

Responding to revenge porn: Challenges to online legal impunity

Dr Michael Salter & Associate Professor Thomas Crofts

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INTRODUCTION

Revenge pornography is a category of online pornography that includes amateur images or videos that were self-produced or manufactured with the consent of those depicted, but then distributed without their consent. This is typically done in ‘revenge’ following the breakdown of a relationship, hence the moniker ‘revenge porn’. There are now a range of dedicated websites and blogs that encourage viewers to maliciously upload material of their partners or ex-partners. The uploading and circulation of revenge porn is a highly gendered activity that impacts disproportionately on women although men may also be victimised,¹ as well as minors where other minors circulate images of them. The paradox is that minors who engage in such activity appear to be criminalised in arguably inappropriate ways by child pornography statutes while adult perpetrators have been, at least until recently, almost immune from legal sanction.²

Victims of revenge porn and their allies have mobilised around principles of women’s autonomy and right to sexual self-expression, only to encounter a lack of specific legislative measures to protect women who are victimised through the non-consensual circulation of intimate images. If the law represents, as Durkheim argued,³ a system of commitments reflective of prevailing moral cultures and sentiments, then the absence of formal sanctions against revenge porn perpetrators suggests at the very least an ambivalence about the victimhood status of women harmed by revenge porn. The apparent passivity of authorities in the face of victim complaints about revenge porn suggests an undercurrent of support for the worldview of which revenge porn is a product: that women who take and share intimate images of themselves have fallen outside the bounds of appropriate femininity and have become legitimate objects of public ridicule and disgust.

This chapter is concerned with the shifts, changes and collisions of moral sentiment that underpin the phenomenon of revenge pornography, arguing that this reflects larger conflicts over women’s formal and informal status in interpersonal and public life. Despite the legal and social advances catalysed by the women’s movement, norms prohibiting female bodily and sexual display are widespread and, in the case of revenge porn, enforced online through semi-coordinated campaigns of threats and abuse designed to ‘expose’ the woman as perverse and promiscuous. The lack of protection afforded to victims may represent a de facto endorsement on these norms. In an opposing movement, victims and their allies have instituted their own systems to provide support, build consensus and impose informal sanctions upon revenge porn perpetrators. Recent law reform efforts suggests that the online social solidarity shared amongst those with shared beliefs about women’s rights includes a sexual ethos whose opposition to misogynist sentiment is being lent the weight of law.

THE EMERGENCE OF REVENGE PORN

In the latter half of the twentieth century, technological innovations in camera, video, computing and communication technology were made widely available to the consumer market. For the first time, individuals were able on a large scale to make and view their own media without the involvement of an intermediary. For example, the invention of the Polaroid camera meant that photos no longer needed to be processed by a chemist, and advances in video technology enabled the production of home movies without professional assistance.

Consumer interest in this technology was driven to a significant degree by its applications in sexual life since it enabled the confidential production of erotic or explicit material.⁴ In the 1970s and 1980s, individuals, couples and sexual subcultures began producing and sometimes sharing amateur pornographic photos and videos with others.⁵

It soon became clear that erotic material manufactured consensually could be misused in the context of an abusive relationship. One of the earliest known examples of revenge porn was a pornographic home movie of the then-married ‘blacksploitation’ stars Jayne Kennedy and Leon Isaac Kennedy which began to be circulated commercially and informally in the late 1970s. The video became available only after Jayne divorced Leon and it has been suggested that Leon released the tape to punish Jayne for leaving him.⁶ In the 1980s, the pornographic magazine *Hustler* began publishing images of naked women submitted by readers, sometimes accompanied by identifying information about the women including her name. Some of these images were submitted without the permission of the women resulting in legal action (e.g. *Wood v Hustler Magazine Inc., 1984*). Throughout the 1980s and into the 1990s compromising VHS tapes of other celebrities occasionally found their way into pornography stores however rumours about the tapes were much more widely circulated than the tapes themselves. VHS tapes can only be viewed if a physical copy of the tape, and a video player, is available, which necessarily restricts the capacity of a vengeful ex-partner to circulate them to others.

As the internet was popularised in the mid-1990s (driven in no small way by consumer interest in anonymous pornography access)⁷ online communities and networks formed to share and view amateur and self-produced pornography.⁸ The appeal of this amateur material was that it depicted ‘real’ people and sexual interactions as opposed to the scripted encounters of professional pornography. This appeal extended beyond consensually circulated material to images and videos shared out of malice or revenge. The internet transcends the physical limitations of VHS and prior media technologies, enabling the almost simultaneous production and distribution of image and video to a potentially global audience. In instances where an individual seeks to maliciously distribute a sexual image or video of another, the internet acts as a “force multiplier”,⁹ making the material publicly and internationally available. This has been illustrated by a number of high profile cases in which female (and some male) celebrities have found their careers destabilised when ex-partners released or sold sexual images or video without their consent. Beyond these high-profile cases are innumerable people whose images have been uploaded to the internet without their consent, to be shared and commented upon by a largely male audience.

THE INTERSECTION OF INTERPERSONAL AND TRANSNATIONAL HARM

Revenge porn occurs at the intersection of interpersonal and transnational harm, in which the global circulation and storage of intimate images is enabled by a personal act of betrayal. Ehrenreich Brooks observed that the marginality of international crimes in legal discourse and practice, with its state-centric focus on national jurisdictions, ‘maps almost precisely onto equally problematic domestic law distinctions between the private and public realms of behaviour’.¹⁰ In law, transborder and transnational forms of injustice are often ‘misframed’ as domestic issues,¹¹ while physical and sexual coercion in ‘private’ relations are misunderstood as a conflict over ‘rights’ rather than exercises of power and control.¹² The incommensurability of international or ‘private’ harms with the hegemonic frames operating within the criminal justice system frequently leads to their exclusion from formal modes of redress. Transnational forms of gender-based victimisation are particularly problematic in this regard, since women may be denied an adequate forum to adjudicate their complaint at either a national or an international level.¹³

In effect, revenge pornography occurs at the intersection of two ‘meta-political injustices’¹⁴: the legal misrepresentation of gender-based forms of coercion in terms developed for contractual relations, and the lack of international mechanisms to address transborder wrongs in a globalised world. However such misframings are not accidental but instead represent prevailing assumptions about citizenship and the obligations of the state. The increasingly global flows of information and capital engendered by digital and online technology have emerged contemporaneously with, and facilitated, a neoliberal ideology in which responsibilities previously attributed to the state are devolved to the individual. Neoliberalism enjoins citizens to adopt a ‘self-governing, enterprising’ mode of subjectivity while the state constricts service and program delivery.¹⁵ This excessive focus on individual responsibility and risk management obscures the gendered differentials and inequities of interpersonal relations,¹⁶ amplifying existing cultural logics that blame women who experience gendered violence.

In the mass media, women have been extolled to avoid the risks that supposedly inhere in the production of intimate images, alongside the message that women who take such risks are personally responsible for any harms that subsequently befall them. In a recent article for *Forbes*, law professor Eric Goldman rejects the need for a legal remedy or a policing response to revenge porn, instead advising individuals: ‘don’t take nude photos or videos’.¹⁷ Other commentators have asserted more forcefully that women who make such images are ‘dumb’.¹⁸ The position that it is women’s responsibility to manage risk in sexual encounters, and that those that fail in this endeavour are ‘dumb’, carries with it a view of romantic relations as an agreement governed by deliberative negotiation between two parties i.e. a contract. However as Hegel noted contract theory obscures the social and historical structures and processes that contextualise interaction by treating them as natural or given.¹⁹ The contractual view of sexual relations as a rational-calculative exchange naturalises male wrongdoing and gender power imbalances as the implicit backdrops to sexual negotiations that women must factor into their decision-making.

