

Minerva Access is the Institutional Repository of The University of Melbourne

Author/s:

Thompson, Chrissy

Title:

Everyday misogyny: on 'upskirting' as image-based sexual abuse

Date:

2019

Persistent Link:

<https://hdl.handle.net/11343/224155>

Terms and Conditions:

Terms and Conditions: Copyright in works deposited in Minerva Access is retained by the copyright owner. The work may not be altered without permission from the copyright owner. Readers may only download, print and save electronic copies of whole works for their own personal non-commercial use. Any use that exceeds these limits requires permission from the copyright owner. Attribution is essential when quoting or paraphrasing from these works.

Everyday Misogyny: On ‘Upskirting’ As Image-Based Sexual Abuse

Chrissy Thompson

Submitted in total fulfilment of the requirements for the degree of Doctor of Philosophy

ORCID: <https://orcid.org/0000-0001-5461-008>

School of Social and Political Sciences

UNIVERSITY OF MELBOURNE

May 2019

This is to certify that

- I. the thesis comprises only my original work towards the PhD except where indicated in the Preface,
- II. due acknowledgement has been made in the text to all other material used,
- III. the thesis is less than 100,000 words in length, exclusive of tables, maps, bibliographies and appendices.

Chrissy Thompson

Preface

This thesis contains content that has been published in the journal *Feminist Media Studies*. The article is entitled ‘A Media Archaeology of the Creepshot’ and was published in 2018. This is a co-authored publication where the second author, Dr. Mark Wood, contributed no more than 20% (see Appendix One for more information). I have included sections of the article in this thesis in Chapter Four in the sub-section ‘Creepshots and Folksonomies of Misogyny’ which can be found on pages 111-119. Further, material from Chapter Six of this thesis has been accepted for publication in the Journal *Violence Against Women* on 20 May 2019. Finally, I would like to acknowledge the funding received to complete this thesis including the Australian Post-Graduate Award (awarded in 2013), the John Barry Memorial Travelling Scholarship (awarded in 2016) and the Graduate Research in Arts Travel Scholarship (awarded in 2018).

Abstract

The objectification of women by men is an enduring reality that has continued to evolve with the technics of everyday life. Premised on presumptions of sexual access to women, upskirting is one expression of such objectification, as well as the misogyny and violence that structures women's everyday lives. In Victoria, 2007 the *Summary Offences Amendment (Upskirting) Bill 2007* was enacted in response to a high-profile case of upskirting that occurred earlier that year. Amidst growing concern in other Australian states and territories over the ramifications of our rapidly expanding technological landscape, upskirting triggered significant media and political commentary between 2005-2014. In this thesis, I trace how upskirting became an issue of social concern in Australia prior to its criminalisation in Victoria and examine how it was framed in political and media discourses. This thesis grapples with the multiple manifestations of misogyny that structured understandings and responses to upskirting. I argue that we must re-focus our gaze and fray the familiar to unravel one key problem of the everyday: the obfuscation and denial of the ordinary men and their misogyny that is responsible for the systemic abuse of women.

Acknowledgements

I have often joked with friends that my twenties have been defined by my effort to give birth to my PhD thesis. In the time it would have taken for three baby elephants to consecutively gestate, instead I have produced 100,000 words (weighing roughly the same amount as three elephants when the emotional weight poured into its construction is considered). Admittedly, more than once throughout this process I have thought that a baby elephant would be easier to create than this thesis.

Despite my carefully crafted timeline and my resolve to complete my doctorate by the time I was 25, as John Allen Saunders wrote in 1957 “life is what happens to us while we are making other plans”. Unsurprisingly, during the six years it has taken to complete this thesis, I have experienced the delights and disasters of early adulthood ranging from buying my moustache parrot Reggie and rescue puppy Bentley, to suddenly adjusting to life using a wheelchair. Such events have left me both richer and poorer (depending on the kind of currency I was required to expend), however all experiences have taught me something valuable, leaving me feeling wealthy in wisdom. This feeling of spiritual affluence was fortunate really, given how depressingly depleted my finances were at times, living on a meagre student stipend.

This thesis would not have been written, if not for the support of a tribe of wonderful people in my life. I would first like to acknowledge John Fitzgerald’s distinctive contributions to earlier chapters of this project. To Dave McDonald – you agreed to come on board at the eleventh hour and have been generous with both your time and feedback. It is a difficult task to be thrown into a PhD that is already formed, where key decisions have already been made and the form and substance of the project is (mostly) determined. Your support in helping me create the project I envisioned at an incredibly stressful and demanding time in my candidature, left me feeling gifted with an academic Godsend in my hour of need. Thank you for helping me cross the line and for your support over these last 12 months, I am so grateful for your presence during this period.

To my primary supervisor Alison Young who has accompanied me through this journey since 2013. Your understanding and support over the last six years and your encouragement to

never give up has helped ensure I completed within four years full-time equivalent candidature, despite failing health, changing life circumstances and wavering confidence in my own ability. As an undergraduate student, you were someone I looked up to with immense respect as a prolific, intelligent and kind academic. Having the opportunity to work with you has been one of the highlights of my PhD experience. Thank you for your guidance throughout this process and for tempering my enthusiasm with your sagely experience and advice. Your ability to keep me focussed would impress all of the teachers who repeatedly wrote “Chrissy would excel if only she would focus more” in my school report cards (except of course for the incredible Ibbi Fulu who always encouraged me to follow my passion and believed in me before I had learnt how to believe in myself). Without your encouragement and guidance, I would not have made it to the finish line.

To my beautiful friends who have cheered me on for over half a decade: your enduring patience as I obsessively ranted about pictures of privates and other equally inappropriate dinner-table topics has not gone unnoticed. Thanks for still inviting me out to dinner anyway. Your support during the most challenging period of my life thus far has made all the difference. I am blessed to have received such unconditional love over the years. I must also acknowledge my enormous team of mates who doubled as my proof readers: Miles, Jenny, Gordon, Teagan, Kim, Rhiannon, Bron, Jo, Jack, Adam and Hannah – thank you for giving up hours of your time to help me improve this thesis. I’d like to especially thank the incredible Chantel and Beth who read the entire beast cover to cover all while pregnant or caring for tiny newborn infants. Little Max and Mini Tel have the most incredible mothers and I am so grateful that you have been part of my journey through this thesis and in life.

To Mum, Dad and Adam; thanks for believing in me and helping me to become the person I am today. You taught me first how to fight with my fists up in the boxing ring and then how to fight for my dreams armed with resilience, determination and the trademark Thompson stubbornness, grit and determination. Your eternal love and encouragement throughout my life has pushed me on in times where I wanted to throw in the towel. Thanks for helping me knock out my thesis.

To my other family – Robert, Linda, Amanda and Matt, thank you for helping me through the good times and the bad. There was nothing a well-timed Dad-joke or game of Cluedo could not ameliorate and I am grateful to you all for teaching me how to be still and how to “let it

be”. To my Firestorm Dojos family and my sister Roz, you taught me as a twelve-year-old that “limitations you thought you had, don’t exist” and that I could do anything I set my mind to. You came through for me when I felt flat and my hope was punctured by the uncertainty of facing the unknown, as my body suddenly stopped working. For teaching me how to be a martial artist in the dojo and in life – in *Ishoa*, thank you for everything.

To my partner in crime, my best friend and birthday thief Dr. Mark Wood. You were my carer for many months while I was in and out of hospital and nursed me back to health when I was ill in both body and spirit. You listened to me speak about my thesis, helped me nurture it for longer than anyone else and most of all you cheered me on louder than anyone, which is quite a feat for someone as softly spoken as you. You are a good sort – I think I’ll keep you.

Lastly, to the men hiding in the shadows cast by a culture afflicted with misogyny, to the ordinary men who are perpetrators of everyday acts of gender-based violence, intimate intrusions and image-based sexual abuse. I see you. To every woman who has been a victim of image-based (and all other forms of) sexual abuse; this thesis is for you most of all and for a future where upskirting and sexual violence no longer exists.

Contents

Abstract	iv
Acknowledgements	v
Contents	viii
List of Figures	x
Chapter One: Explicating the Problems of the Everyday	1
Research Questions, Objectives and Significance	5
Definitions and Framing.....	11
Thesis Overview	18
Chapter Two: Theorising the Everyday	22
A Brief History of the Everyday in Social Theory	23
Everyday Context: Space and Time in the Everyday.....	31
Everyday Practices: Mundane Mobilities	44
Everyday Legalities: Law in Urban Thoroughfares	52
Conclusion.....	59
Chapter Three: Researching the Routine	61
The Theory of Moments: A Methodology For the Mundane	61
Media Archaeology.....	63
Observing the Creepers.....	66
Critical (Feminist) Discourse Analysis.....	68
Conclusion.....	78
Chapter Four: The Technics of Everyday Voyeurism	80
Gendered Regimes of Visibility.....	81
Painting Peeping: 18 th and 19 th Century Representations of Upskirting	88
Photography and Film in the 20 th Century.....	95
Video Voyeurism and the Surveillance of Women	103
Smartphones and the ‘Information Superhighway’	107
Creepshots and Folksonomies of Misogyny	111
Conclusion.....	119
Chapter Five: The Emergence of the Techno-Pervert in Australia.....	122
Breasts, Beaches and “Dodgy Types”.....	124
Protecting the Fantasy of Australian Childhood.....	133
Responding to the Exceptional: The Australian Open and Banal Nationalism	139

Boundary Transgression: The Polluting Gaze of The Techno-Pervert.....	149
Conclusion.....	162
Chapter Six: Skirting Around the Issue	164
Regulating the Routine: Legal Responses to Upskirting in the West	164
Australian Responses to Unauthorised Visual Recordings	169
Summary Offences Amendment (Upskirting) Bill 2007	174
Linguistic Avoidance and the Violence of Denial	179
The Invasion of (Wo)Men’s Privacy	182
Diffusing Responsibility to the Digital.....	187
‘Sick Perverts’ and the Exoneration of Ordinary Men	195
The Patriarchal Resistance of Misdirection.....	200
Conclusion.....	207
Chapter Seven: Fraying the Familiar	211
Confronting the Creepers: The Rise of an Online Call-Out Culture	213
The New Criminology of Everyday Life: Towards a Criminalisation of the Self.....	218
Appendix One – Co-author Declaration	224
Appendix Two – Online Observation	225
Appendix Three: Upskirting Incidents in Media Sample by Year and State.....	226
References.....	227

List of Figures

Figure 4.1 – <i>Les Or áades</i> by Bougereau	90.
Figure 4.2 – <i>Lady Godiva</i> by John Collier	93.
Figure 4.3 – <i>The Swing</i> by Jean-Honore Fragonard	94.
Figure 4.4 – Mark Lewis in Peeping Tom looking at one of his victims with his camera	102.
Figure 4.5 – Screenshots taken from Twitter following the #creepshot hashtag	115.
Figure 4.6 – Creepshot tips taken from www.creepshots.com	118.
Figure 4.7 – Forum discussion of creepshot by users	119.
Figure 5.1 – Women in bathers at Collaroy Beach	125.
Figure 7.1 – Tegan Portener’s Facebook post about her encounter with the Newcastle train upskirter	216.

Chapter One: Explicating the Problems of the Everyday

It was my first day of high school in late January 2003. I had just posed for the obligatory 'first-day photograph' for Mum. She used a compact one-use Kodak camera which allowed for one roll of film, or about 20 photos, all of which were spent embarrassing me with each click and wind of the device. As a young girl on the brink of adolescence, I ventured into the exciting and terrifying wilderness of Wantirna Secondary College located in the outer eastern suburbs of Melbourne. I knew the school had recently gained a 'bad reputation' which it had struggled to free itself from over the few years prior, but it was the school I was zoned for so there was no discussion over where I would be going. The only other option was an expensive local private school my parents could never afford on their salaries as commercial cleaners.

Following assembly, it was finally lunch time. Eating my dark rye bread sandwich filled with almond spread quickly earned me ridicule from my classmates, so I left the locker bay to find some familiar faces from primary school who were sitting outside the canteen. Suddenly, a gust of wind passed by and, dressed in our summer uniform, our dresses flew up. A group of boys from my class who were walking past, burst into laughter and called out to me "Nice undies, Thommo!".

It was then that I noticed the other girls were all wearing boxer shorts and that I was the only one who wasn't. Upon asking them why they had shorts on (and that they were surely annoying on this 33-degree day?), they responded that they had to wear them in case the boys saw their knickers (or worse). I asked why they didn't just wear shorts or pants, perplexed at the lengths I was expected to go to protect myself from teasing and exposure. As it turned out, winter uniform wasn't permitted in summer (so no pants) and there were no shorts designed for the girls' Summer uniform which meant we'd have to buy a pair of the gruel-grey boys' shorts – in 2003 and within the heteronormative Wantirna College community, that was an option in name only.

My new girlfriends must have felt a bit sorry for me, observing a helpless, awkward, freckled girl who had no idea about the unspoken rules of the girls' Summer uniform. Fortunately for

me, they would become my teachers: always hold the edges of your dress on a windy day; never sit cross-legged in the courtyard; cross your ankles under the tables in class; tuck your legs back so you aren't 'flashing' the rest of the class; when walking with your school bag, shift it every few seconds to ensure your dress doesn't creep up and ideally have a friend walk a few paces behind you on an alternating basis to detect any sign of unwanted dress creeping...

That afternoon, after berating Mum in the car for not thinking to buy me any boxer shorts, I insisted she take me to our local shopping centre to buy a few pairs of these essential garments that I hadn't even known were a prerequisite for attending school that morning. Determined to make amends for my terrible first day, we walked into the discount store Best and Less. To my horror, that same group of boys were loitering out the front of the shop with heavy school bags. As we walked past, I heard them giggling. Self-consciously, I pulled my dress down half a dozen times in case it had caught on my school bag and risen up. It hadn't. Against my better judgment, I turned around to see the group feigning a Marilyn Monroe scene to mock me further. Mum asked mildly if they were friends of mine. I murmured that they weren't, as we made a beeline for the nightwear section to protect my knickers and me, from further humiliation...

In the previous account, we can see my realisation as a 12-year-old girl of what it meant to move through this world with a female body. I did not know it then, but I was living through what Simone de Beauvoir (1953: 351) identified as the perennial penetration of the male gaze: “men's stares flatter and hurt her simultaneously; she wants only what she shows to be seen: eyes are always too penetrating”. This sense of objectification and difference in moving through public space in a female-presenting body results in a gendered experience of the everyday which lies at the very heart of upskirting, the focus of this thesis. Moving through space in a female-presenting body makes up the everyday in ways that are different for those moving through urban thoroughfares with other gender expressions.¹ Because of this, upskirting needs to be understood within the context of this everyday reality I recalled above and as an example of men’s abuse of women. In this thesis, I not only trace how upskirting became an issue of social concern in Victoria and Australia, but also grapple with the multiple manifestations of everyday misogyny and sexism that structure how we think about and respond to upskirting.

Understandings of upskirting have often been divorced from this everyday context as women go about their daily routines. It is unhelpful, however, to separate upskirting from the other kinds of everyday violence, or, as Rachel Pain (2014: 531) describes it, the “everyday terrorism” women experience as part of their daily life. Deploying terminology such as everyday terrorism “muddies the boundaries between forms of violence that are usually framed as public, political and spectacular and forms that are usually framed as private, apolitical and mundane” (Pain 2014: 534). It is this boundary I interrogate in my project and, in doing so, I challenge the taken-for-granted everyday invoked in discourses on upskirting. Like other forms of violence against women, upskirting straddles a divide between public and private; that is, the display of areas of the body marked as private on public websites. Moreover, upskirting concerns the non-consensual capture of a woman’s private parts and can be both exceptional and ordinary: it is exceptional when represented in news media and

¹ I would later discover that a disabled body, whether female or male, is an invisible body. After years of regulating my movements as many women do (never walk alone at night; only move through busy streets; don’t make eye contact with men when alone) and living with the real threat of sexual abuse in its various forms, all of a sudden, I stopped existing. I no longer mattered because I stopped being seen by the male gaze and I similarly ceased pre-empting it whenever I left the house. Since becoming a wheelchair user I have frequently experienced the discrimination of ableism, but my gender identity has all but evaporated and instances of street harassment and cat-calling have totally ceased.

political discourses as a practice perpetrated by “foreigners” (No Author 2013a: np) and “perverts” (Naughton 2005: np) that ruptures the routine.² However, it is ordinary in expressing an everyday misogyny that is commonplace and timeless.

As Powell, Flynn and Henry (2017) recently estimated,³ upskirting and other forms of image-based sexual abuse are a common experience for many Australians. One in ten Australians has experienced image-based sexual abuse and one in twenty has experienced upskirting, a specific form of image-based sexual abuse (Powell et al. 2017). The report found that women over the age of 18 were twice as likely as men to experience image-based sexual abuse and minority groups such as LGBTI individuals and people with a disability were significantly more likely to experience image-based sexual abuse (rates of image-based sexual abuse of individuals with a disability were as high as one in two, for example). Upskirting is ordinary because the core components of upskirting – the objectification of women – are an expression of misogynistic culture. This objectification of women is intimately intertwined with hegemonic masculinity (Connell 2005) and is a practice that has occurred since time immemorial. Today, many thousands of men take and distribute non-consensual sexual photographs of women-victims around the globe.⁴

For this reason, upskirting should be considered a form of what Stanko (1990) has referred to as “ordinary violence”⁵ or what I term ‘everyday misogyny’, although it was not portrayed as such in political and media discourses on upskirting in Australia. Everyday misogyny occurs because of a sexist worldview that hierarchises men above women. As a consequence of this prejudicial view, women are objectified, harmed, disliked and subjected to various kinds of violence by men, rendering women an instrument men use for their purposes and pleasure. Within the context of upskirting, everyday misogyny refers to the intimate intrusion women

² I use the terms ‘pervert’, ‘voyeur’ and ‘sick’ in reference to the media reporting on this phenomenon (see Naughton 2005; No Author 2008a; No Author 2007c; and comments made by Mrs Green, Mr Robinson and Mr Seitz in the August 8th Upskirting Bill debate) (Victorian Parliament 2007a: 2588-2611). Outsiders typically refer to international visitors such as Takuya Muto, the perpetrator of the 2007 Australian Open upskirting (Hunt 2007) who is described at length in Chapter Five.

³ This data was drawn from a 2014 study by Powell and Henry (2014) who surveyed 3,000 Australian adults between the ages of 18 and 54.

⁴ My online ethnography of upskirt and creepshot pages noted dozens of daily updates from different users.

⁵ Stanko (2006: 546) devises a theory of everyday violence that is founded upon the desire to hear ordinary women talk about ordinary violence. This was part of a movement that sought to reveal the seriousness of domestic violence, which Stanko (1990) and others describe as ‘everyday violence’ as opposed to the ‘stranger danger’ narrative peddled by media and popular culture.

are subjected to by men who presume sexual access to them. Everyday misogyny and sexism are articulated in many different ways; upskirting is just one example of how men use and abuse women as a result of this attitude. We must, therefore, start with the problems of the everyday; after all, the everyday is inescapable (Lefebvre 2002). Whilst the problems central to the everyday have often been framed as interruptions and irruptions, this thesis considers the unnoticed creases in the fabric of the everyday and the behaviours which are ignored, denied and not called out.

Research Questions, Objectives and Significance

While undertaking this thesis, I noticed some recurring themes in the responses from people when I described my work to them. After explaining what upskirting was, people would say that I was wise to study something “minor” like upskirting and that studying a “real” or “serious” form of sexual violence would surely be too confronting to deal with daily for years at a time. While an invasion of privacy is unpleasant, they remarked, it is trivial compared to murder or other acts of violence. It was rare that people recognised that upskirting signified both an invasion of privacy *and* a form of what is now understood as image-based sexual abuse (McGlynn and Rackley 2017a; 2017b; McGlynn, Rackley and Houghton 2017; Powell, Flynn and Henry 2017). When immersing myself in this subject matter for several years, upskirting did not feel minor to me. Initially, I wondered whether this was because of my own involvement with the content. It would only become apparent in my third year, after analysing hundreds of media articles and parliamentary debate transcripts, that this concept was repeated both within my data and my personal encounters. In other instances, some of the people I spoke with would reassure me (or perhaps themselves) that only “perverts” and “sickos” would take these kinds of images and that it must be fascinating to study the mind of a voyeur. Such comments led me to interrogate my attraction to this project. I worried that a cathexis on individual pathology – a criticism often levelled at criminologists writ large – might, in fact, be true of my own research. I re-examined my own motivations and cloaked myself in the reflexivity instilled in me as a young undergraduate anthropology student, to ask myself the questions that I was often asked – why upskirting? Why this project and not another?

With a creeping sense of something amiss in these conversations, I continued to build a theoretical framework for this project that accounted for the everyday. Reading social theory on the everyday from scholars such as Lefebvre (2002) and Highmore (2002) made me realise the absence of gender in these discourses. This absence was repeated both within my research and my own everyday life. When discussing upskirting, what was sometimes less evident to those I spoke with was its gendered nature. My interlocutors did not always recognise that figures such as the “voyeur” (No Author 2007a: np) or “pervert” (Naughton 2005: np) can be ways of absolving culture and harmful codes of masculinity from any responsibility for this form of image-based sexual abuse. These acts of denial and avoidance would follow me into the discourse analysis of my texts, where not only people in my life, but journalists and lawmakers would deny the gendered nature of the individuals using miniaturised cameras or smartphones to upskirt, in favour for the genderless “pervert” (Best 2007: np) or “voyeur” (No Author 2007a: np).⁶

Another common response was a reflection on how technology has colonised the everyday; a process that several of my interlocutors thought was responsible for enabling deviant acts like upskirting. Upskirting emerged during a period of great technological upheaval, as Australia and the rest of the globe edged towards the smartphone revolution. However, upskirting did not suddenly appear like a new smartphone app. Technology did not create upskirting and the objectification of women but merely extended it into new terrains. The way many of these conversations with colleagues and family ended was with them rebuking the sinister actions technology enabled when in the hands of the so-called ‘techno-pervert’ (Naughton 2005: np), followed by techno-pessimistic concerns for the future. Caught amidst a storm of excitement and uncertainty about the potentials of this new technology, the criminalisation of upskirting in Victoria in 2007 said just as much about the culture of unseeing the abuse of women by men as it did about our struggles to adjust to the changing technological landscape of the early twenty-first century.

⁶ As I discuss in more depth below in the ‘definitions’ section, image-based sexual abuse and other forms of violence against women are overwhelmingly perpetrated by men against women. As Wood et al. (2018:14) state: “We focus on this type [of violence] because it constitutes the vast majority of the most serious and pervasive domestic abuse (Flood 2011; Kimmel 2010) and is the most likely to come to the attention of criminal justice authorities (Johnson 2008; Stark 2007). We acknowledge the existence of same-sex [violence], however, given that available data indicate comparatively low levels of controlling, repetitive, escalating and life-threatening violence (Frankland and Brown 2014), this reinforces our decision to focus on men’s violence against women”.

Any social science researcher can no doubt relate to the experiences of miscommunication I described above. In my case, however, what these responses illustrated was a consistent pattern showing how upskirting was dismissed, trivialised and circumscribed to the actions of a few “sick” (Morrell 2005: np) “perverts” (Naughton 2005: np). Such a framing is not unique to upskirting and is evident in other forms of gendered violence. In the everyday imagined by lawmakers and journalists, upskirting was exceptional, remarkable and extraordinary. It was never committed by *our* men, but the ‘techno-pervert’ (Naughton 2005), a term which was coined within the news media and refers to a particular kind of framing of offenders who engage in image-based sexual abuse. Far from being understood as the product of a culture that promotes violence against women and as arising out of the everyday misogyny that structures such interactions, upskirting was perceived to be caused by the digitised eye of the deviant other. A quick scroll through Twitter or Reddit, however, quickly dispels this myth – upskirt images are taken every day, all over the world by, as one website describes their upskirters, “family guys who love to hang out” (Maley 2012: np). There are, of course, some broader parallels in how sexual violence is understood here – for example, the stranger myth for sexual assault in general, or the disavowal of the family in understanding child sexual abuse. Such stranger danger representations have not yet been applied in scholarly work on upskirting, however and in Chapter Five, I extend these conceptualisations of the stranger to the upskirt perpetrator as he appears in media representations of the offence in Australia.

As I engaged in more of these conversations, I began to understand how this denial of harm was reflected in and enabled by popular and political discourses representing upskirting. Upskirting is framed as something that emerges out of nowhere, rupturing the everyday. In light of the revelations above and those uncovered during my research, my analysis in this thesis addresses four central research questions:

- 1) How does the emergence and practice of upskirting relate to the technology used to perpetrate it?
- 2) Why was upskirting identified as an issue in Australia in the early 2000s and in Victoria in 2007?
- 3) How did political and media discourses represent upskirting in Australia over a ten-year period (between 1 January 2005 and 31 December 2014)?
- 4) How was the everyday imagined in these discourses?

The first question was designed to situate the practice of upskirting historically and to better understand previous iterations of this form of image-based sexual abuse (McGlynn and Rackley 2017a; 2017b; McGlynn, Rackley and Houghton 2017). In answering it, I examine the relationship between upskirting and the technology used to facilitate it and demonstrate the ways technology was – and is – implicated in producing gendered regimes of visibility. Importantly, my approach avoids a technologically deterministic substantive view of technology that positions new technologies as the underlying cause of emergent forms of image-based sexual abuse (Feenberg 2002: 5). Taking a techno-social approach, it instead implicates upskirting within a history of technology, looking and gender.

