

# Let's Talk About Sexual Assault: Survivor Stories and the Law in the Jian Ghomeshi Media Discourse

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# Let's Talk About Sexual Assault: Survivor Stories and the Law in the Jian Ghomeshi Media Discourse

## **Abstract**

The recent allegations against former Canadian radio host Jian Ghomeshi catalyzed an exceptional moment of public discourse on sexual assault in Canada. Following public revelations from several women who described being attacked by Ghomeshi, many others came forward with accounts of sexual violence in their own lives. Affirming feminist critiques of sexual assault law reform, many survivors drew on their experiences to expose the criminal justice system's ongoing flaws in processing sexual assault cases. While some held out hope for the criminal law's role in addressing sexual violence, most rejected its individualizing and retributive aspects. Instead, survivors emphasized the need for their experiences to be meaningfully acknowledged, and the primary importance of speaking out publicly about sexual violence in order to debunk common stereotypes and effect cultural change. Following a grassroots feminist impetus, they framed their stories as resisting legal and social norms through a turn to direct personal experience.

Yet the experiential accounts of sexual violence publicized in the wake of Ghomeshi also drew from criminal law discourse in a number of ways. Not only did survivors use legally grounded concepts to define their experiences, they also re-theorized past experiences in ways that bear noticeable parallels to recent shifts in the law of sexual assault, especially around consent. Thus, I argue, their accounts should be read as both resisting and reflecting legal scripts.

## **Cover Page Footnote**

Thank you to Professors Benjamin Berger and Sonia Lawrence for their support, encouragement, and thoughtful feedback, and to the Social Sciences and Humanities Research Council for financial support.

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DANA PHILLIPS\*

The recent allegations against former Canadian radio host Jian Ghomeshi catalyzed an exceptional moment of public discourse on sexual assault in Canada. Following public revelations from several women who described being attacked by Ghomeshi, many others came forward with accounts of sexual violence in their own lives. Affirming feminist critiques of sexual assault law reform, many survivors drew on their experiences to expose the criminal justice system's ongoing flaws in processing sexual assault cases. While some held out hope for the criminal law's role in addressing sexual violence, most rejected its individualizing and retributive aspects. Instead, survivors emphasized the need for their experiences to be meaningfully acknowledged, and the primary importance of speaking out publicly about sexual violence in order to debunk common stereotypes and effect cultural change. Following a grassroots feminist impetus, they framed their stories as resisting legal and social norms through a turn to direct personal experience.

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Les récentes accusations formulées à l'encontre de l'ex-animateur de radio Jian Ghomeshi ont entraîné un nombre exceptionnel de débats publics sur les agressions sexuelles au Canada. Après que plusieurs femmes eurent révélé publiquement s'être fait agresser par

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M. Ghomeshi, de nombreuses autres ont fait état des violences sexuelles subies au cours de leur vie. Reprenant des critiques féministes à l'égard de la réforme des lois contre les agressions sexuelles, de nombreuses survivantes ont fait part de leur expérience pour mettre en évidence les défauts persistants du système de justice pénale dans le traitement des cas d'agression sexuelle. Bien que certaines d'entre elles se soient dites confiantes en la capacité du droit pénal à lutter contre la violence sexuelle, la plupart en ont rejeté la démarche d'individualisation et le caractère punitif. En lieu et place, les survivantes ont souligné la nécessité de reconnaître leur expérience comme il se doit et l'importance primordiale de parler publiquement de la violence sexuelle afin de démystifier les clichés et d'entamer un virage culturel. Dans le sillage d'un élan féministe populaire, elles ont présenté leurs expériences personnelles directes comme une résistance aux normes juridiques et sociales.

Pourtant, les témoignages de violence sexuelle médiatisés dans la foulée de l'affaire Ghomeshi se sont également appuyés sur le discours juridique pénal, et ce, de plusieurs façons. En plus d'utiliser des concepts juridiques pour définir leur vécu, les survivantes ont également rethéorisé leurs expériences d'une manière analogue aux récents changements opérés dans les lois sur l'agression sexuelle, notamment en ce qui concerne le consentement. C'est pourquoi j'avance dans cet article que leurs témoignages devraient être interprétés aussi bien comme une réaction contre le discours juridique que comme le reflet de celui-ci.

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**THE RECENT ALLEGATIONS** against former Canadian radio host Jian Ghomeshi catalyzed an exceptional moment of public discourse on sexual assault in Canada. Following public revelations from several women who described being attacked by Ghomeshi, many others came forward with accounts of sexual violence in

their own lives. The tide of survivor<sup>1</sup> narratives that soon flooded news and social media affirmed concerns expressed by feminist lawyers and legal scholars about the limitations of recent feminist-influenced reforms to the law of sexual assault. The narratives also aligned with feminist approaches that cast doubt on legal solutions to sexual violence, and emphasize the narration of personal experience as a tool for critical consciousness raising. Did they, then, constitute a grassroots alternative to addressing sexual violence through law?

As the allegations against Ghomeshi surfaced, many people questioned why those who had been attacked did not immediately call the police. In response, a number of survivors (and their allies) spoke out about the challenges of addressing sexual violence through legal channels. Their narratives accorded with research which has shown that despite progressive law reforms, sexual assault continues to be vastly underreported, mishandled by police, and under-prosecuted,<sup>2</sup> and that survivors who do go through the criminal process often find it traumatizing and re-victimizing.<sup>3</sup> The accounts survivors gave of their own experiences helped to explain the limited effectiveness of recent reforms by illustrating how social norms that operate to discredit survivors, minimize sexual violence, and assume

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1. I use the term “survivor” to denote a person who has experienced sexual violence, though not without some reservation. Unlike “victim,” which connotes passivity and helplessness, “survivor” emphasizes women’s capacity to overcome the negative effects of sexual violence and move on with life. However, the term may also perpetuate the notion that sexual violence is necessarily a traumatic, extraordinary, and indeed, life threatening event. In this way, it fails to acknowledge the ubiquity—indeed, the normalcy—of sexual violence in the lives of many.
  2. Robyn Doolittle, “Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless,” Editorial, *The Globe and Mail* (3 Feb 2017) online: <[www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309](http://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309)>; Holly Johnson, “Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault” in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012) at 631; Statistics Canada, “Sexual Assault in Canada 2004 and 2007,” by Shannon Brennan & Andrea Taylor-Butts (Canadian Centre for Justice Statistics, 2008) at 8-11, online: <[www.statcan.gc.ca/pub/85f0033m/85f0033m2008019-eng.pdf](http://www.statcan.gc.ca/pub/85f0033m/85f0033m2008019-eng.pdf)>.
  3. Lee Madigan & Nancy C Gamble, *The Second Rape: Society’s Continued Betrayal of the Victim*, reprint ed (New York: Macmillan Pub Co, 1991). The survivor narratives examined in Part III speak to the continued difficulties faced by survivors who participate in the criminal justice system.

implied consent continue to influence legal decision-makers and others, despite the explicit rejection of such norms in legal doctrine.<sup>4</sup>

The survivor narratives that emerged in the media surrounding Ghomeshi also echoed feminist critiques of the criminal justice system's underlying values and objectives. While some held out hope for the criminal law's role in addressing sexual violence, most rejected its individualizing and retributive aspects. Instead, survivors emphasized the need for their experiences to be meaningfully acknowledged, and the primary importance of speaking out publicly about sexual violence in order to debunk common stereotypes and effect cultural change. Following a well-established line of feminist thought, they framed their stories as resisting the oppressive social norms perpetuated by the legal system through a turn to direct personal experience.

In this article, I demonstrate how the survivor narratives surrounding Ghomeshi can be read as a critical grassroots response to law reform efforts that have proven ineffective in many ways. I go on to posit, however, that such a reading is only part of the story. The notion that these narratives constitute a grassroots alternative to failed laws is complicated, I argue, by another set of feminist insights about the relationship between social discourse and experience. Thinkers in this tradition have pointed out that experiential narratives are inevitably shaped by powerful social discourses such as those that circulate through legislation, case law, and other forms of legal decision-making. With respect to sexual violence, such discourses include legal concepts and social norms that continue to marginalize women's experiences, but also the more progressive understandings of sexual violence expressed through recent law reforms.

Indeed, as I demonstrate, the experiential accounts of sexual violence publicized in the wake of Ghomeshi drew from criminal law discourse in a number of ways. Not only did survivors use legally-grounded concepts to define their experiences, they also re-theorized past experiences in ways that bear noticeable parallels to recent shifts in the law of sexual assault, especially around consent. Thus, I argue, while the survivor stories surrounding Ghomeshi resisted

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4. Similarly illustrative are recent complaints against a number of judges for relying on legally rejected myths and stereotypes about sexual assault, most notably Justice Robin Camp, who resigned after the Canadian Judicial Council recommended his removal from the bench. Alison Crawford, "Justice Robin Camp resigns after judicial council recommends removal," Editorial, *CBC News* (9 Mar 2017) online: <[www.cbc.ca/news/politics/justice-robin-camp-judicial-council-1.4017233](http://www.cbc.ca/news/politics/justice-robin-camp-judicial-council-1.4017233)>. Recent legal research offers additional evidence of the problem. See e.g. Karen Busby, "Every Breath You Take: Erotic Asphyxiation, Vengeful Wives, and Other Enduring Myths in Spousal Sexual Assault Prosecutions" (2012) 24:2 *CJWL* 328 at 331 (regarding spousal sexual assault in Canada).

and challenged legal approaches to sexual violence, they were also importantly shaped by legal discourse.

I begin this article in Part I with a brief description of events in the Ghomeshi case, followed by an explanation of my research methodology. In Part II, I briefly review the recent reforms to the law of sexual assault in Canada, and discuss some feminist critiques of those reforms (and law reform generally) which point to the law's ongoing problems and limitations in addressing sexual violence. I then draw on different threads of feminist scholarship to develop two frameworks for understanding how the survivor stories publicized in the wake of Ghomeshi relate to recent developments in sexual assault law. The first places the stories within the feminist tradition of looking to lived experience as an alternative source of knowledge and power through which to challenge the dominant norms and discourses of law. The second framework recognizes that accounts of experience can never be fully extracted from legal and other social discourses. In Part III, I draw upon my research findings to demonstrate how the survivor narratives surrounding Ghomeshi can be read through both frameworks. I suggest that a more nuanced interpretation of the relationship between women's accounts of sexual violence and the criminal law of sexual assault must keep both readings in view. I end, in Part IV, with some concluding remarks.

## I. THE GHOMESHI STORY

Let me begin by offering a brief chronology of events.<sup>5</sup> On 26 October 2014, the Canadian Broadcasting Corporation (CBC) fired Jian Ghomeshi, the charismatic star of its popular radio show *Q*. A slew of allegations of sexual assault and harassment published in the media shortly thereafter decimated Ghomeshi's reputation, paved the way for multiple criminal charges against him, and started a "national conversation" about sexual violence.

On the day he was fired, after threatening to sue his former employer (the lawsuit was filed the next day but later withdrawn),<sup>6</sup> Ghomeshi published a detailed Facebook post claiming that he had been unjustly terminated due to

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5. For a useful overview, see Erika Tucker, "Timeline: Jian Ghomeshi charged in sex assault scandal," *Global News* (11 May 2016) online: <[globalnews.ca/news/1647091/timeline-sex-assault-allegations-arise-after-cbc-fires-jian-ghomeshi](http://globalnews.ca/news/1647091/timeline-sex-assault-allegations-arise-after-cbc-fires-jian-ghomeshi)>.

6. Alysha Hasham, "Jian Ghomeshi files \$55M lawsuit against CBC," *Toronto Star* (27 Oct 2014) online: <[www.thestar.com/news/gta/2014/10/27/jian\\_ghomeshi\\_files\\_55m\\_lawsuit\\_against\\_cbc.html](http://www.thestar.com/news/gta/2014/10/27/jian_ghomeshi_files_55m_lawsuit_against_cbc.html)>; Kevin Donovan, "Jian Ghomeshi drops \$55M CBC lawsuit," *Toronto Star* (25 Nov 2014) online: <[www.thestar.com/news/gta/2014/11/25/ghomeshi\\_drops\\_55m\\_cbc\\_lawsuit.html](http://www.thestar.com/news/gta/2014/11/25/ghomeshi_drops_55m_cbc_lawsuit.html)>.

“unsavoury” but consensual sexual activities in his private life, which he likened to “forms of BDSM.” He attributed his termination to “a campaign of false allegations pursued by a jilted ex girlfriend and a freelance writer,” and proclaimed that “[s]exual preferences are a human right.”<sup>7</sup>

That evening, the *Toronto Star* went public with allegations of sexual assault made anonymously by three women, who said that Ghomeshi had non-consensually hit them, bit them, choked them, obstructed their breathing, and verbally abused them in the course of sexual encounters.<sup>8</sup> Their stories suggested a pattern of manipulative behaviour whereby Ghomeshi would charm a woman, falsely reassure her that his enthusiasm for rough sex was mere fantasy and would not be enacted non-consensually, and then gaslight<sup>9</sup> her following an instance of assault. The *Star* article also presented allegations of sexual harassment from a former colleague of Ghomeshi’s at CBC, who later revealed herself to be Kathryn Borel.<sup>10</sup> None of the women had filed complaints with the police, nor did they wish to identify themselves publicly, citing fears of retaliation, online abuse, and negative career impacts.

Many more survivors came forward in the days and weeks to follow. On 29 October, the *Star* published another story that presented allegations against Ghomeshi from a total of eight women (including the four from the paper’s initial story).<sup>11</sup> This time, one of the women identified herself as Canadian Air Force Captain and *Trailer Park Boys* actor Lucy DeCoutere. The following morning, DeCoutere was interviewed by CBC host Anna Maria Tremonti on

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7. “Jian Ghomeshi’s full Facebook post: ‘a campaign of false allegations’ at fault,” *Toronto Star* (27 Oct 2014) online: <[www.thestar.com/news/gta/2014/10/27/jian\\_ghomeshis\\_full\\_facebook\\_post\\_a\\_campaign\\_of\\_false\\_allegations\\_at\\_fault.html](http://www.thestar.com/news/gta/2014/10/27/jian_ghomeshis_full_facebook_post_a_campaign_of_false_allegations_at_fault.html)>.

8. Kevin Donovan & Jesse Brown, “CBC fires Jian Ghomeshi over sex allegations,” *Toronto Star* (26 Oct 2014) online: <[www.thestar.com/news/canada/2014/10/26/cbc\\_fires\\_jian\\_ghomeshi\\_over\\_sex\\_allegations.html](http://www.thestar.com/news/canada/2014/10/26/cbc_fires_jian_ghomeshi_over_sex_allegations.html)> [Donovan & Brown, “CBC fires Jian Ghomeshi”].

9. Gaslighting refers to a form of psychological manipulation whereby victims are made to doubt their recollection or perception of abuse. The term was coined by the 1938 play *Gas Light* by Patrick Hamilton and subsequent film adaptations.

10. Erika Tucker, “Ex-CBC staffer Kathryn Borel identifies herself in Ghomeshi allegations,” *Global News* (3 Dec 2014) online: <[globalnews.ca/news/1705732/kathryn-borel-says-shes-the-ex-staffer-ghomeshi-wanted-to-hate-f](http://globalnews.ca/news/1705732/kathryn-borel-says-shes-the-ex-staffer-ghomeshi-wanted-to-hate-f)>.

11. Kevin Donovan & Jesse Brown, “Jian Ghomeshi: 8 women accuse former CBC host of violence, sexual abuse or harassment,” *Toronto Star* (29 Oct 2014) online: <[www.thestar.com/news/gta/2014/10/29/jian\\_ghomeshi\\_8\\_women\\_accuse\\_former\\_cbc\\_host\\_of\\_violence\\_sexual\\_abuse\\_or\\_harassment.html](http://www.thestar.com/news/gta/2014/10/29/jian_ghomeshi_8_women_accuse_former_cbc_host_of_violence_sexual_abuse_or_harassment.html)> [Donovan & Brown, “Jian Ghomeshi: 8 women”].