This is a poor framework in both normative and descriptive terms through which to understand sexual interaction. Not only does it hold women responsible for male perpetration, but it overlooks the spontaneous and embodied dimensions of sexual practice that do not lend themselves to calculative rationality. Furthermore, the characterisation of revenge porn victims as a small group of ‘dumb’ women who failed at the neoliberal project of self-management is contested by social research that demonstrates the normalisation of digital and online technology within sexual life. For example, a representative sample of 647 American adults aged 18-24 found 33% had sent a nude or semi-nude image of themselves to someone else²⁰ and surveys based on convenience samples find up to 50% of adults have done the same.²¹ An industry report claimed that 25 million unique users accessed online dating sites in 2011.²² Online sex-seeking frequently involves the exchange of intimate or sexual images.²³ Research suggests that a wide range of women and men around the world are making and sending nude and erotic images of themselves to others, and male wrongdoing in this arena is neither inevitable nor widespread. While revenge porn is illustrative of patterns of coercion and abuse, it would seem that the exchange of self-produced nude images is often mutual, pleasurable and relatively harmless.²⁴

Nonetheless, in the visual economy of nudity that flourishes online, it is clear that women are considerably more vulnerable than men. Female social status has historically been closely tied to chastity and modesty and women are particularly vulnerable to humiliation when their ‘private’ sexual life is made ‘public’. In revenge porn, male offenders seek to instrumentalise double standards in sexual mores to punish an ex-partner for leaving them by circulating intimate images to third parties. These double standards have also been evident in the lacklustre response to victim reports. A small number of revenge porn cases have resulted

in criminal prosecutions. These are likely to increase following law reform efforts in multiple jurisdictions, as will be discussed later in the chapter. Until recently, the more typical scenario was that there were no legal consequences for the person who maliciously circulated the image while the victim is largely unable to prevent or restrict the online circulation of the material.

There are a number of practical obstacles that prevent victims from minimising the harms of revenge porn. Efforts to permanently remove such images face almost insurmountable barriers, since images may be shared via peer-to-peer services, stored on multiple computers in multiple jurisdictions, or hosted by websites whose servers use various means to hide their location and identity. There is no international legal or law enforcement mechanism to enforce the removal of such material. Some victims have sought to minimise the distribution of the images by making digital copyright claims while others have pursued the offender through civil action, but with little confidence that the material will be permanently removed from online circulation. The absence of legal intervention or practical assistance has compounded the intended humiliation and distress of revenge porn victimisation. As the following section will discuss, this distress is further amplified by the viscerally misogynist online networks that have mobilised to stalk, harass and threaten revenge porn victims.

THE STALKING AND HARASSMENT OF REVENGE PORN VICTIMS

Revenge pornography maps onto existing power inequities in the visual economy in which men share pornography with one another to affirm masculine bonds via an objectification of women, often with strongly derogatory overtones.²⁵ Women and gay men may also perpetrate revenge porn but Richardson suggests they are in the minority and typically motivated by financial gain, while heterosexual male offenders are generally seeking to punish and humiliate an ex-partner for leaving them.²⁶ In doing so, the perpetrator can draw on the support of loosely affiliated networks of anonymous men who collectively mobilise to stalk, vilify and threaten female victims of revenge porn. While men may be subject to revenge porn, they are very unlikely to experience the coordinated campaigns of ongoing abuse and humiliation that have targeted female victims.

Such campaigns are indicative of the libertarian and sexist strains of internet culture with their origins in the early days of networked computing. Misogynist hostility and harassment are long-standing features of women's experiences online.²⁷ While social media has proved to be an important platform for women's online participation, female bloggers and journalists report orchestrated sexualised intimidation from men hostile to women's use of digital and online technology.²⁸ Such harassment and threats of sexualised violence appear designed to force the withdrawal of their targets from public life altogether. In a similar fashion, victims of revenge porn can find that images shared without their consent can serve as flashpoints for misogynist online subcultures.

The case of Holly Jacobs is illustrative. Jacobs is an American victim and founder of advocacy group End Revenge Porn. She has described how her ex-boyfriend initially posted explicit images online by hacking into her Facebook profile for family and friends to see, before distributing more material via revenge pornography websites and emailing the material directly to her employers.²⁹ Revenge pornography sites were then used by groups of men to coordinate a prolonged campaign of harassment and abuse, forcing Jacobs to curtail her professional activities and adopt a new identity. She described the impact on her website:

Due to this act, I have had to legally change my name, stop publishing in my field (I am a PhD student), stop networking (giving presentations, going to conferences), change my email address four times and my phone number three times, change jobs, and explain to human resources at my school that I am not a sexual predator on campus.³⁰

Jacobs approached police about her ex-boyfriend's activities but was informed that they could not charge her boyfriend since he had not stolen the images from her but rather she had shared them with him. It is questionable that, if police had investigated her complaint, no evidence of criminal wrongdoing would have been uncovered given her ex-partner's publication of sexualised images of her via social media and the subsequently campaign of threats, stalking and harassment. Other women have also reported trenchant disinterest and unresponsiveness when they report revenge porn victimisation to the police.³¹ Canadian teenager Amanda Todd committed suicide in 2012 following two years of extortion by a man who obtained a nude image of her and attempted to blackmail her into sexual activity, only to send the image to her classmates when she did not comply. Prior to Todd's death, her family contacted the Canadian police five times about the extortion but police did not investigate or take proactive steps to bring the harassment to an end.³²

As the following section will illustrate, the lack of a police or criminal justice response has enabled the development of a predatory online cottage industry of websites that source intimate images via coercive or illegal methods and then attempt to exhort victims for money. As these images frequently catalyse a campaign of harassment and abuse conducted by misogynist online networks of men, women can come under intense pressure to pay the blackmail money or acquiesce to other demands. In this process, the misogyny of online masculine libertinism intersects with an entrenched ambivalence to women's status as citizens and legal subjects to create a precarious position for the growing number of women whose sexual and intimate practices incorporate the use of digital and online technology.

THE DEVELOPMENT OF THE REVENGE PORN BUSINESS MODEL

The website *Is Anyone Up?* first brought the issue of revenge porn to international attention. It was founded in late 2010 and shut down in August 2012 by its American creator Hunter Moore, whose shifting rationales for establishing the site include claims that he wanted to show his friends photos of a woman he was sleeping with, and that he and his friends wanted to 'get back' at their ex-girlfriends by distributing photos of them without their consent.³³ He then created a submission form that enabled others to submit nude or graphic images to the site. This form acted, in essence, as a contract in which the submitter assumed responsibility for defamatory material in accordance with Section 230 of the Communications Decency Act of 1996 which protects internet publishers from the content posted or submitted by others.

Is Anyone Up? hosted thousands of images of men and women alongside links to their social media profile and derogatory commentary. Moore was notoriously unresponsive to requests from victimised adults for the removal of images. Perhaps his most infamous utterance is that a person who committed suicide due to exposure on his site would only boost his profile and advertising revenue.³⁴ One of the regular features of the site was called 'Daily Hate', which contained complaints or legal threats from people who had their pictures posted on the site without consent.³⁵ Moore typically responded by reposting the image alongside a copy of the complaint, resulting in further distress and harassment of the complainant. Rolling Stone branded Moore 'The most hated man on the Internet' in 2012.³⁶

The site garnered international notoriety and condemnation, attracting up to 240 000 unique visitors a day at the height of its popularity.³⁷ Moore claimed to be earning over US\$13 000 a month in advertising revenue from the site.³⁸ In interview, Moore confidently asserted that, since his site hosted only user-submitted content, he was protected from possible civil or criminal charges. However a substantial proportion of women whose images were posted on his site alleged that the images had been stolen or hacked from online accounts.

Charlotte Laws, an ex-private detective, began documenting these allegations when her daughter Kayla found that private images of her had been hacked in early 2012 and

uploaded to *Is Anyone Up?*.³⁹ After being offered little support from the Los Angeles Police Department, Laws began contacting and informally surveying women whose images were available on *Is Anyone Up?*. She found that approximately 40% reported they were the victims of hackers.⁴⁰ After a period of monitoring Moore's online activity and social media account, she passed evidence of hacking to the FBI who initiated a formal investigation.

