's Really Wrong with Shaming Sanctions*, 84 TEX. L. REV. 2075, 2076 (2006).

[4] *See infra* Part II (detailing numerous situations in which courts rely on shaming interventions as substitute for incarceration in IPV cases).

[5] Dan Schwarcz, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 HARV. L. REV. 2186, 2187 (2003). As recently as May 2018, feminist Germaine Greer experienced swift public backlash for her comments that often what women report as rape is just "bad sex," but less discussed in the media was her call for tattooing an "r" on a rapist's hand, arm, or cheek. Ceylan Yeginsu, *Author Calls for Easing of Penalty for Rapes*, N.Y. TIMES, June 1, 2018, at A4.

shaming interventions may be used to achieve three theoretical goals: (1) retribution, by punishing the perpetrator in an effort to express intolerance for IPV; (2) rehabilitation, by assuming that moral education flows from public humiliation; and (3) survivor validation and empowerment, by humiliating or degrading the person who caused her harm.[6] Formal shaming interventions may also demonstrate communal moral condemnation of a perpetrator and his behavior while avoiding the deficiencies long identified in our modern carceral system, as shaming sentences are often ordered in lieu of incarceration.[7]

Shaming perpetrators may seem like a particularly apropos intervention given the tactics many commonly use. Some perpetrators commonly belittle, humiliate, or disgrace their partners within a larger pattern of abuse or violence, and survivors often report an abiding sense of shame as a result.[8] Thus, shaming as a sanctioned intervention is often righteously defended as justifiable payback.[9] Relatedly, there is a cultural assignment *en masse* of a dominant narrative about perpetrators' motivations and traits. This narrative places perpetrators within a group of wrongdoers for whom traditional forms of rehabilitation are assumed not to work and, therefore identifying them as deserving persons to shame. Justifying shame as a "deserved" or "fair" alternative intervention for achieving behavior modification assumes a defined distinction between the moral "rightness" of survivors and a moral "wrongness" of perpetrators. In reality, however, that distinction is imprecise. Many perpetrators of IPV have had multiple shaming experiences over their lifetimes, including those arising from poverty, family-of-origin abuse, and other childhood victimization.[10] Consequently, many perpetrators are survivors of their own traumatic, and often shameful, experiences. Formal or informal public shaming of individuals who have had cumulative experiences with shame contravenes what is understood about creating optimal conditions for changing maladaptive or abusive patterns of behavior for the better.

Shaming interventions also ignore what is understood about internalized shame and externalized violence. Shame is among the most uncomfortable emotions that a human can feel. It often leads to profound embarrassment, a

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[6] Stephen P. Garvey, *Can Shaming Punishments Educate?*, 65 U. CHI. L. REV. 733, 734, 738-39 (1998) ("Punishments should aim to reflect back on the offender what he has done to his victim, which is the essence of the talionic principle.").

[7] Kahan, *supra* note 3, at 2075.

[8] *See* Judith Lewis Herman, *Justice from the Victim's Perspective*, 11 VIOLENCE AGAINST WOMEN 571, 572-73 (2005) (identifying how some perpetrators often seek to "establish . . . dominance not only by terrorizing the victim but also, often most effectively, by shaming her").

[9] *See id.* at 594 (describing how some survivors identify that they wished for "the extreme consequence of shunning and community ostracism" and how perpetrators, not survivors, "would be the ones to look down in shame").

[10] *See infra* Part III (describing how perpetrators of IPV have experienced shame).

sense of unworthiness, and a destructive loss of dignity.[11] Many who experience these consequences seek ways to diminish their intensity. While some individuals may exhibit shame's impact through isolation or self-harm, others may engage in increased externalized aggression, including towards the party perceived as being responsible for the imposition of their shame.[12] As a result, when society legitimizes public humiliation or degradation of IPV perpetrators, it jeopardizes survivors' safety and stability, and violence reduction generally. Further, many survivors return to, or stay with, their abusive partners following formal or informal shaming, increasing the risk to survivors of shame's negative consequences and the likelihood of *survivor* shaming as a result of their relational decision.[13]

This Article explores these and other risks to perpetrators and survivors when shame is used as an intervention for perpetrator accountability. Part I defines shame and its impact, exploring shame as emotional response and shame as intervention. Part I further considers the correlation between shame, aggression, and IPV. Part II explores formal uses of shame within the broad context of IPV. It begins with an overview of the legal history of shame as an accountability tool and turns to modern uses of shame. Part II considers the shaming experiences of perpetrators *and* survivors in order to advance a consistent, feminist, and value-driven approach to the treatment of any party within and beyond a courtroom. To understand the unique harms that arise from shaming perpetrators, Part III explores the social and economic conditions that contribute to shame-proneness and that are correlated with IPV perpetration, including poverty, adverse childhood experiences, and trauma. Finally, Part IV appeals to policymakers, judges, and anti-IPV advocates to reject denigrating interventions and instead commit to dignity-driven approaches to perpetrator accountability. Within the legal system specifically, Part IV proposes interventions that move beyond the standard menu currently used to those that earnestly attempt to address the social conditions associated with perpetrators, shame, and IPV.[14]

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[11] *See infra* Part I (exploring shame's psychological impact on individuals).

[12] *See infra* Part I (arguing that shaming perpetrators may actually cause perpetrators to re-abuse their partners).

[13] *See infra* Part II (hypothesizing that shaming perpetrators may cause society to also shame their partners and enhance culture of survivor blame).

[14] In this Article, I use the terms "intimate partner violence" and "domestic violence" interchangeably to refer to physical violence perpetuated or experienced in intimate relationships. Abuse is used to describe behavior that may include physical violence, but also other behaviors that lead to domination and control. Throughout this Article, I also intentionally resist the term "batterer" because of the sociopolitical understanding of "batterers" and the cultural assumptions tied to that term. Instead, I identify men who engage in IPV as "perpetrators." I recognize that using any one word to describe a broad group of individuals can lead to connotations or assumptions that are inaccurate for those within that group. My intention, albeit imperfectly, is to shift the narrative from assumptions about the person—assumptions captured in "batterer"—to the behavior the person has engaged in. However, while "perpetrator" may be more politically neutral than

I.   DISCERNING THE IMPACT OF SHAME AND THE INTENT OF SHAMING

Shame is a multidefinitional concept. It is both an emotion and an action—one can feel shame and one can be shamed.[15] Shame can be externally imposed by others as a result of an actual or perceived wrongdoing, and it can arise from one's internal response to their assessment of harm that they have caused others. While shame can be a critical emotion for gaining empathy and understanding, experiencing shame also can have detrimental personal consequences. To assess the utility and risks of using shame as an intervention for perpetrators demands, first, an understanding of this complex concept.

A.   *Shame's Psychological Impact*

Shame is a powerful and often deeply uncomfortable emotion. Shame has been described as a public emotion or a "relational phenomenon" because of its link to others' perceptions or the belief that others will learn of one's moral transgression or socially contrary behavior.[16] Shame often arises from a belief that others will reject or disapprove of the harming person[17] and can have a profoundly negative impact on a person's view of his worthiness, dignity, or

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"batterer" in the context of IPV, it also carries similar or different assumptions from "batterer." *See infra* Section IV.A (describing how society's perceptions about individuals change based merely on labels assigned); *see also* Mimi Kim et al., *Plenary 3—Harms of Criminalization and Promising Alternatives*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 369, 381 (2015) (noting choice not to use "language of law enforcement," including words like "perps, perpetrators, [and] offenders"); *Beyond Offender and Victim*, VERA INST. JUST., https://d3n8a8pro7vhmx.cloudfront.net/commonjustice/pages/79/attachments/original/15 06607563/common-justice-on-language.pdf?1506607563 [https://perma.cc/XD V3-597P] (last visited Nov. 20, 2018) (advocating for replacing "offender" and "victim" with "responsible party" and "harmed party"). Finally, because this Article explores the legal system's modern response to perpetrator accountability building from the historical treatment of men as perpetrators and women as their victims, this Article examines shame within the context of male violence perpetuated against women. The unique shame that can result from relationships where violence is perpetuated by women against men or within non-heteronormative relationships is critical to expanding understanding of shame's role in IPV. I hope to explore those experiences in a subsequent article.

[15] Massaro, *supra* note 3, at 672 (identifying that "shame" conflates three concepts: shame, shameful, and shaming). As noted by Massaro, "Shame is the internal reaction: shame the emotion. What is *shameful* is a normative judgment imposed onto behaviors, desires, or other entities. *Shaming* is an external action: shame the verb." *Id.*

[16] ROBERT WALKER, THE SHAME OF POVERTY 154 (2014) ("In effect, their words and experiences corroborated the notion that shame is a relational phenomenon, not something that is self-imposed."). Martha Nussbaum defines shame as "a painful emotion responding to a sense of failure to attain some ideal state." NUSSBAUM, *supra* note 3, at 184.

[17] *See* June Price Tangney, Jeff Stuewig & Debra J. Mashek, *Moral Emotions and Moral Behavior*, 58 ANN. REV. PSYCHOL. 345, 349 (2011) (describing belief that individuals who experience shame have negative view of self rather than merely negative view of their behavior).

sense of ability to change maladaptive behaviors.[18] These negative effects of shame have been described as "a feeling of numbness and deadness" and "the absence of warmth."[19]

Shame is closely related to the emotion of guilt. Shame and guilt are both defined as "moral emotions," as they are linked to communally defined standards of behavior.[20] Though it can be difficult to distinguish shame from guilt (indeed, a person may feel both emotions simultaneously), shame leads to "a negative evaluation of the entire self vis-à-vis social and moral standards."[21] Alternatively, a person experiencing guilt often recognizes "specific behaviors (not the self) that are inconsistent with such standards."[22] Shame can lead a person to identify herself as "being" a particular kind of person whereas guilt is typically a response to "doing" something—a behavior—that violates one's sense of right and wrong.[23] By way of illustration, when a person forgets a friend's birthday or says something insensitive to an unhappy child, that person may feel *guilt* for not responding in a way that maps on to that person's values—friendship; kindness; patience. That person also might feel *shame* by internalizing what her missteps mean about the kind of person she is—a bad friend; a horrible mother; an unworthy spouse. This distinction between "doer" and "deed" is critical to distinguishing shame from guilt.[24] Because shame is directed internally, it is a much more personal, enduring, and potentially self-defining emotion than guilt.[25] One's experience with shame can remain with

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[18] Ruth Buczynski, *Guilt vs. Shame [Infographic]*, NAT'L INST. FOR THE CLINICAL APPLICATION OF BEHAV. MED., https://www.nicabm.com/guilt-vs-shame/ [https://perma.cc/AF2D-UQYK] (last visited Nov. 20, 2018) ("Shame is caused by an innate sense of being worthless or inherently defective.").

[19] JON RONSON, SO YOU'VE BEEN PUBLICLY SHAMED 249 (2015).

[20] Tangney, Stuewig & Mashek, *supra* note 17, at 345 ("Moral emotions represent a key element of our human moral apparatus, influencing the link between moral standards and moral behavior."); *see also* NUSSBAUM, *supra* note 3, at 207 (comparing characteristics of shame and guilt, among other emotions); Massaro, *supra* note 3, at 660 (distinguishing guilt from shame, but noting that both emotions are at least partially global); Buczynski, *supra* note 18 (noting that causes of feeling shame or guilt involve communal factors).

[21] Jeffrey Stuewig et al., *Shaming, Blaming, and Maiming: Functional Links Among the Moral Emotions, Externalization of Blame, and Aggression*, 44 J. RES. PERSONALITY 91, 91 (2010); *see* Diego Zavaleta Reyles, *The Ability to Go About Without Shame: A Proposal for Internationally Comparable Indicators of Shame and Humiliation*, 35 OXFORD DEV. STUD. 405, 408-09 (2007) ("[Shame] is both a moral emotion (in the sense that it acts as an evaluator of self) and has relational aspects (as actions by others, or one's perception of their judgement, may affect one's sense of shame).").

[22] Stuewig et al., *supra* note 21, at 91; *see* Reyles, *supra* note 21, at 408-09 ("[O]ne can humiliate or be humiliated, but always in relation to someone or something.").

[23] *See, e.g.*, WALKER, *supra* note 16, at 36 (noting that "'guilt is about what one did' and shame is about 'what one is'").

[24] *See id.*

[25] *See id.* at 39.

him for a short period or can leave a permanent scar on his sense of self-worth—a potential lifetime of believing that, no matter what behavioral or cognitive changes he makes in response to his shameful act, he is unredeemable. Experiencing shame can be fundamentally self-altering.

Whether shame, as opposed to guilt or any other emotion, will be experienced from wrongdoing and, if experienced, how it will impact an individual, is exceedingly difficult to predict. In exploring this aspect of shame, Professor Toni Massaro writes:

> Any serious effort to define or elicit shame, or to predict its behavioral effects, must consider that shame is ill understood, even by the emotion theorists who have studied it in depth. Indeed, the specific triggers and behavioral consequences of all emotions, including embarrassment, shame, and humiliation, are extremely variable and elusive, so that one cannot know in advance what the impact of shaming a person might be: The emotional impact may range from none, to mild discomfort, to a profound and complete loss of self that inspires a desire to die.[26]

Shame leads not only to negative outcomes but, for many individuals, can lead to beneficial ones. When experienced within certain conditions, shame can have a "positive moral impact" on a person, despite the discomfort it may simultaneously cause.[27] Feeling ashamed helps humans develop social competence and can lead to modification of harmful behavior.[28] Shame also can increase one's empathy through gained clarity about how his harmful behavior negatively impacted the aggrieved person or violated the harming person's value system. Individuals who engage in criminal or immoral behavior—as identified "from the perspective of self, other, or both"—and who feel ashamed as a result of that behavior may more effectively rehabilitate than those who fail to

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[26] Massaro, *supra* note 3, at 655.

[27] Dustyn Coontz, *Beyond First Blush: The Utility of Shame as a Master Emotion in Criminal Sentencing*, 2015 MICH. ST. L. REV. 415, 443 (2015) (noting that shame can have positive moral impact even if person feels bad while experiencing it).

[28] *See* VERA INST. JUST., *supra* note 14 ("[Accountability] includes assuming responsibility for one's actions by acknowledging one's role and agency in causing harm, recognizing the impact of one's actions on others, working to repair that harm to the extent possible, and upholding a commitment not to cause further harm."). Philosopher Martha Nussbaum refers to the positive elements of shame as "constructive" shame. *See, e.g.*, NUSSBAUM, *supra* note 3, at 216 (describing instances in which feeling shame is positive); Nathan Harris, *Shame in Criminological Theory, in* ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4809, 4814 (Gerben Bruinsma & David Weisburd eds., 2014) (detailing how shame can be constructive emotion in some situations); *Shame and Pride Management*, JOHN BRAITHWAITE: WAR, CRIME, REG., http://johnbraithwaite.com/shame-and-pride-management/ [https://perma.cc/ME6Z-28F6] (last visited Nov. 20, 2018) ("[W]hen shaming is done within a cultural context of respect for the offender, it can be an extraordinarily powerful, efficient and just form of social control.").

experience feelings of shame.[29] Shame can help a person learn "what is acceptable and unacceptable in a society, organization, group, or family—in any interpersonal setting."[30] These positive outcomes of shame are most attainable when an individual is in a position to change his or her circumstances or to change the conditions recognized as contributing to the harming behavior.[31]

How a person responds to the emotion of shame in light of a transgression or wrongdoing depends, in large part, on that person's internal moral compass— what behaviors he defines as right or wrong; harmful or acceptable. One's response also depends on one's shame-proneness: an internal measure of a person's past experiences with shame.[32] The more shame a person has in his past, the less likely he will see a path towards rehabilitation. Further, one's experience with feeling or expressing shame can be culturally driven: in some communities, expressing shame is itself considered shameful. As a result, certain "individuals may 'sanction themselves' against exhibiting" their feeling of shame.[33] Withholding one's feeling of shame may induce others to accuse that person of "shamelessness," leading to additional stigmatization that furthers the feeling of shame.[34] A person feeling shame can also lead to *increased* feelings of shame as "one can become ashamed because one is ashamed, or angry because one is ashamed, then ashamed because one is angry . . . gathering increasing force with time, and potentially leading to depression or self-harm."[35] In short, shame is among the most complicated and unpredictable emotions that human beings navigate.

B.   *Shame and Aggression*

Individuals who experience the negative consequences of shame often seek ways to diminish their intensity. Some do so through rectifying the harm they have caused. In situations where a person has engaged in IPV, for example, rectification may lead to an apology, payment for damages or harm that resulted from the abuse, pleading guilty to criminal charges, or agreeing to the entry of

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[29] JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 69-83 (1989) (discussing why and how shaming can be effective in controlling misbehavior by adults); Chris Poulson, Shame: The Root of Violence 6-7 (2001) (unpublished manuscript) (on file with author) ("When an individual is able to perceive that one has transgressed a boundary and/or engaged in an inappropriate behavior (from the perspective of self, other, or both), the experience of shame can signal the need to change behavior.").

[30] Poulson, *supra* note 29, at 6.

[31] WALKER, *supra* note 16, at 48.

[32] *See infra* Part III (describing structural sources that make one more prone to shame, including poverty and child abuse).

[33] WALKER, *supra* note 16, at 39.

[34] *Id.* (suggesting that individuals who attempt to hide their shame are further stigmatized by community).

[35] Terry F. Taylor, *The Influence of Shame on Posttrauma Disorders: Have We Failed to See the Obvious?*, 6 EUROPEAN J. PSYCHOTRAUMATOLOGY, no. 1, 2015, at 4.

a civil protection order ("CPO"). For others, denial, abdication, and blaming others for their harmful behavior may be their response to feeling shame. Still others turn to aggressive or violent behavior.

Aggression can serve to diminish "the intensity of shame and replace it as far as possible with its opposite, pride, thus preventing the individual from feeling overwhelmed by the feeling of shame."[36] While guilt has been found to be an emotion that gives direction—making the harmful *behavior* clear, creating a path forward for a wrongdoer to make reparations—shame can prevent a person from seeing a path towards change because it can cause a person to believe that his core self, not his behavior, is flawed. That inability to fix oneself can be frustrating or humiliating, and can be a root cause of *increased* aggression or other harmful behaviors, including the same behavior for which that person now feels ashamed.[37] Aggressive acts that result from feeling shame can lead to internally directed harm—e.g., substance abuse, suicidal ideation, or suicide completion—or harm that is externally directed.[38] For some shamed individuals, "lashing out at others" serves as a self-protective act.[39] Perceived power through violence provides an opportunity, even if only temporarily, to restore a shamed person's self-image or regain a sense of agency and control.[40] As one researcher noted, "While on the positive side, the experience of shame serves as a driver for constructive change, on the negative side it serves to reduce self-esteem and self-worth, and may accumulate

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[36] Poulson, *supra* note 29, at 12; *cf.* Stuewig et al., *supra* note 21, at 97 (finding no direct relationship between shame and aggression, though finding indirect relationship between shame and aggression through externalization of blame).