To answer research question two, I construct a chronological narrative of upskirtings criminalisation in Australia. Rather than beginning with the triggering event in 2007 (at the Australian Open tennis tournament), I look back to the early and mid-2000s to understand better related issues of social concern connected to technology, public space and bodies. In answering this question, I situate upskirting not only against the history of looking and technology more broadly, but also narrow the focus to Australia and ascertain the socio-political issues of concern prior to the criminalisation of upskirting in Victoria in 2007. The criminalisation of upskirting in Victoria can thus be situated in a broader context at the intersection between issue-creation, media representation and image-based sexual abuse. Such an approach facilitates an understanding of how the issue of upskirting became topical in Australia. Moreover, it enables us to examine what the construction of upskirting in these discourses says about our responses to the changing technological landscape and the gendered social relations that are intrinsically connected with upskirting.

Research questions three and four examine how upskirting was understood and represented in both media and political discourses in Victoria and what this said about the imagined everyday. Underpinning question four was a desire to ascertain what this everyday said about image-based sexual abuse and its implications for women victimised in this way. In an everyday marked by patriarchal resistance and linguistic avoidance, a ‘criminalisation of the other’ functioned to absolve state leaders and the community they represented from any culpability in (re)producing gendered regimes of visibility.

This project makes a number of contributions to the existing and emerging literature on image-based sexual abuse. While valuable work by Powell, Flynn and Henry (2017;

forthcoming) investigates the reach, ramifications and responses to image-based sexual abuse in Australia, an in-depth analysis of the emergence of upskirting in Australia – and, more specifically, Victoria – has yet to be conducted. More broadly, my attention to upskirting contributes explicitly to this body of work in several ways. While there exists work by Powell (2010); Henry and Powell (2014; 2016), Powell et al. (2018), Burton (2005; 2007) and McGlynn and Rackley (2017a; 2017b) into non-consensual sexual photography, technology-facilitated sexual violence and image-based sexual abuse, upskirting has tended to be subsumed within broader frameworks as one of many different forms of sexual violence. This framing is a useful way of conceptualising the continuum of violence; however, it elides a closer analysis of how particular types of image-based sexual abuse become criminalised and what the thresholds and tipping points involved in this criminalisation process might be.

The conceptual framework I adopt to analyse upskirting is distinct from pre-existing frameworks used to understand the offence. It marries feminist literature, social theory, legal geography and mobilities studies and creates a theoretical foundation of the everyday that I used as a lens to inspect the discourses mapping the rise of upskirting in Victoria. For example, one of the more unusual theorists I use in this dissertation is Henri Lefebvre. I draw on his theory of moments, the triad of space and understandings of the everyday and combine it with other literature on feminism, space, movement and law. In doing so, I develop a foundation that takes the everyday seriously as a sensitising concept and asks how the everyday was invoked in response to perceived threats of upskirting. Other contributions of this project include the use of the media archaeology method which traces the use of everyday technology throughout the history of peeping and upskirting. Such an approach enabled me to not only situate upskirting within a broader context but also to understand the use of contemporary media by excavating their continuities with past media.⁷ This technique produces an understanding of how digital media has generated new gendered regimes of visibility and how the emergence of online domains dedicated to upskirting has changed practices of peeping, upskirting and creeping. This approach utilises Brighenti's (2010) work on visibility regimes and emphasised the asymmetrical power of the gaze. This application of Brighenti's (2010) work to image-based sexual abuse within the context of the production of

⁷ See also Wood (2017b) for a media archaeology of fight pages and Thompson and Wood (2018).

gendered vision, allowed me to argue that while technology can extend a practice, it is not responsible for it.

In researching another iteration of upskirting – the creepshot (and what this practice means in a hyper-connected era of social media) – I explore how the notion of ‘folksonomies of misogyny’ might usefully assist in understanding these practices. This concept refers to multi-user tagging practices that function to tag content in a way that fosters harmful sexist attitudes.⁸ My analysis ultimately shifts between different sites where upskirting is constructed ranging from historical, media and political discourses. In Chapter Five, I detail the growing anxiety over new technologies in leisure spaces such as beaches and aquatic centres in Australia more broadly. I frame this social concern as both a fear of new technologies colonising the everyday and as the everyday being violated by outsiders, or techno-perverts.⁹ The focus on these threats, framed as extraordinary and exceptional, meant that other more commonplace forms of upskirting such as those committed in urban thoroughfares were ignored.¹⁰ This chronology of upskirting in Australia is a useful contribution to the field of image-based sexual abuse as it examines critical moments where technology, non-consensual imagery and harm intersected in public discourse.

Parliamentary debates provide another site in which upskirting was negotiated, debated and constructed. In Chapter Six, I conduct a critical (feminist) discourse analysis and explore how acts of linguistic avoidance function in the speech acts by Members of Parliament (MPs) to direct discussions away from framing upskirting as men’s abuse of women. My analysis demonstrates the obliteration of male and state accountability for the objectification of women and the harms it engenders. Here, I contemplate how Garland’s (2000) work on the criminology of the self/other could assist in understanding this phenomenon and ask how we

⁸ See Appendix One for second author’s consent for content from the co-authored publication in *Feminist Media Studies*, ‘A Media Archaeology of the Creepshot’ to be included in this thesis. This article is based on my findings from this doctoral research, rendering me first author and primary contributor. More detail on the specific contributions made by Dr. Wood can be located in Appendix One.

⁹ ‘Techno-pervert’ is a phrase coined in the news media during 2005 and 2006. See Naughton (2005) for example.

¹⁰ I discuss what I mean by urban thoroughfare in more depth on page 42. In the interim, I understand the everyday spaces ordinary citizens traverse as something that shapes and is shaped by space (Kogl 2007: 18). These dynamic and multifaceted milieus (Butler 2009) form the passages, including walkways, train lines, highways and other connecting spaces that are crucial to enabling individuals to traverse the everyday and move from point A to point B.

might interrogate the assumptions about our own role in producing and accepting an everyday that protects cultural norms from accountability when they contribute to men's abuse of women.

Definitions and Framing

The naming of acts has always been an important and powerful act within feminism and it has been particularly important in the area of violence against women. However, naming has also served at times to obscure some forms [of violence] (Westmarland 2015: 104).

Westmarland's statement above speaks to both the power of naming and its potential to obscure violence. In this research, I conceptualise upskirting as a form of sexual harm overwhelmingly perpetrated by men against women. Violence against women affects approximately one in five women globally according to the World Health Organisation and is "effectively condoned in almost every society of the world... [and] operates as a means to maintain and reinforce women's subordination" (WHO 1997: 1). Such violence includes physical, psychological, emotional, financial, social, verbal, sexual and spiritual abuse and should be understood as existing along a continuum of harm (Kelly 1987). Richards and Haglund define sexual violence as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Richards and Haglund 2015: 2).

The effect of the operative word 'likely' in this definition can be problematic when considering forms of image-based sexual abuse because it is very *unlikely* that a woman will ever know of her victimisation – particularly in instances of upskirting which, by its nature, is insidious and covert. Thus, a specific event that goes unnoticed would not directly result in harm. The definition above would, therefore, preclude some instances of image-based sexual abuse from falling under gender-based sexual abuse, thereby absolving perpetrators of accountability and distancing it from the continuum of harm.

Recently, one study found that one in ten men in the United Kingdom did not think upskirting was a form of sexual harm (Tait 2018: np). On www.creepshots.com, one user stated that “we kindly ask women to respect our right to admire your bodies and stop complaining”. Such perspectives trivialise the harm engendered by acts of creeping and reframe violation as victimless admiration. These attitudes are premised on a presumption of men’s right to access women’s bodies and subject women to intimate intrusions to capture images and recordings of their private areas. I contend that situating image-based sexual abuse as a form of gender-based harm is crucial and that it is important to have a definition of sexual violence that can cover non-consensual actions which occur without the victim’s knowledge. There is a broader cultural and gendered harm that is performed through acts of image-based sexual abuse such as upskirting – a harm that extends beyond individual victims and occurs irrespective of whether victims know of their own victimisation. This is misogyny which breeds ideas about men’s access to and rights over, women’s bodies.

In most instances where women become aware of their victimisation, it results in harm, both in terms of the inability to remove images from online spaces and the psychological harm of discovering they have been objectified. In the E-Safety Commission report from October 2017, it was found that “[v]ictims felt a range of negative emotions when they became aware that their private images had been shared without their consent” (E-Safety Commission 2017: 3). Therefore, I advocate for a revision to the first line of Richards and Haglund’s (2015: 2) definition to read instead as “any act of gender-based violence that results in or *would be* likely to result in...”. This subtle shift would capture behaviour such as image-based sexual abuse as it shifts the temporal onus from something that *is* likely, to something that *would be* likely. While upskirting might not cause direct harm to unaware victims, it *would* (and does) cause harm to those who become aware of their victimisation, oftentimes many months or years after the incident has occurred. Moreover, because it is a behaviour that is deeply connected to objectification and overwhelmingly perpetrated by men, it is important that it is categorised as a form of gender-based sexual violence. Changing the definition of upskirting is crucial if we are to include technology-facilitated sexual harms in our definitions of gender-based violence in the future. This is the definition I employ when talking about upskirting as a form of image-based sexual abuse throughout this research – however, it is very different to the way in which upskirting was framed in media and political discourses as a cheap thrill or joke.

Restricted definitions and distinctions in terminology have often resulted in an approach to sexual violence which “treats the gravity of an instance of violence as deriving from the specific form it takes as opposed to the extent of the underlying violation of sexual autonomy” (International Commission of Jurists 2015: 10). This severs continuities with other forms of violence and the history of such abuse, which enables the common trend of men’s violence against women to remain unchallenged. Limited definitions are a common characteristic of the patriarchy – the defining characteristic according to some feminist scholars (Morgan 1992: 238). The abuse of women is also facilitated by misogyny – the dislike of, contempt or prejudice against women because of their gender. Misogynistic attitudes serve to absolve both individuals and communities from taking responsibility for the abuse of women and produce a narrow and homogenous understanding of what counts and what does not count as valid forms of violence.

The way in which violence and abuse is legitimated is also connected to gender stereotypes, particularly relating to stereotypes about the division of labour. Such stereotypes value ‘men’s work’ more highly than ‘women’s’ domestic work, suggest men should control resources and see a separation between the public and private sphere (where women are relegated to the homes and men have authority over and rights to, public space) (Carline and Easteal 2014). Writing on these harmful gendered stereotypes in an Australian context, Carline and Easteal reflect on these characterisations of gender and remark that Australia has “never outgrown the former attitude and our women are still deeply, if unconsciously, impoverished by this dominant cultural characteristic” (Carline and Easteal 2014: 7-8). It is for these reasons, among others, that the framing of sexual violence against women has been problematic, both past and present. From the outset, I want to be clear in naming upskirting as a form of sexual violence against women that is overwhelmingly perpetrated by men. To do otherwise would constitute an act of complicity in hiding men’s abuse by framing upskirting in a way that omits the agent – men – from such actions.

In my discussion of upskirting, I use various kinds of terminology to refer to related but different kinds of voyeurism and non-consensual sexual imagery. Below I explain what I mean by each form of voyeurism discussed during my analysis and my decision to frame upskirting predominately as a form of men’s abuse of women. Given that terminology frames debates and plays a vital expressive role (McGlynn and Rackley 2017a), it is important to be clear from the outset what is meant by terms such as ‘peeping Tom’, ‘upskirting’, ‘video

voyeurism’, ‘creepshots’ and the various frameworks available to understand such phenomena. Throughout this thesis, I use the term ‘privacy’ frequently and borrow Burton’s (2005: 2) approach to understanding privacy as something that is inherently related to contextual consent. The contextual approach to consent understands privacy to be a matter of degree and holds that it is possible to have privacy in a public place. At its core, a ‘contextual approach’ (Burton 2007) to consent takes social practices related to privacy (and potential disruptions to these practices) in a given situation as its starting point. Importantly, a contextual approach to consent protects the right to privacy for those recorded undressing or toileting and for victims of upskirting (see also Munro 2017b).

My overview of terminology is chronological and begins with the practice of peeping and the figure of the peeping Tom. This iteration of voyeurism typically refers to men who look into private dwellings and who derive pleasure from this covert spying, which is a form of voyeurism.¹¹ As technology advanced, so too did practices of voyeurism. This has principally occurred because of “the rise of miniaturised and digital technologies [that] have taken street shooting to a whole new level” (Zeronda 2010: 1132). The mid-1990s, for example, saw the emergence of video voyeurism, referring to a form of voyeurism “using a video camera in order to photograph underneath the clothing of women in public places” (Bell et al. 2006: 301). By 2000, upskirting had largely come to replace the language of video voyeurism. According to Rothenberg (2000: 1130), a typical case of upskirting might be when:

a voyeur takes a shopping bag and places a small video recording device inside the bag pointing upward. He then goes to a shopping mall and waits near the bottom of an escalator. When a woman wearing a skirt gets on the escalator he steps on behind her. He sets the shopping bag down on the step underneath her skirt so the video recording device is pointed up her skirt and turns it on.

Emerging around the same time as the term ‘upskirt’ was ‘downblousing’, a term that referred to the taking of non-consensual images of a woman’s breasts by angling a camera

¹¹ Powell (2010) defined voyeurism as an act whereby sexual pleasure is obtained from watching others, often whilst the victim is engaging in sexual activity or is in pain or distress.

from a height. Finally, around 2010, creepshots came into currency.¹² While often including images of unsuspecting women's genital or anal region, creepshots can include shots of women wearing yoga pants, jeans or shorts in addition to pictures taken up victims' dresses and skirts. As Sanghani (2014: np) explains, "a creepshot is a photograph taken of an unsuspecting woman, or girl, which is then posted onto social media, blogs and websites with the hashtag #creepshot. They focus on her body—particularly her boobs, bum, legs and any visible underwear". Importantly, creeping utilised the advent of the smartphone, social media and the Web 2.0 to create live streams, running feeds, forums and blogs that curated, enabled and encouraged the practice of creeping. This hyper-connectivity resulted in the reconfiguration of such abuse, heralding a shift away from upskirters who lurked in the shadows alone to unified online communities of #creepers.

Until a decade ago, academic scholarship relied on legal definitions such as non-consensual sexual imagery (Burton 2007) to describe practices such as upskirting and creeping. However, since 2010, Powell, Henry and Flynn (Powell 2010; Powell and Henry 2016; Powell, Henry and Flynn 2017) have authored several articles on how unauthorised images are disseminated as a consequence of information and communication technologies. Defined as the use of mobile and online technologies as tools to "blackmail, control, coerce, harass, humiliate, objectify or violate another person" (Powell and Henry 2016: 398), technology-facilitated sexual violence refers to the use of such violence – overwhelmingly (but not exclusively) by men against women. They developed the framework in response to the inadequacy of terminology and laws, which frequently treat "existing and new technologies merely as 'tools' of abuse and as such elide the unique ways in which victim survivors experience harms" (Powell and Henry 2016: 398). Moreover, because behaviours such as sexting (Karaian 2012; 2014; 2015) and so-called 'revenge porn' have often been framed in public discourse in limited and misleading ways, Powell and Henry's concept of technology-facilitated sexual violence provided an opportunity to focus on similarities among diverse behaviours and responses. Above all, they frame technology-facilitated sexual violence as a gendered phenomenon that disproportionately affects women for three reasons (Powell and Henry 2016: 399): like other forms of violence, women and girls are the main targets; the impacts of such behaviours are gendered because of outdated sexual norms for women which

¹² Interestingly, from 2016 onwards, a resurgence of the term 'upskirting' occurred and 'creepshots' were used less and less in popular media. In Chapter Four I discuss the issues with framing behaviour as 'creepy'.

presumes sexual access to women's bodies by men; and finally, it perpetuates what Connell (1987: 98-99) dubs the gender hierarchisation – the “historically constructed patterns of power relations between men and women”.

More recently, McGlynn and Rackley (2017a; 2017b) created their own framework which they dubbed image-based sexual abuse. Like Henry and Powell, McGlynn and Rackley (2017a: 535) take issue with the language used to describe ‘revenge porn’, which they argued refers to “a relatively small, albeit pernicious, subset of private sexual images [that] ... concentrates on the motives of perpetrators, rather on the harms to victim-survivors”. Like other forms of non-consensual image-based harm that have become media-friendly monikers, such terms minimise the harm associated with the activity and disconnect actions from the wider phenomenon of men's abuse of women (McGlynn and Rackley 2017a: 536). Instead, such behaviour should be understood as image-based sexual abuse, a concept that provides a new descriptive tool to better understand “the range of ways in which sexual images are created and/or distributed without the consent of the individual depicted” (2017a: 536-7). Importantly, McGlynn and Rackley deliberately employ the phrase ‘sexual abuse’ to convey the significant harm that may be experienced and identify it as a form of sexual violence. Above all, the breadth and flexibility of this framework enable new and future forms of image-based sexual abuse to be captured.

Both Henry and Powell and McGlynn and Rackley draw upon Liz Kelly's (1987; 1988) work on the continuum of violence. This continuum can be understood in two ways: first, as a continuous series of elements or events that blur into one another and cannot be easily distinguished; and second, as a way to link seemingly distinct phenomena through common factors – the “abuse, intimidation, coercion, intrusion, threat and force” which are used to control women (Kelly 1988: 76). These common factors are described by McGlynn and Rackley (2017b: 27-29) as:

- (i) the sexual nature of the imagery; (ii) the gendered nature of both perpetration and surviving the abuse (predominantly women as survivors of abuse and men as perpetrators); (iii) the sexualised nature of the harassment and abuse; (iv) the harms as breaches of fundamental rights to dignity, sexual autonomy and sexual expression; and, finally, (v) the minimisation of these forms of abuse in public discourse, law and

policy.

Collectively, these scholars seek to make connections between image-based abuse and other forms of sexual violence, enabling a more cohesive, holistic response. While I concur with both approaches, I refer to upskirting throughout this thesis as a form of image-based sexual abuse both for clarity and because this framework avoids reflecting the problematic hierarchies of harm embedded in legal systems which have historically excluded many kinds of harms from receiving acknowledgment and redress. Therefore, I situate upskirting as a form of image-based sexual abuse perpetrated primarily by men against women to illustrate its continuities with other forms of violence. In utilising Kelly's continuum of violence, I demonstrate how 'typical' and 'aberrant' behaviour blur into one another (Kelly 1988: 75).

Concepts such as image-based sexual abuse are important not only at a theoretical level, but because they are useful in ensuring academic research into forms of violence do not become disconnected from the bigger picture of men's violence against women. Westmarland (2015: 104) asserted that "despite knowing it is 'there', men's everyday violence against women in public spaces has been a remarkably under-researched topic over the last two decades... [because of] the difficulty in naming this type of violence". Similarly, Kelly observed that "everyday, routine and intimate intrusions have dropped off so many agendas" (Westmarland 2015: 104). Even when it was on the agenda in the discourses I analysed, the way violence was avoided, hidden or ignored served to obfuscate the everyday reality of men's abuse of women. I understand image-based sexual abuse as one manifestation of everyday misogyny. While upskirting is a form of image-based sexual abuse it is principally an expression of everyday misogyny and image-based sexual abuse is one articulation or sub-category of this everyday misogyny. The harm of upskirting is not limited to the capture of an image or recording; that is, a perpetrator need not succeed in obtaining an upskirt image in order for harm to take place. The act of presuming sexual access to women and undertaking an act of intimate intrusion is just as harmful as actually capturing an image (at which point it thereby falls into the sub-category of image-based sexual abuse, one of the many sub-categories of everyday misogyny). By framing upskirting as a form of everyday misogyny first and foremost, it can attend to the broader harms engendered by such behaviour.

Thesis Overview

My dissertation presents the everyday: the unnoticed, unassuming humdrum of happening that surrounds individuals as they go about their familiar routines. Sidestepping the exciting and extraordinary, I begin my investigation into the everyday in urban thoroughfares that comprise the corridors of circulation of humans, objects, data and law. It is within this milieu that I trace the trajectory of the criminalisation of upskirting in Victoria, 2007. Upskirting does not overtly interrupt the everyday but takes advantage of it by bleeding into the background in order to remain undetected. The presumption of sexual access inherent in the act of upskirting underpins the everyday for women moving through these spaces as they become a target for men's objectification and the victims of sexual violence, often without any knowledge that such behaviour has even transpired. That women can be objectified by merely appearing in public, speaks to how everyday reality is founded on gender disparity and inequality. While the everyday is defined by practices, contexts and the centrality of objects like mobile phones, the everyday also represents the terrain of value judgements, imagination and desire.

In Chapter Two, I detail the theoretical work on the everyday that informs my analysis of upskirting and its criminalisation in Victoria in 2007. Because the everyday is so familiar, it comes "to feel like the backdrop or empty stage for social, political, cultural and economic activities" (Kogl 2007: 2). It is because of this that some have suggested that we do not really know (yet) how to look at the everyday and everyday spaces critically. Perhaps it is because of this that there has been a "failure to analyse and even to see, the legal dimensions of routine urban life" (Valverde 2011: 7). I agree with Valverde's statement but would also add that we have failed to an even greater extent to analyse and see the political dimensions of routine urban life as they relate to gender and the everyday. Therefore, I sketch out a brief history of the everyday in social theory, where I observe a dearth of what the everyday means for women. Conversely, I observe how feminist theory often utilises the notion of the everyday but does not take it seriously as a concept. To overcome this, I call upon feminist theory in my subsequent discussions on the everyday (as value, context, practice and object) and put the everyday into conversation with social theory, mobilities studies and criminalisation literature.

Upskirting occurs during the day-to-day movements of women as they travel through urban thoroughfares (as you cannot be a good #creeper in poor lighting, as the advice on www.creepshots.com stipulates). However, both the Muto case of 2007 that triggered the criminalisation of upskirting in Victoria and the anxieties around illicit photography at Australian beaches and pools between 2004 and 2006 were atypical in comparison with these more common kinds of upskirting.¹³ A specific imagination of the everyday was invoked in coverage of Muto's actions, obfuscating ordinary men's abuse of women from sight and representing the everyday as one threatened by techno-perverts (Naughton 2005), or what Jewkes and Wykes (2012) refer to as 'cyber-paeds'. Despite the media controversy over the issue of new technology in public spaces between 2005 and 2007, it did not result in new legislation. Why, then, did this case trigger the criminalisation of upskirting?

To address these and other questions, I developed a methodology able to examine the discursive and technological underpinnings of upskirting (see Chapter Three). I incorporated three central methods: a media archaeology of voyeurism, online observation of several upskirting websites and social media feeds and a critical feminist discourse analysis of Australian news media and parliamentary texts relating to upskirting. A media archaeology was required because upskirting is not an unprecedented phenomenon, but instead represents the latest in a long line of technologically-facilitated forms of image-based sexual abuse. If we are to understand the current iterations that we see today, we must, therefore, trace the technological developments that have sometimes subtly shaped voyeuristic practices. Taking a media archaeology approach to upskirting involved examining the everyday technologies central to previous iterations of creeping and locating continuities and discontinuities between these iterations insofar as they pertain to technology.

In addition to digging up the technological past of voyeuristic practices, I was also concerned with the technological present of upskirting and related forms of image-based sexual abuse. How have digital media generated new gendered regimes of visibility and how has the emergence of online domains dedicated to upskirting changed practices of peeping, upskirting and creeping? To unpack these issues, I undertook online observation of ten

¹³ Henceforth, I refer to the triggering event in 2007 as the 'Muto case/incident'. This is a deliberate choice in naming the event as actions tied to the perpetrator, rather than as 'the Australian Open incident' as was popularised in news coverage at the time. Naming this event, the 'Muto case' reaffirms offender accountability and does not obfuscate the agent, a strategy of linguistic avoidance discussed in more depth in Chapter Six.

websites, social media groups and subreddits dedicated to upskirting and creeping. In investigating how upskirting emerged as an issue of social concern and how the everyday was invoked in this process, my research was just as concerned with *discourses* on upskirting as *technologies* of upskirting. Finally, a large component of my methodology was a feminist discourse analysis (Lazar 2007) of news media articles, discussion papers and parliamentary discourse on upskirting in Australia. In analysing these news media and political texts, I was concerned not only with how upskirting was represented, but also with how speakers invoked, understood or rendered invisible the everyday in relation to this practice of image-based sexual violence.

Chapters Four to Six are themed around one of the significant components of the everyday outlined in the literature review; Chapter Four explores everyday objects, Chapter Five explores everyday contexts and Chapter Six explores regulation and the everyday.¹⁴ Drawing on the findings of my media archaeology and my observation of upskirting websites, in Chapter Four I examine how we can understand the emergence and practice of upskirting in relation to the technology used to facilitate the behaviour.

In Chapter Five, I examine the everyday contexts of upskirting by means of a reading of Australian news media. Here I set out how upskirting came to be an issue of concern in Victoria by means of a critical (feminist) discourse analysis (CDA) of Australian news media reports on upskirting and related forms of voyeuristic behaviour, tracing how conversations about such behaviours in the media shifted from a concern over voyeurs at beaches and public pools to tourists engaging in voyeuristic practices in urban city spaces. Apparent in discourses about such practices was an ongoing apprehension over the emergence of new optical technologies that destabilised the everyday. Chapter Five also examines the upskirting case that provided the tipping point that brought upskirting to the attention of Victorian parliamentarians: the incident involving Japanese student Takuya Muto in 2007. In doing so, I utilise Jewkes' (2015) account of news values to better understand how this event was represented and how upskirt reporting further perpetuated harmful stereotypes of women and violence.

