

**VIRTUAL INJUSTICE:  
TECHNOLOGY, GENDERED VIOLENCE AND THE LIMITS OF THE LAW**

by

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## **Abstract**

Technology-facilitated violence faces a dangerous combination of attitudes: that such violence isn't serious *and* that it can't be regulated. I look at linked events – the experiences and suicide of a young woman, and the passage of Canada's first standalone anti-cyberbullying legislation – to analyze the workings of the Canadian justice system and the consequences of thinking about the digital as 'not real life.' The young woman, Rehtaeh Parsons, came to symbolize the dangers of cyberbullying, but her case involved sexual assault, the distribution of a photograph of that assault, and lengthy navigation of the justice and mental health systems in addition to the abuse directed her way via technology. In trying to understand how violence 'online' is naturalized and why the harms of technology-facilitated violence receive uneven recognition, I look at the roots and consequences of assumptions that orbit Rehtaeh's case. I illustrate how as a young woman, her allegations of sexual assault were disclosed and confronted institutionally in an environment and culture steeped with longstanding discriminatory myths and stereotypes, especially around gender, alcohol, consent and sexuality. The distribution of the photograph of this traumatic night and the abuse around it were similarly invisibilized. They did not represent to the police an incident of tangible, corporeal harm because of a number of beliefs about digital technologies. In addition to the persistent partition of online and offline, with offline envisioned as 'real life,' I discuss how the widely used metaphor of the Internet as a frontier zone locates it on the edge of or just outside of the reach of the law. In effect, while greater attention to cyberbullying holds the promise of increasing recognition of technology-facilitated violence, there remains a disconnect between the embodied experiences of technology-facilitated violence and legal and social recognition of harm.

## **Lay Summary**

In April of 2013, a young woman in Nova Scotia died by suicide after experiencing a number of traumatic events. Massive public outcry ensued after her death and just weeks later the province passed landmark anti-cyberbullying legislation. This thesis investigates why her case came to be seen as ‘cyberbullying’ when it included sexual assault, the distribution of a photograph of that assault, and lengthy navigation of the justice system in addition to the abuse she received via technology. I ask why none of these multiple instances of violence were meaningfully addressed before her death. At times, they were not even recognized as violence. To do so I examine the many assumptions that orbit Rehtaeh’s case, including myths about sexual assault, the nature of the Internet, and whether the law can or should respond to incidents that involve technology.

## **Preface**

This thesis, including design, analysis and presentation, is the original, unpublished work of the author. It was approved by the University of British Columbia's Behavioral Research Ethics Board, certificate number H16-02719.

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## **List of Abbreviations**

Cyber-Safety Act (CSA)

Distributed Denial of Service (DDoS)

Halifax Royal Police (HRP)

Internet and communication technologies (ICT)

Member of the Legislative Assembly (MLA)

New Democratic Party (NDP)

Royal Canadian Mounted Police (RCMP)

Social Justice Warrior (SJW)

Technology-facilitated violence (TFV)

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*For Rehtaeh Parsons, her friends and family, and for those who face violence in their everyday lives and for those who work towards a world in which violence is no longer part of the everyday.*

## Chapter 1: Mixing Gender, Technology and the Law

### 1.1 A Many-Faceted Failure

*Rehtaeh was a very sensitive person and very insightful. She was a critical thinker, she thought outside the box. She was always a deep thinker, she ran, always understood the plight of others. She had great compassion. That's who Rehtaeh was... (Leah Parsons in CBC News 2013)*

On November 12, 2011 a few young people gathered at a house in Cole Harbour, Nova Scotia. One of those young people can be identified by her real name, Rehtaeh Parsons. The others are referred to in official documents, in the media, and in this research by pseudonyms: as minors their identities are subject to publication bans as part of the Youth Criminal Justice Act. Rehtaeh Parsons had more alcohol than the others, and her memory of the rest of that night was hazy. In a police interview five days after the party, Rehtaeh disclosed that she had been sexually assaulted. There was also additional evidence to suggest that legally she was unable to give consent. Canada's Criminal Code outlines that someone can be considered incapable of consenting to sexual activity, for instance, if they are intoxicated or unconscious (Government of Canada 2016). Consent can also "be withdrawn or become invalid over the course of a single sexual encounter" (Segal 2015, 85). One of the boys had taken a photo during that night: it depicted Rehtaeh, naked from the waist down, with her head out the window, vomiting. A classmate, also half-naked, stands in front of her with his groin pressed to her backside in the midst of sex or a pose suggestive of sexual activity. He is flashing a thumbs-up to the camera.

The photograph of Rehtaeh's assault was widely distributed, at first among those at the party and young people in the area, and then worldwide, thanks to the reach and rapid sharing

powers of Internet and cell phone technology (ICT). It provided a zombie-like, re-appearing visual catalyst for abuse in person and online by total strangers. Her mother, Leah Parsons, described some of what she experienced to the news media: “people texted her all the time, saying ‘Will you have sex with me?’ ...“Girls texting, saying ‘You’re such a slut’” (Ross 2013a). Rehtaeh moved schools and communities multiple times, experienced severe psychological consequences and social isolation, and engaged in self-harm. "She was never left alone. Her friends turned against her, people harassed her...It just never stopped" (CBC News 2013a). Recent youth-centered research has young people consistently indicating greater dread of cyberbullying via email or phone, versus face-to-face. These studies also reveal that within the category of electronic bullying, the anticipation or experience of visual cyberbullying involving photos and videos produces the most anxiety for young people (Langos 2015, 111). As many accounts of cyberbullying note, there is no escape from this kind of intimidation in an increasingly wired and connected world (Nova Scotia Task Force on Bullying and Cyberbullying and MacKay 2012). A case like Rehtaeh’s demonstrates how developments in Internet and communication technologies (ICT) continue to disrupt assumptions about geography and proximity and suggests the challenges of territorial conceptions of jurisdiction.

The photograph that was used to torment her, already circulating at every school she switched to (L. Parsons 2016; Gillis 2013b) was considered insufficient evidence by the Halifax police to bring charges of sexual assault. In April of 2013 Rehtaeh hung herself and was taken off life support by her family three days later. She was 17 years old. At that point, there had been no charges laid for sexual assault, threats made online, via telephone or in person, or the taking or distribution of the photograph.

Rehtaeh was drinking at a party, and her disclosure of sexual assault did not result in

aggressive police action – like so many other young women, the involvement of alcohol and supposedly risky behavior likely played into official impressions of her case (Doolittle 2017). Only after her death did she ascend to the category of a ‘sympathetic’ or ‘good’ victim as a young, attractive, white woman (Randall 2011). Rehtaeh’s death elicited prolonged local and national media coverage, something that is not often the case for other young people who have died by suicide, or who face bullying and harassment. For instance, suicide rates for Indigenous youth in Canada are 5-7 times higher than for non-Indigenous youth. There is some media coverage of these dismal statistics, but very little prolonged, humanizing, individualized attention (Drache, Fletcher, and Voss 2016).

Rehtaeh on the other hand “achieved quasi-celebrity status” despite the initial publication ban on her name (Nova Scotia Provincial Court 2014, 1), and her case has, if somewhat problematically, come to symbolize the dangers of cyberbullying. Stephen Harper, the Prime Minister at the time, personally reacted to her death in the news media, and had meetings with her parents and the Premier of Nova Scotia (CTV News 2013). She was a political touchstone for legislative reform: Nova Scotia passed the first standalone anti-cyberbullying legislation in the country, the Cyber-Safety Act (CSA), just weeks after her death. Along with Amanda Todd, another young victim of technology-facilitated violence, Rehtaeh’s case was mentioned by name and positioned as a justification for Federal Bill C-13, the Protecting Canadians from Online Crime Act, passed in late 2013 (Nichol and Valiquet 2014; Fekete 2013; Senate Committee on Legal and Constitutional Affairs 2014). At least three formal provincial investigations were carried out between 2013 and 2015 to respond to widespread allegations of failures and inadequacies in the police and prosecutorial response, and the mental health and school systems.

Yet at the time of her death in April of 2013, police had closed her file after a year-long investigation into her allegations of sexual assault (Segal 2015); no charges of any kind had been laid against her alleged assailants. Though hundreds of people had seen the photograph, those same assailants did not experience any disciplinary or accountability actions at school, and the dissemination of the photograph and the harassing comments were not addressed by any institution or authority figure who might conceivably have had jurisdiction over Rehtaeh or the other young people involved. As one of my interviewees, a Halifax-based lawyer specializing in technology and privacy noted: “when you look at the safety net that we’re supposed to have, we’re supposed to have layers of it: the school system, the mental health system, you have the justice system. And what had to go wrong to have those holes line up just right for her to fall right through?” (Fraser 2017). Each of the three reports published after Rehtaeh’s death includes details that attempt to explain what happened, but in no way manage to satisfyingly parse out the disjuncture between the substantial and emotional social and governmental response after her death, and widespread failures of recognition and response while she was alive.

## **1.2 Major Questions**

This thesis hinges on this question of harm, and more specifically the visibility and invisibility of harm. Rehtaeh Parsons was unable to access justice for harms that disrupted her schooling, emotional state, family, physical health, future plans and general wellbeing. What happened to her was so harmful that it led her to take her own life. It was not just the incident of sexual assault, nor the sharing of the photograph or the social malice and cruelty both of those produced. As the various reports commissioned by the province demonstrate, despite instances of

empathy and support by individuals, Rehtaeh was also harmed in her pursuit of legal justice, mental health care, and within her various school districts, a cascading lack of recognition that compounded her initial injuries. Before April of 2013, if there had been perceptions that what happened to her was wrong and should have merited some sort of response, they did not result in meaningful official actions. After her death, her case led to child pornography convictions, the passage of Canada's first standalone anti-cyberbullying legislation, the creation of a new cyberbullying investigative unit, a sexual violence strategy for the province, and provided fodder for the passage of Federal Bill C-13, which criminalized the nonconsensual sharing of intimate images and increased law enforcement access to Canadian's telecommunications data. Given the range and importance of these reactions, this thesis asks: why were the harms experienced by Rehtaeh Parsons institutionally invisible before her death? What are the factors that mask the violence experienced by Rehtaeh?

In pursuit of this question, I benefit from the insights of feminist theory as I try to understand individual acts and practices as enactments and reproductions of systemic or pervasive political and cultural structures (Butler 1988). "The analysis of ostensibly personal situations is clarified through situating the issues in a broader and shared cultural context" (1988, 522). In looking at Rehtaeh's life and the legislative events that followed her death, I also respond to recent 'turns' to the material and digital in the discipline of Geography, pushing back against assumptions in and outside of academia that see the digital as a separate, intangible and disconnected space.

In identifying how representation creates divisions between things, language and knowers, enacting Cartesian thinking, Karen Barad shows how it skews perceptions of 'reality' (2003). A feminist project that questions the 'real' would be remiss if it failed to trouble pre-

existing binaries and divisions. In speaking of Internet and digital communication technologies, I create a broad category of apparatuses and networks. Most, though not all, digital communications devices now have access to the Internet, and wireless networks wherever they are found are a common medium for disseminating all kinds of communication and expression. As categories and functions overlap and twist together, or perhaps were never accurate descriptors in the first place, analysis that at first appears confined to the Internet as accessed on a laptop or desktop computer becomes relevant for cell phones, tablets, and other machines. Widespread use of wireless networks and devices also complicates any distinctions between ‘cyber’ violence and ‘regular’ violence. While some situations play out entirely over these networks, more often harmful occurrences cannot be confined to one realm or another. A stalking incident is preceded and accompanied by social media messages, with questions about whether the stalker is communicating from right around the corner or another country (Beaumont 2014b). Comments in an online forum lead to a law enforcement raid on the home of an unsuspecting video-gamer (Fagone 2015). A domestic violence case includes constant harassing text messages (Woodlock 2017). These chilling examples illustrate the futility of distinguishing between on and offline worlds.

Yet the separation of and creation of a hierarchy between the virtual and physical features heavily in law enforcement responses to technology-facilitated violence, including in Rehtaeh’s case. These assumptions about digital communication technologies cross into the realm of ontology, and impact the visibility of certain types of harm. In trying to understand how violence ‘online’ is naturalized and why the harms of technology-facilitated violence receive uneven recognition, I look at the roots and consequences of assumptions that orbit Rehtaeh’s case. These

assumptions, about technology, gender, sexual assault, and violence make up much of the second chapter.

Sarah Hunt attends to the way certain framings create scalar divisions, separating events and processes that are more illuminating and at times, politically imperative to consider together (Hunt 2015). Framings, scalar or otherwise, were used to make meaning and justify responses in diverse ways by different actors. Analyses of gender and gender-based violence were not the major focus in mainstream accounts of Rehtaeh's case, which came to characterize the dangers of cyberbullying. From labeling what happened to Rehtaeh cyberbullying, to casting technology-facilitated violence as a free speech issue, and abuse via technology as separate from the structures of power that shape possibility 'offline,' the narratives and meaning-making around this case did much to shape or justify the eventual responses after Rehtaeh's death, just as narratives around sexual assault and technology as not serious influenced the responses before it. I discuss these framings in the third chapter. Chapter 4 looks at the naturalization of violence that occurs via technology by examining its spatialization in 'technospaces,' spaces that are constructed as lawless and naturally rough and tumble. The challenges so-called cybercrimes offer to territorial conceptions of jurisdiction are entangled with the metaphor of the frontier, which works to locate 'cyberspace' outside of the reach of the law. Through this spatial locating, certain actions become more easily seen as not violent, or disconnected from oppressions and power dynamics that span the Internet and 'real life.'

### 1.3 Representing Violence

*I don't want her life to be defined by a Google search about suicide or death or rape. I want it to be about the giving heart she had. Her smile. Her love of life and the beautiful way in which she lived it. (Canning 2013)*

Leah Parsons, Rehtaeh's mother, thinks carefully about representation. Corresponding with her about this research, she told me that it is important to her to talk about who Rehtaeh was as a person "before any of these awful things happened to her." Leah Parsons, now an activist engaged in anti-violence work, runs a non-profit organization named for her daughter that focuses on education, awareness and prevention of sexualized violence and cyber-abuse. Describing her work, she explained she focuses on gender as it impacts the lives of women and girls, and on changing practices and norms of masculinity. Drawing from her personal experiences, she also provides resources for parents coping with devastating losses, trying, as she says, "to find space for our grief" (L. Parsons 2017). Alongside humanizing her daughter, showing Rehtaeh as a full person not just the starring role in a tragic tale, Parsons also calls attention to the violence embedded in our society and the systemic tolerance of that violence.

Glen Canning, Rehtaeh's father, has had his life similarly transformed. Navigating various systems and agencies with Rehtaeh during the long months after her assault, as well as the provincial firestorm that arose after her death by suicide, like Parsons, Canning has been called to do public work around violence prevention. I saw him speak at a conference promoting healthy relationships for young people in the spring of 2017, and when I approached him after his keynote, he seemed spent, exhausted from the journey of sharing his daughter's story and moving through his own grief. I told him about my hope to look more closely into what Rehtaeh experienced, and cyberbullying and anti-cyberbullying legislation in Nova Scotia, and he

explained that one of his fears is that she and her story will be forgotten. His prepared speech highlighted insights he has drawn from that horrendous time: that young people are not getting the guidance and education they need to responsibly engage with others around questions of (sexual) consent. Cyberbullying, the alarming and endemic problem that Rehtaeh would come to represent nationally and provincially did not feature in his account (Canning 2017). Sexual assault, rape culture, understanding and negotiation of consent, our responsibilities as witnesses, bystanders, and human beings – for Canning, these were the questions, social shortcomings and endemic issues that shaped the last years of his daughter’s life. In addition to acting as advocates – for grieving parents and survivors of sexual assault - both Rehtaeh’s parents continuously talk about who she was, what motivated her, her passions and dreams.

*Rae was a free spirit and free thinker. She was a scientist and astronomer. She had a passion for reading all kinds of literature and loved the arts, history, biology and learning about life. She was a passionate painter who found beauty in things others overlooked. Rehtaeh was a lover of animals and expressed a deep sense of love, devotion and empathy to animals in need. A compassionate heart, Rae felt for those less fortunate and never wanted to hurt others. (Canning n.d.)*

Amid a legacy of legislation and cautionary tales, they do the constant labor of keeping her human.

According to Patrick Brantlinger, representations of embodied experiences of violence are inherently inadequate, even as they are themselves violent: “to resist violence it [representation] must give violence expression” (2001, 252). It is not possible for Rehtaeh to be re-harmed by recalling the traumatic events of the last year and a half of her life. Relying on official documents, statements by her family, and news media, as a third party, in writing about them I cannot hope to tell the Truth of what happened. Feminist research is often an exercise in

ambivalence, consciously inhabiting and making space for contradictions, partiality, and instability, resisting false coherence and total theory (Bondi 2004). In crafting this project, I also cannot avoid changing the materiality of violence and trauma by turning the corporeal body into text, though I can do so with careful attention to how representation can reproduce the spectacle of violence (Hesford and Kozol 2001, 14). I do wish to reproduce the violence, though not the spectacle. Emma Jane argues that much of the so-called nastiness that happens via the Internet is literally unspeakable: the contents are too vile, abusive and disgusting to be aired within the norms of ‘civilized’ discourse (Jane 2014a). Yet the specifics of these threats and insults, which traffic heavily in the language of gendered and sexualized violence, are significant, particularly if they are consistently directed towards certain types of people (Duggan 2017).

The dismissal of what happened to Rehtaeh as unfounded, not serious, or typical adolescent behavior magnified the harm she experienced and impeded her efforts to seek assistance and support. For these reasons, I think reproducing the violence, showing it to be violence, is important. To further this I consciously use language that situates behaviors contained in terms like bullying, cyberbullying, and online harassment as violence. The phrase technology-facilitated violence does double duty in naming and recognizing violence, and resisting an online/offline dualism, something that “can depoliticize and mask the very real and uneven power relationships between different groups of people” (Graham 2013, 180).

So in the following pages I enact one form of violence in the hope of challenging others, but as I look seriously and analytically at the violence Rehtaeh experienced, I honor her life and personhood. Throughout the fifteen months between the party and her death, although she faced institutional inertia and social animus, Rehtaeh coped, struggled and made gains. She was not a passive victim. She relied on friends, family, professionals, and her own strength and flexibility.

Around the time of her death she had started a relationship and made new friends. The day she died she dropped off resumes around town (Gillis 2013b). She was planning for a future. This is an examination of the violence that happened in the life of a young woman, violence that had profound impacts on that future, but that does not erase or blot out her individuality and humanity. I do not present her as a case study, to “shed light on the ‘higher’ truths supposedly crystallized in general theoretical concepts” (Valverde 2015, 2). It is precisely because of Rehtaeh’s inherent value as an individual and a living being that this violence matters. It is also true that sexual violence and technology-facilitated violence have widespread impacts in the lives of far too many people. From his outreach work, her father observed, “Rehtaeh’s story is not unique. Having spoken to many high schools students since her death I would say there is a Rehtaeh Parsons in every school in the country” (Canning 2017). Many of these instances are not seen as harms the justice system is able to respond to, if they are recognized as harms at all.

My analysis looks at the Canadian justice system as a social product that reflects discriminatory attitudes and histories even as it claims neutrality. In undertaking these discussions, I benefit tremendously from the work of activists, scholars and those who consider themselves ordinary people who have devoted their lives, energies and bodies to challenging a justice system that speaks in the language of universality and fairness, but that has consistently devastating impacts on certain people and communities. Collective mass movements like Black Lives Matter and Idle No More stress that the work of justice cannot be found within the justice system as it is currently arranged. The law, far from an abstract and objective arbiter of justice, enacts violence through its operation and in its decisions. Indigenous thinkers in particular remind us that the law is a social product, formed as the governance tool of a settler state that still relies on racist tools like the doctrines of Discovery and Terra Nullius (A. Simpson 2014; L.

Simpson 2011; Coulthard 2014; Hunt 2014). As such, different people experience the law in different ways, and the good intentions of various actors within the legal system do not mitigate the violence of the system as a whole.

Those who seek justice through this (situated and embedded) legal system experience the messy and jumbled operation of that system, where there may be major discrepancies between the possibility and promise of the law and what it achieves in practice. As is the case with legal handling of technology-facilitated violence or sexual assault accusations in Canada, these decisions, processes and practices of justice do not always align with the statutes and directives on the books. Enforcement and justice require more than codes and laws – they depend heavily on the attitudes and beliefs of actors throughout the process.

To speak of the state and its institutions, the law, legal system, and law enforcement as cohesive units, as I have done already (and may do again), is to mask the complicated and at times conflicted expression and implementation of norms and policies at multiple scales. Although larger theoretical explanations can present the state as a unitary actor, the state is also a set of daily practices (Mountz 2003, Herbert 1997) where despite appearances of hegemony, resistance or subversion is possible. Here, Mountz’s call to locate analyses of the state or state institutions “with attention to the microlevel, grounded daily practices of government employees” (2010, xiv) is an important reminder of the varied coherence of the state and the law, and the uneven enactment of legal protections. Consideration of the ‘microlevel’ should serve as a constant reminder of the discretion exercised by individual officers, lawyers and judges, and the consequences that stem from day-to-day decisions in the courts and police stations. The processes of the law are as important to consider as the text of the statutes. This came up in many of the conversations I had in Nova Scotia with lawyers, activists, government and youth workers.

A lawyer shared his views:

*One of the great things about Canadian law is that it's technologically neutral. There are very few provisions where you need to actually criminalize the use of a particular technology or the use of a particular means to do something. Fraud is fraud whether you use a carrier pigeon or a telegram or a fax or email or SMS or whatever. You have police who think that they're in completely uncharted territory and maybe the words in the Criminal Code speak to them in a particular way that doesn't really communicate to them the flexibility of the great tool they have in front of them. (Fraser 2017)*

Focusing on its possibility and potential flexibility, David Fraser represents one orientation towards the law. This faith is not always shared. Indigenous people who have experienced colonial violence, racialized people who face violence at the hands of the police, and people who have experienced sexual violence, all categories of offenses where justice and redress are notoriously elusive, can speak to how painful engagement with the law can be, as well as the limits of the law. The statement released by the Avalon Sexual Assault Center when charges were finally laid against two of the young men in Rehtaeh's case gives voice to one of these limits. In their words, "the reality of how people are sexually victimized is not always reflected in the law" (Avalon Sexual Assault Centre 2013). The Canadian justice system is also built around the offender and focused on punishment - criminalization often fails to take account of the context in which violence occurs. The child pornography charges laid after Rehtaeh's death were some recognition of wrongdoing, but statements made by at least one of the accused before and during the trial speak to the limited ability of the charges to achieve actual accountability. His comments demonstrate the pervasive sexualization of women and girls and widespread ignorance or willful blindness around the concept of consent in sexual situations, part of what has been dubbed rape culture (Bazelon 2014). Child pornography charges do little to address this.