*The Current*,<sup>12</sup> that afternoon, lawyer and author Reva Seth shared her story of sexual assault via *Huffington Post*, bringing Ghomeshi's total number of accusers to nine.<sup>13</sup> One of the anonymous women, who eventually revealed herself to be Linda Redgrave,<sup>14</sup> participated in a number of interviews broadcast by the CBC on 29 October, 30 October, 3 November, and 26 November.<sup>15</sup> Another, whom I will call "C", was interviewed by the CBC on 30 October.<sup>16</sup> On 5 November, a man named Jim Hounslow added himself to the list of survivors, claiming that Ghomeshi had non-consensually fondled his genitals when they worked together on student council at York University.<sup>17</sup> Ghomeshi was the subject of a *Fifth Estate* episode aired on 28 November, which included an interview of another anonymous woman, whom I will call "D."<sup>18</sup> By that date, the *Star* had

12. Interview of Lucy DeCoutere by Anna Maria Tremonti (30 Oct 2014) on *The Current*, CBC Radio, "Lucy DeCoutere speaks out about Jian Ghomeshi: 'From smooching to smacking...there was no build up,'" CBC Player, online: <[www.cbc.ca/radio/thecurrent/lucy-decoutere-james-risen-and-brenda-hardiman-1.2907307/lucy-decoutere-speaks-out-about-jian-ghomeshi-from-smooching-to-smacking-there-was-no-build-up-1.2907316](http://www.cbc.ca/radio/thecurrent/lucy-decoutere-james-risen-and-brenda-hardiman-1.2907307/lucy-decoutere-speaks-out-about-jian-ghomeshi-from-smooching-to-smacking-there-was-no-build-up-1.2907316)> [DeCoutere interview by Tremonti].
13. Reva Seth, "Why I Can't Remain Silent About What Jian Did to Me," *Huffington Post Canada* (30 Oct 2014) online: <[www.huffingtonpost.ca/reva-seth/reva-seth-jian-ghomeshi\\_b\\_6077296.html](http://www.huffingtonpost.ca/reva-seth/reva-seth-jian-ghomeshi_b_6077296.html)>.
14. Laura Fraser, "Complainant in Jian Ghomeshi's sexual assault trial waives publication ban," *CBC News* (18 Apr 2016) online: <[www.cbc.ca/news/canada/toronto/jian-ghomeshi-woman-waves-publication-ban-1.3540206](http://www.cbc.ca/news/canada/toronto/jian-ghomeshi-woman-waves-publication-ban-1.3540206)> [Fraser, "Complainant"].
15. Interview of Linda Redgrave (then anonymous) (29 Oct 2014) on *As It Happens*, CBC Radio, "Jian Ghomeshi allegedly attacked another woman more than 10 years ago," CBC Player, online: <[www.cbc.ca/news/arts/jian-ghomeshi-allegedly-attacked-another-woman-more-than-10-years-ago-1.2817582](http://www.cbc.ca/news/arts/jian-ghomeshi-allegedly-attacked-another-woman-more-than-10-years-ago-1.2817582)> [Redgrave interview, Oct 29]; Interview of Linda Redgrave (then anonymous) (30 Oct 2014) on *The National*, *CBC News*, "RAW: alleged victim says Jian Ghomeshi hit her," CBC Player, online: <[www.cbc.ca/player/News/ID/2579193175](http://www.cbc.ca/player/News/ID/2579193175)> [Redgrave interview, Oct 30]; Interview of Linda Redgrave (then anonymous) (3 Nov 2014) on *As It Happens*, CBC Radio, CBC Player, online: <[www.cbc.ca/player/Radio/As+It+Happens/ID/2585648581](http://www.cbc.ca/player/Radio/As+It+Happens/ID/2585648581)> [Redgrave interview, Nov 3]; Interview of Linda Redgrave (then anonymous) (26 Nov 2014) on *The National*, *CBC News*, "Jian Ghomeshi charged," CBC Player, online: <[www.cbc.ca/player/News/TV%20Shows/The%20National/Canada/ID/2617361033](http://www.cbc.ca/player/News/TV%20Shows/The%20National/Canada/ID/2617361033)> [Redgrave interview, Nov 26].
16. Interview of "C" (30 Oct 2014) on *Information Moncton Morning*, CBC Radio, Moncton, "Jian Ghomeshi allegedly beat, choked N.B. woman with belt," CBC Player, online: <[www.cbc.ca/player/Embedded-Only/News/ID/2617315239](http://www.cbc.ca/player/Embedded-Only/News/ID/2617315239)> [C interview, Oct 30].
17. Kevin Donovan & Alyshah Hasham, "Former York University student alleges Ghomeshi fondled him," *Toronto Star* (4 Nov 2014) online: <[www.thestar.com/news/canada/2014/11/04/ghomeshi\\_was\\_focus\\_of\\_complaints\\_during\\_york\\_student\\_days.html](http://www.thestar.com/news/canada/2014/11/04/ghomeshi_was_focus_of_complaints_during_york_student_days.html)>.
18. "The Unmaking of Jian Ghomeshi," *The Fifth Estate* (28 Nov 2014) CBC Television, CBC Player, online: <[www.cbc.ca/player/Shows/Shows/the+fifth+estate/Season+40/ID/2619940777](http://www.cbc.ca/player/Shows/Shows/the+fifth+estate/Season+40/ID/2619940777)> ["The Unmaking"].

heard from nineteen women—fifteen alleging abuse by Ghomeshi, two alleging sexual harassment, and two claiming they were inappropriately contacted and (or) touched—as well as two men alleging non-consensual sexual touching.<sup>19</sup> The allegations dated from 2001 to 2014.<sup>20</sup> Ghomeshi's final response was made in a Facebook post on 30 October, in which he stated his intention “to meet these allegations directly” and not to speak further in the media.<sup>21</sup>

Initially, none of those making allegations in the media filed a police complaint, without which the Toronto police refused to investigate. However, by 31 October, the police had launched a criminal investigation in response to complaints against Ghomeshi made by two women, including DeCoutere.<sup>22</sup> A third woman came forward soon after.<sup>23</sup> On 26 November, exactly one month after being fired from his job, Ghomeshi turned himself in to the police and was charged with four counts of sexual assault and one count of overcoming resistance through choking.<sup>24</sup> On 8 January 2015, three new sexual assault charges were laid against him.<sup>25</sup> Two of the charges were dropped on 12 May 2015.<sup>26</sup>

On 1 October 2015, Ghomeshi pleaded not guilty to four counts of sexual assault and one count of overcoming resistance through choking in a pretrial

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19. Kevin Donovan, “Jian Ghomeshi did not ask for consent, accusers say,” *Toronto Star* (28 Nov 2014) online: <[www.thestar.com/news/gta/2014/11/28/jian\\_ghomeshi\\_did\\_not\\_ask\\_for\\_consent\\_accusers\\_say.html](http://www.thestar.com/news/gta/2014/11/28/jian_ghomeshi_did_not_ask_for_consent_accusers_say.html)> [Donovan, “Jian Ghomeshi did not ask for consent”].

20. *Ibid.*

21. “Jian Ghomeshi allegedly attacked actress Lucy DeCoutere on 2003 date,” *CBC News* (30 Oct 2014) online: <[www.cbc.ca/news/jian-ghomeshi-allegedly-attacked-actress-lucy-decouterre-on-2003-date-1.2817806](http://www.cbc.ca/news/jian-ghomeshi-allegedly-attacked-actress-lucy-decouterre-on-2003-date-1.2817806)>.

22. “Toronto police investigate Jian Ghomeshi allegations,” *CBC News* (1 Nov 2014) online: <[www.cbc.ca/news/canada/toronto-police-investigating-jian-ghomeshi-allegations-1.2820337](http://www.cbc.ca/news/canada/toronto-police-investigating-jian-ghomeshi-allegations-1.2820337)>.

23. Kevin Donovan, Alyshah Hasham & Tamara Khandaker, “Police investigation of Jian Ghomeshi widens as third woman comes forward,” *Toronto Star* (1 Nov 2104) online: <[www.thestar.com/news/crime/2014/11/01/three\\_women\\_contact\\_police\\_with\\_allegations\\_against\\_jian\\_ghomeshi.html](http://www.thestar.com/news/crime/2014/11/01/three_women_contact_police_with_allegations_against_jian_ghomeshi.html)>. One of the women turned out to be Linda Redgrave.

24. James Armstrong, “Jian Ghomeshi charged with 4 counts of sexual assault, will plead not guilty,” *Global News* (26 Nov 2014) online: <[globalnews.ca/news/1693322/jian-ghomeshi-charged-with-sexual-assault](http://globalnews.ca/news/1693322/jian-ghomeshi-charged-with-sexual-assault)>.

25. David Shum, “Former CBC host Jian Ghomeshi faces three new sex assault charges,” *Global News* (8 Jan 2015), online <[globalnews.ca/news/1761995/jian-ghomeshi-trial-date-to-be-set-at-toronto-court-appearance-today](http://globalnews.ca/news/1761995/jian-ghomeshi-trial-date-to-be-set-at-toronto-court-appearance-today)>.

26. Alyshah Hasham, “Two sexual assault charges dropped against Jian Ghomeshi; others stand,” *Toronto Star* (12 May 2015) online: <[www.thestar.com/news/crime/2015/05/12/two-sexual-assault-charges-dropped-against-jian-ghomeshi.html](http://www.thestar.com/news/crime/2015/05/12/two-sexual-assault-charges-dropped-against-jian-ghomeshi.html)>.

hearing for a trial that began on 1 February 2016.<sup>27</sup> The trial centred around the testimony of the three complainant witnesses: Linda Redgrave, Lucy DeCoutere, and a third woman who remains anonymous at the time of writing. Ghomeshi did not testify. The complainants were subject to vigorous cross-examinations, which revealed inconsistencies in their accounts, as well as previously undisclosed evidence of intimate post-assault contact with Ghomeshi. On this basis, Justice William B. Horkins found that they were not sufficiently credible or reliable to support a conviction, and Ghomeshi was acquitted on all charges.<sup>28</sup>

Ghomeshi was initially scheduled to be tried separately on the remaining sexual assault charge in June 2016.<sup>29</sup> However, on 11 May 2016 he signed a peace bond in exchange for having the charge dropped. Ghomeshi also apologized in court for his behaviour towards his former colleague Kathryn Borel, whose accusation was the subject of the charge.<sup>30</sup> Later that day, Borel spoke publicly about her experiences with Ghomeshi and her reasons for foregoing a trial.<sup>31</sup>

While initially centred on the actions of one man, the Ghomeshi case quickly opened up a much broader public dialogue. On 30 October 2014, *Star* reporter and survivor Antonia Zerbisias and *Montreal Gazette* reporter and survivor Sue Montgomery co-created the hashtag #BeenRapedNeverReported on Twitter for all survivors of sexual assault to share their stories. The hashtag went viral, with nearly 20,000 tags in the first 24 hours.<sup>32</sup> In the weeks to come, several Canadian sexual assault centres reported experiencing a spike in the number of calls for

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27. Alysha Hasham, "Jian Ghomeshi pleads not guilty to sex assault and choking charges," *Toronto Star* (1 Oct 2015) online: <[www.thestar.com/news/crime/2015/10/01/jian-ghomeshi-sex-assault-case-back-in-court.html](http://www.thestar.com/news/crime/2015/10/01/jian-ghomeshi-sex-assault-case-back-in-court.html)> [Hasham].
  28. *R v Ghomeshi*, 2016 ONCJ 155, 27 CR (7th) 17. For an overview of the trial from the perspective of the complainants, see the following video: Ionna Roumeliotis, "Jian Ghomeshi trial: Complainants describe their court experience," *CBC News* (25 Mar 2016) online: <[www.cbc.ca/news/canada/toronto/jian-ghomeshi-trial-complainants-describe-their-court-experience-1.3502490](http://www.cbc.ca/news/canada/toronto/jian-ghomeshi-trial-complainants-describe-their-court-experience-1.3502490)>.
  29. Hasham, *supra* note 27.
  30. Laura Fraser, "Jian Ghomeshi trial: Former CBC radio host signs peace bond, Crown drops sex assault charge," *CBC News* (11 May 2016) online: <[www.cbc.ca/news/canada/toronto/jian-ghomeshi-trial-peace-bond-1.3575912](http://www.cbc.ca/news/canada/toronto/jian-ghomeshi-trial-peace-bond-1.3575912)>.
  31. "Jian Ghomeshi sex assault case: Read complainant Kathryn Borel's full statement," *CBC News* (11 May 2016) online: <[www.cbc.ca/news/kathryn-borel-statement-jian-ghomeshi-case-1.3577280](http://www.cbc.ca/news/kathryn-borel-statement-jian-ghomeshi-case-1.3577280)> [Borel statement].
  32. Isabel Teotonio, "Women find power in BeenRapedNeverReported hashtag," *Toronto Star* (5 Nov 2014) online: <[www.thestar.com/life/2014/11/05/women\\_find\\_power\\_in\\_beenrapedneverreported\\_hashtag.html](http://www.thestar.com/life/2014/11/05/women_find_power_in_beenrapedneverreported_hashtag.html)>; "BeenRapedNeverReported sheds light on survivor stories," *CBC News* (31 Oct 2014) online: <[www.cbc.ca/news/canada/montreal/beenrapedneverreported-sheds-light-on-survivor-stories-1.2820328](http://www.cbc.ca/news/canada/montreal/beenrapedneverreported-sheds-light-on-survivor-stories-1.2820328)> [CBC, Oct 31].

their services,<sup>33</sup> and the issue of sexual violence came to dominate news headlines. The news coverage and surrounding discussion were reinvigorated in early 2016 as Ghomeshi's trial unfolded.

## A. RESEARCH METHODOLOGY

My research looks at survivor narratives published in the news media in the wake of the Ghomeshi story when it first broke in late 2014; I do not examine coverage of the 2016 trial in this paper. My sources are print and web news articles, as well as TV and radio segments posted or archived on news websites, that mention Ghomeshi and were published within three months of the day the Ghomeshi story broke (26 October 2014). I focus specifically on coverage from four sources: CBC, *Toronto Star*, *The Globe and Mail*, and *National Post*. I chose to include both of Canada's national newspapers and the CBC in order to reflect the national character of the discourse at issue and to cover different political perspectives. I included the *Toronto Star* because of its connection to the Ghomeshi story—*Star* journalists broke the story and offered the most detailed coverage—and because it has the highest readership in Canada.

I look at the accounts of both those involved directly with Ghomeshi, and those who came forward in the wake of his story with their own experiences of sexual violence. My main interest lies in accounts of sexual assault, but I also include incidents labelled in the media as “sexual harassment” or “abuse,” both because they often involve non-consensual touching that could fall under the legal definition of sexual assault, and because they are tied together within the media discourse as part of a broader dialogue about sexual violence. While there were some men who spoke out about their experiences, women made up the vast majority of survivors in the media discourse. In my analysis, I focus on women's accounts of sexual violence so as to capture the specifically gendered dimension of the discourse, which was often cast as a conversation about violence against

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33. “Sexual assault calls rise after high profile stories,” *CBC News* (14 Nov 2014) online: <[www.cbc.ca/news/canada/edmonton/sexual-assault-calls-rise-after-high-profile-stories-1.2835842](http://www.cbc.ca/news/canada/edmonton/sexual-assault-calls-rise-after-high-profile-stories-1.2835842)>; “Calls to sexual assault centre up after Jian Ghomeshi allegations,” *CBC News* (4 Nov 2014) online: <[www.cbc.ca/news/canada/saskatoon/calls-to-sexual-assault-centre-up-after-jian-ghomeshi-allegations-1.2822425](http://www.cbc.ca/news/canada/saskatoon/calls-to-sexual-assault-centre-up-after-jian-ghomeshi-allegations-1.2822425)>; Adam Carter, “Jian Ghomeshi allegations lead to rise of local sex assault reports,” *CBC News* (15 Nov 2014) online: <[www.cbc.ca/news/canada/hamilton/news/jian-ghomeshi-allegations-lead-to-rise-of-local-sex-assault-reports-1.2834426](http://www.cbc.ca/news/canada/hamilton/news/jian-ghomeshi-allegations-lead-to-rise-of-local-sex-assault-reports-1.2834426)>; Teghan Beaudette, “Sex assault reports up at Winnipeg counselling centre,” *CBC News* (19 Nov 2014) online: <[www.cbc.ca/news/canada/manitoba/sex-assault-reports-up-at-winnipeg-counselling-centre-1.2838163](http://www.cbc.ca/news/canada/manitoba/sex-assault-reports-up-at-winnipeg-counselling-centre-1.2838163)> [Beaudette, “Sex assault reports”].

women, and to avoid potentially misleading comparisons of male and female survivors on the basis of a very small sample of men.