[37] *See* JUNE PRICE TANGNEY & RONDA L. DEARING, SHAME AND GUILT 90-95 (Peter Salovey ed., paperback ed. 2004) (evaluating link between shame and interpersonal hostility); Stuewig et al., *supra* note 21, at 91 ("Overwhelming feelings of shame and guilt may cause individuals to aggress."); *Shame and Batterer Intervention*, CTR. ON VIOLENCE AND RECOVERY, N.Y.U. (Apr. 17, 2015), http://centeronviolenceandrecovery.org/blog/2015/4/17/shame-and-batterer-intervention [https://perma.cc/LT35-LUFJ] ("[I]nterventions that rely on punitive, anti-therapeutic responses can be seen as shame inducing themselves and thus might contribute to continued incidents of partner abuse."); *infra* Section II.C.1 (explaining best practices for preventing wrongdoers from repeating maladaptive behavior).

[38] *See* CTR. ON VIOLENCE AND RECOVERY, *supra* note 37 (stating that people seek to suppress intensity and pain of shame by inflicting harm to themselves).

[39] Massaro, *supra* note 3, at 656 (noting varied behavioral consequences of shame).

[40] Stuewig et al., *supra* note 21, at 92 ("Feeling powerlesss and in pain, shamed individuals may become angry, blame others, and aggressively lash out in an attempt to regain a sense of agency and control."); *see* NUSSBAUM, *supra* note 3, at 184, 235 (noting that casting shame upon offenders leads to greater sense of alienation for offender, which could lead to greater violence); Massaro, *supra* note 3, at 671 ("Often, this restoration [of the self] is impossible, and only physical withdrawal will ease one's sense of shame.").

over time until a point of overload is reached. It is this overload that seems most associated with violence."[41]

Certain individuals, particularly those with cumulative experiences of wrongdoing (or perceived wrongdoing) followed by shaming experiences, may begin to act in ways consistent with the asserted or implied stigmatization—a "criminal"; a "delinquent"; a "batterer."[42] Indeed, there is a strong correlation between shame and individuals who engage in criminal behavior. According to psychologist James Gilligan, shame was a unifying emotion among hundreds of violent prisoners he interviewed:

> The secret is that they feel ashamed—deeply ashamed, chronically ashamed, acutely ashamed, over matters that are so trivial that their very triviality makes it even more shameful to feel ashamed about them, so that they are ashamed even to reveal what shames them. . . . [N]othing is more shameful than to feel ashamed.[43]

Consistent with Dr. Gilligan's findings, IPV perpetration and past experiences with shame are linked. While a child witnessing physical aggression between his parents is an identified predictor of adult perpetration of violence, when parental physical violence is controlled for, childhood shaming experiences— those that result in humiliation of the child by his parents in front of others; unpredictable or random punishments; or "parental treatment that affect[s] the [child's] whole self"—have been found to be *more* strongly correlated with adult perpetration of partner violence.[44] Part III explores the connection between IPV perpetration and childhood shame further.

Perpetrators of IPV often identify being shamed by the person they harm as the "cause" for their abuse.[45] Consequently, exploring shame as a factor

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[41] Poulson, *supra* note 29, at 7.

[42] *See, e.g.*, BRAITHWAITE, *supra* note 29, at 22 (describing how individuals' failures or perceived failures produce shame, which results in these individuals banding together to set up their own delinquent value systems).

[43] JAMES GILLIGAN, VIOLENCE: REFLECTIONS ON A NATIONAL EPIDEMIC 111 (1997).

[44] These three criteria were derived from a twenty-two item "shame scale" which aggregated reports of parental actions related to shaming. Donald G. Dutton, Cynthia van Ginkel & Andrew Starzomski, *The Role of Shame and Guilt in the Intergenerational Transmission of Abusiveness*, 10 VIOLENCE & VICTIMS 121, 123 (1995). Childhood shaming experiences can include emotional or physical abuse or other displays by the parent that a child is not lovable. As noted by Gilligan, "Violence—whatever else it may mean—is the ultimate means of communicating the absence of love by the person inflicting the violence." GILLIGAN, *supra* note 43, at 47.

[45] *See* Jac Brown, *Shame and Domestic Violence: Treatment Perspectives for Perpetrators from Self Psychology and Affect Theory*, 19 SEXUAL & RELATIONSHIP THERAPY 39, 47 (2004) (noting "perpetrators frequently justify their violence in terms of unfair treatment by their partner"); Kris Henning, *"I Didn't Do It, but If I Did I Had a Good Reason": Minimization, Denial, and Attributions of Blame Among Male and Female Domestic Violence Offenders*, 20 J. FAM. VIOLENCE 131, 131 (2005) (finding that both male and female perpetrators of IPV "attribute greater blame for the recent offense to their

that contributes to violence in intimate relationships might be perceived as anti-feminist, blaming victims, or reinforcing excuses for abusive behavior. Yet, to craft effective responses to IPV when it happens, and to seek to prevent it from happening in the first place, demands understanding and exploring the experiences of the survivor *and* the perpetrator. By understanding shame's role in IPV perpetration, anti-IPV advocates, lawyers, and judges can be better informed about the impact of various accountability interventions, particularly those that intentionally or implicitly denigrate a perpetrator's dignity and the resulting counterproductive outcomes those interventions may have on the survivors they are designed to empower.[46]

C. *The Intent of Shaming: Reintegrative or Stigmatizing*

Beyond one's internal reaction to an experience or intervention, shame can be externally imposed by *others* following an actual or perceived wrongdoing.[47] As discussed in the Introduction, the external imposition of shame can be experienced informally (e.g., an Internet callout) or formally (e.g., judicial orders). Predicting whether a shamed person will respond to a particular intervention in maladaptive or productive ways often depends on the context within which shame is imposed.[48] Criminologist John Braithwaite and others have identified those contexts as falling into two general categories—shame intended to reintegrate the wrongdoer and shame intended to stigmatize him.[49]

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spouse/partner than they acknowledge for themselves"); Stuewig et al., *supra* note 21, at 92 (noting that "shamed individuals may become angry, blame others, and aggressively lash out in an attempt to regain a sense of agency and control"); June P.Tangney, Jeffrey Stuewig & Andres G. Martinez, *Two Faces of Shame: The Roles of Shame and Guilt in Predicting Recidivism*, 25 PSYCHOL. SCI. 799, 799 (2014) ("When shamed, people want to escape, hide, deny responsibility, and blame other people.").

[46] *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 290 (2005) ("[T]hus, the solution for male intimate violence was arrest, prosecution, and incarceration of offenders. Although such recommendations are important, they do not incorporate or address the material, social, and economic concerns of women survivors."). Understanding these conditions is not meant to excuse violence. As asserted by Gilligan, "Explanations are not to be confused with exculpations, or justifications; they serve an altogether different set of purposes, namely, causal understanding and primary prevention." GILLIGAN, *supra* note 43, at 54; *see* Reyles, *supra* note 21, at 408 (emphasizing importance of studying influence of relationship between shame and poverty conditions on individuals).

[47] *See, e.g.*, WALKER, *supra* note 16, at 132 (describing shame among poor people as "internally felt but also externally imposed").

[48] *Id.* (stating community intention of reacceptance helps define whether shame will be reintegrative or stigmatizing).

[49] BRAITHWAITE, *supra* note 29, at 55 (noting shame as punishment for crime may be counterproductive when it is stimatizing rather than reintegrative).

Reintegrative—or constructive—shame seeks to hold wrongdoers publicly accountable for the harm they have caused, paired with a goal of reintegrating that wrongdoer into a community, family, or other group from which his maladaptive behavior led to, or could have led to, exclusion.[50] While disapproval for the harmful behavior is communicated within a reintegrative context, the individual *himself* is not denigrated.[51] Instead, reintegrative shaming publicly disapproves of the behavior while also displaying public respect for the individual and promoting forgiveness and acceptance.[52] As explored in Part IV, reintegrative shame serves as a foundation for most restorative justice models and is rooted in a philosophy of dignity preservation.

In contrast, stigmatizing—or disintegrative—shame arises when an intervention humiliates, shuns, or degrades a person for his committed wrong.[53] Stigmatizing shame "encourages offenders to view themselves as outcasts" and/or encourages *others* to treat offenders as outcasts.[54] Similar to the distinction between shame and guilt, stigmatizing shame does not separate the behavior from the person, often conflating the *wrongdoing* with the *wrongdoer*.[55] Stigmatizing shame can be intended to cause—and often results in—social exclusion and isolation.[56] Indeed, some stigmatized individuals remove themselves from their "social support network to avoid the potential embarrassment of being discovered."[57] In response to Delaware becoming the final state to abolish public physical punishments—punishments that are

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[50] *See id.* at 4 ("[S]haming controls crime when it is . . . bounded by ceremonies to reintegrate the offender back into the community of responsible citizens."); NUSSBAUM, *supra* note 3, at 211 (defining constructive shame).

[51] *See* BRAITHWAITE, *supra* note 29, at 55 (emphasizing importance of "ensuring the deviance label is applied to the behavior rather than the person" in reintegration).

[52] JOHN BRAITHWAITE ET AL., SHAME MANAGEMENT THROUGH REINTEGRATION 32 (2001) ("The theory of reintegrative shaming contends there are a number of things we can do to reduce the risk of stigmatization when wrongdoing is so serious that we are morally required to confront it rather than let it go. We can communicate our disapproval of the act while affirming the person as an essentially good person.").

[53] *See* BRAITHWAITE, *supra* note 29, at 55 ("[T]he defining characteristic of stigmatization as assignment of a deviant characteristic to the person as a master status.").

[54] Schwarcz, *supra* note 5, at 2193 (noting that stigmatizing shame results in offenders being more likely to associate with others who are perceived to be against mainstream standards, thus perpetuating their treatments as "outcast").

[55] Harris, *supra* note 28, at 4810 (explaining stigmatizing shame "occurs when disapproval is directed at the person as well as at the offensive behavior").

[56] David Karp, *The New Debate About Shame in Criminal Justice: An Interactionist Account*, 21 JUST. SYS. J. 300, 302 (2000) ("The threat of social exclusion, of not being regarded as a worthy member of the community, is the primary sanction in a shame penalty.").

[57] Schwarcz, *supra* note 5, at 2199 (stating offender "may refrain from reaching out to his friends for fear that they have learned of his conviction").

distinctly stigmatizing—in 1972, the *New York Times* captured this observation on how stigmatizing interventions can impact a wrongdoer:

> Without the hope that springs eternal in the human breast, without some desire to reform and become a good citizen, and the feeling that such a thing is possible, no criminal can ever return to honorable courses. . . . With his self-respect destroyed and the taunt and sneer of public disgrace branded upon his forehead, he feels himself lost and abandoned by his fellows.[58]

Social isolation from stigmatizing shame can lead to increased criminal or other antisocial behavior through the "associat[ion] with others who are perceived in some limited or total way as also at odds with mainstream standards."[59] For example, a young person who has been punished and stigmatized by others multiple times over his life may seek out "subcultures which reject the rejectors" to regain status and identity.[60] In fact, within certain subgroups, engaging in socially contrary behavior is identified as a positive and valued attribute,[61] and serves as a powerful anecdote to the negative consequences of shame.

To be clear, one *feeling* shame is not alone sufficient to establish that an intervention or punishment is stigmatizing, or intended to cause shame. Even when an intervention is imposed with an intention to reintegrate, a person may still feel stigmatized. In exchange for advancing a social interest in expressing moral intolerance for certain behaviors, all legal punishments or interventions have the potential to embarrass or ostracize a person.[62] Criminal convictions, CPOs, restorative justice conferences, and probation requirements may be standard accountability interventions, but nonetheless may lead to feelings of

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[58] RONSON, *supra* note 19, at 55.

[59] BRAITHWAITE, *supra* note 29, at 67 ("Stigmatization is the most important of those life circumstances that increase the attraction of individuals to criminal subcultures."); Shea W. Cronin, *Reintegrative Shaming & Restorative Justice*, B.U. METROPOLITAN C., https://learn.bu.edu/bbcswebdav/pid-1942479-dt-content-rid-6162758_1/courses/14sprg metcj602_ol/week06/metcj602_W06L01T04_Reintegrative.html [https://perma.cc/ANL2 -RK2D] (last visited Nov. 20, 2018) (noting "mechanism linking disintegrative shaming to further criminal behavior is the breakdown in bonds to the group and/or acceptance of criminal subcultures").

[60] BRAITHWAITE, *supra* note 29, at 102; Cronin, *supra* note 59 (providing when people are stigmatized by punishment, they feel isolated and "seek out subcultures supportive of crime or delinquency").

[61] ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 81 (1963) (explaining individuals with "secret differences," or stigma, will seek out subcultures where "they need not try to conceal their stigma" because they have "chosen the company of those with the same or a similar stigma").

[62] Harris, *supra* note 28, at 4810 ("Strong social norms against criminality, which arise through community activism, are seen as critical to low crime rates because they engender a culture in which crime is unthinkable because people come to see it as abhorrent.").

shame in a person experiencing them.[63] Conversely, using shaming punishments that are intended to stigmatize does not mean that a person will feel shame.[64] A person may be emotionally unaffected or not value his reputation or the reputation of the person shaming him enough to care about the resulting public humiliation.[65] This uncertainty about how external shaming will be experienced makes it a particularly unpredictable intervention. Yet, when the motivation is to punish through diminishing a person's dignity, interventions designed to shame may cause more harm than any benefit they might also produce.[66] As argued by Professor Martha Nussbaum, and for reasons explored in the next Part, for some wrongdoers "[u]sing shame to control crime is . . . like using gasoline to put out a fire."[67]

II.   INTIMATE PARTNER VIOLENCE, ACCOUNTABILITY, AND STATE-SANCTIONED SHAME

Shame has been used as an accountability tool for wrongdoers for centuries. Yet, within the context of IPV, *survivors* often bear the brunt of legal and social

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[63] *See, e.g.*, United States v. Gementera, 379 F.3d 596, 605 (9th Cir. 2004) ("Criminal offenses, and the penalties that accompany them, nearly always cause shame and embarrassment. Indeed, the mere fact of conviction, without which state-sponsored rehabilitation efforts do not commence, is stigmatic. The fact that a condition causes shame or embarrassment does not automatically render a condition objectionable; rather, such feelings generally signal the defendant's acknowledgment of his wrongdoing." (citation omitted)).

[64] *See* Karp, *supra* note 3, at 288 ("Effective shaming depends upon the stake a person has in the community. If a person cares nothing about the disapproval of others, shame is a useless tool. But such a person is extremely rare in society and best classified by a psychiatric disorder. More common is the person who cares little about the opinion of those who hold mainstream values. Instead, he or she cares about the opinion of other members of an oppositional subculture. Shaming remains quite effective, but only with regard to these subcultural members. The trick is to increase the stake of the offender in the larger community.").

[65] Schwarcz, *supra* note 5, at 2190 ("[S]haming, which imposes costs by impugning one's reputation, can deter only to the extent that a potential offender values his reputation in the first place.").

[66] Garvey, *supra* note 6, at 752 ("[W]hen shame does work, it may ironically push an offender into greater criminality. Rather than simply shame him, the penalty may 'stigmatize' or 'label' him a 'criminal.' And if an offender comes to identify himself as a 'criminal,' the result may be more crime, since crime is what 'criminals' do." (footnote omitted)); *see* Leslie Meltzer-Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 169 (2011) (providing typology of dignity identified through Supreme Court opinions as including five related concepts, including "personal integrity as dignity" and "collective virtue as dignity").

[67] NUSSBAUM, *supra* note 3, at 236 ("To expose that person to humiliation may often shatter the all-too-fragile defenses of the person's ego. The result might be utter collapse. Short of that, it is likely to be a sense of great alienation from society and its norms, which may well lead to great violence if the offender is prone to violence.").

blame and stigmatization for their failure to behave in ways expected of a "victim." Understanding how survivors have experienced shame provides a critical framework for crafting a morally consistent and principled response to the acceptance of shame as an intervention for *perpetrators*. This Part provides that framework following a broad overview of state-sanctioned shame in criminal, civil, and extralegal contexts. It then briefly explores the shaming experiences of survivors before turning to how shame has been used as an intervention for perpetrators, both historically and in modern-day.

A. *An Overview of State-Sanctioned Shame*

1.   Criminal Contexts

Before the advent of the modern U.S. prison system, public shaming was a commonly used legal sanction to control undesired social behavior.[68] Driven by the Puritan church's goal of enforcing standards of acceptable behavior and other social norms (and by European standards before that), publicly imposed punishments designed to humiliate or ostracize a wrongdoer were relatively routine.[69] A central goal of Puritan punishments was to create an "unpleasant emotional experience" for the accused.[70] Shaming sentences could range from consequences as minor as public apologies and repentance to physically harmful ones, including securement to a pillory and stocks; public whipping; or "hours on the gallows with a rope around the neck."[71] In response to particularly errant social transgressions, some individuals were permanently maimed, including through branding with a letter to serve as an enduring symbol to the community

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[68] For further discussion on the history of public shaming, see Mimi E. Kim, *Moving Beyond Critique: Creative Interventions and Reconstructions of Community Accountability*, 37 SOC. JUST. 14, 21 (2011), and Adam J. Hirsch, *From Pillory to Penitentiary: The Rise of Criminal Incarceration in Early Massachusetts*, 80 MICH. L. REV. 1179, 1179-81, 1220-46 (1982).

[69] E.B. v. Verniero, 119 F.3d 1077, 1115-16 (3d Cir. 1997) (Becker, J., concurring) (discussing common shaming punishments among American colonies, such as admonition, branding, and maiming); Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1914-15 (1991) (explaining importance in Puritan society of shaming punishments taking place in public to "reinforce the moral order").

[70] *Verniero*, 119 F.3d at 1115-16 (describing shaming punishments as effective because "they had 'sting'"); ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 20 (2004) (describing purpose of Puritan church courts was to "shame and disgrace the sinner").

[71] *Verniero*, 119 F.3d at 1115-16 ("[T]he physical punishment was seen as being effective only insofar as it resulted in the offender being shamed by the publicity of his offense."); Massaro, *supra* note 69, at 1912-15 (describing Puritan punishments, ranging from public confessions to death).

of the crime committed.[72] Non-physical but nonetheless acutely stigmatizing punishments were also imposed, including orders requiring wrongdoers to hold signs or wear letters indicating their transgressions.[73] The effects of such punishments were made more intense by their occurrence before the community where an offender lived, often leading to continued humiliation long after the sentence had expired.[74]

Following centuries of use, public shaming as a formal intervention eventually decreased for two primary reasons. First, available land, economic opportunity, and an improved transportation infrastructure began to break apart the close-knit Puritan communities.[75] This community disruption reduced the mark of public wrongdoing and the related sting of isolation and disapproval that resulted from shaming sentences.[76] Second, growing collective moral outrage about degrading and humiliating forms of punishment led to more standardized punishments, including banishment from the community.[77] As a result, by the mid-1900s, nearly all forms of *physical* shaming punishments and most other forms of public humiliation were replaced by more consistent sentences intended to remove the wrongdoer from the community and/or limit his freedom of movement.[78] This standardized punishment of community

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[72] *See Verniero*, 119 F.3d at 1115-16 ("The effect of branding, mutilation, or maiming was often to cast the offender out of society once and for all."); NUSSBAUM, *supra* note 3, at 174 ("The branding of criminals . . . is a practice that keeps reappearing in one or another form, and thus shame has been throughout history a pervasive part of practices of punishment."); Paul Ziel, *Eighteenth Century Public Humiliation Penalties in Twenty-First Century America: The "Shameful" Return of "Scarlet Letter" Punishments in* U.S. v. Gementera, 19 BYU J. PUB. L. 499, 500 (2005) (noting that historical practices "involved branding the criminal on a visible part of the body, such as the cheek or forehead, so as to unmistakably alert the public to the criminal's tendencies").