¹⁴ Furthermore, each chapter engages with various elements of the everyday and this structure does not denote an exclusion of other components throughout the analysis. All three chapters engage with everyday practice and the everyday as a value, for example.

Chapter Six takes up questions of regulation of the everyday, examining the criminalisation of upskirting in Western nations in the years leading up to the creation of the *Summary Offences Amendment (Upskirting) Bill 2007* (hereafter the ‘Upskirting Bill’) in Victoria. In the second part of Chapter Six, I interrogate how Victorian lawmakers responded to the Muto case in January 2007 and conduct a critical feminist discourse analysis of the August 8th Second Reading¹⁵ of the Upskirting Bill. In exposing the everyday as it was imagined in the Second Reading, I utilise Lazar’s (2007: 148) feminist discourse analysis to examine how modern power is often ‘misrecognised’, resulting in forms of gender-based harms appearing as legitimate and natural (see also Munro 2011).

Finally, Chapter Seven concludes this thesis by considering three issues. Firstly, I discuss how victims of upskirters are now turning the gaze back on perpetrators and using the very technologies co-opted by upskirting against them. Through examining the ‘viral justice’ of such responses to upskirting, I argue that we cannot understand contemporary practices of image-based sexual abuse in isolation from the ‘call-out culture’ that digital media have fostered. Secondly, I contend that the approach to upskirting in Victoria represents an example of what I term a ‘criminalisation of the other’ (drawing on Garland 2000): criminalisation that is premised upon and foregrounds the perceived otherness of offenders. Thirdly and finally, I conclude by reflecting on the importance of the everyday as a concept in addressing what Lefebvre (2002: 4) referred to as the ‘problems’ of the everyday. I encourage criminologists to locate Lefebvre’s ‘everyday man’ whom, he claims, “must be everyday or he will not be at all” (Lefebvre 2002: 24). While everyday men are not at all in official discourses discussing image-based sexual abuse, we will increasingly need the possibilities afforded by both an online call-out culture and the ‘criminalisation of the self’, to locate them and the everyday misogyny which renders them and their actions invisibilised.

¹⁵ In Victoria, legislation must pass through both the Lower House and the Upper House (although it can be introduced in either House). The first reading refers to its introduction, while the second involves a two-part process. First the clerk will introduce the Bill by its short title and move for it to be read a second time. Following this, debate on the Bill will take place (however, this is adjourned to enable members enough time to contemplate the Bill under consideration). Occasionally debate will take place during a third reading but often a second reading debate will suffice and a Bill will then be presented to the Governor of Victoria for Royal Assent.

Chapter Two: Theorising the Everyday

“The familiar is not necessarily the known” (Lefebvre 1991: 15) and the everyday is inescapable (Lefebvre 2002). Everyone experiences a different everyday, an everyday that is shaped by our subject(ive) positions and their positionality within a hierarchised social order. As the following will demonstrate, the everyday is a (problematic) concept with a social life and history. As Highmore (2002: 22) suggests, the everyday refuses to remain at the microscopic level and “suggests a desire for something more than an endless series of singular ‘everydays’”. Understanding upskirting demands a focus on the everyday from both a gendered and technological perspective. Specifically, it requires attention to what it means to move through particular contexts, carrying out certain technologically-facilitated practices. Before examining these intersections between upskirting and the technologically enhanced everyday, we must first consider the life, history and utility of the everyday as a sociological concept. In what follows, I place feminist understandings of the everyday into a conversation with social theory to determine what the everyday looks like for the victims of upskirting: women as they move through urban corridors.

This chapter reviews critical scholarly work on the concept, which features in the work of scholars such as Highmore (2002; 2011) and Lefebvre (1991; 2002; 2004).¹⁶ At the heart of my discussion are what Lefebvre dubbed ‘the problems of the everyday’. For Lefebvre, these concerned the rise of the bureaucratic society of controlled consumption. Following the influential work of feminists such as Dorothy Smith (1987), for me, however, problems of the everyday instead centre on technology, law and gendered harm as they are represented in discourses of upskirting in Australia. I follow Smith’s (1987: 89) advice when she suggests that:

Rather than explaining behaviour, we begin from where people are in the world, explaining the social relations of the society of which we are part, explaining an organization that is not fully present in any one individual's everyday experience.

¹⁶ See Kalekin-Fisherman (2013) for a useful overview of some notable contributions to the field.

After a general discussion of how the everyday has been conceptualised within the social sciences, I then focus on four dimensions of the everyday: context (space/time); practices; technologies; and legalities.

A Brief History of the Everyday in Social Theory

I begin this explication of the everyday by asking the same question that Henri Lefebvre (2002: 43) asked in Volume Two of *The Critique of Everyday Life*: “how can everyday life be defined?”. The everyday is many things for many different scholars – it is the familiar, routine and habitual (Highmore 2002:2011); it is a site of boredom (Ferrell 2004; Hayward and Young 2008), oppression (Ferrell 2001a; 2001b) and resistance (de Certeau 1984; Pink 2012), a space of conflict over competing values (Valverde 2012) and an arena where power circulates (Bærenholdt 2013). It is “an impossibly evasive terrain” (Highmore 2002:20); and what Hegel terms ‘the prose of the world’ (Butler 2012).¹⁷ It is by nature fluid, dynamic and ambiguous; it has a social life and undergoes transformations, is re-formulated, re-employed and re-used (Highmore 2002: 18). It is the background ‘babble’, the taken-for-granted world and the backdrop to the stage that we perform upon daily. ‘Everydayness’ as a concept stresses “the homogenous, the repetitive, the fragmentary” (Lefebvre 1999: 87). The ‘common ground’ or connective tissue of all human thought and activity (Gardiner 2002), it engulfs us and consumes us from all directions and all sides (Lefebvre 2002: 43). Within feminist literature, the everyday is central to examining issues including ‘ordinary violence’ (Stanko 1990), ‘everyday terrorism’ (Pain 2014) and the everyday/everynightness of sexual assault (Kelly 2010). As Kalekin-Fisherman (2013: 718) remarks, “from the diversity of theoretical approaches to everyday life, it is clear that this area of study has no single empirical orientation”. The everyday is difficult to tie down, Lefebvre argues, because it is:

A set of functions which connect and join together systems that might appear to be distinct ... [I]t is therefore the most universal and the most individuated, the most obvious and the best hidden ... [T]he everyday

¹⁷ Hegel (2015) unpacks this in *Aesthetics: Lectures on Fine Art* where he reflects on the depth and reach of the quotidian. The ordinary is always our first point of contact with the world and for Hegel, the prose of the world literally means the prose of the everyday and commonplace.

constitutes the platform on which the bureaucratic society of controlled consumption is erected (Lefebvre 1987: 9).

The way the everyday functions to connect and join systems so that their continuity and interrelationship are apparent is just one of the reasons that this conceptual work on the everyday is crucial to my examination of upskirting. The everyday works to demonstrate how discrete components of society (such as technology, law and gendered relations) can come together to produce a particular kind of lived experience for subjects. I wanted to bring the everyday to the foreground of my analysis rather than leave it as an unnoticed and uninterrogated component of the background as it so frequently appears in other studies.

Scholarly interest in the everyday spans back centuries.¹⁸ The everyday has appeared across historical, philosophical and sociological inquiry, yet it is often sidelined in favour of studying ‘superior, specialised, structured activities’ (Moran 2005: 8). Classic sociological works such as *The Stranger* by Simmel (1908/1971) reflected on the encounter with the stranger and the significance of proximity for social interaction (Crang and Thrift 2000).¹⁹ In doing so, Simmel also devised a description of how, in the everyday, people acted as a group or community as part of their daily life (Kalekin-Fisherman 2013). Similarly, symbolic interactionists such as Schütz (1967) and Berger and Luckman (1972) inspected the mechanisms that underpin this interaction in everyday life and enable (or indeed inhibit) associations between people (Kalekin-Fisherman 2013). Taking a different approach, Elias (1994) examined how the ‘civilizing process’ unfolds within the everyday, slowly and subtly shaping the lives of citizens. While the everyday was not an overt focus for Elias, his work charted how individuals’ conduct responded to and shifted to social structures over time. In this regard, Elias’s work might be considered a longitudinal or macro theory of the everyday.

¹⁸ See Benjamin (1972/2002), Bourdieu (1977), de Certeau (1984), Durkheim (1893), Elias (1994), Gardiner (2002), Goffman, (1956), Habermas (1981), Highmore (2002), Lefebvre (1991), Pink (2012), Quentin (2007) and Simmel (1908/1971).

¹⁹ It is perhaps best to view the figure of the stranger as a symbol or an icon through which “all manner of social and spatial tensions may be channeled” (Crang and Thrift 2000: 58).

Raymond Williams' (1958) essay 'Culture is Ordinary' was one of the indispensable early cultural studies texts to look critically at culture as something which is unremarkable and commonplace (rather than exceptional). Some twenty years before Williams', Husserl (1936) devised the concept of the lifeworld, which informed much phenomenological work thereafter. Husserl's concept of the lifeworld was later adopted and adapted by Habermas who defined it as the "taken-for-granted pattern and context for everyday living through which people conduct their day-to-day lives" (Knox 2007: 2). Similarly building on Husserl's phenomenological work, Schütz (1962: 208) argues that everyday life exists as a 'paramount reality', "a pre-constituted world that is taken-for-granted and viewed as a quasi-natural, unalterable horizon of action by lay members" (Gardiner 2002: 5). Gardiner (2002) notes this view of everyday life provides actors with what Giddens (1986) terms 'ontological security': a stable inner life derived from a sense of continuity and order. In this respect, the everyday is an integral part of both our external life and our inner-lifeworld. The sense in rupture of the everyday occasioned by an event such as that in the Muto upskirting case, for example, illustrates what happens when the everyday is threatened and ontological security is compromised.

Later in the twentieth century, others such as Foucault (1975) and Bourdieu (1977) analysed everyday life as it was imprinted upon the body, whether as a result of the knowledge superstructures embedded in power networks or the effects of habitus: dispositions that shape behaviour and practice in everyday life. The everyday is depicted in Foucault's work on normalisation in *Discipline and Punish* (1975). Here he explores how normalisation is connected to social control and disciplinary power. In his example of the prison, desirable behaviours are normalised by society while aberrant actions are punished which produces a particular view of normality that makes up the everyday. Upskirting presents a 'problem' of the everyday because the behaviours, attitudes and discourses at the core of upskirting are normalised through society. This occurs because such views are premised on sexist beliefs which ultimately absolve ordinary men from responsibility for upskirting by framing it as the exceptional and as the isolated to the conduct of a few. Notably, these few are framed as the 'sick' or 'perverted' other in media and political discourses and do not characterise the normal and everyday.

It is worth noting here that I deliberately shy away from using the terminology ‘normal’ except when analysing its use in discursive representations of upskirting and upskirting perpetrators in Chapters Five and Six. I conceptualise the everyday and normal as being similar but different in several key ways. For example, inherent in Foucault’s work on normalisation is his unravelling of the way harmful social norms, such as those relating to sexuality (among other things) function both historically and in late modernity. His primary concern in many of his key texts was with how these norms were used as a biopolitical tactic to create ‘productive bodies’. Conversely, norms are just one of several important components of the everyday in my analysis. I begin instead with the everyday, which includes both spatial and temporal dimensions (the former of which Foucault has been repeatedly criticised for neglecting, owing to his penchant for the latter) and which is used as a sensitising concept that guides my analysis (Foucault 1980). Foucault flirted with the notion of the everyday in his writing on normalisation, but rarely engaged with it directly or in any real depth.

Kalekin-Fisherman (2013: 715) observes that much of the work dominating Western thought on the everyday over the last century was concerned “with *language, rules, positions, or performances* as the decisive formative mechanism for shaping everyday life”. One of the issues with this body of literature, however, is its historical approach and consequent failure to consider the implications of themes identified in this body of work (Pink 2012: 17). Contemporary investigations, by contrast, have tended to focus on the everyday in more diverse and varied manifestations than some of the previous work outlined above. In its own right, scholarship of the everyday as a phenomenon worth studying is a relatively recent occurrence. According to Gardiner (2002: 2), the everyday has become a burgeoning area of interest for scholars in the last two decades.

Contemporary scholarship by the likes of Gardiner (2002), Quentin (2007) and Highmore (2002; 2011) has described the everyday as the accumulation of ‘small things’ that create a more extensive, but difficult to register ‘big thing’ (Highmore 2011). A problem, a contradiction, a paradox: “both ordinary and extraordinary, self-evident and opaque, known and unknown, obvious and enigmatic” (Highmore 2002: 16), it is the taken-for-granted world that constitutes the ‘common ground’ or connective tissue of all human thought and activity (Gardiner 2002). Everyday life is, naturally, different for each person, but the value of

‘everydayness’ is a shared experience and refers to “the landscapes closest to us, the world most immediately met” (Highmore 2011: 1). As a concept, the everyday defines a philosophical perspective on what the content and structure of contemporary life is and provides us with a framework to inspect and understand experience, encounter and event (Quentin 2007). Lefebvre saw the everyday as “an elusive category stretched out invisibly across urban space” (Moran 2005: 23). He repeatedly asserted the importance of the everyday with statements such as “there is no escaping the everyday” and the everyday is “related to all activities” (Lefebvre 1991: 97). Rather than seeing the everyday as a domain of overlooked ordinariness he saw it as the ‘real’ space where we lead our ‘actual’ lives (Moran 2005: 166). I use this approach to frame upskirting as unfolding in the everyday. I frame upskirting as an everyday encounter, or more precisely, an everyday intrusion which often results in a non-encounter because the upskirt victim rarely takes an agentic role in these interactions (that is, the woman remains unaware of the encounter because she is treated as an object rather than a subject). Only when the intrusion and non-encounter becomes an event, such as in the Muto case, does the everyday come to the foreground as threatened.

As discussed afore, Lefebvre maintained that we must pay attention to the *problems of the everyday* (Lefebvre 2002: 4). These concern not just the quotidian and routine but the interruptions and irruptions, which, like fissures in a smooth planet of constancy, puncture the everyday (Highmore 2011). It is unsurprising that the everyday (as a phenomenon worth studying in its own right) has been given attention by criminologists. Indeed, Mike Presdee (2000: 276) emphasised that “crime...involves the everyday lived experiences and practices of all members of society”. Much of this criminological research, however, employs the everyday in a one-dimensional, monolithic way. For some cultural criminologists such as Ferrell (2004: 287), the everyday is characterised by boredom and oppression as a result of capitalism and postmodernity. Some, such as Presdee (2000: 279) have asserted that “crime should be viewed as everyday responses to lives lived out within deprived, brutalised and often lonely social locations”.²⁰ For Presdee and other cultural criminologists, this reflects a class-based account of a stratified capitalist society where individuals seek out excitement in response to institutionalised boredom. This approach is particularly compelling for the

²⁰ This perspective is not isolated to cultural criminologists and is reflected in humanist literature (notably de Certeau 1984; Lefebvre 2002) and can also be traced all the way back to Cohen and Taylor’s (1976) collaboration *Escape Attempts: Resistance to Everyday Life*.

populations at the focus of many of their analyses (graffiti artists, joy riders and base jumpers for example). Further, their approach can be understood alongside Lefebvre's work on the bureaucratic society of controlled consumption, which detailed the effects of capitalism on the everyday and also temporally within the context of the monotony of 9-5pm work day which I discuss further below.

Discourses that characterise responses to crime as a reaction to boredom often uphold deviance as one way of releasing individuals from the "rhythmic vacancy of everyday life (Ferrell 2004: 291) and are appealing when examining crimes of the dispossessed. Given the ubiquity of freely accessible online pornographic material, one of the most common questions I am asked is "why do the upskirters bother taking pictures when there are better quality images available online that they can access without the risk of being caught?". Read in this way, upskirting might be understood as a transgressive action that resists the organised boredom of mass obedience and seeks out intensity or excitement in the face of institutionalised boredom through the act of upskirting strangers. As one of the most popular locations for upskirting is shopping centres, where capitalist consumption drenches the space and the occupants who move through it, such a framework could provide an interesting lens to look at upskirters.

As I discuss at length in Chapter Four, men who take upskirt pictures do treat women as objects to be taken and displayed in online spaces of conspicuous consumption. However, I prefer a framework that puts a greater emphasis on gendered relations given the overwhelming majority of upskirters are men. Moreover, as men occupy one of the most privileged positions in society, this reading of upskirting as a response to boredom might risk categorising the actions of upskirters as a response to institutionalised apathy rather than as an expression of the perennial sexism inherent in our society. As such, upskirting should be read through the lens of everyday conceptualised via feminist literature (Munro 2011; Vera-Gray 2016a; 2016b; 2018) in order to emphasise the important power relations that form part of the everyday for women as they move through urban spaces.

In reflecting on criminal justice within late modern (Western) societies, Garland observed two separate responses to crime: criminologies of the self (also referred to as criminologies of everyday life) and criminologies of the other. Criminologies of the other are typified by opportunity theories of crime such as routine activity (Felson and Cohen 1980) and rational

choice theories (Clarke and Cornish 1986) of crime. Such approaches to crime assume that it is a “normal, commonplace, aspect of modern society” (Garland 2000: 128). This departs from previous criminological beliefs, which assumed that offenders who digressed from ‘normal’ conduct committed crime due to faulty socialisation or individual pathology. In this way, crime comes to be seen as a risk, or an accident rather than as something committed by an amoral, uncivilised deviant. Within criminologies of everyday life, an emphasis is placed on controlling environments, technology, processes and routines rather than on changing the behaviour of deviant, amoral offenders.

Conversely, criminologies of the other are truly *anti-modern* and react to the failures of penal modernism. This response is based on a fundamental disillusionment with the social arrangement and normative codes upon which society is constructed. It is, as Garland (2001: 184) puts it, “criminology of the dangerous other” (Garland 2001: 184). Such an approach opposes a criminology of the self, being premised on defence and the belief that offenders are not like us, employing an ‘us’ versus ‘them’ mentality and subscribing to a definition of offenders as wicked or evil (Garland 2001: 184). The criminology of the other fosters a “condemn more, understand less” approach that scorns understanding offenders; understanding offenders results in their humanisation and means that we see ourselves in them. Looking for ourselves in offenders requires courage and the ability to weather the unpleasant consequences of what we might find. It is much easier to condemn them as ‘other’ and alienate them as ‘monsters’ unlike ‘normal, everyday’ people. A criminology of the other simultaneously functions as a technique of neutralisation of sorts (Sykes and Matza 1957) and as a way of producing solidarity. It enables punitive responses that result in the incarceration of millions without feeling uncomfortable and is also based on a set of shared values which does not tolerate difference.

One criminology adapts to modern society, claiming that we should modify how social and economic arrangements responsible for generating crime are put together if we are to reduce crime. The other is appalled by contemporary culture and calls for the immoral, dangerous underclass – said to be responsible for the problem of crime – to be excluded and better policed. Despite these differences, both of the new criminologies respond to and further entrench what Garland (2001) terms the culture of control, underpinned by the need to protect the public. While these criminologies are substantially different from one another, they do share a focus on control and, importantly, an “acknowledgment that *crime has become a*

normal social fact” (Garland 2001: 185). Both are a reaction against the culture of welfarism and the criminology of correctionalism; one reaction claims that “crime is normal, get used to it”, while the other sees crime as “a plague that afflicts a degenerate society” (Garland 2001: 186). It is not uncommon to see actors switch between these rationalities; Garland suggests this is a political process, governed by short-term goals, self-interest and political calculations by the actors involved.

Garland’s work focusses on the integration of crime into the everyday as a normal social fact and the various reactions to the changing landscape (perceived or otherwise) of the everyday; however, a notable absence in his scholarship is the consideration of how these criminologies of everyday life relate to or affect a gendered everyday. A more nuanced approach would instead interrogate the *kind* of everyday that is invoked in paroxysmal moments of transgression, that is, it would bring the everyday from the background in analyses to the foreground. In line with such an approach, my examination of upskirting has not assumed a particular model of the everyday but instead examines how the everyday has been represented, shaped and invoked in relation to this issue of social concern.

Ultimately, this requires us to examine the underlying power relations that structure the everyday and create a sense of normalisation, routine and ordinariness. As Holmes (2009: 3) highlights “societies are still organised in ways that tend to benefit men more than they benefit women”. One way in which this inequality unfolds is through the association of private space with femininity and public space with masculinity. The everyday for women has been and remains associated with the domestic sphere and the routinised chores, childcare and family duties that many women perform (Pink 2003). While more women are leaving the home to pursue employment, this results in less subjectification from fathers and husbands but more control from (often male) employers and other figures of power in the public world (Holmes 2009: 131). As upskirting illustrates, far from being freed from sexual harm as part of this transition, women face discrimination, objectification and other forms of sexual harm as they leave the home and move through urban thoroughfares.

Many feminist scholars including Kelly (1988; 2010), Pain (2014) and Stanko (1995: 82) have observed that the reality of sexual violence “is a core component of ‘being’ female and is experienced through a wide range of everyday, mundane situations”. Stanko (2006: 546) devises a theory of everyday violence that is founded upon the desire to hear ordinary women

talk about ordinary violence. This was part of a movement that sought to reveal the seriousness of domestic violence, which Stanko (1990) and others describe as ‘everyday violence’ as opposed to the ‘stranger danger’ narrative pedalled by media and popular culture. Because “small disruptions can be enough to upset the taken-for-grantedness”, upskirting serves as an important issue to inspect these technological and social changes and what they mean for the everyday and women (Holmes 2009: 4).

As social and technological changes continue to affect gender, it is still unclear whether the future of gender and everyday life will be characterised by breaks or continuities with the past (Holmes 2009) and so the reality of violence as normal. Because “small disruptions can be enough to upset the taken-for-grantedness”, upskirting serves as an important issue to inspect these technological and social changes and what they mean for the everyday and women (Holmes 2009: 4). Upskirting straddles this divide between intrusions and disruption. The majority of upskirt incidents do not disrupt women as they move through their everyday routines; however, this does not negate the intrusive nature of the behaviour. The everyday is a space/time of constant street harassment, abuse, violence and non-consensual sexual intrusions, the latter of which rarely becomes a large disruption (that is, that the victim rarely becomes aware of the intrusion). I would, therefore, suggest that in addition to ‘small disruptions’ we must pay attention to *non-disruptive intrusions*. These non-disruptive intrusions, which do not necessarily upset the taken-for-grantedness of the everyday, render them insidious and difficult to detect, much like the effects of the technological unconscious (Thrift 2004; Wood 2018).²¹

Everyday Context: Space and Time in the Everyday

In this section I interpret ‘everyday context’, or ‘everyday space and time’ as the urban thoroughfares (or highways) within which upskirting usually occurs. I also seek to situate these spaces temporally. ‘Everyday context’, simply put, refers to the spatial, temporal and historical building blocks of the everyday. At the most rudimentary level, space is what one can pass at any given moment, while time is what one needs to pass it (Merriman 2012: 23). I acknowledge the intricate and inseparable interconnection between space and time “as

²¹ See also Vera-Gray (2016a; 2016b and 2018) on the effect of these daily intrusions into women’s lives.

constituent elements of social life and organization” (Benda-Beckmann and Benda-Beckmann 2014: 32). There can be no discussion of everyday space without acknowledging the temporal components that are interwoven with the spatial dimensions of everyday life.

Highmore states that:

In modernity the everyday becomes the setting for a dynamic process: for making the unfamiliar; for getting accustomed to the disruption of custom; for struggling to incorporate the new; for adjusting to different ways of living. The everyday marks the success and failure of this process (Highmore 2002: 2).

The relationship between modernity and the everyday is made visible in the effects of industrialisation, a key component of modernity, on the familiar. While some scholars problematically conceptualise the everyday as concrete, homogenous, fixed and part of an overarching conformist reality, sociologist Michael Gardiner (2002: 6) insists that “everyday life *does* have a history, one that is intimately bound up with the dynamics of modernity”.²² Below I examine how the large-scale changes of modernity have affected the everyday in a number of ways, particularly in urban spaces, which have become the centre of activity for many of these changes. As we transitioned from modernity into late modernity, these shifts continued to trickle down. Here I ask: what is the impact of these changes for the everyday contexts relevant to upskirting?

Lefebvre identifies three historical phases of the everyday. The impact of modernity on everyday life in urban space is the most recent of three historical phases of the everyday. Lefebvre published his writings on the everyday many decades ago and since his death in 1991, Western societies have changed as a result of globalisation and the accelerated development of communication technology. Some of the central aspects of modernity Lefebvre identifies in his latest historical phase of the everyday, mass media and capitalism, are still as important and imposing as they were when he published *The Critique of Everyday Life* (1963/2002). Information communication technologies have become increasingly

²² Interpretivists in the post-war period interested in microsociologies of everyday life have since been accused of being “covertly positivist in their orientation” owing to their view of the everyday lifeworld as neither a “‘deep’, or complex phenomenon in an ontological or hermeneutical sense” (Gardiner 2002: 5).

popular over the last 50-years such as the mobile phone and the Internet and accelerates daily life so that ‘being-on-the-move’ has become “an important contemporary life condition” (Jensen 2009: 155). When I use the term ‘everyday context’ in this thesis in relation to the early-mid 2000s when upskirting became an issue of social concern in Australia, I conceptualise this as the fourth historical phase of the everyday. This term is a loose reference to late modernity in general, but with a more specific reference to the impact that technology has had on the everyday. Upskirting emerged within this shifting milieu and must be understood amidst broader social, historical, spatial, temporal and technological changes.

