Sexual Violence in the Digital Age: Replicating and Augmenting Harm, Victimhood and Blame

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Abstract
This article examines some of the complexities and tensions which lie at the intersection of popular and official constructions of technology-assisted sexual violence (TA-SV). It argues that many of the core contextual understandings of victimhood and harm which underpin the cultural and legal framing of offline forms of sexual violence are not only reproduced but augmented in virtual settings. Drawing on debates from critical victimology, the article argues that TA-SV amplifies traditional understandings of ‘victim’ and ‘offender’ behaviours concerning sexual crime. In so doing, it highlights the particular challenges around: a) the ‘ideal victim’; (b) responsibilisation and blame; and c) victim-offender-bystander continuums which emerge not only within discourses on TA-SV, but also through the use of digital evidence at trial. The article concludes by examining the broader implications for academic discourses on victimhood and the challenges for legal and cultural discourses in responding to sexual violence in the digital age.

Keywords
technology-assisted sexual violence, digital age, victimhood, harm, blame, digital evidence

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Introduction

Digital sociologists and criminologists have noted that we are living in the ‘digital society’ (Stratton et al., 2017) or ‘information age’ (Castells, 1996). This has been characterised by the prolific use of new media and mobile technologies, and the last two decades have seen the internet and ‘smartphones’ become ubiquitous to our everyday commercial and social activities. As Grabosky (2001: 243) has long contended, ‘it has become trite to suggest that the convergence of computing and communications has begun to change the way we live, and the way we commit crime.’ The internet has enabled a broad range of what Wood (2021) terms ‘instrumental technicity harms’ where technologies are used as a means to harm beyond their intended use. This includes fraud and identity theft, phishing and malware and terrorism, as well as forms of sexual harassment, exploitation, and abuse. New forms of what have been collectively termed ‘technology-assisted sexual violence’ (TA-SV) (Bluett-Boyed et al., 2013) against both adults and children have emerged and been captured within existing or new legislation in the United Kingdom. This includes, for example, criminal offences known colloquially as ‘grooming’ (McAlinden, 2012), ‘sextortion’ (Wolak et al., 2018), ‘revenge pornography’ (Hall and Hearn, 2017), ‘upskirting’ (Thompson, 2020) and ‘cyberflashing’ (McGlynn and Johnson, 2021) as part of the official recognition of ‘image-based sexual abuse’ (McGlynn and Rackley, 2017) as well as technology-assisted ‘coercive control’ (Dragiewicz et al., 2018). The burgeoning role of technology within sexual violence is evidenced most acutely perhaps in relation to peer-to-peer forms of abuse via ‘sexting’ and several high-profile cases of the filming and distribution of rape or sexual assault among teens (Agnew, 2021; McAlinden, 2018).

The significance of the broader term ‘sexual violence’ is that it acknowledges non-contact forms of abuse which, while they may not result in physical injury or indeed be formally recognised within the law, nonetheless entail longer-term psychological harms for victims and as such represent both a psychosocial and structural problem (McGlynn et al., 2020; Powell and Henry, 2017). On the one hand, as Grabosky (2001) appeared to suggest in relation to ‘virtual criminality’ more generally, TA-SV is in many senses a newer manifestation of sexual crime committed in a different way. On the other hand, as this article asserts, it remains subject to many of the same ideological assumptions relating to victims and perpetrators of non-digital sexual violence including perceptions of ‘harm’ and ‘blame.’

Within the domain of sexual violence, the advent of the technological era has increased the vulnerability of potential victims and opened up new opportunities for offending, while simultaneously shaping cultural norms around sexual behaviour. The faceless nature of virtual communication is said to have a performative, disinhibiting effect, completely altering the nature of social and personal interaction, and distorting social norms and boundaries around ‘appropriate’ and ‘harmful’ sexual behaviour in digital spaces (Agnew and McAlinden, 2021; McAlinden, 2018). This accords with Wood’s (2021) notion of ‘generative technicity harms’ where technology becomes conducive of harmful ends. However, there may also be a high-degree of cross-over of sexual behaviours and norms between online and offline settings (McAlinden, 2018). As discussed further, even within trials for ‘offline’ forms of sexual offending, such as rape
and sexual assault, digital technologies increasingly feature as part of background evidence. In this sense, as other scholars have highlighted, rather than being confined to a purely causative role, digital technologies also act as a barometer for broader social changes (see e.g. Castells, 1996), with their use in matters of contested consent drawing attention to the fluidity and uncertainty within changing social relations.

The law, both across the United Kingdom and in other Western jurisdictions, has adopted somewhat of an ambivalent response to TA-SV. It has been argued, for example, that the law and legislative frameworks have over-regulated consensual digital sexual communications, particularly among young people, while simultaneously failing to respond to the harm that is experienced by victims of non-consensual making and/or distribution of sexual images (see e.g. Henry and Powell, 2015b). In this respect, the law is often faced with ‘playing catch up’ with the rapid pace of technological advancement as well as cultural and behavioural changes. Yet at the same time, the law continues to act as an ‘echo chamber’ (Tilly, 2008: 35) for prevailing social and cultural ambiguities around harm, victim status and blame. As we will explore in this article, these ambiguities are not only replicated but arguably amplified within digital contexts.

The literature on TA-SV has tended to fall broadly into two principal categories: (i) empirical studies (sometimes referred to as ‘netnography’, see Wang, 2018) examining the use of digital technologies to facilitate, inter alia, dating abuse (see e.g. Hinduja and Patchin, 2020; Stonard et al., 2014), cyberstalking and harassment (see e.g. Sheridan and Grant, 2007; Wick et al., 2017) and sexual exploitation and abuse of children including grooming, cyberbullying and sexting (see e.g. Kloess et al., 2014; McAlinden, 2012; Mitchell et al., 2012); and (ii) normative analyses highlighting the need for law to recognise non-contact forms of sexual harm as part of the ‘continuum of gendered violence’ (Henry and Powell, 2016: 388; see also McGlynn and Rackley, 2017). Other work straddles both categories (see e.g. McGlynn et al., 2020; McGlynn and Johnson, 2021). For example, existing work has critiqued the cultural and legal construction of contact forms of sexual offending including raping (e.g. Temkin and Krahé, 2008) and child sexual abuse (e.g. McAlinden, 2014).