[73] Massaro, *supra* note 69, at 1912-15.

[74] *Id.* (noting "fear of disgrace before the community was considerable," especially given social intimacy of colonies).

[75] Ziel, *supra* note 72, at 502 (noting improvement of transportation infrastructure resulted in "individuals experienc[ing] unprecedented mobility").

[76] *See, e.g., id.* ("[T]he foundation enabling the effectiveness of shaming crumbled and the ideology became archaic.").

[77] Donald Braman, *Punishment and Accountability: Understanding and Reforming Criminal Sanctions in America*, 53 UCLA L. REV. 1143, 1168 (2006) (noting criminal justice reformers "sought to rid punishment of what they viewed as its undesirable or ideologically offensive attributes").

[78] Dan Markel, *Are Shaming Punishments Beautifully Retributive? Retributivism and the Implications for the Alternative Sanctions Debate*, 54 VAND. L. REV. 2157, 2167-70 (2001) ("Developed as a partial response to the perceived decline in the utility of shaming punishments, incarceration of the criminal soon became the dominant penal response." (footnote omitted)); Ziel, *supra* note 72, at 506 (explaining that uniformity was a significant goal of Congress in setting sentencing guidelines for modern criminal justice system).

removal ultimately led to the development of our modern penitentiary system and to the dominant carceral response to criminal behavior.[79]

Yet, following the "extraordinary, quartercentury expansion of American prisons" and acceptance of punitive consequences as a leading goal of state intervention, penal and other criminal interventions are increasingly critiqued.[80] Among the leading critiques is the dearth of research that supports the effectiveness of punitive interventions—namely incarceration—in deterring criminal behavior (including IPV) or rehabilitating offenders (including perpetrators).[81] Another dominant critique of the reliance on jails and prisons includes the sheer costs of maintaining incarceration, particularly when overall crime rates have not correspondingly declined.[82]

In addition to illuminating the challenges with our modern response to crime, these critiques have been advanced by some to justify reintroducing public shaming sentences as a legitimate alternative. Some scholars have advocated for systematically reintroducing shaming sentences as a strategy for fixing our broken carceral system, viewing shame as a more effective tool for deterrence and punishment than incarceration.[83] Others have argued that shame is a

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[79] Markel, *supra* note 78, at 2170; Ziel, *supra* note 72, at 501-02.

[80] THE PEW CHARITABLE TR., ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 2 (2009), http://www.pewtrusts.org/~/media/assets/2009/03/02/pspp_1in31_report_final_web_32609.pdf [https://perma.cc/ZJ8J-YJWP] (examining effectiveness of America's overburdened prison system by noting "we are well past the point of diminishing returns, where more imprisonment will prevent less and less crime").

[81] *See, e.g.*, Aaron S. Book, *Shame on You: An Analysis of Modern Shame Punishment as an Alternative to Incarceration*, 40 WM. & MARY L. REV. 653, 656 (1999) (noting that "ample data suggests that current forms of sentencing are ineffective in punishing and/or rehabilitating criminals"). A dominant critique of the criminal justice system is its disparate impact on communities of color. *See* Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1274 (2004). However, because the racial disparity critique of the criminal legal system has not been used to call for increased shaming interventions, it is not directly explored in this Article.

[82] *See* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1159 (2015) ("Apart from the inhumanity of incarceration, there is good reason to doubt the efficacy of incarceration and prison-backed policing as means of managing the complex social problems they are tasked with addressing, whether interpersonal violence, addiction, mental illness, or sexual abuse."); Carol Steiker & Jordan M. Steiker, *Cost and Capital Punishment: A New Consideration Transforms an Old Debate*, 2010 U. CHI. LEGAL F. 117 (citing cost of approximately ninety thousand dollars per death row inmate, per year); THE PEW CHARITABLE TR., *supra* note 80, at 2 ("[F]or hundreds of thousands of lower-level inmates, incarceration costs taxpayers far more than it saves in prevented crime.").

[83] *See* NUSSBAUM, *supra* note 3, at 153 (noting position of Professor Dan M. Kahan of Yale Law School that, for variety of offenses, "shame penalties ought to be favored over other alternatives to imprisonment such as fines and community service").

"common-sense" cost-saving alternative to incarceration.[84] Some have identified that the reduction in shaming penalties has led to high moral costs, including "adrift" moral compasses of many wrongdoers; shaming penalties, they argue, are therefore needed to shape the behavior of individual offenders.[85] Still others have identified shame as an effective intervention for communities— through the State—to reassert social control over those prone to criminal behavior.[86] Judges have identified similar rationales for imposing shaming within their courtrooms. One judge noted that he imposes shaming sentences because the wrongdoer has "too good a self-esteem."[87] Others have named that they use shame to rehabilitate or morally educate offenders through the "lessons learned" from such sentences.[88] Still other judges identify shame as mapping onto the foundational criminal justice tenet of *lex talonis*—an eye for an eye.[89]

Ascertaining how frequently courts apply any of these reasonings and impose shaming sentences in lieu of incarceration or other penalties is difficult. Appeal rates challenging shaming punishments are low, in large part, because many wrongdoers consent to the punishment as an alternative to incarceration. Media

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[84] In advocating for increased use of shaming and public punishments, one researcher stated, "Public shaming punishments aren't just about trying to deter future crimes, or embarrassing low-level offenders to the extent that they would never think to relapse. They're also about the economics of the fiscally broken state and local criminal-justice system." Matt Berman, *Can Public Shaming Be Good Criminal Punishment?*, NAT'L J. (Sept. 9, 2013, 2:00 AM), http://www.nationaljournal.com/s/71318/can-public-shaming-be-good-criminal-punishment [https://perma.cc/WFK6-8TGE].

[85] Schwarcz, *supra* note 5, at 2192.

[86] *See* NUSSBAUM, *supra* note 3, at 227 (referencing Dan Kahan's idea that punishment is how "society expresses its most basic values" and shame punishments make "definite statement"); Chad Flanders, *Shame and the Meaning of Punishment*, 54 CLEV. ST. L. REV. 609, 610-12 (2006) (describing benefit of shaming punishments as "adequately express[ing] the state's condemnation of the crime at a much lower cost than imprisonment"); Dan Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 638 (1996) ("[T]he prospect of public disgrace exerts greater pressure to comply with the law than does the threat of imprisonment and other formal sanctions.").

[87] David Reutter, *For Shame! Public Shaming Sentences on the Rise*, PRISON LEGAL NEWS (Feb. 4, 2015), https://www.prisonlegalnews.org/news/2015/feb/4/shame-public-shaming-sentences-rise/ [https://perma.cc/2ECH-SZ6B] (noting judge would use shameful punishments to "bring defendants who appeared in his court down a rung"); *see* Garvey, *supra* note 6, at 746-47 (stating shaming punishments fit into retributivist theory that offender "deserves it").

[88] Garvey, *supra* note 6, at 757 (noting there are educational aspects of shame punishments through offenders "having once experienced that unpleasant emotion, fear experiencing it again and so might refrain from future wrongdoing"); *see also* Berman, *supra* note 84 (describing shame punishments as forcing offender to reflect on their life, while knowing public is watching, and remembering this while acting in future).

[89] Garvey, *supra* note 6, at 738-39 (stating "[p]unishments should aim to reflect back on the offender what he has done to his victim"); Reutter, *supra* note 87; *see also* Berman, *supra* note 84.

typically are not present at what otherwise might appear to be an uneventful court hearing. Instead, awareness of shaming interventions generally occurs through the public's interest in witnessing a public shaming sentence, or from reports by lawyers or litigants themselves about those experiences. However, anecdotal evidence suggests that shaming sentences are used with some consistency in courtrooms across the country. The most ubiquitous examples of modern shaming in the legal system are of judges ordering persons convicted of various crimes to hold signs in public locations, naming their crimes[90] or describing themselves as *being* a particular kind of person (e.g., "stupid," an "idiot," or a "bully").[91] Beyond these more common sentences, judges have also ordered an offender to watch the autopsy of the person they killed while driving drunk;[92] wear a chicken suit for a solicitation conviction;[93] stand with a pig and a sign reading "This is not a police officer" on a roadside as a consequence for shouting obscenities at an officer;[94] and take out a newspaper advertisement apologizing for engaging in public sex.[95]

Each of these sentences has the power to profoundly humiliate the offender, ostracize him from mainstream society, or both. Yet, judicial intent to humiliate or ostracize, alone, does not determine the constitutionality of such sentences. Courts across the United States, including the Supreme Court, have held shaming sentences to be constitutional so long as they are reasonably related to a legitimate governmental interest.[96] That constitutional threshold is met if the sentence is consistent with mandated statutory sentencing objectives—most

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[90] *See* United States v. Gementera, 379 F.3d 596 (9th Cir. 2004) (ordering defendant, who was convicted of stealing mail, to hold sign reading "I stole mail. This is my punishment"); Ballenger v. State, 436 S.E.2d 793 (Ga. Ct. App. 1993) (ordering defendant convicted of driving under influence to wear bracelet stating "D.U.I. CONVICT").

[91] *See* Reutter, *supra* note 87 (documenting numerous examples of judges sentencing defendants to hold signs publicly labeling themselves as particular type of person); *see also Ballenger*, 436 S.E.2d at 794; Jonathan Turley, *Shame on You; Enough with the Humiliating Punishments, Judges*, WASH. POST, Sept. 18, 2005, at B03 (documenting case in which judge ordered four young defendants to each wear sign labeling them as "JUVENILE CRIMINAL").

[92] RONSON, *supra* note 19, at 82-83.

[93] *Commit a Crime, Do the Time—in a Chicken Suit*, ABC NEWS (Aug. 11, 2007), http://abcnews.go.com/GMA/story?id=3467505&page=1 [https://perma.cc/5P9U-D9R4] (documenting case in which judge sentenced defendant to wear bird costume as punishment for soliciting prostitute).

[94] Tracey Read, *Most Influential: Judge Michael Cicconetti's Alternative Sentences Leave Impression*, NEWS-HERALD (Dec. 31, 2012), http://www.news-herald.com/general-news/20121231/most-influential-judge-michael-cicconettis-alternative-sentences-leave-impression-with-video [https://perma.cc/G43M-QHK4].

[95] *Id.*

[96] *See, e.g.*, United States v. Gementera, 379 F.3d 596, 600 (9th Cir. 2004) (holding that sentences "must be 'reasonably related' to 'the nature and circumstances of the offense and the history and characteristics of the defendant'").

commonly deterrence, protection of the public, and offender rehabilitation.[97] Nearly all interventions that humiliate or stigmatize the receiver of the sentence meet those constitutionally mandated constraints.[98] However, as explored in Part III, reliance on constitutionality alone to justify shaming ignores the extralegal harms that can arise from imposition of such sentences.

2.   Civil and Extralegal Contexts

Public denigration of wrongdoers is also used as a tool for accountability within civil and extralegal contexts. Most notably, the Internet provides an informal platform for individuals harmed, including survivors of IPV, to seek public accountability through public naming of their harmers and the harm they have experienced.[99] Facebook, among other social media sites, has multiple "naming and shaming" pages devoted to identifying wrongdoers, including perpetrators of IPV.[100] While those forums can provide communal space and empowerment for victims and their supporters, their use can also lead to devastating economic, social, and relational consequences on the publicly "named and shamed" person.[101] Unlike legal interventions, which provide

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[97] *Id.* at 607-08.

[98] *See id.* at 609 ("[W]e are aware of no case holding that contemporary shaming sanctions violate our Constitution's prohibition against cruel and unusual punishment."). Cases have been overturned only when interventions have been determined to fail to meet individual state mandates that limit sentencing statutes to rehabilitation of the offender. *See, e.g.*, People v. Hackler, 16 Cal. Rptr. 2d 681, 682 (Ct. App. 1993) (overturning order that defendant wear t-shirt reading "My record plus two-six packs equal four years" on front and "I am on felony probation for theft" on back everytime defendant was outside his home, finding that such order did not serve rehabilitative purpose of California's probation statute because order's "true intent was to brand Hackler and expose him to public ridicule and humiliation, rather than to facilitate his rehabilitation" and it "severely compromised Hackler's chances of finding employment"); People v. Johnson, 528 N.E.2d 1360, 1362 (Ill. App. Ct. 1988) (overturning order that drunk driving offender publish newspaper advertisement with apology and mug shot, finding that such order did not comport with "overall intent" of Illinois's criminal supervision statute to "aid the defendant in rehabilitation and in avoiding future violations").

[99] *See infra* Section II.C (discussing modern day shaming). For a discussion about internet shaming, see podcast *Invisibilia*: *The Callout*, NPR (Apr. 13, 2018), https://www.npr.org/2018/04/13/601971617/the-callout [https://perma.cc/2ATK-MMKA] (chronicling woman's experience "calling out" harassment online and then becoming target of "callout" for her own past behavior).

[100] *See generally* RONSON, *supra* note 19 (describing devastating experiences of multiple individuals who have been "internet shamed").

[101] *See, e.g.*, *Domestic Violence Name and Shame*, FACEBOOK, https://www.face book.com/groups/279259069117028/ (last visited Nov. 20, 2018) (containing seven members and most recent post in 2016); *Domestic Violence Name and Shame the Culprits*, FACEBOOK, https://www.facebook.com/groups/296609539304/?ref=br_rs (last visited Nov. 20, 2018) (containing three members and most recent post in 2010); *Domestic Violence Perth Name and Shame So They Can't Do It To Others*, FACEBOOK,

theoretical checks on orders through appellate review or judicial oversight, Internet shaming has no such safeguards.

Within a civil context, "Megan's Laws" authorize publication of the names and addresses of persons convicted of certain crimes in sex offender registries.[102] The reach of the Internet has had a profound impact on the shaming aspect of this form of state intervention. By way of example, in 2017, the Pennsylvania Supreme Court ruled that a Megan's Law registry requirement could not be imposed *ex post facto* in part because it found the law's "publication provisions—when viewed in the context of our current internet-based world—to be comparable to shaming punishments."[103] This ruling is one of the first to find that the potential harm of disseminating "public" information in light of the Internet's expanse outweighs the defined governmental interest.[104]

Contrasted with Pennsylvania's ruling, the reach of the Internet, and the intensity and scope of public humiliation it allows, has been used to *support* the publication of information about parents delinquent in child support. In 2016, the Arizona Department of Economic Security began tweeting out photos, names, and how much parents—predominantly fathers—owe in child support, followed by the hashtag "#deadbeats."[105] While posting the names and photos

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https://www.facebook.com/groups/315597552204075/ (last visited Nov. 20, 2018) (containing eight members and requires permission to join); *Enoughs Enough!! Domestic Violence Against Women . . . Name n Shame*, FACEBOOK, https://www.facebook.com/ groups/969707293056176/ (last visited Nov. 20, 2018) (containing 553 members and requires permission to join); *NAME AND SHAME – Domestic Violence*, FACEBOOK, https://www.facebook.com/groups/154178297949000/ (last visited Nov. 20, 2018) (containing three members and most recent post in 2011); *Name and Shame the People That Do Domestic Violence to Others*, FACEBOOK, https://www.facebook.com/groups/ 140891946026652/ (last visited Nov. 20, 2018) (containing seven members and most recent post in 2012); *Naming and Shaming Domestic Violence Offenders*, FACEBOOK, https://www.facebook.com/groups/280090482129809/ (last visited Nov. 20, 2018) (containing twenty-six members and most recent post in 2014); *Stop Domestic Violence Lets Start Naming and Shaming Abusers*, FACEBOOK, https://www.facebook.com/ groups/74560270714/ (last visited Nov. 20, 2018) (containing four members and most recent post in 2011).

[102] *See, e.g.*, CAL. PENAL CODE § 290.46 (West 2018) (requiring publication on internet of dates of conviction and incarceration of sex offenders in California).

[103] Commonwealth v. Muniz, 164 A.3d 1189, 1212 (Pa. 2017) (finding that Pennsylvania registry is primarily punishment).

[104] *See, e.g.*, Smith v. Doe, 538 U.S. 84, 86 (2003) (ruling that posting and public notification of person under Alaska's sex offender registration statute is not shaming because it results from "dissemination of accurate information about a criminal record, most of which is already public"); Schwarcz, *supra* note 5, at 2196 (noting how complexity of modern society limits impact of most shaming penalties as being only "partially communicative," as most members of offender's community will not learn about imposition of shaming penalties).

[105] Gregory Krieg, *How to Make 'Deadbeat Dads' Pay in 140 Characters or Less*, CNN (last updated Jan. 12, 2016, 4:03 PM), http://www.cnn.com/2016/01/12/politics/deadbeat-

of parents delinquent in child support on state websites is common across the United States, Arizona Governor Doug Ducey turned to Twitter after deciding that simply naming on the state website was not stigmatizing enough.[106] In a press conference directed at non-compliant fathers, Governor Ducey stated:

> For too long, you've been able to remain anonymous, able to skirt your financial and legal responsibilities with no shame . . . . Well here's a new one for all the deadbeat dads out there: effective immediately, the state is going to begin posting the photos, names, and money owed by these losers to social media, with the hashtag deadbeat. . . . If you don't want your embarrassing, unlawful, and irresponsible behavior going viral: man up and pay up.[107]

Despite identified justifications of public safety and accountability for these and other public interventions, publicizing a person's wrongdoing has exceedingly mixed results. In most contexts, experiencing shame has "no record of efficacy in turning someone away from crime" and research suggests limited effectiveness in stigmatizing interventions leading to other positive behavior change.[108] While some offenders identified that the Megan's Law registration requirement created a motivation not to re-offend, others identified that they suffered from "stress, isolation, loss of relationships, fear, shame, embarrassment, and hopelessness" as a result of the registration requirements.[109] Public shaming may not only be ineffective in stopping perceived morally contrary behavior but as explored in Part III, may counterproductively *increase* the behaviors it is targeted to reduce. [110]

The acceptance of shame in legal and extralegal contexts suggests an additional, more sinister aspect to the appeal of shaming: human interest in the suffering of others.[111] People who are publicly shamed have engaged in an act

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dad-tweets-arizona/ index.html [https://perma.cc/7FSR-SC6S] (describing Arizona's new policy).

[106] *Id.* Twitter has over 330 million active monthly users. *Number of Monthly Active Twitter Users Worldwide from 1st Quarter 2010 to 2nd Quarter 2018 (in Millions)*, STATISTA (2018), https://www.statista.com/statistics/282087/ number-of-monthly-active-twitter-users/ [https://perma.cc/TBZ9-D3YS] (showing that Twitter had 335 million active users in Q2 2018).

[107] *Arizona State of the State Address*, C-SPAN (Jan. 11, 2016), https://www.c-span.org/video/?402989-1/arizona-state-state-address [https://perma.cc/3ZT3-HW29] (containing quoted language at 34:06).

[108] *See* WALKER, *supra* note 16, at 47 ("While it is probable that people generally behave well, both to avoid shame and because they have internalized the social values policed by shame, there is limited evidence that those who experience shame behave better as a consequence."); Berman, *supra* note 84 ("[P]ublic shaming has no record of efficacy in turning someone away from crime . . . .").