## 1.4 Notes on Process

To gather impressions and information for this project, I drew from a number of different sources. I borrow, benefit from, and build upon the work of countless thinkers, academic and non-academic. Both of Rehtaeh's parents speak publically about her case and have become activists and advocates around issues of sexual violence and sexual consent. I spoke or corresponded (albeit briefly) with both Leah Parsons and Glen Canning. A great deal has been written and spoken about Rehtaeh by those who did not know her – it was important to me to contact her family around this project. Whenever possible I use their language and descriptions of their daughter.

Some of the most illuminating and dynamic sections of this thesis come from the semi-structured interviews I conducted in Nova Scotia. Ranging from 1-3 hours in length, they took place in classrooms, law offices, cafes, and conference rooms. Everyone I spoke with was extremely generous with their time, sitting down to talk with me before or during their workdays, and engaging with me around painful topics. Six of these interviews feature heavily in the text. Other interviews, both formal and informal, provided valuable insight and context. Whenever possible I feature direct quotes from our conversations: often the voices of those directly connected to an issue, event, or context speak most clearly – they have a great deal to offer in terms of knowledge and situated viewpoints. Each participant decided how or if they would like to be identified. Although I reviewed a great deal of text before traveling to Nova Scotia, the interviews allowed me to discuss in greater depth and with more specificity some of the

concerns, implications and perspectives threading through the documents I used as secondary sources.

To prepare for and set alongside my interviews, I reviewed a substantial portion of the Canadian media coverage of the Cyber-Safety Act and Rehtaeh's case. When mainstream non-Canadian media organizations took an interest in the events in Nova Scotia around this case, I also looked at those portrayals and perspectives. These I read with attention to consensus around what happened, to the topics that were centered and the ways they were explored. What did journalists see as 'the story'? Debates and proceedings of the Nova Scotia legislature, mostly between March 2013 and August 2013, the text of the legislation, amendments to the legislation, comments on the legislation, and all of the court cases in the province that dealt with cyberbullying, the Cyber-Safety Act or Rehtaeh Parsons helped form and shape my analysis. The province of Nova Scotia and its departments and representatives had a great deal to say about this case in the form of press releases, official reports, and public speeches. These too were incorporated into my research. Looking at cyberbullying legislation on a federal level, I reviewed reports, testimonies, and versions of legislation that attempted to address cyberbullying, or mobilized it for other political purposes. These sources allowed me to assess official narratives and problem definition, and called attention to how and in what ways the state selectively imagines and produces an interpretation at the expense of other possibilities.

Crafting a research project is a continuous exercise in selection and exclusion, and my focus on particular elements within the larger subject matter of technology-facilitated violence leaves little room for certain perspectives or ways of seeing. I look at official designations of harm through state and judicial perspectives, and mainstream media accounts, in order to assess the possibilities and barriers to access to justice for people impacted by technology-facilitated

violence. My analysis touches on the limits of the legal system, on social and legal responses to sexual assault, gender, territorial jurisdiction, and the power of narrative framings and ontological assumptions. These themes arose from the sources I reviewed and my conversations with individuals within the province, but of course they are not the only topics or avenues prompted by those texts. For instance, barriers to justice or recognition of harm could consider the funding and training of police departments, and the intricacies of investigative and prosecutorial decision making. I made the choice to focus on the mentalities and framings that might inform some of those decisions.

Some choices about content and approach are more overtly political than others. For instance, this work does not contain many of the voices of those who have been targeted and had their lives disrupted by technology-facilitated violence. Especially in the case of young people, I rely on second and third hand accounts, research studies and compiled reports. Academic research has long and painful histories of selective and power-laden practices of knowledge production. It is also true that youth and ‘victim’ centered viewpoints and assessments are too often ignored in policy decisions around questions of sexual assault and cyberbullying. The lack of voices of those directly impacted by these issues has political implications, but is also motivated by the desire to cause no further harm. As a relatively inexperienced interviewer, I have taken the risk of relying on existing accounts to reduce another risk: that of interviewing and potentially re-traumatizing those who have survived upsetting and disturbing events.

This thesis also delves into issues of gender-based and sexualized violence. At that party in November of 2011, Rehtaeh found herself in a situation where consent around sex was poorly understood and poorly practiced, if practiced at all. Objectification of certain people, in this case, women and girls, has dehumanizing and deeply tangible consequences, some of which were

present for Rehtaeh that night and in the months that followed. Girls coming into their sexuality, Rehtaeh among them, are faced with an impossible bind of sexualization and sexual shaming, and are socially punished for responding to cultural cues (or their own desires) around being sexual beings (Hasinoff 2015). Due to the circumstances of the case, I focus on women and girls at the expense of other groups who consistently face violence and abuse via technology. It is also true that the categories of ‘women’ and ‘girls’ are too often read as homogenous. These groups are intersected by other experiences, social markers, and identities, all of which complicate the use of categorical clusterings (Crenshaw 1991). This recognition of difference also applies to ‘men’ and masculinity, or rather, to masculinities, as they are historically and culturally influenced and can exist hierarchically (Connell 1995, 2014). Yet at the same time as acknowledging the wide variety of experiences contained by gendered categories, in this work I occasionally speak broadly about women and girls. This is a studied tactic through which I hope to highlight the consistent targeting and denigration of the feminine, in ways that reference sexual violence against particular bodies (though of course not all women have the same bodies).

## **1.5 Conclusion**

I hope to use these pages to follow some of the tangled assumptions and spatialized expectations that characterized the responses, or lack thereof, to the plight of a young woman. Longstanding problematic social and legal attitudes towards sexual assault, including shaming and victim-blaming, have new avenues to find expression. As ever more aspects of personal and professional lives move online, the consequences of what is called cyberbullying and other digital threats and intimidation will only increase. If this type of violence disproportionately

impacts women, queer, trans and racialized people, lacks robust legal consequences, and continues to be considered a normal part of interacting online, what are the implications for social equality, participation, and belonging in an increasingly 'digital' world?

## Chapter 2: Obstacles to Imagining Crime ‘Online’

When Rehtaeh Parsons contacted the police and disclosed that she had been sexually assaulted in November of 2011, the subsequent investigation unfolded over the course of a year. Rehtaeh had given two statements to the police, told them about the existence of the photograph and its rapid and devastating dissemination, surrendered her phone, and given them the names of the young men at the party. At the end of that year, no other phones had been examined, only one of the young men was interviewed as part of the investigation (in August of 2012), no action was taken around the distribution of the photograph, and no charges were filed (Segal 2015). Her death after a suicide attempt in April of 2013 prompted a social outcry that was vast and vocal. In the months after her death the legislature passed the Cyber-Safety Act, the government began formulating a long-awaited sexual violence strategy, the hacker group Anonymous started an operation pressuring the police to “do their job,” and child pornography charges were laid against two of the four young men at the party. But by April of 2013, Rehtaeh had already experienced sexual assault and the range of social shaming, exclusion, embarrassment, malice, and the constant threat of those. Her death was the final harm in a series of harms. It made the harms she experienced more visible, yet she wasn’t silent about what was happening – she sought assistance from the police, from sexual assault services, mental health services, and school administrations. The stasis during the year and a half after she approached the police, and the flurry of response after her death are at the very least, deeply troubling.

There are all sorts of possible reasons for this disjuncture. The report on the police and prosecutorial response highlights (among other details) human error, an overburdened sexual assault investigation team, and lack of collaboration between police and the school system.

Especially in times of neoliberal cost-cutting, inadequate staffing or overloaded staff present a serious obstacle for even the most well intentioned investigator (Segal 2015). In Rehtaeh's case, "one period of delay was arguably caused by the investigator's misunderstanding of the technology" (Segal 2015, 58). Officers and investigators, like anyone, have varying degrees of awareness of the sometimes critical roles digital technologies do and can play in employment, sex and romance, sociality, and countless other facets of everyday life, as well as uneven familiarity with the rapidly changing types and capabilities of digital technologies. A Halifax-based lawyer I interviewed called attention to generational divides that might account for confusion and delays in cases like Rehtaeh's. He speculated that as digital natives become cops, they'll have better tools and improved technological know-how.

The above is actually a researcher's paraphrasing – his precise words were more disjointed than that. My transcription reads: "as they turn over a new generation of cops who have experienced life as young people in a digital age, they'll just have a better inherent... they'll just come with those tools" (Fraser 2017). I think by tools, he meant technical tools as well as more-than-technical tools. What my interviewee was suggesting was that over time, ontological assumptions about digital technologies may undergo a major shift.

Ontology, as defined broadly, pertains to the philosophical consideration of the nature of being, of what exists and by extension the belief systems that inform those ideas of what exists. Mario Blaser puts forward the idea of ontology as "a way of worlding, a form of enacting a reality," where reality is a material-semiotic formulation (Blaser 2013, 551). It is not pre-given, but is shaped by and in historically situated and mundane practices (Blaser 2009; Mol 1999). The idea of the human itself is made and enacted in certain ways. Like Blaser, Sylvia Wynter calls attention to the hybrid nature of human beings: both bios and mythoi, flesh and stories, skin and

masks (Sylvia Wynter in McKittrick 2015). Being human is not a state or condition, it is praxis, a continuous becoming enacted moment-by-moment through our bodies and the stories we tell about them. Some of the ways worlds are made are discursive, but I veer away from an exclusive emphasis on discourse and language. In Karen Barad's words: "matter matters" (2003, 803). In Barad's view, there is much to be suspicious of in the idea of pre-existing entities or thingification, the division between words and things (2003). Stories or narratives do not hover over an objective reality; rather "they partake in the performance of that which they narrate." They are world-making (Blaser 2013, 552, 2009) but the conditions of that world-making are not of their choosing. Humans, far from monopolizing agency, are part of a complex ecosystem full of non-humans and material forces that are "indeterminate, constantly forming and reforming in unexpected ways." They "manifest certain agentic capacities" (Coole and Frost 2010, 10).

Within this performative interaction of matter and semiotics it becomes possible to speak of multiple ontologies, different worlds where meaning and value are allocated according to different ideas of what exists. In this pluriverse of multiple ontologies, there are no worlds that are wrong in the sense that they don't align with a pre-established 'reality.' There are worlds that *perform* wrong: "they are/enact worlds in which or with which we do not want to live" (Blaser 2013, 552). In her work on violence against Indigenous women and girls in Canada, Sarah Hunt looks at how the world created in and through Canadian law in relation to sexual assault re-inscribes sexual violence. If they respond to disclosures, the police and legal system do so in a gendered and racialized way that rarely results in accountability for perpetrators, puts survivors on trial and often causes more them more harm (2014). A world in which sexualized violence, technology-facilitated harassment and sexualized shaming are not seen, or not seen as deeply harmful and socially impermissible is not one in which I wish to live.

However, for many, the harms Rehtaeh Parsons experienced were invisible on numerous levels. As a young woman, her allegations of sexual assault were disclosed and confronted institutionally in an environment and culture steeped with longstanding discriminatory myths and stereotypes, especially around alcohol, consent and sexuality. The distribution of the photograph of this traumatic night and the abuse around it were similarly invisibilized because of a number of assumptions about digital technologies and because they did not represent to the police an incident of tangible, corporeal harm. Not only are digital communication technologies continuously changing, but assumptions around what Internet and communication technologies *are*, and how they fit into our lives, in practical and meaningful senses, undergoes concurrent transformation. These assumptions may not necessarily change as a new generation becomes law enforcement officers, yet ontological assumptions about ICT have substantial implications for how and if harms experienced via those technologies will register socially and legally.

I suggest that what happened to Rehtaeh Parsons, both the heartbreaking combination of institutional (and individual) failures before her death, and the near-universal outcry after it, demonstrate a moment or period of broader social reassessment, where these assumptions about the digital are being tested and perhaps re-evaluated, even as other assumptions about sexual assault and consent are being reiterated. Rehtaeh's lived experiences of harm via digital communication technologies, made visible by her death, prompted a renewed recognition of the harms of what, in Nova Scotia, was dubbed cyberbullying. Rehtaeh's case also speaks to the persistence of beliefs and impressions about the digital that reassert themselves even in moments where they are being actively challenged. Any recognition of the harms experienced by Rehtaeh Parsons involved thinking around or against a number of common assumptions about the digital, most orbiting around what Campbell calls the 'online disembodiment thesis' – the premise that

there is a “radical disjuncture between experiences in the physical world and those found in cyberspace” (2004, 5), in part involving the perceived immateriality of the ‘digital.’ This belief of separation is easily punctured yet remarkably tenacious, with deep roots in Western philosophical (and political) traditions, and also the processes of global capitalism.

## 2.1 Grounding the Cloud

*Our best machines are made of sunshine; they are all light and clean because they are nothing but signals, electromagnetic waves, a section of a spectrum, and these machines are eminently portable, mobile - a matter of immense human pain in Detroit and Singapore. (Haraway 1991, 154)*

Towards the end of the 1990s, N. Katharine Hayles proposed that humans are no longer human in the classical liberal humanist sense, the conception of the human that has dominated Western contexts for centuries. Instead we have entered a subjectivity she calls the posthuman, one that sees human identity as information rather than embodied enactment. This view rests on the premise that information is a bodiless fluid that can travel seamlessly and unchanged between locations and interfaces, including from the human body into an intelligent machine. If information has nothing to do with materiality, then the humanness of being human is not essentially connected to the individual human body, and it is possible to enact a roboticist’s dream: to download human consciousness, unchanged, onto a computer. As Hayles makes clear, “much had to be erased to arrive at such abstractions as bodiless information” (1999, 12). In the same vein, much has to be erased to see machines as sunshine. Digital technologies – supposedly the ideal space for circulating information - have lost their body, materiality, and histories.

The language that surrounds technology, particularly online technology, persists in emphasizing etheriality, transcendence, seamlessness. Metaphors and widely used terms like ‘the cloud,’ ‘virtual’ and ‘cyberspace’ work to elide the grounded materiality and complicated interconnection of digital technologies and their components, and suggest two distinct worlds, positioning cyberspace as an abstract space or separate digital village. The name and imagery associated with virtual cloud storage aptly illustrate these tendencies, suggesting it is nearly massless and lighter than air, but also distant and hovering above or apart. These terms and others like them both express and enact this separation and disembodiment. Yet “the internet is a material technological system like any other” (Taffel 2015, 28). As computer and digital interfaces appear more seamless and ‘intuitive’ to the user, the list of components, innovations, and entangled processes and operations grows ever more complex in ways which, contrary to rhetoric of a hovering ‘cyberspace,’ are deeply material.

Changing technologies have greatly contributed to the supposed shrinking of the globe, the annihilation of space by time. Digital communication technologies are a critical part of that intimacy. Yet as Doreen Massey points out “different social groups and different individuals are placed in very distinct ways in relation to these flows and interconnections” (1993, 62). Global hierarchies and familiar patterns of north/south economic exploitation are expressed in the ever-growing set of workers who are part of what is often called the digital economy. The trend of seamlessly designed digital interfaces that mask the technical aspects of platforms also serve to hide the embodied labor that builds and supports those enterprises. In addition to motivating mining projects, major infrastructure development and maintenance, and resource use, digital technologies have intensified the neoliberal assault on labor, providing sharing economy

platforms that promote ‘on-demand,’ ‘crowdwork,’ digital piecework and the tools to increasingly outsource labor processes (van Doorn 2016; Irani 2015; Richardson 2016).

Privileged users may see the Internet and the information produced or circulating via its communication channels as intangible and abstract, but many others have a much more intimate relationship with the matter of the digital. “When considering the assemblages of minerals, metals, chemicals and code which compose the computers, modems, routers, exchange points, fibre-optic cables, monitors and myriad of other components that comprise the physical layers of the internet, we find that the weightless rhetoric of cyberspace is underpinned by vast amounts of matter” (Taffel 2015, 19). Allusions to cyberspace or a cyberworld “feel somewhat dated” today (Kinsley 2014, 365), but the modifier ‘cyber’ is still routinely used to describe crimes, investigative units, communication, commuting, products, in short, almost anything with online elements.<sup>1</sup> The ‘cyber’ does more than add clarification. It is a locator, a divider, and most of all, it carries an assumption with it – that anything listed is somehow different, separate from what it would be without the ‘cyber.’ Conceptual divisions between what is seen as the virtual and the real persist.

## **2.2 To Legislate or not to Legislate?**

When Rehtaeh was taken off life support in April 2013, it had been roughly a year and a half since she disclosed to the Halifax police that she had been sexually assaulted, and a year and a half enduring the resurfacing of that infamous photograph, and the slut-shaming, harassment

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<sup>1</sup> Lisa Nakamura calls cyber “one of the most irritating and ubiquitous prefixes of the nineties” (2008, 1673). Her insight applies as well to the discourse of more recent years.

and social exclusion it fueled. A few weeks later, the Province of Nova Scotia unanimously passed a unique piece of legislation, the Cyber-Safety Act (CSA), Canada's first standalone anti-cyberbullying legislation.<sup>2</sup> The passage of this bill did a number of things that were directly influenced by Rehtaeh's experience. It created a number of pathways for legal redress for those experiencing cyberbullying, including CyberSCAN, a new civil investigative unit with the power to request protection orders, subpoena information, broker deals between complainants, and confiscate electronic devices. The CyberSCAN unit and the protection and prevention orders were intended to provide tools to immediately confront and mitigate cyberbullying behavior, to prevent its spread and intensification. The Act also widened and clarified responsibility around cyberbullying by expanding the jurisdiction of school authorities beyond school grounds, and making it possible to hold parents accountable for their children's actions online. To the end of providing compensation for those targeted, it created a tort of cyberbullying, allowing those targeted to pursue action in civil court.

Even if the legislation was a hastily assembled response to public outrage around Rehtaeh's death, it was a recognition that something considered socially wrong had happened. It was also an act of naming. It declared that what happened to Rehtaeh was cyberbullying, and by extension, it affirmed cyberbullying as a social problem that deserved the attention and legislative response of the state. At the same time, it served to mask other elements of her case. Even as they commissioned official reports looking into different departments, in declaring cyberbullying to be the problem, the Nova Scotia government downplayed the actions of police, public prosecutors, the school administration, mental health services, and systemic failures

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<sup>2</sup> Most Canadian provinces opted to make changes to their Education Acts to include cyberbullying alongside bullying.

around consent education and investigation of sexual assault. In effect, by passing legislation focused on cyberbullying, the Province sent an implicit message indicating there were gaps in the law – that the failure of law enforcement and the courts was understandable. They could not have succeeded: they didn't have the adequate tools to deal with Rehtaeh's situation.

Certainly digital technologies have changed the ways some crimes and cruelties are committed, as well as their reach and timing. Cyberbullying's "conceptual elasticity," to use Jane Bailey's language (2014b), has it stretching to encompass an incredible array of activities and harms, many of which could fall under existing laws - quite the source of confusion or negotiation for police and legal institutions. In Rehtaeh's case, two of the four young men at the party were eventually brought to court for making and distributing child pornography. As the police had closed their yearlong investigation without laying any charges in November 2012, some cynical voices called attention to the timing of the arrests – after Rehtaeh's death by suicide, and under pressure from a range of actors, including the hacking group Anonymous who were sufficiently motivated by Rehtaeh's story to start the online action #OpJustice4Rehtaeh (Hauser 2013).

### **2.3 Sexual Assault and Legal Justice**

In Rehtaeh's case, sexual assault forms the subject matter of the child pornography, and is very much an existing Criminal Code offense. So while they were initially encouraged that arrests had been made, Rehtaeh's parents had misgivings about the charge: "when you hear the details of the photo described, they can go on about [my daughter] didn't consent for this photo being taken, yet for some reason she was able to give consent for sex?' her father said following

the second hearing” (Glen Canning in Beaumont 2014). Examining 116 recent Criminal Code cases involving technology facilitated violence in Canada, the great majority of which were against women, Jane Bailey returned to the fundamental feminist question of whether criminal law is able to provide any sort of meaningful justice for women who have experienced violence. Criminal law can technically respond to technology-facilitated violence against women, but will it? Of the 116 cases that made it to trial, there were 95 convictions, yet common themes surfaced in the review of those cases. The crimes committed tended to be attacks on sexual, emotional and psychological integrity, and used the victim as an instrument or object to achieve a goal. The written responses of the courts offered de-contextual analyses of that harm and violence. And the written decisions, even when resulting in a conviction, incorporated an innocence narrative for the perpetrator, wherein the victims were often blamed in some way for what happened to them. From a review of the cases, Bailey drew the tentative conclusion that the machinery to respond to technology-facilitated violence against women is mostly in place. However, the will to use that machinery is often missing (2017; Sheehy 2012). Formal equality is a limited model if the same values and beliefs still inform enforcement and interpretation of laws (Kalinina 2014). Rehtaeh’s case seems to add additional evidence to those conclusions.

Changes to the Criminal Code in Canada in 1983 based on the long-term efforts and interventions of feminist legal advocacy and scholarship have resulted in a criminal law of sexual assault that statutorily speaking, is “pretty good” (Randall 2011, 399). Here in part, is Bailey’s machinery. Yet to her second point, the application of the law on behalf of those who have experienced sexual violence leaves much to be desired. As Bailey notes, case law is only a tiny slice of the crimes that occur (2017). Many instances of violence never make it to court, whether because they were not reported, dismissed, lost, classified as unfounded, or not prosecuted.

Canada's national unfounded rate for sexual assault is 20%, which means that in 1 of 5 reports of sexual assault, "the investigating officer doesn't believe a crime was attempted or occurred."

And in Canada, fewer than 1 in 10 report those assaults to the police in the first place (Doolittle et al. 2017; Government of Nova Scotia 2013). A Halifax-based anti-violence worker aired similar sentiments during our conversation about Rehtaeh Parsons and the CSA.