While this is a fast-growing area of scholarship, there is to date a dearth of critical work on the norms and values which underpin contemporary constructions of ‘harm’, ‘victimhood’ and ‘blame’ concerning TA-SV and which ultimately shape how digital or non-contact forms of sexual violence are conceptualised and responded to within cultural and legal contexts. This article addresses this gap in the literature, by unpacking some of the core complexities, ambiguities and tensions which lie at the interface of contemporary legal and cultural constructions of sexual violence within digital settings.

The article draws on the classic literature on critical victimology, as well as more contemporary feminist scholarship, which has interrogated sexual crime and other offending contexts across the United Kingdom and—where relevant—in comparable Western common law jurisdictions such as the US, Canada, and Australia. We make two core arguments: (i) that many of the core contextual understandings of victimhood, harm and blame which underpin the cultural and legal framing of offline forms of sexual violence are not only replicated but augmented in virtual settings; and ii) it is these broader ideological contestations around victimhood, harm and blame which coalesce to
problematic cultural and legal discourses on sexual violence in digital settings. This includes consideration of the ‘ideal’ (Christie, 1986) or ‘imagined victim’ (Walklate, 2007), and therein ‘victim hierarchies’ (Carrabine et al., 2014); responsibilisation and victim blame; and the ‘victim-offender continuum’ (McAlinden, 2014). It contends that TA-SV challenges accepted understandings of ‘victimhood’ and ‘blame’, expands traditional notions of ‘victims’ and ‘perpetrators’ of sexual crime, and presents new challenges around the diffusion of responsibility to third-party ‘bystanders’ (McMahon and Banyard, 2011). These challenges are replicated not only within cultural discourses on TA-SV but also within the context of legal discourses around the use of digital evidence at trial.

The structure of the article is as follows: Part II examines the core themes from critical victimology and feminist legal scholarship, including those related to victim hierarchies and the ideal victim; victim blame and responsibilisation; and victim-offender dyads and continuums. Part III explores how those themes are reified and augmented in digital settings and through the use of digital evidence in trials. Finally, in the concluding section, the article briefly considers the broader implications for academic discourses on victimhood and the challenges for legal and cultural discourses in responding to sexual violence in the digital age. In particular, it draws attention to the need for i) further intersectional analyses of the impacts of TA-SV, ii) greater scrutiny over the role of digital evidence in replicating narratives of victim blame, iii) continued engagement with the ‘continuum of sexual violence’ as a means of challenging the normalisation of TA-SV, and iv) further research into the potential ‘ripple effect’ in terms of who bears responsibility for sexual victimisation.

Constructing Victimhood: Hierarchies, Blame and the Victim-Offender Continuum

As the victim of crime has become more visible in criminal justice law, policy, and research, critical victimology scholars have demonstrated how an ‘idealised’ (Christie, 1986) or ‘imagined’ (Walklate, 2007) victim has emerged as the ‘binary opposite’ of the ‘wicked’ offender (McEvoy and McConnachie, 2012). The ‘ideal victim’ is understood as ‘a person or a category of individuals who—when hit by crime—most readily are given the complete and legitimate status of being a victim’ (Christie, 1986: 18). The ‘ideal victim’ is often typified as a child or elderly person, someone considered ‘weak, vulnerable, innocent and deserving of help, care and compassion’ (Carrabine et al., 2014: 157). The emphasis on the ‘innocent’ target of the ‘monster’ perpetrator (Rock, 1998: 195 cited in McAlinden, 2014) has been critiqued for distinguishing between ‘worthy’ and ‘unworthy’ victims (Tilly, 2008: 94), thereby creating ‘hierarchies of victimhood’ (Carrabine et al., 2014). These hierarchies have practical implications for effective responses to crime: the more a victim’s story deviates from the narrative of the ‘ideal victim,’ the more likely it is that they will struggle to have their victimisation recognised, reducing their ability to access support services or legal redress mechanisms (Fohring, 2018; McAlinden, 2014).

Hierarchies of victimhood are particularly evident in the discourses surrounding sexual violence (McAlinden, 2014: 181). These discourses are often shaped by ‘rape
mythologies’, meaning beliefs that victims and perpetrators of sexual violence will conform to particular homogenous patterns (Conaghan and Russell, 2014; Cowan, 2021; Payne, 2009). Research has demonstrated that perceptions of an individual’s race and socio-economic status (Cossins, 2003; Long, 2021), clothing, sexual history and ‘moral character’ (Spears and Spohn, 1997), age and gender (McAlinden, 2014), level of intoxication (Schuller and Stewart, 2000), response to the alleged violation (Ellison and Munro, 2009) and even previous experience of violence can all shape the extent to which that individual will be considered a ‘deserving’ victim (Randall, 2010). The ‘imagined victim’ of sexual violence is also assumed to have suffered ‘real’ violence through a one-off violent attack by someone unknown to them (Estrich, 1987). This framing of ‘real’ harm often renders invisible ‘more ordinary, everyday threatening, intrusive, and coercive experiences of unwanted sexual attention and contact’ (Randall, 2010: 408) experienced by women and other marginalised groups. Consequently, those who experience these more ‘everyday’ intrusions can have their victimhood denied and their experiences trivialised as part of ‘normal’ social interactions.

Further to this, victims who deviate from the ‘idealised’ imaginary by virtue of their characteristics, behaviour, or experiences can find themselves blamed for their victimisation (Temkin and Krahé, 2008: 41-8). Victim ‘respectability’ has been found to be a key variable when it comes to attributions of blame in ‘offline’ sexual abuse (Temkin and Krahé, 2008: 45), resulting in a tendency to focus on the complainant’s, rather than the accused’s behaviour. This socialised expectation that individuals will prevent their own victimisation (Gotell, 2008; Stanko, 1985) can be situated within long-standing patriarchal power dynamics that position women as sexual gatekeepers and men as sexual predators, thereby placing responsibility on women to limit or say ‘no’ to sexual activity (Frith, 2009). However, since the late 20th century this expectation has been further augmented by the entrenching of neoliberal strategies of responsibilisation (Comack and Peter, 2005; Garland, 1997), which ‘deviate away from recognising public responsibility for social problems,’ and re-orient around individuals’ choices (Randall, 2010: 409).