One of the very first texts to comment on the relationship between the everyday and modernity was Marx and Engels’s *Communist Manifesto* (1848/1975). Deeply inspired by Marx’s work, Lefebvre devoted much of his career to exploring this relationship between the everyday and capitalism, or what he dubbed the “bureaucratic society of controlled consumption” (Butler 2012: 29). Beginning initially with a more general approach to the everyday, Lefebvre gradually became more interested in everyday life in urban space. For Lefebvre, the impact of modernity on everyday life in urban space was the most recent of three historical phases of the everyday. The first phase was connected to the natural world and religious mysticism (Butler 2012: 29). In this phase, the lived experience of the everyday was not infiltrated by the products of industrialisation and the rhythms of life “could only be poorly distinguished from the rhythms of nature” (Butler 2012: 29). In the second phase, characterised by urbanisation and mass consumer culture, spontaneity and diversity in social practices became less frequent as control over daily life expanded and “the commodity managed to insinuate itself into the most minute crevices of everyday life” (Butler 2012: 29). One of the central characteristics of the everyday in this second phase was the subdivision of the everyday according to categories of consumer goods (further explored in relation to the optical technology in Chapter Four).

In the third phase, control and manipulation of the everyday by state administrators became more ubiquitous. Achieved through mass media, advertising and state bureaucratic control, modernity and the rise of capitalism, this control and manipulation of the everyday resulted in all aspects of domestic life, leisure time and cultural activity falling prey to systematisation (Butler 2012: 29). Therefore, no single system of everyday life in advanced industrialisation existed, but instead, a series of sub-systems with their own specialised social activities took the place of any cohesive total system. Such a conceptualisation is a somewhat romantic view

of the everyday as a total system that became progressively more fractured and siloed from other components of every life. Moreover, I would argue that technology, particularly the smartphone and the Internet, have seen the re-integration of distinct components of social life. It is now possible to undertake domestic tasks using smartphone apps (such as mobile banking or lodging an order for a supermarket to deliver food to your door) while at work. People can now communicate with friends from distinct social circles on open social network sites that bring diverse social groups together on one mega platform. Finally, we are now deeply entrenched in a 24-hour news cycle that is slowly eroding hard copy broadsheet and tabloid newspaper consumption in favour of online access. In this respect, the online sphere is, in many ways re-collectivising the social, for better or worse. To understand upskirting and its relationship to the everyday, it is crucial that the behaviour is contextualised amidst the macro-level changes which have contributed to the hyper-connected and technology-laden world we inhabit today.

These changes are felt most acutely through the temporal register of the everyday. Until the modern era, time was typically attributed to divinity and thus intimately linked with fate and cosmology (Lefebvre 2004: 61). In the medieval era, it was believed that both space and time were created by God and reflected a conception of time as a meaningful and symbolic entity imbued with religious meaning (Reith 2004: 387). Defined as the “routines of daily life”, most things we deal with “occur within the framework of *everyday time*” according to Alheit (1994: 307), and often juxtaposed to other temporal scales such as ‘lifetime’. Associated with the cyclical, everyday time is the taken-for-granted background to daily life that is pushed aside by the empty repetition of working life under capitalism (Alheit 1994). A time “modelled on abstract, quantitative time, the time of watches and clocks”, it has come to characterise the time of everydayness (Lefebvre 2004: 82). Quantified time divides itself into lots and parcels and is organised, principally, around production and work (Stewart 1993: 13). For Lefebvre (2004), this division of time can be separated further into two main categories; the cyclical and the linear. The cyclical refers to the cosmic, to nature, days, seasons and monthly cycles, whereas the linear refers to social practice and human activity.

In the third phase of modernity, cyclical time had been increasingly colonised by the linear time enforced by capitalist logic premised on production-consumption-production (Lefebvre 2004; Butler 2012). The ‘everyday time’ of modernity was organised according to

quantitative, abstract clock time;²³ an ‘empty’ temporal horizon segmented by work and characterised by repletion, routine and regulation.²⁴ One of the most significant events that shifted the way time was understood during this phase was the creation of the steam engine. Around 1847 many European towns adopted the Greenwich Mean Time (colloquially known as railway time) as a way of enhancing mobility through implementing a standardised clock time (Urry 2007).

While many of these conditions are still apparent in contemporary capitalist societies, there have been several changes that have affected the way in which everyday time is both conceptualised and experienced in what I refer to as the late modern fourth phase of the everyday. In *Liquid Modernity*, Bauman (2000: 112) reflects on how late modernity is “born under the stars of acceleration and conquest”. The wake of new technological advances enables a speed of movement, flexibility and expansiveness previously unattainable. Late modernity has, according to scholars like Bauman (2000) and Virilio (1977), resulted in the conquest of space through the mastery of time and has subsequently become a principal tool of power (Bauman 2000).²⁵ This occurs through the devaluing of space as “if all parts of space can be reached at any moment, there is no reason to reach any of them at any particular moment and no reason to worry about securing the right of access to any” (Bauman 2000: 118). Such changes to the technological landscape have significantly affected the relationship between time and the everyday.

But how have these macro-level changes trickled down to the everyday? In a post-capitalist, consumerism driven society, everyday time is often described in relation to work and the subsequent drudgery and monotony associated with a 9-5pm work-day. It is defined by the desire to count and mark off each piece of the day, which Stewart (1993: 14) describes as represented in “the pages of the calendar, the notches marked in a tree that no longer stands – these are the signs of the everyday, the effort to articulate difference through counting”.

²³ For Highmore (2011: 5), “Clocks alone cannot account for the particularity of modern time. Dramatic changes in the representation and experience of time (the ‘nature’ of time) can also be related to the standardising practices of the Church, the school and the hospital, which impacted fundamentally at the level of the everyday”.

²⁴ “Technologies kill immediacy” according to Lefebvre (2004).

²⁵ This occurs through the devaluing of space as “if all parts of space can be reached at any moment, there is no reason to reach any of them at any particular moment and no reason to worry about securing the right of access to any” (Bauman 2000: 118).

However, it is not just the standardised clock time which defines everyday time. When juxtaposed with the expression “time flies when you’re having fun”, we can observe that experiential time does not follow standardised time (Highmore 2011: 88). Time is experienced differently depending on our affective state – for example, if we have a deadline looming, then time seems to speed up. If we are happy and enjoying an experience such as a vacation, then time may seem to ‘fly’ by.²⁶ Conversely, time appears to slow down when we are waiting for something, perhaps while we are stuck on hold, or when engaged in a task we find boring or tedious. The latter is often associated with work, with time spent doing something we have to do and not something that is necessarily enjoyable.

Housework and domestic chores are another example of the stale relationship between time and the everyday. De Beauvoir reflected that few tasks were more like the torture of Sisyphus than housework, that time no longer felt like it was moving forward and that “everything was stuck in endless uniformity and repetition” (Highmore 2011: 90). Lefebvre’s (1992: 61) reflection on everyday time as both fleeting and ungraspable, while simultaneously being timed chronometrically, captures the paradoxical nature of what I refer to as everyday time. This is one of the components which make up everyday contexts where upskirting takes place (streets, public transport, shopping centres, leisure spaces). Each morning is a new iteration of the everyday which registers temporally and is experienced differently depending on one’s affective state and place at that moment.

Critiquing everyday life, however, also entails critiquing everyday spaces because these are the arenas in which people live (Kogl 2007: 6). It has only been in the last century that understandings of space have shifted from a conceptualisation as something that is static, flat and simplistic to something dynamic, complex and relational.²⁷ Space was described as “practiced place” by de Certeau (1984), whereas others have described it as the arena in which “everyday ‘common-sense’ knowledge and experience is gathered” (Tonkiss 2005: 2). Yi-Fu Tuan (1977: 3), one of the first thinkers to problematise space and place, distinguished

²⁶ I distinctly recall the moment I became aware of the subjective experience of time when speaking to a friend before the school holidays when I was six years old. When asking him whether he was excited for the holidays he replied that, yes, he was, but not *too* excited. When I asked what he meant he replied “You can’t look forward to them too much or else they disappear so fast you’ll be back at school before you know it. You can’t let the holidays know that you’re looking forward to them or they will run away from you”.

²⁷ See Soja (1989); Crang and Thrift (2000); Massey (2005); Hayward (2012); Campbell (2013).

them as follows: “Place is security, space is freedom: we are attached to the one and long for the other. [They] are basic components of the lived world and we take them for granted”. Space has also been described as a product of interrelations, a sphere of multiple possibilities and something that is in a constant state of construction (Massey 1994).

Scholars such as Blomley et al. (2001), Butler (2009), Cresswell (1996; 2006) and Thrift (1996) have investigated the complex nature of space in an effort to produce an understanding of space as not simply “a thing among other things, nor a product among other products” (Lefebvre 1991: 71).²⁸ This reflects the shift from previous assumptions that space and in particular everyday urban spaces, were simply the backdrop or ‘aesthetic surface’ our everyday lives were set against (Campbell 2013). I understand space to be neither a “physical container of objects, nor an infinite, discursive field” but as something which is multifaceted and dynamic (Butler 2009: 322). It is better to begin by paying attention to the urban not as a fixed space, but as one that is open, fluid and dynamic. What has been repeatedly articulated in literature on space was the need to understand space as a multi-dimensional arena of social imaginaries and possibilities. Preoccupied as I am with the ‘in-between’ spaces and places of the everyday, the thoroughfares and walkways, the railway stations and public transport systems that are the sites where upskirting most frequently occurs, these taken-for-granted environments of the everyday are just as important as the public squares and tourist attractions of the city.

For Lefebvre, there can be no comprehensive analysis of society without consideration of space (Gerodetti and Bieri 2006: 73). In *The Production of Space* (1991), he reflects on how space is intimately bound up with social reality and how space is produced is fundamentally connected to the capitalist societies of modernity, underpinned by a produce-consume-produce logic (Butler 2012). This is why space could never be “in itself” an epistemological starting position because “space does not exist ‘in itself’; it is produced” (Schmid 2008: 28). Space is simultaneously six things: the forces of production; a product that is consumed as a commodity; a political instrument that facilitates forms of social control; a basis for the reproduction of property relations; a set of ideological and symbolic superstructures; and a means of human reappropriation through the development of counter-spaces (Butler 2009).

²⁸ See also Millie (2008; 2011), Young (2012), Jensen (2009) and Campbell (2013).

To make sense of these diverse (and sometimes conflicting) conceptualisations of space, Lefebvre (1991) formulated a triad²⁹ consisting of three theses categorising space, which aimed to “undermine dichotomies of structure and agency, discourse and practice” (Ronneberger 2008: 137). Although it might be going too far to say Lefebvre was successful in overcoming these dichotomies, it is nonetheless a flexible and thorough conceptual tool when applied to everyday urban spaces. In Chapter Five, for example, I demonstrate how the spaces of the beach and pool are consumed as a commodity while simultaneously connected to an imagination of Australian national identity.

The first element of the triad of the production of space is the *practices of space* (or perceived space). This component of the triad relates to the enacting of spatial order through action and refers to the performance of spatial competencies required of social actors (Tonkiss 2005). One example of this is moving to the left on an escalator to allow people who wish to walk up the stairs to move past. When someone is not literate in reading the unspoken spatial cues, this can result in disgruntled commuters and a bottleneck on travellers. Upskirting transgresses the spatial order as it is expected that commuters and strangers do not take unauthorised sexual recordings of women as they go about their everyday lives. However, at the same time, upskirting adheres to the expectations that you do not make eye contact or disturb other people. This returns to my previous discussion on the distinction between disruption and intrusion and how upskirting may not disrupt, but that this does not then negate its intrusive nature. One of the defining features of upskirting is that it is discreet and is not detected by the victim precisely *because* it adheres to spatial norms in not disturbing strangers as they go about their everyday business.

The second component of Lefebvre’s triad, *representations of space*, refers to the conceived space of representation that is constructed discursively through language and thought. For example, urban architects until just last century often operated as if space was an apolitical, neutral void (Shields 2013). These understandings of space produced particular discourses on space which Lefebvre believed had an important role in producing the everyday given such spaces are where we lead our lives. I look closely at the way in which the boundaries of these spaces are imagined in the media and political discourses analysed in this thesis. I am chiefly

²⁹ Not to be confused with his other triad in which the urban was a mediating level between the micro and macro levels of social reality; between the everyday and global.

interested in understanding how the space an action unfolds in can have a significant impact on the kinds of reactions evoked in the wake of transgressive behaviour. The third dimension of Lefebvre's triad concerns *spaces of representation* (or representational space). This is connected to spaces of imagination, embodiment and desire and how our bodies and senses are embedded in space and identify with 'lived space' (Stevenson 2013). As the act of upskirting is a distinctly sexual behaviour, it is a behaviour that aligns with the lived, embodied dimension of space defined by desire.³⁰

Together, the three theses of the triad emphasise how the spaces of social life are social products and constructed not only out of materials and things but meanings, language, symbols and the intangible experience of embodied 'lived' space. Lefebvre was most interested in the production of space and the politics injected within this process. It is curious that his focus did not extend to the very real differences in access and safety to these spaces which are determined by gender and the ramifications of spatial production in relation to the everyday movement and circulation for women. This is arguably one of the most profound issues relating to the production of space, given that these spaces have historically been designed and made by men, for men (Tonkiss 2005). Regarding politics and everyday spaces, gendered relations have been and remain, one of the most important issues relating to the production, representation and use of everyday spaces. Despite the prominence of space as a constituent element of everyday contexts and its politicisation in terms of gender, safety and access, Lefebvre's understanding of the relationship between space and gender has been described by some as "unfocused" and "random" (Gerodetti and Bieri 2006: 74). One of the opening epigraphs of this chapter states that "man will be everyday, or he will not be at all" (Lefebvre 2002: 24). Notably, this says nothing of women and indeed, women are rarely discussed in Lefebvre's work. While his writing is applicable to feminist understandings of space and everyday life, it ignores women's experiences. Because his work "rarely develops a feminist or gendered understanding of space", scholars such as Beebejaun (2017: 325) state that he cannot be described as a feminist. To be applied within my project, Lefebvre's thinking on space and the everyday therefore needed to be complemented with feminist readings of these intertwined issues.

³⁰ Another project specifically attuned to the embodied feeling of both offenders and victims would capture this dimension of the triad if used in conjunction with sensory ethnography and other phenomenological methods. This is beyond the scope of the analysis here, however.

Any discussion of gender and space must examine the relationship that the public/private dichotomy has for notions of privacy and the body moving through public space. Urban spaces have been (and still are) defined as ‘public’ spaces, which can broadly be understood as “places provided or protected by the state, according equal and in principle, free access to all users as citizens” (Tonkiss 2005: 67). Iveson (2008) distinguishes between topographical and procedural approaches to public space. The former refers to physical locations, whereas the latter to the notion that public space denotes collective action (Iveson 2008: 3). Iveson identifies three issues with both approaches concerning publicness where publicness is understood (often at the same time) as a context for action, as a kind of action and as a collective actor.³¹ Topographical models of public space imagine ‘public’ as referring to spaces of sociability in the city. In these spaces, one’s actions are visible to others.

Conversely, procedural models of public space use the term ‘public’ quite differently; these models of space imagine public as denoting spaces where citizens can participate in collective discussions about issues and interests (Iveson 2008: 17). In my analysis, I adopt Iveson’s approach to public space, particularly when drawing regional distinctions between the genital and anal area and urban spaces. I refer to public space in the topographical sense outlined by Iveson (2008: 17) in these instances, as it can usefully draw our attention to the power of regional distinctions between public and private, such as the genital and anal region that is photographed in an upskirt image. Moreover, it can illustrate how socio-spatial norms about conduct and action are contested when moving through urban thoroughfares. This understanding is helpful for considering the blurring of the public and private that occurs because of everyday surveillance and practices like upskirting.

It can be argued that there is no clear distinction between private and public anymore (and arguably there never really has been; at the very least the boundary has been labelled “unsteady”) (Sennett 1996). This appreciation of the murky boundary between public/private lies at the centre of Iveson’s work and it is the intersection between the social imaginaries of publics and the spatial imaginaries of cities that he examines in his work. The overlap between space, publics and privates is a recurring theme in my own analysis as I grapple with

³¹ This is much the same for the concept of the everyday, which can be a time (each day presents a new everyday), action (referring to an action one performs as part of a daily routine) and a place (a familiar site one visits).

discursive representations of women's bodies in space. An added layer to my own analysis is the role of technology in this complex relationship and the effects of technological change within these environments. In particular, the ways in which technology can blur boundaries, transporting images of private parts to public online domains is one of the key issues with upskirting. However, as I explore further in Chapter Six, it is not productive to analyse these binaries as separate from other issues, such as gendered relations and the ways in which women's bodies have long been tied to notions of public/private space. I agree with Iveson that "we need to have a much clearer appreciation of the multidimensional nature of the public/private distinction" (Iveson 2008: 14). I would add the caveat that this preoccupation with such categories, when examined in isolation from other dimensions of social life which interacts with public space (such as gender, race, class or disability), risks a partial understanding of public/private spaces.

Others have suggested that the terms 'public' and 'private' are vague and that most things are both private and public in one sense or another (Warner 2002: 28-29). The distinction between public and private becomes complicated when considering sexuality (Gerodetti and Bieri 2006). As Salter (2016: 2) observed: "femininity has been associated with privacy, while masculinity has been attributed to both public and private aspects". This has ramifications for women ranging from exclusion from public spheres to the association of the home with 'private' matters, resulting in, among other things, the silencing and neglect of intimate partner violence (Pateman 1998). This association has resulted in the "marginalisation of women from the terrain of social and political debate in liberal democracies otherwise known as the 'public sphere'" (Salter 2016: 2; Habermas 1962). Despite the increasing presence of women in the public sphere, upskirting and other forms of sexual violence such as street harassment are a common experience for women today.

The relationship between public and private within urban city spaces is now intrinsically related to surveillance and technology. Many have argued that postmodernism and the technological developments emerging alongside it have resulted in the lines between the private and public becoming more blurred than ever (see Staples 2014). Marx (2016 in Brighenti 2010) asserts that surveillance is about managing boundaries along a publicity-privacy axis, or what Simmel refers to as an axis of divulgence-secrecy. For Simmel (1908), this axis is "understood as actively devoted to managing information placed at some point along the axis divulgence-secrecy; management which inherently generates power effects"

(Brighenti 2010: 164). These power effects are exercised through the normative use of the secret, which acts as a visibility device: for everything that is public, there is something that is kept secret. In the case of upskirting, this is a woman's intimate areas and the divulgence of images of her anal or genital region violates this secrecy management strategy.

Everyday urban spaces are not confined geographically but overlap with and oscillate between, imagined, discursive, online, public, private, symbolic, cultural, social and economic spaces. Subject to different uses and meanings, everyday spaces are comprised of meeting places or places to 'hang out' in and are sites of social encounter, a field of politics and power and the symbolic and material landscape (Tonkiss 2005: 1). Together these dynamic and multifaceted milieus (Butler 2009) form the everyday spaces ordinary citizens traverse and it is in this way that the everyday shapes and is shaped by space (Kogl 2007: 18). These spaces within the context of upskirting are what I call 'urban thoroughfares' or what Urry (2007) calls 'passages'. Such thoroughfares are spaces of movement and circulation, the passageways and corridors that form the arteries of urban environments. In the fourth historical phase of the everyday, movement is crucial to the construction of both time and space and cannot be disentangled from our understandings of either.

While historically theorists have generally spoken of space and time as separate, recent scholarship suggests instead that we should hold time and space together, asserting that it is impossible to divorce the one from the other (Crang and Thrift 2000; Thrift and May 2001). As alluded to above, movement and circulation are crucial to everyday urban spaces; indeed, human life is based on and in movement (Thrift 2008: 5). Social and cultural phenomena "unfold in both space and time, with the processual enactments of events co-producing multiple, open space-times or time-spaces" (Merriman 2012: 23). A recurring concern of social scientists has been the way that humans organise the spatio-temporal dimensions of their lives. However, it was not until the spatial turn that the relationship between space and time were problematised (Urry 1996). This critique was heralded by figures such as Thrift, who believed that the essential unit of geography was not spatial, but the relation of time-space to larger spatio-temporal configurations (Merriman 2012). Importantly, there is no 'absolute' relation between time and space; it is the intermeshing that produces spaces and times, which are multiple, practiced, manufactured, embodied and lived. Massey (1994; 2005), in addition to striving to connect the political with the spatial, also pushed to consider the temporal within this relationship. She claimed that scholars needed to "rethink space as

integral space-time and to conceptualise space-time as relative, relational and integral to the constitution of entities themselves” (Merriman 2012: 38). I draw upon this perspective but place it within a broader framework of the everyday that sees this integral space-time relationship as key elements which constitute everyday contexts.

Scholars have recently begun to query the conceptual marriage between time and space, or space-time, suggesting the hyphen or conjunction have bound them, as if in an a priori connection. To follow this argument would result in a dramatic reconceptualisation of the ontology of space-time. As spaces increasingly become recognised as ‘stages of intensity’ defined by traces of movement, speed and circulation (Thrift 1996: 289), theorists such as Merriman (2012) and Thrift (2008) suggest that accounting for movement, dynamism and circulation must be considered when working with the space-time nexus. Similarly, I assert that movement and mobility force scholars to rethink conventional understandings of space and time and position time and space simultaneously as both the context for movement and a product of movement (Cresswell 2006). In this way, mobility becomes primary to the events of spacing and time and positionality becomes a nascent quality of movement (Merriman 2012: 43). Traditional ways of conceiving space, time and movement bound to neo-Cartesian or neo-Euclidean space-times are challenged, producing in its stead a ‘movement-space’ which is relative rather than absolute. Given how new forms of “technology in our everyday environments [have] led to the emergence of a world dominated by new...apprehensions of space”(Merriman 2012: 43), Merriman, Thrift and others ask, “why not movement?” This is asked to query why movement cannot also be a register that may at least be of equal importance to understanding the unfolding of events. As the discussion below highlights, there has been a profound shift in both time and space as a result of mobility and the technologies of mobilisation that facilitated these changes. Because upskirting occurs as women move through everyday spaces and the data captured (that is, the images or recordings) are then moved to online spaces where they are transported and shared on mega-platforms such as Twitter and Reddit, exploring this relationship between mobility, gender and the everyday is crucial to understanding this form of image-based sexual abuse.

Everyday Practices: Mundane Mobilities

So far, this chapter has reviewed literature on the everyday in social theory, the everyday as a value/quality and everyday context (or movement-space). To further examine the everyday, it is important to devote attention to what it is people *do* in contemporary Western capitalist societies – their everyday practices. Because of my focus on upskirting, the everyday practices I explore are those undertaken by victims of this form of image-based sexual abuse. Below, I discuss practice theory and frame mobility as an everyday practice with a particular focus on the intersection between mobility and gender within these spaces. Mobility extends to both the movement of people and information in the current era of smartphones, social media and online mega-platforms. Such devices and the movement of information they enable, are now an integral part of the everyday for many people living in cities in Western nations around the globe. I consider the importance of the immaterial (for example, data), materiality and objects in everyday life as matter that circulates through the everyday.

Everyday life is something that is dynamic and continually changing (Pink 2012). Defined by scholars like Schatzki (2001: 168) as giving meaning to the “unnoticed and apparently insignificant activities of everyday life”, practice theory is deeply connected to the everyday. Two of the most well-cited practice theorists are de Certeau (1984) and Bourdieu (1977). In summary, the two scholars provide different answers to the same question regarding the nature of practice. While Bourdieu rejects a binary view of resistance and submission through a notion of relationality, de Certeau instead depends on a problematic binary on which the strategies of the powerful and the tactics of the weak are positioned against one another (Pink 2012: 19). In recent years, the emergence of the ‘practice turn’ has gained traction and has become increasingly prevalent in the social sciences as a way of approaching social scientific research. Pink (2012: 23) notes a practice approach can help explain why some activities “appear normative and are sustained and also how practices are transformed as they are performed”. Importantly, practice theory and its intersection with mobilities and materiality theory offers a praxiological resolution of the micro-macro problem – “conceiving the micro as the realm of practices ... ties the existence of macro things to everyday practices” (Schatzki 2001: 15). I use a praxiological approach to examine how the behaviour of upskirting is tied to the systemic gendered nature of the everyday which structures, limits and harms the everyday of women as they move through public space.

I have been using the terms movement, mobility and circulation interchangeably throughout this discussion thus far; however, it is worth delineating definitions of each to illustrate their differences. First: circulation. This term can be defined as a product of broader forces of modernisation and urbanisation, which act upon cities to transform them into points in a circulatory process (Blum 2003: 91). Circulation differs to mobility and movement in that it can be “both a model and a conceptual vocabulary for understanding the continual movement” (Boutros and Straw 2010: 10). Cresswell’s (2010) definition of movement is useful here as it distinguishes between movement and mobility. For Cresswell, movement can be understood as the “raw material” for the production of mobility; while it is a crucial element for mobility, it is misleading to equate ‘movement’ alone with ‘mobility’. Such an approach is confusing because movement in and of itself says nothing about what mobilities mean, how they are practiced and how they are imbued with power (Cresswell 2010).

To be clear, mobility *is* movement, however, it is also motive force, velocity, rhythm, route, experience and friction. Furthermore, it is more than just these six elements; it is “the entanglement of movement, representation and practice” (Cresswell 2010: 19).³² Upskirting occurs while people are both on the move and while they are in spaces of movement, however, this does not mean that upskirting exclusively happens while the perpetrator and victim are moving. Some of the most popular areas for taking upskirt pictures are when women are on escalators standing still (as they are being moved up or down), or while they sit down on a train (as they are propelled towards their destination). What is common to most incidents of upskirting is that the victim is moving *through* the everyday, usually from point A to point B and perpetrators take advantage of these mobility systems and movement practices when taking images and recordings of women in city spaces.