*There is a pattern in what they [The Department of Justice] will take on, and that's with police and all actors in the justice system. They have discretion and so personal bias can really influence the discretionary power of people who work in the criminal justice system, which leads to things like certain people being able to access justice and certain people not. Primarily black, indigenous, trans people are not experiencing any form of meaningful justice and white, good victims, so like the good victim narrative really comes into cyberviolence. (DD 2017)*

Rehtaeh's accusations of sexual assault never made it through the law enforcement investigation to trial. I think the stated reasons for this – whether they involve overloaded officers or reliance on misguided impressions - should not distract from the larger truth that very few of the many instances of sexual violence that happen in Canada make their way through the courts. Part of the reason Rehtaeh's case did not head to trial was related to recommendations made to law enforcement by a prosecutor who said "there was no realistic prospect that sexual assault charges would result in convictions" (Segal 2015, iv). Consider the logic at work here: cases of sexual violence, if not considered unfounded in the first place, are not brought to trial because trials for sexual violence do not often result in convictions.

If there had been a trial, far from guaranteeing justice or public vindication, Rehtaeh could have faced what many people, women and girls in particular, face when they bring their stories of sexual violence to the state: re-traumatization, secondary wounding, intense scrutiny of

their lives and personal decisions, unwanted publicity and exposure, and moral judgment (Doolittle 2017). In the debates prior to the passage of the CSA after Rehtaeh's death in April of 2013, representative Diane Whalen noted the high rates of reports and low convictions in the province, asking: "if you were a woman who was sexually assaulted, and you're already suffering emotionally and physically and mentally, would you want to put yourself into a court system that routinely is not finding criminal fault or the people are getting away with it?" She continued, "I really feel that the laws we have, have been on the record, they should be good for much more than they're being used for and I think some of that is cultural and attitudinal and we need to do more about that as well" (Nova Scotia House of Assembly 2013f, 1497).

Discriminatory beliefs and assumptions about 'real' victims and 'real' rape, which legal changes in the 1980s were intended to address, are still rife in the criminal processing of sexual assault cases (Bailey 2014a; Sheehy 2012) and even impact whether a survivor will be more likely to disclose the attack (Ahrens, Stansell, and Jennings 2010). Factors like officer assessments of the character of the victim, whether the perpetrator was known to the victim, the ways the victim behaved during the assault, and common assumptions that many (women) lie about sexual assault to cover up another situation or to obtain revenge still play a role in the processing of sexual assault cases (Venema 2016).

Widely held myths create a persistent picture of what rape looks like - physically violent penetration perpetrated by a stranger who is strenuously resisted by the victim - that contradicts statistics about sexual assault. Most sexual assault involves people known to the survivor and result in few overt physical injuries (U.S. Department of Justice Office on Violence Against Women n.d.). When the definition of rape or sexual assault is narrowed to a certain set of myths, access to justice is similarly narrowed. When reporters spoke with the female friend who

accompanied Rehtaeh to the party in 2011, she expressed similar myths. The mother of one of the boys was present in the house that night. With this in mind, the friend said: “I would think that if four people were raping a girl, that the mother would wake up, you know? Like, if you’re getting raped by four people, or two people, or one person even, you’re going to be screaming, you’re going to be yelling, you’re going to be crying.” Based on an idea of ‘real’ rape and a ‘real’ victim, the friend did not believe Rehtaeh was raped, and crucially “she told as much to police.” The piece reveals her shaky grasp of the concept of sexual consent, especially in relation to alcohol, and yet “her account appears to have played a key role in their [the police] investigation” (Ross and Willick 2013).

The report on the police and prosecution response to Rehtaeh’s case also outlines how against protocol, Rehtaeh was interviewed twice by the police, creating a situation where the ambiguous notes from the lengthy first unrecorded interview could be set up against the second video-recorded statement. Without a recording of the first interview, the notes cannot express whether leading questions were asked, if sentences were Rehtaeh’s or the officer’s interpretation, or if words or phrases were suggested to her (Segal 2015). Having two interviews also creates more avenues for inconsistencies in statements, the details of which have often been used to question the credibility of the complainant in the initial assessment of the case by police, in court, or both. As anti-violence activists and advocates of trauma-informed care underline, inconsistent memories, recollection of details, and counter-intuitive behaviors are all symptoms and consequences of traumatic experience (Armstrong and Miller 2009; R. Campbell 2012; Ontario Coalition of Rape Crisis Centres n.d.).

These insights have led to the transformation of police handling of sexual assault cases in some jurisdictions. In 2014, as a result of Rehtaeh’s case, a trauma-informed response to sexual

violence course was offered to police officers in the province, which specifically stressed that first responders should only ask for basic information from complainants so as to spare them multiple interviews (Segal 2015, 27). While a trauma-informed approach like this would minimize the harm of reliving what happened more than once for a law enforcement investigation, the experience of seeking justice through the law may still be extremely agonizing, harmful and disturbing for survivors. As the province began formulating its first sexual violence strategy after Rehtaeh's death, the input from service providers, and representatives from survivor groups and community organizations who advocate for survivors and their families underlined this point. "There is a considerable lack of confidence in the system, in the way investigations are conducted and in the court process. Often, there are few convictions, and survivors feel re-traumatized as a result of their experience" (Government of Nova Scotia 2013, 11). The painful experiences of survivors who choose to seek justice through official channels, both those whose cases make it through to trial and those who don't, speak to the embodied consequences of accessing or attempting to access legal justice. In the words of Shelley Cardinal, "the justice system was built for the offender. It's a punitive system that was built for offenders, that's who it was built for. It wasn't actually built to provide support to anybody" (cited in Hunt 2014, 183).

All these factors and attitudes contribute to rendering Canada's 'pretty good' machinery of sexual assault law ineffective in practice. It is in this context of myths and stereotypes, discrimination and histories of discrimination that charges for the sexual assault experienced by Rehtaeh Parsons were unlikely to result in a conviction, and the decision not to pursue them becomes 'reasonable.' What remained, after considerable social pressure, were legal proceedings related to the photograph.

The application of child pornography charges after Rehtaeh's death is a complicated calculus. In addition to being incomprehensible to her family and others in light of decisions not to prosecute for sexual assault, the charges were late, and seemed heavily motivated by public pressure and outrage. While Rehtaeh's family may have been relieved there would be some sort of legal accountability, the application of child pornography charges to minors is connected to broader trends of criminalizing teenage sexual expression, and punishes youth, sometimes with jail, probation and other long-term consequences, for broader social patterns around the sexualization of young women, tolerance for misogyny, sexism, rape culture and homophobia (Shariff 2017; Whynatch 2013). Child pornography laws make the production, possession and distribution of sexually suggestive images of youth under 18 illegal. Intended to prevent the sexual exploitation of children by adults, child pornography charges have also been used to prosecute youth for photographs shared and taken, consensually or not, and even threatened against youth who take nude photos of themselves (Hasinoff 2015). In extreme cases, youth who engage in consensual sexting are threatened with (or subjected to) prosecution and registration on sex offender list (Karaian 2012).

As critics of these uses of child pornography laws argue, prosecuting young people for instances of consensual sexual expression and experimentation is the product of "heightened public anxiety and hysteria around youth and sexuality" (Henry and Powell 2015a, 105). Some argue this criminalization is fuelled by moral panic around the protection of 'respectable' white, attractive, middle and upper class girls from sexual predators and themselves (Karaian 2012, 60). A raced and classed protectionist impulse and the failure to distinguish between experimentation and expression, and non-consensual and predatory uses only incorporates more people into bloated prison and correctional systems, which are often much more about punishment than

accountability (Coburn, Connolly, and Roesch 2015).

The use of child pornography charges around what happened to Rehtaeh Parsons feels like the contortion of an existing law to cover a set of disturbing and harmful behaviors by adolescents for which no other laws seemed applicable. Policy discussion around ‘cyber’ crimes constantly orbits this question of whether new laws are necessary. Like Sarah Hunt’s important emphasis on the everyday violence of the law for Indigenous people and Indigenous women in particular (Hunt 2017), the question of whether or not the law is even a tool capable of providing justice for certain people or around certain situations is not one that often enters legislative or mainstream public debate. One of the anti-violence workers I spoke with shared that analysis: “I think there’s no justice for victims of gender-based violence through that route” (DD 2017), but more often the terminology of gaps or systemic failures came to the forefront, without the consideration that those systemic failures are or can be, as Hunt highlights, very much an integral part of the system.

## **2.4 Legal Gaps?**

After the death of Rehtaeh Parsons, in the legislature there were some voices drawing attention to lack of services and the ineffectiveness of the justice system around sexualized violence (Nova Scotia House of Assembly 2013b, [d] 2013, [g] 2013, [f] 2013, [e] 2013). The province did embark on the creation of a sexual violence strategy, realized in 2015, to develop “better delivery of prevention and support services” (Province of Nova Scotia 2015, 2). Workshops were held, emergency funding released, new funding created, efforts made to coordinate services and polices. But as a number of legislators allege, five years had elapsed

between the comprehensive needs assessment in these areas in 2008 and the start of the development of the sexual assault strategy in 2013. There was also a considerable delay between the release of the 2012 Task Force report on Bullying and Cyberbullying, and the passing of the CSA in 2013. With both governmental actions coming into being in April, May and June of 2013, there was a clear link to Rehtaeh.

In terms of cyberbullying and sexual assault, two issues that were central to Rehtaeh's experience and the campaigns that arose after her death, the former was overwhelmingly seen as an area where the law was failing, but while convictions and reporting rates around sexual assault were mentioned, there was not a similar push to address the inadequacy of the justice system as related to sexual assault. This question from MLA Michel Samson during the April 16, 2013 legislative session gestures at systemic issues around legal justice for sexual assault by asking about the rates of charges.

*In Nova Scotia the proportion of sexual assaults that resulted in charges being laid declined from 56 per cent to 30 per cent. At 30 per cent, Nova Scotia had the lowest proportion of sexual assaults that resulted in the laying of a charge in all of Canada. Since that time the stats have not improved enough and another variable for sexual assault has entered the picture - the expansion of social media and mobile phones. With the lowest proportion of sexual assaults resulting in charges in the country and with the challenges posed by the Internet and mobile phones, what resources has the Minister of Justice provided police in Nova Scotia to address this pressing issue? (Nova Scotia House of Assembly 2013d)*

The Justice Minister Ross Landry's response illustrates a trust in the processes of the justice system that are often not shared by survivors of sexual violence who seek redress through its channels.

*The police management has adequate budgets and funding to do their training. They set their priorities, they usually set it a year or so in advance and then lay that out. There's*

*also continued education within the policing community for officers to take additional academic training, which we support in many different forms. (Nova Scotia House of Assembly 2013d)*

Landry's comments maintained a perspective that did not register the possible inability of police and the justice system to tackle that violence, nor their role in sometimes extending it.

It follows that in such a framework, fixing sexual violence would focus on funding for supporting survivors and advocacy organizations, and a modest educational campaign. Yet in the case of cyberbullying where the law *was* seen as unable to respond, new legislation was needed.

Familiar calls for new laws to deal with cyberbullying and technology-facilitated forms of violence after the death of Rehtaeh Parsons found further realization in the passage of Bill C-13 by the Canadian Parliament in late 2014. Short-titled the Protecting Canadians from Online Crime Act, politicians pushing for passage of the bill invoked Rehtaeh and other young victims by name at hearings and readings, and in appeals to the public. C-13 was widely condemned as a Trojan Horse of sorts, giving the police and surveillance agencies long-sought-after powers to access Canadian's online communications under the guise of protecting vulnerable populations, namely children (C. Parsons 2015; Geist 2013, 2014).<sup>3</sup> In addition to those powers, C-13 outlawed the non-consensual distribution of intimate images, addressing perhaps the largest perceived legal gap around cyberbullying, especially for people over the age of 18 (Fraser 2014; Canadian Bar Association 2014).

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<sup>3</sup> In Canada, these powers were given the name 'lawful access,' and before the successful passage of C-13, four other bills were introduced with these provisions over a more than 15-year period. All of the other iterations failed to garner enough support for passage. C-30, proposed by the Harper government in 2012, was the first of this series of bills to link lawful access provisions to cyberbullying or protection of children. However, C-30, short-titled the Protecting Children from Internet Predators Act, contained no actual content around cyberbullying or online harassment beyond the name of the bill, and was widely panned as a clunky attempt to use the protection of children as a way to increase government surveillance powers.

Adding to the pile of referential legislation passed after her death, C-13 and its intimate images clause could not have been used to prosecute the young men who took and distributed the photograph of Rehtaeh because it could not be applied retroactively. Even if that had been a possibility, the intimate image provision in C-13 did not provide increased protection for youthful victims. For offenses committed after its passage in 2014, it did offer more moderate options for dealing with youthful offenders, including separating the offense from the stigma of child pornography (Canadian Bar Association 2014).

## **2.5 Logging out of the ‘Cyberworld’**

Child pornography was not the only Criminal Code offense that could have applied in Rehtaeh’s case. Sexual assault (section 271), sexual exploitation of a child (section 153), criminal harassment (section 264), uttering threats and intimidation (section 423), counseling suicide (section 241), indecent or harassing communications (section 372) and voyeurism (section 162) were all conceivable possibilities (Makin and White 2013; Fraser 2017). According to Wayne MacKay, a lawyer, law professor and the former chair of Nova Scotia’s Task Force on Bullying and Cyberbullying, “in spite of the wide range of provisions in the Criminal Code of Canada that might be applied in the cyberbullying context there has been some reluctance to apply these provisions in the cyber context” (MacKay 2015, 19). He re-iterated this sentiment when I interviewed him in the spring of 2017:

*They [the police] have not necessarily been very creative at applying existing laws to the cyberworld. There’s a crime of criminal intimidation or criminal harassment. Why couldn’t that also be online? Of course it can. So even before they had [a law against the] distribution of intimate images, why wasn’t anyone suggesting well this is*

*harassment, this is significant criminal style harassment? ...The law was there in part, they just weren't applying it to the new context of the cyber/internet world. So I think it's a combination of not taking those kinds of offenses seriously, but also not being creative enough to apply existing laws to a new context (MacKay 2017).*

MacKay's sentiments were echoed in other conversations I had. Regarding Rehtaeh's case, lawyer David Fraser said, "nobody had the, and I don't know if creativity is the right word, but the ability to translate a situation like that into a legal framework that you can actually take action on for the benefit of the victim" (2017). He continued more emphatically:

*The police generally have no clue... they have virtually no imagination in thinking about how the law applies to online activities. They, I don't know if it's in police academy or otherwise, they have this image in their head of what harassment looks like and it's somebody following someone from place to place and menacing them with their physical presence (2017).*

Adding more fuel to the fire, a lawyer I spoke with who worked closely with Halifax law enforcement around cyberbullying also expressed this tension around the Internet and 'real-life.'

*The police didn't take it seriously. My view is that the police didn't believe - I had them say statements to me that if it didn't happen in real life then it wasn't real. So a threat wasn't a threat unless a man's coming in with a gun at your head... I think for the police, when it came to online, it didn't matter the type of person who was calling or it didn't matter the person's socioeconomic status, it didn't matter if it was an older lady, a younger lady, they really didn't take any kind of online cyberbullying seriously (BB 2017).*

A youth worker highlighted the subjective nature of these views, making the connection between the ways technology is used by different people and their perceptions of what it is.

*Something that's a challenge for youth is the generational divide, where there's more of a disconnect between online life and real life, where youth are saying: "it's the same thing." It's basically the same thing (CC 2017).*

A few of the terms and ideas featured in these quotes - 'cyber context,' 'cyber world' and 'real life' - get at the common conceptual division between the digital and physical, the sense that these are separate spheres. As the last interview demonstrates, this is often envisioned as a hierarchical relationship, though its ordering is highly subjective. Often digital dualism implies the "entrenched view that virtuality, that is, what goes on in cyberspace, is inferior; a lesser order of knowledge than that produced offline, in meatspace; a vernacular term for embodied, face-to-face encounters in non-computer mediated contexts" (Franklin 2012, 315). "Criminal law supports victims when threats are perceived to be real" (Shariff and Gouin 2006, 34). BB's perception of the police has them enacting this hierarchical divide by considering activities that take place in the 'cyberworld' as not serious, not real. Her own experience of these activities gave her no choice but to take them seriously.

*It was so bad the stuff that we would see. And I think I told you some of the main ones that stuck out were just a lot of videos between people that would be shared online. A lot of kids going into pseudonyms online and then bullying. And there was a lot of provoke suicide online. That was really disgusting. There was a lot of... it was just sick. It was sick. It was like the twilight zone. You were like entering the twilight zone everyday at work. I used to laugh, [a colleague] and I and a bunch of us, we would say all we do is we watch pornography all day, but that's basically what it was. And then you get immune to it because you're watching it so often. It was gross. But it bothered me. It really bothered me. There were some nights that it would bother me so much that I couldn't sleep. (BB 2017)*

Similar strands of thought that see online and offline as divided spheres run through the works of scholars like Sherry Turkle (1984, 2011) who have a deep concern about human relationships and experience, find contemporary (and often youthful) engagement with phones and computers worrisome, and privilege the 'real world' above technologically-mediated experience. Whether or not many find Turkle's plea for a return to conversation compelling,

these critiques are fundamentally based in digital dualism – it makes no sense without the idea of ranked separate spaces. In these frameworks, the virtual or cyber is not reality, rather it is seen as a digitally replicated version of something real, or something having the appearance of reality.

The same logic accompanies the advice to those facing harassment in online contexts to log off or shutdown, implying that by severing an online connection, the Internet and the harassment experienced via the Internet will disappear. It conveys an ontological misconception about digital communication technologies, and focuses on the behavior of the person targeted rather than that of the perpetrator, a variant of victim-blaming. This sentiment is also directly contradicted by the testimony of young people, who underline how the experience of cyberbullying is constant and many feel they have no way of escaping from the 24/7 abuse (Standing Senate Committee on Human Rights 2012a; MacKay 2012). In spite of this, CyberSCAN, the investigative unit created by the CSA, appears to have dabbled in this kind of advice. As one youth-worker related:

*I saw that even with CyberSCAN. They would tell people to just get off the Internet. Just delete your Facebook, delete your Twitter, and then this won't happen to you... It's not really a level of help that challenges the problem in a meaningful way (DD 2017).*

A lawyer I interviewed who had considerable experience taking on cases that involved digital technologies had a similar view of law enforcement reactions in those situations:

*There's also this notion that if it's electronic it's abstract. It goes hand in hand with "oh you should just unplug – what somebody says on Twitter, what does that matter – well just ignore it"... I fail to see how that helps in a meaningful sort of way. That's just like leaving the room when someone is ranting about you (Fraser 2017).*

His assessment suggests that those proposing the unplug option see the Internet as a completely

different space. Unplugging doesn't 'challenge the problem in a meaningful way' because the digital is not a separate sphere that can be cognitively or practically shorn off. And in Canada, as with a growing list of places, use of the Internet is increasingly not optional. A Halifax-based youth worker and programs manager expressed it succinctly:

*People were telling youth to just get offline, just unplug, but that has social implications, that has financial implications, like employment. You can't not be online right now, it's just not reasonable (CC 2017).*

Beyond the consequences of not being online in a world where economic transactions, communication, work, social interaction, news, and governance are happening via digital technologies, "drawing a mutually exclusive distinction between 'off-line' and 'online' realms is all but defunct nowadays in practical term" (Franklin 2012, 316). As Willson observes, even the terminology offline/online is clunky and confusing: "the awkwardness of simply trying to demarcate these as 'different' spaces is evident in this phrasing, pointing to the intertwining and interrelationship of both spaces already perceived as commonplace" (2017, 139).

Logging off might sign a user out of an account, or change their personal usage of social media, but online presence doesn't disappear. Unplugging might remove primary user-generated content, but secondary disseminations of that content, comments, discussion threads, signatures on petitions, news stories, blog posts, online databases of addresses and phone numbers, digital public records, and countless other types of content about a given person remain online and searchable in spite of a user's activity or active status. Unplugging is not disconnecting; disconnection, in the sense of completely removing oneself from the Internet and digital technologies, simply isn't possible. Not only does a personal decision have no bearing on certain kinds of Internet presence, ever-growing swathes of life in certain places involve and incorporate

digital technologies. The decision to opt out is one that narrows possibility on a multitude of levels, affecting job prospects, romantic and sexual prospects, creative expression, friendships, and access to resources in general.

Suggestions about unplugging or logging off, inevitably made by members of the public when experiences of aggression or violence are shared, but also common recommendations of law enforcement officials (Citron 2014), construct a problematic relationship between freedom of expression and tolerance of violence as well as between virtual and corporeal worlds. Like much existing discourse around the digital, these suggestions stumble on its seeming intangibility and immateriality. They diminish or ignore how technology facilitated violence affects actual or perceived mobility, from safety at home and navigating daily commutes, to professional, financial, and psychological wellbeing. In effect, advice to victims that they should log-off, grow a thicker skin, or modify their behavior in some way succinctly demonstrates a disconnect between the embodied experiences of TFV and legal and social recognition of harm. This virtual/corporeal divide effectively codes or treats the virtual as a simulacrum of ‘real life,’ contributing to differential ideas of conduct and harm between these two constructed realms.

## **2.6 Imagining ‘Online’ Violations**

Cognitive formations such as digital dualism that associate the digital with the intangible, and see the digital and physical as separate realms, hinder the association of existing laws with online situations. If the virtual is seen as a digitally replicated version of something real, or something having the appearance of reality, then the violence that happens in those environments is simultaneously seen as somehow not real, less serious than physical harm. The photograph of

Rehtaeh and its dissemination, involving the possible criminal elements of sexual assault, voyeurism, child pornography, intimidation, and defamation was described by the police as “a community issue” (Borden Colley 2013; L. Parsons 2013; Makin and White 2013). A few years later, in a shamefaced response to criticisms of the police for the dismissive mishandling of a case involving digital technologies and stalking, impersonation, and conspiracy to orchestrate sexual assault, Halifax Regional Police Deputy Chief Bill Moore appealed for public understanding, calling the Internet “another world out there to be policing” (CBC News 2014).<sup>4</sup> The supposed invisibility and disconnection of this kind of crime impacts resource allocation in terms of funding (Davis 2012), as well as care and attention. According to the women involved, the police “treated the harassment as unsolvable in part because it involved the internet” (Beaumont 2014b), though the police and legal actions around sexual assault also has a separate but similar history of incapacity. As the byline of the story noted, this was “even after Rehtaeh Parsons,” gesturing to the persistence of ways of thinking about the Internet, even after major local incidents challenged assumptions that what happens on the Internet or via digital communication technologies is somehow not ‘real life.’