The result is the ongoing ‘over-responsibilisation’ of women and girls, who are framed as responsible for managing men’s sexual attention and aggression (Lamb, 1996: 95). This can manifest in the dissection of what women and girls were wearing and how they behaved at the time of their victimisation, even in cases of young girls, where consent cannot legally be given (Eastwood and Patton, 2002; Young, 1998). Narratives of victim blame are reinforced through contemporary sexual violence prevention policies cautioning women to ‘drink responsibly,’ avoid going ‘off with someone you’ve just met,’ and to ‘make yourself clearly understood’ (Carmody and Carrington, 2000; Munro, 2017: 432; Vera-Gray and Kelly, 2020). Consequently, those who are sexually assaulted are viewed as having failed in this role (EVAW, 2019). In this way, women are subject to increased surveillance and expected to conduct ‘moral evaluations’ of their actions and its potential effects, mitigating their behaviours and the associated risks accordingly (Trnka and Trundle, 2014: 139).

Perceptions of ‘ideal,’ blameless victimhood are mirrored by images of the ‘ideal’ ‘stranger perpetrator’ as the ‘older, adult, predatory male “monster”’ (McAlinden, 2014: 182). These mirroring ideals have contributed to a victim/offender dyad in
which victimisation and perpetration are considered mutually exclusive phenomena (Menard, 2012; Muftić and Deljkic, 2012). These distinct categorisations have been critiqued for their failure to accommodate either ‘deviant victims’ or ‘vulnerable offenders’ and for overlooking the fluidity that can exist between victim/offender identities (McAlinden, 2014). This fluidity has sometimes been referred to as the ‘victim-offender overlap’ (Jennings, Piquero and Reingle, 2012) or ‘continuum of offending’ (McAlinden, 2014: 186), and has been observed in diverse contexts where sexual abuse or exploitation has become normalised. For example, Baxter (2020) has explored cases of trafficking for sexual exploitation where trafficked women have become offenders, noting the tendency for such women to be excluded from both constructions of victimhood and related forms of assistance. In the context of sexual abuse against children, Agnew and McAlinden (2021) have critiqued the tendency to frame perpetrators as predatory adults, noting that up to one-half of child sexual abuse is committed by someone under eighteen. As they note, in peer-to-peer contexts, particularly in organisational settings such as schools or residential care, the line between ‘explorative and exploitative’ sexual behaviours can become blurred (Agnew and McAlinden, 2021) due to the normalisation of ‘risky’ or ‘harmful’ sexual behaviours. As will be discussed later, further complexities also arise when we move beyond individualised notions of victim and offenders to consider the role of peers and community members, also referred to as ‘bystanders’, whose actions or inactions before, during or after an incident of sexual violence have the potential to help the victim or make the situation worse (McMahon and Banyard, 2011).

This section has outlined the core contextual understandings of victimhood, harm and blame which underpin the cultural framings of ‘offline’ forms of sexual violence. In the following section, we turn to analysing how these cultural understandings and framings are played out within constructions of victimhood relating to sexual violence in digital settings.

**Constructions of Victimhood in the Digital Age**

As we will explore in this section, the last few decades have seen the cultural conceptualisations of sexual victimisation outlined above replicated and augmented in the context of new media and communication technologies. This has occurred both in the context of emerging non-contact forms of sexual violence and official responses to them, and within the context of the use of digital evidence at trial. These cultural constructions of TA-SV and digital evidence have in turn created significant challenges within professional and legal responses to off and online forms of sexual violence (as well as harms with both off and online dimensions), with implications for individuals’ ability to access support services and legal avenues of redress.

**Victim Hierarchies and the Ideal Victim**

Victim hierarchies and ‘ideal victim’ narratives are replicated and augmented in the digital age in three principal ways. First, the individual characteristics associated with an ‘ideal victim’ of ‘offline’ sexual offending create similar hierarchies of victimhood in relation to TA-SV. Second, the normalisation and trivialisation of TA-SV in the
media and legal spheres creates additional hierarchies of harm, with victims of ‘non-contact’ or ‘disembodied’ harms (Powell and Henry, 2017: Ch 3) struggling to have their harms taken seriously. Third, the introduction of digital evidence in cases of contact sexual violence has played a new role in enforcing and entrenching ‘ideal victim’ stereotypes in the courtroom. Each are considered in turn.

Mirroring ‘offline’ hierarchies of victimhood, characteristics such as age, gender, ethnicity, and class shape the degree to which victims of TA-SV have their victimisation recognised. In common with ‘contact’ forms of sexual violence, discussions around TA-SV are premised on perceptions that ‘the younger the victim, the greater the blame’ placed on the perpetrator (Tilly, 2008: 95). ‘Moral panics’ (Hunt, 2011) around youth sexuality and the need to protect the innocence of children emerge, with TA-SV framed as ‘an age-specific issue of vulnerability’ and the ‘ideal victim’ as a young, naïve person requiring protection from sexual predators, cyberbullies, and even themselves (Henry and Powell, 2015a: 766-767). This emphasis on vulnerable, innocent children as the archetypal victim of TA-SV risks insufficient attention being given to the technology-facilitated sexual harms experienced by adult women (Henry and Powell, 2015b). Moreover, as discussed further, dominant narratives concerning children as ‘ideal victims’ of TA-SV cannot accommodate digital forms of harmful sexual behaviour among peers such as non-consensual sexting or cyberbullying where children may become perpetrators of sexual violence (McAlinden, 2018).