The Ghomeshi story provides a useful context for examining a small sample of contemporary survivor narratives. The particular circumstances of the case may, however, also distract readers from the broader themes I wish to discuss. My primary interest is not Ghomeshi himself, or even the people and institutions surrounding him, but rather the wave of survivor discourse that arose in the wake of his story. That said, I cannot excise these accounts from their context in the world of professional Canadian (and particularly Torontonion) media, a factor that limits the representativeness of my findings. It is also important to acknowledge that Ghomeshi and his survivors garnered media attention at the expense of many others who may have stories to tell about sexual violence. I would suggest, though, that the Ghomeshi case serves as an interesting point of reference precisely because it generated such an intense, protracted, and widespread public response.

Looking only at experiential accounts published (or broadcast) via formal news media presents another methodological difficulty. The national conversation about sexual violence that was invigorated by Ghomeshi did not just take place in news media; it happened in blogs and social media sites, at sexual assault centres and counseling offices, and around water coolers and kitchen tables. The accounts submitted and selected for publication in the news outlets I have chosen represent a small and carefully-edited fraction of what was said at the time.<sup>34</sup> The published stories also likely represent a relatively privileged echelon of survivors. Undoubtedly, the social position of people like Lucy DeCoutere, Reva Seth, and, in a prominent story not involving Ghomeshi, former politician Sheila Copps, facilitated their ability not to come forward publicly, both by increasing their access to news media platforms and decreasing their vulnerability to various forms of stigmatization attendant upon disclosing a sexual assault.<sup>35</sup>

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34. Although heavily edited, I nevertheless refer to these accounts as 'narratives' because they do offer significant pieces of the stories of survivors in their own words.

35. DeCoutere and Seth both readily acknowledged this, describing a sense of responsibility to come forward due to the relatively minor impacts such a public revelation would have for them. Said DeCoutere: "My story ... it's a little upsetting but it's not traumatic. I wasn't terribly hurt by him, and if the women who are talking about this won't come forward with their names, they're obviously feeling like they'll be targeted in some way and that their lives will be impacted negatively." DeCoutere interview by Tremonti, *supra* note 12. Seth conveyed a similar sentiment, noting the relative immunity afforded to her by her personal and professional life: "I feel that while it is exceedingly difficult to publicly put your name forward and open yourself up to all of the accompanying criticism, if you are in the position that you can do so without fearing the ramifications in terms of your family, marriage,

Again, though, I think it is worthwhile to examine these narratives for the very reason that they were so widely circulated, despite the exclusions that resulted. The broad readership of the news outlets I have chosen to examine makes them a powerful public influence and a useful, if imperfect, window on public discourse. The decision to focus on mainstream news media is also admittedly pragmatic, given their accessibility.

## II. FEMINIST FRAMEWORKS

How should the survivor stories publicized in the mainstream news media surrounding Ghomeshi be understood in relation to recent developments in the law of sexual assault? After briefly outlining recent sexual assault law reforms, this Part draws upon different threads of feminist scholarship to develop two frameworks for understanding the relationship between the law and the experiential accounts of survivors. On their face, the survivor narratives seem to play into a feminist tradition that emphasizes personal experience as a means to challenge dominant discourses and institutions. I therefore begin by elaborating on the feminist turn to experience as a method for critiquing law, focusing on sexual assault law in particular. However, I go on to suggest that the Ghomeshi-driven survivor narratives should also be read as bearing out another set of feminist insights about the power of dominant discourses to shape experience in the first place.

### A. RECENT REFORMS TO THE LAW OF SEXUAL ASSAULT

In Canada, feminist efforts to combat the patriarchal norms embedded in the law of rape (now sexual assault) have led to a number of legal reforms. Overall, the principle underlying the law has shifted from protecting men's proprietary interests in women's bodies to promoting the sexual autonomy of both partners. Whereas it used to be that only a man could rape a woman via "sexual intercourse,"<sup>36</sup> gender-neutral statutory language now allows for the possibility that any person can commit a variety of forms of sexual assault against any other.<sup>37</sup> Furthermore, legislative reforms have rejected spousal immunity for sexual violence,<sup>38</sup> abolished

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personal or professional trauma, then you should do it." Seth, *supra* note 13.

36. *Criminal Code*, RSC, 1970, c C-34, s 143 [*Criminal Code*, 1970].

37. *Criminal Code*, RSC, 1985, c C-46, s 265 [*Criminal Code*].

38. *Ibid.*, as amended by *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, SC 1980-81-82-83, c 125, s 19 [Bill C-127].

sexist corroboration requirements,<sup>39</sup> eliminated the need to draw an adverse inference regarding complainant credibility where there is a delay in reporting,<sup>40</sup> and introduced so-called “rape shield provisions” to restrict the admissibility and use of sexual history and reputation evidence.<sup>41</sup>

Of particular importance to this paper is the development of the law around consent. Statutory reforms have established a robust consent standard by articulating a positive definition of consent as “the voluntary agreement of the complainant to engage in the sexual activity in question,”<sup>42</sup> legislating specific restrictions on consent (*e.g.*, where the complainant is incapable of consenting, or expresses a lack of agreement “by words or conduct” to engage, or to continue to engage, in the activity),<sup>43</sup> and requiring the accused to have taken “reasonable steps ... to ascertain that the complainant was consenting” prior to relying on the defence of mistaken belief in consent.<sup>44</sup> The latter provision effectively legislated an affirmative consent standard in Canadian sexual assault law. These reforms have been considered and applied in a number of Supreme Court of Canada cases, most notably the 1999 case of *R v Ewanchuk*.<sup>45</sup> In the 2011 case of *R v JA*, the Court added a further qualification, finding that a person cannot agree in advance to sexual acts performed while he or she is unconscious, because the law defines consent as conscious and ongoing.<sup>46</sup>

## B. FEMINIST CRITIQUES OF THE LAW REFORMS

The sweeping nature of the changes made to the law of sexual assault is a significant achievement. And yet, feminist legal scholars and practitioners point out that these reforms have not deeply transformed the gendered dynamics of sexual violence, nor its ubiquity.<sup>47</sup> The reforms, moreover, have often failed to help survivors in practice. Low rates of reporting, charging, prosecution, and conviction for sexual assault suggest that the law continues to be heavily

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39. *Ibid*, s 5, repealing s 139 and s 19, and adding s 246.4, later renumbered s 274.

40. *Ibid*, s 19, adding s 246.5, later renumbered s 275.

41. *Ibid*, adding ss 246.6 and 246.7, later renumbered ss 276 and 277.

42. *An Act to amend the Criminal Code (sexual assault)* SC 1992, c 38, s 1, adding s 273.1(1) [Bill C-49].

43. *Ibid*, s 1, adding s 273.1(2).

44. *Ibid*, s 1, adding s 273.2(b).

45. *R v Ewanchuk*, [1999] 1 SCR 330, 169 DLR (4th) 193 [*Ewanchuk*].

46. *R v JA*, 2011 SCC 28, 2 SCR 440 [*JA*].

47. Such claims are made by a number of Canadian feminists in a recent book: Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012).

under-enforced.<sup>48</sup> Survivors who do participate in the criminal process often find it traumatizing and re-victimizing.<sup>49</sup> And state-sponsored punishment can be unhelpful or even detrimental to those who have significant familial, emotional, financial, or social ties with their assailants.<sup>50</sup>

Feminist critiques of sexual assault law reflect a variety of perspectives and concerns. For many, the limited effectiveness of recent reforms bears out a longstanding worry: the danger of relying on the legal system—a frequent enabler of inequality—to resolve gender oppression. One of the groundbreaking proponents of this view is Carol Smart, who, in 1989, urged feminists to “de-centre law,”<sup>51</sup> arguing that “we should not make the mistake that law can provide the solution to the oppression that it celebrates and sustains.”<sup>52</sup> Smart worried that efforts to fix overtly discriminatory laws might give a false impression of feminist legal victory and thereby bolster the validity of the underlying system.<sup>53</sup> As Mary Heath and Ngaire Naffine put it, “law reform is an affirmation of the law and the liberal story about the state.”<sup>54</sup> Engaging in law reform thus means giving up, at least temporarily, the ability to critique law as an institution that perpetuates social hierarchies and entrenches gender inequality.

Feminist wariness of the legal system stems from the critical insight that law’s purported objectivity actually serves to legitimize dominant viewpoints that consistently discount the experiences of women and other marginalized groups.<sup>55</sup> In part, this occurs through the tenacity of dominant social norms that inform practical interpretations of law, as noted in the introduction. At a deeper level, feminist legal scholars have argued that the very logic of law rests on a paradigm

48. Johnson, *supra* note 2.

49. Madigan & Gamble, *supra* note 3.

50. Dianne L Martin, “Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies” (1998) 36 Osgoode Hall LJ 151 at 184-85; Aya Gruber, “Neofeminism” (2013) 50 Houston L Rev 1325 at 1356, 1366, 1374-75 [Gruber, “Neofeminism”].

51. Carol Smart, *Feminism and the Power of Law* (New York: Routledge, 1989) at 5.

52. *Ibid* at 49.

53. *Ibid*.

54. Mary Heath & Ngaire Naffine, “Men’s Needs and Women’s Desires: Feminist Dilemmas about Rape Law Reform” (1994) 3:1 Austl Feminist LJ 30 at 31. See also, Lise Gotell, “The Discursive Disappearance of Sexualized Violence: Feminist Law Reform, Judicial Resistance, and Neo-liberal Sexual Citizenship” in Dorothy E Chunn, Susan B Boyd & Hester Lessard, eds, *Reaction and Resistance: Feminism, Law, and Social Change* (Vancouver: UBC Press, 2007) at 149 [Gotell, “Discursive Disappearance”].

55. As Katharine Bartlett explains: “Feminists’ substantive analyses of legal decisionmaking have revealed to them that so-called neutral means of deciding cases tend to mask, not eliminate, political and social considerations from legal decisionmaking.” “Feminist Legal Methods” (1990) 103:4 Harv L Rev 829 at 862.

that prioritizes individual autonomy and rationality while failing to recognize the social, relational, and affective dimensions of life.<sup>56</sup> Thus, while sexual assault law reforms have eliminated the law's most overt endorsements of the traditional heterosexual seduction script,<sup>57</sup> they have not transformed its underlying vision of sexual relationships as transactional, nor have they re-conceptualized sexual assault as a systemic phenomenon tied to gender inequality (apart from some notable exceptions in the case law). Although the law's recognition of women's sexual autonomy is undoubtedly important, gender-neutral laws that strive for formal equality by emphasizing individual autonomy tend to obscure and thereby depoliticize the socially gendered reality of sexual violence.<sup>58</sup>

Reflecting a somewhat different set of concerns, some feminist legal scholars have questioned the compatibility of feminist thought with the values underlying the criminal justice system in particular. One of the early critics of feminist engagements with criminal law in Canada was Dianne Martin, who wrote about the issue in the late 1990s.<sup>59</sup> Martin was dismayed by the increasing convergence of feminist advocacy with the law and order agenda of the political right. While early second-wave feminist activism was critical of the legal system, Martin observed a rapid shift in feminist strategy from critiquing the patriarchal norms embedded in law towards increasing the efficacy and severity of the criminal justice system in convicting and punishing individual sexual offenders.<sup>60</sup> Consequently, a major strand of feminist advocacy became aligned with a criminal justice "retribution ethic," whereby moral scapegoating serves to maintain the legitimacy of the justice system without actually increasing community safety.<sup>61</sup>

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56. For an in-depth treatment of this topic, see Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011). Regarding sexual assault specifically, see Nicola Lacey, "Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law" (1998) 11:1 *Can JL & Jur* 47.

57. *Ibid* at 49, 51; Ngaire Naffine, "Possession: Erotic Love in the Law of Rape" (1994) 57:1 *Mod L Rev* 10; Patricia Novotny, "Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?" (2002) 1:3 *Seattle J for Social Justice* 748.

58. Lise Gotell, "Governing Heterosexuality through Specific Consent: Interrogating the Governmental Effects of *R v JA*" (2012) 24:2 *CJWL* 359 at 385 [Gotell, "Governing Heterosexuality"]; Heath & Naffine, *supra* note 54 at 51; Annabelle Mooney, "When a Woman Needs to Be Seen, Heard and Written as a Woman: Rape, Law and an Argument Against Gender Neutral Language" (2006) 19:1 *Int'l J Semiotics & L* 39.

59. Martin, *supra* note 50.

60. *Ibid* at 166.

61. *Ibid* at 159-60.

Martin's skeptical stance towards criminal justice has grown amongst contemporary feminist legal scholars.<sup>62</sup> Regarding sexual assault and rape law in North America, contemporary critics have claimed that the sweeping reforms pursued so zealously by second-wave feminists have contributed to the disproportionate criminalization of racialized men,<sup>63</sup> the diminishment of female legal and sexual agency,<sup>64</sup> and the scapegoating of a widespread social problem onto a handful of sexual deviants.<sup>65</sup> Some have used the disparaging term "carceral feminism" to critique punitive uses of law for purportedly feminist purposes.<sup>66</sup> While these critiques focus more specifically on the path feminist criminal law reform has taken in North America, they share with those of Smart and others the notion that the way law operates is fundamentally antithetical to feminism.

### C. THE TURN TO LIVED EXPERIENCE

Skepticism about the transformative potential of law (and criminal law in particular) has compelled some feminist legal scholars and activists to emphasize the importance of working outside of, and with a critical stance towards, the legal system. The idea has been to establish an independent way of knowing and speaking that can present a challenge to legal understandings. Thus, Smart wanted to "acknowledge the power of feminism to construct an alternative reality to the version which is manifested in legal discourse."<sup>67</sup> For this purpose, feminists have

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62. See e.g. Aya Gruber, "A 'Neo-Feminist' Assessment of Rape and Domestic Violence Law Reform" (2012) 15:3 J Gender, Race & Just 583; Aya Gruber, "Rape, Feminism, and the War on Crime" (2009) 84:4 Wash L Rev 581 [Gruber, "Rape, Feminism"]; Meagan Johnston, "Sisterhood Will Get Ya: Anti-rape Activism and the Criminal Justice System" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) at 291.
63. I Bennett Capers, "The Unintentional Rapist" (2009) 87:6 Wash U L Rev 1345 at 1367; Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence* (Durham, NC: Duke University Press, 2009) at 9-10. See also, Gruber, "Rape, Feminism," *supra* note 62.
64. Gruber, "Neofeminism," *supra* note 50 at 1356, 1366; Katherine M Franke, "Theorizing Yes: An Essay on Feminism, Law, and Desire" (2001) 101:1 Colum L Rev 181.
65. Melanie Randall, "Sexual Assault Law, Credibility, and 'Ideal Victims': Consent, Resistance, and Victim Blaming" (2010) 22:2 CJWL 397 at 406-407.
66. Elizabeth Bernstein, " Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns" (2010) 36:1 Signs 45; Janet Halley, "Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict" (2008) 9:1 Melbourne J Intl L 78 at 79; Elizabeth Bernstein, "The Sexual Politics of the 'New Abolitionism'" (2007) 18:3 Differences 128 at 143.
67. Smart, *supra* note 51 at 160.

often turned to the kinds of firsthand accounts of violence and oppression that have recently emerged in Canadian media. In this way, feminism's "alternative reality" has been rooted in women's lived experience. As Robin West observes, "it is feminism's most crucial insight that *our experience* must be primary."<sup>68</sup> The narration of personal experiences of oppression, including experiences of sexual violence, has thus proved crucial to feminist projects.

The second-wave feminist practice of consciousness raising exemplifies the turn to subjective experiential accounts as a ground from which to mount critical challenges to law. As I discuss further in Part III, the firsthand accounts of sexual violence offered in the wake of Ghomeshi, which were in some cases widely publicized (albeit through the filter of media outlets with their own agendas), may be read as a contemporary instance of this phenomenon. Many survivors who spoke out in mainstream media explicitly cited, as reasons for coming forward, the need to expose and fight gendered violence, discredit rape myths, support other survivors, and challenge the legal system's effectiveness in dealing with sexual assault. Although not all of the survivors explicitly labelled themselves or their actions as feminist, I identify their stories as broadly constituting a grassroots feminist discourse, because they draw from personal experience to consciously expose gendered violence that has, in most cases, not been effectively addressed by formal institutions. The survivor storytelling surrounding Ghomeshi can thus be read as contributing to the feminist project of developing alternative discourses that challenge those found in law.