In addition to conceptions of the Internet as immaterial, separate, and not or less real, part of the dismissal of harm around digital technologies relates to their association with disembodiment. Elements of Rehtaeh’s experience and the experiences of the women in the above example – harassing messages, the creation of fake profiles, non-consensual distribution of photographs, threats of bodily harm – these are more easily dismissed by the police because of longstanding conventions in Canadian law of privileging harms that have visible, more

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<sup>4</sup> For some excellent journalism exploring and publicizing this case, see Hilary Beaumont’s series for *The Coast Halifax*: (Beaumont 2014b, [c] 2014, [d] 2014, [e] 2014).

immediately tangible impacts (Fraser 2017; MacKay 2017). The Criminal Code includes a range of harms – financial, reputational, damage to property – but it enshrines the idea of the protection of the body from physical harm and violation (Sheila Brown in Henry and Powell 2015, 765). While Canadian Courts recognize psychological harm, for instance, noting that the intimidation caused by harassment is a real form of harm,<sup>5</sup> “the public’s priority has often been traditional crime,” (Segal 2015, 36–37) meaning ‘offline’ crimes, but also acts that produce marks on the body. One of my interviewees, a lawyer and major legal player in the provincial cyberbullying conversation, echoed this, positioning the treatment of cyberbullying as an extension of the general lack of responsiveness of the law and police to non-physical, or less obviously physical harm. In his words:

*At the police level, I think for a long time the view was that ‘this is unfortunate that this happened, but it’s pretty minor, don’t bother us too much, we’ve got big things to do. We’ve got to go deal with thefts, and assaults and murders and so on, don’t bother us with this stuff. Act more sensibly and it wouldn’t happen to you’ (MacKay 2017).*

Not only does his response point to the deplorably common trend of scrutinizing the victim’s behavior rather than that of the perpetrator (Bossler and Holt 2012), but he identifies the areas he thinks the police take more seriously: property and bodily injury. Many of the harms caused by digital technologies or clustered under the term cyberbullying can be invisible from the outside because of the ways they manifest or fail to manifest in the physical body (Deschamps 2016). Yet not only can bodily harm result from online interactions or digital communication, “psychological harm *is* also physical and social harm, embodied and ‘real’” (Henry and Powell

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<sup>5</sup> For a few recent cases involving digital communication technologies and harassment, see R. v. Wenc, 2009 ABCA 328, R. v. Barnes, 2006 ABCA 295, and R. v. Greenburg, 2009 ONCJ 28.

2015b, 770). As critical race scholars like Mari Matsuda demonstrate with hate speech, an attack that is perceived as non-physical can give rise to “physiological symptoms and emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide” (Matsuda 1988, 2336). The idea that psychological harm, social exclusion, shaming, emotional distress, and depression are not located in the corporeal body, in terms of both bio-chemical changes and neuron activity and other more superficially visible impacts like stress rashes, panic attacks, self-harm, and inability to sleep is underpinned by assumptions that the mind and body are somehow separate entities. These assumptions flourish in scenarios where the corporeal is considered less obvious, such as in digital communications and online, giving rise to what Boler calls “new digital Cartesianism” (Boler 2007).

## **2.7 Disembodied Hopes**

As they arose in Western contexts in the 1990s, online spaces were seen as emancipatory - having the potential to provide unprecedented freedom in how “digital individuals” (Curry 1997) could transcend place and identity-based constraints by leaving their locations and bodies behind. In the vision of the most ardent cyber-utopians, cyberspace was: “the new home of Mind,” (Barlow 2016) where “the disembodied consciousness leaps and dances with unparalleled freedom... a realm in which the mind is free from bodily limitations” (Bukatman 1993, 208). When Barlow, Bukatman, or other techno-utopians equate the Internet with the mind, and declare it free from the constraints of the body, they are enacting what Boler calls ‘new digital Cartesianism’ (2007). “The body, story goes, remains docked, immobile at the

interface, while the mind wanders the pixelled delights of the computer programmer's creation" (Murray and Sixsmith 1999, 318). In these visions, the Internet is a realm of free-floating, pure information, abstracted from power structures where limitations associated with bodily location, difference, ability, and possibility are erased. It is a world where "all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth" (Barlow 2016), and its freedom makes it the ideal home for a historically tenacious, idealized vision of the mind.

This idea of disembodiment as transcendence, where the body is seen as heavy, dragging, limiting or distasteful in some way, and the mind is freed from the body, has deep Western philosophical and religious roots.<sup>6</sup> Mind and soul as pure and desirable, holy or the true manifestation of the human, body as polluted and limiting... these associations come easily to cultures familiar with or built upon Christian traditions of seeing the body and the earthly realm as sinful - entities to be freed from through endurance and piety. Philosophically, the idea of the mind and body as separate and existing in a hierarchical relationship is perhaps most memorably articulated by Descartes. This dualism has proven to be tenacious and damaging, as well as difficult to maintain in practice. As Judith Butler argues, "when we consider Descartes' efforts to think the mind apart from the body, we see that he cannot help but use certain bodily figures in describing that mind. The effort to excise the body fails because the body returns, spectrally, as a figural dimension of the text" (Butler 2015, 32).

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<sup>6</sup> In spite of the power-laden histories and implications of ideas of bodily transcendence, there are extremely compelling reasons, subjective and otherwise, to wish for that transcendence. Those who live in oppressive national or home situations, people looking to experiment with more fluid identities around gender or race, others looking to distance themselves from bodies that are a source of chronic pain – this is not a denigration of those desires. I raise these critiques of digital dualism and new digital Cartesianism to bring attention to how ontological assumptions about digital technologies and 'online spaces' materially function to extend or solidify existing social relations.

This return of the body is equally apparent in supposedly disembodied digital spaces. With perhaps more critical chops than some of the other techno-optimists, cyberfeminists of the 1990s held out hope that digital technologies would allow for the liberation of people, especially women, from rigid and patriarchal gender roles by removing or reducing the markers that connected to gender and gendered performance or expectations (Plant 1997; Millar 1998; Haraway 1991; Stone 1995). Others scholars focusing on race saw the emancipatory possibility of Internet architectures to disrupt racial schema: the mapping of people into racial categories that evoke racial meaning (Kang 2000), or at the very least, to allow racialized people to exist in certain spaces without visible bodies, potentially lessening the oppressive impacts of racial thinking.

Yet the body, and the identities and markers associated with it, constantly reappears in these supposedly pure, disembodied digital contexts. “If one were to peruse the textual exchanges on bulletin boards, discussion boards, or chat rooms, one would find ample evidence of constructed bodies” (Young and Whitty 2010, 219). And as Boler notes, on a supposedly anonymous, disembodied platform, users frequently “inquire about others’ ‘age/sex/location’ (‘asl’) in order to interpret communication and/or to confirm one’s projection of the other’s identity” (2007, 154). A recent PEW study on online harassment found that harassing behaviors frequently target a personal or physical characteristic (Duggan 2017). In ‘cyberspace,’ as with everywhere else, certain people, among them women, transfolks, racialized people, queer people, people who are fat or have a disability and ‘others’ of all varieties are particularly, and I borrow from Haraway, “not allowed *not* to have a body” (1988, 575).

As Shaka McGlotten relates in his book on virtual intimacies and queer men, “the fluidity and playfulness of cyberspace and the intimate possibilities it was supposed to afford have been

punctured by corporeality; for me and some of my informants, for example, the particularities of our racial enfleshments have operated as obvious and not so obvious drags on our erotic or romantic possibilities” (McGlotten 2013, 3). Circumstances like these, where the body takes on the “role as final arbiter of authentic identity” (Boler 2007, 157), and when those authentic identities are sorted according to existing social relations, indicate that cyberspace “cannot be presumed to be the place of transgression and destabilization,” and is certainly not disembodied (Bailey and Telford 2008, 267; van Doorn 2011). That Rehtaeh’s story centers on sexual assault and slut-shaming, and that her tormenters offered primarily sexualized abuse is no coincidence. There are no ‘unmarked’ or separate positions or spaces: bodies and identities matter.

## **2.8 Conclusion**

It is perhaps ironic that a medium lauded for its ability to “weave new networks from what were once isolated words, numbers, music, shapes, smells, tactile textures, architectures, and countless channels as yet unnamed” (Plant 1997, 11–12) is considered a separate world. While critical thinking around digital technologies can complicate truisms in Western thought, “particularly uncritical distinctions between the mind and body and the organic and synthetic” (J. Campbell 2004, 45), for many, ‘real’ is still corporeal. Digital communication technologies, and the Internet in particular, have presented a great deal of confusion for users and thinkers who when pressed, may be able to name numerous ways the Internet is a fundamental part of their lives, yet still articulate the sense of a tenacious division between ‘real life’ and the Internet. Even some of the participants I interviewed who were adamant about how harm on the Internet was real harm and needed to be taken seriously would in other moments slip into language that

suggested it was an entirely different space. These instances speak to the complexity of negotiations and understandings of what digital technologies are and how they fit into conceptions of reality.

Variouly known as new digital Cartesianism (Boler 2007) or online disembodiment (Campbell 2004), the cognitive division between online and offline, the digital and corporeal is remarkably persistent. Yet violence online that explicitly and implicitly impacts physical bodies is challenging commonsense assumptions about digital technologies and online environments as somehow separate and not real life. In lacking the ‘creativity’ or ‘imagination’ to apply existing laws to situations that involve digital communication technologies, law enforcement officials and prosecutors grapple with conflicting ontologies of technology, different ideas about what it is and therefore what its impacts can be. They also perform or resist myths around sexual assault, and the addition of technology to situations involving sexual violence, especially against women and girls, complicates incidents that are already too often viewed as unfounded or not a priority. ‘Creativity’ gets at a mental barrier that speaks to what harm looks like and how technologies fit into individual lives, which may differ generationally as many of my interviewees suggested, or along less prescribed categories.

I suggest a case like Rehtaeh Parson’s offers both confirmation of existing ontological assumptions around sexual assault and technology, and a visualization of a moment of reconsideration in this constant evaluation of where resources should be sent, of what is harm, and what deserves social redress. Digital communication technologies as immaterial, intangible, separate and disembodied, and above all else, ‘not real life,’ does not resonate with what happened to Rehtaeh, nor align with many other embodied experiences of technology. Perhaps unsurprisingly, Rehtaeh’s situation indicates the complicated entanglements – material,

theoretical, ethical – that tie together these supposedly separate worlds and trouble strict categorization of the digital and corporeal, the mind and body, online and offline.

### **Chapter 3: Making Meaning Around Cyberbullying**

Passed almost immediately after the death of Rehtaeh Parsons in April of 2013, Nova Scotia's Cyber-Safety Act (CSA) served a number of purposes. The government was under a great deal of pressure to take some action in relation to her case: in sensationalizing cyberbullying by routinely featuring the most extreme and tragic outcomes, the media contributes to a public perception of a crisis, and pressures government to respond (Vandebosch et al. 2013). A lawyer I interviewed noted (perhaps cynically), it was an election year, and "what are the levers that the politicians have? They can make laws" (Fraser 2017). External considerations or not, the transcripts of the debate around the CSA are emotional and feature a number of lawmakers expressing sadness and frustration that government action hadn't been taken earlier. Rehtaeh's was not the first death attributed to cyberbullying in the province – in 2011 a Task Force on Bullying and Cyberbullying was convened after the bullying related deaths of three young women (Nova Scotia House of Assembly 2013f, [h] 2013). Much to the disappointment of members of the Task Force, particularly its Chair, prominent human rights lawyer Wayne Mackay, the province had implemented almost none of the 85 recommendations suggested in the 2012 Task Force report (Mackay 2013; MacKay 2017). In the debates and proceedings around the CSA, the lawmakers on record reference this failure, and seem genuinely distraught and determined to take steps to reduce the negative impacts of cyberbullying, particularly for young people (Nova Scotia House of Assembly 2013f, [h] 2013). In this, they echo the assumptions expressed by the lawyer above: the law is capable of providing justice but

there were no laws to address circumstances like this. As Marilyn More, the Minister responsible for the Advisory Council on the Status of Women Act put it:<sup>7</sup>

*Nova Scotians told us that there's often a gap between on-line behaviour that is considered criminal, and cyberbullying that is clearly designated to harm someone, but is not covered by the Criminal Code of Canada (Nova Scotia House of Assembly 2013h).*

The passage of the Act also put an official framing on Rehtaeh's experiences. An anti-cyberbullying bill doubles down on the affirmation of the possibility of justice through official legal channels for those who face technology-facilitated violence. Despite the sexual violence strategy the Province also began to organize at that time, the passage of the CSA and the optics and fanfare around it suggest to the public that the most important part of why there was no relief or justice for Rehtaeh was not related to police handling of sexual assault. Instead, cyberbullying and the legislative gap around cyberbullying were to blame for the greatest harms Rehtaeh experienced.

Media and communications studies uses a theory called framing to explain how mass media picks up and highlights select elements of a perceived reality and the ways this can “promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation” (Entman 1993, 52). Relevant far beyond newspapers and television, the action of framing provides a way of organizing the world and providing meaning. The events that took place in the last 2 years of Rehtaeh's life and onward have been framed in specific ways by different actors, sometimes with pointed agendas in mind, leading to predictably diverse results. If Rehtaeh's father saw her experience as being primarily about sexual assault and issues

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<sup>7</sup> During that period More was also Minister of Labour and Advanced Education, and Minister of Immigration.

of consent, the action he demanded was different than that proposed by the provincial government, who focused on the distribution of Rehtaeh's photograph and the use of technology. If the *action* of framing suggests the nature of the problem and by extension proposes a solution, the *theory* of framing does the critical work of puncturing claims of objective representation, highlighting the contingency and fluctuation of meaning. It calls attention to the social construction of that meaning and how it plays off of and perpetuates preexisting individually and culturally held systems of belief and common sense. There is nothing inherently good or bad or biased about framing. This research is not removed from those processes of meaning making through discursive framing. It troubles them even as it presents perspectives of its own.

Doing the work of examining and dissecting dominant frames, I too present interpretations about what happened around Rehtaeh Parsons, though those interpretations make no claim of stability, totality or finality. The narratives around Rehtaeh, what happened to her, her death, the legislation she inspired, its dismissal, even the term cyberbullying, they are frames that create meaning, deflect responsibility, bring attention to certain people and actions, and shape moral responses. While she was alive, immediately after her death, and to this day, different actors make sense of what happened to Rehtaeh by relying on or countering different narratives. In this chapter I explore the push and pull of meaning, the redefinitions, and the consequences of ways of understanding the events surrounding Rehtaeh and what happened after her death.

The most influential frame around Rehtaeh Parsons, which was put forward by the government of Nova Scotia and also by large portions of the Canadian media and supported by reports commissioned on the police and prosecutorial response, the school system, and the mental health system told the story of what happened to her as about cyberbullying. In passing

anti-cyberbullying legislation, the government was making use of a term that had a social and academic history, one they consciously or unconsciously linked up with what had happened to a teenage girl in their province. After giving context around the term, I look at its limitations and achievements, as well as reactions to its use. Many of the mainstream understandings of Rehtaeh's case, including it as cyberbullying, failed to situate what happened within a broader social context. This problem definition is "not merely a label for a set of facts and perceptions. It is a package of ideas that includes at least implicitly an account of the causes and consequences of some circumstances that are deemed undesirable, and a theory about how a problem may be alleviated" (Janet Weiss in Deschamps and McNutt 2016, 46). I use this chapter to puncture some of those packages in order to create space for different connections and understandings to take root.

### **3.1 Cyberbullying: the Scholastic Take**

With its roots in the term bullying, cyberbullying evokes youthful indiscretions and familiar, if reviled, rites of passage. Consistent with that impression, "cyberbullying research and theorizing is largely guided by findings in the traditional bullying literature (Tokunaga 2010, 279). While actual instances of cyberbullying may be less frequent than suggested by substantial media coverage of the topic, examining the US Youth Internet Safety Survey of a representative sample of Internet-using youth, Finkelhor reports that reported rates of cyberbullying have grown steadily from 6% in 2000, to 11% in 2010, an increase of 83% (2014). In fact, cyberbullying appears ubiquitous to the extent that many young people claim to be immune to its impacts, calling the behaviors 'drama' rather than bullying or harassment (Steeves 2014). Rates

also vary widely by age, location, study and methodology. In their 10 years of research, Patchin and Hinduja (2016) found an average of 28% of the roughly 15,000 students they surveyed to consider themselves victims of cyberbullying. A Canadian study reported that 37% percent of the young people they surveyed experienced something mean or cruel online that made them feel badly (Steeves 2014, 2). Another study of internet-using Canadians between 15-29 found that 17% reported having experienced cyberbullying (Hango 2016). In a nationally representative sample of Canadians aged 12-18, 42% said they were bullied electronically in the last month (J. Li and Craig 2015).

Yet as Livingstone and Smith observe in their review of recent research, an increase in use of mobile and online technologies has not yielded equivalent evidence of a clear or substantial increase in risk or harm for young people (2014, 642). That may be because safety messaging is reaching youth, as they suggest. Other studies note that cyberbullying is often not disclosed to parents or teachers (Q. Li 2007), and the level of harm can be nearly invisible from the outside (Deschamps and McNutt 2016). There is general agreement that there is a connection between who is bullied and who bullies face-to-face and via the Internet or phone (Baldry, Farrington, and Sorrentino 2015) and that the categories of bully and victim often overlap, leading to the use of terms like bully-victims (Q. Li 2007; Yang and Salmivalli 2013). Involvement in cyberbullying in any capacity is heightened for vulnerable young people who have previous experience of violence or live in precarious circumstances (Hango 2016; Ybarra and Mitchell 2007).

Part of the reason statistics vary widely and there is no clear evidence of an increase in harm for young people is the lack of widespread agreement on a definition of cyberbullying. Researchers, not to mention policymakers and media outlets, vary in definition and use of the

term (Ybarra et al. 2012; Sabella, Patchin, and Hinduja 2013). The great majority of academic research on cyberbullying makes use of the insights and themes provided by scholarship on bullying. Some researchers more explicitly connect cyberbullying to ‘traditional’ bullying, and cite its common characteristics of ongoing or repeated intentional infliction of harm within the context of a power imbalance (Beran and Li 2008; J. Li and Craig 2015; Finkelhor 2014). Observing the ways cruelty has changed since the introduction of certain kinds of digital technologies and platforms, others maintain cyberbullying is distinct or cannot be usefully analyzed from within the established framework of bullying (Patchin and Hinduja 2011; Dooley, Pyzalski, and Cross 2009; Slonje, Smith, and Friséen 2013; Deschamps and McNutt 2016).

Whether research avows or disavows connections to bullying, very few of the published studies discuss cyberbullying as it applies to adults – most associate the term exclusively with children. That distinction is much less clear outside of a scientific/academic context. The Cyber-Safety Act applied the term to all Nova Scotians without differentiating based on age. When I spoke with him in 2017, Task Force Chair Wayne Mackay observed:

*The term cyberbullying itself has taken off with a life of its own, and in fact ironically, although the Cyber-Safety Act was struck down because it [had a definition of cyberbullying that] was too broad, the public perception of cyberbullying is way broader than even that in the Cyber-Safety Act. (MacKay 2017)*

Cyberbullying’s “conceptual elasticity,” to use Jane Bailey’s language (2014b), has it stretching to encompass an incredible array of activities and harms. Various attempts to classify the types of cyberbullying list behaviors such as flaming (heated overt public attacks/exchanges), doxxing (revealing personally identifying information), harassment, stalking, denigration, impersonation, outing and trickery, exclusion, video recording and posting of assaults, and non-

consensual dissemination of intimate images (Willard 2007; Kowalski, Limber, and Agatston 2008; Langos 2015). These lists reveal the textural differences that digital technologies have had on the mode and character of cruelties inflicted. The anonymity offered by some of these platforms, the ease of recruiting a large number of participants, the potentially limitless audience, the longevity of posted content and the searchability and indexing powers of online technologies contribute to a growing consensus that cyberbullying can cause more long-term harm for young people than face-to-face abuse (Langos 2015; Cartwright 2017; Tokunaga 2010).

### **3.2 Cyberbullying: What's in a Name?**

Despite deep yearning for a clear and standardized definition of the term, debates that play out in literature reviews (unsurprisingly) create fewer ripples outside of those circles. The Cyber-Safety Act and media coverage around Rehtaeh Parsons latched onto the term cyberbullying, already in circulation, to describe repeated verbal and textual attacks via technology and the non-consensual sharing of an intimate and non-consensually taken photograph. An incredible number of terms have sprung up to try and describe the array of harm, violence and incivility experienced via Internet and communication technologies. These ongoing efforts to create language not only reflect the continuously shifting uses of ICT and the introduction of new platforms - they also work to make these harms visible. As Sara Ahmed writes: naming enables “something to acquire a social and physical density by gathering up what otherwise remain scattered experiences into a *tangible thing*” (2016).

As Gabriella Coleman observed in her ethnography of online hacker culture, naming creates epistemic objects, “stabilizing a set of experiences by making them available for

reflection” for self and others (Coleman 2014, 31). So for all that naming can falsely fix meaning in place, exclude, or divide to the point of meaninglessness, it also brings into being (Foucault 1990). Not fully, in the sense that the entity being named did not exist before its naming; yet the act of naming grants a degree of visibility. To borrow further from Ahmed, “to give a problem a name can change not only *how* we register an event but *whether* we register an event” (Ahmed 2016). In this sense, leaky, bulky and obfuscating though it may be, the term cyberbullying is a critical yet tense act of naming, full of possibilities and silences.

If the meanings of violence are created within dominant social and moral codes and institutions, “the range of possible narratives, interpretations and explanations” are mediated. As Wilding discusses: “seeing meaning itself as a bounded space, with boundaries that are actively established and defended, allows for an analysis of ‘meaning’ as a conduit of power and control” (2014, 239, 232). When violence is framed as consisting of physical, discrete, often public acts, largely between non-related individuals, the meaning of violence is constrained, often in ways that do not challenge patriarchal assumptions about authority, social roles or spaces. The ways these moral codes and discourses draw lines of visibility and invisibility around certain forms, of violence but also bodily forms, underscores the political, imaginative, and theoretical importance of stretching the boundaries of violence.

Rob Nixon (2011) points out that representations and conceptions of violence often cluster around spectacular violence that is public, bounded, embodied and discrete. Violence that is slow or temporally complicated, enacted on landscapes rather than humans, enacted on the wrong kinds of humans, tends to go unreported or unacknowledged as violence (Nixon 2011). Nixon’s mobilization of the term “violence” to talk about long dyings like environmental degradation, climate change, radiation, toxic build up, and long term species loss pushes back

against the invisibility of certain types of abuse, cruelty, and slow dyings and brings them into the fold of “violence” even as it redefines violence - though these two processes do not always occur at the same rate.