Identified as a general principle of modernity (Canzler et al. 2008: 270), mobility denotes both actual and potential movements of people, goods, ideas, images and information (Jensen 2009: 256). The continuous movement of people, capital and things subsequently results in the formation and reformation of space itself (Sheller and Urry 2006), emphasising the intimate relationship between mobility and space.³³ Importantly, mobility addresses both

³² By ‘movement’, Cresswell (2010) is referring to physically moving from A to B, by ‘representation’ he refers to the shared meaning of movement and by ‘practice’ he means the embodied act of movement.

³³ The relationship between mobility and time is also important; the act of movement is the passing of space in time after all.

space and time. On the one hand, time is understood as accelerated and relates to the speed of movement. On the other hand, space is conceptualised as paramount to the analysis of mobilities (Jensen 2009). These spaces and times are inherently connected with movement; “there is an intimate relationship between transport, mobility and urban form” and everyday urban spaces are influenced, informed and formed by the various passages and modes of transport both past and present (Hall and Barrett 2012: 284). Thus, “mobility is changing the ways people routinely behave in public spaces” and this circulation, movement and mobility form an integral part of the everyday (Berry and Hamilton 2010: 111). We certainly see these altered patterns and modalities of mobility impacting upskirting given the practice is inherently connected with movement. In my examination of media reports, upskirting overwhelmingly occurred in places such as shopping centres (especially on escalators),³⁴ public transport,³⁵ and leisure spaces (such as the Flemington Racecourse,³⁶ Olympic Park,³⁷ and cafes³⁸).

Recently, a new urbanism³⁹ has emerged with an interest in everyday practices and the movement that constitutes everyday life in urban spaces (Hall 2009).⁴⁰ Situated within this new urbanism is mobilities studies, a relatively recent discipline in its own right (Urry and Sheller 2006). Urry (2006: 159) states that there is a need to recognise that mobility fundamentally impacts upon “our mundane everyday life experiences” because the issues of mobility in, around and through urban space are “intimately linked to the ordinary routine-orientated everyday” (Pooley et al. 2005: 14-15). While geography has engaged with issues of urban space and movement for decades, it was not until the late 1970s and early 1980s that social science research began to take mobility seriously according to mobility scholars (Hannam et al. 2006).

³⁴ See Bernecich (2013) for Greensborough Shopping Centre example.

³⁵ See an article in *The Daily Telegraph* (No Author 2008d) for the “Shoe-Cam-Len” case of Leonard Marsden who took images of female passengers on trams and trains without consent.

³⁶ No Author (2013b) – Flemington Racecourse cleaner upskirting incident.

³⁷ Hunt (2007) for the Takuya Muto Australian Open tennis tournament incident.

³⁸ See for example the Ross Sargent case in 2007 (No Author 2007d).

³⁹ See Hall (2009); Amin (2006) and Amin and Thrift (2002).

⁴⁰ Criminology has only recently begun to catch up with mobilities literature with the publication of *The Criminology of Mobilities* in 2014 by Aas, Pickering and Bosworth. On the role of mobilities in random breath testing operations conducted by the police in Australia, see Wood and Thompson (2018).

De Certeau (1984: xi) shifted the banal backdrop of the everyday to the foreground in his work on movement practices, ensuring that the background that sets the stage for the daily scenes in which our everyday lives are enacted upon was rendered visible. The everyday practices used within these spaces must be taken seriously so that they are no longer simply considered as the obscure background of social activity and life. For this reason, de Certeau (1984: 138) took an interest in “the common routines of walking, moving and dwelling in space”. De Certeau’s contention culminates in his famous chapter in *The Practices of Everyday Life*: ‘Walking in the City’, when he looks critically at everyday practices, or what he terms the “ways of operating” (de Certeau 1984: 3).

Technological advances have created transportation systems, automobiles and communication devices that have accelerated the movement of people, commodities and information in late modernity. Despite the role of these transportation systems, walking is still an essential everyday practice and importantly, this is an embodied practice. Given the direct relation between walking, commuting and upskirting (as many women are moving through urban spaces when they are victimised), there is a need to reflect on walking and commuting as an everyday practice with an emphasis on gender. The politics of mobility has, after all, been a central focus within mobilities studies, which examines the right to mobility and the way it is manifested in political rationalities, ideas, representations and images (Jensen 2009: 256).

Compared to the substantial body of research on automobilities,⁴¹ there is comparatively little scholarship on the railway and public transport within the social sciences (but see Bissell 2018). While the automobile and the creation of car-only environments is widely regarded as the catalyst for the transformation of urban environments in the last century, the commuter train system is responsible for the movement of millions of people to and from work every day. The railway instigated a new connectedness and has had a profound effect on temporal, spatial and social relations in urban environments. The nineteenth century marked the shift in the primary mode of movement from walking to travelling by train. As Urry (2006: 93) highlights, before the introduction of the steam engine, machinery operated on the periphery of people’s everyday life. The popularisation of this powerful speeding mechanical apparatus

⁴¹Dant (2004), Thrift (2004), Featherstone, Thrift and Urry (2005), Urry (2006).

signalled the foregrounding of machines into the everyday so that they became familiar and part of the routine of daily life. Railways made places relational, defined as travelling to or from somewhere and “for better or worse, in terms of values of connoisseurship or consumption” (Urry 2006: 101). As places began to lose their uniqueness and underwent physical transformations to accommodate the ever-expanding railway system, fundamental changes also occurred in how people related not only to their environments but to each other.

It is worth reflecting on the relationship between gender and commuting, particularly on public transport systems. As with walking, there have been (and remain) embedded structures that inherently disadvantage, limit or complicate the mobility of women who access these systems. In the late 1970s, feminist geographers such as Rosenbloom (1978) and Giuliano (1979) rejected what they called the ‘neuter commuter’ – the assumption that all commuters had the same mobility needs. This ideal commuter was, like many other systems, founded on the problematic assumption that mobility was not differentially accessed and was subsequently structured around the needs of white, privileged, able-bodied men (Law 1999: 569). Research indicated that there were “significant gender differences in trip distance, transport mode and other aspects of travel” (Law 1999: 569). Particularly prevalent was the fear associated with sexual assault experienced by many women using public transport systems such as the railway (see Yavuz and Welch 2010). As others such as Gerodetti and Bieri (2006: 72) highlight, it is important to recognise the “normalizing and regulative power inherent in spatial structures”. Train stations are a key site of fear for women moving through urban thoroughfares and often figure in the ‘sexual danger’ narrative characteristic of the city.

Feminist geography was born in the early 1980s after an onslaught of critiques were lodged at ‘gender-blind’ approaches to urban design and transportation planning (Law 1999: 567). However, as Massey (1994: 2) remarked, “geographies matter to the construction of gender” because in the past, women were excluded from public space. Women were excluded principally because public space was deemed to be a space for men (Habermas 1962/1991: 33) and to be unsafe for women to move through without being accompanied by a man, especially during the evening. Some contemporary research asserts that this is still the case and that women are excluded from masculinised cities where space is unquestionably still premised on a male-centric approach which subsequently “restricts women’s use of public spaces in rearticulated socially coded ways” (Paul 2011: 411). The female body is a site that

is over policed and scrutinised in public space.⁴² This attention can culminate in fear of sexual assault and the “under-representation of women in certain settings, thus reinforce[s] the sense of fear and risk for women who do find themselves in those settings” (Law 1999: 570). There are clear links between gender, space and upskirting – public space and the women who move through them are seen as sexualised objects that can be accessed by the men who perpetrate upskirting. This presumption of sexual access (Kelly 1988) to women moving through the everyday expresses this enduring view of both space and women, illustrating that, in many ways, public space is still an arena for men’s desires and pleasures to be realised (Habermas 1962/1991).

Much of this attention fixates on what a woman looks like and what they wear; indeed, how their body is presented has profound effects on a woman’s ability to move through space. The consequences of being a woman in space are evident; by occupying a female presenting body there are ramifications for not only being in space but moving through space as a woman also. Indeed, the limitations of women’s mobility functioned as a fundamental component of women’s subordination, particularly through the exclusion and confinement of women from public space in the past (Massey 1994). This illustrates the way in which spatial arrangements “help to reproduce structures of gender and sexual difference” (Tonkiss 2005: 94) which simultaneously acts as a form of spatial control with social, cultural, economic, political and physical ramifications

Recently, research has examined not just the relationship between women occupying public space, but the everyday practice of moving through urban spaces through the lenses of gender and daily mobility (Law 1999). Advocates of the mobility turn argue that issues of mobility are connected with both meaning, power, representation and practice. They contend that society and culture must be understood through modes of mobility and the differential modes of mobilities enabled through different bodies, mobility systems and scales as much as by space and place (DeLyser in Cresswell and Merriman 2011: 84). It is important to consider the body in analyses of mobility, as discussions of the mobile subject have a history of referring implicitly (and sometimes, explicitly) to a subject who is typically masculine and

⁴² See Butler (1993) on the performativity of gender.

experiences “unfettered movement across and within the social realm” (DeLyser in Cresswell and Merriman 2011: 85).

Feminist scholars have therefore resisted romantic readings of mobility which are grounded in a bourgeois masculine subjectivity (Skeggs 2004: 48). Such analyses fail to realise that issues of gender (and class, race, age, ability and so on) have a profound effect on mobility because mobility is a “gendered activity that is often more available to men than it is to women” (Cresswell 2006: 448). This reflects what Sheller and Urry (2006) call the ‘uneven resources’ of mobility. Everyday practices and experiences in space are affected by this uneven resource, which is determined by, and dependant on, factors such as the body one inhabits. Practices interconnect with things and processes. The materiality and sometimes immateriality of the built environment, objects and machines of mobility such as a railway, enable everyday practices and therefore warrant further attention. As Bridge and Watson (2010) indicate, humans and materials co-produce in urban environments. Indeed, it was suggested that studies on mobility needed to be brought “together with more ‘local’ concerns about everyday transportation, material cultures and spatial relations of mobility and immobility” (Bridge and Watson 2010: 12). In this thesis, the local concern in question is the mundane task of simply transporting oneself through urban thoroughfares unimpeded by men who presume sexual access to women as they go about their everyday lives.

The new technics of everyday life have radically altered mobility and movement. Principally, this shift relates to the movement of data and online content rather than physical goods and commodities and not only creates new, previously uncharted pathways through space, but also opens urban spaces in ways that affect everyday life. This can be linked to one of the conditions of late modernity (Beck et al. 1994): the transformation of urban spaces into digitised spaces of mediation.⁴³ Below, I discuss the channels of mediation which reconfigure urban spaces into hybrid spaces, drawing upon De Silva e Souza’s concept of hybrid spaces. De Silva e Souza (2007: 764) focuses explicitly on mobile interfaces such as the mobile phone and conceptualises urban spaces as hybrid spaces which refer to “a situation in which the borders between remote and contiguous contexts can no longer be clearly defined”. These new hybridised urban spaces can be understood in relation to three trends: a) hybrid spaces as

⁴³ Further to this, De Silva e Souza (2007: 769) contends that “the digital has never actually been separated from the physical ... urban spaces”.

connected spaces; b) hybrid spaces as mobile spaces and c) hybrid spaces as social spaces (De Silva e Souza 2007: 765). I explore hybrid spaces as mobile spaces and the way in which they provide new digitised laneways for information to flow into and out of everyday urban spaces of movement. Before the period when upskirting was criminalised in Victoria, there was growing concern over the development of such spaces.

De Silva e Souza (2007: 763) asks: “How is physical space reconceptualised by the connectivity of digital mobile media?”. She posits that physical spaces have become hybrid spaces; mobile spaces which are created by the constant connection of users to mobile interfaces which are also connected to the Internet. Subsequently, a person can move through urban spaces and online spaces simultaneously, uploading and downloading information as they go about their daily business. The mobile phone redefines traditional relationships with Internet access (where people would once have had to sit down in front of a computer in their homes) by enabling users to embed the Internet in public space and their everyday mobility practices (De Silva e Souza 2007). Crucial to De Silva e Souza’s (2007) contention is that every shift in interface results in a transformation of both the social relationships it mediates and the spaces in which it is embedded. While similar changes across urban spaces can be located historically with the creation of the railway and alterations to the landscape it triggered, mobile Internet enabled interfaces such as the smartphone facilitated the coordination of social actions in real time, in ways that mobile technologies were previously unable to achieve. The result of such mobile communication technologies opens yet another passageway within the everyday – urban (hybrid) spaces of movement. This adds the circulation of images and information along the cyber highways of today to the flow of people and objects along the freeways, railways and walkways.

It is also important to take the effect of materiality seriously, after all “things make people just as much as people make things” (Miller 2010: 135). Internet-enabled devices such as smartphones and high-tech digital cameras, travel alongside humans as they move through urban thoroughfares (and information highways, often simultaneously). As Urry (2006: 92) asserted, we now live our lives on the move and “in the company of various machines of movement”. The everyday has become irrevocably intertwined with mobile media in much the same way as it has become dependent upon the motorway and railway to facilitate the movement of people, ideas and objects. The effect of mobile media as central everyday devices has become “intimately incorporated into routine bodily practices” (Beer 2012: 361).

In the case of upskirting, such devices have become incorporated into the routine bodily practices of men who perpetrate acts of image-based sexual abuse.

Mobility, space, time and power are all notions at the core of modernity (Cresswell 2006). These concepts are not merely abstractions but have serious ramifications upon the everyday, which has “become the prime focus for anxieties about the management of risk” (Moran 2005: 166). With more people residing in cities than anywhere else globally, urban spaces make up some of the most frequented environments contingent to the daily routines of millions of people; spaces which have been described as “by nature full of all manner of dangers and risks” (Valverde 2012: 1). The citizens who occupy and traverse these everyday urban landscapes have been defined as much by the right to move as by the nation or city from which they belong (Cresswell and Merriman 2011). As the ‘social thermometer’ of the city, when free-flowing mobility is inhibited the clogged arteries of traffic, people, objects and data create problems demanding both regulation and control (Adey and Bevan 2006: 46).

I look at two channels (or thoroughfares) for the transportation of goods, people and data – the walkway and the information superhighway – in my examination of the interconnection between materiality, mobility and everyday life. If we understand practices as materially mediated nexuses of activity, then it becomes apparent that we cannot overlook the material, least of all because practices are “the source and carrier of meaning, language and normativity” (Schatzki 2001: 11). Given upskirting’s relationship with the immaterial, digital domain, where many images and recordings are distributed, I examine both the material *and* immaterial dimensions of the everyday in relation to mobility practices through urban thoroughfares as it is important not to become “inattentive to the actual, everyday materiality of the places in which people actually dwell” (Latham and McCormack 2004: 702).

Everyday Legalities: Law in Urban Thoroughfares

Law imposes its definition of events on everyday life (Smart 1989: 4).

Amidst the flurry of familiar footsteps through everyday thoroughfares, the law also moves alongside train rides, upon footpaths and through information superhighways. In the final section of this chapter, I locate law as a tool of regulation, power and control within the

everyday as a “critique of everyday life ... encompasses a critique of political realms by everyday social practice and vice versa” (Lefebvre 1963/2002: 19). I examine scholarship on regulating the everyday in urban thoroughfares that are crucial for the quotidian circulation of women. I reflect on how law and the everyday intersect and function as a theoretical foundation upon which to build my later analysis of the everyday in political and media responses to upskirting. In paying attention to the everyday, not only in terms of what it is but in how it is regulated, often overlooked “ever-shifting dynamics of urban governance on the ground” may be revealed to have been quite literally under our feet all this time (Valverde 2012: 3). These dynamic workings of urban governance executed through criminalisation and law, increasingly control how we move and act in public spaces.

Criminalisation is intimately connected to the everyday – within urban centres we see how some bodies and behaviours are under and over criminalised. Criminalisation literature is centred on a fundamental sociological question: “how do social facts, in this case laws that define criminality, come into being?” (Jenness 2004: 148). Sutherland (1950) examined sexual psychopathy laws and attempted to understand how laws pertaining to ‘sexual psychopaths’ came into being. Sutherland noted that the laws’ origin and diffusion could be attributed to two things; “the manipulation of public opinion by the press and the influence of experts on the legislative process” (Sutherland 1950: 143). Several years later, Joseph Gusfield (1963) investigated how demographic shifts in the United States acted as a catalyst for the criminalisation of the sale and consumption of alcohol during the temperance movement, arguing that criminalisation was a prime example of “symbolic politics” (1963: 7). For Gusfield, this referenced a “struggle over symbols, including the law, between status groups vying to secure deference” (Jenness 2004: 150). Such characteristics of law creation are still apparent today; as I discuss in Chapters Five and Six, the way upskirting was represented in popular discourses was one of several catalysts for the Victorian Upskirting Bill in 2007.

But ‘issue-creation’ is merely the first step in criminalisation. Scholarship in the 1970s and 1980s paid attention to how the “variability inherent in the timing, content and institutionalisation of criminal law” was just as important in determining how social facts

come into being (Jenness 2004: 154).⁴⁴ The criminalisation process, defined as “the process by which new legal regulations are created and new enforcement strategies designed” is deeply connected with the everyday as it can transform the most mundane of actions into significant crimes (Ferrell et al. 2008: 86). In this way, criminalisation can be wielded as a political tool by legislators who vow to right the wronged victims of certain behaviours. Such individuals subsequently use “parliament’s ultimate policy weapon to protect against the conduct” provoking anxiety at a certain moment in time (Hughes 2010: 125). Furthermore, criminalisation is, as Gusfield suggested, inherently symbolic and “often, the value of criminal law is symbolic – calling something a crime symbolises our condemnation of the action” (Hughes 2010: 125). Just as relevant as the analyses that examine the kinds of crimes that elicit condemnation, are interrogations which seek to understand why others are ignored.

Urban environments are often sites of criminalisation. Human geographers such as Tim Cresswell have reflected on how place plays a pivotal role in the creation of norms, behaviour and transgression. I similarly mapped the impact of transgression in everyday places, noting that “by behaving out of place [an] actor [draws] attention to ... the legitimacy of a law” (Cresswell 1996: 7). Crucially, Cresswell argues that spaces are often taken-for-granted and that the consequence of transgressive actions is the disruption of common-sense assumptions over appropriate and inappropriate uses of and behaviour in everyday spaces. In criminology, scholars have reflected on transgression, criminalisation, urban space and everyday life. Millie investigated the importance of value judgments⁴⁵ in relation to the context that the behaviours occur within and examines how value judgments are “fundamental to the criminalisation process” (Millie 2011: 278). This understanding of value judgements is informed by Feinberg’s principles of harm and offence whereby a “behaviour becomes unacceptable and liable to censure if it is seen to cause sufficient harm or offence to the victim (individual, group, society at large, or environment)” (Millie 2011: 280). Some issues with these principles include that not all harmful activities are criminalised and likewise, some that are criminalised are not all that harmful. Moreover, determining offensiveness is difficult as it is tied to issues of disgust, obscenity and moral (in)tolerance and is often accepted in private but considered offensive in public spaces (public urination or sex for

⁴⁴ Particular attention in this body of literature was paid to the role of the media, triggering events, social movement organisations and the state (Jenness 2004).

⁴⁵ See Young (2012) for more on aesthetic judgements in relation to the criminalisation of graffiti.

example) (Millie 2011).

Rose and Valverde (1998) similarly look at the role of space and law in everyday life, drawing on a 'problematisations' approach which looks at how some behaviours "come to emerge as a target for government". The analysis of problematisations for Rose and Valverde is "the analysis of the practices within which... problematising experiences are formed" (Rose and Valverde 1998: 545). They suggest that it is necessary to examine the role of legal institutions, mechanisms, arenas, forms of reasoning and strategic regulation play within this process (Rose and Valverde 1998: 546). Of the four elements they listed to aid with this approach – subjectifications, authorisations, spatialisations and normalisations, the latter two were most useful in thinking through upskirting. Spatialisations refers to new spaces of the regulation of conduct, namely the spaces in which "a set of routines of everyday life [are] distributed...the shopping mall, for example, or the public park" (Rose and Valverde 1998: 548). Normalisations, for Rose and Valverde (1998: 548), refers to when the normative order comes to constitute the modernity of societies as "law can be nothing else than social". In relation to upskirting, several questions present themselves: "where do these behaviours take place?", "what does it mean to transgress here?" and finally "what is law saying when it prohibits this behaviour?".

There is an entire subdiscipline within law that pays attention to questions of this nature. Legal geography emerged over twenty years ago after Nicholas Blomley published *Law, Space and Power* in 1994. Prior to this, it was asserted that "for most of its professional existence, human geography was essentially lawless" (Delaney 2015: 2). The discipline is anchored around scholarship which seeks to produce "fine-grained, detailed attention to the complex processes of legal constitutively and a desire to understand the reciprocal or mutual constitutively of the legal and the spatial" (Delaney 2015: 1-2). There is also considerable literature on the relationship between law and everyday mobility in urban thoroughfares. "Mobility is no longer outside authority and government", Jorgen Ole Bærenholdt (2013: 27) proclaimed, rather, "mobility itself has become part of new forms of authority and government" and is consequently an elementary strategy in the making of contemporary societies (Bærenholdt 2013: 27). The regulation of mobility is not just a responsibility of the state, but a tactic that is crucial to governing societies. Informed by Foucault's work on power, biopolitics and governmentality, Bærenhodlt (2013) suggests that societies are increasingly governed *through* mobility. However, whilst mobility may be governed it is

above all, a way of governing (Bærenholdt 2013). This describes a situation in which bodily, technological and institutional forms of self-government are “internalized in people’s mobile practices” (Bærenholdt 2013: 29). Ultimately, governmobility mobilises Foucault’s idea of the ‘power to circulate’ (Urry 2006: 121) to understand how societies are made with mobility.

With the complexity of connections and security issues in play, governing through mobility has become the very central move in making societies. Bærenholdt’s (2013) governmobility describes how the regulation of mobilities have become internalised in people’s daily practices of mobility; in an era when technologies are embedded everywhere, governmobility also functions through objects and relations. Furthermore, drawing insight from Foucault once again, Bærenholdt suggests that there is an emergent biopolitics of mobility that encourages people to move to get calm through “coping with uncertainties through mobility” (Bærenholdt 2013: 28). Governmobility may therefore helpfully explain not only the prioritising of movement and circulation by the state but the way in which states govern *through* mobility.

While these top-down understandings of state power through mobility are useful, upskirting must be considered on both micro and macro levels, as the everyday can only be grasped through attention to both scales. Furthermore, if people’s everyday practices have internalised the regulation of mobility, how can those who perpetrate upskirting be understood? When considering upskirting, for example, the understanding of mobility as something that is associated with flow and freedom and in turn, as something which is desirable and wholly positive, is challenged. With the exception of Cresswell (1996) and Pickering, Bosworth and Aas (2014), mobility studies has not been applied extensively to crime until quite recently.

One of the implications of considering the nexus between mobility and crime is that it complicates this utopian view of mobility as freedom and flow. Moreover, the case of upskirting is important when thinking through the crime-mobility-space nexus. Unlike cybercrimes and immigration research where mobility is conceptualised in terms of its functionality (that is, how it is used to perpetrate a crime), upskirting illustrates how mobility is woven into the very fabric of the everyday and occurs because of the fourth historical phase (or late/postmodernity) of the everyday we now occupy. In this respect, upskirting enables us to move away from an instrumentalist view of mobility in understanding it as something which is integral to everyday life in urban thoroughfares and corridors.

As alluded to above, spatial codes are used to delineate and restrict women's use of public space (Paul 2011). Mobility too can be and is, used to perpetrate harm and is implicated in power hierarchies – there is an inherent relationship between geographies and gender which necessarily includes the mobility practices through and within these spaces (Massey 1994). If urban spaces are “unequivocally premised through a male-centric approach”, as Paul (2011: 411) asserted, how does this male-centric overlay on space intersect with mobility? In the case of upskirting, I contend that we can see how mobility gets co-opted for the perpetration of image-based sexual abuse. While mobility does not *cause* image-based sexual abuse such as upskirting, it facilitates it. Upskirters take advantage of women's mobility and distribute the recordings to online spaces such as social media websites and other mega-platforms. Upskirters do not internalise the regulation of mobility as suggested by Bærenholdt (2013); instead, they illustrate how mobility is imbued with (gendered) power relations and flout the state's governmobility efforts.

To conclude, I bring this discussion back to the relationship between gender, law and technology as this is crucial to unpacking the criminalisation of upskirting in Victoria. Despite ostensibly being gender-neutral (at least in most Western nations), law often delivers outcomes which are deeply gendered. The law has been, and remains, a sphere where the values and qualities of legal pursuits not only define male roles and public life, but also defines what power means (MacKinnon 1986: 26). Feminist legal theory, like most disciplines, exists on a spectrum and cannot easily be defined as monolithic or unified. Most feminist theory tends to share two core items, however: “feminists recognise that the world is shaped by men, who for this reason possess larger shares of power and privilege” and feminists believe in equality for all men and women, both political, social and economic (Levit et al. 2016: 12). Where scholars do differ is on the meaning of the goal of equality and how best to achieve it. Like Smart (1989: 4), I explore how law exercises power and how this results in the disqualification of and resistance to, alternative accounts of social reality. For me, this social reality is read through the everyday and the way it is produced through representations which are normalised in popular and political discourses on the criminalisation of upskirting in Victoria.