[109] Jill S. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 49 (2005) (detailing study of 183 men who were subject to notification requirements as result of sex offense convictions).

[110] *See infra* Section III.C (discussing intersection of poverty and IPV perpetration).

[111] There is research to suggest that interest in the suffering of others is biologically

considered amoral or offensive to the senses of a broad subgroup of citizens. As was true in Colonial America, modern public shaming provides collective communal judgment about unacceptable behavior. That judgment arises from a sense of power and entitlement by certain (usually self-selected) subsections of the population to correct the behavior of others, particularly certain kinds of wrongdoers—those assumed to have an inherent proclivity for deviant behavior (e.g., sexual "predators," fathers who are not financially responsible for their children, drunk drivers). Shaming or taking pleasure in the shaming of others provides moral validation to the life one is living as compared to their "amoral" counterparts,[112] resting on an assumption that one's *own* behavior would not transgress into the moral failings displayed by the shamed individual.[113] Within the context of IPV specifically, the dominant cultural narrative attached to perpetrators—like "deadbeats" and "bullies"—easily casts them within a group of individuals for whom shaming sanctions may be particularly easy to tolerate, accept, and even take pleasure in.

B.   *Survivors, Blame, and IPV*

Consistent with its determination to institutionalize and control social behavior, the Puritan church also led efforts to reduce violence in the homes of European descendants.[114] The Puritans enacted the first laws against family violence, including spousal abuse, in the Western world.[115] Puritan leaders were responsible for adjudicating cases involving family violence, often ordering public accountability for husbands who privately harmed their children or wives.[116] While laws demanding accountability for the violence husbands inflicted on their wives demonstrated movement towards recognizing spousal abuse as a social wrong, religious and cultural expectations of both men and women carved deep exceptions to what constituted amoral behavior. If a woman

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rooted. *See, e.g.*, Mina Cikara & Susan T. Fiske, *Their Pain, Our Pleasure: Stereotype Content and Schadenfreude*, 1299 ANNALS N.Y. ACAD. SCI. 52, 53 (2013) (finding through controlled experiments that envy is strongly correlated with *schadenfreude*). Pleasure felt in response to someone else's misfortune is captured in the phrase "*schadenfreude*." *See, e.g.*, Richard H. Smith et al., *Exploring the When and Why of Schadenfreude*, 3/4 SOC. & PERSONALITY PSYCHOL. COMPASS 530, 530 (2009) (defining *schadenfreude*).

[112] *Talk of the Nation: Why We Revel in Others' Humiliation*, NPR (Aug. 1, 2011), https://www.npr.org/2011/08/01/138895817/why-we-revel-in-others-humiliation [https://perma.cc/F69D-NRCF].

[113] *See, e.g.*, RONSON, *supra* note 19, at 33-66 (describing intense public shaming against journalist who plagiarized aspects of book).

[114] PLECK, *supra* note 70, at 20 ("Church courts tried cases of spouse abuse, cruelty to children and servants, assaults, threats against parents, and child neglect . . . .").

[115] *Id.* at 21 (noting that "Massachusetts *Body of Liberties*" provided that "Everie marryed woeman shall be free from bodilie correction or stripes by her husband").

[116] *Id.* at 20 (noting that "ruling church elders investigated complaints" and upon congregation's determination that accused was guilty and had failed to repent, minister would deliver "blistering sermon chastising the evildoer").

deviated from her expected role as wife and homemaker, or was perceived to do so, both she *and* her husband could be publicly shamed—she, for her deviation, and he, for failing to keep her in line.[117] These exceptions created implicit and explicit permission—even social and legal expectations—for domestic violence ("DV"). A "nagging wife" and a "woman who convenanted with the devil" were separated by a "thin line," with both serving as a justification for DV and public humiliation.[118] Indeed, because "nagging" and adultering wives were so often blamed for bringing violence upon themselves, women began identifying in their petitions for divorce that they were beaten "without provocation."[119] These experiences of Puritan women were the experiences of white women. There was little to no accountability—through the Church or otherwise—for women held as slaves or who fell outside of the Puritan community and experienced violence in their intimate relationships during this period, or for many of the decades that followed.[120]

Through the late-1900s, progress towards perpetrator accountability was slow but incremental. By the mid-1800s, states began to criminalize DV, with some sanctioning public physical punishments as an accountability tool.[121] A few states passed laws that authorized physical and public shaming through flogging as a formal legal intervention for violence perpetrated in the home, though even those laws were limited to "extreme cases of wife beating."[122] Other states authorized less brutal but equally public forms of punishments. For example, in 1877 the Nevada legislature passed a law to "tie for two to ten hours, to a permanent post erected in the county seat, any man convicted for the first time of beating his wife or another woman."[123] The offender was forced "to wear a sign that read, 'Woman or wife beater.'"[124]

Despite some attempts to legislate accountability for DV by humiliating perpetrators, wives continued to be routinely blamed and shamed for "causing"

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[117] Common law principles of coverture granted husbands the right to beat their wives and impose public punishments for "misbehaving." *See* Miccio, *supra* note 46, at 287 ("The liberty to beat wives, a liberty the common law granted husbands through the doctrine of coverture . . . ."); Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PENN ST. L. REV. 337, 350 (2015) (noting that colonial courts "often found fault with the behavior of both spouses").

[118] PLECK, *supra* note 70, at 18-19 (providing examples of wives being publicly humiliated).

[119] *Id.* at 24.

[120] *See generally* Terri L. Snyder, *Women, Race and the Law in Early America*, *in* OXFORD RESEARCH ENCYCLOPEDIAS (Sept. 2015).

[121] PLECK, *supra* note 70, at 109.

[122] *Id.* at 111. While the motivation for those laws may have been to regulate abuse in intimate relationships, history suggests that the law was motivated more by a desire to "control the lower classes." *Id.* at 109.

[123] *Id.* at 110.

[124] *Id.*

the violence against them on a much grander scale than men were for inflicting it. By way of example, in 1864, a North Carolina court determined that an accusation of adultery charged by the wife against her husband was "sufficient provocation to justify a physical attack because her behavior fell outside the bounds of acceptable wifely conduct."[125] Thus, despite some legal progress, most perpetrators still were not held accountable as the legal system continued to rationalize blaming survivors and to shift responsibility from the person inflicting abuse to the person experiencing it.[126]

The eventual dismantling of laws favoring public chastisement and coverture nearly eliminated the risk that abused women would be subjected to formal, public punishments by the State for their "role" in the violence inflicted upon them.[127] Divorce became more accepted in the late 19th century, providing some women increased opportunities to exit abusive relationships.[128] However, progress remained elusive as existing chastisement laws were substituted with laws that legitimatized DV through a different justification: family privacy and spousal immunity.[129] Once again, these laws left perpetrators unaccountable and women with limited recourse for the violence inflicted upon them.[130]

Through vigorous advocacy by feminists, survivors, and other anti-IPV advocates, including the intentional naming of the scope and depth of the problem of violence against women, the last fifty years have led to a profound shift from complacency and overt victim blaming to demands for state and perpetrator accountability. By the late 1980s, family privacy and spousal immunity laws were repealed, reducing legal protections for perpetrators of abuse. Additionally, many anti-IPV advocates urged stronger criminal interventions "in part as a corrective for the history of profoundly inadequate and sometimes hostile response of the criminal justice system to domestic violence cases."[131] As a result, today many jurisdictions have adopted

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[125] Miccio, *supra* note 46, at 253 (citing State v. Black, 60 N.C. (Win.) 262 (1864)).

[126] *But see* Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860-1930*, 86 IND. L.J. 185 (2011) (challenging scholarship alleging apathy towards DV during this time).

[127] *See* Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1850 (2001).

[128] Ramsey, *supra* note 126, at 195 (documenting expanding grounds for divorce in United States and Australia in 19th century to include reasons such as "mental cruelty," adultery, and physical abuse).

[129] LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 29-30 (2008) ("[C]ourts adopted a family privacy theory: The legal system should avoid intervention in domestic violence cases out of a respect for the sanctity of the family and the intimacy of family relationships.").

[130] *Id.* at 30 ("If the courts refused to get involved, husbands could still beat their wives with little fear of state intervention of punishment.").

[131] Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 803 (2001) (describing changes in criminal

mandatory policies, including mandatory arrests and "no-drop" prosecutions in an explicit attempt to increase the accountability that for centuries had been elusive.[132] CPOs, available in every state, provide opportunities for survivors to create complementary forms of accountability through treatment programs, classes, or other requirements ordered of their abusing partners.

Despite progress towards increasing legal accountability, entrenched ideas about survivor behavior linger, contributing to less formal, though equally insidious, blaming and shaming of survivors.[133] Just as survivors report shame as an outcome of IPV and its correlative trauma, they also report experiencing shame from the system actors upon whom they must rely to extricate themselves from abusive relationships.[134] Survivors are routinely demeaned and disbelieved

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law for IPV).

[132] The dominant use of the criminal justice system, its mandatory policies and punishment, has generated robust critique by feminists and advocates, in large part about the impact such policies have on survivors. *See, e.g.*, LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 107 (2012) ("Mandatory arrest brought greater protection for many women, but at a sizeable cost—the freedom of individual women to decide whether they wanted to be involved in the criminal system at all."); Coker, *supra* note 131, at 806 ("[B]ecause these policies make irrelevant battered women's preferences regarding arrest and prosecution, mandatory policies limit the control of individual women."); Epstein, *supra* note 127, at 1867 ("By failing to honor a victim's individual preferences, mandatory policies patronize her and may undermine her efforts to exert control over her life by disrupting her intimate relationship, economic security, and family stability."); Deborah Epstein, Margret E. Bell & Lisa A. Goodman, *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL'Y & L. 465, 467 (2003) ("For many battered women, prosecution of their batterers actually creates a *greater* long-term risk of harm."); Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145, 148 (2015) ("It is time for the anti-domestic violence movement to consider taking a critical look at the state and institutional response to domestic violence and the current goal of safety, asking whether each established response or new initiative is addressing the needs of persons subjected to abuse in terms of their personal goals, resilience, agency, and dignity.").

[133] *See* Nicole M. Overstreet & Diane M. Quinn, *The Intimate Partner Violence Stigmatization Model and Barriers to Help Seeking*, 35 BASIC & APPLIED SOC. PSYCHOL. 109, 118 (2013) (analyzing existence of "cultural stigma" which is "manifested as victim-blaming reactions and attitudes from formal and informal support networks").

[134] *See, e.g.*, Herman, *supra* note 8, at 573 (indicating that victims understand legal system as "theater of shame"); Overstreet & Quinn, *supra* note 133, at 117 (noting that results of eleven studies showed women "expressed self-blame, shame, and embarrassment about partner abuse").

by police,[135] courts,[136] and other system actors for not conforming to expectations of how a survivor "should" respond to abuse, regardless of whether those responses would make her safe or stable. Women describe not reporting, or underreporting, their experiences with IPV or sexual violence "because they feel ashamed and responsible for the violence; they fear family disintegration, physical reprisal, and being degraded in the courtroom."[137] Survivors also identify embarrassment or fear of not being believed as weighing on their

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[135] In a recent ACLU large-scale study of service providers, attorneys, and others working with survivors of IPV, nearly eighty-eight percent reported that the police "sometimes" or "often" do not believe survivors or blame survivors for the violence and eighty-three percent reported that the police "sometimes" or "often" failed to take allegations of sexual assault and domestic violence seriously. ACLU, RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 1 (2015), https://www.aclu. org/report/sexual-assault-domestic-violence-and-policing [https://perma.cc/F97N-RRC6] (explaining concerns with regard to how police respond to domestic violence and sexual assault according to study respondents).

[136] *See* Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 751 (2007) (explaining how legal system's response to domestic violence victims reveals belief that women victims are weak and do not act in their best interests, particularly if they choose to stay with their abuser).

[137] John Braithwaite & Kathleen Daly, *Masculinities, Violence and Communitarian Control*, *in* CRIME CONTROL AND WOMEN: FEMINIST IMPLICATIONS OF CRIMINAL JUSTICE POLICY 151, 163 (Susan L. Miller ed., 1998). Two recent examples validate these concerns. In December 2011, a woman came before a judge in Baltimore County, Maryland, for a temporary order of protection. *Judge Bruce Lamdin Interrogates Woman Seeking Restraining Order*, WASH. POST (Sept. 9, 2012), https://www.washingtonpost.com/video/ opinions/judge-bruce-lamdin-interrogates-woman-seeking-restraining-order/2012/09/09/ 614fd664-faae-11e1-875c-4c21cd68f653_video.html?utm_term=.36f6c6fbb22a\. In her ex parte testimony, the petitioner described a horrific assault by her husband:

He pinned me to a shelf, busted my arm open, left a gash in my forearm. He then threw me down on the floor, stomped me in the ribs so hard that I peed my pants. My oldest who was 12 years old got my son and hid in a closet with a hammer and called someone to come get us.

Id. The woman further described her husband's attempt to burn down their house a few days after the violence. *Id.* When she argued that she believed he was a threat to her safety and welfare and asked the judge to remove him from their shared home, the judge responded, "Ma'am there are shelters" and "It confounds me that people tell me they are scared for their life and then they stay in a situation where they can remove themselves and go to a shelter." *Id.* In 2014, a survivor of abuse had been subpoenaed to court for the trial of the person who had abused her. Rene Stutzman, *Seminole County Judge Reprimanded by Florida Supreme Court*, ORLANDO SENTINEL, Aug. 31, 2016, at B4. She failed to appear and a warrant for her arrest was issued. *Id.* After being arrested for her failure to appear, Florida Judge Jerri Collins brought the woman to tears. *Id.* After she identified extreme anxiety and her desire not to be involved in the trial as her reason for not appearing, Judge Collins responded, "You think you're going to have anxiety now? You haven't even seen anxiety." *Id.* Finding the woman in contempt, she sentenced her to three days in the county jail. *Id.* Both judges were ultimately sanctioned for their behavior in these cases. *Id.*

decision-making about how to respond to the violence they have experienced.[138] As observed by Judith Herman, "Victims understand only too well that what awaits them in the legal system is a theater of shame."[139] The myriad ways survivors continue to be blamed for the abuse inflicted upon them and their responses to it has driven much of the dominant feminist critiques of the mandatory policies rooted in our modern legal responses to IPV.[140] The criminal system specifically has been critiqued for the ways it can be disempowering, traumatizing, or humiliating in a manner "reminiscent of the original crime," and even "diametrically opposed" to the goals of survivors.[141] While the civil system provides more control to survivors, survivors have identified "feeling powerless and marginalized in the face of the complex rules and procedures" of the civil process.[142]

Unlike the motivations that may drive shaming those who perpetrate abuse (as described elsewhere in this Article), blaming and shaming survivors is often motivated by gender-normative expectations about how a victim "should" behave.[143] Despite these different motivations, there are parallels in outcome: shaming survivors *or* perpetrators for their response to an experience can result in acute dignity deprivation, with the shamed person being able to only "present himself [or herself] as part of his [or her] full self, rather than a unified, composed, or collected whole."[144] Drawing from these experiences of survivors can help shape a broad, morally consistent, and dignity-driven approach to the legal system's treatment of individuals who *engage* in IPV. A commitment to dignity cannot be limited to those who are legally or socially sympathetic or blameless, but must include protecting the inherent value of all citizen, including those who engage in deviant behavior. As explored in Part III, the distinction between "survivor" and "perpetrator" is often a illusory one. As a result, while the "justice system's treatment of victims has been far worse than its treatment of their abusive partners, the perceptions and experiences of" individuals who

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[138] ACLU, *supra* note 135, at 7-8 ("Other studies find that the primary reasons for non-reporting were embarrassment, fear of reprisal, fear that police won't believe them, and belief that police are likely to be ineffective.").

[139] Herman, *supra* note 8, at 573.

[140] *See, e.g.*, Coker, *supra* note 131, at 801 (analyzing impact of mandatory arrest policies on victims of domestic violence); Gruber, *supra* note 136, at 757-61 (considering advantages and disadvantages of mandatory arrest policies).

[141] Herman, *supra* note 8, at 574, 582.

[142] *Id.* at 582 (explaining that despite power legal system offers complainants, victims often feel powerless due to emotional nature of situation and confusing intricacies of filing civil complaint).

[143] *See, e.g.*, Overstreet & Quinn, *supra* note 133, at 118 (explaining how "friends and family made IPV survivors feel 'stupid' for staying in an abusive relationship").

[144] Meltzer-Henry, *supra* note 66, at 219 (using Supreme Court opinions to explain personal integrity as dignity).

abuse must be considered in order to protect the legitimacy of the legal system and to craft accountability interventions that prioritize dignity for all.[145]

C.   *Perpetrator Accountability and Modern-Day Shaming*

1.   Accountability, Defined

Following centuries of legal and social complacency, perpetrator accountability, along with survivor safety, is now consistently identified as a dominant goal of the anti-IPV movement.[146] Accountability occurs through two distinct but interrelated means: those externally imposed and those that result from an internal recognition of a wrong done and the learning that flows from that recognition.[147] External accountability "occurs when you change your behavior because another person or an outside agency gives you consequences for your behavior."[148] External accountability might occur through a public declaration or public action that a person or organization has complied with norms or expectations, or failed to comply, followed by a reinforcer or punisher. Voters hold public officials externally accountable for their election promises, reelecting them into office or voting them out depending on their perceived effectiveness. Schools are held externally accountable for their students' tests scores, which can impact bonuses, enrollment numbers, and teacher recruitment. Within the context of IPV, external accountability can be achieved through public, judicial, and/or moral condemnation by others of a perpetrator's abuse.[149] External accountability in the context of wrongdoing might occur through retributive interventions, such as arrests, convictions, and CPOs (though not technically retributive, CPOs are often pursued to redress harm experienced).

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[145] Epstein, *supra* note 127, at 1884.

[146] *See* Ramsey, *supra* note 117, at 359 ("[T]he Battered Woman's Movement emphasized batterer accountability, rather than treatment. Keeping women safe and helping them escape abusive relationships, along with educating the public about the harms of domestic violence, also headed the Movement's goals."). Some feminist scholars question whether these two goals should be expanded to include others. *See, e.g.*, Johnson, *supra* note 132, at 148 (arguing that anti-DV movement needs to shift from goal of "short-term safety" to "short and long-term security").

[147] *See, e.g.*, WALKER, *supra* note 16, at 132 (noting that shame "is internally felt but also externally imposed").

[148] *See, e.g.*, KEVIN A. FALL & SHAREEN HOWARD, ALTERNATIVES TO DOMESTIC VIOLENCE: A HOMEWORK MANUAL FOR BATTERING INTERVENTION GROUPS 105-06 (4th ed. 2017).

[149] According to John Braithwaite, shaming is "all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming." BRAITHWAITE, *supra* note 29, at 100. Braithwaite's definition "does not limit itself to demeaning or humiliating forms of disapproval but seeks to encompass the full spectrum of ways in which disapproval might be expressed." Harris, *supra* note 28, at 4810.

Holding perpetrators externally accountable can be critical to the empowerment and overarching goals of a survivor—convictions, treatment programs, and stay away orders carry an explicit message that abuse is not tolerated, can validate a survivor's experience, and ultimately, may keep her safe.[150] Yet, as Fernando Mederos noted, "creative and flexible" responses to perpetrator accountability advocated through the initial anti-IPV movement have moved to "somewhat rigid beliefs and practices about intervention" for perpetrators.[151] In particular, and as explored further below, accepted external accountability interventions for IPV have been intransigently stuck on a standardized menu of interventions including criminal convictions and domestic violence intervention programs ("DVIPs"), with limited space for interventions that are responsive to the experiences or needs of the individual perpetrator.