Where adult TA-SV is discussed, additional hierarchies emerge premised on the intersecting identities of the victim, leading to the overlooking of harms perpetrated against marginalised groups. Further mirroring responses to ‘offline’ sexual harassment, it is often white, affluent, heterosexual, cis-gendered, able-bodied women that are foregrounded in the media and literature around online sexual harassment (Hackworth, 2018). Yet, evidence suggests that ethnic minorities and members of the LGBTIQ+ community are more susceptible to sexualised online abuse, although less likely to report their harms (see e.g. Harris and Vitis, 2020). Similarly, popular, scholarly, and legal responses to image-based abuse have centred hetero-normative dynamics where men distribute images of their female partners or ex-partners (Kirchengast, 2016: 100), despite evidence that men are victimised at similar rates as women and that those from minority backgrounds are disproportionately victimised (Dodge, 2021: 449). The emergence of hierarchies based on identity and the resultant overlooking of the experiences of marginalised communities suggests a need for greater intersectional analysis of TA-SV (Crenshaw, 1991). Such an approach would actively consider how a victims’ ethnicity, sexuality, gender identity, or social status may interact to advance or limit the recognition of their harm. Studies which centre an intersectional approach might assist in complicating the ‘somewhat constrained academic and popular understandings’ of TA-SV (Dodge, 2021: 463) and in unpacking the diverse online experiences and needs of marginalised groups.

Hierarchies also arise in relation to the nature of the victimisation. As noted above, the ‘ideal victim’ of sexual violence is assumed to have suffered ‘real’ violence. Feminists have long challenged such hierarchies of harm by drawing attention to the ‘continuum’ within which sexual violence is situated (Kelly, 1988; Vera-Grey, 2017). While there has been recognition of the continuum of online harmful behaviour, as well as its connections
to other forms of sexual violence (see e.g. McGlynn et al., 2017; Vera-Grey, 2017) hier-
archies of harm have been reproduced and augmented in the context of TA-SV. For
instance, while certain forms of TA-SV such as perpetrators distributing sexual images
without the victim’s consent are the subject of increasing public policy and media
debate, other forms of TA-SV such as cyber flashing have been normalised and framed
as ‘routine and unavoidable’ (McGlynn and Johnson, 2020: 4). Others, such as the cre-
ation of sexualised photoshopped images, have been dismissed as causing insufficient
harm to justify criminalisation (McGlynn et al., 2017: 34). This dynamic is reinforced
through the media’s frequent use of monikers such as ‘revenge porn’ and ‘upskirting’
that serve to minimise the harm (McGlynn et al., 2017: 30-32) and obscure the fact
that, for many victims, such incidents are experienced as a serious and embodied form
of sexual assault (Harris, 2020; Henry and Powell, 2015a; McGlynn et al., 2020).

Similarly, the law’s inability to appropriately name and respond to TA-SV, contributes
to victim hierarchies in which only those that fit within the narrow confines of the legis-
lation are ‘deserving’ of legal redress. Even where the conduct does fit within a recogn-
nised crime category, criticism has been directed at criminal justice professionals for
not taking TA-SV seriously (Kinlaw, 2019). For instance, in 2016, Sussex police were
heavily criticised for failing to charge a man who had distributed sexual images of five
different women, including a 15-year-old (Laville, 2016). Indeed, a study conducted
with two police forces in England suggested that notions of ‘ideal victimhood’ influence
this normalisation process within police forces, with interpersonal offences such as
domestic abuse and ‘revenge pornography’ denoted as ‘lower level forms of offending’
than property-related anonymous cybercrimes (Black et al., 2019: 374). Evidence also
emerged of victim blame and responsibilisation, themes explored in greater detail below.

Narratives around ‘ideal victimhood’ and victim hierarchies are being reinforced by
the increased use of ‘digital evidence’ in criminal investigations concerning both on
and offline sexual offending (Dodge, 2018; Dodge et al., 2019; George and Ferguson,
2021: 49; Ramirez and Lane, 2019). While Rumney and McPhee (forthcoming) note
the ‘evidential value’ of such evidence to the police, prosecution and the defence, the
use of digital evidence is highly susceptible to stereotypical interpretations of victim-
hood. For example, the persistent narrative that an ‘ideal victim’ is someone attacked by a
stranger rather than their partner or an acquaintance, enables digital communications to
play a crucial role in precluding investigations into sexual violence. This was evidenced
in a review conducted in England and Wales, where it was found that investigations were
more likely to receive a ‘no further action’ outcome if they involved rape within a mar-
riage or by a partner or ex-partner, or if there had been social media contact between the
alleged perpetrator and complainant (George and Ferguson, 2021: 44).

Similarly, accounts from an Independent Sexual Violence Advisor interviewed for the
same review suggested that assessments of digital communications played an increas-
ingly central role in determining the outcome of adult rape trials, with digital evidence
being subjected to particular scrutiny in cases of alleged acquaintance rape (George
and Ferguson, 2021: 53). This is in part a reflection of the challenges associated with
proving sexual assault. The private nature of such crimes means that there is rarely
any independent corroborating evidence, such as forensics or witnesses (Daly, 2021).
As a result, digital communications are valued by both the prosecution and the defence
and are subjected to the analyses and interpretations of both. The malleability of digital evidence has led to concerns that it is being used to subject complainants’ behaviour to even greater scrutiny, leading to the reinforcement of narratives around ideal victimhood. For example, Dodge has reported how ‘flirty’ emails/texts sent by the complainant to the accused have been interpreted as ‘odd’, ‘questionable’ and ‘out of harmony’ with what is to be expected of victims of sexual violence (Dodge, 2018: 314 citing R v Ghomeshi, 2016). Drawing on court observation research, Smith and Skinner (2017: 450) have also highlighted how defence counsel draw on text communications to present complainants as ‘abnormal’ and ‘untrustworthy.’ Such analyses overlook the reality of sexual violence; indeed others have highlighted the complexity of unravelling post-assault text messages, and the diverse meanings that might exist behind seemingly positive messages between the complainant and defendant (see e.g. Dodge, 2018; McAlinden, 2018). Without a nuanced understanding of how victims might act in the aftermath of an assault, digital evidence of a complainant’s pre- and post-assault behaviour risks entrenching problematic stereotypes about ‘ideal victimhood’ and hierarchies of blame.