#### D. THE DISCURSIVE CONSTRUCTION OF EXPERIENCE

Survivors who came forward in the wake of the Ghomeshi allegations compellingly employed personal narratives to voice experiences of oppression that they believed were not, or would not be, adequately addressed through legal channels. In this way, their stories can be read as part of an alternative feminist epistemology and discourse grounded in lived experience. And yet, another important line of thinking within feminist scholarship, influenced especially by postmodern thought, suggests that experience is not a pure ground for resistance to legal power. Specifically, thinking around the relationship between language and experience casts doubt upon the independence of experiential accounts from the legal discourses that they purport to challenge.

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68. Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1994) at 217. Bartlett similarly describes feminism as "a movement which grounds its claims to truth in experience." *Supra* note 55 at 847.

The feminist turn to experiential narratives as a source of truth can invite a view of language as merely referential—nothing more than a system for denoting an independent, pre-existing reality. Experiences of sexual violence are seen as an under-recognized or actively stifled aspect of this reality. By articulating them, survivors “break the silence” and challenge the validity, or at least the completeness, of dominant accounts of reality, such as those put forward by legal decision-makers. As Joan Scott explains, the appeal to experience thus operates as “a corrective to oversights resulting from inaccurate or incomplete vision,”<sup>69</sup> while experience itself serves “as uncontested evidence and as an originary point of explanation.”<sup>70</sup>

Yet experiential accounts of sexual violence depend at least in part on the language of law to convey meaning. They bank on the legal weight of “rape” and “sexual assault.”<sup>71</sup> As Vanessa Munro observes, “Rape, as a crime, inevitably involves a legal aspect.”<sup>72</sup> To the extent that the legal discourse around sexual crimes forms the linguistic platform for survivor storytelling, it shapes the experiences described. It is worth noting, for instance, that some of the incidents recently brought to light as long-silenced stories of sexual assault may not have met the legal test for the crime as it was defined at the time the incidents took place. It was only following the elimination of the spousal immunity doctrine in 1983<sup>73</sup> that a woman could legally accuse her husband of sexual assault. Only after the introduction of an affirmative consent standard in 1992<sup>74</sup> did the law deem her silent acquiescence to unwanted sex with her high school boyfriend a sexual assault.<sup>75</sup> By sanctioning a new, highly charged name for these events, the law transformed their meaning.

Most contemporary feminist thinkers acknowledge that the social discourses in which we are immersed influence, at least to some degree, the way we perceive and represent experience. Feminist legal scholars point to law in particular as

69. Joan W Scott, “Experience” in Judith Butler & Joan W Scott, eds, *Feminists Theorize the Political* (New York: Routledge, 1992) at 24.

70. *Ibid.*

71. Dennis Klinck notes that law modifies the meaning of all stories to which it relates by giving them “an added dimension, a new significance.” *The Word of the Law* (Ottawa: Carleton University Press, 1992) at 293.

72. Vanessa Munro, “Legal Feminism and Foucault—A Critique of the Expulsion of Law” (2001) 28:4 *JL & Soc’y* 546 at 565.

73. Bill C-127, *supra* note 38.

74. Bill C-49, *supra* note 42.

75. Women may have described such incidents in terms of “rape” or “sexual assault” in the past, but without the sanction of law, their descriptions would be less likely to be socially understood or accepted.

an important vehicle through which social norms are discursively mobilized.<sup>76</sup> This has led to critical analyses of “the productive and discursive effects of law.”<sup>77</sup> For instance, Lise Gotell argues that “judicial decisions on sexual assault operate as a gendering strategy, creating gendered subjectivities and privileged and devalued subject positions, rather than merely acting on pre-existing, *a priori* subjects.”<sup>78</sup> Gotell draws on this understanding to show how the contemporary legal discourse around sexual assault continues to construct women as sexually reactive rather than proactive, and also makes them responsible for protecting themselves against sexual violence. Legal discourse, then, wields particular power in shaping gendered interpretations of experience.

This is not to say that our thoughts and stories are wholly determined by the dominant norms embedded in law. We can, of course, think outside of the cultural scripts handed down to us, as scholars such as Scott and Gotell urge us to do. Indeed, theories of discursive construction have served as a powerful critical tool for feminists, allowing them to expose gender differences, and the gendered sexual violence that follows from them, as changeable social constructions rather than fixed realities. Recognizing that our personal stories are shaped by legal discourse does not diminish their disruptive power; it allows us to consciously appropriate the power of law. Thus, I argue that we ought to understand grassroots experiential accounts such as those put forward in the media discourse surrounding Ghomeshi as both challenging and drawing upon law's power.

### III. THE SURVIVOR STORIES

Having briefly outlined two frameworks through which women's experiential accounts might be interpreted in relation to law, I turn now to a more detailed examination of the survivor stories publicized in the initial media coverage surrounding Ghomeshi. My hope is to illustrate the applicability and value of both of the frameworks just described in interpreting these narratives.

I begin by considering the phenomenon of Ghomeshi-driven survivor storytelling as a whole. In Part II, I depicted this phenomenon as a contemporary iteration of the longstanding feminist practice of consciousness raising. Here I elaborate upon and justify this view. I go on to investigate how survivors who

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76. Vanessa Munro, for instance, emphasizes the extent to which the “constructive aspects of social power” identified by Foucault “originate from and are manifest within the normative expectations encapsulated within prevailing legal doctrines.” *Supra* note 72 at 564.

77. Gotell, “Governing Heterosexuality,” *supra* note 58 at 371.

78. Gotell, “Discursive Disappearance,” *supra* note 54 at 134.

came forward through news media assessed, both implicitly and explicitly, the role of the law, and the criminal justice system in particular, in addressing sexual violence. This inquiry reveals that many survivors affirmed feminist critiques of sexual assault law reform by exposing the problems and limitations of the legal system through their accounts, though some also viewed criminal justice as at least part of the solution to sexual violence. Next, I show how, on a meta-narrative level, survivors conceptualized their own stories as part of a grassroots feminist movement grounded in the “truth” of experience, which serves to counter the marginalizing effects of law. Finally, I examine how the experiential accounts of survivors drew from legal discourse, and correlated with recent legal reforms, despite their apparent positioning outside of law.

### A. CONSCIOUSNESS RAISING

In the week after the Ghomeshi story broke, Amanda Dale, a long-time feminist advocate and Executive Director of a Toronto clinic for women experiencing violence,<sup>79</sup> referred to the public response to the story as a moment of “collective consciousness-raising.”<sup>80</sup> In doing so, she tied the Ghomeshi moment to a much older feminist phenomenon: the second-wave practice of consciousness raising, wherein women met in small groups to relate personal experiences and thereby to discover and articulate the threads of gender-based oppression running through their lives. This practice exemplifies the turn to experiential narratives as a ground for building feminist knowledge and discourse. Kathie Sarachild, one of the first proponents of feminist consciousness raising in late 1960s America, described it as “going to the people—women themselves, and going to experience for theory and strategy.”<sup>81</sup> In 1973, rhetoric scholar Karlyn Kohrs Campbell characterized consciousness raising as an “affirmation of the affective, of the validity of personal experience.”<sup>82</sup>

Like the consciousness raising sessions of the late 1960s and early 1970s, the firsthand accounts of sexual violence publicized by mainstream Canadian news media in the wake of Ghomeshi emphasized the discovery of personal

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79. The Barbra Schlifer Commemorative Clinic offers legal, counseling, and interpretation services to women who have experienced violence, often in the context of abusive relationships.

80. Sarah Boesveld, “The Speed of Activism” *National Post* (1 Nov 2014) (ProQuest) [Boesveld, “The Speed of Activism”].

81. Kathie Sarachild, “Consciousness Raising: A Radical Weapon” in *Feminist Revolution* (New Paltz, NY: Redstockings, 1975) at 135.

82. Karly Kohrs Campbell, “The Rhetoric of Women’s Liberation: An Oxymoron” (1973) 59:1 *QJ Speech* 74 at 79.

“truths,” the cultivation of solidarity, and a collective shift towards a more lucid understanding of the reality of violence against women. However, the survivor discourse in the media surrounding Ghomeshi was less explicitly political, and far more widespread than the small gatherings of the second wave. Communication scholars Stacy Sowards and Valerie Renegar identify these characteristics as reflective of how third-wave feminists have adapted consciousness-raising practices to fit a new cultural and political context.<sup>83</sup> They claim that while “personal stories continue to play an important role in helping people recognize that their experiences of oppression or discrimination are not isolated,” they are now often published for a wide audience, rather than being told in small groups.<sup>84</sup> According to Sowards and Renegar, third-wave consciousness raising “creates space for sharing experiences, reading stories, and developing a critical perspective” without necessarily demanding particular, concrete follow-up actions.<sup>85</sup> This accords with the high value survivors in the media surrounding Ghomeshi placed on speaking out as an end in itself.<sup>86</sup> Thus, I argue that the Ghomeshi-driven survivor discourse may be broadly read as a form of third-wave consciousness raising, whereby women’s named experiences of sexual violence provided an avenue for challenging legal and other dominant social discourses. As I discuss in the next section, that challenge was often directed towards the criminal justice system in particular.

## B. “WHY DIDN’T YOU CALL THE POLICE?”: SURVIVORS AND THE JUSTICE SYSTEM

The media discourse surrounding the Ghomeshi case demonstrates the Canadian public’s persisting faith in law as a primary source of justice. Many commentators expressed the view that sexual violence is best dealt with by police and the courts.<sup>87</sup> In response, survivors offered firsthand accounts of the justice system’s failure to help them or the women they know. It was on this basis that freelance writer

83. Stacy K Sowards & Valerie R Renegar, “The Rhetorical Functions of Consciousness-Raising in Third Wave Feminism” (2004) 55:4 *Comm Stud* 535 at 541.

84. *Ibid.*

85. *Ibid* at 549.

86. See Section C, *below*.

87. Interview of Sue Montgomery, Alexa Conradi & Vanessa Pilon by Wendy Mesley (4 Dec 2014) on *The National, CBC News*, “Why women don’t report sexual assault,” CBC Player, online: <[www.cbc.ca/player/News/TV+Shows/The+National/ID/2626913327](http://www.cbc.ca/player/News/TV+Shows/The+National/ID/2626913327)> [Mesley interview]. See also Chris Murphy, “A defence lawyer’s advice to his daughters, after Ghomeshi,” *Toronto Star* (8 Nov 2014) online: <[www.thestar.com/opinion/commentary/2014/11/08/a\\_defence\\_lawyers\\_advice\\_to\\_his\\_daughters\\_after\\_jian\\_ghomeshi.html](http://www.thestar.com/opinion/commentary/2014/11/08/a_defence_lawyers_advice_to_his_daughters_after_jian_ghomeshi.html)>.

Denise Balkissoon explained her decision to tell her own story of assault (albeit not sexual assault): “I am writing it now because of those asking why shamed CBC host Jian Ghomeshi’s alleged victims didn’t call the police. It’s because it’s essentially useless, and thoroughly disappointing.”<sup>88</sup> Balkissoon recounted calling the police and having them charge her then-boyfriend, only to be told later that they had not taken pictures of her injuries because she had been drinking.

Other survivors gave similar accounts of attempting to seek justice through legal channels only to be disappointed. Their stories affirm feminist critiques of how the law often fails in practice due to the stereotypical assumptions of police officers, lawyers, and ultimately, judges.<sup>89</sup> In some of the stories I looked at, such beliefs led to a refusal on the part of the police to lay charges. Sheila Copps, for example, recounted going to the police over thirty years earlier after being raped (around the time of the first set of major legal reforms). They told her that a conviction was unlikely because she knew the perpetrator, and merely warned him to stay away.<sup>90</sup> In another historic rape case, an officer did nothing other than to tell a twelve-year-old survivor, whom I will call “E,” “I’m sorry this happened to you.”<sup>91</sup> More recently, Danielle Da Silva described feeling “infantilized” by police when she finally decided to report a previous incident of sexual violence. “It felt like I don’t matter, they weren’t taking me seriously, I felt like I wasn’t being believed,” said Da Silva. Her case was ultimately dismissed.<sup>92</sup>

Where charges were laid, many survivors recounted negative experiences with police and court processes. An anonymous Concordia student who accused three McGill football players of assaulting her in 2011 told the *National Post* that her lawyers “didn’t listen to what I wanted at all.”<sup>93</sup> She recalled completing a rape kit only to have it rendered inadmissible as evidence because of a paperwork mistake on the part of police, and being misinformed about the need to preserve

88. Denise Balkissoon, “Violence against women isn’t some secret we’ve just uncovered,” *The Globe and Mail* (7 Nov 2014).

89. See Crawford, *supra* note 4.

90. “Sheila Copps: I was raped and sexually assaulted,” *CBC Hamilton* (10 Nov 2014), online: <[www.cbc.ca/news/canada/hamilton/news/sheila-copps-i-was-raped-and-sexually-assaulted-1.2830561](http://www.cbc.ca/news/canada/hamilton/news/sheila-copps-i-was-raped-and-sexually-assaulted-1.2830561)> [CBC, “Sheila Copps”].

91. Rosie DiManno, “Don’t let star factor distract us from rape’s reality: DiManno,” *Toronto Star* (30 Nov 2014), online: [www.thestar.com/news/gta/2014/11/30/dont\\_let\\_star\\_factor\\_distract\\_us\\_from\\_rapes\\_reality\\_dimanno.html](http://www.thestar.com/news/gta/2014/11/30/dont_let_star_factor_distract_us_from_rapes_reality_dimanno.html) [DiManno, “Don’t let star factor”].

92. “Police process horrible, sexual assault survivor says,” *CBC News* (7 Nov 2014), online: <[www.cbc.ca/news/canada/toronto/police-process-horrible-sexual-assault-survivor-says-1.2828557](http://www.cbc.ca/news/canada/toronto/police-process-horrible-sexual-assault-survivor-says-1.2828557)> [CBC, “Police process horrible”].

93. Monique Muise, “Stacked against victims; Seeking justice after sex assault can be uphill battle,” *National Post* (29 Nov 2014) (LexisNexis Academic).

her clothing as evidence. Not having access to the accused's version of events also led her to feel alienated by the process: "I actually didn't feel a part of anything that was going on. It is the accused against the state and I just become a witness."<sup>94</sup> In another case, an anonymous *Star* reader, who I will call "F," set out a detailed missive warning others about her experience as a complainant in the courtroom. In addition to illustrating the emotional and psychological burden of testifying as a complainant, F pointed explicitly to the gap between the law on the books and the law in action:

[Y]our nightmares about what may happen in the courtroom will come true . . . . You will indirectly be called a liar, over and over again. Your sexual history will be brought forth despite the Rape Shield law, because the defense will find an indirect way to do so. . . . In the end, it is likely the justice system will fail you, and you will wonder why you ever agreed to come forward to begin with.<sup>95</sup>

These stories illustrate how the legal system affirms its own authority to define events over and above that of survivors, and thereby fails to give them a sense of justice.

Many survivors pointed to the types of experiences described above as a reason not to go to the police in the first place (in addition to other reasons). "[I]n the end, you come out of it worse off" said an anonymous Member of Parliament whom I will call "G," explaining her decision not to report an alleged sexual assault by a colleague to the police.<sup>96</sup> "It's not easy to go to police, and even if you do, there's no guarantee that the police will treat you humanely, or that you will get to the courts and be treated humanely, or that anything will happen," opined Antonia Zerbisias.<sup>97</sup> In a similar vein, Linda Redgrave initially predicted that police would discredit her account of being abused by Ghomeshi, though she did ultimately make a police report. She contrasted her scenario to a domestic violence complaint, which, in her view, police would be more likely to take "at face value"—a curious comment given historic and ongoing resistance to the

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94. *Ibid.*

95. Rosie DiManno, "For sex assault victims, going public is just the beginning: DiManno," *Toronto Star* (2 Nov 2014), online: <[www.thestar.com/news/gta/2014/11/02/for\\_sex\\_assault\\_victims\\_going\\_public\\_is\\_just\\_the\\_beginning\\_dimanno.html](http://www.thestar.com/news/gta/2014/11/02/for_sex_assault_victims_going_public_is_just_the_beginning_dimanno.html)> [DiManno, "For sex assault victims"].