A number of scholars and political figures bemoan the way the media focuses on the most tragic cases of cyberbullying – the deaths of young, sympathetic victims – arguing they represent only the smallest percentage of those experiencing cyberbullying behaviors (Bailey 2014b; Sabella, Patchin, and Hinduja 2013). More often, impacts build upon one another, are protracted, unseen, and linger over months, years, or for the lifespan of those targeted. These day-to-day impacts, like the environmental harms Nixon stresses, are harms that have widely gone unrecognized as harm.

After Rehtaeh’s death, media attention was intense and prolific. As Jane argues, while academic work on technology facilitated violence focuses on the minutiae of categorization and definition, far from sensationalizing, mainstream and new media outlets have managed to convey and assess the ubiquity and ramifications of those experiences (2014b). In Rehtaeh’s case, these stories aired some of the details of her everyday experiences in the year and a half after the assault. The casually sent sexualized taunts, invitations, and judgments, the social exclusion and trips to mental health facilities – death by a thousand texts (Beaumont 2013; Fekete 2013; Gillis 2013a; Hauser 2013; Ross 2013b). Not only did ‘cyberbullying’ as a naming help to cluster those experiences, representations of the ‘spectacular’ violence of Rehtaeh’s suicide publicized the more common, slower, accumulated harms of cyberbullying. Thus even as these instances of spectacular violence are empirically rare, the media coverage around them helped crystalize and

publicize language about ICT connected violence, giving those impacted a social reference point and terminology to describe their experiences.<sup>8</sup>

### 3.3 Different Frames: Ways of Seeing

Although the mobilization of ‘cyberbullying’ by the media and government worked to frame the story of what happened to Rehtaeh Parsons, that terminology or story was not universally accepted. “Many people including Rehtaeh’s father, Glen Canning, have persuasively argued that part of the denial of justice in the Rehtaeh Parsons case is that the cyberbullying issues have been used to obscure the underlying problem of sexual assault” (MacKay 2015, 20). Then Prime Minister Stephen Harper, speaking to the media about Rehtaeh Parsons, also objected to the use of term cyberbullying, saying: “bullying to me has a kind of connotation ... of kids misbehaving. What we are dealing with in some of these circumstances is simply criminal activity” (CBC News 2013b). If for Rehtaeh’s parents, ‘cyberbullying’ diverted attention from other aspects of her case, and for the Prime Minister, trivialized what happened, lawyers, activists, and youth workers I spoke with had a great deal to say about the appropriateness or effectiveness of ‘cyberbullying.’ Working with the term – he has had to in court - lawyer David Fraser shared his perspectives on what counts as cyberbullying.

*A journalist says something bad about you that reflects poorly on you, that’s not cyberbullying. If it’s the usual sort of mudslinging in a political sort of context: that’s not*

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<sup>8</sup> The recognition is important, though it is a complicated naming. ‘Cyberbullying’ may be immediately identifiable and concerning, but as a juggernaut or umbrella term that contains so many behaviors and social issues, it is unlikely to lead to meaningful legal or social responses. See Jane Bailey, “Time to Unpack the Juggernaut?: Reflections on the Canadian Federal Parliamentary Debates on ‘Cyberbullying,’” *Dalhousie Law Journal; Halifax* 37, no. 2 (Fall 2014): 661–707.

*cyberbullying. But if it's individual beating up individual for the purpose of causing harm, or the purpose of causing embarrassment, I would probably call that cyberbullying. But you know I think the thing is, cyberbullying is a very amorphous thing... it encompasses a huge range of behaviors that are individually problematic and we kind of lump them into this thing called cyberbullying (2017).*

When I spoke with him in Halifax, Wayne Mackay highlighted the ways language can condition responses: “it’s not a serious thing because it’s called bullying, if you said well this is violence, this is an assault, this is a sexual invasion, you get a different reaction” (MacKay 2017). People I interviewed in Nova Scotia were developing their own language to respond to the ways they perceived ‘cyberbullying’ as inadequate in capturing the full meaning and breadth of the experience of technology-facilitated abuse. BB, a lawyer who worked on cyberbullying cases in the province, stopped in the middle of answering one of my questions to rethink her own use of that term:

*It shouldn't be. It shouldn't be called cyberbullying. Cause it's not bullying. It goes way beyond bullying... what I was looking at were, it wasn't cyberbullying, it was cyber... assault. Cyber enticement to harm, cyber stalking, cyber luring, cyber pedophilia, cyber... so bullying was just a generic term which is not the right term, but was used to encompass a million different things that could happen online. It should be... it's cyber-harm, that's what it really should be. (BB 2017)*

Others used the term cyberviolence as a deliberate intervention to underscore the seriousness and impacts of some of these behaviors. CC and DD called attention to how ‘cyberbullying,’ as amorphous as it is, doesn’t feel appropriate for some of the types of cruelties and hostility.

*I guess cyberviolence – it is more broad, because we're looking at harassment, trolling, doxing, sexual exploitation when it occurs online, revenge porn and all those things. I don't know if cyberbullying encompasses all of that, or the trafficking of young women or young people that's happening online as well. (CC 2017)*

DD, a youth worker, clearly familiar with some of the research on bullying, felt ‘cyberbullying’ wasn’t able to express the harms experienced.

*I call it cyberviolence and I do that for a specific reason, because it’s violence. The word bullying has certain connotations around it being a repeated behavior, a childhood thing, something that can be easily managed, but online, the types of cyberviolence the people I’m working with have experienced, they cause a harm that goes above and beyond bullying. So things like revenge porn, luring and trafficking, the non-consensual sharing of images, hate speech which is very often misogynistic and transphobic and homophobic and racist. So things like that. I think the word cyberbullying doesn’t fully encapsulate what that means for people who experience it. (DD 2017)*

In mentioning misogyny, transphobia, homophobia and racism, DD called attention to how violence is situated and occurs within a specific context. This was important to CC as well:

*We call it cyberviolence rather than cyberbullying so that we’re not minimizing what’s happening. So we’re looking at violence that is occurring across these different systems, so different forms of oppression, ableism, sexism, based on religion, race and everything else. (CC 2017)*

She explicitly reiterated this towards the end of our interview, stating her anti-violence programming and work with youth was “looking at cyberviolence as cyberviolence that’s happening within a context and working to address those systems of oppression, and working across systems” (CC 2017). Using the term cyberviolence to replace cyberbullying, CC and DD perform a linguistic intervention, a reframing, that calls attention to the incredible array of harmful activities perpetrated via digital communication technologies, and shifts them from the realm of youthful indiscretion and rites of passage to one of violence. In addition to the switch in terminology, DD and CC employed an analysis that considers behaviors and impacts within a social context. In discussing systems of oppression, they situate cruelties or harm that happen via

technology in the world we live in, not some theoretically neutral or individualized digital sphere.

For youth worker, activist and academic AW, reframing cyberbullying as cyberviolence didn't do enough to connect analysis to the social context in which that violence occurred.

*And for the tragedy of not thinking about it [cyberbullying] as violence is that we're missing the whole community context where that kind of violence is taught. When we don't think about it as violence, we're unable to think about, well, what is the home life of that kid? They call someone a bitch and cunt and threaten to kill them online, where in their social life are they hearing this? How is this being taught, how is this being learned? What is their home life like? What is their social context like? What are they talking about in locker rooms? So because we're not able to talk about it as violence, we're not able to actually look at where the violence is coming from and then we call it cyberviolence or cyberbullying or whatever, we just blackbox it and turn it into something else. It's like disconnected from actual communities... the way it gets siphoned off institutionally in discipline by discipline erases all of the context and connections between everyday life, family structures, institutional and social life and then what happens online. (AW 2017)*

The violence is situated as is the knowledge produced about that violence. AW also expressed frustration around the scientific and academic handling of 'cyberbullying,' pointing to the context within which that violence occurs and the context of knowledge creation around cyberbullying.

*There's an epistemological problem because they only talk about in a disciplinary context if there's been randomized control trials right? And then the whole social network around who is dealing with bullying, NGOs, Canadian Red Cross, schools, it's social science... we had this whole other epistemological process of what counts as evidence... that's why we're not talking about digital harassment, digital violence as violence. Whose domain is that even in? Other than theorists who can theorize about violence, but then... the theorizing about it being violence isn't going to be in a format that can be taken up by evidence-based practitioners, like psychologists, or administrators, I really think it's a disciplinary problem. (AW 2017)*

Standards about what counts as evidence, which discipline studies a particular topic and in what way – these are questions that get at the conditions in which a certain kind of knowledge is produced.

### **3.4 Embedded and Entangled: Soil and Roots**

Many of the academic attempts to define and classify behaviors as cyberbullying or not come from a desire to have a uniform standard of measurement, which from a rational-scientific perspective, would aid the pursuit of replicable, universal conclusions (Patchin and Hinduja 2015; Tokunaga 2010). While laudable in their aims of improving policy and prevention initiatives, strict categorization and the search for universal measures is politically fraught in ways that are not always acknowledged or recognized. If the goal is recognizing the ethical implications, ubiquity and destructiveness of what Jane calls ‘e-bile,’ over-strict designation is more dangerous than broader categories that might contain an occasional misclassification (2014b). And categories are more fluid than often indicated in scholarship. As AW describes, such silo-ing is a barrier to holistic considerations of an issue and sometimes prevents insights from one discipline from benefitting another. Black feminists and critical race scholars have provided important reminders and interventions around the tension between finding harmonies and resonances between situations, and creating categories that collapse meaningful differences (Spivak 1985; Lorde 1984; Anzaldúa 1987; Crenshaw 1991). Roping the unruly, contextual, stunningly diverse array of experiences that are associated with technology-facilitated violence into the category cyberbullying is not without consequences and tacit alignment with particular

epistemological paradigms. Haraway has a word for the use of only one language as the standard: reductionism (1988).

This narrowing of what counts as knowledge and its production is not limited to epistemology – the great majority of the most cited research on cyberbullying comes from Europe and North America, even though prevalence rates of bullying and cyberbullying are extremely high in countries outside those regions (Zych, Ortega-Ruiz, and Del Rey 2015). Knowledge about ‘cyberbullying’ is not hovering out there, waiting to be discovered: “science is a contestable text and a power field” (Haraway 1988, 577). Cyberbullying itself, as well as the production of knowledge about cyberbullying exists within and reproduces existing power structures and dynamics.

Voices that highlight the neutrality of technological forms similarly enact a false divide between those technologies and who developed and funded them. Early techno-utopians who celebrated the limitless possibilities of the ‘cyber’ believed in a form of Internet objectivity only conceivable if the digital and physical were separate and disconnected. The views of AW, DD, and CC speak to the situatedness of digital communication technologies - that they are not unmarked by their histories. These technologies were developed by particular people in particular spaces for particular purposes. Histories may not determine but they certainly condition. Even as it contains too much in certain ways, as a term ‘cyberbullying’ does little to evoke or acknowledge the location and embeddedness of Internet and communication technologies in social power structures and dynamics, nor the way ICT products contain, in the words of Lochlann Jain, “assumptions about sociality, behavior, and human action” (2006).

Recognition of the entanglement of technologies with their creators and social context, if not widely acknowledged, is not a recent revelation. Over two decades ago, Friedman and

Nissenbaum outlined what they called three categories of bias in relation to computer systems: preexisting, technical and emergent. Preexisting bias refers to beliefs or stereotypes that have their origins in a society, culture, institution or person and make their way into the design of a system. How systems operate technically, perhaps by relying on certain hardware, making use of alphabetized lists, or quantifying the qualitative, creates technical bias. The third, emergent bias, arises well after the design phase when devices, systems, or programs are used by people in context (Friedman and Nissenbaum 1996). Friedman and Nissenbaum's use of the word bias to describe all manner of influences on technological use and design implies the possibility of non-bias, that some sort of objective state exists, something very much at odds with the premise of this research. Never the less, their categories speak to the ways computers, phones, their hard and software, and the applications they run are much more than merely technical infrastructure.

As Willson recounts in relation to algorithms, there is no way to see them “as an uncomplicated and objective instruction.” They are “embedded in complex amalgams of political, technical, cultural and social interactions” (2017, 141). Algorithms, which are mathematical functions, step-by-step instructions or programming created to fulfill a given function, shape an ever-growing list of daily activities and media consumption. In automating selection, they influence search engine results, online news access, news aggregation, consumer recommendations – all kinds of content that is made visible to an individual based on factors such as their previous browsing and choices, and sometimes more invasive personal details like presumed gender, race, income level or political beliefs (Just and Latzer 2017). Algorithms are a notable example of one of the ways discrimination or bias can be encoded and then concealed. Once an algorithm is written, it can be tested and edited, but it performs its task automatically: the instructions or rules the algorithm consists of dictate the process and results. Recent scholarly

and investigative work highlights areas where algorithmic decisions can create unequal outcomes based on factors like race or class: from content display on search engines (Noble 2017), facial recognition software (Garvie, Bedoya, and Frankle 2016), predicting criminal recidivism (Angwin et al. 2016), or employment prospects (Madden et al. forthcoming), to assigning risk factors to people at the border (Amoore 2009). While tempting (and widely encouraged, especially by tech companies) to equate automation and code with neutrality, algorithms, among other software and devices are invented and programmed by human beings: “biases and values are embedded into the software’s instructions, known as the source code and predictive algorithms” (Citron and Pasquale 2014, 4). Amoore notes:

*The so-called decision trees [of algorithms] always already embody assumptions about human behavior and characteristics - for example, racial profiles embedded within facial recognition algorithms, ethnic or religious practices flagged as anomalous, name algorithms accorded risk scores- though these are concealed within the mathematical logics. It is not difficult to find, for example, the proliferation of “associations” with Islamic faith mobilized as risk indicators within the writing of security algorithms (2013, 50–51).*

When the coding and assumptions of algorithms remain classified, they are the classic ‘black box’ where inputs are mysteriously converted to outputs. As an automated process, the rationale behind the decisions may not even be clear to the operator, let alone a third-party observer. Like other technologically mediated processes, algorithmic black boxes are often imbued with a technogloss that conveys objectivity, authority and certainty. But as Bowker and Star note, opinions, rhetoric, arguments, decisions, uncertainties are frozen as code or categories and hidden away inside a piece of technology (1999).

When the term cyberbullying is deployed in situations where these embedded aspects of technologies are veiled, as they are often in user-friendly interfaces, pre-packaged software

bundles, and free programs, it is easier to consider as an isolated, individualized, interpersonal issue. This is not a theoretical scenario. According to a report by Canadian legal organization, West Coast LEAF, “too often, analyses of the problem of “cyberbullying” erase its sexist, racist, homophobic, transphobic, and otherwise discriminatory nature, and ignore the context of power and marginalization in which it occurs” (2016, 7) (Nakamura 2013, 2014). Wayne MacKay observed that many people see the ‘online world’ as completely disconnected from previous histories and patterns, something that shapes their perception of what abuse online is.

*...they don't see it as an extension or form of bullying, they don't see it as an extension or form of sexual violence against women, they don't see it as an extension of racism, a new way to practice racism, they don't see it as an extension of new ways to practice homophobia, but it is all of those. And it's connected to that, and the cyber aspect is simply the vehicle. (MacKay 2017)*

Digital technologies are now also replete with representations of self, existing through photographs (of the user or manufactured) and avatars that represent a physical body. Thanks to technological innovations and user desire, it is increasingly difficult to avoid disclosing race, ethnicity, gender, or other identities that are presumed to have a certain set of visible markers (Kang 2000; Nakamura 2008). While users can attempt to operate anonymously online, access to and familiarity with the Internet, its design and regulation, as well as treatment on the Internet when not anonymous are deeply impacted by what Lisa Nakamura calls “racial, gendered and cultured histories and the identities conditioned by them” (2013, 146). Technology is a sociotechnical product, and changes in technologies combine artifacts, people, organizations, cultural meanings and knowledge in a contingent and heterogeneous process (Wajcman 2010: 149). Harassing and abusive behaviors mimic and enact structures of oppression through sexualization of women, racist discrimination, and targeting of ‘othered’ people (Schneider et al.

2012; Chemaly 2013; Citron 2014; Nakamura 2013; Bailey et al. 2013; Matamoros-Fernández 2017).

Recent PEW studies of online harassment found that around 40% of their sampled population had experienced some form of harassment, but that the type of harassment and who was targeted varied widely. Making the useful distinction of “less severe” harassment (name-calling and purposeful embarrassment) and “more severe” harassment (stalking, sexual harassment, physical threats, and sustained harassment), the studies found that young adults (18-29) experienced higher levels of harassment and there was a gendered divide in terms of the types of harassment experienced. The studies used a binary gender breakdown, and according to their framework, women, young women in particular (18-24), “experience certain severe types of harassment at disproportionately high levels” (Duggan 2014, 3–4). These include sexual harassment (at twice the rate of men) and unsolicited explicit messages (Duggan 2017). The women in the PEW study also experienced ‘less severe’ harassment at similar rates to men, though name-calling and embarrassment of women often uses language that speaks to the broader social objectification and sexualization of women (Jane 2014a). Women’s reactions to technology-facilitated harassment suggest the menacing presence of gendered violence that impacts the lives of so many women (Sinha 2013; Petrosky et al. 2017). “For many women, online harassment leaves a strong impression: 35% of women who have experienced any type of online harassment describe their most recent incident as either extremely or very upsetting, about twice the share among men (16%)” (Duggan 2017, 7). This gendered imbalance was also present in social assessment of online harassment as a problem: around 54% of men of all ages considered it a major problem as opposed to 70% of women and 83% of young women (18-29) (2017, 8).

Numerous studies on cyberbullying highlight how youth who are racialized, transgender, queer or indigenous are targeted at greater rates than their cis, straight, white peers (Shariff and Gouin 2006; West Coast LEAF 2016; Schneider et al. 2012; Bailey 2014a). In some situations, technology-facilitated violence acts as a form of social surveillance, enforcing boundaries of “acceptable” identities and behaviors (Lyon 2003; Duffy and Pruchniewska 2017), and confining the online and physical spaces in which those targeted feel safe and respected. Much, though perhaps not enough, has been made of the widespread misogyny that occurs via digital communication technologies, the vileness and hostility of which causes women to change their habits and to withdraw from public exchanges or political office (Sierra 2014; Hess 2014; Penny 2011; Gardiner et al. 2016; West 2017; Chemaly 2016, 2013; Buni and Chemaly 2014; Daniels 2009).

Emma Jane (2014a) makes the argument that the vitriol and vileness of these technology facilitated comments makes them unspeakable, and by extension, under-discussed and under-theorized. In replacing the actual texts, emails or tweets with stand-ins such as ‘unpleasant,’ ‘obscene,’ and ‘nasty,’ scholars and the media are at risk of downplaying the severity and character of the abuse. For that reason, she makes the point to fully quote abusive remarks. One she personally received:

*your article reeks of a half ugly lesbian, determined to get her own back on all the men who refused to fuck her over all these years. We all know that for \$35 a bloke can get a full body massage, his dick wanked for him, by a pretty little 18 year old, not some sad assed thing like you with a hatred of men (Jane 2014a, 560).*

And others:

*-She’s so fugly, I wouldn’t even bother raping her from behind with a box cutter*

*-so you're a bolshevik feminist jewess that hates White people . . . fucking ovendodger  
-no one would fuck you, you're so ugly you look like you have downs syndrome, you'd be  
thankful to be raped  
-YOU BETTER WATCH YOUR BACK . . . IM GONNA RAPE YOUR ASS AT 8PM AND  
PUT THE VIDEO ALL OVER THE INTERNET  
-only tragedy is that a bullet didn't rip through ur brainstem after u were used 4 ur 1 &  
only purpose in this world*

This small selection of comments illustrates Jane's point that much of the abuse used to express disapproval of women is violently misogynistic and focuses on women's appearance, sexual desirability, and status as a sexual object for male pleasure. They also underscore women's bodily vulnerability and express other types of discrimination such as anti-Semitism and ableism. The title of her piece, "Back to the Kitchen Cunt," aptly captures the spatial undertones of these missives: women (in this case) do not belong here. It is worth noting that this targeting and exclusion from a public sphere or public office, or for having certain opinions or behaviors does not occur in universal or straightforward ways. "Exclusion, far from being an equal-opportunity subordinator, targets sexed, gendered, and racialized bodies most persistently, but it does so partially and differentially" (Sanchez 2004, 879; Wasco 2003).

### **3.5 Et tu, Cyber-Safety Act?**

Consistent with the way the term cyberbullying often obscures the context of power and the histories within which this harassment takes place, the legislative response to Rehtaeh's death contained no acknowledgment of the gendered and sexualized character of cyberbullying, nor any provisions identifying differential impacts. Speaking with me about the CSA two years after

it was overturned, Wayne Mackay saw this lack of provisions for what he called vulnerable people as one of its major weaknesses.

*People are targeted but still need protection even though they're not youth but they're still vulnerable... if you're an adult, you're a gendered person or a person with a disability or an adult gay person or any member of an racialized minority, a targeted religious, any member of the targeted groups. You might need protection even though you're not a child, child or not, children are not the only ones needing protection from cyberbullying. (MacKay 2017)*

Gender, age, sexual orientation, disability, race, religion – these are intersections that speak to how people are situated in hierarchical relations within what Doreen Massey calls “power geometries” (Massey 1993).

The CSA was a recognition by the Nova Scotia legislature that cyberbullying was harmful, and yet it included no recognition of why particular people might be targeted at greater rates, how impacts might land differently, and who might have fewer resources to deal with that abuse. In another institutional ‘missed opportunity,’ the Canadian Supreme Court’s decision in *AB v. Bragg Communication* similarly recognized the harm of cyberbullying. However, they failed to discuss why the *sexualized* cyberbullying of a young girl would be particularly harmful. This depoliticizes and decontextualizes a type of abuse that relies on “familiar discriminatory myths that undergird inequality, including that respectable white females are not sexually active, that racialized and Aboriginal females are sexually inviolable, and that same-sex sex is shameful and embarrassing” (Bailey 2014a, 733–734). Even government documents that attempt to quantify the rates of sexual violence acknowledge the inaccuracy of sexual assault statistics because of the social and personal consequences of reporting (Allen 2016). If official statistics for Canada put that number at 21,500 in 2015, the true rates are much higher: women face very

real threats of sexual violence in their day-to-day lives. The threat of rape via these technologies seeks to act as a Foucauldian disciplinary tactic, promoting conformity to existing gender roles and conceptions of femininity (Cole 2015).