Shortly afterwards, Moore shut down *Is Anyone Up?*. At the time, he claimed that there were too many images of minors being submitted to the site and the legal requirements of age checking and contacting the police were too onerous.⁴¹ However it is likely that he had been made aware of the FBI investigation by his lawyers. If closing the site was an attempt to forestall the police investigation, it failed. Moore's parents' house, where he lived, was raided by the FBI in early 2013.⁴² In January 2014, Moore was arrested and indicted along with another man, Charles Evens, on fifteen counts of conspiracy, computer hacking, aggravated identity theft, and aiding and abetting.⁴³ Prosecutors contend that Moore paid Evans for photos Evans obtained by hacking email accounts.

It is notable that it took a highly motivated and skilled victims advocate in Charlotte Laws to trigger a formal investigation into Moore's alleged activities, although the hacking allegations had been regularly aired in media coverage and victims had made individual complaints to law enforcement. This provides further support for the argument that the lack of legal protections for revenge porn victims is reflective of a broader disinterest in, or even hostility to, women who are subject to harm and abuse after engaging in behaviour deemed to be immodest or risky. There appears to be a continuum of 'subterranean values'⁴⁴ that discourage supportive responses to revenge porn and may even enjoin others in the victimisation of targeted women.

In the 12 months following the closure of *Is Anyone Up?*, Hunter Moore's Twitter following increased from 50 000 to 550 000.⁴⁵ He now has over 580 000 followers. The most ardent of these style themselves as "The Family" with Moore as "The Father". Collectively "The Family" can tweet hundreds of thousands or even millions of times a day.⁴⁶ His vast online support network poses a serious risk to Moore's detractors. Once Moore became aware of Law's identity, she found herself the target of a campaign of abuse and terrorisation including threats of death and rape via telephone and email.⁴⁷ Moore enjoys the support of thousands of zealous followers who view him as the victim of the forces of "sexual repression".⁴⁸

REVENGE PORN, BLACKMAIL AND EXTORTION

It is clear that revenge porn is the focus of strong but conflicting sentiments that have stymied the development of a coherent policing or legal response. Efforts to protect revenge porn victims from abuse and to hold perpetrators to account are in direct conflict with the view that the harms of revenge porn are the fault, primarily, of the woman who took the picture or allowed it to be taken. This is the view articulated by revenge porn operators such as Moore, who revelled in the evident amorality of his conduct while repudiating responsibility for it. Instead, he assigned ultimate culpability to those who take erotic or sexual images of themselves in the first place. He articulates a sexual ethos that is a paradoxical mix of prurient conservatism and libertarian machismo, in which women who take sexual photos of themselves deserve to be publicly shamed and humiliated, and do not deserve the benefit of legal rights and protections but those that humiliate them do. However the allegations against him suggest that this served as a rationale behind which a more complex set of calculations were at play, in which Moore allegedly sought to meet viewer demand for more images (and thus maintain the profitability of his site) by engaging a hacker.

The convergence of conservative misogyny, libertarian sexuality and commercial opportunism is even more readily apparent in those revenge porn sites that sort to replicate

and expand the revenge porn business model brokered by Moore. *Is Anybody Down?* was a site set up by American Craig Brittain that ran from December 2011 to April 2013. Like *Is Anyone Up?*, the site hosted nude and sexual images without the consent of the person depicted, along with identifying information. However the victim information provided by Brittain was particularly extensive, including the woman's name, address and, often, her phone number. Victims were catalogued according to state, country and physical attributes, including derogatory references to sexual orientation, weight and purported sexually transmitted infections.⁴⁹ This site was very aggressive in soliciting content, posting job advertisements for 'content acquisition specialists' who were apparently tasked with befriending women on online dating sites and soliciting naked images from them, which they then provided to *Is Anybody Down?* along with the women's names and contact details.⁵⁰ Brittain himself was accused of posing as a woman online to solicit naked photos from women before posting these to *Is Anybody Down?*.⁵¹

The site was operated in a maliciously intrusive way designed to maximise the reputational damage and harassment experienced by victims. For those women seeking to have images removed from *Is Anybody Down?*, the site recommended the services of a fictitious New York lawyer 'David Blade III' who promised to remove the images for a fee of between \$200 and \$300. Electronic evidence indicates that that 'David Blade III' is in fact Craig Brittain.⁵² Brittain denied this but acknowledged that he profits from the money that women pay to 'Blade' for the removal of images from his site.⁵³ The site garnered international media attention and the ensuing negative publicity appeared to get the better of Brittain, who in April 2013 closed the site, confessing on Twitter that he was 'very, very lonely' and had been 'bullied myself as a child'.⁵⁴ Britain subsequently threatening to repost the content of the site but did not go ahead. Civil action is reportedly being considered by some of his victims.⁵⁵

More recently, the operator of revenge porn site *Ugotposted*, Californian Kevin Bollaert, was arrested and charged with 31 counts of identity theft, extortion, and conspiracy. His site hosted nude and sexual images of adults alongside identifying information, and directed victims to a separate website (changemyreputation.com) in which they were asked to pay between US\$300 and \$350 to have the pictures removed. Like other revenge porn operators, Bollaert's website includes a submission form through which users posted content to the site. However Bollaert's submission form went further by specifically requiring user to submit identifying information alongside photos, including the victim's full name, location, age and social medial links. While the use of a submission form was an apparent attempt to take advantage of Section 230 of the Communications Decency Act of 1996, the specific requirement that users submit the identifying information of victims is allegedly in breach of California Penal Code sections 530.5 and 653m (b). This section makes it illegal in California to wilfully obtain identifying information 'for any unlawful purpose, including with the intent to annoy or harass'. Bollaert has been charged in effect under laws criminalising identity theft, while his apparent attempts to extort and blackmail people depicted on his site has yet to be the subject of a criminal charge.

CHALLENGING LEGAL IMPUNITY: IS A NEW OFFENCE NECESSARY?

Prior to the arrests of Bollaert and Moore, criminal charges against revenge porn perpetrators and website operators are notable only for their absence. Unable to elicit a response from the police and the justice system, some revenge porn victims and advocates turned instead to informal remedies to sanction perpetrators. For example, in August 2011, a young woman whose pictures were posted on *Is Anyone Up?* found Hunter Moore's home address, and stabbed him in the shoulder as he walked to the mailbox.⁵⁶ The wound was not serious but required stitches. Hunter Moore and Craig Brittain have also been targeted by the hacker collective Anonymous, which 'doxxed' them by gathering and publishing their private

information, and disrupting their websites.⁵⁷ Hacking revenge porn sites and ‘doxxing’ men who post images of women online without their consent has since become relatively common, with some individuals and groups mobilising online to uncover the names of perpetrators, document their activities, publish their details and pass them on to law enforcement agencies.⁵⁸

A number of women including Holly Jacobs have formed online support groups for victims. Jacob’s site ‘End Revenge Porn’ is prominent as is the website ‘Women Against Revenge Porn’ run by revenge porn victim Bekah Wells, while victims in Texas have set up ‘Army of She’. The sites vehemently resist the stigmatisation of revenge porn victims by publicising women’s experiences of victimisation and providing practical advice and legal referrals. The sites seek to coordinate legal action against perpetrators and websites, and to organise lobbying efforts for the criminalisation of revenge pornography. For example, Jacobs has worked directly with California state senator Anthony Cannella who has sponsored a California bill that recently passed the legislature to make some forms of revenge porn a misdemeanour punishable by up to six months in jail for a first offense.⁵⁹

It is commonly thought that revenge porn is an area where the law has failed to keep up with technical and social developments and is inadequate in its current state to appropriately deal with revenge porn. Before addressing whether there really is a need for, and advantages to, a new offence it is first worth examining whether there are existing laws that can appropriately be applied to revenge porn. It would appear that there are a number of existing legal remedies for a victim of revenge porn in civil and in criminal law, however the effectiveness of these remedies depends on the function that the branch of law is designed to fulfil. Whereas civil law is a private matter between the individual parties with remedies primarily designed to compensate for any loss or harm caused, criminal law is a public matter generally prosecuted by the state with remedies designed primarily to punish the harm-doer rather than compensate the victim. Criminal law also has a broader, symbolic, communicative and censuring function. Indeed, as Ashworth notes, ‘[i]t is the censure conveyed by criminal liability which marks out its special social significance’.⁶⁰

A person may seek remedy in civil law to compensate for the harm or loss caused by revenge porn. This may be in actions for breach of privacy, or in jurisdictions where this action does not exist (such as Australia) it may take the form of breach of confidence or possibly intentional infliction of emotional distress. *Giller v Procopets* [2008] VSCA 236 is the first Australian case where it was accepted that a person could recover damages for emotional distress under the tort of breach of confidence as a result of the distribution of videos showing sexual intercourse. In this case Ms Giller lived in a de facto relationship with Mr Procopets between 1990 and 1993. Mr Procopets made VHS video recordings of himself engaging in sexual activity with Ms Giller. After the relationship broke down Mr Procopets sought to harass Miss Giller by showing and sending these videos to her family and friends. It was found that Ms Giller could recover damages to compensate for the mental distress that she had suffered through the showing of these videos. Other possible civil actions include defamation where the distributed material ‘injures the reputation of another by exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society’ (Lord Atkin, *Sim v Stretch* [1936] 2 All ER 1237, 1240) and breach of copyright where a person has created, and thus has ownership of, the material.