96. Tasha Kheiriddin, "What justice demands," *National Post* (27 Nov 2014) (Factiva).

97. Jacques Gallant, "Twitter conversation about unreported rape goes global," *Toronto Star* (31 Oct 2014), online: <[www.thestar.com/news/crime/2014/10/31/twitter\\_conversation\\_about\\_unreported\\_rape\\_goes\\_global.html](http://www.thestar.com/news/crime/2014/10/31/twitter_conversation_about_unreported_rape_goes_global.html)>.

very idea of domestic violence as a crime, as demonstrated by Balkissoon's story.<sup>98</sup> Most skeptical of all were those who had "insider" knowledge of the criminal justice system. Reva Seth explained that, "as a lawyer, I'm well aware that the scenario was just a 'he said/she said' situation. ... I, as a woman who had had a drink or two, shared a joint, had gone to his house willingly and had a sexual past, would be eviscerated."<sup>99</sup> Seth also cited a general desire to keep the police out of her life.<sup>100</sup>

In addition to concerns that legal recourse would be both onerous and ineffective—law's failure to do justice in practice—many survivors noted that they were not actually interested in seeing their attacker formally punished. These remarks can be read along the lines of Martin and others' critique of the "retribution ethic" of criminal law.<sup>101</sup> "I'm really not motivated by ... finding that person in jail, or them being punished in a particular way. I'd like to be able to say what happened, explain the effects, and then hear an apology and a recognition," said Alexa Conradi, in response to a question by Wendy Mesley about pressing charges.<sup>102</sup> Co-panelist Sue Montgomery echoed this view: "That's all I wanted too, I just wanted a recognition of what he did and for him to apologize."<sup>103</sup> G too expressed a desire for an apology, and not a prosecution.<sup>104</sup>

Although not speaking of criminal justice, Kathryn Borel also eschewed punitive responses to Ghomeshi's sexual harassment: "I had no intention to sue, or to get him fired, or even to have him reprimanded. I just needed him to stop."<sup>105</sup> Journalist Leah McLaren gave similar reasons for not filing a formal complaint against a colleague who inappropriately touched her at a party: "It bugged me, but did I think he deserved to be frog-marched out of the

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98. Redgrave interview, Oct 30, *supra* note 15. Redgrave's point may not have been so much that it is easy to make a domestic violence complaint, but rather that it is difficult to make a complaint against a person whom she referred to as a "TV personality." She may also have been responding to active efforts on the part of feminists (sometimes backed by governments) to emphasize the severity of domestic violence in order to change social and legal attitudes.

99. Seth, *supra* note 13.

100. *Ibid.*

101. Martin, *supra* note 50.

102. Mesley interview, *supra* note 87.

103. *Ibid.*

104. Josh Wingrove, "NDP MP details abuse allegation, calls for probe," *The Globe and Mail* (25 Nov 2014), online: <[www.theglobeandmail.com/news/politics/ndp-mp-details-abuse-allegation-calls-for-probe/article21787508/](http://www.theglobeandmail.com/news/politics/ndp-mp-details-abuse-allegation-calls-for-probe/article21787508/)>.

105. Kathryn Borel, "Jian Ghomeshi harassed me on the job. Why did our radio station look the other way?" *The Guardian* (2 Dec 2014), online: <[www.theguardian.com/commentisfree/2014/dec/02/-sp-jian-ghomeshi-sexual-harassment-cbc-ignored](http://www.theguardian.com/commentisfree/2014/dec/02/-sp-jian-ghomeshi-sexual-harassment-cbc-ignored)> [Borel, "Jian Ghomeshi harassed me"].

building with his belongings in a cardboard box? That seemed a bit extreme. And so I kept my mouth shut.”<sup>106</sup> McLaren did finally confront her colleague in the wake of the Ghomeshi story, after he wrote an article decrying sexism in the media, and received a sincere apology in response. As a result, she described feeling “remarkably better—like anvil-off-my-chest better.”<sup>107</sup>

According to these remarks, criminal justice and other legal or quasi-legal processes were not perceived to offer the outcome most sought after by survivors: meaningful recognition and apology for the harm suffered. Moreover, the majority of survivors were not interested in the kind of retribution and punishment that tends to be a focus of criminal law in particular. Of course, these are not the only aims of the criminal justice system. Preventing perpetrators from doing further harm is also an important goal (whether achieved in practice or not)—one of particular salience in the context of Ghomeshi, given the serial nature of the accusations. However, while a general desire to eradicate sexual violence was certainly implied by calls to end gender inequality and “rape culture,” harm prevention was not frequently invoked as a specifically sought after outcome by survivors in the discourse I examined. When it was, criminal law was not seen as the answer. Borel’s comment about “need[ing] him to stop” speaks to a concern about prevention of further harm, but given that she was facing harassment at work, she went to her union to try to stop Ghomeshi, not the police.<sup>108</sup> To the extent that other survivors pointed to harm prevention as a goal, they identified speaking out publicly, or delivering warnings within female social networks, as adequate solutions.<sup>109</sup>

The mixture of dissatisfaction, distrust, and lack of interest in the police and the legal system displayed in the above accounts accords with feminist critiques of law as an inadequate answer to sexual violence. Following the grassroots impetus

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106. Leah McLaren, “Women shouldn’t have to wait years for sexual offenders to apologize,” *The Globe and Mail* (7 Nov 2014), online: <[www.theglobeandmail.com/news/national/women-shouldnt-have-to-wait-years-for-sexual-offenders-to-apologize/article21511954](http://www.theglobeandmail.com/news/national/women-shouldnt-have-to-wait-years-for-sexual-offenders-to-apologize/article21511954)>.

107. *Ibid.*

108. Borel, “Jian Ghomeshi harassed me,” *supra* note 105.

109. Seth explained that she didn’t feel it was worth reporting Ghomeshi because “[m]ost of my girlfriends had a story about an uncomfortable, sleazy, angry or even scary encounter with a guy. No one really did anything other than avoid them and tell their girlfriends to also stay away.” *Supra* note 13. DeCoutere stated: “I know no man will ever hurt me again after speaking out.” Boesveld, “The Speed of Activism,” *supra* note 80. When asked why she came forward about her experience with Ghomeshi in the media, C stated: “I want other women to be aware of his behaviour. I want other women to not fall for his manipulations like I did ... If women coming out with their stories can help other women in the future not fall into this trap, that’s what I want.” C interview, Oct 30, *supra* note 16.

of feminist scholarship and activism, these survivors draw on firsthand accounts of experience to challenge the claim that law achieves justice, by showing how it fails, both in practice and in theory, to do justice for them.

Despite all of the acknowledged problems with the system, however, some survivors did turn to law as at least part of the solution to sexual violence. Reflecting a liberal feminist mindset, some took their negative experiences as indicative of the need to improve the system, rather than reject it outright. Da Silva, for instance, asserted that survivors need legal resources,<sup>110</sup> while F ended her letter by proclaiming that “[a]ssault against women will be given free rein until changes are made to statutory law.”<sup>111</sup> The latter comment is particularly interesting, given the extensive changes that have already been made to statutory law, without eradicating the problematic dynamic of sexual assault trials. F’s knowledge of sexual assault law reform in Canada is unclear, but her comment serves as an important reminder that many survivors are likely unfamiliar with this history, even if they are well acquainted with the legal system. Legislative reforms that are not reflected in the daily operation of law may thus fail to register in terms of lived experience. Though, as I discuss later in this Part, such reforms may nevertheless shape experience indirectly through their influence on broader social discourses.<sup>112</sup>

While some survivors who were let down by the legal system proposed to improve it, the consciousness-raising discourse surrounding Ghomeshi actually encouraged others to report to police.<sup>113</sup> “Jessica,”<sup>114</sup> for instance, explained her decision to report as based on a newfound solidarity with other survivors: “It made me realize that I might not be the only person who has been victimized by him—and if that’s the case, then I’m making someone else stand alone,” she said. “I feel like I should be advocating for women’s rights and ending violence. I shouldn’t be ashamed and I shouldn’t feel guilty anymore.”<sup>115</sup> Interestingly, like many of the women above, Jessica initially identified not wanting to ruin her attacker’s reputation or career as a reason for not reporting to police. In light of

110. *CBC*, “Police process horrible,” *supra* note 92.

111. DiManno, “For sex assault victims,” *supra* note 95.

112. See Section D, *below*.

113. It may also have influenced police response, given the public scrutiny the police were under. Indeed, shortly following the breaking of the Ghomeshi story, then police Chief Bill Blair stated: “I know there’s been quite a bit of discussion about how difficult [coming forward] is, and we acknowledge how difficult it is. And it’s one of the reasons we remain so committed to providing the support that victims need.” *CBC*, “Police process horrible,” *supra* note 92.

114. A fake name used in Carter, *supra* note 33.

115. *Ibid.*

the Ghomeshi story, however, she came to realize that “I’ve had to live with this for eight years. This guy took something from me.”<sup>116</sup> Novelist and survivor Daria Salamon drew a similar link between personal empowerment and the will to seek criminal justice: “By not coming forward, by not pressing charges, I ensured that I remained a victim.”<sup>117</sup> These comments reflect a view of feminist consciousness and activism as calling for, rather than opposing, the involvement of police.

In addition to Jessica, we know that a handful of Ghomeshi’s survivors also reported previous assaults to the police after telling their stories in the media or hearing those of others. Two of them—DeCoutere and Redgrave—filed criminal complaints after giving media interviews; they both spoke out again publicly to recount their positive experiences with police (Jessica reported a more mixed experience).<sup>118</sup> In Redgrave’s case, the decision to report came after an initial interview with CBC, at the end of which she reflected, “I wish there was some way that I could press charges against him now.”<sup>119</sup> In a later interview, Redgrave described being persuaded to report after learning there was no limitation period for sexual assault: “And then I thought, ‘I can do this.’ And I felt I had to do this.”<sup>120</sup> The tone of Redgrave’s comments strikes a similar chord to Jessica’s, suggesting a sense of budding personal strength and solidarity leading to a police report.<sup>121</sup> At the same time, the phrase “had to” indicates that Redgrave may also have felt a sense of duty to report. Redgrave ultimately recounted: “The police treated me with the utmost respect and care ... It was a lot easier than I thought.”<sup>122</sup> A few days later, DeCoutere added that she “felt heard and validated” by the police, and noted that “[t]hose considering coming forward should know

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116. *Ibid.*

117. Daria Salamon, “‘They climbed into my bed ...’: Novelist Daria Salamon breaks her silence about two men having ‘a little meet-the-teacher fun,’” *The Globe and Mail* (1 Nov 2014).

118. Natalie Alcoba, “DeCoutere praises police attitude; Ghomeshi probe,” *National Post* (7 Nov 2014); Redgrave interview, Nov 3, *supra* note 15.

119. Redgrave interview, Oct 29, *supra* note 15.

120. Redgrave interview, Nov 3, *supra* note 15.

121. The act of speaking out itself may have contributed to this sense of empowerment, as “[t]he act of speaking out in and of itself transforms power relations and subjectivities, or the very way in which we experience and define ourselves.” See Linda Alcoff & Laura Gray, “Survivor Discourse: Transgression or Recuperation?” (1993) 18:2 *Signs* 260 at 260.

122. Redgrave interview, Nov 3, *supra* note 15.

that it was a safe place.”<sup>123</sup> Once again, rather than serving as an alternative to engaging with law, feminist consciousness raising actually culminated in making a formal complaint.

The association of feminist discourse and police reporting outlined above may appear to exemplify the kinds of feminist alliances with the criminal justice system that have been subject to extensive critique.<sup>124</sup> Certainly, criminal justice and other forms of individual punishment were touted by some media commentators, and at least one survivor, as crucial to addressing sexual violence.<sup>125</sup> While the accounts of the women above (those who filed police reports) appear to fall into the same camp, their remarks also suggest that retribution was not their primary motive. As Redgrave put it, “I’m not fixated on the outcome. It’s more that I need to go there and tell them the facts and give them my truth. And the fact that they are willing to hear me, it’s validating. It’s giving me a voice.”<sup>126</sup> Recall also Jessica’s comment about not wanting other survivors to “stand alone.”<sup>127</sup> According to these and other similar accounts, the pressing of charges acted not as a path to retribution, but as a kind of truth claim on the part of survivors. Survivors who went to the police may thus have treated the

123. Alcoba, *supra* note 118. Some commentators attributed these positive police experiences to the relatively privileged treatment accorded to Ghomeshi’s survivors in particular. Such treatment may be due both to the attention garnered by the star’s high profile, and the fact that his accusers were all “educated and employed,” as the *Toronto Star* hastened to mention. See Donovan & Brown, “CBC fires Jian Ghomeshi,” *supra* note 8. Feminist activist Steph Guthrie, for example, claimed to have observed a number of cases since the Ghomeshi story broke where survivors were treated “like garbage” by those they had come forward to. Interview of Roxane Gay, Steph Guthrie & Septembre Anderson by Brent Bambury (26 Dec 2014) on *Day 6*, CBC Radio, “Was 2014 a good year for women?” online: <[www.cbc.ca/player/Radio/Day+6/ID/2644284744/](http://www.cbc.ca/player/Radio/Day+6/ID/2644284744/)>. In the same vein, E commented in her letter to the *Star*: “Perhaps if I had been raped by Ghomeshi ... I would have gotten some other response than, ‘I’m sorry that happened to you,’ and that was said to me by a female officer. I was 12 years old. Why did I not matter?” DiManno, “Don’t let star factor,” *supra* note 91.

124. See Part II, Section B.

125. One anonymous survivor who was instrumental to bringing forward the allegations against Ghomeshi stated: “I’m thrilled and glad he is going to be in the hands of the justice system.” Kevin Donovan, Tim Almenciak & Mary Ormsby, “Jian Ghomeshi now in ‘the hands of the justice system,’” *Toronto Star* (26 Nov 2014) online: <[www.thestar.com/news/crime/2014/11/26/ghomeshi\\_now\\_in\\_the\\_hands\\_of\\_the\\_justice\\_system.html](http://www.thestar.com/news/crime/2014/11/26/ghomeshi_now_in_the_hands_of_the_justice_system.html)>. Some media commentators also emphasized the need for a tough legal response to perpetrators. See e.g. Erin Andersson, “Why we can’t let the conversation about sexual violence fade away,” *The Globe and Mail* (11 Dec 2014) online: <[www.theglobeandmail.com/life/relationships/why-we-cant-let-the-conversation-of-sexual-violence-fade-away/article22048547](http://www.theglobeandmail.com/life/relationships/why-we-cant-let-the-conversation-of-sexual-violence-fade-away/article22048547)>.

126. Redgrave interview, Nov 26, *supra* note 15.

127. Carter, *supra* note 33.

criminal justice system as more of a platform for taking a stand against gendered violence (and thereby supporting other survivors) than a central resolution to it. Nevertheless, in doing so, they accepted—whether knowingly or not—the consequences of engaging a system targeted towards individual punishment, and which tends to perpetuate social inequalities.

While some survivors did turn to law to address sexual violence, most disagreed with the narrow characterization of such violence that the law tends to perpetuate. A great deal of commentary in the media pointed to either Ghomeshi himself,<sup>128</sup> or the “toxic” celebrity culture at the struggling CBC,<sup>129</sup> as the root of what went wrong. Survivors, however, widely challenged the notion of sexual assault as a problem of individual, or even institutional, deviance. “I think if you go to most large institutions, you will find sexual harassment, and you will find abuses of power. ... I think it’s a systemic problem that exists in most large institutions including the CBC,” opined Borel.<sup>130</sup> In telling her story, Copps similarly debunked the notion that sexual assault and harassment is a problem specific to federal politics: “It’s not a parliamentary problem, it’s a society problem,” she said.<sup>131</sup> Indeed, there was general agreement amongst survivors that the issue went beyond any particular place or institution. As Balkissoon put it, “this broken system is not the CBC, or journalism, or Canada – but the whole world.”<sup>132</sup>

The public outpouring of survivor stories itself challenged the notion of sexual violence as an isolated phenomenon—a point that some survivors emphasized. “The facts tell us, and what we’ve seen in the last couple weeks, is that almost everyone you know has had this experience,” observed survivor

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128. See e.g. Margaret Wentz, “The distorted reality of ‘Big Ears Teddy,’” *The Globe and Mail* (1 Nov 2014) (ProQuest); “Printmaker makes point with Jian Ghomeshi shirt,” *CBC News* (7 Nov 2014), online: <[www.cbc.ca/news/canada/saskatoon/printmaker-makes-point-with-jian-ghomeshi-shirt-1.2826989](http://www.cbc.ca/news/canada/saskatoon/printmaker-makes-point-with-jian-ghomeshi-shirt-1.2826989)>.