Internal accountability is most commonly identified as rehabilitation—a cognitive recognition of the harm one has caused followed by a change of behavior.[152] The strongest indicator of internal accountability is avoidance of deviant behaviors and engagement in adaptive ones.[153] Understanding how to achieve internal accountability and what factors might interfere with it is critical to understanding how to most effectively intervene in response to harmful behaviors.[154]

External and internal accountability are interrelated. External accountability can increase one's internal accountability by creating a climate where expectations for behavior are clear and the expected behavior change is perceived as possible. To achieve internal accountability, a contemporaneous external force, such as a conviction, CPO or a restorative justice conference, may be necessary. Conversely, if external interventions fail to resonate with the wrongdoer, or if they ostracize or denigrate him, internal recognition of wrongdoing and behavior modification may be elusive. While shame can be a vehicle for achieving internal accountability, neither internal nor external

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[150] *See, e.g.*, Herman, *supra* note 8, at 585 (explaining that victims' "most important object was to gain validation from the community" and that "[t]hey wanted their communities to take a clear and unequivocal stand in condemnation of the offense").

[151] Fernando Mederos, *Batterer Intervention Programs: The Past, and Future Prospects*, *in* COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND 127, 135 (Melanie F. Shepard & Ellen Pence eds., 1999).

[152] FALL & HOWARD, *supra* note 148, at 105-06.

[153] *See, e.g.*, *id.* ("Internal accountability occurs when you change your behavior because you believe it is the right thing to do. Deep inside, you realize that you are responsible for hurting another person, and for that reason you want to change.").

[154] CREATIVE INTERVENTIONS, CREATIVE INTERVENTIONS TOOLKIT: A PRACTICAL GUIDE TO STOP INTERPERSONAL VIOLENCE 4.F-1 to 4.F-93 (2012), http://www.creative-interventions.org/wp-content/uploads/2012/06/4.F.CI-Toolkit-Tools-Taking-Accountabili ty-Pre-Release-Version-06.2012.pdf [https://perma.cc/W4YP-VJHY] (suggesting strategies to anticipate resistance to taking accountability and navigate such avoidance tactics in order to achieve accountability and stop violence).

accountability need shame to be achieved. In fact, shaming may reduce internal accountability by a person emotionally or physically blocking himself from shame's potentially positive impact.[155] Yet, within our legal system and increasingly within our culture, shame is conflated with accountability, the distinctions between them ignored.

### 2.	Shaming Sentences

In 2013, a twenty-seven-year-old man punched his girlfriend in the face, fracturing it in three places.[156] After convicting him, a Montana district judge ordered the defendant, in addition to sentencing him to six months in jail and ordering him to pay the medical bills his girlfriend incurred as a result of the assault, to write "boys do not hit girls" five thousand times.[157] In Florida, a wife alleged that her husband pushed her onto their couch and "put his hand on her neck."[158] Upon finding that the violence was "very, very minor," and after hearing from the wife that she was not hurt or in fear, the court ordered the husband to buy his wife flowers, bring her to Red Lobster for dinner, and then take her bowling.[159] In 2004, a judge in Texas ordered a perpetrator of abuse to attend yoga classes once a week for a year.[160]

Depending on the perpetrator, these sentences may achieve the goal of internal accountability by rehabilitating him through recognition of the harm he caused, while also validating the survivor's experience and maintaining the retributive focus of the criminal legal system. These sentences may be viewed as creative, even constructive, and neither designed to publicly denigrate the perpetrator, nor out of line with the severity of the underlying crime. Indeed, creative sentences can lead to targeted problem-solving and provide judges the ability to identify the most directed interventions for an individual's harmful behavior.[161] Sentences that expand beyond traditional criminal justice

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[155] *See supra* Part I (analyzing unpredicatable nature of responses to shaming tactics).

[156] Michael Muskal, *Judge Orders Man to Write 5,000 Sentences; Man Who Punched Girlfriend Must Draft 'Boys Do Not Hit Girls.'*, DAYTON DAILY NEWS, Dec. 25, 2013, at A6.

[157] *Id.*

[158] Danielle A. Alvarez, *Judge Orders Husband in Marital Spat: Go on a Nice Date*, SUN SENTINEL, Feb. 8, 2012, at 1A. The judge also found that the defendant held up his fist to hit her but never struck her. *Id.*

[159] *Id.* The couple was also ordered to begin seeing a marriage counselor within a week. *Id.*

[160] *Yoga Sentence Judge: 'Each Case is Different'*, CNN (Jan. 24, 2004, 9:18 PM), http://www.cnn.com/2004/LAW/01/24/cnna.standley/ [https://perma.cc/62P3-G96P]. This condition was ordered with the support of the victim and in addition to ten to twelve months of probation, eighty hours of community service, anger management counseling, and random urinalysis. *Id.*

[161] *See, e.g.*, *Commit a Crime, Do the Time—in a Chicken Suit, supra* note 93 (exploring judge's use of creative punishments when he found "traditional sentences, the jail time and

interventions *can* be more effective than those that fit within the standardized consequences routinely imposed.[162]

However, creative sentences should be imposed with caution. Judges have expansive power to issue orders that cross into shaming a litigant under a pretext of "fairness" or "creativity."[163] As explored in this Article, how a sentence will be *experienced* depends in large part on the person against whom it is ordered. For some, attending a yoga class for a year may be an educational and transformative experience; for others, it may feel akin to wearing a sign on their back. As such, judges must carefully weigh whether the gain in imposing a creative sentence outweighs the risks to the individual against whom the order is issued and, for the reasons explored herein, the survivor of that person's abuse.

Shame is a more obvious motivation for other types of sentences ordered in IPV cases. In one case, a judge ordered a convicted perpetrator of IPV to stand in front of his ex-wife—his victim—while she spit in his face.[164] As noted in the Introduction, in March 2017, a judge in Guilford County, North Carolina ordered three men found guilty of misdemeanor domestic violence charges the option of carrying a sign or serving time in jail.[165] All three men chose to carry the sign, which read: "This is the face of domestic abuse."[166] When asked about the experience, one of the men identified that carrying his sign was "pure hell, it's embarrassment."[167]

These sanctions may have satisfied the judge, the community, and even the survivor that the perpetrator was being held externally accountable for his crime. However, such sentences risk counterproductive outcomes to survivor safety and to a perpetrator's ability to achieve internal accountability. Shaming sentences also have an ancillary risk: While the shaming orders noted above were directed at particular wrongdoers, the reach of those sentences may extend well beyond the targeted person to his partner, children, and broader social network.[168] Indeed, family members and friends of wrongdoers often report

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a fine—those weren't working").

[162] *See, e.g.*, *id.* ("While there's no hard evidence that these punishments actually reduce crime, many are designed to give back to society or the person wronged.").

[163] *See, e.g.*, *id.* ("Many defendants complain the creativity is merely grandstanding or abuse of power, and some lawyers question its overall impact, saying these types of 'scarlet letter' sentences have no place in modern society.").

[164] Karp, *supra* note 56, at 303-04 (providing examples of "debasement penalties" which are designed to "lower the status of the offender through humiliation").

[165] Chad Tucker, *Guilford County Judge Orders Public Humiliation Punishment for Domestic Abusers*, FOX 8 (Mar. 29, 2017, 4:03 PM), http://myfox8.com/2017/03/29/guilford-county-judge-orders-public-humiliation-punishment-for-domestic-abusers/ [https://perma.cc/Z3CS-27NR] (describing men's reactions to their sentences).

[166] *Id.*

[167] *Id.*

[168] Hedwig Lee, Lauren C. Porter & Megan Comfort, *Consequences of Family Member*

shame through association, which can lead to the associated person's *own* stigmatization.[169] Shame by association may be particularly damaging to survivors of IPV, many of whom choose to stay with their shamed partner, and may contribute to the culture of survivor blame so prevalent within our modern, socio-legal systems.

Finally, formal shaming sentences can have a broadly destructive impact beyond the individual shamed. As Professor Leslie Meltzer-Henry argued, "When society treats people in ways that are *in*-humane, or when people engage in activities that are *de*-humanizing, collective virtue as dignity diminishes."[170] State-sanctioned degradation or humiliation of a person "is wrong not only for the effect it has on that individual, but also for the consequences it has on collective humanity and society."[171] If the goal of the above-identified shaming orders was to send a message of moral condemnation for shameful behavior, the judge incongruously subverted the dignity of the defendant to do so, potentially decreasing societal expectations of the judiciary. If the goal was to display unity with the survivor, the court may have failed not only by increasing her risk of physical harm, but by embarrassing the person she ultimately may love.[172] If the goal was to educate the offender or others about the harm of the shameful act of IPV, the lesson learned may be broader distrust of the legal system and lack of clarity on the harms of shaming.

3.   Domestic Violence Intervention Programs

DVIPs are the most commonly utilized intervention in civil and criminal cases involving IPV.[173] Though they "vary considerably in format, duration,

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Incarceration: Impacts on Civil Participation and Perceptions of the Legitimacy and Fairness of Government, 651 ANNALS AM. ACAD. POL. SOC. SCI. 44, 46 (2015) (noting that friends and family members of incarcerated persons may experience "feelings of shame and stigmatization" as result of that person's incarceration).

[169] *See, e.g.*, GOFFMAN, *supra* note 61, at 30 (explaining "tendency for a stigma to spread from the stigmatized individual to his close connections").

[170] Meltzer-Henry, *supra* note 66, at 221.

[171] *See id.* (explaining consequences of treating people in "subhuman manner").

[172] *See* Tamara L. Kuennen, *Love Matters*, 56 ARIZ. L. REV. 977, 990-91 (2014) (noting that women who remain in abusive relationships often feel "deep sense of commitment to their partners" and "feel hope that their relationships can work out").

[173] Mandatory DVIP attendance was reported as a primary intervention to domestic violence intervention in thirty-four percent of courts that responded to a national survey, with between seventy-five percent to one hundred percent of offenders ordered into a batterer program. MELISSA LABRIOLA ET AL., A NATIONAL PORTRAIT OF DOMESTIC VIOLENCE COURTS, at vii (2009); s*ee* CALIFORNIA TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE, DOMESTIC VIOLENCE: KEEPING THE PROMISE, VICTIM SAFETY AND BATTERER ACCOUNTABILITY 5 (2005) ("Batterer intervention programs are at the center of California's criminal justice response to domestic violence. Most convicted batterers are sentenced to probation and required, as part of that sentence, to complete a 52-week program."); Ellen L. Pence & Melanie F. Shepard, *An Introduction: Developing a*

approach, and collaborations,"[174] the vast majority of DVIPs conform to the Duluth Model.[175] The Duluth Model arose out of feminist theory recognizing that IPV is caused by "patriarchal beliefs that compel men to exert power and control over their female partners through psychological and physical abuse."[176] Within this framework, men—DVIP programs are nearly uniformly designed for heterosexual male perpetrators of abuse—are asked to confront their attitudes about control and to learn strategies for dealing nonviolently with intimate partners.[177] DVIPs work in tandem with the legal system by holding perpetrators externally accountable to the victim, the court, and the community.[178] DVIPs also are designed to teach perpetrators to modify their cognitive justifications (and ultimately their behavior) for their abuse.[179] In some U.S. courtrooms, nearly one hundred percent of identified perpetrators are referred to DVIPs.[180]

Despite how commonly courts order participation in DVIPs, "[m]ost findings show that these programs do not change [perpetrators'] attitudes toward women

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Coordinated Community Response, in COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND, *supra* 151, at 3, 3-4 (explaining origin and growth of Duluth Model as intervention program).

[174] EDWARD W. GONDOLF, THE FUTURE OF BATTERER PROGRAMS: REASSESSING EVIDENCE-BASED PRACTICE 13 (2012). Programs range from twelve to fifty-two weeks long. *See* Julia C. Babcock, Charles E. Green & Chet Robie, *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCHOL. REV. 1023, 1024 (2004) (finding that treatment effects from IPV programs, including those that use cognitive behavioral therapy ("CBT") and Duluth Models had "minimal impact on reducing recidivism beyond the effect of being arrested").

[175] SHELLY JACKSON ET AL., U.S. DOJ, NAT'L INSTITUTE JUST., BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? 1 (2003), https://www.ncjrs.gov/pdffiles1/nij/195079.pdf [https://perma.cc/LY2F-JGDX].

[176] *Id.* (explaining Duluth model is psychoeducational program "based on the feminist theory that patriarchal ideology, which encourages men to control their partners, causes domestic violence"); Linda G. Mills, Briana Barocas & Barak Ariel, *The Next Generation of Court-Mandated Domestic Violence Treatment: A Comparison Study of Batterer Intervention and Restorative Justice Programs*, 9 J. EXPERIMENTAL CRIMINOLOGY 65, 68 (2013).

[177] JACKSON ET AL., *supra* note 175, at 1; Mills, Barocas & Ariel, *supra* note 176, at 68.

[178] *See, e.g.*, Mederos, *supra* note 151, at 130-31 (explaining how Duluth batterer intervention groups "were situated in a community-wide framework of institutions that held physically abusive men accountable").

[179] *See, e.g.*, John Hamel, *"But She's Violent, Too!": Holding Domestic Violence Offenders Accountable Within a Systemic Approach to Batterer Intervention*, 4 J. AGGRESSION, CONFLICT & PEACE RES. 124, 124 (2012) (noting that "holding domestic violence perpetrators accountable for their abusive behavior is the number one objective of batterer intervention programs"). DVIPs are also referred to as Batterer Intervention Programs ("BIPs") and Spouse Abuse Abatement Programs ("SAAPs"). JACKSON ET AL., *supra* note 175, at 1.

[180] LABRIOLA ET AL., *supra* note 173, at vii (stating that 34% of courts responding to survey "reported ordering 75% to 100% of offenders to a batterer program").

or domestic violence, and that they have little to no impact on reoffending."[181] In part, their lack of success arises from a failure to prioritize internal accountability. One comprehensive review of state DVIPs found that "[o]nly three jurisdictions list the therapeutic rehabilitation of the offender as a goal."[182] In light of this and of the limited success rates of DVIPs generally, external accountability (through retribution) appears to be the accountability goal prioritized for this most prevalent treatment intervention.[183] While external accountability alone may achieve *some* goals of the anti-IPV movement, the limited impact DVIPs have on meaningful behavior change is profoundly relevant to the goal of survivor safety and overall violence reduction.

Beyond critiques of the effectiveness of the content of the curriculum, DVIPs have been criticized for how they essentialize and shame perpetrators.[184] The nearly exclusive programmatic focus on patriarchal motivations for violence fails "to distinguish among men who abuse their partners"[185] or to assess the treatment needs of individual perpetrators and, as such, is at odds with psychological and sociological research.[186] In his seminal 2007 book, *Coercive*

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[181] Ramsey, *supra* note 117, at 367-68 (citing research that supports male offender who finishes DV intervention program based on either Duluth Model or cognitive-batterer intervention program "is only five percent less likely to re-assault his female partner than a man who has only been arrested and convicted in the criminal justice system"); *Domestic Violence Courts: Batterer Programs*, U.S. DOJ: NAT'L INSTITUTE JUS. (June 30, 2011), https://www.nij.gov/topics/courts/domesticcrime/intimate-partner-violence-courts/interve ntions/Pages/batterer-interventionprograms.aspx [https://perma.cc/6CXB-TU99] (noting that all domestic violence courts mandate batterer programs to some degree and that estimated "one-third of domestic violence courts refer almost all offenders to these programs"); *Intimate Partner Violence Interventions: Interventions—Batterer Programs*, U.S. DOJ: NAT'L INSTITUTE JUS. (July 6, 2011), https://www.nij.gov/topics/crime/intimate-partner-violence/interventions/Pages/batterer-intervention.aspx [https://perma.cc/6P5V-7H73] (noting that while intervention programs have success with some, there is no consensus as to what percentage of men cease their violent behavior as result of participation in such programs).

[182] Ramsey, *supra* note 117, at 376 (examining batterer intervention programs to demonstrate general "focus on accountability, rather than treatment").

[183] *See id.* ("The focus on accountability, rather than treatment, is evident in the methods group facilitators are instructed to use.").

[184] Bob Wallace & Anna Nosko, *Working with Shame in the Group Treatment of Male Batterers*, 43 INT'L J. GROUP PSYCHOTHERAPY 45, 51-52 (1993) (explaining that group therapy can cause men to feel shame and become defensive).

[185] GOODMARK, *supra* note 132, at 148.

[186] *Id.* at 147-49 (arguing that ignoring complexity of men who abuse "significantly decreases the likelihood that interventions with those men will succeed" and reporting "there is significant debate about the effectiveness of these programs"). Failure to create curricula that are racially and culturally specific and that address the motivations for violence within certain racial and cultural groups stems, in part, from an essentialization of perpetrators. *See* Mederos, *supra* note 151, at 136 (explaining that DVIPs are structured without regard for psychological differences among abusive men). *But see* Ramsey, *supra* note 117, at 366 (noting that "Duluth model's official website denies that shaming is part

Control, Evan Stark explores a variety of motivations for IPV.[187] A year later, sociologist Michael Johnson introduced "typologies of intimate partner violence."[188] Still other lawyers, psychologists, and researchers have presented differing frameworks for understanding the types of violence that occur within intimate relationships.[189] Indeed, the research that reasons beyond power and control motivate IPV is so conclusive that according to Joan Kelly and Michael Johnson, "[a]mong some social scientists, it is no longer considered scientifically or ethically acceptable to speak of domestic violence without specifying the type of partner violence to which one refers."[190]

The failure to differentiate between motivations of perpetrators in an effort to gain a broader understanding of their violence can lead to perpetrators feeling "judged and disbelieved."[191] Yet, DVIPs remain consistently uniform. As argued by Professor Leigh Goodmark, "given that women frequently return to their partners after they enter treatment, assuming that the treatment will reduce abuse, the legal system is endangering women by essentializing men."[192] Myopically focusing on one treatment intervention for all perpetrators ignores other understood sources of violence and how those sources—including

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of its methodology").

[187] *See generally* EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE (Claire Renzetti & Jeffrey L. Edleson eds., 2007) (discussing men's political, economic, and domestic motivations for abusing women).

[188] MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 67, 77 (Claire Renzetti ed., 2008) (defining "intimate terrorism, violent resistance, and situational couple violence" as types of IPV). According to Johnson and Joan B. Kelly, there are essentially four primary categories of IPV: Coercive Controlling Violence, Violent Resistance (self-defense to coercive controlling violence), Situational Couple Violence, and Separation-Instigated Violence (violence that is "instigated by the separation [of a couple] where there was no prior history of violence in the intimate partner relationship or in other settings"). Joan P. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Intervention*, 46 FAM. CT. REV. 476, 477, 487 (2008). Of those typologies, the most prevalent are situational couple violence and coercive control. *Id.* at 489.