A limitation of civil law is that the person must have the resources, financial and emotional, to bring a case. More fundamentally, civil law largely lacks the symbolic, condemnatory function that is inherent in criminal law. Remedies are generally only awarded to compensate for injury and to put the person back in the position they would have been if the defendant had not committed the wrongful act. While punitive or exemplary damages, which aim to punish the defendant and to deter such behaviour, are available they are rarely

awarded because they are regarded as crossing the jurisdictional boundary into criminal law without providing the protections of the criminal law system (see *State Farm Mutual Automobile Insurance Co v Campbell*, [538 U.S. 408](#) (2003)).

This points to the obvious advantage of criminal law which is designed to deter behaviour and which relies upon the state in most cases to take over the process of prosecution. There already exists a range of offences which may cover cases of revenge porn raising the question of whether these offences are effectively enforced in relation to revenge porn and if they are whether a specific offence is necessary. In many jurisdictions there are offences against publishing indecent material, for example s 578C *Crimes Act (1900)* NSW. In *Police v Ravshan Usmanov* [2011] NSWLC 40 a 20 year old man was convicted of this offence after he uploaded 6 pictures of his girlfriend showing her genital area and breasts to Facebook. In sentencing Mr Usmanov to six month imprisonment Deputy Chief Magistrate Mottley commented:

In relation to this matter I have regard to the purposes of sentencing, and in particular the need to prevent crime by deterring both the offender and the community generally from committing similar crimes. This is a particularly relevant consideration in a matter such as this where new age technology through Facebook gives instant access to the world. Facebook as a social networking site has limited boundaries.

Incalculable damage can be done to a person's reputation by the irresponsible posting of information through that medium. With its popularity and potential for real harm, there is a genuine need to ensure the use of this medium to commit offences of this type is deterred. (2011: [19])

In recent decades most jurisdictions have also enacted offences to covering stalking. The creation of such offences was triggered by the murder of five women in California between 1989 and 1990. The fact that prior to their murders the women had claimed that they had been repeatedly harassed by former lovers or fans (one case involved the actress Rebecca Shaeffer) and that four of the victims had restraining orders against their killers highlighted the inadequacy of the very real harms flowing from stalking behaviour and the fact that the criminal law did not provide adequate protection for victims of stalking.⁶¹ In order to fill that gap California, closely followed by many other jurisdictions, created a specific stalking offence (California Penal Code § 646.9). Stalking offences generally cover repeatedly following or communicating with the victim and either causing the victim distress or fear for their safety or the safety of others and/or the intention to cause harassment, alarm or distress. Such offences may make specific reference (eg California Penal Code § 646.9(g), (h)) to the use of electronic means of communication, covering mobile phones etc.

In 2004 an offence was added to the Australian Commonwealth Criminal Code to cover using a carriage service (internet, emails, mobile phone, etc) to menace, harass or cause offence (s 474.17). This offence is satisfied where the person publishes or distributes material in a way 'that a reasonable person would regard as being, in all the circumstances, menacing, harassing or offensive.' This offence does not require that a person intends to menace or harass but that they were reckless, that is, they were aware of a substantial risk that this would occur and it was not justifiable to take that risk (s 5.4). While the Commonwealth Attorney General's department has stated that this offence is adequate to address revenge porn,⁶² the offence yet to be applied in a revenge porn case. However two men in the Australian Defence Force were recently convicted of this offence after one man streamed via Skype his consensual sexual activity with a female army cadet.⁶³

Despite the fact that there are already a range of offences which could apply to revenge porn scenarios it appears that prosecution under existing offences is still quite rare. This might be because of difficulties satisfying offence provisions, such as the intention to harass for a stalking offence. It may also be due to the reluctance of victims to bring forward

a complaint for fear of bringing further attention to the fact that the material has been disseminated. It may also be because, as in the case of stalking, there is a lag in the development of the social realisation that such behaviours are indeed harmful and worthy of criminalisation. In response to growing concern that the criminal law is not adequate to address revenge porn some jurisdictions have now introduced or are planning to introduce offences specifically dealing with non-consensual distribution of material. For example, New Jersey and California are the first states in the US to enact criminal offences with other US states and the Australian state of Victoria considering the introduction of similar offences.

The offence in the Californian Penal Code §647(j)(4) applies where a person distributes, with the intention of causing serious emotional distress, an image that they took of an intimate part of another person's body in circumstances where there is an agreement or understanding that it will remain private. For this offence to apply the person must distribute with the intention of causing serious emotional distress and the depicted person must suffer serious emotional distress. While the introduction of such an offence is lauded by some as a step in the right direction there is concern that this offence will be of limited effectiveness because it only covers images that the offender took themselves, thus not cases where a person passes on an image that they did not create. Furthermore, there is the need for proof that the distribution is done with the intention of causing severe emotional distress, a requirement which may be difficult to prove. Others are critical of whether such an offence conflicts with the First Amendment right to free speech.⁶⁴

Despite these limitations and the argument that there are existing offences which could and should be used to deal with revenge porn there are specific advantages to a new offence designed specifically for revenge porn. This advantage relates to the communicative and symbolic function of criminal law. As Ashworth notes '[c]riminal liability is the strongest formal condemnation that society can inflict'.⁶⁵ Creating such an offence therefore expresses social condemnation of the practice at the core of the offence and acknowledges the harms associated with such behaviours. Thus, from a fair labelling perspective a new offence is a positive step in developing an offence which appropriately identifies and names the particular wrongfulness of this behaviour. Chalmers and Leverick explain the dual role of fair labelling:

It might be thought that the language of 'labelling' could refer only to the description attached to the offender's conduct, but in fact one of the considerations which is often taken to underpin fair labelling is the need to differentiate between different forms of wrongdoing.⁶⁶

Fair labelling is of fundamental importance given the nature of criminal law as society's most condemnatory tool. Offence labels operate as short-hand communicators giving the public a clear indication of what the offender has done and precisely how he or she has 'failed in her or his basic duties as a citizen'.⁶⁷ As Wilson notes '[p]recise, meaningful offence labels are as important as justice in the distribution of punishment. These labels help us to make moral sense of the world'.⁶⁸ On a wider and perhaps more fundamental level offence labels have a symbolic and educational function in society. Seeing offenders convicted according to the perceived wrongfulness of the behaviour communicates society's core values and confirms in the public's mind the wrongfulness of the behaviour.⁶⁹ The advantage of creating a specific offence rather than relying on broader offences or civil law is that, '[a] criminal provision is better able to communicate the boundaries of socially acceptable behaviour if it packages crimes in morally significant ways'.⁷⁰

In order to be effective a new offence should focus on the intentional dissemination, or the threat of dissemination, of the intimate image without the consent of the victim (or without reasonable grounds for presuming consent) to the manner of distribution regardless of whether the person is the creator of the image or has merely come into possession of that

image.⁷¹ In recommending a new offence it must also be kept in mind that there are limits to what the law can do, there must also be a social realisation among victims, the public, the police, prosecutors and the courts that such behaviour is deserving of prosecution. A new specific offence can, however, through its symbolic function confirmation in the public consciousness the wrongfulness of distributing intimate images of another without their consent. A new offence also functions to contest or disrupt misogynist social norms and values that deflect responsibility for the harms of revenge porn from the perpetrator and to the victim.