129. See e.g. Linden MacIntyre, “Why I Left the CBC And Its Toxic Atmosphere,” *Huffington Post Blog* (22 Nov 2014), online: <[www.huffingtonpost.ca/linden-macintyre/ghomeshi-cbc-macintyre\\_b\\_6204668.html](http://www.huffingtonpost.ca/linden-macintyre/ghomeshi-cbc-macintyre_b_6204668.html)>; Rosemary Westwood, “Ghomeshi’s gone, but toxic host culture likely alive and well at CBC,” *Metro News* (16 April 2015), online: <[www.metronews.ca/views/2015/04/16/ghomeshis-gone-but-toxic-host-culture-likely-alive-and-well-at-cbc.html](http://www.metronews.ca/views/2015/04/16/ghomeshis-gone-but-toxic-host-culture-likely-alive-and-well-at-cbc.html)>.

130. Interview of Kathryn Borel (2 Dec 2014) on *As It Happens*, CBC Radio, “Former ‘Q’ producer Kathryn Borel adds name to workplace allegations against Jian Ghomeshi,” online: <[www.cbc.ca/player/Radio/ID/2623309123](http://www.cbc.ca/player/Radio/ID/2623309123)>.

131. Richard J Brennan & Rob Ferguson, “All of a sudden he jumped me’: Sheila Copps on fellow MPP’s sexual assault,” *Toronto Star* (10 Nov 2014) online: <[www.thestar.com/news/canada/2014/11/10/premier\\_kathleen\\_wynne\\_sees\\_hope\\_in\\_sheila\\_copps\\_willingness\\_to\\_step\\_forward.html](http://www.thestar.com/news/canada/2014/11/10/premier_kathleen_wynne_sees_hope_in_sheila_copps_willingness_to_step_forward.html)> [Brennan & Ferguson, “All of a sudden”].

132. Balkissoon, *supra* note 88.

Karen Freedman.<sup>133</sup> Quebec TV host Vanessa Pilon similarly underscored the ubiquity of the issue. When her co-host claimed that Pilon was the first person he knew who had been sexually assaulted, she recounted informing him: “I don’t think I’m the first, . . . I’m just the first person you know about.”<sup>134</sup> The revelation that sexual violence is not a rare but a regular occurrence serves to debunk the “liberal story” of law reform as having achieved gender equality.<sup>135</sup> As Quebec Federation of Women president Alexa Conradi observed, “people are realizing ‘we can’t have equality if this many women have been assaulted in our lives.’”<sup>136</sup> For Conradi, this realization represented the true “watershed moment” of the Ghomeshi story.<sup>137</sup>

Insistence on the social and cultural dimensions of sexual violence in the survivor discourse surrounding Ghomeshi raises a challenge to the law’s focus on individual perpetrators. Although some survivors (and other commentators) pointed to specific aspects of the legal system as at least part of the problem, sexual violence was more widely described as a matter of culture—or, to use the words of Reva Seth, Daphne Simone, and Marlo Boux, “rape culture.”<sup>138</sup> This phrase, along with “violence against women”—used by Seth, DeCoutere, Balkissoon and many others<sup>139</sup>—suggests a pervasive socio-cultural phenomenon, rather than a problem of a few bad apples or a few technical legal issues. By speaking of “rape” and “violence against women,” survivors also challenged the trend towards gender-neutral understandings of sexual violence in law, insisting that gender in fact lies at the heart of the issue.<sup>140</sup>

### C. ALTERNATIVES TO LAW: JUSTICE THROUGH STORYTELLING

The survivor discourse surrounding Ghomeshi challenged the adequacy of legal approaches to sexual violence at the level of both theory and practice. While some survivors viewed law as a necessary, or even as an empowering part of the

133. Teghan Beaudette, “Manitoba university pens how-to guide for helping sexual assault victims,” *CBC News* (20 Nov 2014), online: <[www.cbc.ca/news/canada/manitoba/manitoba-university-pens-how-to-guide-for-helping-sexual-assault-victims-1.2839188](http://www.cbc.ca/news/canada/manitoba/manitoba-university-pens-how-to-guide-for-helping-sexual-assault-victims-1.2839188)>.

134. Mesley interview, *supra* note 87.

135. Heath & Naffine, *supra* note 54.

136. Mesley interview, *supra* note 87.

137. *Ibid.*

138. Seth, *supra* note 13; Teotonio, *supra* note 32.

139. Seth, *supra* note 13; “Jian Ghomeshi to plead not guilty to sex assault, choking charges,” *CBC News* (26 Nov 2014) online <[www.cbc.ca/news/canada/jian-ghomeshi-to-plead-not-guilty-to-sex-assault-choking-charges-1.2850661](http://www.cbc.ca/news/canada/jian-ghomeshi-to-plead-not-guilty-to-sex-assault-choking-charges-1.2850661)> [CBC, “Jian Ghomeshi to plead”]; Balkissoon, *supra* note 88.

140. See *supra* note 58.

equation, most agreed that legal avenues would not suffice to address the problem. Rather, for many survivors, the best hope lay in the very kind of public discussion in which they were already participating. Meta-narratives thus emerged about the value of the public discussion and storytelling itself. "Having this conversation can help build a public understanding of the complexity around these issues," said Seth.<sup>141</sup> "There has to be a way to change perceptions, and talking loudly and publicly about it is probably the most impactful," added Daphne Simone.<sup>142</sup> Others, such as Copps, placed the emphasis more specifically on survivors going public with their stories: "If people don't sort of talk about things that happen to them and expose them, then they're never going to change."<sup>143</sup>

Some espoused the importance of speaking out alongside the use of legal mechanisms, or even through them, as the examples of survivors who went to police in the previous section show. DeCoutere, for instance, encouraged survivors to "share,"<sup>144</sup> and stated her hope "that victims' voices continue to be heard,"<sup>145</sup> while also reassuring those thinking of reporting to police that it was a "safe place."<sup>146</sup> In discussing her experience with police in a CBC interview, Redgrave similarly hoped "that other women who have a story will come forward because it's not as horrible as they're expecting," without indicating that women should come forward to the police, or to the media, specifically.<sup>147</sup>

For others, however, speaking out was characterized as an alternative to the legal system. As survivor Holly Bausman observed, "*instead of police*, women are also turning to social media to share their stories."<sup>148</sup> Survivor Marlo Boux's comments are especially germane in this regard:

I feel like my justice and my healing will come through being able to lend a voice to this ... And if it empowers another survivor, of any gender in any way, if it makes someone feel like they're not alone, adds positively to a conversation or enlightens someone who's thinking about rape culture differently, for me that is justice. That is healing.<sup>149</sup>

By framing her own storytelling as an alternative path to "justice," Boux reiterates the feminist turn towards experiential accounts as an independent foundation

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141. Seth, *supra* note 13.

142. Teotonio, *supra* note 32.

143. CBC, "Sheila Copps," *supra* note 90.

144. DeCoutere interview by Tremonti, *supra* note 12.

145. CBC, "Jian Ghomeshi to plead," *supra* note 139.

146. Alcoba, *supra* note 118.

147. Redgrave interview, Nov 3, *supra* note 15.

148. Beaudette, "Sex assault reports," *supra* note 33 (emphasis added).

149. Teotonio, *supra* note 32.

from which to address gendered sexual violence. Another example of this comes from Simone:

Putting our survival stories out there can only continue to invoke stigma if we continue to fear negative repercussion, so I strongly believe that a big part of the battle right now is to take the risk, lay our truths on the table, and hope that in doing so we can chip away at the ignorance surrounding rape-culture.<sup>150</sup>

In this account, the revelation of hidden “truths” offers the key to social change. Many of the meta-narrative comments made by other survivors expressed similar views. Centred around themes of “silence” and “voice,” “speaking out,” and “being heard,” this meta-discourse reflected feminist understandings of experiential narratives as a source of buried knowledge that must be brought to light in order to expose injustice and resist dominant cultural messages.

One of the themes that emerged in this meta-discourse was the difficulty of “breaking the silence” about sexual violence. Survivors pointed to two interconnected obstacles in this regard. First, there is the need to recognize and name the serious harms that one has experienced—to “give voice to the hurting self.”<sup>151</sup> Second, there is the need for survivor stories to be meaningfully heard by the broader public. As Holly Johnson observes, these two phenomena are related:

Reactions from others in the woman’s social world contain both explicit and implicit messages about how to make sense of what happened. These reactions have a direct impact on her ability to interpret the experience as a violent act for which she is not responsible.<sup>152</sup>

The reasons given by many survivors for initially staying silent point to these two interrelated problems.

With respect to the internal recognition issue, many survivors described having initially downplayed what happened to them, chalking it up to “some bad experience,”<sup>153</sup> or “personal misjudgment [by the perpetrator].”<sup>154</sup> “I was really trying to normalize it,” said DeCoutere, explaining why she did not say anything after Ghomeshi attacked her, or leave his house right away.<sup>155</sup> She and several other women involved with Ghomeshi agreed to go out with him again after

150. *Ibid.*

151. West, *supra* note 68 at 184.

152. Johnson, *supra* note 2 at 622.

153. Redgrave interview, Oct 29, *supra* note 15.

154. Brennan & Ferguson, “All of a sudden,” *supra* note 131.

155. DeCoutere interview by Tremonti, *supra* note 12.

an initial attack, while C spent the night at his house.<sup>156</sup> Although Seth reacted angrily to Ghomeshi's attack and did not agree to see him again, her account can also be read as minimizing her experience in some respects. For instance, in the course of explaining why she did not report Ghomeshi to police, she reflected that she "hadn't been raped"—even though Ghomeshi penetrated her with his fingers against her will.<sup>157</sup> This comment demonstrates the persistence of traditional understandings of sexual violence; despite the change from rape to sexual assault and the accompanying recognition that a serious sexual violation need not involve penile penetration, Seth, a lawyer, continued to measure her experience by the old standard. Seth also noted that most of her female friends had had a bad experience with a man, and did nothing other than warn others about him, illustrating how survivors can influence each other's reactions.<sup>158</sup>

Other common reasons given for staying silent included feelings of self-blame and self-doubt on the part of survivors for getting into a vulnerable situation, or failing to clearly assert themselves. "You feel very embarrassed, and like you put yourself in that situation, and therefore why are you complaining," explained D, interviewed anonymously by the CBC, tearfully.<sup>159</sup> Kathryn Borel, who waited over a month after the Ghomeshi story broke to attach her name to allegations of sexual harassment against the Canadian star, explained that, "like a lot of women, I worried that I had somehow brought Ghomeshi's unrelenting advances upon myself."<sup>160</sup> Even after going public, Borel described having "this fear that I wasn't right, that I wasn't trusting my experiences."<sup>161</sup> Similarly, in discussing her decision to reveal multiple experiences of sexual assault (unrelated to Ghomeshi) via the twitter hashtag #BeenRapedNeverReported, Vanessa Pilon stated that for many years "I thought maybe it was my fault, and maybe I wasn't too clear ... that I did not give consent."<sup>162</sup>

These accounts show how survivors' internal interpretations of sexual violence often accord with the minimization, normalization, and victim-blaming perpetuated by dominant social discourses, including the law (especially pre-reform but still post-reform), lending support to Johnson's theory. As author Venetia Black astutely observed in a *Globe and Mail* article about her own

156. *Ibid*; C interview, Oct 30, *supra* note 16.

157. Seth, *supra* note 13.

158. *Ibid*.

159. "The Unmaking," *supra* note 18.

160. Borel, "Jian Ghomeshi harassed me," *supra* note 105.

161. "Jian Ghomeshi harassment accuser," *The National* (2 Dec 2014), online: <[www.cbc.ca/player/Embedded-Only/News/ID/2623533671](http://www.cbc.ca/player/Embedded-Only/News/ID/2623533671)>.

162. Mesley interview, *supra* note 87.

experiences of sexual assault (unrelated to Ghomeshi): “Some of us have been conditioned to believe this kind of violence is normal.”<sup>163</sup> Such conditioning may also arise from perpetrators themselves. For example, Redgrave and many others explained their reactions to Ghomeshi in part by his own attempts to normalize his behaviour. “As soon as he was done [the assault] he was nice, and friendly, and normal again,” explained C.<sup>164</sup> DeCoutere gave a similar account: “I didn’t say anything about what had happened, and neither did he. And it was ... it was like nothing.”<sup>165</sup>

In some cases, survivors perceived what had happened to them as serious, despite the minimizing efforts of the perpetrator(s) or others. However, they remained silent due to the second problem noted above—that of public reception. As Seth reminded her readers, even if a survivor views her own experience as a serious harm, she will nevertheless face “the accusation that it wasn’t that bad.”<sup>166</sup> Indeed, many survivors expressed fears that others would judge, blame, and ultimately not believe them.

In the narratives I reviewed, those “others” often included legal decision-makers. Daria Salamon’s *Globe and Mail* article about her experience of sexual assault offers one example. In the article, Salamon reflects upon her decision not to report two men who broke into her apartment and fondled her in bed shortly after she moved to a small town to start a new job as a teacher.<sup>167</sup> Although she initially thought she would report the incident—despite the men’s attempts to downplay it as “having a little meet-the-teacher fun”—she soon realized that these men were well known in the community, and friends with the RCMP: “I would be doubted, questioned and slandered by people who would support them. I didn’t want to subject myself to further attacks.”<sup>168</sup> In the same vein, Seth explained that

even if I had wanted to do something, as a lawyer, I’m well aware that the scenario was just a ‘he said/she said’ situation. I was aware that I, as a woman who had had a drink or two, shared a joint, had gone to his house willingly and had a sexual past, would be eviscerated. Cultural frameworks on this are powerful.<sup>169</sup>

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163. Venetia Black, “As a sexual assault survivor, I know what it’s like to keep silent,” *The Globe and Mail* (17 Nov 2014) online: <[www.theglobeandmail.com/life/facts-and-arguments/its-a-predators-world/article21594805](http://www.theglobeandmail.com/life/facts-and-arguments/its-a-predators-world/article21594805)>.

164. C interview, Oct 30, *supra* note 16.

165. DeCoutere interview by Tremonti, *supra* note 12.

166. Seth, *supra* note 13.

167. Salamon, *supra* note 117.

168. *Ibid.*

169. Seth, *supra* note 13.

DeCoutere's view was strikingly similar. In explaining why she didn't report to the police initially, she stated: "I put myself in that position where I was in his place, a person whom I didn't know very well. So, I know enough to know that there would be so many holes in my story."<sup>170</sup> Regardless of whether they blamed themselves, then, survivors expressed an understanding that blame would be placed upon them through the legal process. Hence the oft-cited concern of re-victimization. As Bausman put it: "I had already given myself enough self-blame that I didn't want to have to go through it with somebody else."<sup>171</sup> Survivors thus attributed their silence to the prediction that neither the general public nor the law would recognize their experiences as actual sexual assaults.

## 1. SPEAKING OUT TOGETHER

How did survivors in the media discourse surrounding Ghomeshi overcome these silencing forces? Most notably, by finding strength in numbers. As the early days of the Ghomeshi story show, a critical mass of survivor stories was needed to create both a more receptive public climate, and a sense of solidarity through which survivors could re-interpret their experiences internally. While the CBC's decision to fire Ghomeshi may have lent some initial credibility to the accusations that followed, many people on social media still began by siding with Ghomeshi—or at least reserved judgment one way or another. Prominent public figures such as Sheila Copps (who later went public with her own experiences of sexual assault) and Elizabeth May defended him on Twitter.<sup>172</sup> Ghomeshi's Facebook post proved initially compelling, even after the *Toronto Star* published allegations by four women later that evening. However, as the allegations multiplied over the next week, suggesting a signature pattern of behaviour on Ghomeshi's part, and two of the women publicly identified themselves, their accounts became increasingly difficult to deny. The more survivors came forward, the more credible they became.