[189] *See, e.g.*, ELLEN PENCE & SHAMITA DAS DASGUPTA, REEXAMINING 'BATTERING': ARE ALL ACTS OF VIOLENCE AGAINST INTIMATE PARTNERS THE SAME? 3 (2006), http://praxisinternational.org/wp-content/uploads/2018/03/ReexaminingBattering-2.pdf [https://perma.cc/G6MZ-8TNW] ("Five distinct categories of domestic violence emerged in our analysis.").

[190] Kelly & Johnson, *supra* note 188, at 477 (citing Michael P. Johnson, *Apples and Oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence*, 2 J. CHILD CUSTODY 43, 43-52 (2005)).

[191] Ramsey, *supra* note 117, at 372 (citing Donald G. Dutton & Kenneth Corvo, *Transforming a Flawed Policy: A Call to Revive Psychology and Science in Domestic Violence Research and Practice*, 11 AGGRESSION & VIOLENT BEHAV. 457, 463 (2006)) (emphasizing shaming approach is not conducive to understanding causes of violence).

[192] GOODMARK, *supra* note 132, at 150.

poverty, race, and culture—are correlated with IPV and male identity.[193] Assuming one predominant motivation limits a more robust or accurate response to the "dynamics of the partner violence, the context, and the consequences" and the ability to consider "appropriate sanctions, and more effective treatment programs tailored to the different characteristics" of IPV.[194]

Additionally, attribution of traits or motivations disconnected from one's experience or understanding can increase feelings of humiliation, embarrassment, or shame in the person against whom the motivations are assumed.[195] Rigidly standardized DVIPs that are driven to trigger cognitive modification of specific beliefs and attitudes can "undercut[] one's sense of worth," leaving a participant feeling that he is flawed and cannot change.[196] The group aspect of DVIPs (nearly all use classes and not individualized or targeted treatment) further amplifies the shaming aspect of many DVIPs, making them akin to other interventions where one's wrongful behavior is publicized.[197] Stated bluntly by Bob Wallace and Anna Nosko, DVIP groups can become "a crucible of shame."[198]

III. STRUCTURAL SOURCES OF SHAME AND INTIMATE PARTNER VIOLENCE

Perpetrators of IPV often have multiple shame-creating experiences over their lifetimes. Poverty and childhood trauma, including trauma resulting from childhood abuse, are strongly correlated both with IPV perpetration *and* with shame. Understanding these shaming conditions enhances clarity about the risks of sanctioning or tacitly accepting shame as an accountability intervention for trauma survivors broadly, including those survivors who may perpetrate abuse against another person.

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[193] *See id.* at 4 (listing "contextual variables" that impact violent relationships); Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 204 (2008) (arguing for intersectional analysis of men's power in society).

[194] Kelly & Johnson, *supra* note 188, at 477-78 (describing value of differentiating among different types of partner violence).

[195] *See* Dowd, *supra* note 193, at 238 (explaining stereotypes of masculinity affect men "to the extent those constructions are inaccurate").

[196] GONDOLF, *supra* note 174, at 119 (describing shame as "complex issue" that can cause man to feel he "doesn't deserve anything better").

[197] *See* JOHNSON, *supra* note 188, at 73 ("[T]he most common approach . . . involves group sessions . . . .").

[198] Wallace & Nosko, *supra* note 184, at 52-53 ("The very fact of having to attend a group . . . may trigger for the man a sense of being flawed.").

A. *Poverty*

    1.   Poverty, Unemployment, and Shame

    Those who live in poverty are among the most stigmatized people in the United States and around the world.[199] While poverty is generally understood as a condition that impacts one's monetary access and resources, poverty also has a psychosocial dimension.[200] Poor people often report suffering "pain from mockery, taunting, and the assault on their human dignity and individuality"— core components of shame—as a result of their poverty.[201] Shame can be a cause or consequence of poverty, or both;[202] people living in poverty often feel ashamed at being unable to meet societal expectations due to their lack of resources.[203] That feeling of shame can undermine confidence and individual agency; lead to depression, sullenness, and disintegration; contribute to *increased* feelings of shame; and perpetuate the cycle of poverty.[204]

    Cultural messaging about individuals living in poverty consistently assumes their individual responsibility for the economic conditions within which they live.[205] Discussions of poverty are often separated from discussion about the structural conditions that perpetuate it, crafting a narrative that poverty results from personal failure or ineptness.[206] Poverty is roundly viewed as a "self-inflicted" condition, not as a condition of circumstances beyond an individual's control or the result of long-standing policies, including those that are racially biased.[207] As a result, poor individuals are often met with curtness and negativity—even contempt—in their interactions with families, communities,

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    [199] *See generally* WALKER, *supra* note 16 (discussing "poverty-shame nexus incorporating stigma").

    [200] *Id.* at 120 ("[S]hame is very often central to the experience of poverty."); Reyles, *supra* note 21, at 405 (analyzing nexus of societal shame, humiliation, and poverty).

    [201] NUSSBAUM, *supra* note 3, at 225 ("One of the most stigmatized positions, in all societies, is poverty.").

    [202] WALKER, *supra* note 16, at 188 ("The primary cause of poverty—lack of income variously attributable to complex combinations of restricted employment opportunities, limitations of health, age, education and development, and cultural and security constraints—is added to by the mix of stigmatization and external and internal shame that can exacerbate, deepen, and perpetuate [poverty].").

    [203] *Id.* at 97.

    [204] *Id.* at 182.

    [205] *Id.* at 56 ("[T]he public . . . readily view[s] most poverty as being self-inflicted . . . .").

    [206] *Id.* at 67-68 ("[P]ublic discourse . . . associates poverty with personal failings rather than with structural determinants . . . .").

    [207] *Id.* at 57 ("'Welfare' in the United States has traditionally been heavily stigmatized because it is widely identified with receipt by African Americans."); Loren Miller, *Race, Poverty, and the Law*, 54 CALIF. L. REV. 386, 386 (1966) (identifying American public's reluctance to admit U.S. Constitution "condoned and permitted discrimination" against African Americans).

and the agencies responsible for helping them.[208] According to Diego Zavaleta Reyles:

> The sense of humiliation and shame that poverty can bring relates to many aspects of life: it can result from being unable to do what is customary in society; from having to accept alms or special treatment; from encounters with officials and those delivering services; or from belonging to segments of society to which negative values are attached (e.g. in many contexts, poverty is associated with laziness, incompetence or criminality).[209]

A cultural perception also exists that poor people *behave* shamelessly—in ways that are "selfish, exploitative, and loathsome."[210] By way of example, people who make a choice to use their food stamps or other state-sponsored financial aid on certain kinds of food or cell phones or other nonessential needs, as defined by others, often report being publicly judged and humiliated, accused of using the system, taking advantage of taxpayer money, or abusing their "handout."[211] Relatedly, unemployment contributes to profound feelings of distress, humiliation, and shame by reinforcing assumptions about one's capacity and one's responsibility for their unemployment, even if that unemployment resulted from external causes.[212] The shame attached to unemployment can be particularly acute for men who may find themselves unable to meet societal expectations of breadwinning for their families.[213] As

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[208] NUSSBAUM, *supra* note 3, at 182 (listing "deeply rooted and long-standing patterns of thought" such as "belief that the poor cause their poverty"); WALKER, *supra* note 16, at 97, 151 (explaining that society makes impoverished people feel ashamed and detailing discrimination against poor people in various welfare schemes worldwide).

[209] Reyles, *supra* note 21, at 407.

[210] WALKER, *supra* note 16, at 89.

[211] Isaac Bailey, *Stop Shaming Poor People for Being Poor*, CNN (Mar. 29, 2017, 7:07 PM), https://www.cnn.com/2017/03/29/opinions/stop-shaming-poor-for-being-poor-baile y/index.html [https://perma.cc/G668-TJ8X] (describing "scorn" from Americans "who express disgust at the sign of someone paying for a steak with an EBT card"); Simcha Fisher, *The Day I Bought Steak with My Food Stamps*, PATHEOS (Apr. 17, 2015), http://www.patheos.com/blogs/simchafisher/2015/04/17/the-day-i-bought-steak-with-my-food-stamps/ [https://perma.cc/83EQ-WEE6] (describing one woman's experience with both being ashamed of being on food stamps and with experiencing judgment of others as she purchased steak for her family after saving up for months).

[212] Charlotte Bilo, *Psycho-socio Consequences of Poverty – Why It's Important to Talk About Shame*, SOCIALPROTECTION.ORG (June 15, 2017, 1:43 PM), http://socialprotection .org/learn/blog/psycho-socio-consequences-poverty-–-why-it's-important-talk-about-shame [https://perma.cc/285K-H5EP] ("[B]eing unemployed often evokes a feeling of uselessness.").

[213] Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity, in* SEX, GENDER, AND SEXUALITY: THE NEW BASICS: AN ANTHOLOGY 58, 60-61, 66 (Abby L. Ferber, Kimberly Holcomb & Tre Wentling eds., 2009) (further noting that one man's employment failures led to "shame," "humiliation," sense of "personal 'failure,'" and despair when "he has ceased being a man among men").

noted by one researcher, men often attribute unemployment "to themselves as worthless failures who are less than men."[214] Consequently, and for many of the reasons identified in the next Section, unemployment and its resulting shame serve as the "strongest contextual risk factor" for IPV.[215]

2.   Poverty and Aggression

As explored in this Article, shame, poverty, and aggression are linked. It is unsurprising, then, that many perpetrators of IPV live within conditions of poverty.[216] Low family income, coupled with the resulting stress, is statistically correlated with family violence.[217] Indeed, IPV strongly correlates with poverty, "economic deprivation and subjectively perceived economic strain."[218] Rates of IPV are nearly twice as high in households that live at or below the federal poverty level as compared to households living at one hundred to two hundred percent above the federal poverty level.[219] Women living in households where the annual income is less than $7,500 experience nearly seven times more IPV than do women in households where the annual income is $75,000.[220] Up to

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[214] Kevin L. Fall, Homeless Men: Exploring the Experience of Shame (Dec. 2014) (unpublished Ph.D. dissertation, University of Iowa), http://ir.uiowa.edu/cgi/viewcontent.cgi?article=5494&context=etd [https://perma.cc/3FS4-KXGA] (emphasis omitted).

[215] Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 421-22 (2007) ("Individual perceptions of declining economic well being contribute to family distress, conflict, and violence.").

[216] *Id.*; *see also* KATHRYN COLLINS ET AL., FAMILY INFORMED TRAUMA TREATMENT CTR., UNDERSTANDING THE IMPACT OF TRAUMA AND URBAN POVERTY ON FAMILY SYSTEMS: RISKS, RESILIENCE, AND INTERVENTIONS 21 (2010), https://www.nctsn.org/sites/default/files/resources/resource-guide/understanding_impact_trauma_urban_povertyfamily_systems.pdf [https://perma.cc/MPX5-RLDM] ("Adults surviving the stress of urban poverty are . . . more likely to experience multiple traumatic events.").

[217] COLLINS ET AL., *supra* note 216, at 12, 21, 32 (arguing level of stress is due, in part, to "poor interpersonal interactions in the family and . . . hopelessness about the future"); *see also* Ramsey, *supra* note 117, at 353-54 (finding that in "late nineteenth-century New York City . . . at least 12 of the 17 men convicted of first-degree domestic murders between 1879 and 1893 were working-class or unemployed" and that during the Temperance Movement "more than half of the men executed for domestic murders in turn-of-the-century New York were portrayed as drunks who depended on the meager earnings of their female intimates for liquor money").

[218] Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585, 610 (2015) (noting that "[p]oor women suffer significantly higher rates of domestic violence").

[219] ACLU, *supra* note 135, at 7 ("[I]ntimate partner violence rates for households living at or below the federal poverty level (FPL) are nearly *double* the rates of those living at 101% -200% of FPL.").

[220] *Id.* When their income increases to $24,999, women remain around three times more likely to suffer physical violence than women with annual incomes over fifty thousand dollars. SHANNAN CATALANO, U.S. DOJ, BUREAU OF JUST. STATISTICS, INTIMATE PARTNER

sixty-five percent of women receiving welfare benefits experience relational violence.[221] As Robert Walker noted in his book, *The Shame of Poverty*:

> Sometimes persons experiencing poverty are depicted as shameless, resisting the humiliation heaped on them, occasionally in ways that demonstrate moral strength and resilience but more often through the adoption of antisocial behaviour that turns out to bring them no benefits and often to make matters worse. Shame felt on the inside is portrayed as destructive, with people in poverty engaging in fantasy and self-deception, retreating into themselves and into a spiral of despair, depression, and failure that sometimes ends in violence or suicide.[222]

The stress and hopelessness of poverty can also cause some to experience frustration or anger. That anger may well up "uncontrollably from the sense of shame itself, sometimes from the frustration of being unable to stem the source of the shame, and sometimes from the apparent inability to do anything at all."[223] Violence is a common outlet for that anger and, as explored above, the shame from living in economically strained conditions.[224] For males in particular, violence serves to "ward off the shame and feared abandonment" that can result from not being able to fulfill their traditional masculine roles and serves to reinforce a socially valued form of masculinity—aggression.[225] Poverty-induced anger begins young: children growing up in poverty are more prone to anger than are children growing up in more financially secure homes.[226]

Despite the understood correlation between IPV and poverty, analysis of the economic structures of communities and households as context for DV has been dismissed as an excuse for avoiding perpetrator accountability and remains "largely absent from the debates" on how best to respond to it.[227] Professor Deborah Weissman, who has written on the correlation between market

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VIOLENCE IN THE UNITED STATES (2007), https://www.bjs.gov/content/pub/pdf/ipvus.pdf [https://perma.cc/BY5K-Q6HG] (reporting statistics of IPV across various demographics).

[221] Terrence D. Hill, Krysia N. Mossakowski & Ronald J. Angel, *Relationship Violence and Psychological Distress Among Low-Income Urban Women*, 84 J. URB. HEALTH 537, 537 (2007) ("[B]etween 34 and 65% of women receiving welfare report some form of relationship violence in their lifetime.").

[222] WALKER, *supra* note 16, at 97.

[223] *Id.* at 88.

[224] Weissman, *supra* note 215, at 421 ("Anger, humiliation, and despair experienced in the workplace are transferred to the home and . . . influence rates of family dysfunction and domestic violence.").

[225] Wallace & Nosko, *supra* note 184, at 50.

[226] *See* COLLINS ET AL., *supra* note 216, at 11-12 (explaining impoverished children experience extremely high rates of trauma and "chronic anger").

[227] Ramsey, *supra* note 117, at 359 ("[M]any factors associated with intimate-partner violence—including . . . poverty—were dismissed as myths or excuses."); Weissman, *supra* note 215, at 405-06 ("[E]conomic hardship and the demise of community resources [are] social conditions by which domestic violence is both cause and effect.").

conditions, economic insecurity, and IPV, has argued that the relationship between DV and economics has been "undertheorized due to fear that domestic violence would receive less attention as just one more problem emanating from a culture of poverty."[228] However, as explored in Part IV, advocating for the improved economic conditions of both survivors *and* perpetrators may be among the most critical interventions needed to reduce violence in intimate relationships.

B.   *Trauma, Family-of-Origin Abuse, and Shame*

Traumatic experiences, including those arising from living in poverty, "have a tremendous impact on future violence victimization and perpetration."[229] Children growing up in poverty face extremely high rates of trauma[230] and children living in urban poverty are routinely exposed to particular categories of trauma, including trauma arising from low neighborhood safety, racial discrimination, food instability, and exposure to substance abuse.[231] Exposure to violence in poor, often urban, environments also is common—many poor children experience the death of a family member, family violence, parental abandonment, or parental maltreatment.[232] The correlative trauma that can arise from living in poverty disproportionately impacts communities of color due to the racial makeup of many urban communities.[233] As a result of their experiences, children growing up in extreme poverty "are more likely than those growing up in other contexts to experience multiple traumas and . . . to thus

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[228] Weissman, *supra* note 215, at 436 ("[F]ocus on economic forces . . . serves to illustrate the ways in which current global economic restructuring often contributes to despair and violence.").

[229] *See, e.g.*, Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, 3 J. JUV. JUST. 1, 2 (2014) ("Adverse childhood experiences refer to the following 10 childhood experiences researchers have identified as risk factors for chronic disease in adulthood: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment towards mother, household substance abuse, household mental illness, parental separation or divorce, and having an incarcerated household member."); Massaro, *supra* note 3, at 664 (noting that many psychologists believe "that '[m]any violent children lash out . . . because . . . they are highly prone to shame (that is why so much violence is triggered by acts of disrespect).' Shame can provoke externalization of blame or other responses, including a reduced capacity for empathy" (footnote omitted)).

[230] COLLINS ET AL., *supra* note 216, at 12 (stating children growing up in poverty often display symptoms of Post-Traumatic Stress Disorder ("PTSD")). One study found that between seventy and one hundred percent of children screened had symptoms of trauma. *Id.* at 11 ("Studies of children living in poor inner-city neighborhoods document extremely high rates of exposure to trauma (70-100%) . . . .").

[231] *Id.* at 12.

[232] *Id.* at 11.

[233] *See id.* at 4 (noting that impoverished urban neighborhoods are disproportionately represented by families of color).

develop complex symptoms of traumatic distress"[234] or meet the diagnostic criteria for complex Post-Traumatic Stress Disorder ("PTSD").[235] Complex PTSD results from chronic trauma characterized by multiple, interpersonal traumatic events.[236] A complex PTSD diagnosis carries into adulthood: "Adults surviving the stress of urban poverty are not only more likely to experience multiple traumatic events; they are also more likely to develop trauma-related symptoms that impact their functioning, health and well-being."[237]

Shame can, and commonly does, result from traumatic experiences *regardless* of one's own victimization as a result of that trauma. Reflecting this correlation, in 2013 the DSM-5 was updated to include the following diagnostic criteria for PTSD: "persistent negative emotional state[s] (e.g., fear, horror, anger, guilt, or *shame*)."[238] Shame is also a characteristic of other mental health diagnoses including "obsessive-compulsiveness, psychoticism, anxiety, and depression" because of the ways people blame *themselves* for such mental health conditions or because of how others respond to the underlying behaviors that lead to a person's diagnosis.[239]

In part because of the impact of shame, trauma—including trauma resulting from childhood abuse and victimization—is also directly correlated with violence perpetration.[240] As noted by one psychologist regarding the most violent men in our culture:

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[234] *Id.* at 11.

[235] *Id.* at 12-13.

[236] *Id.* at 11-12 (stating children in urban poverty are more likely than others to develop complex symptoms of traumatic distress).

[237] *Id.* at 21 (citations omitted).

[238] AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (emphasis added). Researcher June Tangney and others call this "global devaluation"—identification of oneself as corrupt and not just one's behavior. *See, e.g.*, TANGNEY & DEARING, *supra* note 37, at 117 (discussing DSM-IV and its diagnostic criteria); Taylor, *supra* note 35, at 4 (stating it is possible shame diverted into anger could account for frequency of anger reactions in PTSD).

[239] Stuewig et al., *supra* note 21, at 91 (citations omitted). Guilt, on the other hand, has been found to be "unrelated or inversely related to psychological problems." *Id.* at 92. Mental health issues, including those arising from traumatic experiences, often lead to substance abuse—another risk factor for IPV. *See* Robert F. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARCHIVES PSYCHIATRY & CLINICAL NEUROSCIENCE 174, 181 (2006) ("We found a strong relationship between early adverse experience and substance use and abuse (illicit drugs, alcohol, and nicotine) later in life."). Substances may be used to self-medicate underlying mental health conditions that arise from previous traumatic, often shameful, experiences and substance abuse is strongly correlated with use of violence in intimate relationships. Kenneth Corvo & Pamela Johnson, *Sharpening Ockham's Razor: The Role of Psychopathology and Neuropsychopathology in the Perpetration of Domestic Violence*, 18 AGGRESSION & VIOLENT BEHAV. 175, 178 (2013) (finding suspected links between substance abuse and domestic violence).