In sum, victim hierarchies have been replicated, augmented, and strengthened in the context of TA-SV, narrowing the cohort of victims recognised as ‘deserving’ of sympathy and legal redress. The ‘ideal victim’ archetype of the innocent, vulnerable child has been reproduced, with harms against adult women and particularly marginalised communities frequently overlooked. The introduction of new forms of offending have brought additional hierarchies, with some forms of TA-SV being taken more seriously than others and victims of TA-SV struggling to have their harms accepted as ‘real’ violence. Meanwhile, digital evidence in the context of ‘offline’ sexual violence has contributed to further hierarchies of blame and provided new means through which to scrutinise victim behaviour. Cementing the importance of complainant conduct in proving the presence or absence of consent, trials have seen even limited previous or ongoing electronic communication between the complainant and the accused used to apportion responsibility and undermine complainants’ accounts. The following section builds on this analysis through a deeper exploration of victim blame and ‘responsibleisation’ in cases of TA-SV.

Victim Blame and ‘Responsibilisation’

As noted above, critical research on ‘offline’ forms of sexual violence demonstrates that victims who do not conform to the ‘ideal victim’ prototype are often blamed for their victimisation (Gotell, 2008; Randall, 2010; Stanko, 1985). Extending this analysis to the digital arena, this section will demonstrate first, how similar cultural narratives of blame and responsibility are constructed and reinforced in the context of TA-SV. Second, it will examine how developments in the digital world, such as the creation of consent apps, exacerbate rather than alleviate many of the existing challenges associated with evidencing consent within legal discourses.

In a similar vein to critical literature on ‘hierarchies of blame’ (McAlinden, 2014) within offline contexts, commentators have drawn attention to the way victims of image-based abuse who may have initially consented to the image’s creation can find themselves framed as culpable or partially responsible when the image is shared without their consent (Sugiura and Smith, 2020: 57). Echoing the dissection of victims’ clothes in rape trials
(Cowan, 2021), victims of ‘upskirting’ can also find themselves blamed for ‘wearing too short a skirt’ and ridiculed for seeking redress (Sugiura and Smith, 2020: 58). Victims have spoken of feeling ‘judged, alone and unsupported’ and facing blame from ‘family, friends, the internet and the world around them’ (McGlynn et al., 2020: 14). Similarly, a victim of the recent phenomenon colloquially referred to as ‘e-Whoring’; an online fraud scam where pictures of people, mostly women, are traded and sold in packs between scammers, explained in a BBC Documentary that blame often lies with the victim as people comment that ‘you shouldn’t have taken naked pictures then’ or ‘stop posting pictures’ (London, 2021). Such a mindset, the victim suggested, is ‘one step away from “what were you wearing at the time?”’, “why did you drink so much?”’, “why didn’t you get a taxi?”’ (London, 2021). These questions replicate problematic victim precipitation theories (see Amir, 1968; Wolfgang, 1958) and ‘just world’ thinking (Meyers, 2016) by implying that the violation followed naturally from the victim’s behaviour. Problematic social and cultural expectations around appropriate sexual behaviour are thus reproduced in the context of TA-SV, resulting in the responsibilisation of women and girls (in particular) and limiting their ability to participate freely in online and offline spaces (Citron, 2009: 391; McGlynn and Rackley, 2017: 551; Vera-Gray and Kelly, 2020).

While the perception that digital technology is implicitly ‘leaky’, and that images posted online are ‘bound to be disseminated’ (Dodge, 2019: 132, citing Calo, 2015), can contribute to the misattribution of blame in cases of TA-SV, there is also the potential for alternative interpretations to emerge. For instance, in an analysis of Canadian court cases, Dodge (2019) found that rather than blaming the complainant, judges perceived the ease with which TA-SV can be committed and distributed—with the ‘click of a mouse’—as increasing the harm caused to the victim as well as the blameworthiness of the perpetrator, resulting in harsher sentencing decisions as a form of deterrence. In this way, key capabilities of digital technology, such as allowing information to be easily accessed, copied, shared and archived can be used to simultaneously condemn and excuse perpetrators depending on how such actions are interpreted: as ‘a thoughtless one time mistake’ or as ‘involving significant planning and forethought’ (Dodge, 2019, 131-132 citing R v Zhou 2016).

However, in a trend reminiscent of responses to ‘offline’ sexual abuse, narratives of victim-blame and responsibilisation have been identified in TA-SV prevention policies as well as police advice. In a 2013 study, for example, Salter et al. (2013: 309) found that education materials depicted a fictional female high-school student as ‘foolish and implicated in her own moral downfall’ after photos she shared with a male student were distributed around her school. In contrast, a fictional male student who was deceived into sending sexually explicit material to an adult male online was depicted as ‘entirely innocent (if somewhat naïve)’ (Salter et al., 2013: 309). These contrasting narratives highlight the gendered nature of responsibilisation and blame, with girls expected to engage in ‘safety work’ to avoid abuse (Vera-Gray and Kelly, 2020). Similarly, Jane (2016: 4) reports that police advice to women who have suffered online abuse is often that ‘they simply take a little break from the Internet’ or that they use ‘less attractive’ profile pictures and avoid engaging with provocative issues and discussions online. Such advice creates a climate of fear based on the ‘spacelessness of technology’, the
idea that we can theoretically be exposed to violence any time we use digital media or devices (Harris, 2016), serving to discipline women and girls into conformity with ideal feminine risk preventing behaviours (Gotell, 2008; Munro, 2017: 427). This ‘spacelessness’ significantly augments the situations in which women and girls are expected to engage in ‘safety work’ and creates new forums in which women are unable to exercise their agency freely without risking being deemed responsible for their own abuse. This emphasis on individual risk avoidance sets a baseline for victim blaming that can also result in self-blame. Indeed, victims of image-based abuse have spoken of feeling ‘ashamed’, ‘disgusted with themselves’, and ‘stupid’ (McGlynn et al., 2020: 11).