Willson, and Cross and coauthors employ an ecological or ecosystem-based framework to consider the technologies themselves, how they are used, and how their impacts are experienced (Cross et al. 2015; Willson 2017). Thus an individual's experience or enactment of problematic behavior occurs within a number of influences, including factors at an individual, family, peer and community level. I would add historical and cultural levels to that social ecology. Following Willson, "this is an ecosystem that involves technical – software, code, platforms and infrastructure – and human designs, intents, audiences and uses more broadly" (2017, 141). The technical does not form in isolation to the human. 'Cyberbullying,' when seen as a purely interpersonal issue between relative equals in a separate digital sphere, cloaks or blankets the broader social context, including the power dynamics that span both the Internet and "real-life". These perspectives refuse to consider an individualized, ahistorical subject as victim: who is targeted and what the abuse looks like isn't random. They also promote a perspective that looks at the perpetrator's actions as they are situated, making it harder to justify criminalization and incarceration of individuals who take their cues from larger systems and structures.

Official government representatives, documents, proceedings and responses in Nova Scotia around bullying and cyberbullying were in no way unaware of the ways these harms were produced and occurred in context. On April 11, four days after Rehtaeh's death, Premier Dexter Darrell addressed the legislature, citing the complexity of what happened to her:

*The issues that this situation has brought painfully forward, and into the view of the world, are ones that respect no particular departmental responsibility. They do not*

*belong to, or within, some particular system or process. They cross all of the visible and invisible lines. That is why this government, this province, is taking a coordinated, comprehensive, and thorough approach to these difficult and disturbing issues. (Nova Scotia House of Assembly 2013c)*

The debates around the CSA and the 2012 Task Force report on Bullying and Cyberbullying that helped shape the law express awareness around sexualized violence, and mention the targeting of women, girls, Aboriginal, racialized, queer, disabled, and other vulnerable people (Nova Scotia Task Force on Bullying and Cyberbullying and MacKay 2012; Nova Scotia House of Assembly 2013b, [d] 2013, [f] 2013, [h] 2013). Part of the Province's response to Rehtaeh's death involved initiatives and funding related to sexual assault, eventually resulting in the Province's first comprehensive sexual violence strategy in 2015 (Government of Nova Scotia n.d.). In the meantime Marilyn More, the Minister responsible for the Advisory Council on the Status of Women, was asked by Premier Darrell Dexter to "assess the status of work on the supports and programs to address individuals who have, or may face sexual violence" (Nova Scotia House of Assembly 2013c). In May of 2013, that month and all future Mays were declared Sexual Assault Awareness Month, and the Province allocated \$900,000 to "help communities to address sexual violence" (Nova Scotia Premier's Office 2013). This was a major shift for the Province.

Legislative comments and reports showcase Nova Scotia's abysmal record in responding to high and increasing rates of sexual assault, inadequate or non-existent resources for survivors, and declining rates of sexual assault prosecutions (Nova Scotia House of Assembly 2013b, [d] 2013, [g] 2013, [f] 2013, [e] 2013; Rubin 2008). The actions taken after April of 2013 indicate there was at least some awareness of the connections between sexual violence, gender and technology, yet none of those insights were incorporated into the only law to emerge from Rehtaeh's case.

### 3.6 Too Broad a Stroke: the Death of the CSA

In the beginning of 2015, a case came before the Nova Scotia Supreme Court that challenged the constitutionality of the CSA. Giles Crouch sought a protection order against his former business partner Robert Snell, accusing him of cyberbullying. The protection order was granted in December of 2014, and prohibited Snell from cyberbullying as defined in the CSA, from communicating with or about Snell, and was required to take down any Internet comments that referred to him directly or indirectly (Supreme Court of Nova Scotia 2015c). The decision lists some of their exchanges, and the social media posts or emails that constitute cyberbullying, which range from vague threats,<sup>9</sup> to accusations of fraud,<sup>10</sup> declarations of incompetence,<sup>11</sup> and attempts to embarrass him.<sup>12</sup> Court documents cite Crouch's accounts of Snell's occasionally violent behavior, including punching a desk and filing cabinet, which alongside anonymous emails and vague comments, contributed to Crouch's expression of fear for his personal safety. In his assessment, Judge McDougall stated "these few instances over a four- or five-year period do not amount to violent behavior" and noted that Crouch had also posted some accusatory comments about Snell, and knowingly misrepresented facts when trying to obtain a protection order (Supreme Court of Nova Scotia 2015c, 11–12).

In short, unlike a few of the other cases dealing with the CSA, which involved threats to family members, threats of physical violence and nonconsensual sharing of intimate images, the

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<sup>9</sup> "Surprises continue to creep up.... Looking forward to what is coming for someone."

<sup>10</sup> "Seeing someone take the piss on tax audits, when really should be audited..... 10 years of tax avoidance or stupidity and they are still going."

<sup>11</sup> "Mr. Crouch was scheduled to appear on CTV News to discuss cyber security. That same day, Mr. Snell posted on Google+: That is brilliant, almost like asking a plumber for medical advice. #news"

<sup>12</sup> "Then there are Mr. Snell's alleged efforts to alert Mr. Crouch of Canada Revenue Agency's attempts to contact him. Instead of contacting Mr. Crouch directly, Mr. Snell sent a text message to Mr. Crouch's employer."

judge ruled that the exchanges between Crouch and Snell, mostly consisting of vague veiled statements of incompetence, were fairly innocuous. As Wayne MacKay noted, the lawyers who chose that case for a constitutional challenge did so very strategically: it was the perfect example of how cyberbullying, as defined in the CSA, was being applied to an excess of expressive activities. In MacKay's words, it was a good case to show that the use of the law was "going way too far, cause this is not what the Act should be about. And if the definition is so broad that it allows this, then it's too broad" (MacKay 2017). Confirming this impression, one of those lawyers told me he had taken on the case because: "it seemed to me to be an example of what is wrong with the legislation and how it could be abused" (Fraser 2017). Another lawyer who dealt professionally with a number of cyberbullying cases made a distinction between the kinds of cases like Crouch v. Snell, and others that deeply disturbed her. In her view, what happened in Crouch v. Snell was not what needed to be made illegal, nor was Crouch someone who needed to protection under the law.

*The types of cases... they were just trivial. They were just people name-calling – you're this, you're that, you had an affair, I'm your illegitimate child. It was just name-calling. The ones that used to really upset me were the sexual – involving children or women. And sort of violent, sexual hatred. Those are the ones I found to be really terrible. (BB 2017)*

BB's distinctions between trivial and more upsetting instances of cyberbullying were not present in the law – and that was the problem. The CSA's definition of cyberbullying was heavily based on the Province's 2012 Task Force report on Bullying and Cyberbullying, which was commissioned by the Department of Education and was specifically formulated around youth and schools, for discipline not for prosecution. The Task Force had concluded that cyberbullying was an extension of bullying rather than a new concept, and incorporated some of the insights

garnered from the substantial body of literature on bullying into their definition of cyberbullying – namely that the behavior is repeated and harmful, and recognition that bystanders often play a critical role in perpetuating such behaviors or amplifying their harms. The Act’s definition reads:

*"Cyberbullying" means any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way. (Nova Scotia House of Assembly 2013a)*

In the months after its unanimous and speedy passage in May of 2013, critical voices began to emerge (Brown 2013; Fraser 2013; Globe and Mail 2014). As one of those detractors noted: “the problem that anybody has, and I think the problem that the drafters had in the Cyber Safety Act, and the fatal defect was, “how do you define what cyberbullying is in order to give it an appropriate legal response?”” (Fraser 2017).

According to Judge McDougall’s analysis, the purpose of the Act was to protect Nova Scotians from harm to their reputation or well-being by restricting or controlling freedom of expression (Supreme Court of Nova Scotia 2015c, 34). The right to “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication” is guaranteed under Section 2(b) of the Canadian Charter of Rights and Freedoms (*Canadian Charter of Rights and Freedoms* 1982). Reasonable limitations on any of the rights in the Charter are permitted under Section 1 of that same document. The judicial precedent set out in *R v. Oakes* lays out two provisions regarding these limitations: the goal of the legislation must be “pressing and substantial” and the means of attaining these limitations must be justifiable and reasonable in

a free and democratic society (Supreme Court of Canada 1986). In that the CSA sought to protect the reputation and personal dignity of individuals and provide expanded and expedited access to justice, McDougall considered it pressing and substantial. Yet Canadian courts undertake restrictions on freedom of expression with great caution. As Judge McDougall noted in his decision, the only type of expression that does not receive protection under the Charter is violent expression. To this end he concluded: “to the extent that cyberbullying falls short of violence or threats of violence, it is within the sphere of conduct protected by s. 2(b)” (Supreme Court of Nova Scotia 2015c, 31).

The decision laid out some damning conclusions. The legislation infringed on the Charter much more than necessary to accomplish the legislative aims. It lacked clear standards that would enable the Justices of the Peace or the Courts to avoid making arbitrary or discriminatory rulings. It restricted both public and private communications. It made illegal certain kinds of speech that did not really apply to the prevention of cyberbullying. Previous decisions involving the CSA observed that the legislation made no mention of context or condition or qualifications regarding the electronic communication.

*A neighbour who calls to warn that smoke is coming from your upstairs windows causes fear. A lawyer who sends a demand letter by fax or e-mail causes intimidation. I expect Bob Dylan caused humiliation to P. F. Sloan when he released “Positively 4th Street”, just as a local on-line newspaper causes humiliation when it reports that someone has been charged with a vile offence. Each is a cyberbully, according to the literal meaning of the definitions, no matter the good intentions of the neighbour, the just demand of the lawyer, or the truthfulness of Mr. Dylan or the newspaper. (Supreme Court of Nova Scotia 2015b, 14)*

This lack of nuance or consideration of differential impacts as a problem with the legislation was something a number of my interviewees from the legal sector mentioned in our conversations.

Even David Fraser, the most ardent free speech advocate among them, who was instrumental in the scuttling of the CSA, believed in considering identity and context in relation to cyberbullying:

*One thing that they need to have as part of the definition of whether something is cyberbullying, is any vulnerabilities of the victim, that are either inherent because of age or otherwise because of circumstances. It can be gender, it can be sexual orientation, it can be a combination of those. (Fraser 2017)*

The legislation did not take context into account and it did not limit who could be a victim of cyberbullying. Although the overly expansive reach of the CSA and its definition of cyberbullying led to its dismissal in *Crouch v. Snell*, the legislation was remarkably inclusive for a piece of legislation that was so heavily related to and justified by the protection of children. That lack of nuance around different vulnerabilities was both a blind spot and an opportunity. Because of its broad reach, the CSA created legal structures that took certain kinds of technology-facilitated violence more seriously. In the two years of its operation, CyberSCAN, the civil investigative unit created by the law, handled 823 cases, the largest percentage of which involved adults as both the complainants and the accused (Safer Communities and Neighbourhoods Project of Nova Scotia 2016).

**Table 3.1 Overview of CyberSCAN cases by cyberbullying detail: age.**

<b>Involving (Adult/Youth)</b>	
Adult vs Adult	381
Adult vs Youth	15
Outside Agency	27
Restorative Justice	2
Unknown vs Adult	78
Unknown vs Youth	59
Youth vs Adult	25
Youth vs Youth	236
<b>Total number of Cases assigned: 823</b>	

*Source:* Safer Communities and Neighbourhoods Project of Nova Scotia. 2016. “Statistical Queries: Overview of Cases by Cyberbullying Details.” Public Safety Investigation Section. Obtained via FOIPOP request 2016-02835-JUS from the Nova Scotia Department of Justice.

This is of no little importance. According to Statistics Canada, 91% of young people in Canada aged 15-29, used the internet on a daily basis and are the demographic who experience the highest rates of various kinds of abuse on digital platforms (Hango 2016). Gender and sexuality seem to be important factors in predicting the type and frequency of this abuse: queer and bisexual youth experience twice the victimization of their heterosexual peers (Hango 2016), and overall young women are targeted for abuse, particularly severe forms of harassment at greater rates than other groups (Duggan 2014).

Violence and attacks against women and girls via digital communication technologies are gendered, often taking the form of sexualized abuse (Shariff and Gouin 2006). “Derogatory terms are used to “objectify their bodies, [demonize] their sexuality, or infantilize them (fat, dog,

'eight,' cunt, hole, pussy, lez, slut, whore, hooker, babe, baby, chick, kitten)'"(Chaffin 2007, 780). One of the most common and impactful forms of violence, photographs or videos of a crime or consensual sexual encounter, or even just nude photographs, is critically influenced by gender. Not only do women in Canada experience sexual violence as a persistent and serious problem (transwomen and Indigenous women at especially high rates) (Mahoney, Jacob, and Hobson 2017), but that violence has gendered meaning.<sup>13</sup> And as Shariff and Gouin underline: "research suggests that new technologies build on, rather than reinvent patriarchal society" (Shariff and Gouin 2006, 31). A nude photograph of a cis-man seems unlikely to have the same impacts on the subject as a nude photograph of a woman.

A local example of gender-based harassment surfaced in a number of my interviews. New Democratic Party (NDP) politician Lenore Zann, the representative for the district of Truro-Bible Hill, was an actor before she moved back to Nova Scotia and got involved in politics. The day she announced her candidacy, a still of the television show *The L Word*, where she appears topless, was sent to the press by a staffer of the opposing Liberal Party. Prime Minister Darrel Dexter, also of the NDP, clearly expresses the social meaning of that act in his comments on the matter: "I'm just extraordinarily disappointed that someone would seek to try and disparage the reputation of a fine, fine individual" (CBC News 2009). The same photo would be used to try to embarrass and undermine Zann a few years later, this time by a teenage boy on Twitter, whose posting sparked a wave of retweets and vulgar insults (Macdonald 2013). A photo of a partially clothed woman has a social meaning connected to larger patriarchal structures about what

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<sup>13</sup> In 2014, women reported violent victimization rates at around 85 incidents per 1,000 population. Men reported 67 incidents per 1,000 population. Women made up 88% of all police-reported crimes of sexual assault, 83% of other crimes of sexual violation, 100% of commodification of sexual activity, and between 70 and 79% of victims of threatening phone calls, criminal harassment, and forcible confinement, kidnapping or abduction.

women are good at and good for. Those become extra visible when they involve a woman seeking political power. Women and their perceived sexual availability, moral judgments around whether or not they strike the (impossible) balance between sexually desirable and modest, speculation around their personal habits, and that some of those personal habits seem to be considered relevant to their suitability as a romantic partner, employee or holder of public office, speak to gendered expectations and norms of behavior that have long histories.

Zann took her complaints to CyberSCAN, who brokered an informal agreement with the young man, but as lawyer David Fraser alleged, a visit or phone call from an investigator is intimidating and with a very inclusive definition of cyberbullying, can be used to silence politically relevant speech. Though as he acknowledged, the workings of power are far from straightforward.

*There are very interesting power dynamics that can be at play here. So you have a kid and their MLA, so you would think that that's where it is. But it's gendered and sexualized and shaming and so it kind of inverts, so there's just interesting dynamics at play in here. (Fraser 2017)*

Zann knew the identity of the young man and contacted his school and family in addition to CyberSCAN, but the unit was the only official pathway open to her. At the time of the CSA's passage, there were no specific laws in Canada that would apply if intimate photos or videos of women were non-consensually shared: child pornography charges are reserved for youthful victims, and C-13, with its intimate images clause, was still on the drafting table. Of course Canada has existing laws that might have been applied to such cases and to other kinds of abuse online (defamatory libel, harassment, extortion), but as noted in the previous chapter, the effectiveness of those laws depends heavily on whether there is the will to use them, and

motivation varies widely between places and individual officers (Doolittle et al. 2017). The CSA’s creation of the CyberSCAN investigative unit gave young women, a group heavily targeted for abusive comments and attention, as well as all adults, a resource for confronting technology-facilitated violence. The relatively simple statistics connected to the unit available through the Freedom of Information (and Protection of Privacy) Act on CyberSCAN show there was in fact a wide gender disparity in CyberSCAN’s cases (Safer Communities and Neighbourhoods Project of Nova Scotia 2016). 72% of the 794 cases where gender is listed involve ‘females’ as the gender of those being targeted. ‘Females’ also make up just slightly less than half (45%) of the alleged attackers.

**Table 3.2 CyberSCAN statistics on gender of complainant and accused.**

<b>Involving (Gender)</b>	
Female vs Female	269
Female vs Male	86
Male vs Female	199
Male vs Male	100
Outside Agency	27
Restorative Justice	2
Unknown vs Female	103
Unknown vs Male	37
<b>Total number of Cases assigned: 823</b>	

*Source:* Safer Communities and Neighbourhoods Project of Nova Scotia. 2016. “Statistical Queries: Overview of Cases by Cyberbullying Details.” Public Safety Investigation Section. Obtained via FOIPOP request 2016-02835-JUS from the Nova Scotia Department of Justice.

Whether or not CyberSCAN resolved any of those cases to the satisfaction of the complainants is hard to determine from the available information. My interviews suggested that as a unit staffed primarily by employees with backgrounds in law enforcement and correctional services, the unit had a particular skillset, and the preventative educational component of their work was sometimes not well received by youth (AW 2017; Fraser 2017; DD 2017). An anti-violence worker suggested that, while she was convinced of CyberSCAN's "good intentions":

*... maybe it wasn't as informed as it could have been in terms of the ways that people experience online violence. So for example when they're telling people, young people especially, to just delete their Facebook, that doesn't have an understanding of the way that social media is so integral in a young person's life. (DD 2017)*

It should come as no surprise that CyberSCAN was not immune to problematic tendencies that see violence with 'digital' and sexual elements as less of a priority. One notorious case in Halifax involving conspiracy to commit sexual assault, stalking, harassment and defamation -all orchestrated via digital communication technologies- was ineptly (mis)managed by the police *and* the CyberSCAN unit. The women involved were shuttled back and forth between the two departments (Beaumont 2014b, [c] 2014, [e] 2014, [a] 2014). In addition to scrutinizing the complainants and suggesting they modify their behavior or online engagement, CyberSCAN allegedly became the place where anything with a 'cyber' element was sent, regardless of whether it involved possible Criminal Code offenses and would fall under police jurisdiction (BB 2017; Beaumont 2014b). For a staff of five investigators, that would be a heavy caseload. CyberSCAN statistics illustrate this jurisdictional overlap and blending: particularly in the NFA (no file added) section, outcomes are divided into multiple categories, noting instances where cases were handled by CyberSCAN (CYB) and by the police (PF).

**Table 3.3 CyberSCAN statistics on case resolution.**

<b>Overview of Cases by Enforcement/ Outcome Action:</b>	
Assist Other Agency	26
CyberBullying Prevention Order	10
CyberBullying Warning Letter	27
Informal Resolution	276
Informal Resolution/PF	5
NFA - Investigated and Unfounded CYB	121
NFA - Investigated and Unfounded/PF	6
NFA - Legislation Overturn	20
NFA - Legislation Overturn/PF	9
NFA - No response from victim CYB	42
NFA - No response from victim/PF	1
OPEN FILES	1
Resolved - Betwn Invest&Compl/PF	18
Resolved - Betwn Invest&Complaint	230
Resolved - Cleared by Police Involvement	29
Restorative Justice CYB	2
<b>Total number of Cases assigned: 823</b>	

*Source:* Safer Communities and Neighbourhoods Project of Nova Scotia. 2016. “Statistical Queries: Overview of Cases by Cyberbullying Details.” Public Safety Investigation Section. Obtained via FOIPOP request 2016-02835-JUS from the Nova Scotia Department of Justice.

### **3.7 ‘Balancing’ Act: The Freedom of Speech Trick**

In the *Crouch v. Snell* decision when Judge McDougall declared the law overzealous in its restrictions on freedom of expression, the issue was not that no limitations could be made on freedom of expression. In Canada, limitations to Section 2(b) of the Charter, which includes freedom of expression, are justified under Section 1, and are more common than in the US, where very few limitations on expression are permitted. As the Judge put it: “The *Cyber-safety*

*Act* seeks to balance an individual's right to free speech against society's interests in providing greater access to justice to victims of cyberbullying” (Supreme Court of Nova Scotia 2015c, 50). The majority of people I interviewed made use of the metaphor of balance to express what they saw as tension between the right to freedom of speech and protecting from harm. Similarly, considerable analysis of cyberbullying and sexualized online harassment comes to reside or lean upon this framing that pits freedom of expression against increased regulation of vile, abusive, and harassing speech, or as some of my interviewees saw it, protection of the vulnerable.

The court’s decision in *Crouch v. Snell* took a stance that affirmed the importance of the aim of the legislation, which was to protect the reputation and personal dignity of individuals and provide expanded and expedited access to justice. It accepted that to the extent that the behaviors that fall under the definition of ‘cyberbullying’ were violent, or violated the dignity and reputation of individuals, the government could regulate them. Types of speech were also mentioned in the decision, where restrictions against expression considered low-value, or further from the core values of s. 2(b), such as hate propaganda, were easier to justify. In this the court affirmed that regardless of the value allocated to such activities, they still counted as expression, but the classification of the type of expression as high or low impacted whether or not governmental interference was justified (Supreme Court of Nova Scotia 2015c, 31). Ultimately the ruling found that the legislation’s definition and process of providing protection around it infringed “on s. 2(b) of the *Charter* much more than is necessary to meet the legislative objectives” (Supreme Court of Nova Scotia 2015c, 48).

According to the Nova Scotia Supreme Court in *Crouch v. Snell*, the CSA did not strike an appropriate balance between the goal of providing access to justice for victims of cyberbullying and ensuring the minimal impairment of Charter-protected rights to freedom of

expression. Balance is often the phrasing used in discussions around rights. But more than the idea of balance, the Court's identification of high and low value expression, and consideration of what is intended by Section 2 of the Charter – the reason that free expression is important to a democratic society – get us into the territory of competing values. Though he could not let the legislation stand, Judge McDougall affirmed the pressing importance of the goals of the CSA, and of protection of an individual's reputation and dignity in a free society. One US case in particular, featuring this characteristic tussling around the issue of freedom of expression, offers useful insights on the friction between national values.