CONCLUSION

Revenge porn raises important questions about how individuals negotiate responsibility, vulnerability and trust in intimate relations, and how to respond when the betrayal of this trust is amplified to international effect by new media technology. In the absence of an adequate criminal justice or law enforcement response, revenge porn has operated in a zone of legal impunity that has generated a set of countervailing forces active online. Misogynist networks of men and boys use revenge porn to harass and intimidate women online and offline, and some members of these networks seek to eroticise and commodify female distress by establishing dedicated revenge porn websites and extorting female victims for money. In opposition, victims and their advocates are organising to provide support, formulate a political and collective response, and impose sanctions upon offenders since the justice system will not. However without the legal or practical means to disrupt the circulation of their image online, victims of revenge porn remain vulnerable to ongoing abuse and harassment orchestrated by those hostile to women's online and public participation.

As digital and online technology is integrated into social and sexual life, it can operate as a new medium for the reproduction and intensification of relational and gendered coercion. Revenge porn is one example of this. It is apparent that existing criminal offences could be applied to sanction revenge porn perpetrators but a new offence may be necessary in order to adequately label the harms of revenge porn and communicate that it is serious and deserving of prosecution. This is the preferred response of a growing number of jurisdictions who are seeking to criminalise revenge porn. In doing so, they are challenging entrenched cultural logics that blame women for putting themselves 'at risk' of victimisation and endorse the public shaming of female sexuality. Herman notes that it is common for sexual offences to include a 'ritualized element' designed to 'defile' the victim in the eyes of others.⁷² The creation of offences that specifically target revenge porn may both deter perpetrators and operate symbolically to restore and affirm the dignity of victims.

BIBLIOGRAPHY

- AAP. "Army Sacking over Skype Sex Scandal." *Sydney Morning Herald*, November 9 2013, <http://www.smh.com.au/national/army-sacking-over-skype-sex-scandal-20131109-2x70k.html> (13 March 2014).
- . "Revenge Porn 'Spreading Like Wildfire'." *SBS.com.au*, November 22 2013, <http://www.sbs.com.au/news/article/2013/11/22/revenge-porn-spreading-wildfire> (13 March 2014).
- AP. "Notorious 'Revenge Porn King' Charged with Hacking." *Sydney Morning Herald*, January 25 2014, <http://www.smh.com.au/world/notorious-revenge-porn-king-charged-with-hacking-20140125-hv9tc.html#ixzz2tFZutQrv> (13 March 2014).
- AP/MTV, "A Thin Line: 2009 AP-MTV Digital Abuse Study," (2009), http://www.athinline.org/MTV-AP_Digital_Abuse_Study_Executive_Summary.pdf (13 March 2014).
- Ashworth, Andrew. *Principles of Criminal Law*. Oxford: Oxford University Press, 2006.

- Baird, Julia. "Twitter Opens a New World of Abuse Aimed at Women." *Sydney Morning Herald*, February 15 2014, <http://www.smh.com.au/comment/twitter-opens-a-new-world-of-abuse-aimed-at-women-20140214-32qyf.html> (13 March 2014).
- Bennett, Mark. "Are Statutes Criminalising Revenge Porn Constitutional." *Defending people: The tao of criminal-defense trial lawyering [blog]*, October 14 2013, <http://blog.bennettandbennett.com/2013/10/are-statutes-criminalizing-revenge-porn-constitutional.html> (13 March 2014).
- CBC News. "Amanda Todd Suicide: Rcmp Repeatedly Told of Blackmailers Attempts." *CBC News*, November 15 2013, <http://www.cbc.ca/news/canada/amanda-todd-suicide-rcmp-repeatedly-told-of-blackmailer-s-attempts-1.2427097> (13 March 2014).
- Chalmers, James, and Fiona Leverick. "Fair Labelling in Criminal Law." *The Modern Law Review* 71, no. 2 (2008): 217-46.
- Chemaly, Soraya. "The Digital Safety Gap and the Online Harassment of Women." *Huffington Post Media*, January 28 2013, http://www.huffingtonpost.com/soraya-chemaly/women-online-harassment_b_2567898.html (13 March 2014).
- Chen, Adrian. "Unmasking Reddit's Violentacrez, the Biggest Troll on the Web." *Gawker*, December 12 2012, <http://gawker.com/5950981/unmasking-reddits-violentacrez-the-biggest-troll-on-the-web> (13 March 2014).
- Clark-Flory, Tracey. "Doxxing Victim: "This Isn't About Porn, This Is About Humiliation".*" Salon*, March 2 2014, http://www.salon.com/2014/03/02/doxxing_victim_this_isn%E2%80%99t_about_porn_this_is_about_humiliation/ (13 March 2014).
- Coopersmith, Jonathan. "Pornography, Technology and Progress." *ICON* 4 (1998): 94-125.
- . "Pornography, Videotape and the Internet." *Technology and Society Magazine, IEEE* 19, no. 1 (2000): 27-34.
- Dery, Mark. "Naked Lunch: Talking Realcore with Sergio Messina." In *C'lickme: A Netporn Studies Reader*, edited by K. Jacobs, M. Janssen and M. Pasquinelli, 17-30. Amsterdam: Institute of Network Cultures, 2007.
- Dodero, Camille. "Bullyville Has Taken over Hunter Moore's Is Anyone Up." *Village Voice*, April 19 2012, http://blogs.villagevoice.com/runninscared/2012/04/bullyville_isanyoneup.php (13 March 2014).
- . "How Revenge-Porn Publisher Hunter Moore Suffered \$250,000 Worth of Payback." *Gawker*, March 12 2013, <http://gawker.com/5965758/how-revenge+porn-publisher-hunter-moore-suffered-250000-worth-of-payback> (13 March 2014).
- . "Hunter Moore Makes a Living Screwing You." *Village Voice*, April 4 2012.
- Durkheim, Emile. *The Division of Labor in Society*. New York: Simon and Schuster, 1997.
- Ehrenreich Brooks, Rosa. "Feminism and International Law: An Opportunity for Transformation." *Yale Journal of Law and Feminism* 14 (2002): 345-61.
- Feldman, Brian. "How Hunter Moore Tries to Silence Critics: A Step-by-Step Guide." *Vocativ*, January 16 2014, <http://www.vocativ.com/culture/uncategorized/hunter-moore-tries-silence-critics-step-step-guide/> (13 March 2014).
- Finkel, Eli J., Paul W. Eastwick, Benjamin R. Karney, Harry T. Reis, and Susan Sprecher. "Online Dating: A Critical Analysis from the Perspective of Psychological Science." *Psychological Science in the Public Interest* 13, no. 1 (January 1, 2012): 3-66.
- Flood, Michael. "Men, Sex and Homosociality: How Bonds between Men Shape Their Sexual Relations with Women." *Men and masculinities* 10, no. 3 (2008): 339-59.
- Fraser, Nancy. *Scales of Justice: Reimagining Political Space in a Globalizing World*. Cambridge & Malden MA: Polity, 2008.