Historically, women have often been excluded from the legal realm and gender is “deeply woven into the fabric of law” (Conaghan 2013: 245). Constructed upon the values and assumptions that underpin legal doctrine, unequal gendered power relations are “consistently

a factor implicated in the legal distribution of power and resources...patriarchal configurations remain an intrinsic part of a legal heritage” (Conaghan 2013: 245). Women’s personhood has frequently been ignored in the eyes of the law and can occur, for example, where the woman is pregnant and the rights of the unborn foetus (which is not considered a legal person until it is born) trumps the rights of the pregnant woman (James and Palmer 2002: 4). She may be recognised as a legal subject; however, she is not always treated as such, resulting in her status being regularly undermined. The law has also been used at times to help women, for example in not being considered criminals (MacKinnon 1987) for attempting to access healthcare when they want to terminate a pregnancy. However, the law remains a gendered tool which continues to deliver unequal outcomes to women globally (Eisenstein 1988; Kelly 1988; MacKinnon 1989; Munro 2017a; Smart 1989).

The violence of law is captured by Derrida’s (1992) *Force of Law: The Mystical Foundations of Authority*, where he argues that the law is intrinsically and inevitably violent. Part of this lies in the application of general rules to specific cases which results in fixing subjects and events. This imposition of an unchallengeable judgement is a violent one and negates the possibility of an ethical sphere within law because of this discrepancy. Lacey and Zedner (2002: 7) explore this argument in relation to feminist legal theory and note three approaches by feminist legal scholars when considering the legal subject: scholars who reveal how law violently excludes the feminine; work that looks at the role of law in constructing sexed subjects; and research into the possibility of a form of law that is less oppressive to women. These last two categories refer to what Lacey and Zedner dub ‘contextualisation as strategy’ which draws attention to the social relations the law neglects. By bringing attention to these elements which law has systematically excluded, it can situate legal concepts within a broader context with the aim of showing how new categories might be reformulated which are not culturally masculine, are less violently exclusive. Such an approach can result in modified categories to better serve the needs of women, which law has historically ignored (2002: 7).

Feminist scholars (see Kelly 1988; Pateman 1988) have argued for decades that this legal structure has resulted in unjust outcomes for women seeking justice through traditional criminal justice pathways. Recent Australian and American criminological scholarship has also reflected on the relationship between gender, technology and law (Henry and Powell 2016; Powell and Henry 2017). In an article published in the *Hastings Law Review*, for

example, Marc Tran (2015) critically assessed the harmfulness of two forms of street harassment: cat-calling and upskirting/creepshots. Whilst cat-calling and creepshots are qualitatively dissimilar in several ways, he argues both should be treated with equal disdain and should be conceptualised as different, but equally harmful forms of street harassment (Tran 2015). Vera-Gray (2016a; 2016b; 2018) has written extensively on the intrusions into women's lives that occur through street harassment by unknown men. Sexual harassment is deeply rooted in both the abuse of power and the use of sexual behaviour (MacKinnon 1979). This kind of behaviour is an example of unequal power relationships, defined by scholars like MacKinnon (1979) as “the result of the use of male sexuality to reinforce male power”, often rooted in patriarchal social structures in society (Conaghan 2013: 6). Image-based sexual abuse has only recently entered the mainstream and popular vernacular, however, upskirting has been written on for nearly twenty years as a stand-alone offence. Since 2010 Powell, Henry and colleagues have authored several articles on how unauthorised images are disseminated as a consequence of information and communication technologies (Flynn et al. 2017; Powell 2010; Powell and Henry 2014; 2016; Powell et al. 2018). More recently attention has been paid to image-based sexual abuse, particularly in the United Kingdom after a Bill to criminalise upskirting was proposed in June 2018. Despite these important advances, there is no work to date which looks specifically at upskirting as a form of image-based sexual abuse with a focus on the everyday and criminalisation.

Conclusion

As people move along footpaths, roads and upon public transport systems, these mobility practices and infrastructures are subject to new means of control and power (Jensen 2009). This movement through everyday urban space may appear seamless and smooth but it is facilitated by countless laws on various scales; however invisible laws presence may appear. Without exaggerating law's importance, “law matters” and is responsible for shaping the experiences of everyday life in urban spaces “to a great extent” (Valverde 2011: 6-7). In the fourth historical phase of the everyday, mobility is an important everyday life practice (Jensen 2011) and the “rhythms of people in everyday circulation becomes an indicator that people are placed by power” (Allen 2003: 188). Particular people and more specifically, particular bodies, are placed by the power in different, often unequal ways, as this chapter has demonstrated in relation to women.

The objective of this literature review has been to re-connect the (mostly male) sociological theorisations on the everyday with feminist writing on ordinary violence (Stanko 1990). I take seriously the concept of the everyday by investigating how upskirting as a form of image-based sexual abuse and a contemporary example of everyday misogyny can be understood with the conceptual framework weaved above. For women moving through urban spaces, upskirting is just another of many kinds of unsolicited actions that make up their everyday journeys. Fundamentally, the relationship between upskirting and the everyday is one defined by the presumption of sexual access to women by men where “men assume sexual access to women they do not know” (Kelly 1988: 29). It is unsurprising that while not all women live in fear of sexual assault “many of women’s routine decisions and behaviours are almost automatic measures taken to protect themselves from sexual violence” (Kelly 1988: 31). As women increasingly participate in public life and the workforce, in spaces and contexts that previously (and, to a large extent still do) privilege male mobility, their everyday extends beyond the home. Therefore, while the ordinary violence (Stanko 1990) of intimate partner violence remains an ongoing threat to women worldwide, it is important to re-conceptualise the everyday as extending to these public, urban spaces or else we risk adhering to outdated binaries that relegate women’s experience to the domestic (private) sphere.

This is my ‘problem of the everyday’. Following Lefebvre’s exhortation, I pay attention to the everyday as it is represented in media and political discourses about upskirting in Australia. One of the defining features of everyday misogyny is that it is hidden, happens in both public and private spaces and is part of the experience of being a woman. Upskirting too is a hidden, insidious form of harm based on the exertion of male power over female victims. Unlike the kind of ordinary violence explored by Stanko (1990) in relation to intimate partner violence at the hands of known men, upskirting happens in various spaces and often by strangers, but this does not preclude it from also being an everyday form of harm. The unknown intrusions premised on sexual access and objectification may not rupture a woman’s everyday today, but throughout her life, it is always disrupted and intruded upon because she is a woman. If “the familiar is not necessarily the known” (Lefebvre 1991: 15) then one of the principal objectives of this thesis is to make known the hidden elements of an everyday that is structured by a culture that routinely ignores, denies and neglects men’s abuse of women.

Chapter Three: Researching the Routine

If the everyday consists of practices, contexts and materialities that are policed, produced and politicised by various institutions in multiple ways, then researching the everyday requires tools that can attend to these nuances. Moreover, when qualitatively driven, it requires researchers to triangulate methods, data and theory appropriate to addressing the intricate problems of the everyday. To recap, the four research questions for my investigation are:

- 1) How does the emergence and practice of upskirting relate to the technology used to perpetrate it?
- 2) Why was upskirting identified as an issue in Australia in the early 2000s and in Victoria in 2007?
- 3) How did political and media discourses represent upskirting in Australia over a ten-year period (between 1 January 2005 and 31 December 2014)?
- 4) How was the everyday imagined in these discourses?

Given my emphasis on technology and discourse, it was necessary to develop a methodology that could investigate the technological and discursive dimensions of upskirting.

Subsequently, the methodology I drew upon utilised three approaches renowned respectively for their utility in researching technology and discourse: media archaeology, online observation and critical (feminist) discourse analysis (CDA). In this chapter, I detail my use of these approaches and offer some methodological considerations when researching the intersections between image-based sexual abuse and the everyday.

The Theory of Moments: A Methodology For the Mundane

The everyday functions not only as an object of analysis, but also as the intermediate and mediating *level* that defines the human world, which cannot merely be anchored to culture, society, ideology, political superstructures or history (Lefebvre 2002: 9). Methodologically speaking, this means that the everyday acts simultaneously as a theoretical foundation, sensitising concept and as an analytical tool. The everyday is used in this way to create a more coherent and conceptually consistent project that informs and is informed by its subject

matter. In utilising the everyday as an intermediate level, I resisted fixing this investigation to an examination of culture *or* society *or* ideology *or* political superstructures *or* history (Lefebvre 2002: 9).

Lefebvre asserted that the macro cannot be read from the micro and that the micro cannot be grasped via the macro (Stevenson 2013); the everyday is always at once embedded in both micro and macro processes which is why he advocated for a conceptualisation of the everyday as a mediating, intermediate *level* (Lefebvre 1991: 54). I use the everyday as both theory, concept and analytical tool and it directs my investigation into the regulation and control of the everyday. Furthermore, it guides how the politicisation of the everyday by the state occurs in response to the paroxysmal moments provoked by transgressive actions such as the upskirting incident at the Australian Open in 2007. As Moran observed, “the quotidian coalesces with the political in unnoticed but pervasive ways” and “even the most mundane routines incorporate complex...politics” (2005: xi-9). In this project, I sought to uncover how issues of power, technological advancement and gendered relations were represented in upskirting discourses about the everyday which is “a highly charged political arena” (Highmore 2011: 20). This is what I mean when I refer to ‘the politicisation of the everyday’ which I suggest is a concept that helps bring together the various registers of the everyday. We can thus examine complex phenomena such as upskirting which brings together gendered regimes of visibility, technological infiltration of the everyday and social relations premised on sexual access and objectification.

Transgressive actions are often moments of rupture in the unnoticed and commonplace and serve as an instance that transforms the ordinary into the extraordinary. A lacuna is opened up in the everyday, revealing the pervasive ways in which the quotidian is policed, produced and politicised. The problem of the everyday examined in this project was the unequal gendered relationships that are normalised as part of the material of everyday life. The problems are difficult to detect and often do not cause ruptures in the everyday. Rather than tearing the fabric of the everyday, everyday misogyny expressed through acts such as upskirting, instead remains hidden precisely because it intrudes without disrupting. My methodology was guided by and structured upon Highmore’s (2002: 19) work which sought to tell the story of how “the idea of the everyday become[s] enlivened when it is set to work and put in crisis”. The criminalisation of upskirting constituted what Philipopoulos-Mihalopoulos (2012: 38) might dub a ‘momentary crisis’. For Philipopoulos-Mihalopoulos (2012: 120), the law is

instrumental in thinking through crisis as every era needs a crisis which results in crises becoming both exceptional and unexceptional. As I explore in Chapter Five, this crisis threatening the everyday in Australia leading up to upskirtings criminalisation in Victoria was the anxieties provoked over new optical technologies in public spaces used for prurient purposes by the techno-pervert. This theory of crises also aligns with Lefebvre's theory of 'moments' which are the "fleeting, sensate, fragments of time" that result in a detachment from and a puncture to, the banality of everyday life (Butler 2012: 29). Drawing upon the criminalisation of upskirting in Victoria as a paroxysmal moment that "dispossess mundane, everyday existence, annulling it, denying it" (Lefebvre 1991: 124-125), I utilised this theory in my research design to enable an exposition into and a critical reflection on, the politics and power relations that flow through and structure everyday life.

Media Archaeology

Media archaeology understands current media through examining its relationship to past media. It is premised on drawing insights into new media from old media which preserves technological continuity and synchronicity in media-centred analyses. It is a method which ultimately seeks to uncover how media's past "lives on in the present, guiding and informing people's attitudes in their daily lives" (Parikka and Huhtamo 2011: 14). Piccini (2016) for example applies the method to understand how media 'made' the Olympic City. It is in contemplating the intra-action between objects, technologies, screens, cameras, spectacles, images and audiences, that a new understanding of how the Olympic urban landscape was co-produced within this assemblage was formed.⁴⁶ Other scholarly investigations into isolated technologies of voyeurism and the affordances they enable have been published (see McGlynn et al. 2017; Flynn et al. 2017), however, my analysis is the first media archaeology that focusses on peeping and upskirting. As such, this narrows the parameters of this investigation to examples of how media has been used to look at, represent and otherwise institute gendered ways of looking at women. Moreover, I examined how technologies are embedded in ideology and constructed in a wider set of desires and dreams related to erotic, scopophilic and voyeuristic fantasies involving the female body (Parikka 2013: 54).

⁴⁶ The benefits of using this method have also been noted by others including Born (2016) and Kirby and Emerson (2016).

Far from being an unprecedented practice, camera-phone facilitated upskirting is but the latest instance of image-based sexual abuse. To understand how upskirting emerged as a practice and issue of social concern, we must unearth its inextricable technological, cultural and social preconditions. Media archaeology provided an excellent set of tools for achieving this task. At its core, media archaeology is a trans-disciplinary methodology that examines the emergence, practices, affordances and potentialities of new media by drawing insights from past media (Parikka 2013: 134). Whilst Huhmato and Parikka (2011: 1) note “studies of new media often share a disregard for the past”, scholars who take a media archaeological approach address the history and development of media cultures and untangle the relationships between past, present, obsolete and forgotten media. As an approach, media archaeology maps “the co-existence of new and old media cultures intertwined through practices, apparatuses and recurring ideas” (Parikka 2013: 160). In tracing the technological past of upskirting, this approach enabled me to similarly chart the enduring gendered regimes of visibility which produces asymmetrical, unequal looking relationships.

As its name suggests, media archaeology is heavily indebted to Foucault’s (1972) archaeological method of analysis; an analytical method that seeks to uncover the rules which govern discourse and which sits below a subject’s consciousness. The archaeological method principally seeks to uncover the rules which define a system of conceptual possibilities and which subsequently governs the limits of thought and language in a particular time or place. Yet it is the work of German media theorist Friedrich Kittler that has had the greatest impact on the approach’s development. In line with Kittler’s (1992) account of the technological a priori of discourse, media archaeologists are concerned with the technological and mediatic underpinnings of discourse, sense (making), subjectivity and sociality which, according to media archaeologists, are shaped by the way specific media transmit, store and mediate information. Understanding the development of media, therefore, lies at the heart of understanding social changes. The entanglement of the body, senses and the intricate history of media technology are key elements of media archaeology (Parikka 2013: 22-23) and also aligns to Kittler’s theory. Media archaeologists such as Kittler are intensely concerned with the materiality of media and media cultures, while, conversely, generally avoid technological determinism. Parikka (2013: 18), for example, argues that media archaeology asks the following questions: “what are the conditions of existence of this thing, of that statement, to these discourses and the multiple mediated practices with which we live?”. These questions are simultaneously political, aesthetic, economic, scientific and technological and require an

examination of the nexus of these forces. As Parikka (2013: 36) asserted: “we need to understand the particularities of each mode of transmission... in our culture to have a real grasp of what the media is doing to us”. Media archaeology enabled me to examine how media and the environments they generate, have shaped the everyday and our cognitive and affective capacities in relation to image-based sexual abuse. It was within such a media environment that upskirting emerged as a concern in 2007.

As media archaeology reminds us, language is not the only system of subjectification. Beginning with technology as a prism through which we can look at subjectification can be equally revealing as starting with subjectification in an analysis. Drawing on Foucauldian notions of power, media archaeologists examine “structures of power through a technological analysis” (Parikka 2013: 136-164) and note that subjectification is, in part, a product of media specific practices. Subjectification, in other words, occurs not only through people and institutions, but in the circuits in which our media systems are made (Parikka 2013: 70). Specific media, alongside the culturally coded practices they enable, generate regimes of visibility and looking that are imbued with power relations that become apparent in the cultural practices associated with each new form of media. The visible is stratified and within these strata, discourse can always be located (Brighenti 2010). Discourse is imbued with images and it is unhelpful to separate the visible and the articulable, where one corresponds to the non-discursive and the discursive, respectively. Instead, it is better to understand how the two are interwoven and how “inscription in the visible through inscription technologies is consequently a process that always takes place in the dual form of the observable and the articulable” (Brighenti 2010: 33).

In practice, media archaeology involves examining the technological form, functionality and affordances of a range of media with a focus on media from the past. Through doing so, researchers may identify continuities, discontinuities and radical breaks between media in their shaping of human subjectivity, practices and cognitive capacities. To understand the techno-social underpinnings of upskirting, I examined the everyday technologies that have successively shaped different iterations of the activity. Heeding Kittler’s (1986: 229) warning, I incorporated a material and techno-historical reading of upskirting prior to analysing discourses on upskirting in Australia, as “discourse analysis ignores the fact that the factual condition is no simple methodological example but is in each case a techno-

historical event”. It is these many techno-social events that Chapter Four examines in my media archaeology of upskirting.

Such an approach does not mean the sociological and power-related implications of technology were sidelined or neglected in my analysis. Rather, in line with Parikka and Huhtamo (2011), I resisted deterministic readings of technology in favour of interrogating how media emerge in discursive spaces and how various technologies were imagined and understood. This approach began not with the new, which is too often the focal point of media-centred investigations, but instead looked to the commonplace, the cliché and the everyday as the starting point. Furthermore, this form of media archaeology has a preoccupation with excavating the secret, forgotten, neglected or suppressed histories in relation to media and endeavours to offer alternative readings that challenge current understandings of the history of media technology.

Observing the Creepers

My analysis was not focused solely on the technological antecedents of upskirting. To understand the technological practices of contemporary upskirting, I observed and analysed the content of several upskirting websites, subreddits and social media pages. Through examining not only the way upskirts were consumed and curated on these pages but also the way the techniques and subcultural knowledge of upskirting were shared, I was able to better comprehend how individuals who engaged in upskirting and creeping understood the practice. Even more importantly, perceiving how upskirters used these online platforms enabled me to unpack upskirtings technological unconscious – what Thrift (2005) refers to as the “the operation of powerful and unknowable information technologies that come to ‘produce’ everyday life” (Beer 2009: 988). Here, my media archaeology of the past bled into an analysis of the technological present, as I examined how the form and affordances of digital media created or co-opted for voyeurism shaped the current state of upskirting.

As Wood (2017b: 179) notes, “with the emergence of social media, the audience, reconfigured as users, has never been so accessible”. Rather than employing a participatory form of online observation such as digital ethnography (see Hine 2015; Postill and Pink 2012; Pink et al. 2016), my observation of these domains was covert. Whilst such participatory

forms of observation generally generate richer data, there were several reasons why engaging in this form of observation was unsuited for my research. Firstly, given the transgressive and often illicit nature of upskirting, there was a high likelihood that site users would be unwilling to answer my questions. Further, I was concerned that, upon realising that their sites were being observed, site administrators would switch their domains to private, locking me out of observations entirely. Most upskirting websites, feeds and other social media pages revolved primarily around practices of uploading and commenting on images. Consequently, most of these domains lacked an appropriate forum for engaging with site users. As I discovered during my observations, few users of upskirting sites were repeat posters (or posted under the same pseudonym repeatedly). Moreover, few users engaged in ongoing conversations with other users. This presented several issues for participatory observation; most significantly, it was difficult to establish requisite rapport with users (see Wood 2017b).

My observation of upskirting sites nonetheless generated rich data on how technological infrastructure and use of these sites has generated new ‘gendered regimes of visibility’. Over the period of five years, I visited these public sites several times a month before conducting a more in-depth analysis between December 2015 and February 2016.⁴⁷ During this time, I observed previous posts dating as far back as ten years in some instances and also monitored how frequently new content was uploaded. While this was a relatively short period of time to conduct this intensive research, combined with my unstructured research of these web pages in the years leading up to this time, I consider the data as a complementary set to my primary focus on political and media texts representing upskirting. Above all, looking at confronting sexist content of the nature displayed on these websites is difficult for an extended period of time. In line with Beyens et al. (2013) who extensively detailed ‘the pains of criminological research’ as a form of self-care, I stepped away from this content after gathering the data I required. After three months, recurring themes had presented themselves clearly enough that I deemed it beneficial to return to my more infrequent use of the websites.

I observed and collected data from 10 websites or social media pages dedicated to upskirting. Each of these domains were public, that is, they could be readily located by any Internet user using a mainstream search engine and accessed without needing to log in to a password

⁴⁷ See Appendix Two for a comprehensive list of sites under observation.

protected domain. Subsequently, because of the public nature of this information, I did not require ethics approval to access these sites. These sites (n.4) were dedicated upskirting and/or creepshot sites; that is, they were stand-alone websites created specifically for the task of aggregating and curating footage of upskirts and/or creepshots. The remaining domains I collected data from were reddit sub-feeds (n.2), Twitter upskirting and/or creeping hashtags (n.1), Instagram (n.1), Flickr (n.1), Tumblr (n.1) and a Facebook page dedicated to curating upskirt footage (n.1). From these domains, I collected textual data in the form of hashtags and posts by administrators and users and technological data in the form of site features, affordances and infrastructures.

Unlike the remaining two components of my methodology which posed little to no ethical considerations, my observation of upskirting sites did pose some ethical consideration that warrants discussion here. Most significant of these ethical considerations related to the issue of directly quoting material posted on these domains. Directly quoting posts on public domains can, Bassett and O’Riordan (2002) note, not only alienate the authors of such posts from the material they create but also open these individuals up to intrusion from others who search for their comments. By directly quoting posts, readers need only copy and paste these quotes into a search engine to quickly locate both the comment and the author online. In cases where an individual either repeatedly posts on a site or posts under their real name, this opens quoted users up to potential intrusion from individuals who read and locate them. Whilst sensitive to the potential for future intrusion in the lives of posters on upskirting sites, several factors minimised the possibility harm occurring to individuals on these sites. Most individuals on the sites I examined, posted under pseudonyms, thereby lowering the potential for ongoing intrusion from others who read their quotes. Moreover, as noted before, few individuals posted repeatedly on these sites, at least under the same pseudonym. For these reasons, I made the determination that it was appropriate to directly quote material posted on upskirting sites.

Critical (Feminist) Discourse Analysis

Modern power (and hegemony) is effective because it is routinely in the texts and talk of everyday life. This makes it an invisible power, ‘misrecognized’ as such and ‘recognized’ instead as quite legitimate and natural (Lazar 2007: 148).

The everyday represents not just an object of analysis in my examination of upskirting. In conceptualising it as an intermediate level that oscillates between the macro and the micro, the everyday also functions as a vital analytical tool (Lefebvre 2002). Such thinking aligns with Fairclough's approach to discourse analysis which examines the micro and macro as mutually-constituting components of discourse. As a sensitising concept and analytical tool, the everyday enables this dialectical movement, as it mandates a necessarily close inspection of both macro and micro processes. This form of discourse analysis is also well matched for this research project owing to the way in which Fairclough conceptualises discourse analysis in general. Stating that discourse analysis essentially attempts to unravel how individuals are woven into a social fabric and discern how the producer(s) of a text is woven into that fabric, Fairclough's (1992: 176) approach aligns with how I understand the everyday. The everyday essentially is this social fabric that holds countless different threads in place. Through conducting a discourse analysis of political and media texts I generated an understanding of how the very fabric of social life itself was woven, maintained and politicised in relation to upskirting.

Just as I employed certain tools to attend to the specificities of technology and how it is implicated in the act of upskirting, it has been vital to situate other kinds of sources amidst broader understandings of the kinds of material under analysis. While I largely referred to these as political and media discourses, these are general labels for an array of discourses. I looked at two specific forms of media and political discourses – crime news and parliamentary debates. Crime news has a long history in academic research (Benedict 1993; Chibnall 1975; Cohen 1972; Galtung and Ruge 1965; Greer and McLaughlin 2012; Jewkes 2015; Moore 2014; Young 1990) and has enjoyed increasing popularity in the last decade. As Carrabine (2008: 10) stated, media representations are a useful way of ascertaining what constitutes the everyday, as “media form part of the fabric of everyday life in ways that are both routinely ordinary and exceptionally complex” (Carrabine 2008: 10).

Carvalho (2008: 161) reminds us of the importance of examining what she terms the “biography of public matters” which can only be achieved through longitudinal analyses of mediated texts. Moreover, given that “media representation[s] of social issues is...a function of the discursive construction of events, problems and positions by social actors”, the discursive strategies used by actors in the many arenas both before and after a journalistic text is produced must also be considered. As will be discussed in more depth below, there is a

need to contemplate the various social processes and discourses beyond and outside the text/s under analysis to fully grapple with the complexity of issue-creation (Jenness 2004). In adopting Rose and Valverde's (1998) problematisation approach, my methodology was of course guided by the central research questions listed at the beginning of this chapter. This attends not only to the criminalisation of upskirting in Victoria in 2007 but the processes through which it underwent issue-creation in mediated discourses in the lead up to (and after) the Muto case. Because it is challenging to look beyond texts to consider the broader sociocultural and institutional contexts (and journalism intersects with many different fields of society), developing a research methodology that can capture all the moments in the 'life' of a news text, remains an essential, albeit "unaccomplished" goal of CDA (Carvalho 2008: 162). Part of the reason this has remained unattainable is that a snap-shot approach is often employed, inspecting issue-creation only over the span of several days or months. Conversely, I have opted for a media archaeology of the technics of everyday voyeurism to contextualise the issues that erupted on Australian shores in the mid-2000s relating to new technology and non-consensual sexual photography. In adopting a biographical approach to social and political matters, such analyses can help make sense of the arrangements that govern us (Carvalho 2008: 172).