One of the most significant US free speech cases of the last 50 years took place in Illinois and revealed substantial disagreement between public and judicial opinion on the question of limits to freedom of expression. In 1978 US courts ruled that local ordinances around permits and insurance put in place to prevent a neo-Nazi march in Skokie, IL, violated the First Amendment rights of the marchers to express their opinions. Defendants of this ruling were quick to acknowledge the odiousness of that expression, especially in a town with a large population of Holocaust survivors, but maintained that freedom of expression should take precedence over other considerations. In this framework, all views should be allowed airtime with the rationale that it is much more dangerous to allow the government “to decide what its citizens may say and hear” (Decker 1978). The idea of “republican virtue” (Downs 1985) also holds that there is much to be gained from the tussling, exposure, educational initiatives, creation of alliances, and involvement in the political process that comes out of the airing of all perspectives. Yet as Donald Downs notes in his analysis of the conflict between neo-Nazi marchers and Holocaust survivor residents of Skokie, much harm was done as well. After extensive interviews, he concluded that the gains of political mobilization of the Jewish

community, the general debate around freedom of speech, and any sense of success or mastery the survivors might have gained through the process of resistance were insufficient gains when placed alongside the psychological trauma experienced by the survivors.

Certain forms of hate speech receive negative reactions from the public not just because of the distasteful content of the speech, that those who object happen to find it offensive, but *because the speech threatens other dearly held values*, including the right to be treated with the respect due to free citizens (Downs 1985). Here the court's decision in favor of the marchers "exalts individualism abstracted from the community at the same time as it practices a method which is analytical in nature: the context, intent, and associated expression that give meaning to any individual speech act are ignored in honor of the individual's particular right to exercise uninhibited free speech" (Downs 1985, 168). In the case of technology-facilitated expression, the idea of community becomes even more complicated as it partially disconnects from territorial notions of geographic space.

Legal formalism, which in an ideal form holds that law should be a kind of closed system where authoritative legal texts are used to understand and apply the rules is a philosophy that is not restricted by national borders (Farber 2015). Emphasis on an abstracted individual whose actions are analyzed apart from the factors that give those actions their social meaning is part of the reason substantive justice feels so distant after certain legal outcomes. In addition, judicial treatment of individuals in an altercation as merely individuals may offer a pleasing, neutral sounding legal formula, but in erasing context, it claims an authoritative universalism for the law, something that is very much a social product.

There are a few things worth drawing attention to beyond the social construction of the law. The first is that the most common objections, framings and legal actions that arise in

relation to ‘cyberbullying’ and technology facilitated violence operationalize the protection of freedom of speech or freedom of expression. While Canada’s Charter allows for reasonable limits to be placed on freedom of speech, and Canada and the US have different legal systems, processes and histories, they share aspects of free speech discourse. In addition, the application of legal judgments according to longstanding ideas of jurisdiction is challenged by how digital communication technologies operate in practice, something I explore in more depth in the next chapter. Given the US-based physical location and hosting of many digital platforms and companies, freedom of expression policies in the US may have outsized influence on the effectiveness of regulations in Canada (Banks 2010; Nemes 2002). Thus US jurisprudence becomes relevant in Canada because US laws that permit certain interpretations of the right to freedom of expression protect individuals or organizations located in the US from the intercession of Canadian law.

In either country, freedom of speech in a legal-governmental sense “is to be free from the government telling you what you can or cannot say” (Fraser 2017). It does not apply to speech between citizens, though free speech rhetoric now provides a more defensible cause for all manner of bigots to march behind (The Guardian 2017; d’Ancona 2017; Shabi 2017). What is often not recognized in these debates is the way the declaration of the right of freedom of expression and free speech within Canada (and even more intensely, the US) creates a hierarchical relationship between the speaker and the spoken-to. Harms to individuals and groups who are the subject of the speech become secondary to the right of another individual to utter nearly anything they want. This emphasis on freedom of expression as a nearly unfringeable right that must be defended at all costs is also a framing that invisibilizes the harms that are borne in the defense and enactment of this most important of rights. It helps obscure that there

are definitive patterns around who tends to bear more of those harms, more of the consequences of unfettered free speech (Duggan 2017).

### **3.8 Conclusion**

In Nova Scotia, when it came to the violence experienced by a teenage girl and the measures taken to address it, various narratives relied on framings that competed to produce meaning, point fingers, suggest policy, and shape legal responses. Some of these framings render occurrences politically neutral or disconnected from social context or ‘real world’ oppressions, others actively challenge and destabilize dominant explanations. They have concrete impacts around what counts as knowledge, violence and harm.

What happened to Rehtaeh Parsons was an incredibly complex combination of violent acts, institutional dismissals, jurisdictional dilemmas, narrow state responses, interpretations, and narrative framings that fit into broader social patterns around sexual violence against women and girls, systemic and cultural barriers around the prosecution of sexual assault, and beliefs about technology. Yet cyberbullying, one of the dominant frames used to make sense of what happened to her, tends to dissociate behaviors from their social context. Similarly digital technologies themselves are all too often considered neutral or the products of technical parameters rather than social forces and actors. “Constitutional policy” writes Downs, “must always address the context of rights if it is to be responsible. Indeed, conceptions of reality and morality cannot be grasped adequately without recognition of the social environment within which they are embedded” (1985, 118). The failure to recognize embeddedness: of the law, of legal actors, digital technologies, of participants in sexist, racist, and homophobic actions, guarantees that justice and

access to justice remain elusive for those facing violent expression, and members of groups consistently facing this kind of violence.

## Chapter 4: Spatial Imaginations and the Naturalization of Violence

One of the major questions that animates this research asks why Rehtaeh Parsons was unable to access justice for the harms that eventually caused her to take her own life. I have already discussed a few of the ontological assumptions that accompany the uses and meanings of technology, assumptions that may impact if and how violence connected to digital communication technologies is seen as violence, if it is seen at all. This chapter looks at how some of those assumptions interact with the question of jurisdiction, a key legal technology that shapes how and where the law is deployed.

Jurisdiction is “the governance of legal governance” (Valverde 2009: 141) and in Canada, like other settler states, has historically relied on a particular interpretation of territory to function. In this case, territory refers primarily to territory understood as a physical location where authority is demarcated, and within that, to sub-state agents or institutions who claim a set of issues, circumstances or happenings as within their purview to address – their functional territory if you will. For criminal actions that cross national borders, countries attempt to address jurisdiction through international institutions, agreements and extradition, though the connection between national sovereignty, the law and jurisdiction often impacts the effectiveness of such agreements. The nation-state is imagined in part through a physical and cartographic locatedness, and its power derives from the delineation of that space and the assertion of authority over it. Territory in the physical, land-based sense so salient to the identity and function of the nation-state becomes a point of focus in cases of so-called cybercrimes because the ‘where’ of the crime comes into question around the presumed locational void or omnipresence of the Internet.

Unlike the simple, shaded sections on a traditional map, which suggest a deceptively

clear, evenly applied internal governance and a straightforward international demarcation of authority, so-called cybercrimes evoke the messiness of state claims of sovereignty and challenge the workings of domestic legal structures. They present conceptual sticking points to a territorial understanding of jurisdiction. Whether fraud, hacking, long distance harassment, stalking, or DDoS attacks,<sup>14</sup> criminal behavior that involves digital communication technologies exposes slippages and gaps in the meaning and practice of jurisdiction by the Canadian state, and presents challenges to justice systems rooted in the idea of territory as land. How does the law respond when the crime, if even conceived of as a crime, is understood to happen in a space that is seen as unmoored from any physical territory? What happens to territory-based conceptions of jurisdiction when they are confronted with ‘cybercrimes’?

#### **4.1 Canada and Jurisdiction**

Indigenous people living in Canada, faced with dispossession by a settler colonial state, have theorized jurisdiction without territory, locating it instead within a person, carried from place to place (Fabris 2017). This arises because Canada’s state project centered and still centers on territory: seizing it, occupying it, killing or displacing its original residents and caretakers, and creating legal structures to protect and rationalize those acquisitions. As it enacted (and continues to enact) incredible violence against Indigenous peoples, colonization propelled the simultaneous transformation of the meaning of jurisdiction. Settler colonial states remade jurisdiction from authority over particular people or activities into Westphalian style sovereignty over territorial land, eradicating more fluid and multiple legal traditions as part of the process of

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<sup>14</sup> DDoS stands for distributed denial of service attack, which involves subjecting a website to so many requests that for a period of time it becomes overloaded and unable to function.

state building and solidification (Ford 2010; McCreary and Lamb 2014). This transformation was envisioned in and aided by the map, which in its technical functioning can obscure contestation over land, hiding the plurality of legal orders that did or do exist in what is portrayed as a single sovereign space (Pasternak 2014). The law, with its appeal to precedent, universality, equality and reason also performs as a supposedly politically neutral technology, creating situations where “abstract administration is mistaken for a kind of uniform equality” (Pasternak 2014, 154). Seeing neutrality is, of course, a blindness enabled by privilege. “While Canadians largely take for granted the neutrality of Canadian law and governance, Indigenous people’s experiences reflect the culturally-specific, power-laden nature of law” (Hunt 2014, 67).

The concept of legal spatiality holds that “the scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime” (Raustiala 2004, 2506). Although territorial sovereignty was riddled with gaps and exceptions from the beginning – think embassies, sanctuaries, reserves and later the movement of global capital, international law and institutions – what Sassen calls “structural holes in the tissue of formal state authority” (2013, 9–10), jurisdiction remains persistently linked to territory. Often presented as bounded, smooth, and an administrative matter, the product of rational and abstract legal demarcation, jurisdiction is a set of social practices and “the outcome of political and social contestation” (Strauss 2016: 6).

As the meaning of jurisdiction shifted to bolster the authority and legitimacy of the Canadian settler state, jurisdiction came to organize authority over land, but also more formally over function. When the Constitution Act of 1867 divided areas of jurisdictional responsibility between Federal and Provincial governments, the Federal government became responsible for a list of activities that were separate from those allocated to the Provinces.

**Table 4.1 Canadian governmental divisions of responsibility at the time of the Constitution Act.**

Federal Jurisdiction	Provincial Jurisdiction	Shared Jurisdiction
Trade	Public lands and forests	Agriculture
Taxes	Health system	Companies and economic development
Postal service	Municipal institutions	Prisons and justice
Militia and defense	Marriage	Fishing
Currency and banks	Property and civil rights	Public works
'Indian' policies	Education	Transportation and communication
Criminal law	Business Licenses	Immigration
Residual powers (not defined in the <i>British North America Act</i> )	Provincial constitution	
Right of disallowance over the provinces		

Source: The author.

The allocation of responsibilities or areas of authority within a scalar model is central to the presentation of jurisdiction in Canada, but often appears simplistic, prompting visions of a textbook rather than the enacted messiness of administration. The list on paper fails to capture, or perhaps strategically de-emphasizes, the unexpected overlap, contestation, and confusion that is governance in practice. Legal systems are ordered within a space, and each brings its own histories, techniques and reach to bear on the same social objects, legalizing them in different ways. The practice of law can be said to be more about the interaction of these legal scales than their isolation from one another, what Boa de Sousa Santos calls “interlegality” (1987).

Jurisdiction works in similar ways, with different jurisdictions interpenetrated and superimposed, claiming or disavowing people and activities across scales and spaces. “We govern ourselves through legal machineries that, like many other human-made tools, are more complex than most of their users realize” (Valverde 2009, 154). Jurisdiction enters people’s lives on many levels, including and beyond international, national and provincial (state) scales, for instance, through schools, families, communities, and places of employment. Theorizing and practicing

jurisdiction is also made more complicated because most areas of membership and authority are unstable and open to change at varying rates.

All of this created complexity for addressing offenses against Rehtaeh Parsons. In terms of national jurisdiction in Canada, criminal law is the responsibility of the Federal government, so when deciding to respond legally to the suicide of Rehtaeh Parsons, the Province created a series of civil offenses (which lie within provincial legal jurisdiction), and a civil investigative unit through the Cyber-Safety Act. CyberSCAN investigators worked closely with the police on issues that had a cyberbullying element. These distinctions, between criminal and civil law, federal and provincial governments, Halifax Royal Police, Royal Mounted Police and the CyberSCAN unit were compounded by the challenges presented to existing territorial conceptions of jurisdiction by the Internet and digital communication technologies. If “in its common usage jurisdiction is explicitly spatial and scalar, grounded in territoriality,” (Strauss 2016: 3) how does jurisdiction deal with what is perceived as an aterritorial type of offense?

## **4.2 Land and Metaphor**

It is not unusual for images or language about the Internet to suggest, directly or indirectly, that it is a place or a space separate from the space a user’s body inhabits while they operate the keyboard. In *Hackers*, a US movie from the 1990s, it is portrayed as an urban downtown, with skyscrapers made of semi-translucent, ever-changing green digits. A satiric video made by comedian Dave Chappelle pictures the Internet as a mall, with stores for acquiring free music and watching pornography (Comedy Central UK 2017). Routinely, language around the Internet will position it not as a tool but as somewhere to go: “I’m *on* the

Internet,” “it happened *in cyberspace*.” Ideas like the global village, the information highway, and surfing the web bring physical metaphors and imagery into conversations and imaginings about an electronic network. Metaphors and language that reference already existing, well-known ‘tangible’ objects help make sense of ‘intangible’ digital communication technologies. For instance, a wide array of digital programs or platforms with graphic interfaces use cues that reference or imitate non-digital objects or activities. Called skeuomorphs, these aesthetics put spiral bound notebooks into word processing programs, replicate the controls of analogue audio mixing systems on computer music programs, and display calendar apps using images of paper calendars. Skeuomorphs, along with the language of place, help users make sense of the Internet and feel more comfortable when the mechanics and spatiality of how it works are not immediately self-evident.

When it comes to uncomfortable things such as illegal or disturbing behavior on the Internet, questions of the where and what of digital technologies take on a greater significance. Cyberbullying and technology facilitated violence, like sexual assault, are not often prosecuted, nor are perpetrators held accountable. In addition to getting a sense of how few cases of sexual assault make it to trial, a nationwide problem, the Globe and Mail’s investigation into unfounded rates for sexual assault across Canada showed that where you are has significant bearing on whether or not your claims will be believed (Doolittle et al. 2017). Although the law is not always strictly confined by territorial boundaries, they play an important role in determining who or what can be regulated, and in what ways. Thus jurisdiction is a matter of extreme importance, deciding not only formal questions such as which institution, legal system or set of laws applies, but, because of the uneven operation of the law in practice, affecting whether or not the process of justice can even begin.

### 4.3 The Frontier and the Limits of Justice

“Civilizing through law, externally territorial jurisdiction has been concerned to ensure that no places were left ungoverned, beyond or between systems” (Farmer 2013, 245–46). This idea of law and jurisdiction as civilizing and civilization is especially evocative in light of one of the most popular metaphors used to discuss violence and the Internet: the frontier. The association of the Internet and digital communications technologies with the frontier is so widespread as to become banal. The frontier is a territorial metaphor that casts the Internet as a place, much like a highway or a village. But the frontier is a place that is seemingly just outside of the law’s reach, where behavior that is unacceptable in other spaces can be performed without consequences.

The nature of territorial jurisdiction has a specific history in Canada, one that is inextricable from settler colonialism. Historically, the frontier was regarded as a place of encounter, both between European settlers and Indigenous peoples and between settlers and the rugged wilderness. According to Rifkin, the frontier is “a way of envisioning place beyond governmental requirements and categories” (Rifkin 2014, 176), but its relationship to the state is more intimate than that. The frontier is a technology that worked to separate the lawlessness, violence and genocide of settlement from settler laws and society. It was an imaginary that insulated the juridical order of the settler state by disconnecting it from the techniques that were used to establish that state (Altenbernd and Young 2014). After all, violent settlers and explorers, what Wolfe calls “frontier rabble,” were the principle means of the expansion of the colonial state (2006, 392).

If the frontier functions as a technology, how does it function within and around technology? As Canadian legal organization West Coast LEAF suggests, when this metaphor is applied to the Internet, it leads to certain characterizations of the perpetrators, of what is happening, and how those targeted should respond:

*It [violent speech and actions on the Internet] is dismissed as harmless locker-room talk, its perpetrators as juvenile pranksters and its victims as overly sensitive complainers. Some consider cyber misogyny an inconvenience that its targets should ignore or defeat with counterspeech. Others suggest that it's simply the nature of the Wild West of the Internet. While the arguments differ, the underlying message is the same: women need to tolerate this misogyny or opt out of life online. (West Coast LEAF 2016, 71)*

This statement raises additional insights around gender, as the frontier was typically imagined as a dangerous, masculine zone where women and femininity did not belong. Frontier stereotypes and tropes make sense of and justify the lawlessness of the Internet and the “uncanny incapacity on the part of the state to regulate and police certain types of violence and illegal behavior” (Pratt 2005, 1052). Describing the Internet as the Wild Wild West or the frontier references the naturalization of colonial violence against Indigenous people and other settlers, and associates that context with the Internet, casting violence and nastiness as inevitable, expected, and impossible to prevent. The space itself is coded as risky. This metaphor places the Internet, and places it on the edge of or just outside of the law.

Sherene Razack writes about how gender, race, and space work in concert to mask the violence against Indigenous women and Indigenous women who are also sex workers. According to Razack and other feminist legal scholars, working in the sex trade and being of a certain race and space causes women to be seen by some legal actors as consenting “to whatever violence is visited upon them” (Razack 2000, 93). Behavior, identity and location are used to

qualify harm, and interact with law to produce judgments that do not deliver on promises of universal justice. In Razack's analysis, a spatialized view of justice reveals the role of race in determining zones and bodies that are or are not entitled to justice. If 'the street' is a place where violence happens, it is a "natural by-product of the space" (Razack 2000, 117). Through the metaphor of the frontier, the Internet is similarly coded as a space where violence is normalized. If the Internet is a space where the law doesn't reach and violence is expected, in consenting to use digital communications technologies, users are to some degree seen as consenting to violence enacted against them.

It is not uncommon to encounter this logic when an experience of technology-facilitated harassment or violence comes to light (Sierra 2014; Venema 2016; Chemaly 2013). A great deal of harassment, particularly gender-based harassment, is dismissed as relatively harmless, a result of natural temperament that should be excused, or of the conduct of the person targeted (Shariff and Gouin 2006; Henry and Powell 2015a, [b] 2015). Bullying, whether via technology or in person is often surrounded by a similar language of gendered or rite-of-passage style inevitability along the lines of:

*Boys will be boys, it's just bullying, everybody goes through it, you've just got to suck it up, you gotta move on. That's the way it is. Girls should get used to that. They'll get over it. (MacKay 2017)*

A lawyer who worked on a number of cyberbullying cases while the CSA was still in effect mentioned that her experience with police constantly revolved around this type of attitude. In her words, police would ask:

*Why are you taking sex pictures of yourself? Why are you engaging in the sex act on the floor? ...and that's not the issue at all. And that's how they would see it. (BB 2017)*

Underlying these kinds of police responses is the idea that the person targeted ‘should have known better.’ They should not expect a response from law enforcement because they were not only engaging in behaviors considered risky, ranging from posting comments, taking nude photos, and participating in social media, but they were doing so in a space where violence is expected and more easily dismissed. The frontier presumption of spatialized rough and tumble lawlessness works in tandem with social and legal judgments around the behavior of those targeted and those enacting the problematic behavior to dismiss technology-facilitated violence.

#### **4.4 Frontier Justice?**

A few days after Rehtaeh died by suicide in April of 2013, Nova Scotians or anyone with an Internet connection could read a press release or watch a video put together by a group calling themselves Anonymous. The videos and press release were organized under the hashtag #OpJustice4Rehtaeh and the individuals participating were doing so in the anarchic tradition of the hacker group Anonymous, a mantle adopted for a variety of Internet-facilitated activist and prank campaigns. Springing up from 4chan, an Internet discussion board that labeled users without a screen name ‘anonymous,’ Anonymous, a decentralized, amorphous, constantly shifting functional arrangement, moved unexpectedly into gathering behind ventures with more of a political message, often around values like transparency, openness, and freedom of expression (Coleman 2014). Anthropologist Gabriella Coleman, who spent considerable time with ‘Anons’ doing ethnographic research, cautions that Anonymous is a name that anyone can pledge allegiance to. It would be a mistake to assume the grouping of people who began #OpJustice4Rehtaeh was stable or consistent, or that other individuals or clusters of individuals

did not represent themselves as Anonymous and take action around Rehtaeh Parsons. Writing of Anonymous and their actions in Nova Scotia in 2013, I refer to all segments of Anonymous as Anonymous, though statements and videos may have been crafted and released by separate groups. In Coleman’s words, they are a “protest ensemble,” and not necessarily a coherent unit (Coleman 2013).

The lack of charges in Rehtaeh’s case and her sudden and tragic death prompted the creation of a new operation, one that alleged police handling of the case had been incompetent (Anonymous 2013). Anonymous’ threat to release the names of the four boys who attended the party with Rehtaeh in November 2011 was, according to them, not vigilante justice. They did want to highlight “injustice in the system,” or perhaps more accurately, a set of massive systemic and moral failures, which they outlined in detail:

*What the police are saying to the citizens of Nova Scotia is clear: having underage students drinking and having sex in your home is not a crime in our community. Photographs of 15-year-old girls having sex is not child pornography, but if it is, the distribution of that child pornography is not a crime. A 15-year-old girl is capable of giving her consent to sex even after she is inebriated to the point that she vomits while hanging out of a window – it is not sexual assault. We urge the RCMP [Royal Canadian Mounted Police] to act like guardians, set the proper example for the young men of Nova Scotia and send a clear message: this behavior will not be tolerated in our communities. The women and young girls of Nova Scotia should not have to live in fear or be forced to hide evidence of a rape because they will be called whores. (Anonymous 2013)*

Sex, booze, underage girls, rape, lawlessness, ineffective justice systems, guardians that aren’t guarding, a (literally) masked advocate for justice<sup>15</sup> - the Internet is a metaphorical frontier, but this tragic tale could as easily be said to feature myths of the frontier as imagined in the Canadian and US West, with its fabled saloons, dangerous sexuality and irregular justice.

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<sup>15</sup> Anonymous videos and announcements often use a figure wearing a Guy Fawkes mask as a spokesperson.