- Gold, Danny. "The Man Who Makes Money Publishing Your Nude Pics." *The Awl*, November 10 2011, <http://www.theawl.com/2011/11/the-man-who-makes-money-publishing-your-nude-pics> (13 March 2014).
- Goldman, Eric. "What Should We Do About Revenge Porn Sites Like Texxxxan?" *Forbes*, January 28 2013, <http://www.forbes.com/sites/ericgoldman/2013/01/28/what-should-we-do-about-revenge-porn-sites-like-texxxxan/> (13 March 2014).
- Halter, Ed. "Secrets and Thighs: A History of Celebrity Sex Tapes, Real and Fake, from Joan Crawford to Paris Hilton." December 2 2003, <http://www.villagevoice.com/2003-12-02/news/secrets-and-thighs/> (13 March 2014).
- Hardin, Chet. "The Face of Revenge Porn: Awash in 'Honest' Porn, Colorado Springs' Craig Brittain Reigns as One of the Most Hated Men on the Internet." *Colorado Springs Independent*, January 9 2013, <http://www.csindy.com/coloradosprings/the-face-of-revenge/Content?oid=2608450> (13 March 2014).
- Hartman, Yvonne. "In Bed with the Enemy: Some Ideas on the Connections between Neoliberalism and the Welfare State." *Current Sociology* 53, no. 1 (January 1, 2005): 57-73.
- Harvey, Laura, Jessica Ringrose, and Rosalind Gill. "Swagger, Ratings and Masculinity: Theorising the Circulation of Social and Cultural Value in Teenage Boys' Digital Peer Networks." *Sociological Research Online* 18, no. 4 (2013).
- Hegel, Georg Wilhelm Fredrich. *Hegel: Elements of the Philosophy of Right*. Cambridge University Press, 1991.
- Held, Virginia. *The Ethics of Care: Personal, Political and Global*. Oxford 2005.
- Herman, Judith Lewis. "Justice from the Victim's Perspective." *Violence Against Women* 11, no. 5 (May 1, 2005): 571-602.
- Hess, Amanda. "Why Women Aren't Welcome on the Internet." *Pacific Standard*, January 6 2014, <http://www.psmag.com/navigation/health-and-behavior/women-arent-welcome-internet-72170/> (13 March 2014).
- Horder, Jeremy. "Rethinking Non-Fatal Offences against the Person." *Oxford J. Legal Stud.* 14 (1994): 335.
- Jeltson, Melissa. "Predditors: New Tumblr Outs People Who Post 'Creepshots' to Reddit." *Huffington Post*, November 11 2012, http://www.huffingtonpost.com/2012/10/11/predditors-tumblr-creepshots-reddit_n_1955897.html (13 March 2014).
- Klettke, Bianca, David J. Hallford, and David J. Mellor. "Sexting Prevalence and Correlates: A Systematic Literature Review." *Clinical Psychology Review* 34, no. 1 (2// 2014): 44-53.
- Laws, Charlotte. "I've Been Called the 'Erin Brovovich' of Revenge Oprn, and for the First Time Ever, Here Is My Entire Uncensored Story of Death Threats, Anonymous and the Fbi." *XOJane*, November 21 2013, <http://www.xojane.com/it-happened-to-me/charlotte-laws-hunter-moore-erin-brockovich-revenge-porn> (13 March 2014).
- Lee, Dave. "Anonymous Target Revenge Porn Site Owner Hunter Moore." *BBC*, December 3 2012, <http://www.bbc.co.uk/news/technology-20579728> (13 March 2014).
- Lee, Timothy. "'Involuntary Porn' Site Tests the Boundaries of Legal Extortion." *Ars Technica*, November 14 2012, <http://arstechnica.com/tech-policy/2012/11/involuntary-porn-site-tests-the-boundaries-of-legal-extortion/> (13 March 2014).
- Maass, Brian. "Revenge Porn Website May Be 'Catfishing', Impersonating Women to Obtain Nude Photos." *CBS Denver*, February 15 2013, <http://denver.cbslocal.com/2013/02/15/revenge-porn-website-operator-may-be-catfishing-impersonating-woman-to-obtain-nude-photos/> (13 March 2014).

- Markowitz, Eric. "The 8,000 of Hunter Moore's Cult Will Do Anything for 'the Father'." *Vocativ*, January 8 2014, <http://www.vocativ.com/01-2014/8000-members-hunter-moores-cult-will-anything-father/> (13 March 2014).
- Matza, David, and Gresham M. Sykes. "Juvenile Delinquency and Subterranean Values." *American Sociological Review* 26, no. 5 (1961): 712-19.
- Miller, Michael. "Miami Revenge Porn Victim Holly Jacobs Demands Politicians 'Take Issue Seriously'." *Miami New Times*, May 2 2013, http://blogs.miaminewtimes.com/riptide/2013/05/miami_revenge_porn_victim_holly_jacobs/ (13 March 2014).
- Mitchell, Barry. "Multiple Wrongdoing and Offence Structure: A Plea for Consistency and Fair Labelling." *The Modern Law Review* 64, no. 3 (2001): 393-412.
- Morahan-Martin, Janet. "The Gender Gap in Internet Use: Why Men Use the Internet More Than Women—a Literature Review." *CyberPsychology & Behavior* 1, no. 1 (1998): 3-10.
- Morris, Alex. "Hunter Moore: The Most Hated Man on the Internet." *Rolling Stone*, October 11 2012, <http://www.rollingstone.com/culture/news/the-most-hated-man-on-the-internet-20121113> (13 March 2014).
- O'Connor, Julia, Ann Shola Orloff, and Seila Shaver. *States, Markets, Families: Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the United States*. Cambridge: Cambridge University Press, 1999.
- O'Connor, Maureen. "The Crusading Sisterhood of Revenge-Porn Victims." *New York Magazine*, August 29 2013, <http://nymag.com/thecut/2013/08/crusading-sisterhood-of-revenge-porn-victims.html> (13 March 2014).
- Janice Richardson, "If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law," in *Feminist Perspectives on Tort Law*, ed. Jane Richardson and Erica Rackley, (Abingdon & New York: Routledge, 2012), 145-162.
- Ringrose, Jessica. *Postfeminist Education?: Girls and the Sexual Politics of Schooling*. Routledge, 2012.
- Ringrose, Jessica, Laura Harvey, Rosalind Gill, and Sonia Livingstone. "Teen Girls, Sexual Double Standards and 'Sexting': Gendered Value in Digital Image Exchange." *Feminist Theory* 14, no. 3 (2013): 305-23.
- Roy, Jessica. "Craig Brittain, Owner of Revenge Porn Hub Is Anybody Down, Says He's Shutting the Site." *Betabeat*, April 4 2013, <http://betabeat.com/2013/04/craig-brittain-owner-of-revenge-porn-site-is-anybody-down-says-hes-shutting-down-the-site/> (13 March 2014).
- . "Even as He Promises to Close 'Is Anyone Down', Craig Brittain Covertly Plans a New Revenge Porn Site." *Betabeat*, April 5 2013, <http://betabeat.com/2013/04/craig-brittain-revenge-porn-is-anybody-down-obama-nudes/> (13 March 2014).
- Salter, Michael. "Getting Hugged: The Impact of International Law on Child Abduction by Protective Mothers." *Alternative Law Journal* (2014): forthcoming.
- Salter, Michael, Thomas Crofts, and Murray Lee. "Beyond Criminalisation and Responsibilisation: Sexting, Gender and Young People." *Current Issues in Criminal Justice* 24, no. 3 (2013): 301-16.
- Stearns, Heather M. "Stalking Stuffers: A Revolutionary Law to Keep Predators Behind Bars." *Santa Clara L. Rev.* 35 (1994): 1027.
- Victorian Law Reform Committee. *Inquiry into Sexting*. Parliamentary Paper No. 230, 2013.
- Williams, M. E. "'Real Housewives,' Spare Us Your Sex Tapes." *Salon*, June 9 2010, http://www.salon.com/2010/06/08/danielle_staub_sex_tape_fatigue/ (13 March 2014).
- Wilson, William. "What's Wrong with Murder?". *Criminal Law and Philosophy* 1, no. 2 (2007): 157-77.

Wysocki, Diane Kholos, and Cheryl D Childers. "'Let My Fingers Do the Talking': Sexting and Infidelity in Cyberspace." [In English]. *Sexuality & Culture* 15, no. 3 (2011/09/01 2011): 217-39.

Majid Yar. "The Novelty of 'Cybercrime' an Assessment in Light of Routine Activity Theory." *European Journal of Criminology* 2, no. 4 (2005): 407-427.

¹ Janice Richardson, "If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law," in *Feminist Perspectives on Tort Law*, ed. Jane Richardson and Erica Rackley, (Abingdon & New York: Routledge, 2012), 145.

² Michael Salter, Thomas Crofts, and Murray Lee, "Beyond Criminalisation and Responsibilisation: Sexting, Gender and Young People," *Current Issues in Criminal Justice* 24, no. 3 (2013): 301-316.