I employed a historical-diachronic, longitudinal media analysis and examined coverage over a ten-year period. In short, this approach focussed on the language used over this period, with a particular interest in mapping out the changes over time in a chronological fashion. The media analysis was broken into three phases. First, a critical collation from 2005-2014 over a 10-year period was conducted to observe general trends in how upskirting was presented in news media. This enabled patterns to be identified, such as those pertaining to how upskirting was (re)named: from peeping to upskirting and finally creeping. Such an approach led to a second more targeted analysis of texts from 2005-2008, which was when social concerns over non-consensual sexual imagery were most heightened. A refined examination enabled me to identify how upskirting became an issue of social concern in Australia by analysing the kinds of victims and offenders that repeatedly appeared in media reporting on this phenomenon. I observed a transition from concern over beach and pool photography to the tourists and tennis players photographed during the Australian Open. To answer how upskirting became criminalised in Victoria, the third phase of my media analysis was an in-depth analysis of a four-week period between January and February of 2007, which allowed me to investigate coverage of the Muto case. An in-depth analysis involved a deeper attention to the language

used and ideology deployed in the news articles that reported on the Muto incident, with a focus on objects, actors, discursive strategies and ideological standpoints conveyed within the texts (Carvalho 2008). My media analysis subsequently became progressively narrower at each stage, allowing both general observations of trends and patterns and an in-depth analysis of the signal crime at the Australian Open.

As Moore (2014: 2) notes, media are elements of culture and society and form part of our cultural landscape; they transform raw events into news stories and participate in cultural currents. My discussion in Chapter Five of media reporting and the Muto case, in particular, examined how an event was transformed into a crime news story. I drew on Jewkes' (2011) account of news values defined as a set of criteria by which the newsworthiness of an event can be determined – to explain why this incident contributed to the Upskirting Bill. I also analysed the coverage to identify what this said about the everyday, by emphasising how the everyday was represented as something threatened by those outside our borders. By drawing on media criminology, I was able to establish some common trends in crime news representations of the Muto case in January 2007. I problematised these representations of upskirting and the implications this selective coverage of upskirting entailed for perpetuating harmful representations about stranger danger and gendered violence. Principally, this occurred at the expense of focussing on the insidious, but more mundane incidents of upskirting that occur in public spaces, on transport and in leisure centres.

Several scholars have reflected on the complex relationship between the media and the everyday, including Lefebvre (1991; 2002; 2004) and Highmore (2002; 2011). Highmore believes that the everyday is often omitted from the mass media (at least explicitly), stating that “the ordinary never stood much of a chance against the sensationalism of newspapers” (Highmore 2002: 4). Lefebvre would agree with this reflection as he stated that while the media does not “speak to” the everyday, it “enters into the everyday; even more: [it] contribute[s] to producing it” (Lefebvre 2004: 57). This made conducting a discourse analysis of the media coverage of upskirting with an attuned focus to the everyday, and how it was represented, even more important. Lefebvre referred to the relationship between the media and the everyday as ‘the mediatised everyday’ which results in the everyday becoming “the prey of the media, used, misunderstood, simultaneously fashioned and ignored” (Lefebvre 2004: 59). Ultimately this produced a particular kind of everyday, one threatened in a

momentary crisis by outsiders beyond community borders who seeped into the routine, lurking in the shadows and jumping out unexpectedly to prey on innocent citizens.

Reference to the everyday (including everyday practices, spaces, times and objects) may be difficult to detect for these reasons. The everyday may appear only fleetingly or be very subtle; it may also be invoked as something in need of protection from dangerous offenders (as a value); refer to what victims were doing (such as walking to the beach) or where they were (a tennis tournament, a shopping centre, on a bus or train). The everyday may not be present at all as Highmore and Lefebvre suggest is often the case; however, employing the theory of moments renders the politicisation of the everyday more accessible in these moments of rupture or crisis. By taking a problematisation approach (Rose and Valverde 1998) and examining the emergence of upskirting as an issue amidst broader concerns surrounding technology in Western nations, the everyday can be interrogated both within these moments (micro level) and on a macro scale. The scale of this project therefore shifts. It expands and contracts like the lens of a camera as it traces the disruption of transgressive movements in the isolated moments of the everyday (Lefebvre 2004), to the politico-legal eruption in its wake, invoking new legislation in response to these momentary crises (Philipopoulos-Mihalopoulos 2012).

I also analysed parliamentary debates – a deliberative sub-genre of political rhetoric (Ilie 2010: 8). A parliament is a social institution which can be defined as an apparatus of verbal interaction, or ‘order of discourse’ (Fairclough 1992: 40). Each social institution contains ‘ideological-discursive formations’ (IDF) and each IDF can be understood as a speech community with their own discursive norms (Fairclough 1992: 31). Fairclough observes how the ‘background knowledge’ (the naturalised ideological representations which are seen as common sense) underpins these discursive norms and varies for each institution. A parliamentary discourse refers to “an oratorical discourse targeting an audience that is asked to make a decision by evaluating the advantages and disadvantages of a future course of action” (Ilie 2010: 8). Analysis of parliamentary speech can reveal the rhetorical strategies of Members of Parliament (MPs), their hidden agendas and any ideological or tactical bias, among other insights (Ilie 2010).

I combined two approaches to CDA – those formulated by Fairclough (2001) and Wodak (2001). Fairclough (1992) takes a three-pronged approach to CDA which maps three separate

forms of analysis onto one another: the analysis of language texts; the analysis of discourse practices; and the analysis of discursive events. I triangulated my observations using Fairclough's (1992) argument that the micro, meso and macro must be examined to really contextualise findings and develop a deeper understanding of the phenomena under analysis. This macro level is outlined in Chapter Four with a history of the ways in which technology has been used by men to objectify women. Chapter Five summarises my meso analysis – the in-between level between the micro and macro. In inspecting the media coverage of image-based sexual abuse (specifically peeping and upskirting) in the years prior to 2007, I was able to better understand the emerging conversations and framing of this behaviour. In doing so, I observed how newspapers, what (Williams 2015) describe as an 'elite discourse', represented the growing concerns over beach and pool photography of topless sunbathers and children. Finally, Chapter Six was my micro-level analysis of the Upskirting Bill, achieved by examining linguistic techniques of avoidance apparent in the Second Reading speech.

While Fairclough's three-pronged approach emphasises textual analysis and performs CDA at a micro, meso and macro level, Wodak is more interested in developing "tools relevant for specific social problems" (Meyers 2001: 22). Wodak (2001) focuses on context and subsequently devises a theoretical approach to CDA that addresses four different levels of context: the immediate language of a text; the intertextual and interdiscursive relationship between utterances, texts, genres and discourses; the social level (or extralinguistic) level which is referred to as the context of situation; and broader socio-political and historical contexts. While Fairclough's (2001) three-pronged approach is methodological and is part of the process of *doing* CDA, Wodak (2001) advocates for the switching between these levels as a way of examining findings from different perspectives and minimising the risk of bias. In this respect, Wodak (2001) suggests employing this contextual approach not only to "identify the operation of power and dominance in discourse", but as a way of increasing the reliability of the findings and the rigour of the research design (Wooffitt 2005: 138).

Fairclough and Wodak (1997) share an emancipatory objective in conducting CDA. As a problem-based methodology with emancipatory objectives, CDA offered an apt approach for my thesis to examine the oppressive gender relations in my data and which permeate the everyday. These were not the initial motivations I held when conducting my research; the everyday and its relationship to crime as a source of disruption as revealed through various discursive representations was the starting point for this research. However, after spending

time with my data, it became clear that the everyday was not a place unaffected by power but illustrated the many manifestations of domination and hegemony that trickle down into every facet of everyday life.

CDA begins with a clear political agenda that sets out to reveal the role of discourse in (re)producing and challenging dominance (Wooffitt 2005) and is distinctive in intervening on the side of the oppressed. Fairclough and Wodak (1997) also unite in viewing language as a social practice and considering the context of language use to be of the utmost importance (Seale et al. 2004: 186). While I lean more towards a Fairclough inspired CDA, there are limitations with his approach. Notably, Fairclough does not clearly distinguish between the discursive and non-discursive – an issue that led me to employ media archaeology alongside CDA. Additionally, Fairclough limits his analysis to single texts. Whilst somewhat problematic, given that my dataset exceeded 320 documents and discourse analysis is usually employed to examine a small corpus of texts, in practice, the short length of many of the news articles I encountered did not present considerable logistical or methodological difficulties for my analysis. As Jørgensen and Phillips (2001: 89) note, “it is easier to show how dynamic discursive practices take part in constituting and changing the social world when analysing the reproduction and transformation of discourses across a range of texts”. Given my interest in context, more than one document was necessary to explore this in adequate depth which pushed me to search out other CDA scholars to compliment my analysis and led to my discovery of Lazar’s (2007) feminist CDA.

I utilised Lazar’s (2007) influential work on critical (feminist) discourse analysis (CDA) which examines unequal social orders in society. Such analyses aim to:

show up the complex, subtle and sometimes not so subtle, ways in which frequently taken-for-granted gendered assumptions and hegemonic power relations are discursively produced, sustained, negotiated and challenged in different contents and communities (Lazar: 2007: 142).

Importantly, this approach understands that power and ideology sometimes manifest in ways that are not always apparent to those involved in social practices. Irrespective of this awareness, men nonetheless reap the patriarchal dividends (Connell 2005) and benefit from a system where women are routinely subordinated and dominated. Like Connell (2005), I

suggest that in claiming that patriarchal gender ideology is structural, this simply means that “it is enacted and renewed in a society’s institutions and social practices, which mediate between the individual and the social order” (Lazar 2007: 147). Critical (feminist) discourse analysis endeavours to examine how dominance and power is discursively constructed and produced and negotiated in relation to gender, and how these systems of order are maintained (see also Munro 2017a). It is for this reason that CDA has been labelled as analytical activism due to its emancipatory objectives. Therefore, such an approach is not incompatible with Fairclough and Wodak’s CDA. Rather it is a specific form of this kind of analysis tailored to revealing how the linguistics practices are implicated in patriarchal ideology and oppression (Cameron 1992). While politicisation is often the central objective of CDA’s of parliament, of equal importance is the de-politicisation of something which results in “the exclusion of issues and/or people from processes of political deliberation and decision – placing them outside politics” (Fairclough 1992: 241). For me, this related to the myriad of ways in which upskirting was dislocated from the objectification at the heart of the behaviour and the identification of men as perpetrators of this form of image-based sexual abuse.

To uncover how the everyday was represented, invoked and (de)politicised in relation to upskirting, I drew upon a hybrid version of Fairclough (1992), Wodak’s (1997) and Lazar’s (2007) varieties of F/CDA. For Fairclough, CDA is as much a theory as it is a method and is best understood as “a theoretical perspective on language and more generally semiotics” (Fairclough 2001: 121). Fairclough’s (1992) approach synthesises linguistic varieties of discourse analysis with social theories of subjectivity and knowledge production. For Fairclough, the effects of discourse include the construction of social identities, subject positions and types of self; the construction of social relationships between people; and the construction of systems of knowledge and belief. Of concern for me was the latter of these three effects. Yet discourse analysis is multidimensional and these dimensions overlap and require the progression from the interpretation of discourse to the description of the text. Such interpretation and description must take place in “light of the social practices in which the discourse is embedded” (Fairclough 1992: 231). Further, analysis often involves various sources which are produced, circulated and displayed differently depending on the kind of genre that a source belongs to.

In total, I analysed 328 media and political documents relating to upskirting/peeping/creeping in Australia that were published between 1 January 2005 and 31 December 2014. This

consisted of news media reports from all states and territories in Australia (n.317) and political documents such as press releases (n.2), Standing Committee for Attorney-General's discussion papers (n.1) and Victorian parliamentary documents (including debates, legislation and Explanatory Memorandum) (n.8).⁴⁸ While the majority of this analysis was on media articles between 2005-2008, a longitudinal analysis enabled broad trends and patterns to be detected, such as the attention on pools and beaches in 2005 and 2006, the increase of articles during 2007 concentrating on the Muto case and the shift in terminology away from upskirting circa 2010 which focussed instead on 'creeping'. As Spender and Bardin (1985: 163) remind us, "in order to live in this world, we must *name* it. Names are essential for the construction of reality, without a name it is difficult to accept the existence of an object, an event, a feeling". This examination of naming the practice of upskirting was a crucial component of my analysis.

Parliamentary debates, legislation and official documentation on upskirting were accessed through public archives such as the state government website and the online databases Austill and LexisNexis.⁴⁹ Similarly, news media documents were located through Austill, LexisNexis and Google News searches through entering the search terms 'upskirt', 'up-skirt', 'up skirt', 'upskirting', 'up-skirting', 'up skirting', 'peeping', 'peeper', 'creepshot', 'creeper' and 'creeping'. To be included in my sample, articles had to concern upskirting occurring within an Australian context. Articles that concerned upskirting-related events happening outside of Australia were removed from consideration. In Chapter Five, I also outlined the problematic coverage of news media outlets who both publish upskirt images of some female celebrities and condemn the upskirting of others.

In all sources, the discursive structures of the texts were analysed to determine how the technology, behaviour, offender, victim and everyday – or what Fairclough dubs "normality beyond which is often very hard to reason and behave" – was invoked (Fairclough 1992: 172). The crucial discursive structure, that is, what is understood as truth (but may not

⁴⁸ See Appendix Three for a breakdown of individual upskirt incidences by state and year.

⁴⁹ It should be noted that Moore (2014) highlighted the issues with using such search engines for media representations, particularly that they 'flatten' the article and decontextualise it so that it cannot be analysed alongside other articles or adverts. While this is a legitimate concern, it would have been too time-consuming to locate hard copies for all 320+ documents. I therefore decided to compromise and accepted this limitation in exchange for a data set that could give me a snapshot of media articles on upskirting over a 10-year period.

necessarily *be* true) under analysis in Chapter Six was the presence of forms of linguistic avoidance, a specific form of avoidance speech. In Chapter Six I develop my own category of this phenomena I term ‘misdirection’, which can be understood as an expression of what Caffi and Janney (1994) dubbed avoidance speech. Analysing a range of discourse, from court discourse to political discourse, Caffi and Janney (1994) discerned avoidance strategies that were similar across speech situations. Janney defined linguistic avoidance as a:

complex, systematic, pragmatic, skill involving choices in different linguistic systems (pronoun, determiner, person, aspect, modality, number, tense, voice, degree, negation etc) that modify meanings at different levels of linguistic organization (word, phrase, clause, sentence, discourse) (Janney 1999: 260).

Anchimbe (2008) examined the ways in which linguistic avoidance was apparent in speeches given by politicians. He analysed the techniques of avoidance used by former French president Jacques Chirac in an interview about France’s relationship with the United States on the eve of the Iraq war. Linguistic avoidance is also evident in what Humphry’s (2004) dubs ‘management speak’ – a form of public discourse which employs highly ideological language to stir listeners emotionally or intellectually and which has an important face-saving function (Anchimbe 2008). Just like physical strategies of avoiding threatening objects (for example, moving away from things), there are also speech patterns for avoiding threatening concepts in discourse.⁵⁰ These generally appear in two ways; ‘talking away’ and ‘talking around’ a negative concept without implicating oneself, or the position one represents. As Brown and Levison (1987) note, this act of avoidance can be achieved through hedging which involves the ways a sentence is framed, the emphasis on certain elements within the sentence and its order. Janney (1999: 264) developed five dimensions to linguistic avoidance: *valence*, *proximity*, *specificity*, *evidentiality*, *degree*, to which Anchimbe later added two other categories: *urgency* and *imaginary*.

While these dimensions of linguistic avoidance are useful for general political discourse analysis and indeed several of the dimensions were apparent in my analysis (proximity, specificity and urgency for example), I situate my CDA more firmly in feminist studies

⁵⁰ These include closing the boundaries to the threatening object, becoming non-committal to the object, increasing distance between the object and yielding to it (Janney 1999).

which analyse speech acts that avoid, trivialise, neglect or otherwise diminish men's abuse of women. I am indebted to the work of feminist scholars Lamb (1991) and Romito (2008) who specifically applied linguistic avoidance in this way. As Lamb (1991) explains, linguistic avoidance refers to linguistic choices that obscure the issues of responsibility in discussions of violence against women. Such strategies are regularly deployed in discussions of men's violence against women, where they often produce highly problematic accounts of the causes and key issues associated with such violence. Such strategies can also tell us much about how the everyday is imagined by individuals through revealing how they conceptualise a crime as an act that disrupts, frays, reproduces or emerges from the social fabric they inhabit.

My variation of linguistic avoidance – misdirection – was developed using three specific frame codes. This began loosely as an interrogation into statements about privacy; technology; and upskirt perpetrators. Given the volume of data, I narrowed the focus to statements that: explicitly discussed the privacy of men *and* women or men to the *exclusion* of women); identified technology as the *cause of* upskirting (particularly those that causally linked upskirting to expanding technology and which *eliminated men as agents* through re-framing the discussion to new technologies); and statements that framed upskirt perpetrators as 'other' by making value judgements about upskirters being 'sick', 'aberrant' or 'disgusting'.

Conclusion

The research process is chaotic and in a constant state of evolution and flux (Mellor 2001). Conducting this project has reiterated the necessity for developing responsive research capable of adapting to the changing needs of a project and researcher, particularly projects that span over several years such as a dissertation. Throughout this process, I have picked up (and put back down) many different methodological tools until I came across the ones able to facilitate the needs of my project. In isolation, each method constituted a new way of approaching upskirting in Australia as this is the first media archaeology, CDA and application of the conceptual framework of the everyday to this sub-genre of image-based sexual abuse.

In many respects, it would have been much simpler to have conducted a media archaeology *or* a CDA *or* a content analysis of news reports *or* a theoretical examination of upskirting. However, without the triangulation of multiple methods, I felt that the complexity of the phenomenon would be compromised and ascertaining the relationship between upskirting (the behaviour, the perpetrator the victim), technology and the everyday would be limited. More importantly, to understand the gendered regimes of visibility at play that manifest through avoidance speech and other subtle actions, a more holistic approach was needed to fully encompass, examine and deconstruct the long-standing nature of these unequal social-relations. These methods allowed a more nuanced and in-depth understanding of upskirting to emerge by contextualising the criminalisation of upskirting in Victoria against the deeply complex historical, technological, social, political and cultural backdrop from which it was produced.

Chapter Four: The Technics of Everyday Voyeurism

In Chapter Two, I suggested that we are in a fourth historical phase of the everyday (sometimes characterised as post or late modernity), defined by hyperconnectivity, mobility and the mass consumption and production caused by capitalism. This fourth phase is defined by the technologies used to produce the everyday; as Greenfield (2017: 13) observes, our ability to perform the everyday competently is contingent on a range of discrete, obscure factors. This results in a reliance on network access to accomplish even the most ordinary of goals. Such access is overwhelmingly facilitated by Wi-Fi enabled smartphones – one of the most rapidly adopted pieces of technology in human history (Greenfield 2017). It is the smartphone which has become intrinsically connected to the act of upskirting circa 2007 and, in particular, the powerful camera function available at the touch of a finger. But upskirting did not emerge concurrently with smartphones and to conflate the two eschews a more nuanced understanding of the long history that upskirting has in relation to various media.

It is for this reason that my first research question asked how we can understand the emergence and practice of upskirting *vis a vis* the technology used. This chapter undertakes a media archaeology to understand upskirtings emergence and criminalisation, examines the technological preconditions of the practice and asks how everyday life relates to image production and voyeurism. Importantly, whilst twenty first century upskirting has been enabled by new miniaturised technologies, it does not happen *because* of these technologies. Rather, it is the product of an ensemble of historical, social, political, cultural and technological developments. In this chapter, I trace these developments and, in doing so, examine how upskirting has evolved to become the practice it is today; transitioning from the ‘peeping tom’, to the ‘video voyeur’, the ‘upskirter’ and finally the ‘creeper’. Beginning with a broad discussion of painting, the camera and cinema, I then narrow my focus to the video camera and finally the mobile smartphone and Internet as they relate to the practice of upskirting. Before I engage with this media archaeology, it is prudent to first detail my theoretical contributions concerning gendered regimes of visibility and their relationship to power and objectification (see Thompson and Wood 2018).

Gendered Regimes of Visibility

To look, or be looked at, creates various relations between actors – relations that differ depending on a series of questions involving the act of looking. Such questions are connected to structurally patterned asymmetries of visibility and include who is looking at who or what, why they are looking, how the looking is done and where and when this takes place. We cannot divorce regimes of visibility from their socio-politically structured contexts without risking abstraction. According to Sassetelli (2011: 124), the moment of visual representation “is crucial in the formation of gender identities”. It takes seriously the act of looking and how the gaze is the semiotics of our intentions (Warren 2011). Given the intimate connection between upskirting, looking and visual representation, examining how gendered identities are formed as a result of this mediated looking was integral to my analysis.

Because of the gendered association of seeing and looking (and, conversely, the conflation of blindness and castration), my analysis was necessarily ocular-centric precisely because seeing has been long associated with the male gaze. For Foucault (1980: 158), scopic regimes of ‘malveillance’ and the disciplining and normalising effect of the gaze was a central focus of his work. Jay traces the dethroning of the scopic regime in modernity where it was “violently decentred” (1994: 96). He reflects on the extent that the eye is implicated in our everyday life and that we might “become more aware of how mediated our visual experiences are by the discursive contexts in which they appear” (Jay quoted in Smith 2008: 187). In an interview with Smith (2008: 183-184), Jay reflects on the effect of technology for visual experiences. He asserts that “it is necessary to focus on how they [technologies] work and what they do”. However, he goes on to warn that it is equally important to maintain the ability to make distinctions between different kinds of images and the experiences they provoke. Like Bryson (1984), I believe it is important to ‘fuss’ about the relationship between gender and looking; it is here that we can locate the crisis of vision in which visibility is blinded and dominated by signs. The symbolism of the female body, particularly the genital and anal region visibilised within the context of upskirting, reveals how scopic regimes have historically been implicated in image-based sexual abuse (McGlynn and Rackley 2017a; 2017b; McGlynn, Rackley and Houghton 2017).

Whilst gender was never an explicit concern in Foucault's writing, (indeed, the subject was often gender-neutral in much of his work), his reflections on power, the body and sexuality have inspired a great deal of attention in contemporary feminist literature (King 2004). In particular, Foucault's work on the cultural construction of sexuality and the body contributed to the feminist movement against gender essentialism. There is a great deal of debate about whether Foucault's work is useful when considering feminist issues, for instance, not all people feel his work is well aligned with gendered analyses. Jay, for example, asserted Foucault was "unconcerned with women's sexual experience" (Jay 1994: 416). Feminists such as Hartsock (1990) and Alcoff (1988) suggested that there is a fundamental incompatibility with pure Foucauldian analyses of gender, while Moi (1985: 105) claimed that "the price for giving into his powerful discourse is nothing less than the depoliticisation of feminism". One of the most enduring criticisms of Foucauldian theory for many feminists is that Foucault's nihilism and relativism have resulted in accusations of an account of power that has no room for agency and resistance (McLaren 2002).

While it might be true that Foucault did not explicitly engage with issues relating to women, their bodies and their sexual experiences, it does not, therefore, follow that his work is not useful within a gendered analysis. There is not room here to engage with the extensive debate about Foucauldian theory within a feminist context. However, given my use of Foucauldian theory is more second hand in nature (drawing on Brighenti's work which better accounts for gender), I acknowledge the ongoing debates regarding Foucault's theory within a feminist context. My analysis is preoccupied with visual culture because of the nature of peeping, creeping and upskirting, and Foucault's work on vision and scopic regimes (which I use most prominently in relation to Brighenti's research), has been useful, in my own feminist analysis.⁵¹ I have not found his work incompatible within my framework; perhaps because this is not a strictly Foucauldian and instead, *à la* Foucault, I use his work as one of many 'tools' in my conceptual toolkit.

In addition to drawing on Brighenti (2010), I also rely on Warren's (2011) work on the role of the eye in the social world. Warren (2011: 543) holds that the eye (and the act of looking) is at the centre of social control in everyday life. The eye is the foundation of social order and

⁵¹ Such practices are of course embodied and call upon other senses to carry out the capture of non-consensual sexual images, but these senses are not as critical to an understanding of upskirting.

is “an important facet of a set of bodily signals that constitute social control in the everyday life of Western culture – the first bastion, as it were, of society’s defences against violence and disorder” (Warren 2011: 544). Restricting such analyses to what the eye can perceive, can no longer adequately capture the state of social life, which is now inherently a techno-social life. It is for this reason that I use the work of Brighenti (2010). His more contemporary reflections on the intersection between vision and technology, married with feminist work which explicitly engages with objectification and the male gaze, overcomes many of the shortcomings of a strictly Foucauldian analysis.

Visibility creates relationships, and I am interested in discerning what these subject relations mean within the context of looking, particularly when the other is unaware that they are being looked at. Vision is not projected in a vacuum; it occurs between people and objects in spaces and times, and is guided by affordances, possibilities of action and invitations to action (Brighenti 2010). Brighenti (2010: 3) notes that visibility is “a phenomenon that is inherently ambiguous, highly dependent upon contexts and complex social, technical and political arrangements which could be termed ‘regimes’ of visibility”, a systematic, routine and strategic set of practices that maintain the visibility or invisibility of specific phenomena for particular ends. Visibility can thus be conceptualised as a dimension of the social at large, as a field of inscription and projection of social action, and as such, Brighenti suggests that the visible can be explored as a territory (Brighenti 2010: 4-5).