Self-blame is a behaviour commonly demonstrated by victims of off and online forms of sexual violence and a key barrier to disclosure when coupled with victim-blaming attitudes within society (Jackson, 2021). The emergence of digital evidence, as discussed earlier, compounds the situation and has been shown to create additional challenges to reporting due to fear over the intrusive nature of investigations. For example, in a recent study exploring the reasons why ‘victim-survivors’ do not report rape, one participant spoke about concern over their off and online worlds colliding: ‘I would have to hand my phone over to the police. I had minimal contact with my abuser - maybe 2 texts - but I was promiscuous with others and knew that I would probably be questioned about that and judged for it’ (Smith and Daly, 2020: 25). Such concern is understandable in light of research on sexual history evidence, in particular, demonstrating how rape trials promote the ‘twin myths’ that promiscuous women are more likely to consent to sex and, in any event, are less worthy of belief (see McGlynn, 2017). While the defence should be able to thoroughly defend their client, increasing recourse to social media communications and decontextualised digital evidence can result in lengthy and invasive investigations that reproduce and augment problematic narratives of credibility, suspicion, and blame (Smith and Skinner, 2017) that sexual violence survivors are all too familiar with.

Against this wider backdrop, another concerning development is the creation of consent apps for mobile devices to formally document consent to sexual activity (Danahe, 2018). While such apps may intend to promote a culture of actively seeking consent, they represent an extremely thin conception of consent - reducing consent to a ‘one-click day pass’ - and ultimately add to the growing number of ways a complainant’s pre-assault behaviour can be used to attribute blame (Flowe, 2021). While consent, the central element distinguishing sex from sexual violation across many jurisdictions, is evidentially fraught, foundational tenets of consent are that it is person and situation specific, it is an ongoing process, can be subject to change and can be withdrawn at any time. Consent apps fail to reflect these important principles. Even if they include a feature to withdraw consent, this places responsibility on the complainant to access the app and take this action. Yet, a complainant may be unable to use this feature during an abusive encounter, or if they do their original consent might nonetheless be used to bolster a defendant’s claim of belief in consent. There is also the possibility of someone being coerced into selecting ‘yes’ or of the abuser themselves having control of the complainant’s phone.

Although such apps have been subject to sustained critique (see e.g. Danahe, 2018), they continue to be proposed in the context of responses to sexual violence (see McGowan, 2021) and defence lawyers have encouraged clients to make use of such
apps as means to evidence ‘the fact that both parties have turned their minds to the very important issue of consent’ (Harding, 2015). In this respect, the desire to ‘innovate’ (White and McMillan, 2020) sexual violence away through technologies aimed at preventing, mitigating and/or documenting evidence of consent could result in a situation where victims are rendered complicit, and thus to blame for what occurred, and the complexities of their lived experience are dismissed in favour of technocratic app-based technology.

The foregoing analysis has established that problematic norms around self-surveillance and the avoidance of ‘risky’ behaviour are reproduced in the context of TA-SV resulting in blame being directed towards the victim; and, consequently, to the normalisation and trivialisation of such violence. It has also been shown that the increasing use of digital technologies as part of background evidence for ‘offline’ forms of sexual offending creates new avenues through which victims encounter blame and shame, creating additional deterrents to reporting experiences of sexual violence. Furthermore, the creation of consent apps can work to responsibilise victims and excuse offenders, thus doing more harm than good and adding to the ways in which narratives of victim blame can emerge in criminal justice processes. With this in mind, the following section moves to discuss the impact of the digital world on the understanding and conceptualisation of victim-offender dyads and continuums.

**From Victim-Offender to Victim-Offender-Bystander Continuums**

A further way in which cultural constructions of victimhood are reified and expanded in digital settings is via what may be termed ‘victim-offender-bystander continuums.’ As discussed above, the literature on critical victimology highlights the potential cross-over between victim and offender status (see e.g. McAlinden, 2014), in which victims may be perceived as having been complicit as ‘participating victims’ (Olafson et al., 1993: 14) in either their own victimisation or that of others (see also Bouris, 2007). Within this broader context, the victim-offender dyad is usually presented in two dimensional terms, with little or no consideration of third party or ‘bystander’ involvement - although there is a growing literature with a specific focus on bystander prevention programmes (Banyard et al., 2004; McMahon and Banyard, 2011). Within the realms of TA-SV, however, the cultural normalisation of ‘risky’ sexual behaviour via digital platforms, among adults as well as adolescents (McAlinden, 2018), and the ease of digital transmission of messages or videos means that the victim-offender continuum is arguably much more nuanced and complex. This is evidenced, for example, in cases of non-consensual sharing of intimate images (such as ‘sexting’ or ‘revenge pornography’) where the victim may have taken the initial image of themselves. This factor gives rise to two principal consequences. First, there is more of a potential ‘ripple effect’ in terms of who bears responsibility for sexual victimisation as either a ‘perpetrator’ or ‘bystander.’ Second, this latent complexity of TA-SV concerning identifying the relevant victims, perpetrators, or bystanders, is also not easily accommodated with legal or professional discourses.

Although these issues can arise in the context of adult offending, they are well illustrated in relation to peer-to-peer forms of sexual abuse and exploitation amongst young people. For example, the third-party making or sharing of indecent images or
videos of sexual assault, challenge dominant victim-offender dichotomies in relation to sexual violence. While many commentators argue against the ‘panic’ that may occur in relation to teen sexting (see e.g. Hasinoff, 2015) and for the non-criminalisation of the making or sharing of ‘indecent images’ on a consensual basis (see e.g. Gillespie, 2013; McAlinden, 2018), it is generally accepted that the non-consensual or third-party dissemination of sexually explicit images or videos to others outside the confines of an inter-personal relationship is problematic (Walker and Sleath, 2017). Within this broader context, digital forms of peer abuse expand the victim-offender relationship by the inclusion of potentially many others—such as within the context of an entire class, year group or school or beyond—either as potential ‘perpetrators’ or ‘bystanders.’