[240] Charles L. Whitfield et al., *Violent Childhood Experiences and the Risk of Intimate*

As children, these men were shot, axed, scalded, beaten, strangled, tortured, drugged, starved, suffocated, set on fire, thrown out of the window, raped, or prostituted by mothers who were their pimps. For others, words alone shamed and rejected, insulted and humiliated, dishonored and disgraced, tore down their self-esteem and murdered their soul." For each of them the shaming "occurred on a scale so extreme, so bizarre, and so frequent that one cannot fail to see that the men who occupy the extreme end of the continuum of violent behavior in adulthood occupied an equally extreme end of the continuum of violent child abuse earlier in life."[241]

While many, if not most, of the individuals who perpetrate IPV do not have histories with such extreme experiences of abuse, nor are they necessarily the most violent men in our culture, it is likely that perpetrators of IPV have had past traumatic experiences or have been victimized by violence themselves. As one example, researchers found that "large numbers of [traumatized] Iraq/Afghanistan combat veterans returning home after repeated tours of duty" who were diagnosed with PTSD were at increased risk of engaging in IPV.[242] Rates of severe violence were over twenty-five percent for perpetrators/service members with PTSD, as compared to three percent for service members without a PTSD diagnosis.[243] In another study, out of 501 African American men enrolled in a DVIP, the vast majority (between eighty-five to ninety percent) had been exposed to trauma through interpersonal violence as preteens, teenagers, and adults.[244] Trauma and childhood family-of-origin violence also are correlated with IPV *victimization*: female children who experience family aggression and violence are at increased risk of being an adult victim of IPV by a rate of three times over women who have not had such experiences.[245] As a

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Partner Violence in Adults, 18 J. INTERPERSONAL VIOLENCE 166, 166 (2003) (stating "violent childhood experiences increased the risk of victimization or perpetration of IPV").

[241] RONSON, *supra* note 19, at 247-48 (quotation omitted).

[242] Corvo & Johnson, *supra* note 239, at 177 (noting how, following these large numbers of traumatized veterans returning home, "there has been an increase in the research linking PTSD and domestic violence").

[243] *Id.* Other studies have suggested that the "presence of PTSD ha[s] a 2-8 times multiplier effect on the incidence of domestic violence." *Id.* at 178.

[244] GONDOLF, *supra* note 174, at 156-57.

[245] Whitfield et al., *supra* note 240, at 178 (stating how violent childhood experiences increased risk in women of victimization of IPV). This study supports other research that correlates adverse childhood experiences and victimization. *See* Alicia Clark & David Foy, *Trauma Exposure and Alcohol Use in Battered Women*, 6 VIOLENCE AGAINST WOMEN 37, 37 (2000) (finding IPV and childhood sexual abuse of women positively correlated with alcohol use). A related aspect of trauma and IPV is trauma arising from traumatic brain injury ("TBI"). TBI arises most often from blunt trauma to the head from accidents, sports, or assaults. This form of trauma has been positively associated with violence—according to one study, men who perpetrated violence had head injury rates ten times the rate of the general population. Corvo & Johnson, *supra* note 239, at 179 ("[R]eports rates of head injury among domestic violence perpetrators of 40-61%, as much as 10 times the rate in

result, interventions designed to address conditions that both contribute to and result from childhood trauma may lead to improved outcomes for perpetrators and for the individuals they harm.

IV. RESISTING SHAME: DIGNITY-ENHANCING INTERVENTIONS

Shame's counterpoint is dignity. Whereas shame can denigrate one's sense of self-worth, dignity can elevate the inherent value of a person, regardless of their perceived moral shortcomings or contrary social behavior.[246] Accountability interventions that protect the dignity of wrongdoers are more likely to have a positive impact on behavior change than are shame-driven ones. Prioritizing dignity requires individually targeted and socially responsive interventions over those that subvert or ignore distinctions among individuals.[247] This Part explores four approaches to IPV that prioritize perpetrator dignity—without sacrificing accountability—in an attempt to reduce the harmful outcomes that can result from shame and the conditions that perpetuate it.

A. *Labels and Language*

Labels have a profound impact on an individual's behavior and how others behave towards him.[248] When applied in a way that feels true to a person's experience, labels can lead to empowerment and validation—dignity enhancing

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the general population.").

[246] *See* Epstein, *supra* note 127, at 1846 (identifying related value in procedural justice); Rex D. Glensy, *The Right to Dignity*, 43 COLUM. HUM. RTS. L. REV. 65, 66 (2011) (exploring philosophical and legal meanings of dignity and differing views on identifying and integrating dignity as mandate within U.S. legal system); Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1, 10 (2014) (concept of human dignity often is equated with each individual's inherent worth); Meltzer-Henry, *supra* note 66, at 215 (providing multiple definitions of dignity as used by the Supreme Court, including *personal integrity as dignity*). James Gilligan, a leading researcher on shame and violence, found that a small change in treatment of prisoners made a huge difference. He noted that, when prisoners were treated with respect and not shame, violence in prisons "dropped astoundingly." RONSON, *supra* note 19, at 251 (interviewing James Gilligan); *see* Massaro, *supra* note 3, at 650 ("Shame is central to individual emotional development, and doubtless influences the creation and enforcement of social norms; but governmental attempts to manipulate and explore shame through public humiliation rituals may be far more complicated, costly, and counterproductive than the reformers seem to appreciate.").

[247] NUSSBAUM, *supra* note 3, at 52 ("[A] concern with the dignity of the offender should always be solidly built into the system of punishment, and, with it, the idea of eventual reintegration of the offender into society.").

[248] *See* John M. Darley & Paget H. Gross, *A Hypothesis-Confirming Bias in Labeling Effects*, 44 J. PERSONALITY & SOC. PSYCH. 20, 21 (1983) ("[T]he bulk of the self-fulfilling prophecy literature . . . finds that confirmation effects are often produced when racial, ethnic, or other negative social labels are implicated—exactly those cases in which one expects perceivers to refrain from using category-based information."). *See generally* ROBERT ROSENTHAL & LENORE JACOBSON, PYGMALION IN THE CLASSROOM (1968).

outcomes.[249] In the converse, naming a person *as* his behavior, in ways that feel contrary to his experience, or about a characteristic over which he cannot control, can contribute to feelings of self-doubt, a loss of self-worth, and can dramatically impact the individual's behavior and the behavior of others towards him.[250] A study from 1968 elucidates this point: Two psychology researchers told elementary school teachers that "some of their students had scored in the top twenty percent of a test designed to identify 'academic bloomers'—students who were expected to enter a period of intense intellectual development over the following year."[251] In actuality, the students were selected at random, and performed no differently from their peers on an academic test.[252] A year after "convincing the teachers that some of their students were 'due to bloom,'" the researchers returned to the school and administered that same test.[253] The results showed that the labeled students scored higher.[254] The study concluded that students' scores increased because the teachers' behavior towards them changed, resulting in the labeled children achieving far higher results than their non-labeled counterparts, not because the children were any smarter than their peers. In other words, while the label may matter to an individual's identification of his or her self-worth or capabilities, the behavior *others* attribute to that label may have a more influential effect on that individual.[255]

Many feminists and other anti-IPV advocates routinely essentialize perpetrators through the labels and language used to describe them, despite long demanding the resistance of essentializing survivors. The terms "battering" and "battered woman," while initially used to provide accessible terminology to draw attention to the issue of male violence against women, have been criticized for assuming one type of violence in intimate relationships and one type of victim.[256] Defining women who experience violence at the hands of their intimate partners as "battered women" has been critiqued as conveying a narrative of "powerless and passive objects of another's violence, helpless to

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[249] *See, e.g.*, Johnson, *supra* note 132, at 146-47 (arguing that domestic violence "law and practice overemphasize women's short-term safety in ways that deprive women of dignity and agency").

[250] *See, e.g.*, Darley & Gross, *supra* note 248, at 20 (finding that certain stereotypical information, such as socioeconomic status, "creates not certainties but hypotheses about [a] stereotyped individual" and that "these hypotheses are often tested in a biased fashion that leads to their false confirmation").

[251] ROSENTHAL & JACOBSON, *supra* note 248, at 72-97 ("The basic question to be answered in this chapter is whether in a period of one year or less the children of whom greater intellectual growth is expected will show greater intellectual growth than the undesignated control-group children.").

[252] *Id.*

[253] *Id.*

[254] *Id.*

[255] This is known as the "Pygmalion Effect" or a form of self-fulfilling prophecy. *Id.*

[256] BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 87 (1989).

free themselves from the constraints imposed by the 'batterer.'"[257] These observations have led to a critical recognition among many within the anti-IPV movement that women harmed in intimate relationships should be afforded differentiation "so that the experience of a single group of women does not drive and dominate feminist analysis."[258] Instead, survivors' goals and their individualized experiences should guide their response and the response of others to the abuse inflicted upon them, not a predetermined outcome or set of assumed goals.

Yet, those of us committed to violence reduction risk losing credibility about the harms of essentializing survivors when describing those who inflict abuse. As with "battered woman," there is clear social and political meaning attached to "batterer"—a person sanctioned through a patriarchal society to engage in IPV.[259] This term is filled with deeply held, negative expectations that perpetrators lack the willingness or capacity to change. "Batterers" are culturally understood to engage in the worst of behavior—violence against women that is "premeditated, escalating, terroristic, [and] chronic."[260] The term rests on an assumption that there is something innately wrong with men who perpetrate abuse. However, "batterer" is a social construct, not a psychological condition. Identifying which individuals or groups are morally "flawed"—and *why*—is strongly connected to existing cultural norms and political movements. Professor and legal historian Carolyn Ramsey has identified how the violence men used on their wives during the Temperance campaign was identified as "alcohol-fueled degeneration, rather than being rooted in men's primal nature."[261] Prior to the Temperance movement, Puritans saw men's behavior as "irresponsible, violent-tempered sinners"—a religious failing rather than a psychological trait.[262] Most recently, first- and second-wave feminists shifted

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[257] Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1024 (1997). The term "battering" also assumes a type of violence that is "continuous, repeated, and unrelenting," denying the experiences of "women occasionally hit—even hit only one time—by their intimate partner." HOOKS, *supra* note 256, at 87. Further, battering and the "battered woman" are constructed predominantly from a narrative crafted to define the white, heterosexual woman. Shalleck, *supra*, at 1023. Even "victim" and "survivor" have been identified as inaccurately defining experiences of individual women. *See, e.g.*, Kim, *supra* note 68, at 14 (describing woman who did not want to self-identify as survivor but rather victim, because that felt true to her experience of being sexually assaulted).

[258] Dowd, *supra* note 193, at 203.

[259] Ken Corvo & Pamela J. Johnson, *Vilification of the "Batterer": How Blame Shapes Domestic Violence Policy and Interventions*, 8 AGGRESSION & VIOLENT BEHAV. 259, 268 (2003); Shalleck, *supra* note 257, at 1023.

[260] Corvo & Johnson, *supra* note 259, at 261.

[261] Ramsey, *supra* note 117, at 350.

[262] *Id.* at 349 ("In contrast to colonial New Englanders, who saw wife beaters as irresponsible, violent-tempered sinners, nineteenth-century Americans offered a different diagnosis.").

the source of IPV to "the man who violently asserts his dominance over his powerless female victim."[263] In other words, today's "batterers" are the "alcoholics" and "sinners" of decades past, a framing that has dominated the social and political responses to IPV for the past fifty years.

This modern narrative—that IPV is driven by a desire to dominate and control—"reinforces commonly held assumptions and beliefs, such as that all domestic violence has the same pattern" and that all perpetrators have the same personality characteristics.[264] By way of example, one shelter director observed:

> Batterers do what they do because it works. They don't have much motivation to change, because they are not really held accountable in the community at large. In their worldview, they believe that they are entitled to use violence in order to control their partners. They mostly get what they want using violence so what is the motivation to change?[265]

Assuming one motivation or dominant trait of all perpetrators harms the individuals so labeled by failing to see and respond to their individual experiences. It also harms survivors by narrowing the potentially viable solutions to IPV, collapsing "important distinctions along various dimensions of the problem—degree of severity, for example, or periodicity or occurrence."[266] While unity of motivations may make it easier to craft standardized accountability interventions, that unity is at odds with previously described sociological and behavioral research about the variety of motivations that contribute to IPV perpetration and ignores best practices for effectively intervening in harmful behaviors.[267]

Labels also matter because, simply, *words* matter. Words have been identified as being "singularly the most powerful force available to humanity . . . . Words have energy and power with the ability to help, to heal, to hinder, to hurt, to harm, to humiliate, and to humble."[268] They impact how one is seen and how

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[263] *Id.* at 355-56 ("This second-wave movement almost inevitably relied on a simple but potent image—the man who violently asserts his dominance over his powerless female victim—to raise public awareness about the gendered harms of intimate partner abuse and to galvanize state action against it.").

[264] Corvo & Johnson, *supra* note 260, at 261.

[265] GONDOLF, *supra* note 174, at 17.

[266] GOODMARK, *supra* note 128, at 146; *see* WALKER, *supra* note 16, at 142-43 (noting that people in poverty are repeatedly labeled in pejorative ways, leading to erosion of understanding for circumstances within which poor people find themselves). As recounted by bell hooks, "My partner was angry to be labeled a batterer by me. He was reluctant to talk about the experience of hitting me precisely because he did not want to be labeled a batterer." HOOKS, *supra* note 256, at 88.

[267] *See supra* Section II.A (discussing IPV, accountability, and state-sanctioned shame); *see also* JOHNSON, *supra* note 188, at 65 (discussing essential variability of situational couple violence); STARK, *supra* note 187, at 103 (discussing specialized institutional means developed to realize goal of accountability for offenders).

[268] Yehuda Berg, *The Power of Words*, HUFF POST: BLOG (Sept. 14, 2010, 1:45 PM),

one views oneself. Labels, and the interventions that flow from the assumptions attached to those labels, threaten dignity by judging individuals on the basis of a single trait, making them "unable to present themselves as composed, dignified, whole selves capable of human virtue."[269] Changing the language used to describe perpetrators of IPV may seem a minor suggestion for an extremely complex social problem. However, doing so opens up a more nuanced understanding of perpetrators and IPV. Moving from a singular classification of violence in intimate relationships to one that allows for distinguishing of individuals and experiences can reduce one's own maladaptive expectations of oneself, and can set in place conditions for accountability directed at the *individual* rather than the group to which one is assumed to belong.[270]

B.   *Beyond Retributive Accountability: Economically Targeted Rehabilitative Interventions*

Retribution and criminal accountability have been priorities of the anti-IPV movement for decades. However, as bluntly stated by one set of researchers, while criminalization of IPV "may deter some acts of violence in the short term . . . as an overall strategy for ending violence, [it] has not worked."[271] Increasingly, some feminist scholars have called for a shift in priorities of the anti-IPV movement away from criminalization for a variety of reasons, including its ineffectiveness as a response and to better advance the goals and autonomy of survivors.[272] Decriminalization would also reduce the shaming that can be inherent in court sentencing and avoid judges who justify the use of shaming sentences.

While this Article does not call for decriminalization of IPV, it does urge consideration of how the attendant consequences of criminalization may

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https://www.huffingtonpost.com/yehuda-berg/the-power-of-words_1_b_716183.html [https://perma.cc/JH5Q-FDMH].

[269] Meltzer-Henry, *supra* note 66, at 216.

[270] *See, e.g.*, Epstein, *supra* note 127, at 1874 ("These responses, however, can only be effective if batterers actually *comply* with police directives, with judicial orders setting conditions for pretrial release, sentencing, probation, and parole, and with court-issued civil protection orders."); *see also* BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 17-18 (2014) ("Each of us is more than the worst thing we've ever done.").

[271] Critical Resistance and INCITE! Women of Color Against Violence, *Gender Violence and the Prison-Industrial Complex*, *in* COLOR OF VIOLENCE, THE INCITE! ANTHOLOGY 223, 223 (INCITE! Women of Color Against Violence ed., 2006) ("[T]he overall impact of mandatory arrest laws for domestic violence have led to decreases in the number of battered women who kill their partners in self-defense, but they have not led to a decrease in the number of batterers who kill their partners.").

[272] *See generally* Leigh Goodmark, *Should Domestic Violence Be Decriminalized*, 40 HARV. WOMEN'S L.J. 53 (2017) (discussing how time may be "ripe to consider alternatives to criminalization of intimate partnet violence" given current focus on overcriminalization and decreasing mass incarceration).

increase shame or the conditions that contribute to it, and therefore, increase IPV perpetration.[273] Specifically, criminalization can intensify the shame-inducing condition of poverty: For poor individuals, incarceration, convictions, and the time required to attend DVIPs or other probation requirements can perpetuate their chronic economic instability. The causes for such instability range from job loss due to needed time off for court mandates, to employers refusing to hire persons with particular convictions for safety or reputational concerns. While the standardized punitive interventions may be appropriate for certain particularly violent, unstable, or repeat offenders, for others, more targeted interventions may more effectively respond to the conditions understood to contribute to IPV. Those interventions could be identified through the advancement of problem-solving justice. Within the context of IPV, there may be no more effective intervention than those targeted to improve the economic circumstances of perpetrators.[274]

Problem-solving justice, delivered through problem-solving courts, is driven by the principle that "the justice system will achieve better outcomes by addressing the underlying problems that bring people into the system, not just the specific offenses for which they are arrested."[275] Problem-solving courts have been utilized in response to a variety of social and systemic challenges in the United States. The Conference of State Court Administrators has recommended that problem-solving courts target their efforts on high-risk and high-need participants.[276] Jurisdictions use problem-solving justice to address litigants' mental health issues and homelessness;[277] provide individualized

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[273] Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 175 (2004) ("Others seem undeniably to have found an effect on crime rate, but we suspect that much, if not most, of this is the result of incapacitative rather than deterrent effects.").

[274] Bilo, *supra* note 212 ("While the material resources needed to prevent one from feeling ashamed vary across cultures and levels of economic development, the emotional experience of poverty-induced shame and its impacts are almost universal.").

[275] Chief Judge Jonathan Lippman, *Foreword* to GREG BERMAN & JOHN FEINBLATT, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE (Quid Pro Books 2015).

[276] Suzanne M. Strong, Ramona R. Rantala & Tracey Kyckelhahn, *Census of Problem-Solving Courts, 2012*, U.S. DOJ, OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT. (2012), https://www.bjs.gov/content/pub/pdf/cpsc12.pdf [https://perma.cc/84ES-V2Y] ("In 2012, the Bureau of Justice Statistics' (BJS) Census of Problem-Solving Courts (CPSC) counted 3,052 problem-solving courts in the United States. The most common types of problem-solving courts were drug courts (44%) and mental health courts (11%). Most courts (53%) reported that they were established prior to 2005, including drug (64%), youth specialty (65%), hybrid DWI/drug (63%), and domestic violence (56%) courts." (citation omitted)).