³ Emile Durkheim, *The Division of Labor in Society* (New York: Simon and Schuster, 1997).

⁴ Jonathan Coopersmith, "Pornography, Technology and Progress," *ICON* 4, (1998): 94-125.

⁵ Mark Dery, "Naked Lunch: Talking Realcore with Sergio Messina," in *C'lickme: A Netporn Studies Reader*, ed. K. Jacobs, M. Janssen, and M. Pasquinelli (Amsterdam: Institute of Network Cultures, 2007), 18.

⁶ Ed Halter, "Secrets and Thighs: A History of Celebrity Sex Tapes, Real and Fake, from Joan Crawford to Paris Hilton," *Village Voice*, December 2 2003, <http://www.villagevoice.com/2003-12-02/news/secrets-and-thighs/> (13 March 2014)

⁷ Jonathan Coopersmith, "Pornography, Videotape and the Internet," *Technology and Society Magazine, IEEE* 19, no. 1 (2000): 28.

⁸ Dery, "Naked Lunch: Talking Realcore with Sergio Messina", 22-23.

⁹ Majid Yar, "The Novelty of 'Cybercrime' an Assessment in Light of Routine Activity Theory." *European Journal of Criminology* 2, no. 4 (2005): 411.

¹⁰ Rosa Ehrenreich Brooks, "Feminism and International Law: An Opportunity for Transformation," *Yale Journal of Law and Feminism* 14 (2002): 349.

¹¹ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge & Malden MA: Polity, 2008), 12-29.

¹² Virginia Held, *The Ethics of Care: Personal, Political and Global* (New York: Oxford, 2005).

¹³ Michael Salter, "Getting Hugged: The Impact of International Law on Child Abduction by Protective Mothers," *Alternative Law Journal* (2014), forthcoming.

¹⁴ Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, 62.

¹⁵ Yvonne Hartman, "In Bed with the Enemy: Some Ideas on the Connections between Neoliberalism and the Welfare State," *Current Sociology* 53, no. 1 (2005): 63.

¹⁶ Julia O'Connor, Ann Shola Orloff, and Seila Shaver, *States, Markets, Families: Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the United States* (Cambridge: Cambridge University Press, 1999).

¹⁷ Eric Goldman, "What Should We Do About Revenge Porn Sites Like Texxxan?," *Forbes*, January 28 2013, <http://www.forbes.com/sites/ericgoldman/2013/01/28/what-should-we-do-about-revenge-porn-sites-like-texxxan/> (13 March 2014)

¹⁸ Mary Elizabeth Williams, "'Real Housewives,' Spare Us Your Sex Tapes," *Salon*, June 9 2010, http://www.salon.com/2010/06/08/danielle_staub_sex_tape_fatigue/ (13 March 2014)

¹⁹ Georg Wilhelm Friedrich Hegel, *Hegel: Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991).

²⁰ AP/MTV, "A Thin Line: 2009 AP-MTV Digital Abuse Study," (2009), http://www.athinline.org/MTV-AP_Digital_Abuse_Study_Executive_Summary.pdf (13 March 2014)

²¹ Bianca Klettke, David J. Hallford, and David J. Mellor, "Sexting Prevalence and Correlates: A Systematic Literature Review," *Clinical Psychology Review* 34, no. 1 (2014): 48-49.

²² Eli Finkel, Paul Eastwick, Benjamin Karney, Harry Reis and Susan Sprecher. "Online Dating: A Critical Analysis from the Perspective of Psychological Science," *Psychological Science in the Public Interest* 13, no. 1 (2012): 5.

²³ Diane Kholos Wysocki and Cheryl Childers, "'Let My Fingers Do the Talking': Sexting and Infidelity in Cyberspace," *Sexuality & Culture* 15, no. 3 (2011): 230.

²⁴ There are important questions about the reproduction and intensification of normalised gender stereotypes that are frequently evident in consensually manufactured nude and erotic images, as well as the influence of consumer culture and bodily objectification in digital erotic self-presentation (see Jessica Ringrose, Laura Harvey, Rosalind Gill and Sonia Livingstone, "Teen Girls, Sexual Double Standards and 'Sexting': Gendered

Value in Digital Image Exchange," *Feminist Theory* 14, no. 3 (2013); Laura Harvey, Jessica Ringrose, and Rosalind Gill, "Swagger, Ratings and Masculinity: Theorising the Circulation of Social and Cultural Value in Teenage Boys' Digital Peer Networks," *Sociological Research Online* 18, no. 4 (2013); Jessica Ringrose, *Postfeminist Education? Girls and the Sexual Politics of Schooling* (Oxon & New York: Routledge, 2012). These factors may shape the contexts in which images are produced and exchanged, and the way images are interpreted and shared, in problematic ways. Nonetheless in most cases it would appear that the trust and privacy of those who share such images are generally respected by those they send the images to.

²⁵ Michael Flood, "Men, Sex and Homosociality: How Bonds between Men Shape Their Sexual Relations with Women," *Men and masculinities* 10, no. 3 (2008): 352.

²⁶ Richardson, "If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law", 145.

²⁷ Janet Morahan-Martin, "The Gender Gap in Internet Use: Why Men Use the Internet More Than Women—a Literature Review," *CyberPsychology & Behavior* 1, no. 1 (1998): 5.

²⁸ For example, see Soraya Chemaly, "The Digital Safety Gap and the Online Harassment of Women," *Huffington Post Media*, January 28 2013, http://www.huffingtonpost.com/soraya-chemaly/women-online-harassment_b_2567898.html (13 March 2014); Julia Baird, "Twitter Opens a New World of Abuse Aimed at Women," *Sydney Morning Herald*, February 15 2014, <http://www.smh.com.au/comment/twitter-opens-a-new-world-of-abuse-aimed-at-women-20140214-32qyf.html> (13 March 2014); Amanda Hess, "Why Women Aren't Welcome on the Internet," *Pacific Standard*, January 6 2014, <http://www.psmag.com/navigation/health-and-behavior/women-arent-welcome-internet-72170/> (13 March 2014).

²⁹ Michael Miller, "Miami Revenge Porn Victim Holly Jacobs Demands Politicians 'Take Issue Seriously'," *Miami New Times*, May 2 2013, http://blogs.miaminewtimes.com/riptide/2013/05/miami_revenge_porn_victim_holl.php (13 March 2014)

³⁰ <http://www.endrevengeporn.org/my-letter-to-legislators.html> (13 March 2014)

³¹ Maureen O'Connor, "The Crusading Sisterhood of Revenge-Porn Victims," *New York Magazine*, August 29 2013, <http://nymag.com/thecut/2013/08/crusading-sisterhood-of-revenge-porn-victims.html> (13 March 2014); Tracey Clark-Flory, "Doxxing Victim: "This Isn't About Porn, This Is About Humiliation"," *Salon*, March 2 2014,

http://www.salon.com/2014/03/02/doxxing_victim_this_isn%E2%80%99t_about_porn_this_is_about_humiliation (13 March 2014).

³² CBC News, "Amanda Todd Suicide: RCMP Repeatedly Told of Blackmailers Attempts," *CBC News*, November 15 2013, <http://www.cbc.ca/news/canada/amanda-todd-suicide-rcmp-repeatedly-told-of-blackmailers-attempts-1.2427097> (13 March 2014).

³³ Alex Morris, "Hunter Moore: The Most Hated Man on the Internet," *Rolling Stone*, October 11 2012 <http://www.rollingstone.com/culture/news/the-most-hated-man-on-the-internet-20121113> (13 March 2014); Camille Doder, "Bullyville Has Taken over Hunter Moore's Is Anyone Up," *Village Voice*, April 19 2012, http://blogs.villagevoice.com/runninscared/2012/04/bullyville_isanyoneup.php (13 March 2014).

³⁴ Camille Doder, "Hunter Moore Makes a Living Screwing You," *Village Voice*, April 4 2012, <http://www.villagevoice.com/2012-04-04/news/revenge-porn-hunter-moore-is-anyone-up/> (13 March 2014).