On a mythic level, vigilante justice in the frontier towns of the North American West was presented as a way to do the work of justice when official actors did not exist or were incapable or unwilling to respond. As a space of chaos and acknowledged lawlessness, outside of the regular jurisdiction and operation of the law, the myth of the frontier gives rise to complicated ‘good guys,’ who sometimes do or claim the work of justice, filling the void of a nonexistent or ineffective authority. According to Lisa Arellano, vigilante-produced accounts in the US frontier largely positioned vigilantes as brave and organized individuals or groups responding to criminal conditions and state inaction to widespread popular support. The vigilantes perform a narrative intervention by claiming that a violent act is legitimate because it is a punishment visited upon a criminal, an understanding that has caused Arellano and other scholars to draw parallels between the perpetrators of frontier justice and the groups and individuals who enacted horrific violence against black people in the US South after reconstruction (Arellano 2012). In much the same way the law draws lines around what is or is not unlawful violence – an important task seeing as it metes out violence in the form of official punishment - vigilante justice attempts to cast a violent action as morally justifiable.

Anonymous and the actions they took in relation to Rehtaeh Parsons: the launch of an operation, research on the identities of the probable perpetrators, public communication around failures in the case, the claiming of moral high ground, and challenges to police ability fit with Arellano’s presentation of vigilante accounts of their own actions. In #OpJustice4Rehtaeh, like other Anonymous operations, those speaking as Anonymous cast their own violent or potentially violent actions (such as publishing the identities and addresses of teenagers accused of rape) as legitimate by placing them within a broader narrative of responding to a criminal or immoral action that the state cannot or refuses to address. The understanding of the perpetrator as part of a

heroic cult that fulfills the wishes of a supportive public is similarly embraced by Anonymous, who routinely end their communiqués with statements like:

*We are Anonymous.  
We are legion.  
The honest support us.  
The corrupt fear us.  
The heroic join us.  
Expect us.  
(Anonymous 2013)*

The territorial and functional jurisdiction where the crimes against Rehtaeh took place was that of the Halifax Royal Police (HRP) or the Royal Canadian Mounted Police (RCMP), and there were and are substantial complaints around their handling of the case. It is likely that most of the members of Anonymous who participated in #OpJustice4Rehtaeh were nowhere near Halifax. They accessed Rehtaeh's case via the networks of the Internet rather than through personal relationships or as a part of the territorial community in which she lived. Intervention in Nova Scotia followed the group's pattern of involvement in a number of cases featuring police ineptitude around the sexual victimization and assault of young women, namely Amanda Todd in British Columbia and the mess of power, impunity and sexual assault in Steubenville, Ohio.

In the eyes of some, they were a group of meddling strangers who knew nothing about the dynamics of what happened or the community. For others, they were a vital voice calling attention to an inept and ineffective police response to a morally repugnant crime (Leung 2013). Anonymous, with their reputation for digital prowess, threatened to use their specialized knowledge and ability to navigate Internet architectures to bring the four accused boys to justice, or to at least bring the case to a point where the legal system engaged. The solution Anonymous enacted in a situation where the processes of law were seen as non-operational and put part of the

business of justice into the hands of a group of non-state actors precisely because the state was considered incapable. In their words:

*Is it necessary for Anonymous to be involved in this case? Yes. For a moment let's set aside the theatrics, the masks and the labels. We are group of concerned citizens that have recognized an injustice in the system. We have taken it upon ourselves to point out that injustice to the public and we are asking the police to correct their incompetent handling of this case--a young girl has already died from it. (Anonymous Canada 2013b)*

Although they maintained there was no connection, police reopened their investigation just days after Anonymous' first actions, and Rehtaeh's father, Glen Canning, credited them with keeping public attention on her case (Omand 2015). Rehtaeh's parents asked the group not to publically release any of the information or names they discovered, and it seems some sections of Anonymous respected those wishes. Others did not. It is still possible to find names of the accused on the Internet, released by a group called Anonymous BC, which may or may not be different from Anonymous who spearheaded #OpJustice4Rehtaeh. The Anonymous who were handling that operation made pointed threats about what would happen if the police didn't do their job, and underscored the inevitability of disclosure, if not by them, then by someone else (Anonymous Canada 2013a). Media coverage around their role in the case also featured frequent use of the term vigilante, highlighting Anonymous' status as an actor outside of the law.

For Rehtaeh Parsons who was a subject of the law in an established jurisdiction, the involvement of the Internet and digital communications technologies and ongoing nation-wide failures of the law around sexual assault together created the sense of a legal void, a symbolic frontier zone. Following the metaphor, in this situation the hacker group Anonymous acted as a kind of vigilante force, stepping in around widespread social outrage at what was seen as a complete failure of justice. It is apt that if the nature of the frontier made the law operate

unevenly or not operate at all, then the conception of the Internet as a frontier zone where the law could not effectively reach or was out of its element would produce a 'local' force that attempted to see justice done.

#### **4.5 Frontier Masculinities**

The imaginary of the frontier, complete with violent and heroic vigilantes, is also suggestive when it comes to the performance of masculinity via technology. In a territorial sense, the frontier was presented as a place for rugged male explorers to forge their characters to a particular vision of masculinity. These myths exalted self-sufficiency, physical toughness, freedom, machismo, initiative and violence, all free from the confine(ment)s of domesticity (Kikkert and Lackenbauer 2017). This exclusion of women and the feminine runs in the face of many actual examples of women living and traveling in the US and Canadian West. However the idea of women as a restraint on the development of the masculine character as part of frontier mythology raises interesting parallels around the exercise of certain types of masculinities on the Internet.

Anecdotes as well as recent studies underscore the gendered impacts of technology-facilitated violence, noting that women are often targeted because they are women, and faced with vitriol and threats of sexualized violence that encourage them to vacate online platforms (Duggan 2014, 2017; Chemaly 2013; Buni and Chemaly 2014; Citron 2014). Danielle Citron describes three emblematic cases: a tech blogger, a law student, and a woman whose intimate images were posted online by an ex-partner. These women were targeted with threats of sexualized violence and changed the ways they used Internet and digital technologies, not to mention careers, houses and habits. A deluge of seemingly arbitrary rape threats, doxxing and

sexually violent images led Kathy Sierra, the tech blogger, to cancel speaking engagements, fear for the safety of her family, and shut down her influential blog. Predictably, as Citron notes:

*Some high-profile bloggers and commentators told her she was being a 'silly girl' and this sort of roughhousing was an inevitable and harmless part of online life. She was told to 'turn off' her computer if she could not take the 'heat in the kitchen.'* (2014, 37)

One of the comments Sierra received?

*Better watch your back on the streets whore... Be a pity if you turned up in the gutter where you belong, with a machete shoved in that self-righteous little cunt of yours.* (Citron 2014, 36)

As the law student in Citron's example wrote in her own piece on the dismissal of technology-facilitated misogyny:

*These tactics - the rape threats, the manufactured First Amendment outrage, the scrutiny over physical appearance, the shock at women asserting themselves, the argument that people who take threats seriously are overreacting, the assertion that women want and like sexualized insults - are long-standing tools used to discredit and cut down women who transgress traditional gender roles and challenge male authority.* (Filipovic 2007, 301–302)

Sexualized threats against women are only one piece of the performance of a version of masculinity. While women often face gender-specific abuse, people of any gender are targeted online with insults, threats and bluster, and faced with similar dismissals of their concerns. This in itself asks for a certain kind of toughness, stoicism, or correspondingly aggressive response – a particular vision of the masculine.

Leaning on the idea of freedom of speech, certain users enact a kind of aggressive masculinity that offers disdain for moderation, ‘civil’ discourse, and liberal tolerance, instead calling out perceived weaklings and people they consider out of place with disdainfully bestowed titles such as SJWs (social justice warriors) and snowflakes. Intended to highlight weakness, this language belittles consideration for others, awareness of structural oppressions, sensitivity of any kind, and narratives of individual value. One of the most famous US accounts of the frontier, Frederick Jackson Turner’s “The Significance of the Frontier in American History,” theorizes that the frontier causes people return to “primitive conditions” in terms of both amenities and behavior, and the movement between civilized refinement and primitive conditions is essential to the development of the [US] national character (1893). Turner’s idea of “primitive conditions” is evocative in light of the ways those disturbed by certain modes of Internet interaction, including the aggressive misogyny above, commonly characterize it as backwards and uncivilized - a regression. Race and gender factor into this in significant ways when the web acts as space where attitudes that are seen to cross mainstream boundaries are now frequently aired and celebrated as a more essential, authentic (usually white) masculinity (Hess 2017; Marche 2016; Daniels 2009).

#### **4.6 Taming the Frontier?**

The Internet presented a jurisdictional dilemma to Halifax police because of its association with intangibility (not serious or even real life) and because of the ways it didn’t easily submit to regulation (naturally lawless). Network connectivity and the presumed locationlessness of the Internet pose challenges to a sense of jurisdiction based on territory and

sovereignty. What happened to and around Rehtaeh, including Anonymous' activism, prompts the question: is the Internet located within the boundaries of the nation-state? And a second: does the reach of national law stop at those boundaries?

Before the CSA was thrown out for violating Section 2 of the Charter, Nova Scotia Supreme Court Justice Arthur LeBlanc, granting a cyberbullying prevention order under the CSA, quoted part of the Province's Cyberbullying Task Force Report:

*Cyberbullying poses a particular challenge to the community because it happens in a sort of "no man's land". The cyber-world is a public space which challenges our traditional methods of maintaining peace and order in public spaces. (cited in Supreme Court of Nova Scotia 2015, 6)*

Alluding to optimistic hopes for the liberatory possibilities of the Internet, Jurgenson reminds us that "the digital was thought to be a new frontier where information could flow freely, national boundaries could be overcome, expertism and authority could be upended" (2012). Though it might seem naïve in hindsight, this assessment is a reminder of the important role digital communication technologies play in resisting censorship, circumventing state control, and providing platforms for whistleblowing, critique and other voices. As Citron maintains, the strengths of the Internet are also what makes it an ideal platform for abusers: its virtues fuel its vices (2014).

Thus the metaphor of the frontier acts in multiple ways. The association of the Internet with intangibility not only presents confusion around responsibility for territorially organized conceptions of jurisdiction, it reinforces impressions that the Internet is not 'real life,' that the harms that happened there aren't serious. It is also a zone that is seen as difficult to regulate because of the way it spans international borders. Not only are the enforcement of regulations in

Canada subject to the will of individual companies (BB 2017), but many of those companies and sites are hosted in the US, and Canadian laws are stymied by strict US commitments to First Amendment rights (Nemes 2002). But beyond the technical and legal obstacles to overseeing conduct on the Internet or via technology, the narrative of the Internet as a frontier zone creates expectations of lawlessness as acceptable and inevitable. A sense of nostalgia born of national myth-making that casts the extreme violence and impunity of the frontier as merely rough and tumble plays into the dismissal of violent threats on the Internet as a natural part of a rugged environment.

Much like the historic movement of formal state structures into spaces seized from Indigenous inhabitants, proposed solutions for solving the issues of Internet lawlessness tellingly involve the expansion of the nation-state. At the same time as suggesting the excitement of boundary pushing, or that anything goes on the Internet, or that the Internet is outside of police jurisdiction, the use of the frontier metaphor by representatives of the state also serves agendas of increased regulation, surveillance and oversight. Canada's Federal Bill C-13, Protecting Canadians from Online Crime Act, made the nonconsensual sharing of intimate images illegal *and* gave law enforcement vast new powers to collect user telecommunications data (C. Parsons 2015; Public Safety Canada 2017).

Beyond actions to increase state oversight, official reports and public education plans at a federal and provincial level highlight behavioral changes by individuals as an antidote to bad behavior and general lawlessness online. The language they use is specific and worth noting: the way to combat cyberbullying and harassment via technology is to practice digital citizenship (Nova Scotia Task Force on Bullying and Cyberbullying and MacKay 2012; Standing Senate

Committee on Human Rights 2012a, [b] 2012). As Nova Scotia MLA Jaime Baillie raised in legislative session in the days after Rehtaeh's death:

*One of the recommendations of the MacKay task force on bullying, Mr. Speaker, was to teach digital citizenship in our schools, to actually place it on the curriculum, so that all young Nova Scotians know about the rights and the responsibilities that they now have, as citizens in an on-line and digital world. (Nova Scotia House of Assembly 2013c, 11)*

The practice of citizenship, and the appeal to practice citizenship is especially interesting given the association of the Internet with the frontier. Turner positions the frontier as the place where civilization and savagery meet, a wave that moves ever westward, leaving civilization in its wake (1893). I interpret this push to include education around digital citizenship in school curriculum, lessons that include conduct, rights and responsibilities as a sort of civilizing mission. In a sense, the teaching of digital citizenship acts to stretch the state into the frontier zone of the Internet. Thus the metaphor of the frontier works as a tool that excuses bad behavior and failures to prosecute it, and also justifies the expansion of state power and encouragement of behaviors that center the nation.

The proliferation of lawlessness, leaking of sensitive information, recruiting for extremist causes, and threats of large-scale attacks are some of the stated rationales for expanding government access to the devices and communications of citizens and non-citizens. According to some proponents, with the right combination of laws and technologies, this Wild Wild West Internet will be brought into the state's reach and into the realm of regulation. In Turner's vision of the frontier, citizens and the nation experience a cycle of returning to "primitive conditions" and then evolving towards 'civilization.' "Social development has been continually beginning over again on the frontier" within a larger process of national evolution (1893). Metaphorically

imagined but territorially placed, Turner's frontier ended in 1890 when settlers ran out of land. It is not much of a stretch to extend the frontier logic that Turner outlines, the continuous dynamic process of transformation, to the wireless networks and constant mechanistic iterations of digital communication technologies. Unlike that of colonial land grabs and settlement, this aspect of Canadian life has no territorial limits. It is a 'frontier' that state involvement may never render settled to its satisfaction. The suggestion of digital citizenship as proposed at federal and provincial levels will not once and for all settle the question of how to use digital technologies. The practice of digital citizenship, if taken up by a great number of Canadians, may affect habit and experience around those technologies, but they are part of a shifting landscape of human uses, social norms, changing technologies, and increasing hybridity. There is no clear end to this frontier.

#### **4.7 Conclusion**

Technology-facilitated violence faces a dangerous combination of attitudes: that such violence isn't serious *and* that it can't be regulated. Jurisdiction plays into these attitudes in surprising ways. To begin with, jurisdiction is useless without access to justice: a crime must be seen as a crime, injurious and worth investigating. But questions of jurisdiction have major impacts on how and if technology-facilitated violence moves through the legal system. Given the association of the Internet with intangibility and its perceived location everywhere and nowhere, those facing this kind of abuse also face confusion and inertia when they come into contact with territory-based ways of accessing the justice system. Confounded though it may be around 'cybercrimes,' territorially conceived jurisdiction is still a powerful organizing force in Canada,

and it is maintained through the metaphor of the Internet as a frontier. The frontier imagery does ideological work. It tells users what to expect and what to accept. Through the conceptual framework of the frontier, this violence is rendered natural and understandable, even as it is placed just outside the reach of the law.

## Chapter 5: Concluding Thoughts

Throughout my research on this project, there have been mutterings and rumors about the possible passage of another anti-cyberbullying bill in Nova Scotia. The Cyber-Safety Act (CSA) was thrown out for excessive infringement on freedom of expression as guaranteed in Section 2(b) of the Charter of Rights and Freedoms. The two men who brought their relatively mild dispute through the court system to the Supreme Court, resulting in the death of the CSA, were not seen by many as the type of people the original bill intended to protect. Yet it is undeniable that a bill motivated by the death of a young woman and organized around protecting children offered resources to adults who had no other recourse against communications they experienced as violent and disturbing. Given the commonality of confusion or indifference around such behaviors by law enforcement, the CSA was an important public recognition of the harms caused by this thing called cyberbullying. Of course, as many (including myself) have noted, the *what* of cyberbullying is far from clear, and as a term it has problematic tendencies towards erasure. In directing money, attention, speeches and legislative focus to the harms of cyberbullying, however they interpreted it, the government of Nova Scotia did have an impact — even if that impact was not the anticipated massive reduction of technology-facilitated violence. “One of the important roles of law in society,” according to Nova Scotia’s Cyberbullying Task Force, “is to change attitudes and values about what is inappropriate and blameworthy conduct” (Nova Scotia Task Force on Bullying and Cyberbullying and MacKay 2012, 48). The passage of an anti-cyberbullying bill and the tabling of its replacement take on that challenge of paradigm shift. They reflect faith in the ongoing promise of behavioral change and justice through the law, something that is by no means guaranteed or even possible.

In this thesis I have tried to map the spatiality, not to mention gendered and ontological dimensions of assumptions about technology-facilitated violence that clustered around a particular and tragic set of circumstances. Cybercrimes, however they are defined, often receive less notice; when noticed, they are perceived as unremarkable. As one legal scholar claims: “if these attacks took place in the terrestrial world — in real space rather than in the virtual space of the Internet — they would receive a barrage of media attention” (Brenner 2012, 1). Rehtaeh Parsons did receive a barrage of media attention, but only after she took her own life. It is no coincidence that it was her suicide — an embodied, discrete physical harm — that inaugurated the flurry of activity and recognition around her case. Three more youthful deaths this year alone are likely part of the reason that after more than 18 months of half-hearted announcements and inaction, the Province finally seems more serious about redrafting anti-cyberbullying legislation (King 2017; Gorman 2017). Analysis around cyberbullying and disturbing behavior ‘online’ still traffics in the language of disconnection, operating on value-laden assumptions about the digital as a somehow less real sphere. Provincially, I witnessed moments of reassessment, explicit challenges to that narrative, including efforts to rename what happened to Rehtaeh so as to better match the descriptors to her experiences. There was also pushback, especially from those working with youth, around official responses that advocated ‘logging off.’ As a number of my interviewees declared, not only do such suggestions fail to address the actual problem, but for many, logging off is an impossibility — these are not separate worlds to switch between. In its most effective instances, the renaming around cyberbullying is descriptive but not dichotomous. There is a fundamental difference between trying to capture the textural differences between what happens via digital communications technologies versus face-to-face, and casting the digital as a separate and distinct sphere.

Language and naming around technology-facilitated violence can express or allude to a set of deeper held beliefs. Ontological assumptions held by law enforcement officials and prosecutors about what digital technologies *are* impact whether existing laws will be applied to actions that involve technologies. Police impressions of ‘cybercrime’ as less serious, not worth their time, and difficult or confusing to investigate are disappointingly common. I have argued that part of the reason this perspective continues to be persuasive is related to widely held beliefs that digital communication technologies are intangible, immaterial, disconnected and not ‘real life’. Technologies and spaces associated with the virtual are not only seen as not ‘real life,’ but interactions that take place via these technologies are also considered less real – certainly not comparable to an offline encounter. This preoccupation with ‘real life’ and the ranking of harms, with a specific vision of physical harm taking precedence, did much to hinder the recognition of the everyday harms Rehtaeh Parsons experienced via the Internet and over her phone.

Nova Scotia provincial publications stress the action of intervention as part of their broader suggestion of digital citizenship, and behavioral change around technology-facilitated violence is often couched in the language of the bystander. For as many people who find themselves on the receiving end of abusive or derogatory speech or actions, a greater percentage have witnessed such conduct. “Harassment does not have to be experienced directly to leave an impact:” it chills expression, changes how users engage online, and sometimes motivates active intervention on behalf of others (Duggan 2017, 4). If 60% of people feel that bystanders should actively intervene when they witness harassing behavior, as the findings from PEW’s recent survey on online harassment suggest, they also see a major role for online service providers and the state. Nearly half thought law enforcement should be more involved, with 43% expressing dissatisfaction that police don’t take such incidents seriously (Duggan 2017). Given the

devastating (and unevenly distributed) impacts of technology-facilitated violence, it is unlikely such calls for increased police acknowledgement and involvement will lessen. It will remain a challenge to combine 1) recognition of that violence, support for those targeted, and accountability for those perpetrating it with 2) a refusal to advocate for increased criminalization without context, and greater surveillance of citizens by the state and its institutions.

In the same study, 79% of respondents thought online services have a responsibility to step in when online harassment occurs. Calls for platforms to develop more effective tools for reporting and responding to objectionable or deplorable content and behavior have been loud and frequent in recent years (Athar 2015; Wortham 2017; Valenti 2014). In times of global tendencies towards state austerity, and the slimming down of certain functions and expectations of government, these requests make a certain kind of sense. However welcome increased intervention by platforms might be in some ways, such calls also invite corporate entities to do work traditionally allocated to the state. The mechanics and consequences of that intervention are also far from clear. With the addition of functions like live-streaming to a number of popular services, hiring of content moderators has likewise ballooned (Ingram 2017; Seetharaman 2017, 2016; Shahani 2016).

Content moderators are sizeable workforces of precarious, contract-based workers who respond to user complaints of inappropriate, offensive, or horrific content (Huntemann 2015; Roberts 2016). When North American Internet users ask for online services to take greater responsibility for the abuse that happens on their platforms, it is moderators who do that embodied labor — labor that can exact a terrible toll. Recently, US-based content moderators have initiated legal action against Microsoft for failing to prepare them for the psychologically damaging impacts of viewing videos of child exploitation, despite company-provided counseling

services (Lee 2017). Across contexts, workers report symptoms akin to PTSD, and connect their jobs to depression, alcoholism, deterioration of relationships, loss of trust in humanity, paranoia and deep despair (Chen 2014). What does it mean for a job that materially sustains someone to simultaneously cause them such harm? Many moderators are also based in India and the Philippines, a growing workforce that raises ethical questions around circuits of globally sourced, invisible, feminized labor. Given the horrific nature of content moderator's work, these transnational outsourcing networks exacerbate the traditional inequalities of geographical exploitation with new kinds of cognitive exploitation, alienation, and injury.

Recognizing, naming, working towards forms of accountability, and developing adequate support systems around technology-facilitated violence – these begin slowly, and they begin with recognition. Although this project has interrogated the logics of state (in)action and the visibility and invisibility of certain kinds of harm, recognition is a limited strategy. Visibility is not the same as changing “the foundational power relations which continue to perpetuate law’s violence” (Hunt 2014, 145), and it does not escape me that this work is full of observations and low on suggestions. Though the increased ability to name violence does not necessarily mean the occurrence of those incidents is altered, questions around visibility can lead to the elucidation of power relations. Understanding the mechanisms of power, how it works through and around the social, how it is expressed through violence and formal access to justice, provides at least a precondition for larger transformations. For all its limitations, inside visibility lurks the possibilities of different futures. After all, “nothing happens in the ‘real’ world unless it first happens in the images in our heads” (Anzaldúa 1987, 87).

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