In particular, TA-SV poses practical challenges to traditional victim-offender dualisms along gendered and age dimensions. Reflecting the discussion around ‘ideal victimhood’ above, empirical evidence suggests that professional perceptions of online forms of harmful sexual behaviours among young people are often highly gendered with young females deemed to be at risk of sexual victimisation and young males to pose a risk as sexual aggressors (McAlinden, 2018). The realties, however, are often far more complex. Recent research highlights that perpetrators of peer-forms of TA-SV such as ‘sexting’ have diverse identities and motivations ranging from coercion to pleasure (see e.g. Bianchi et al., 2021; Lee and Crofts, 2015). Agnew (2021), for example, shows how young people are exposed to a range of gendered pressures in relation to ‘sexting.’ Similarly, Dodge (2021) highlights incidences of young women and girls sharing indecent images of others out of ‘jealousy’, and boys sharing images of girls to avoid bullying and shaming from their peers. Research into the sexting experiences of self-identifying LGBT adolescents demonstrates that the range of motivations for sexting amongst sexual and gender minority youths are thought to be even more complex, while the pressures to send sexual images may be significantly higher (Van Ouytsel et al., 2020; Van Ouytsel et al., 2021).

The complexities of peer abuse outlined above illustrate the ways in which the typical juxtaposition of ‘ideal victims’ and ‘ideal perpetrators’ can struggle to accommodate victim-offender continuums (McAlinden, 2014). Indeed, the traditional cultural framings of ‘ideal’ victims and perpetrators of contact forms of sexual violence outlined above leave little space for these complexities and, as a result, can lead to young people failing to see themselves as victims and/or offenders (McAlinden, 2018) or even as bystanders. Further to this, the spread of videos or images of sexual assault online can lead to a ‘virtual restaging’ of the event through altered videos or memes designed to deflect responsibility from the perpetrator, and also shield the audience from blame, by presenting the visual as humorous (Oles-Acevedo, 2018). At the level of praxis, ‘statutory’ (Wolak, et al., 2004: 432) or ‘compliant’ victims who do not self-identify as such may pose unique challenges for law enforcement in terms of failure to co-operate or complaint withdrawal at the police investigation stage (McAlinden, 2018). As a whole, there is a dearth of both theoretical and empirical work in relation to the role of bystanders in particular in both digital and non-digital forms of sexual violence (see exceptionally, Harder, 2021, in the context of sexting).

Moving beyond instances of image-based ‘sexting’, the existence of digital evidence, such as video or picture evidence capturing sexual violence being perpetrated, also
contributes to a ‘victim-offender-bystander continuum.’ According to Dodge (2018: 304) such digital evidence has the potential to act as the ‘model witness’, challenging the traditional ‘he-said-she-said’ nature of sexual violence cases by providing an independent account of the incident unhindered by the flaws of human memory (see also Powell, 2015). However, such evidence also exposes the collective nature of digital forms of sexual violence, and broader forms of harm which potentially ensue, going beyond the traditional victim-offender dyad. By way of an international example, in the high-profile 2012 Steubenville case from Ohio in the US, the 16-year old victim only learned of the sexual assault committed against her by her peers while she was unconscious due to photographs and videos of the assault being posted on social media. As Laskey (2013) argues reflecting on this case, highlighting the potentially significant, yet sometimes unacknowledged role of the ‘bystander’:
‘Instead of helping, bystanders posted, tweets, photos and videos documenting and making light of the alleged attacks. If a bystander would have stepped up, by saying this is wrong or alerting the girl’s friends, the events on August 11 could have been different.’

Similarly, in Nova Scotia, Canada, a photographic image of the complainant, 15-year old Rehtaeh Parsons, vomiting out a window while one of the alleged perpetrators appears to penetrate her from behind was shared on social media.15 Parsons was subjected to relentless bullying as a result of this image and killed herself 18-months after the alleged assault. A man subsequently plead guilty to taking the photo and was sentenced to a conditional discharge, including 12 months of seeing a probation officer (BBC, 2014). In speaking to the ‘bystander effect’ relating to omissions rather than acts, Parson’s father explained in an interview:

It’s people who don’t do anything. People who will see something happening or a person in distress or in trouble and not think that it involves them and they just don’t want to do anything about it. The bystander (issue), I know in my daughter’s case, it could have made a difference, a big difference, but it just never happened (McCooey, 2017).

In this respect, while ‘digital traces’ (Dodge, 2018: 304) of an assault can provide ‘something like a real-time accounting of the assault’ (Oppel, 2013), as noted above, they also implicate a wider range of people and raise questions around how responsibility should be allocated among those who witness, document and share images of abuse.

It is worth reiterating that such complexities are not limited to young persons’ experiences, nor are they limited to incidences of non-consensual sexual activity. To take a recent example, in July 2021 a taxi driver in Northern Ireland distributed a video of two passengers engaged in a sexual act in his taxi without their consent. When the video subsequently went viral, the incident was referred to the police and the taxi driver lost his job (Toner, 2021). Yet, while the taxi driver’s culpability in sharing the video has been recognised, to date there has been limited discussion about the role of the numerous other individuals who assisted in widely distributing the video. In contrast, the media coverage and legal proceedings surrounding the above cases generated widespread public debate and broader controversies concerning victim-blaming, rape and rape culture and ‘cyberbullying’ among young people. In relation to the second case in particular, the fact that the Canadian legal system had initially failed to bring charges
against the alleged perpetrators, including those who had taken the photographs, pro-
voked public condemnation. In general terms, the law is not well-equipped to cope
with complex forms of TA-SV such as peer-to-peer sexual exploitation and abuse
(McAlinden, 2018). This includes in particular composite forms of sexual violence
which traverse digital and non-digital settings and which may involve multiple perpetra-
tors as active participants as well as bystanders. Moreover, there are also related difficul-
ties of engaging young people as ‘emotional bystanders’ (Harder, 2021) around digital
forms of sexual violence.