³⁵ Danny Gold, "The Man Who Makes Money Publishing Your Nude Pics," *The Awl*, November 10 2011, <http://www.theawl.com/2011/11/the-man-who-makes-money-publishing-your-nude-pics> (13 March 2014).

³⁶ Morris, "Hunter Moore: The Most Hated Man on the Internet."

³⁷ Doder, "Hunter Moore Makes a Living Screwing You."

³⁸ Gold, "The Main Who Makes Money Publishing Your Nude Pics."

³⁹ Charlotte Laws, "I've Been Called the "Erin Brovkovich" of Revenge Oprn, and for the First Time Ever, Here Is My Entire Uncensored Story of Death Threats, Anonymous and the FBI," *XOJane*, November 21 2013, <http://www.xojane.com/it-happened-to-me/charlotte-laws-hunter-moore-erin-brockovich-revenge-porn> (13 March 2014).

⁴⁰ Ibid.

⁴¹ Doder, "Bullyville Has Taken over Hunter Moore's Is Anyone Up."

⁴² Camille Doder, "How Revenge-Porn Publisher Hunter Moore Suffered \$250,000 Worth of Payback," *Gawker*, March 12 2013, <http://gawker.com/5965758/how-revenge-porn-publisher-hunter-moore-suffered-250000-worth-of-payback> (13 March 2014).

⁴³ AP, "Notorious 'Revenge Porn King' Charged with Hacking," *Sydney Morning Herald*, January 25 2014, <http://www.smh.com.au/world/notorious-revenge-porn-king-charged-with-hacking-20140125-hv9tc.html> (13 March 2014).

⁴⁴ David Matza and Gresham M. Sykes, "Juvenile Delinquency and Subterranean Values," *American Sociological Review* 26, no. 5 (1961): 713.

-
- ⁴⁵ Eric Markowitz, "The 8,000 of Hunter Moore's Cult Will Do Anything for "The Father"," *Vocativ*, January 8 2014, <http://www.vocativ.com/culture/celebrity/8000-members-hunter-moores-cult-will-anything-father/> (13 March 2014).
- ⁴⁶ Ibid.
- ⁴⁷ Laws, "I've Been Called the "Erin Brovkvovich" of Revenge Porn, and for the First Time Ever, Here Is My Entire Uncensored Story of Death Threats, Anonymous and the FBI."
- ⁴⁸ Brian Feldman, "How Hunter Moore Tries to Silence Critics: A Step-by-Step Guide," *Vocativ*, January 16 2014, <http://www.vocativ.com/culture/uncategorized/hunter-moore-tries-silence-critics-step-step-guide/> (13 March 2014).
- ⁴⁹ Chet Hardin, "The Face of Revenge Porn: Awash in 'Honest' Porn, Colorado Springs' Craig Brittain Reigns as One of the Most Hated Men on the Internet," *Colorado Springs Independent*, January 9 2013, <http://www.csindy.com/coloradosprings/the-face-of-revenge/Content?oid=2608450> (13 March 2014).
- ⁵⁰ Jessica Roy, "Even as He Promises to Close 'Is Anyone Down', Craig Brittain Covertly Plans a New Revenge Porn Site," *BetaBeat*, April 5 2013, <http://betabeat.com/2013/04/craig-brittain-revenge-porn-is-anybody-down-obama-nudes/> (13 March 2014).
- ⁵¹ Brian Maass, "Revenge Porn Website May Be 'Catfishing', Impersonating Women to Obtain Nude Photos," *CBS Denver*, February 15 2013, <http://denver.cbslocal.com/2013/02/15/revenge-porn-website-operator-may-be-catfishing-impersonating-woman-to-obtain-nude-photos/> (13 March 2014).
- ⁵² Timothy Lee, "Involuntary Porn' Site Tests the Boundaries of Legal Extortion," *Ars Technica*, November 14 2012, <http://arstechnica.com/tech-policy/2012/11/involuntary-porn-site-tests-the-boundaries-of-legal-extortion/> (13 March 2014).
- ⁵³ Hardin, "The Face of Revenge Porn: Awash in 'Honest' Porn, Colorado Springs' Craig Brittain Reigns as One of the Most Hated Men on the Internet."
- ⁵⁴ Jessica Roy, "Craig Brittain, Owner of Revenge Porn Hub Is Anybody Down, Says He's Shutting the Site," *Betabeat*, April 4 2013, <http://betabeat.com/2013/04/craig-brittain-owner-of-revenge-porn-site-is-anybody-down-says-hes-shutting-down-the-site/> (13 March 2014).
- ⁵⁵ Roy, "Even as He Promises to Close 'Is Anyone Down', Craig Brittain Covertly Plans a New Revenge Porn Site."
- ⁵⁶ Gold, "The Main Who Makes Money Publishing Your Nude Pics."
- ⁵⁷ Dave Lee, "Anonymus Target Revenge Porn Site Owner Hunter Moore," *BBC*, December 3 2012, <http://www.bbc.co.uk/news/technology-20579728> (13 March 2014); Hardin, "The Face of Revenge Porn: Awash in 'Honest' Porn, Colorado Springs' Craig Brittain Reigns as One of the Most Hated Men on the Internet."
- ⁵⁸ Adrian Chen, "Unmasking Reddit's Violentacrez, the Biggest Troll on the Web," *Gawker*, December 12 2012, <http://gawker.com/5950981/unmasking-reddits-violentacrez-the-biggest-troll-on-the-web> (13 March 2014); Melissa Jeltson, "Predditors: New Tumblr Outs People Who Post 'Creepshots' to Reddit," *Huffington Post*, November 11 2012, http://www.huffingtonpost.com/2012/10/11/predditors-tumblr-creepshots-reddit_n_1955897.html (13 March 2014).
- ⁵⁹ O'Connor, "The Crusading Sisterhood of Revenge-Porn Victims."
- ⁶⁰ Andrew Ashworth, *Principles of Criminal Law* (Oxford: Oxford University Press, 2006), 1.
- ⁶¹ Stearns, Heather M. "Stalking Stuffers: A Revolutionary Law to Keep Predators Behind Bars." *Santa Clara L. Rev.* 35, (1994): 1027.
- ⁶² AAP, "Revenge Porn 'Spreading Like Wildfire'," *SBS.com.au*, November 22 2013, <http://www.sbs.com.au/news/article/2013/11/22/revenge-porn-spreading-wildfire> (13 March 2014).
- ⁶³ AAP, "Army Sacking over Skype Sex Scandal," *Sydney Morning Herald*, November 9 2013, <http://www.smh.com.au/national/army-sacking-over-skype-sex-scandal-20131109-2x70k.html> (13 March 2014).
- ⁶⁴ Mark Bennett, "Are Statutes Criminalising Revenge Porn Constitutional," *Defending people: The tao of criminal-defense trial lawyering*, October 14 2013, <http://blog.bennettandbennett.com/2013/10/are-statutes-criminalizing-revenge-porn-constitutional.html> (13 March 2014).
- ⁶⁵ Ashworth, *Principles of Criminal Law*, 1.
- ⁶⁶ James Chalmers and Fiona Leverick. "Fair Labelling in Criminal Law," *The Modern Law Review* 71, no. 2 (2008): 22.
- ⁶⁷ Jeremy Horder, "Rethinking Non-Fatal Offences against the Person," *Oxford Journal of Legal Studies* 14, no. 3 (1994): 339.
- ⁶⁸ William Wilson, "What's Wrong with Murder?," *Criminal Law and Philosophy* 1, no. 2 (2007): 162.
- ⁶⁹ Barry Mitchell, "Multiple Wrongdoing and Offence Structure: A Plea for Consistency and Fair Labelling," *The Modern Law Review* 64, no. 3 (2001): 398.
- ⁷⁰ William Wilson, "What's Wrong with Murder?," 162

⁷¹ for a similar proposal see Victorian Law Reform Committee, "Inquiry into Sexting," (Parliamentary Paper No. 230, 2013), 152.

⁷² Judith Herman, "Justice from the Victim's Perspective," *Violence Against Women* 11, no. 5 (2005): 572.