[277] *See, e.g.*, Richard C. Boldt, *Problem-Solving Courts and Pragmatism*, 73 MD. L. REV. 1120, 1149 (2014) ("[M]ental health/homeless courts make available to clients a variety of services, including mental health treatment, substance abuse treatment, housing and government benefits assistance, family counseling, employment counseling, and job training.").

support for drug dependence;[278] and increase compliance with child support orders.[279] Although specialized domestic violence courts are sometimes identified as "problem-solving," those courts generally "do not view defendant rehabilitation as a high-priority part of the problem-solving process. This differs sharply from most problem-solving courts. Rather, the mission of domestic violence courts concentrates more on the promotion of victim safety and external offender accountability."[280]

Yet, given the role of economic instability in IPV perpetration, problem-solving courts that identify perpetrator rehabilitation as a priority warrant real consideration. Child support problem-solving courts provide a framework for responding to the economic conditions that contribute to a social and legal harm. Similar to perpetrators of IPV, parents who fail to financially support their children fall within a category of persons for whom empathy and understanding are not easily afforded. Yet, following years of sentencing fathers to jail for lack of compliance with child support orders, many lawyers and judges now recognize that fathers often live within conditions of severe poverty or have felony convictions that restrict their ability to work, and therefore, their ability to pay.[281] An Urban Institute study confirmed this recognition by finding that nearly three-quarters of high-child-support debtors had no reported income or reported incomes of ten thousand dollars a year or less, and that seventy percent of arrears were owed by obligors who were similarly financially situated.[282] This data has led to a shifted perspective that incarcerating fathers for being "deadbeats" is often akin to incarcerating the poor for their poverty. Today, some child support courts have moved from the imposition of prison time for noncompliance to program-to-work options.[283] The goal of these programs is to

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[278] *See, e.g.*, Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 YALE L. & POL'Y REV. 125, 135-36 (2004) (describing New York's drug courts).

[279] *See generally* STATE COURT ADMIN. OFFICE, MICH. SUPREME COURT, CHILD SUPPORT SPECIALTY COURTS PILOT PROGRAM: PROCESS EVALUATION (2011) (evaluating efficacy of Michigan problem-solving court pilot programs aimed at increasing child support payments).

[280] *How Do Domestic Violence Compare to Other Problem-Solving Courts*, CTR. FOR CT. INNOVATION (Aug. 7, 2005), https://www.courtinnovation.org/articles/how-do-domestic-violence-compare-other-problem-solving-courts [https://perma.cc/2EXD-6DU9].

[281] Elaine Sorensen, Liliana Sousa & Simon Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation* THE URBAN INST. 3 (2009), https://www.urban.org/research/publication/assessing-child-support-arrears-nine-large-states-and-nation/view/full_report [https://perma.cc/AN8M-CYJF].

[282] *Id.*

[283] Tina Griego, *Locking Up Parents for Not Paying Child Support Can Be a Modern-Day 'Debtor's Prison,'* WASH. POST (Sept. 26, 2014, 7:20 PM), https://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/?utm_term=.f47f03ed2fd1 ("That shift, still underway, has seen the rise of new partnerships between child support enforcement, the courts, social service agencies and fatherhood programs seeking to figure out what's

address the foundation of the problem: lack of income. Georgia, for example, has adopted Parental Accountability Courts ("PACs") "to remove barriers to non-payment of child support, such as unemployment, substance abuse, low level education."[284] The overarching goal of PACs is to keep people out of jail for failing to pay child support while simultaneously increasing compliance.[285] Virginia has a similar program designed to achieve employment preparedness through the provision of specific skills training, among other interventions.[286]

Critical distinctions clearly exist between the harms that result from IPV perpetration and those that result from child support noncompliance. Yet, both often have roots in poverty and economic instability. As such, within the context of IPV, a problem-solving approach for many cases involving IPV could lead to better outcomes for perpetrators and violence reduction generally. Courts could offer job training or other economically supportive programs to perpetrators who are otherwise determined eligible (due to the nature of the abuse, their prior histories, etc.) in lieu of other criminal or punitive interventions. Monitoring and counseling in support of economic stability (along with other targeted interventions that may impact economic stability, including mental health and/or drug treatment) in a problem-solving court setting could meet the public's and the survivor's demand for accountability, while also responding more directly and effectively to the economic conditions that contribute to abuse. CPOs could allow survivors to request job or vocational training for the person against whom they seek protection if that remedy furthers the survivor's legal goals. Economic intervention programs such as these could be paid for by shifting funding from DVIPs, resulting in a leveling of costs.

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keeping parents from paying the child support they owe. And then - this is the seismic part - helping those parents address their issues instead of locking them up.").

[284] *Child Support and Incarceration*, NAT'L CONF. OF ST. LEGISLATURES (June 6, 2018), http://www.ncsl.org/research/human-services/child-support-and-incarceration.aspx [https://perma.cc/S5WV-M3UR] ("Georgia has a series of problem solving courts, also called Parental Accountability Courts, which seek to remove barriers to non-payment of child support, such as unemployment, substance abuse, low level education. The overarching goal of these courts is to keep people out of jail for failing to pay child support, and to obtain support payments.").

[285] Griego, *supra* note 283 ("[C]hild support enforcement workers are reaching out to employers. [sic] trying to help parents facing jail find jobs and other support they need - this, in a state that not long ago sought to publicly shame fathers who owed child support by putting their names, faces and money owed in newspapers.").

[286] A. Ellen White & Craig M. Burshem, *Problem Solving for Support Enforcement: Virginia's Intensive Case Monitoring Program*, NAT'L CTR. FOR ST. CTS. 54 (2012), http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/~/media/Microsites/Files/Future%20Trends%202012/PDFs/ProblemSolving _White.ashx [https://perma.cc/54EC-C6FH] ("Through the Intensive Case Monitoring Program, Virginia has helped noncustodial parents facing incarceration overcome the barriers that prevent them from paying child support.").

Anti-IPV advocates and lawmakers may find shifting priorities to attend to the needs of perpetrators to be too politically perilous given the vast needs of survivors, grant limitations, and limited social empathy for perpetrators.[287] Responding to the social conditions of perpetrators also may be perceived as excusing abuse or betraying a commitment to survivors[288] or as depriving survivors, courts, or communities of the interventions needed to hold perpetrators adequately accountable for the harm they have caused. These concerns, however, assume a clear line between interventions that "benefit" perpetrators and those that "benefit" survivors. As noted by Fernando Mederos, "the aversion to approaches that do not focus on [standardized] accountability has crystalized into a fear that to focus on other issues with [offenders] means a wholesale abandonment of concern for safety for [survivors] and for holding offenders responsible for their conduct."[289] Promoting creative, economically driven interventions for perpetrators might do more to disrupt the complex connections between shame, poverty, and IPV than existing interventions have.[290] Meaningful economic interventions could reduce the shame felt particularly powerfully by unemployed men, increase their sense of dignity and self-worth, reduce further involvement with the legal system, and ultimately lead to overall violence reduction.[291] Moreover, attending to the economic

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[287] In response to centuries of state and public complacency, feminists and anti-IPV advocates were able to bring the epidemic of violence against women into the national spotlight in the early decades of the 20th century through identification of violence against women "as a form of misogyny practiced by men for the purpose of subordinating women and to which the State was complicit." Weissman, *supra* note 215, at 394. "[T]he collective view of women—subordinated and under the control of the individual patriarch and of the Patriarchy." Miccio, *supra* note 46, at 250.

[288] *See* GONDOLF, *supra* note 174, at 124 (noting, in context of DVIPs, "[u]nderstandably, some advocates dig in their heels against what they perceive as an increasing onslaught of psychological treatments for men who have criminally attacked, abused, and injured women and children"); Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 KY. L.J. 614, 653 (2004) ("Engaging batterers on an emotional level—as people rather than criminals—raises flags for some domestic violence advocates, who fear that reinforcing batterer's responsibility of their violence will be lost in discussions of abusive childhoods, feelings of confusion or self-doubt, or concerns about children."); Deborah M. Weissman, *The Community Politics of Domestic Violence*, 82 BROOK. L. REV. 1479, 1480 (2017) (identifying how dominant carceral responses to DV are indifferent to "structural sources of domestic violence as a problem").

[289] Mederos, *supra* note 151, at 135.

[290] *See* Goodmark, *supra* note 272, at 101 ("[A]lternatives to the criminal legal system must prioritize redressing the harm to the victim over reintegrating offenders. Nonetheless, while neither restorative justice nor community accountability programs are currently viable options in most communities, they could, if properly developed, provide an alternative to criminalization.").

[291] *See* Weissman, *supra* note 215, at 387 ("[M]en precluded from fulfilling the dominant model of masculinity as a result of their subordinated role in the workplace often

circumstances of perpetrators also may improve a *survivor's* economic outcomes by increasing the likelihood of receiving child support or other financial support from her partner, or, if she remains with him, stability and economic security. More globally, as argued by Professor Martha Nussbaum, "There are many reasons for societies to concern themselves with securing a decent living-standard for all citizens, since life, health, educational opportunity, meaningful work, and a decent opportunity to develop one's mental faculties all have intrinsic importance."[292]

Finally, beyond perpetrators, many survivors have vast economic needs— needs that restrict the options available to them to respond to their abuse.[293] Advancing the economic conditions of survivors[294] would provide critical assistance needed to exit an abusive relationship and to maintain that separation.[295] Improving the economic conditions of survivors may also lead to positive consequences for reducing IPV perpetration generally: lifting women out of poverty or providing them opportunities to separate from an abusive relationship will impact their children, who otherwise might grow up in potentially trauma-laden or abusive conditions. One outcome from their mother's improved economic conditions may be an overall reduction in the childhood shame they experience from poverty or trauma, and the adult violence that is statistically correlated with both.

C.   *Judicial Prioritization of Dignity*

Judges have profound power to impact a person's experience and to influence a broader collective belief in the legitimacy of the legal system. "Ensuring that an accused person is treated with fairness, respect, and neutrality enhances the morality and decency of our justice system."[296] In some ways, reducing stigmatizing shame in courtrooms is quite simple: judges must be committed to the preservation of dignity of *all* parties, even the most egregious of offenders, and must avoid sentencing orders that intentionally denigrate, humiliate, or

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resort to "'hypermasculinity' (the exaggerated exhibition of physical strength and personal aggression) in an attempt to gain social status."" (citing Angela Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 785 (2000))).

[292] NUSSBAUM, *supra* note 3, at 238.

[293] Economic abuse often contributes to or causes those hardships. *Id.*

[294] Johnson, *supra* note 246, at 1 (arguing for creation of "comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party's dignity, the importance of home and ending domestic violence, as opposed to merely 'safety'"); *see* GOODMARK, *supra* note 132, at 186-91 (discussing establishing economic security and engaging men who abuse).

[295] ASHA DUMONTHEIR & MALORE DUSENBERY, INST. FOR WOMEN'S POL'Y RES., INTERSECTIONS OF DOMESTIC VIOLENCE AND ECONOMIC SECURITY (2016) ("Policies ensuring employment protections can help remove the barriers that survivors face to accessing safety and economic security.").

[296] Epstein, *supra* note 127, at 1873-74.

publicly shame wrongdoers. Training to educate judges on the correlations drawn in this Article can provide necessary context for understanding the risks of shame broadly and, specifically within the context of IPV, how humiliation or degradation may be counterproductive or even dangerous to the victims the court may be trying to protect.

Judges—and other system actors—also can enhance the dignity of parties appearing in their courtrooms through the same ideas that support the theory behind procedural justice. Fundamental to procedural justice is the treatment of all individuals with respect, which positively "affects compliance [with court orders] regardless of whether the ultimate result is viewed as right or wrong."[297] For reasons identified elsewhere in this Article, shaming may work against court order compliance. When a person is denigrated or embarrassed—when he is deprived of dignity—that person is more likely to perceive the source imposing the directive as less legitimate and therefore, the issued order as unfairly imposed.[298] One result from "sanctions imposed in a manner that harms a person's dignity" is an *increase* in future offending.[299] By contrast, a commitment by judges to defend the dignity of litigants and embrace procedural justice can lead to increased legitimacy of courts through a reduction in state-sponsored denigration of wrongdoers and, for IPV specifically, increased survivor safety through increased perpetrator compliance with the orders intended to protect them.

D. *Restorative Justice and the Potential of Reintegrative Shame*

Reintegrative shame is foundational to many restorative justice models. Indeed, many restorative justice models are built on materializing the utilitarian benefits of shame by using public- and community-driven conferences or circles to enforce standards of behavior.[300] Restorative justice can provide survivors and perpetrators opportunities for interventions outside of the "standard procedures of criminal and civil law,"[301] resulting in "other avenues of support for healing and accountability, rather than a short period of incarceration of the offender."[302] Indeed, many survivors identify community condemnation of the

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[297] *Id.* at 1875.

[298] *Id.* ("If people feel unfairly treated by a government official or a court proceeding, they will perceive the source as less legitimate and, as a consequence, obey its orders less frequently.").

[299] *Id.* at 1877.

[300] JAMES PTACEK, RESEARCH ON RESTORATIVE JUSTICE IN CASES OF INTIMATE PARTNER VIOLENCE 160 (2017) ("There are three common forms of Restorative Justice used in IPV cases: victim-offender mediation, family group conferencing, and peacemaking and sentencing circles.").

[301] Herman, *supra* note 8, at 571.

[302] ERIKA SASSON, CTR. FOR CT. INNOVATION, CAN RESTORATIVE PRACTICES ADDRESS INTIMATE PARTNER VIOLENCE?: SUMMARY OF A ROUNDTABLE DISCUSSION 1 (2016), https://www.courtinnovation.org/sites/default/files/documents/Intimate_Partner_Restorati

offense as *more* important than punishment, retribution, or rehabilitation.[303] Restorative justice models allow victims to describe the harm they have experienced and ask the wrongdoer to publicly accept responsibility for that harm.[304] Such interventions can help achieve vindication from the community "as a rebuke to the offenders' display of contempt for their rights and dignity"[305] and can help craft creative and targeted interventions designed to address the impact of, and impetus for, the caused harm.[306] From the perspective of the wrongdoer, restorative justice can provide a supportive space for gaining empathic understanding of the victim's experience, admitting responsibility, and being accepted back into his community.

Proponents of restorative justice identify that educating wrongdoers about social norms of behavior can reduce the "negative stigmatization of the individual" by focusing on *the act* with a goal of reintegration of the *individual*.[307] Restorative justice can also provide an alternative to the stigmatizing experiences that can result from a perpetrator's interaction with the legal system and reduce the uncertainty that can come from judicial power.

For the reasons laid out in Part I, shame experienced within a reintegrative context *can* lead to internal and external accountability for the harm caused. Moreover, such experiences may be critical to gaining empathy and modifying maladaptive behaviors. However, because restorative justice models rely both on publicizing wrongdoing and on community standards of behavior, participants and facilitators must be committed to resisting the stigmatic shaming of perpetrators for their abuse, while also preventing the historical shaming imposed on *survivors*—assuming or expecting certain behaviors in response to IPV. Said differently, when utilized, restorative justice processes must ensure strict commitment to the dignity of *both* parties,[308] avoid blaming

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ve_Roundtable.pdf [https://perma.cc/M25H-XB6D].

[303] Herman, *supra* note 8, at 585 ("Beyond acknowledgment, what survivors sought most frequently was vindication. They wanted their communities to take a clear and unequivocal stand in condemnation of the offense.").

[304] Laurie Kohn, *What's So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 535-36 (2010) ("Its central principles require the victim to have the desire and strength to represent her needs and talk honestly and the offender to take responsibility for his actions.").

[305] Herman, *supra* note 8, at 597.

[306] Some standardized interventions include "apologies, restitution, and acknowledgments of harm and injury." Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?*, 3 ANN. REV. L. SOC. SCI. 161, 162 (2007). *But see* Herman, *supra* note 8, at 578 (noting that restorative justice movement has been highly defendant oriented and has "reproduced many of the same deficiencies as the traditional justice system with respect to victim's rights").

[307] Menkel-Meadow, *supra* note 306, at 165.

[308] *See* PTACEK, *supra* note 300, at 174. *But see* Herman, *supra* note 8, at 594 ("A few [survivors] wished for the extreme consequence of shunning and community ostracism.").

survivors for the choices they have made, and demand a commitment to the recognition of the whole perpetrator, not just the sum of his actions. Those who support restorative justice interventions must pay critical attention to the processes utilized to ensure that the utilitarian aspects of shame are upheld, and the dignity-depriving ones are resisted, including avoiding processes that propogate the shame-proneness to which a perpetrator may already be inclined. These processes can include a commitment to support the perpetrator, not for the violence used or to minimize or externalize blame, but to support his human dignity.[309] Additionally, when community members are present, facilitators must work to ensure community condemnation is towards the *action*, not the *person*.[310] When implemented with a commitment to dignity preservation and an understanding of the counterproductive harms of shame intended to humiliate or stigmatize, restorative justice models are valuable options for achieving perpetrator accountability, while simultaneously meeting survivors' articulated goals.[311]

CONCLUSION

Accountability for perpetrators of IPV is critical for survivor empowerment, the external and state-sanctioned moral condemnation of abusive behavior, and for modifying perpetrator behavior for the better. The correlation between violence and shaming experiences, however, demands caution against conflating shame with accountability. While shame can be an effective—indeed, critical—tool for behavior modification, its effectiveness is heavily dependent upon how it is imposed or experienced by an individual. Reifying or tacitly condoning stigmatizing shame as an acceptable form of social control discounts what is known about the negative impact of shame and its fallout in shaping different, socially acceptable behavior. Shame as an intervention for individuals who themselves may be shame-prone may be ineffective at best, and counterproductive at worst. When imposed publicly or when done with the intention to humiliate or embarrass, shame can increase violence and aggression. Moreover, shaming as a tolerated intervention implicitly assumes that the person shamed is "unusual" or "bad" or "morally adrift" and that the person who is imposing shame is "usual" or "good" or "morally right."[312] As explored in this Article, those distinctions ignore what is understood about the complex social

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[309] Menkel-Meadow, *supra* note 306, at 169 (citing NUSSBAUM, *supra* note 3).

[310] *Id.*; PTACEK, *supra* note 300, at 174.

[311] Menkel-Meadow, *supra* note 306, at 161 ("Restorative justice, which began as an alternative model of criminal justice, seeking healing and reconciliation for offenders, victims, and the communities in which they are embedded, has moved into larger national and international arenas of reintegration in political and ethnic conflicts.").

[312] NUSSBAUM, *supra* note 3, at 217 (discussing how shame is related to moral judgment about certain groups that are being shamed).

conditions and experiences that contribute to IPV perpetration and what is understood about trauma and victimization.

Prioritizing dignity over shame affords "all citizens the social conditions of self-respect"[313]—even the least sympathetic among us. Those committed to reducing IPV should demand of one another and of the systems within which they intersect rejection of perpetrator essentialization and perpetrator shaming. Protecting the dignity of survivors *and* perpetrators should guide any formal or informal interventions imposed by judges or advanced by anti-IPV advocates or the community at large. Interventions that are genuinely motivated by dignity protection, including those that consider the systemic conditions that contribute to IPV perpetration, are critical to effectively furthering the goals of perpetrator accountability, survivor safety, and overall violence reduction.

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[313] *Id.* at 196.