The mounting allegations struck some survivors as an opportunity for newfound recognition in the eyes of the public. Speaking of her encounters with Ghomeshi in a CBC interview, Redgrave explained that "when this came to light a few days ago it almost, it ... gave me permission to speak and I thought 'maybe someone will listen to me now' 'cause I don't think if I had said anything

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170. DeCoutere interview by Tremonti, *supra* note 12.

171. Beaudette, "Sex assault reports," *supra* note 33.

172. Brennan & Ferguson, "All of a sudden," *supra* note 131; "Elizabeth May Takes Back Tweets About Jian Ghomeshi (UPDATED)," *Huffington Post* (27 Oct 2014), online: <[www.huffingtonpost.ca/2014/10/27/elizabeth-may-jian-ghomeshi\\_n\\_6056924.html](http://www.huffingtonpost.ca/2014/10/27/elizabeth-may-jian-ghomeshi_n_6056924.html)>.

back then that anyone would care.”<sup>173</sup> In another interview the following week, Redgrave explained how knowledge of other, similar stories also changed her perception of her own experience: “It didn’t feel so much like it was my fault,” she explained.<sup>174</sup> The proliferation of survivor narratives thus led Redgrave to see her own experience in a new light, and ultimately to contribute to the growing survivor discourse.

The capacity for one story to empower another soon became a dominant meta-theme of the survivor discourse. For many, the moment presented not only an opportunity to tell their own stories, but a chance to help others to do the same. As DeCoutere put it: “Every woman who comes forward paves the way for the next.”<sup>175</sup> Indeed, many survivors cited the desire to support others in coming forward as a key factor in their decision to speak out. Recall, for instance, Jessica’s comment: “It made me realize that I might not be the only person who has been victimized by him—and if that’s the case, then I’m making someone else stand alone.”<sup>176</sup> Or consider the following remark from Calgary artist and survivor Mandy Stobo: “I thought even if it helps one person say out loud something that’s happened to them and it lets them breathe for a minute, it’s worth it.”<sup>177</sup> In a CBC interview, Bausman addressed survivors directly: “I want every girl who’s ever gone through it to know that: You can overcome it and there is help out there. . . . It’s not your fault. Quit blaming yourself. Talk to someone. Get it out and forgive yourself.”<sup>178</sup> These comments reveal a motivation on the part of survivors not just to support others emotionally, but specifically to encourage them to further “break the silence” by telling their own stories. Note, for instance, Bausman’s incitement to “[t]alk to someone” and “[g]et it out,” as part of a process of self-forgiveness. Or the fact that, in Stobo’s view, being able to “breathe for a minute” came as a result of speaking “out loud.” This was a movement specifically about voice.

In addition to personal empowerment of both self and others, the act of speaking out was also linked to broader social change. Here, the feminist

173. Redgrave interview, Oct 29, *supra* note 15.

174. Redgrave interview, Nov 3, *supra* note 15.

175. “Jian Ghomeshi case: Ex-CBC employee among complainants in new sex assault charges,” *CBC News* (8 Jan 2015), online: <[www.cbc.ca/news/canada/toronto/jian-ghomeshi-case-ex-cbc-employee-among-complainants-in-new-sex-assault-charges-1.2893723](http://www.cbc.ca/news/canada/toronto/jian-ghomeshi-case-ex-cbc-employee-among-complainants-in-new-sex-assault-charges-1.2893723)>.

176. Carter, *supra* note 33.

177. Manisha Krishnan, “How Ghomeshi scandal sparked global dialogue on rape,” *Toronto Star* (26 Nov 2014) online: <[www.thestar.com/news/gta/2014/11/26/how\\_ghomeshi\\_scandal\\_sparked\\_global\\_dialogue\\_on\\_rape.html](http://www.thestar.com/news/gta/2014/11/26/how_ghomeshi_scandal_sparked_global_dialogue_on_rape.html)>.

178. Beaudette, “Sex assault reports,” *supra* note 33.

undertones of the discourse came to the surface. "I feel like I should be advocating for women's rights and ending violence. I shouldn't be ashamed and I shouldn't feel guilty anymore," said Jessica.<sup>179</sup> In a similar vein, DeCoutere reflected: "It's made me just think a lot about where women sit in society ... and how it's not a comfortable sofa at the moment."<sup>180</sup> Antonia Zerbisias' use of the language "sisters ... rising up" to describe the Ghomeshi-driven survivor discourse also cast a political light on events, conjuring classic images of feminist solidarity.<sup>181</sup>

## 2. AFFECTIVE DISCOURSE

The meta-narratives described above point to a sense of feminist solidarity through storytelling that seeks to counter the silencing effects of dominant social discourses that are often driven or perpetuated by law. However, the language of the narratives themselves also indicates how they might be read as constituting a movement of discursive resistance to law. Not only did survivors recognize and name experiences that had previously been silenced by legal and other social discourses, they did so in ways that challenged "the criteria for legal validity and legitimacy"<sup>182</sup> that frame legal discourse itself—that is, by emphasizing the primary significance of feelings. Thus, survivors described experiences of "shame,"<sup>183</sup> "embarrassment,"<sup>184</sup> "fear,"<sup>185</sup> and "shock."<sup>186</sup> They described feeling "stupid"<sup>187</sup> and "worthless."<sup>188</sup> In response to Ghomeshi's claim that the incidents underlying the allegations against him amounted to consensual BDSM, DeCoutere objected: "It was not a kink thing. I know that because it didn't feel sexy."<sup>189</sup> True to the heart of feminist theory, affective, lived experience was thereby affirmed as an authoritative source of knowledge.<sup>190</sup>

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179. Carter, *supra* note 33.

180. DeCoutere interview by Tremonti, *supra* note 12.

181. Teotonio, *supra* note 32.

182. Bartlett, *supra* note 55 at 878.

183. See *e.g.* Black, *supra* note 163; Salamon, *supra* note 117; Mesley interview, *supra* note 87; Teotonio, *supra* note 32; Carter, *supra* note 33.

184. See *e.g.* Redgrave interview, Oct 29, *supra* note 15; D's comments in "The Unmaking," *supra* note 18; Teotonio, *supra* note 32.

185. See *e.g.* Black, *supra* note 163; Teotonio, *supra* note 32.

186. See *e.g.* DeCoutere interview by Tremonti, *supra* note 12; Redgrave interview, Oct 29, *supra* note 15; C interview, Oct 30, *supra* note 16; Donovan & Brown, "Jian Ghomeshi: 8 women," *supra* note 11.

187. Teotonio, *supra* note 32, quoting Sarah Baker.

188. Beaudette, "Sex assault reports," *supra* note 33, quoting Holly Bausman.

189. DeCoutere interview by Tremonti, *supra* note 12.

190. See West, *supra* note 68; Campbell, *supra* note 82.

Nor was this source of knowledge limited to the negative. Just as survivors conveyed the bad feelings associated with sexual violence and silencing, they also described positive feelings that resulted from telling their stories. Speaking out was thus identified as a source of healing. “Voicing my perspective of what happened and how I felt allows feelings of shame to dissipate and diminish, allows healing to occur,” said Salamon.<sup>191</sup> In a similar vein, speaking out on Twitter helped Sarah Baker, a registered nurse from Vancouver, to eradicate feelings of “shame and responsibility”; after going public, she described feeling “good” and “strong.”<sup>192</sup> Survivor Marlo Boux said: “I feel like my justice and my healing will come through being able to lend a voice to this.”<sup>193</sup>

In her article, “Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law,” Nicola Lacey argues that sexual assault law remains inadequate precisely because it ignores the “embodied and affective aspects”<sup>194</sup> of experience, leading to an “impoverished conception of the value of sexuality.”<sup>195</sup> While the law emphasizes the value of sexual autonomy,

[i]deas of self-expression, connection, intimacy, relationship—those things which surely underpin contemporary understandings of what is valuable about sexuality—are absent. Conversely, violation of trust, infliction of shame and humiliation, objectification and exploitation find no expression in the legal framework, albeit that they surface with increasing insistence in argument at the sentencing stage.<sup>196</sup>

The applicability of Lacey’s statement is somewhat attenuated in the current Canadian context. Violation of trust and exploitation, for instance, now form essential elements of certain sexual offences,<sup>197</sup> while the exercise of authority is relevant to determinations of consent in sexual assault.<sup>198</sup> In addition to these acknowledgments of the significance of relational dynamics, affective experience also bears upon the law in various ways. For instance, feelings of remorse on the part of an accused can play a significant role in sentencing, as can victim impact statements, which may relay the feelings of victims in the wake of a crime. With respect to sexual assault, the subjective fear of the complainant may demonstrate a lack of consent under section 265(3)(b) of the *Criminal Code*.

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191. Salamon, *supra* note 117.

192. Teotonio, *supra* note 32.

193. *Ibid.*

194. Lacey, *supra* note 56 at 60.

195. *Ibid.* at 57.

196. *Ibid.* at 54.

197. *Criminal Code*, *supra* note 37, ss 153, 153.1.

198. *Ibid.*, s 265(3)(d).

Nevertheless, Lacey's point still holds to the extent that courts continue to articulate the values animating sexual assault law in terms of autonomy, rather than relationship or affect. While affective experience may be a part of what has motivated the development of legal doctrine in this area, it is not explicitly acknowledged as something that guides, or ought to guide, legal decision-making. Nor do the affective experiences of the parties in a given case matter to the legal analysis in a general sense; rather feelings are treated as facts, relevant only in specific, prescribed ways. Thus, in examining the matter of consent, sexual assault law considers whether the complainant feared the application of force by the accused, as demonstrated through the presentation of evidence,<sup>199</sup> but dismisses other aspects of how she experienced the encounter as legally irrelevant. By bringing these affective dimensions of sexual experience to the fore, the experiential accounts of survivors in the media coverage surrounding Ghomeshi offer an alternative mode of understanding to the law's focus on consent.

Collectively drawing from their lived experience to name the harms of sexual violence allowed survivors in the media surrounding Ghomeshi to counter legal and other social discourses that threatened to silence them. Their stories, and the way they told them, exposed the failures of the legal system to adequately address sexual violence, both on an individual and a systemic level. In this way, the survivor narratives that were sparked by the Ghomeshi story may be read as a grassroots feminist discourse that critiques law from an outside perspective. This discourse offers an alternative way of addressing the problem of sexual violence—speaking out about personal, affective experiences—that raises critical challenges to law.

#### D. "WHAT HAPPENED TO ME?": CONSTRUCTIONS OF SEXUAL VIOLENCE

As demonstrated in the previous section, survivor storytelling in the Ghomeshi media coverage appears—and often presents itself—as independently founded in personal experiences which serve to challenge legal (and other socially dominant) discourses. However, without further nuance, this characterization risks ignoring the ways in which the narratives at issue also draw from legal meanings. In this section, I argue that the Ghomeshi-driven survivor discourse actually correlates with recent sexual assault law reforms in a number of ways. In particular, I note how survivors redefined their experiences of sexual violence using legally grounded concepts such as "crime," "assault," and "consent," and how their redefinitions parallel changes in the meaning of these concepts within the legal discourse.

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199. *Ibid.*, s 265(3)(b).

Survivors in the media surrounding Ghomeshi sometimes characterized their stories as instances of experience-based truth-telling. But how did these truths emerge, and why at this particular moment? As discussed in Part II, some feminist scholars have long critiqued the notion that personal narratives simply report the hidden “truth” of experience, arguing that this ignores “the manifold ways in which all human experiences ... are mediated by theoretical presuppositions embedded in language and culture.”<sup>200</sup> In other words, language, or discourse, does not just provide a tool for describing the “truth” of experience; it provides a theory for organizing and making sense of experience. Moreover, the theories on offer in various discourses have particular social purposes and effects. As Linda Alcoff and Laura Gray put it, “[e]xperience is not ‘pre-theoretical’” but “always already political.”<sup>201</sup>

What’s interesting about the survivor stories that emerged around the Ghomeshi case is the way in which they explicitly re-theorized experience and thereby redefined past events. The initial theory for many survivors—whether internalized or externally imposed—was one that minimized, normalized or blamed the survivor herself for instances of sexual violence, often leading her to stay silent. The new theory that survivors ascribed to in their publicized narratives, however, cast the episodes described as serious wrongs for which they were not to blame. In some cases, this understanding was made explicit. Salamon, for instance, described “[b]eing allowed to say that something terrible happened to me.”<sup>202</sup> In other cases, the severity of the event being recounted was implied by its recitation within a conversation centred on sexual violence.

What impelled this theoretical, or discursive, shift? What gave Redgrave “permission to speak”?<sup>203</sup> Why was Salamon now “allowed to say” her terrible experience? The most obvious answer, and the one given by both Redgrave and Salamon, attributes the change to the building momentum of the survivor discourse itself<sup>204</sup>—a discourse that can be read as offering feminist theories for the interpretation of sexual experience. I do not seek to deny the power of that discourse, but rather to show how it draws upon legal discourse to make itself both intelligible and powerful. Not only that, but the shift in experiential

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200. Mary E Hawkesworth, “Knowers, Knowing, Known: Feminist Theory and Claims of Truth” (1989) 14:3 *Signs* 533 at 544.

201. Alcoff & Gray, *supra* note 121 at 283.

202. Salamon, *supra* note 117.

203. Redgrave interview, Oct 29, *supra* note 15.

204. Redgrave interview, Oct 29, *supra* note 15; Salamon, *supra* note 117.

theorizing that appeared within the survivor discourse bears noticeable parallels to the shifts in the law of sexual assault.

Survivors who spoke out in the media surrounding Ghomeshi found themselves in the process of realizing and conveying new understandings of the pervasiveness and seriousness of sexual violence by re-interpreting experiences that they or others had previously downplayed. In order to do so, however, they needed language with social traction. They needed to make the wrongs they were trying to name intelligible, both to themselves and to the broader public, and for this, they turned to law. The concept of a crime, after all, generally signals a serious wrong. “There was no need—or space—to go into the gory details or name names. It was enough, it seemed, to just name the crime,” asserted survivor Sue Montgomery.<sup>205</sup> In her *Globe and Mail* article, Salamon equated telling her story with “[f]orcing those men to acknowledge that breaking into a young woman’s apartment in the middle of the night, waking her up, trapping her there against her will, groping at her, is not having a little fun. It is assault.”<sup>206</sup> In these examples, when survivors named their experiences of sexual violence, they named them as crimes. It is also interesting to note DeCoutere’s remark in a *Global News* interview that she looked up the legal definition of sexual assault shortly after coming forward with her story.<sup>207</sup> Although DeCoutere did not elaborate, interviewer Laura Brown asked her how she was doing in light of this legal revelation. Both DeCoutere’s research and Brown’s question indicate the perceived power of the law in interpreting and defining experiences of sexual violence.<sup>208</sup>

Survivors also harnessed the power of legal discourse by focusing upon the legally central issue of consent. While the concept of “consent” may not seem as intrinsically legal as “crime” or “assault,” I argue that the term itself was used repeatedly by survivors at least in part to import the gravity of law.<sup>209</sup> There are, after all, plenty of other ways to talk about experiences of sexual violence that do not rely upon the language of consent—such as through the affective language discussed in the previous section. In focusing on consent, survivors were

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205. Sue Montgomery, “Hashtag unleashes outpouring of rage,” *National Post* (29 Nov 2014) (LexisNexis Academic). Although Montgomery was referring specifically to survivor discourse on Twitter, the point holds for mainstream media narratives as well.

206. Salamon, *supra* note 117.

207. Interview of Lucy DeCoutere by Laura Brown (30 Oct 2014) *Global News*, “Extended: Lucy DeCoutere on encounters with Jian Ghomeshi,” online: <[globalnews.ca/video/1646258/extended-lucy-decoutere-on-encounters-with-jian-ghomeshi](http://globalnews.ca/video/1646258/extended-lucy-decoutere-on-encounters-with-jian-ghomeshi)>.