Thus, while scholars have critiqued narrow and binary conceptualisations of victim/
offender identities, the increasing role of digital technology, not only as a tool to perpet-
rate abuse but to capture and document this abuse, contributes to a new ‘victim-offender-bystander’ continuum that expands and complicates the key tensions
identified in this paper surrounding victimhood, blame and responsibility.

Conclusion

This article has examined some of the core complexities and tensions around cultural dis-
courses on sexual violence in digital contexts and their implications for legal responses to
TA-SV. Drawing on the literature on critical victimology and wider feminist legal scholar-
ship, it has highlighted how some of the core cultural constructs and complexities
which underlie contact forms of sexual violence are reproduced and amplified in
digital settings. These relate in particular to the creation of narratives around the individ-
ual characteristics of the ‘ideal victim’; the normalisation and trivialisation of ‘non-
contact’ forms of harms resulting in victim blaming and the absolution of offender
responsibility; and the social designation of ‘victims’, ‘perpetrators’ or ‘bystanders.’

We have demonstrated that these narratives are manifest not only within cultural dis-
courses but within legal, including evidential, settings. We argue that it is these
broader, pre-existing ideological contestations around the meaning of ‘victimhood’,
‘harm’ and ‘blame’ which coalesce to problematise cultural and legal discourses on
sexual violence in digital settings.

Our findings highlight that continued engagement with these complexities is necessary
to meaningfully engage with and address harms perpetrated both online and offline. In
particular, the findings suggest several areas for future scholarly research. First, the domi-
nance of ‘ideal victim’ narratives that centre the experiences of children and cis, white,
heterosexual, middle-class women demonstrate the need for further intersectional ana-
lysis of TA-SV and recognition of the disproportionate impacts of these forms of violence
on marginalised communities. Second, ongoing scrutiny is needed of the ways in which
cultural understandings of victimhood are shaping the use and interpretation of digital
evidence, resulting in the replication, augmentation, and entrenching of narratives of
victim blame and responsibilisation in policing and the courtroom. Third, the ‘spaceless-
ness of technology,’ normalisation of ‘risky’ sexual behaviour and expansion of digital
methods for perpetrating sexual violence highlight the relevance of the ‘continuum of
sexual violence’ as an analytical tool and means of challenging behaviours related to
TA-SV. Finally, greater research is needed into the potential ‘ripple effect’ in terms of
who bears responsibility for sexual victimisation.
At the level of policy, the analysis also challenges us to think beyond binaries and narrow constructions of quantifiable ‘harm.’ This means questioning the ‘normalising discourse’ which may occur around sexual violence in digital settings, and which can otherwise impact cultural and legal understandings of ‘victimhood’ and ‘harm’ and obfuscate the allocation of blame and the acceptance of responsibility for wrongdoing. More broadly, it also entails recognising the often complex, fluid and ‘messy’ nature of sexual violence in the digital age which may traverse both contact and non-contact forms of sexual violence and potentially involve multiple victims and offenders as well as culpable bystanders.

Acknowledgements
The authors would like to thank the anonymous reviewers, Dr Kathryn McNeilly and Dr Kevin Hearty for their helpful feedback on earlier drafts.

Declaration of Conflicting Interests
The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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Notes
1. Research conducted by Turgoose (2016) estimated that there are 140 million users of social media sites world-wide, including 10 million users within the United Kingdom and where 80 per cent of access is via smartphone. Such figures would almost certainly have risen.
2. In England and Wales, section 15 of the Sexual Offences Act 2003 (as amended) created the offence of ‘meeting a child following sexual grooming’ i.e. where the arrangement to meet is made online.
3. Sextortion is where victims are lured into performing sexual acts in front of a webcam and their actions are recorded by offenders, unbeknown to victims, who then use the footage to blackmail individuals. This is captured by the offence of blackmail via the Theft Act 1968, section 21.
4. See the offence of ‘disclosing private sexual photographs or films with the intent to cause distress’ via the Criminal Justice and Courts Act 2015, section 33.
5. Upskirting – the act of taking a photograph under a person’s skirt without their permission – is now a criminal offence of voyeurism under the Voyeurism Act 2019.
6. Cyberflashing is the unsolicited sending of sexual images or videos especially of the genitals over digital networks. While criminalised in Scotland (Sexual Offences (Scotland) Act 2009, section 6), it is not currently an offence in England and Wales or Northern Ireland.
7. Controlling or coercive behaviour in an intimate and family relationship is an offence under the Serious Crime Act 2015, section 76.
8. Sexting is potentially caught by legislation governing ‘child pornography’ which criminalises the creation, possession and distribution of indecent images of children under eighteen years. See the Protection of Children Act 1978 (as amended).
9. See e.g., ‘Roll Red Roll’ (2018), the Netflix documentary on the 2012 sexual assault case in Steubenville, Ohio, USA.

10. While we acknowledge that some victims prefer the term ‘survivor’, we use the term ‘victim’ throughout, consistent with the critical victimology literature and feminist legal scholarship. This is not intended to deny the agency of those who experience sexual violence. We use the term ‘complainant’ when discussing criminal investigations and sexual offence trials.

11. Examples of digital evidence include photographs or videos of the alleged sexual violence captured by the alleged perpetrator, bystanders, or CCTV, and electronic communications such as text messages, emails or social media conversations exchanged before or after an alleged act of sexual violence.

12. This might include identifying a perpetrator or digital evidence of a confession. Reflecting the importance of electronic evidence to the defence, see the Liam Allan case where previously undisclosed text messages from the complainant led to the collapse of the trial (Smith, 2018) and a Crown Prosecution Service investigation in the same year that uncovered 47 cases in which there were problems with disclosure of unused material to the defence (CPS, 2018).

13. R v Ghomeshi (2016) 155 ONCJ.

14. R v Zhou, (2016) ONCJ 547.

15. Case failed to lead to a charge of sexual assault.

16. See the 2015 Amazon Prime documentary, ‘No Place to Hide: The Rehtaeh Parsons Story.’

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