208. *Ibid.*

209. I wish to thank Professor Sonia Lawrence for helping me to articulate this insight.

undoubtedly prompted by Ghomeshi's insistence that his sexual interactions were all consensual, and the resultant focus on consent within the media discourse. Redgrave, for instance, described being "infuriated" by Ghomeshi's claim to have acted consensually, "because there was nothing to prepare me for this, nothing, there was no talk ... it came out of nowhere."<sup>210</sup> "There was absolutely nothing consensual about what happened to me," asserted another anonymous Ghomeshi survivor.<sup>211</sup> G similarly described having sex with "no explicit consent" (her case was unrelated to Ghomeshi), a seeming reference to the affirmative consent standard established in Canadian law.<sup>212</sup>

Although not using the term "consent," DeCoutere invoked consent-like language in a noteworthy way in response to Ghomeshi's attempt to portray himself as a victim of sexual persecution due to his interest in BDSM: "I don't really think anybody cares what Jian does in his own bedroom, unless he's hurting people ... who don't want to be hurt."<sup>213</sup> The addition of "who don't want to be hurt" is interesting, as it signals an acknowledgment of the ultimate primacy of sexual autonomy over the more feeling-based value of "hurt." Rather than relying upon "hurt" to express the wrong of sexual violence in an embodied, affective register, DeCoutere reduces the meaning of the term to mere physical injury, the wrong of which depends entirely on whether it was "wanted." Along with the other examples above, this suggests that, despite their frequent emphasis on feelings, survivors still found themselves compelled to engage in modes of (legal) discourse that prioritize autonomy over embodied experience in order to be heard.

Given the temptation to view survivor narratives as constituting a feminist discourse that stands outside of law, and the self-presentation of many narratives as such, the reliance of these narratives on legal concepts such as "crime," "assault," and "consent," is noteworthy in itself. Even more interesting is the way in which changes to the meanings of these concepts within legal discourse correlate with how they were used by survivors to define their experiences. Consider, for instance, how the legal meaning of consent has shifted from "no means no"—where a person might be excused for having an honest but mistaken belief in consent in the absence of verbal or physical resistance—to a standard of "only yes means yes." As Gotell observes, this move towards affirmative consent "reveal[s] a marked expansion of the range of situations that are seen to constitute legitimate

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210. Redgrave interview, Oct 29, *supra* note 15.

211. Donovan & Brown, "Jian Ghomeshi: 8 Women," *supra* note 11.

212. Wingrove, *supra* note 104.

213. DeCoutere interview by Tremonti, *supra* note 12.

or real 'sexual assault.'<sup>214</sup> Not only can this be seen in the courts, it is also evident in the media discourse surrounding Ghomeshi, wherein survivors expressed an increased willingness to name, and in many cases reinterpret, encounters to which they had passively acquiesced as instances of sexual assault. G, for example, recounted having "sex with no explicit consent" after her colleague grabbed her on her way out of his hotel room and she "froze."<sup>215</sup> "It was late, I was tired. ... It makes you unable to think really fast, losing control of how to react," she explained.<sup>216</sup> In this account, G projected an understanding of assault as based upon an affirmative consent standard. Not only did she reject the equation of passivity with consent, she also rationalized her passive reaction.

The narratives of other survivors also debunked the still culturally prevalent assumption that women will (and should) actively resist unwanted sexual advances. Unlike G, however, many women expressed surprise or dismay at their acquiescence in the moment. Acknowledging that she did not say anything after Ghomeshi choked and slapped her, DeCoutere observed, "I felt like if I left right away it would be impolite ... which is crazy."<sup>217</sup> She went on to exclaim: "I'm so puzzled as to why my reaction was so non-reactive."<sup>218</sup> Several others violated by Ghomeshi gave similar descriptions of their reactions. "I just allowed it to happen. I didn't know what else I was supposed to do," said C.<sup>219</sup> In the same vein, journalist Jan Wong described reacting passively when a doctor touched her inappropriately as a teenager, and again as an adult when sexually harassed by a colleague: "Like so many of Ghomeshi's dates, I was stunned into silence."<sup>220</sup> And, speaking of being groped by a drunken colleague at a work function, Leah McLaren reflected: "For years, as most women do, I've racked my brain to figure out why I failed to react in that moment."<sup>221</sup>

The bewilderment of these women at their own reactions illustrates Ian Leader-Elliot and Ngairé Naffine's critique of the new autonomy-centred model of sexual assault as supporting "an underlying fiction ... that women are now capable of engaging actively, articulately and meaningfully in sex, of making their

214. Gotell, "Discursive Disappearance," *supra* note 54 at 146.

215. Wingrove, *supra* note 104.

216. *Ibid.*

217. DeCoutere interview by Tremonti, *supra* note 12.

218. *Ibid.*

219. C interview, Oct 30, *supra* note 16.

220. This comment was made in reference to the first incident. Jan Wong, "WONG: Ending long silence around sexual assault," *Halifax Chronicle-Herald* (3 Nov 2014), online: <[thechronicleherald.ca/opinion/1248497-wong-ending-long-silence-around-sexual-assault](http://thechronicleherald.ca/opinion/1248497-wong-ending-long-silence-around-sexual-assault)>.

221. McLaren, *supra* note 106.

‘positive state of mind’ manifest, and that this is how sex in fact takes place.”<sup>222</sup> Indeed, DeCoutere and Wong both take pains to portray themselves as assertive and outgoing women, making their passivity in the moment all the more surprising to them. “[I’m] fairly sassy ... and yet this shut me up,” noted DeCoutere.<sup>223</sup> Wong recalled: “I had covered Tiananmen Square, fought off a kidnapping by Chinese plainclothes police and invaded a Hells Angels convention in Toronto.” And yet she did not stand up to her editor when he started rubbing her legs under the table.<sup>224</sup> The difficulty these women experienced in actively resisting sexual assault and harassment was clearly at odds with their own self-image.

To the extent that the above women chided themselves for failing to object to unwanted sexual activity, they displayed their continued internalization of social norms about consent and sexual assault that the law has formally discarded. At the same time, by identifying passive behaviour as a reaction to unwanted sex, rather than as an indication that nothing unwanted occurred, they also affirmed the need to rethink socially prevalent views. Indeed, these narratives show survivors in the process of reviewing, rethinking, and ultimately redefining their past experiences in ways that align with changes in the legal discourse around sexual consent. For example, while DeCoutere expressed bafflement at her non-reactiveness, she also normalized it, noting, “this is something that I think is probably familiar to folks who are in a shocked situation like that where a man has been aggressive to them.”<sup>225</sup> When asked in an interview, “Did you struggle?” Redgrave similarly defended herself: “No ... I was in shock. ... There was no conversation ... about ... anything ... he didn’t ask me if I like to be hit.”<sup>226</sup> Through this response, Redgrave turned the focus away from her lack of resistance and back to Ghomeshi’s failure to obtain affirmative consent.

Indeed, many of the women who made allegations against Ghomeshi pointed to his failure to satisfy the communicative demands of consent, often referring to a lack of discussion before the activity in question: “He did not ask if I was into it. It was never a question,” said DeCoutere.<sup>227</sup> Another anonymous woman recalled her experience as follows: “After a few drinks we went back to his room where he proceeded to literally throw me on his bed, no buildup,

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222. Ian Leader-Elliott & Ngaire Naffine, “Wittgenstein, Rape Law and the Language Games of Consent” (2000) 26:1 Monash U L Rev 48 at 69.

223. DeCoutere interview by Tremonti, *supra* note 12.

224. Wong, *supra* note 220.

225. DeCoutere interview by Tremonti, *supra* note 12.

226. Redgrave interview, Oct 29, *supra* note 15.

227. Donovan & Brown, “Jian Ghomeshi: 8 women,” *supra* note 11.

no conversation, and started biting, pulling my hair and biting me all over.”<sup>228</sup> In one case, C recounted being told by Ghomeshi: “I tend to get a little aggressive, don’t let it scare you,” before he attacked her on a subsequent date.<sup>229</sup> She did not consider such a general warning sufficient to constitute consent: “And so when he was violent with me without any talk of it ahead of time at his house, I didn’t see it coming.”<sup>230</sup> In line with shifts in the legal discourse, such statements imply that Ghomeshi ought to have sought affirmative expressions of consent at the time of the activity he was initiating. Redgrave’s response to the question, “Why did he stop?” illustrates the general sentiment: “Why did he start, is my question. Why did he start without asking?”<sup>231</sup>

An objection may be raised that these women’s expectations regarding consent were tied to the unusual nature of the sexual conduct at issue. In DeCoutere’s words: “Adults don’t slap each other across the face unless there’s an agreement, ... unless there’s a conversation.”<sup>232</sup> Because acts like hitting and choking do not fit within the normal repertoire of heterosexual intimacy, especially in the early stages of a relationship, and presumably also because they carry a risk of physical injury, they may be seen to call for a much more careful prior negotiation of consent (if they can be consented to at all).<sup>233</sup> Indeed, some of Redgrave’s remarks suggest that her expectation of affirmative consent may have related only to certain kinds of activities: “I guess you could say I consented to him pulling my hair because I didn’t protest, but the punching no, not at all.”<sup>234</sup> Despite her earlier assertion that one should not “start without asking,” implied here is the view that resistance may be required to claim a lack of consent, at least in the context of some activities. It is therefore hard to generalize the views about consent expressed by Ghomeshi’s survivors. Nevertheless, the accounts of Wong, McLaren, G, and many others demonstrate a general tendency on the part of survivors who spoke out in the wake of the Ghomeshi story to measure sexual encounters by an affirmative consent standard.

To be clear, I am not claiming that sexual assault law reforms directly caused survivors to re-interpret their experiences. Most survivors did not explicitly refer to the law on the books in the published narratives I examined (DeCoutere being an exception), and, as noted earlier, some even showed ignorance of recent

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228. Donovan, “Jian Ghomeshi did not ask for consent,” *supra* note 19.

229. C interview, Oct 30, *supra* note 16.

230. *Ibid.*

231. Redgrave interview, Oct 29, *supra* note 15.

232. DeCoutere interview by Tremonti, *supra* note 12.

233. See *JA*, *supra* note 46.

234. Redgrave interview, Oct 30, *supra* note 15.

reforms. What I am claiming is that survivors used legal terms to articulate alternative interpretations of their experiences in the wake of a discursive shift around those terms (albeit with a significant lag time from when those shifts first occurred). This change in meaning within the legal discourse, brought about through legislative reforms and refined through case law, may have supported some survivors to understand previous experiences differently, or to convey the harm of those experiences in a socially intelligible way. In this way, survivor stories that are often presented as resisting or challenging the legal system may also be read as drawing from the changing legal discourse around sexual assault. A more nuanced understanding of the relationship between sexual assault law and women's experiential accounts of sexual violence demands that we keep both perspectives in view.

#### IV. CONCLUSION

The multiple allegations of sexual violence made against well-known CBC radio host Jian Ghomeshi captured the Canadian public's attention, sparking a torrent of survivor storytelling in mainstream media and other forums. This public and widespread movement can be read as a third-wave iteration of the more intimate and overtly political consciousness-raising practices of second-wave feminism. While some survivors who spoke out in the media exhibited a positive or hopeful attitude towards the legal system, many critiqued it through appeals to firsthand experience. Survivors also portrayed their own storytelling as part of a grassroots movement to break the silence around sexual violence and thereby to challenge prevailing social norms—norms often thought to be perpetuated by the legal system. At the same time, a closer look at the survivor narratives surrounding Ghomeshi shows that they drew upon legally grounded terms and concepts, and did so in ways that match recent changes in legal discourse. This points to the influence of law on the construction of narratives about sexual experience, even as those narratives are mobilized to challenge legal norms and practices.

The point is borne out by the final episode of the Ghomeshi saga. Ghomeshi's acquittal sparked heated debate in the public sphere. While some celebrated the decision for upholding the presumption of innocence in the face of insufficient

evidence,<sup>235</sup> others decried the lack of justice that survivors continue to experience under our criminal system.<sup>236</sup> For the complainants, whose accounts had been torn apart by the adversarial process, the only validation seemed to come from picking up the pieces of their stories and telling them, once again, outside of courtroom walls.<sup>237</sup>

In the end, Kathryn Borel, the final complainant whose trial was yet to begin, opted to proceed directly to that space outside the courtroom. After accepting a peace bond and an apology in lieu of testifying for the prosecution, she stood outside the courtroom and gave her account of the prolonged harassment and assault she had experienced at the hands of Ghomeshi. She described how her employer failed to respond to her complaints, such that she “didn’t even internalize that what he was doing to my body was sexual assault” until the police confirmed that her experiences met that description.<sup>238</sup> In light of this discovery, she emphasized that Ghomeshi was guilty of “the crime of sexual assault,” noting that he “violated me in ways that violate the law.”<sup>239</sup> In Borel’s view, foregoing the trial in favour of an apology was

the clearest path to the truth. A trial would have maintained his lie, the lie that he was not guilty and it would have further subjected me to the very same pattern of abuse that I am currently trying to stop.<sup>240</sup>

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235. Harpreet S Nirwan, “The Presumption Of Innocence Was The Real Winner Of The Ghomeshi Trial,” *Huffington Post Blog* (24 Mar 2016), online: <[www.huffingtonpost.ca/harpreet-s-nirwan/jian-ghomeshi-verdict\\_b\\_9542892.html](http://www.huffingtonpost.ca/harpreet-s-nirwan/jian-ghomeshi-verdict_b_9542892.html)>; Neil Macdonald, “You don’t like the Ghomeshi verdict, fine, but don’t take it out on the judge,” *CBC News* (24 Mar 2016), online: <[www.cbc.ca/news/canada/ghomeshi-verdict-judge-neil-macdonald-1.3506958?cmp=rss](http://www.cbc.ca/news/canada/ghomeshi-verdict-judge-neil-macdonald-1.3506958?cmp=rss)>; Margaret Wente, “Truth and deception: Ghomeshi verdict a good day for justice,” *The Globe and Mail* (24 Mar 2016), online: <[www.theglobeandmail.com/opinion/truth-and-deception-ghomeshi-verdict-a-good-day-for-justice/article29387850](http://www.theglobeandmail.com/opinion/truth-and-deception-ghomeshi-verdict-a-good-day-for-justice/article29387850)>.
236. Amanda Dale & Pamela Cross, “Can the Ghomeshi trial lead to change?” *The Globe and Mail* (24 Mar 2016), online: <[www.theglobeandmail.com/opinion/can-the-ghomeshi-trial-lead-to-change/article29388229](http://www.theglobeandmail.com/opinion/can-the-ghomeshi-trial-lead-to-change/article29388229)>; “Jian Ghomeshi trial’s not guilty decision triggers outrage, march to police headquarters,” *CBC News* (24 Mar 2016), online: <[www.cbc.ca/news/canada/toronto/jian-ghomeshi-judge-ruling-1.3504250](http://www.cbc.ca/news/canada/toronto/jian-ghomeshi-judge-ruling-1.3504250)>; Jean-Paul Bedard, “A Rape Survivor’s Reaction To The Jian Ghomeshi Verdict,” *Huffington Post Living Blog* (24 Mar 2016), online: <[www.huffingtonpost.ca/jeanpaul-bedard/rape-survivors-reaction-ghomeshi-verdict\\_b\\_9542732.html](http://www.huffingtonpost.ca/jeanpaul-bedard/rape-survivors-reaction-ghomeshi-verdict_b_9542732.html)>.
237. Roumeliotis, *supra* note 28; Sarah Boesveld, “Exclusive: Lucy Decoutere on the Ghomeshi disaster,” *Chatelaine* (24 Mar 2016), online: <[www.chatelaine.com/news/exclusive-lucy-decoutere-on-the-ghomeshi-disaster](http://www.chatelaine.com/news/exclusive-lucy-decoutere-on-the-ghomeshi-disaster)>; Fraser, “Complainant,” *supra* note 14.
238. Borel statement, *supra* note 31.
239. *Ibid.*
240. *Ibid.*

In this moment, Borel, like many of the women who spoke out in the media, was telling a story in defiance of a legal system that would continue to affirm Ghomeshi's innocence, while denying the experiences of those he harmed. She was telling an alternative—and in her view, more truthful—story than the one that would have been told in the courtroom. However, as her comments demonstrate, the law was also working through her story, helping her to identify and name the harms she experienced in a powerful new way. Indeed, if the law works for survivors anywhere, perhaps it is here.