Scholars have written about the ramifications of the loss of eye contact in an increasingly urbanised city filled with strangers and others have considered the ethical relations that shared eye contact (and the lack thereof) can produce. Levinas (1991) reflected on the role of eye contact and the importance of this exchange in producing ethical relations between actors. Levinas (1991) believed that the face of the ‘other’ communicates an ethical requirement with the subject; a relationship of peace that mandates “you shall not kill me” (Bernasconi 1997: 90). Simmel (1908) echoes the import of face-to-face encounters which enable the sharing of eye contact, advocating that eye contact is needed to establish social relations between self and other. He asserted that eye contact is a pure social interaction, or ‘sociation’, that forms an unspoken contract between two strangers. Indeed, vision is so much a part of subject creation that Brighenti (2010) suggests that vision *is* subject-making; a subject is born only through the creation, development and maintenance of visibility

relationships. This means that when one subject looks at another and that look is not returned, an asymmetrical relationship is established.

Building on Simmel's work, Urry (2004) suggested that it was the sharing of a look which produced intimacy because of the "most complete reciprocity" of this shared gaze – "[o]ne cannot take through the eye without at the same time giving" after all (Frisby and Featherstone 1997: 112). Simmel feared such interaction was becoming less and less apparent in city spaces as a result of urbanisation and the influx of strangers which subsequently reduced the opportunity for such intimacy to occur. This was a concern also shared by Sennett (1996: 15) who asserted that the proliferation of freeways and roads in city spaces to the detriment of walking pathways had resulted in spaces that were "meaningless or even maddening", because it had become a "mere function of motion". Featherstone et al. (2005) reflected on the consequences of not returning the look of another because of the rising use of the automobile (over other forms of mobility such as walking or riding a horse). For them, the sense of community and the social obligations established through eye contact and face-to-face encounters were lost as people became flows of faceless, ghostly machines. The human-ness of others in the community disintegrated as a result of the loss of such an exchange, as "there is no reciprocity of the eye and *no look is returned from the 'ghost in the machine'*" (Featherstone et al. 2005: 30).⁵² Similarly, no look is returned when men upskirt women – women are precluded from the exchange and do not share the look from the digitised eye that captures non-consensual images of their genitals.

Watching is active while being watched is passive and in many Western societies, it is typically the male who watches and the woman who is watched, resulting in a form of control and domination (Brighenti 2010: 28). This arises because of gendered vision (Gribaldo and Zapperi 2012), or what I term 'gendered regimes of visibility' that are intimately connected to the sexualised dimension of visibility. Sight can violently provoke lust, desire and voyeurism. In the case of upskirting, the action concerns inscription and projection on the female body. Looking inherently involves a power differential, whereby the looker is situated as superior to the viewed (Brighenti 2010: 27). Asymmetrical relations emerge within, and

⁵² Tonkiss (2003: 15), however, argues that there is no longer a need to live face-to-face. Now, individuals can live 'side-to-side' in the city which she characterises as a container of indifference. Others have since observed that we no longer only live side by side but also through our screens.

because of, these regimes of visibility. There is a significant difference between looking at another and sharing a look with them through eye contact, and looking at another who does not know they are being seen. Moreover, returning eye contact is not enough in itself to ensure a reciprocal exchange. Take for example a woman who is being stared at on the street by men. While the woman may meet the gaze of the men who leer at her – this act of looking does not take place as an equal exchange, simply because the gaze is returned. The men who objectify the woman by staring at her body (and making eye contact), cat-calling or following her, is often received as threatening, unwelcome and unwanted (Tran 2015). I am interested in applying these understandings of visibility regimes and looking relationships when the looking is done with a mechanical or digitised eye and how this produces specific gendered regimes of visibility.

This gendered vision is (and has been) used as a power device for the control and domination of women and takes place in the social field of visibilities that produce and reproduce these social relations. Indeed, to gaze implies more than ‘to look at’ – “it implies a social, psychological relationship of power in which the gazer is superior to the object of the gaze” (Schroeder and McDonagh in Nguyen 2007: np). Gendered regimes of visibility then, are the construction of subjectivity through the creation, development and maintenance of visibility relationships. These relationships are structured by a hierarchy of vision that emerges in social fields of visibilities, and it is through these discourses that social relations are produced and reproduced. In looking at the complex social, technical and political contexts that form regimes of visibility, we can see how specific gendered regimes of visibility are produced when we focus on the asymmetry of vision.

Intimately connected to these gendered regimes of visibility is objectification, hegemonic masculinity and power. As O’Toole et al. (2007: xii) observed, “gender and structural social arrangements ... are almost always imbued with an asymmetrical distribution of power”. Brighenti’s work is indebted to Foucault’s (1975: 187) *Discipline and Punish* and his theorisations on disciplinary power.⁵³ He defines this disciplinary power as something that is,

⁵³ So invested was he in such endeavours that he claimed: “The archaeology of the human sciences has to be established through studying the mechanisms of power which have invested human bodies, acts and forms of behaviour” (Foucault 1980: 61).

exercised through its invisibility; at the same time, it imposes on those whom it subjects a principle of compulsory visibility. In discipline, it is the subjects who must be seen...It is the fact of being constantly seen, of being always able to be seen, that maintains the disciplined individual in his subjection (Foucault 1975: 187).

This understanding of disciplinary power and its relationship to visibility is useful for uncovering the gendered aspect of vision. As I argue in this chapter, woman's visibility and her 'to-be-looked-at-ness' which defines what it means to be a woman, is a repeated theme in my analysis.

In its most broad definition, objectification commonly refers to the treating of women "as objects for men's use and abuse" (Nussbaum 2010: 68). As Nussbaum (2010: 68) explains, under this definition, "the objectifier treats the objectified as a mere tool of his ends, not as an end in herself". Objectification is, however, a 'cluster concept' that cannot be reduced to a single plain or attitude. It is important to understand the various actions and attitudes that objectification extends to, as it is much more than simple instrumentality and a denial of autonomy. Objectifying behaviour includes (but is not limited to): *instrumentality; denial of autonomy; inertness; fungibility; violability; ownership; denial of subjectivity; reduction to the body; reduction to appearances and silencing* (Nussbaum 2010: 69-71).⁵⁴ Given that "the body and the various modes through which it is objectified is one of the most productive avenues of intervention and analysis for the feminist study and practice of visual culture" (Jones 2013: 473), I began my own analysis here.

Within the context of upskirting, women are seen as objects to be used by men at their leisure – a defining feature of patriarchy and a central component to Kelly's (1988) notion of 'sexual access' discussed in Chapter Two. If we consider visual objectification within the context of gendered regimes of visibility, such regimes "show how men see the world, how in seeing it they access and possess it, and how this is an act of dominance over it" (MacKinnon 1993: 326). Upskirting is an example par excellence of the asymmetrical and gendered regimes of

⁵⁴ Martha Nussbaum (2010) is responsible for the first seven behaviours that are listed, while Rae Langton (2009) developed a further three (8-10). See also Mulvey and MacCabe (1980), MacKinnon (1989) and Hesford (2004).

vision which exert control and dominance over women. Not only are women subjected to being looked at without knowing they are the object of interest by another, but what is being seen is that which they designate as private through the fabric boundary of their underwear, dress and skirt. This action not only transgresses the spatial order of the sites women occupy but exemplifies the boundary transgression of public and private that is only made possible through the sensory enhancement offered by visual technologies. Here we can see the prescience of De Beauvoir's statement that "men's stares flatter and hurt her simultaneously; she wants only what she shows to be seen: eyes are always too penetrating ... masculine desire is as much an offence as it is a compliment" (De Beauvoir 1953: 351). It is for this reason that Brighenti (2010:29) no doubt stated that the act of men watching women "highlight[s] a phenomenon of extraordinary importance for those interested in studying how visibility constitutes itself". Indeed, this phenomenon is a central focus throughout my analysis.

In the following section of this chapter, I explore the nexus between the gaze, image production and objectification with reference to Laura Mulvey's work on cinema and scopophilia. In the analysis that follows, numerous instances of objectification are made apparent, revealing the historical and ongoing reality for women who are not only stigmatised and treated as part of an underclass but who are visibilised through various media in ways that consistently objectify them.⁵⁵ As Sassetelli (2011: 131-132) observed in her interview with the prolific Laura Mulvey, women were and are, exploited both through their bodies and through images of the female body. Representation and the questions it elicits cannot be ignored when we accept that the female body is frequently a sight and site of oppression – "it is impossible to conceive of liberating the female body without analysis of oppressive representations of the female body" (Sassetelli 2001: 132). Below is an exposition of oppressive representations relating to voyeurism, peeping and creeping.

⁵⁵ Like Dworkins (1974) and Langton (2009), I hold that objectification is a prominent form of social shaming and is an intrinsic part of upskirting.

Painting Peeping: 18th and 19th Century Representations of Upskirting

Some might question the need to begin with painting rather than the birth of the camera. Yet, in many ways, the practice of representing the female form in art is no less important to the history of upskirting than the advent of the camera. To uncover the social relations implicit in gendered regimes of visibility, we must look further back than the creation of the camera and the photograph if we are to contextualise and understand the emergence of upskirting as a practice. If media act as extensions of perceptual senses (McLuhan 1964), we should begin with earlier modes of representation and communication to capture the whole picture, so to speak. We start, then, in what Lefebvre dubbed the first phase of the everyday, during a time when the everyday was not defined by and infiltrated with the objects of industrialisation.

Vision is an act and not just a thought, and it is imbued with desire, passion and power. In Merleau-Ponty's work on *Eye and Mind*, he explored how artistic practices such as painting functioned as a form of vision (Merleau-Ponty 1964). Merleau-Ponty (1964) was one of the first scholars to explicitly explore the archaeology of the visible, in which he discussed the 'carnal formula'. This referred to the visceral ways in which paintings can evoke desire and feeling within the body of the viewer and how something "makes itself visible *in us*" (Quigley 2013: 3). Painting functions as a form of visibility which extends the act of vision, where the invisible is made manifest through the painter's encounter with the objects they paint (and which is revealed to them through the act of perceiving and painting). "An image", wrote Berger (1972: 9) "embodies a way of seeing ... [and] is a sight which has been recreated or reproduced ... No other kind of relic or text from the past can offer such a direct testimony about the world which surrounded other people at other times". What this reflection demonstrates is how the specific vision of the image-maker, in this instance, the painter, is recognised as part of the record. I focus on what it means for the image of women to be seen by a man, by first discussing certain key ideas relating to the centrality of the nude in the European painting tradition before looking at two examples relevant to peeping and upskirting; Jean-Honoré Fragonard's *The Swing* and John Collier's *Lady Godiva*.

Men look at and survey women before deciding how to treat them and the way a woman is treated is determined by how she appears to a man (Berger 1972: 46). This has implications for the representations of women in painting and other artistic media as it reflects gendered

cultural attitudes. The social presence of a man, both in visual culture and society, is different to that of a woman (Berger 1972), for women are associated with nature and men with culture (Ortner 1974). If it is always culture's project "to subsume and transcend nature, if women [are] considered part of nature, then culture would find it 'natural' to subordinate them" (Ortner 1974: 73). If we recall that the natural world defined the first phase of everyday life and that the second phase saw the beginning of the colonisation of the everyday by consumer culture, then alongside Ortner's (1974) analysis we might read this as not only the domination of nature by culture but the symbolic domination of women by men. However, this would imply a period where women were not dominated by men which, during most of Western nations history, has not been the case. To address this issue of domination and inequality, Ortner (1974) emphasised the need to better identify, deconstruct and overturn the effects of both cultural language and imagery which frequently devalues women.

During the Renaissance and Enlightenment periods when many nude paintings were created, a woman's primary purpose was to be married and bear children; to be born a woman meant to be awarded a small, confined space where men kept them. Women's success in life was intimately linked to how she appeared to men as this was of "crucial importance for what is normally thought of as the success of her life" (Berger 1972: 46). The nude painting, typically found in European oil paintings, illustrates how women were seen and judged. Moreover, the relations between men and women were articulated in these representations: "men act and women appear. Men look at women. Women watch themselves being looked at...thus she turns into an object – and an object of vision: a sight" (Berger 1972: 47). These reflections note the ways in which the representation of a woman's body results in her objectification because she appears not for herself, or other women, but as a sight for men to look upon.

Distinguishing between a nude and naked image is important. To be naked is to be oneself, however, to be nude "is to be seen naked by others and yet not recognised for oneself" (Berger 1972: 54). When considered in the context of nude images, this becomes especially important as women, who are valued only for what they look like, are here recognised first as a nude. The naked/nude hierarchy occurs because a naked body has to be seen as an object in order to become a nude. Nude paintings show an early manifestation of the objectification of women's bodies. Most nude paintings were of women and painted by men for men. The painter's vision is so strong that it 'binds' her to him, making no allowances for the spectator

who can only see the image as a reflection of this relationship; the spectator is always on the outside. For women, visibility meant becoming the blinded object of another's sight "the observed of all observers, the women are to be seen, not to see and for them, equally, visibility is the experience of Being becoming Representation" (Bryson 1984: 75). In such paintings, the relationship between the female body and visibility become apparent as an unequal, asymmetrical encounter.

The consumer of such images is both a voyeur of the female subject and a witness to the creation of the image. In this respect, the spectator becomes a voyeur when looking at nude images. He looks at the manifestation of this process, of this relationship between painter and object but knows that she is not naked for him and that he cannot turn her into a nude in the same way that the painter has. But the spectator is presumed to be a man and "it is for him that the figures have assumed their nudity" (Berger 1972: 54). Such images were often purchased for personal collections and hung in places like meeting rooms. Indeed, *Les Or éades* by Bougereau is one such painting that provided comfort to men who felt outwitted, offering a reassurance that their status was at least higher than that of a woman (Berger 1972: 57).



Figure 4.1: Les Or éades by Bougereau 1825-1905.

Source: <http://tinyurl.com/z699mpe>

Nead (1992) builds on Berger's work in her commentary on the patriarchal tradition of the female nude and suggests that the genre of nude art sits on the edge of art itself, challenging the boundary between aesthetics and obscenity. Using Mary Douglas, Nead suggests that in seeing the female nude we are exposed to the bodies boundaries that are regarded as polluting and dirty. These images explicate social deviation— such boundaries cannot be separated from other cultural and social boundaries and require regulation and framing to control the issues that the representation of such spaces and boundaries evoke. According to Nead (1992: 525), “the distinctions between inside and outside, between finite form and form without limit, need to be continuously drawn”. The symbolic importance of the female nude is that it marks the limit of art and the external limit of obscenity. Through artistic style it transforms the obscene into the aesthetic, transforming an image into art in the process. An interesting parallel between the nude and the naked body of a women in pornography is apparent in this reading: if pornography is the ‘other’ to art in its portrayal of the sexually unmediated (Nead 1992: 529), this insinuates that there is a difference between a female nude and a pornographic image of a woman.

For Andrea Dworkin (1983), however, the representation of the nude female body is always pornographic; “in the male system, women are sex...who belong to all male citizens. Seeing her is seeing porn. Seeing her sex, especially her genitals, is seeing porn”. Among other forms of objectification, we can see Nussbaum's (2010) *fungibility* and Langton's (2009) *reduction to body parts and appearance* at work in nude paintings. Women are represented in these images and exposed for the purview of the male gaze. Through this lens, the artist, video voyeur, upskirter and creeper are all amateur pornographers. This reading of what it means to curate images of the female body (and images of female body parts) is accurate in a web-enabled hyperconnected world where upskirt and creepshot images are now shared. Many of the websites these images appear on are pornographic websites. Upskirts, creepshots and voyeurs have become distinct sub-genres on these web pages where the line between staged recordings and those taken without the women's consent becomes blurred. Indeed, it is precisely this act of taking intrusive pictures without consent that is so arousing for users, which I discuss in more detail later in this chapter.

If upskirting is fundamentally about observing and producing images of a women's genitals, where does this fit in the history of representing and looking at women's bodies? Upskirting, divorced from the technology used to facilitate it today, is reminiscent of the ‘peeping Tom’

of decades past and is a contemporary example of one of the many ways in which female bodies are objectified through gendered regimes of visibility. But where did this term ‘peeping Tom’ come from? Through looking back to the various representations of Lady Godiva dating as far back as the 11th century, we see that art holds one answer to this question. The legend of Lady Godiva states that she attempted to persuade her husband, Leofric the ‘grim’ Earl of Mercer and Lord of Coventry, to reduce the heavy taxes he placed on the townspeople (Green 2018; BBC 2014). Hesitant to agree to this proposition, Leofric countered that he would reduce the taxes on one condition; that she ride through the town on horseback naked. Determined to assist the citizens of the Coventry she agreed to this arrangement, however, she ordered everyone to remain indoors and avert their eyes as she made this journey. With her long golden hair acting as a cloak, she rode through the city where all but one of the citizens obeyed her request to stay indoors. A man named Tom was unable to resist the temptation to gaze upon her naked flesh and unbarred his window to catch a glimpse of the Countess (Green 2018). However, before he could look upon Lady Godiva’s flesh, the story reports that he was struck blind. Such is the origin of the term ‘peeping Tom’, and more than one thousand years later, it is still used today (Donoghue 2002).

In the late 19th century, John Collier popularised the image of Lady Godiva, representing her riding through the town, hiding her breasts with her hair and averting her eyes. In the background, the windows have been shut and there are no other people in the image besides Godiva and her horse. To look at Godiva is to disgrace her, seeing that which she does not want to be seen by others. Tom is rendered blind not just for looking at Godiva, but for threatening and compromising her modesty with his stare. It is clear here that the intention in this image is not to paint another nude object/woman as was done in the European oil paintings detailed above. Like the townspeople, the spectator is discouraged from looking. The painting provokes a complex relationship between looking and not looking. Berger’s claim about seeing and knowledge is reinforced here, where he reminds us that the relationship between seeing and knowing is never settled and “seeing and knowing are so close to each other that they constantly influence and interfere with each other, to the point that the boundary between perception and knowledge fluctuates and practically vanishes” (Brighenti 2010: 11).



Figure 4.2. A painting of Lady Godiva by John Collier. Source:
<http://tinyurl.com/z2t8k4m>

While ‘peeping Tom’ has its roots in the early expression of upskirting, perhaps the most relevant painting in terms of representing the actual practice of upskirting is *The Swing*, one of Jean-Honoré Fragonard’s most renowned paintings, created in 1767. The painting was commissioned by French libertine Baron de St Julien who approached Fragonard to paint an image of his mistress on a swing as she was pushed by a Bishop. It is reported that the Baron said to Fragonard “place me in a position where I can observe the legs of that charming girl” (Cuzin 1988: 260). During this period, such a request was considered perverse and was refused by several other painters before Fragonard accepted the piece. The image depicts the Baron’s mistress perched upon a swing in a beautiful peach dress, pushed by a man behind her who is her husband and concealed in shadow, while the Baron is illuminated under the woman’s dress. She is subjected to the gaze of a man below her and is pushed with such force that she has lost a shoe. This depicts her reckless abandon and complicity in the action, emphasised further by the loss of a shoe mid-swing, for she stares back at the Baron staring at her, knowing that he can see up her dress.



Figure 4.3. Jean-Honoré Fragonard's *The Swing*.

Source: <http://tinyurl.com/hovvglr>

The production of such pieces and their association with aesthetic judgement entangles objectification with art so that they become indistinguishable. In assessing the value of the piece, we are invited to reduce the woman to her appearance and body parts, to compare them with similar works and reflect on the representation under scrutiny. While this practice is not isolated to nude artwork, it does hold implications when considered amidst a broader history of women's objectification and subordination which is (re)produced through countless cultural motifs. This is perhaps one of the most explicit and obvious manifestations of the relationship between women's bodies, representation and visibility, but it is an important one for such values and attitudes that informed that tradition are now "expressed through other more widely diffused media – advertising, television, photography and film" (Berger 1972: 63). Whereas *The Swing* reflects the internalised male gaze of the woman to the spectator, *Lady Godiva* instead acts like a mirror – showing the audience themselves looking at Godiva and the consequences this looking holds for the naked/nude female body. Whether a woman wants to be looked at or not is irrelevant – these images are about men's desire. We can see this pattern similarly repeating itself with photography and film, for "the camera's eye, as

monocular as that of a peephole, produce[s] a frozen, disincarnated gaze on a scene completely external to itself (Jay 1994: 74). This sense of disconnection from what is viewed and the ownership, power and control of the images that are captured using a camera, are key themes in both photography as art and as image-based sexual abuse.

Photography and Film in the 20th Century

Photography not only remorselessly encroached on the turf of painting but enthusiastically plagiarised from the genre, usurping the “painter’s task of providing images that accurately transcribe reality” (Sontag 1977: 94). Despite contestation by some over whether photography invigorated or usurped painting, what is clear is that photographs are as much an interpretation of the world around us as paintings and drawings are (Sontag 1977: 6-7). Underlined by the desire to facilitate and instigate “intensive seeing”, photography thus marked the beginning of a new era of visibility and changed the very way men saw (Berger 1972). While the camera had been developed in the 11th century (Newhall 1982), it was not until the 19th century that the first successful camera image was created and the first film devised. By 1900 the Brownie camera (a small, inexpensive cardboard box camera that took 2 ¼ inch pictures) was introduced along with the concept of the snapshot, popularising the camera and providing the catalyst for a fundamental change in human perception (Newhall 1982). Indeed, the “representational possibilities and mass proliferation of photographic images became salient features of modern culture” (Dant and Gilloch 2002: 6). Moreover, the industrialisation of camera technology enabled the democratisation of all experiences by translating them into images (Sontag 1977). The introduction of such technology has had a profound effect on everyday life in a way quite unlike any other device or practice. It has been argued that the taking of photographs has become the everyday practice that narrates our domestic lives (Carrabine 2011: 6). We need only think about ‘selfie’ culture and the practice of uploading travel photos and family ‘happy snaps’ to social media to see just how true this has become.

Not only is the camera an essential tool for conducting an upskirt but it is a piece of technology that has instituted a new visual code. It determines “what is worth looking at and what we have a right to observe” (Sontag 1977: 3). Mechanical reproduction changed our understanding of images and visual culture and “the unprecedented availability of

reproduction was turning the past into an archive” (Huhtamo and Parikka 2011: 7). Technology gets its meaning from the pre-existing discursive contexts in which it is introduced (Huhtamo and Parikka 2011: 8). We can, therefore, understand the crucial role of photography and the camera against the backdrop of the nude paintings which were previously the predominant public representation of the female body until the late 19th century.

The automobile and, decades later, new media, are often cited as new technological innovations that propelled us towards the postmodern world we now inhabit, but the camera has had an equally profound influence on the contemporary everyday. Photography first came into its own as an extension of the middle-class flâneur’s eye. For Benjamin and later Sontag (1977: 55), the photographer was “an armed version of the solitary walker reconnoitring, stalking, cruising the urban inferno, [a] voyeuristic stroller who discovers the city as a landscape of voluptuous extremes”. One of the most important changes that has arisen as a result of the new codes of vision produced by the camera is the fundamental shift in how we approach both distance and proximity. As Larsden (2014: 125) notes “distance [and proximity] have never meant so little *and* so much, with the world getting smaller *and* larger at the very same time”. The camera allows vision to be extended in ways that are inaccessible to the naked eye and like the microscope, provides for a close examination of things at a resolution that is beyond ordinary perception, capturing the world in new ways.

While this period produced photographic seeing that enabled an aptitude for discovering beauty in the ordinary, it also resulted in a tremendous promotion in the value of appearances as the camera recorded them (Sontag 1977: 85-89). In addition to altering how we approach that which appears before us, it provoked a fundamental shift in how we understood the private and public. Camera technology enabled an extension of vision, a shift which was altered even further with the advent of surveillance and video cameras. However, cameras not only made it possible to know more by seeing more, “they changed seeing itself, by fostering the idea of seeing for seeing’s sake” (Sontag 1977: 93). As a result, private sites and sights previously inaccessible to the public were slowly rendered more visible, a phenomenon we can clearly see occurring in the case of upskirting in the 1990s and 2000s. In this context, we can understand why Barthes (1981: 15) asserted that “the ‘private life’ is nothing but a zone of space, of time, where I am not an image, an object”. The private here has become redefined as a space where individuals can retreat from the gaze of the camera, protecting

themselves from the personal death that occurs as a result of becoming a 'total image', a fate they are subjected to as soon as they enter the public sphere. Suddenly, humans were simultaneously able to see more and, in turn, come to know more about the world around them. It was through this process that the photograph and the camera came to be regarded as an instrument for knowing things and as such, reinforced the relationship between seeing, knowing and power (Sontag 1977: 93). What we could see, aided by the zoom of a camera lens and the ability to freeze a moment in time, became synonymous with knowledge.

The values inherent in vision and its production that intimately connected with upskirting started to take shape through the regimes of visibility generated by cameras and photographic seeing. "Photographic vision," Sontag (1977: 90-99) argued, "has to be constantly renewed with new shocks ... so as to produce the impression of violating ordinary vision". In the era of photographic seeing "what is beautiful became just what the eye can't (or does not) see: that fracturing, dislocating vision that only the camera supplies" (Sontag 1977: 90-99). Within the context of upskirting, such claims are evident: ordinary (unaided) vision means that looking up a woman's dress or skirt is usually quite difficult, at least if discretion and covertness are desirable. Using a camera to photograph a woman's genitals violates ordinary vision through seeing that which is normally private. Both distance and proximity, public and private, are ascribed new meaning because of the new ways of seeing instituted by technology. The re-inscription of meaning occurs because of the speed that images and information can now be produced and distributed. New technology is transformed into vehicles for transmitting information and it is this process of speeding up and increased data dissemination that some have asserted is destroying the world today (Virilio 1991).

This reconfiguration of the relationship between the everyday and vision is amplified when we consider Minor White's (1952/2006: np) famous statement that "the photographer projects himself into everything he sees, identifying himself with everything to know it and feel it better". What does it mean, then, for the photographer to project himself into a woman's intimate areas, rendering visible that which she wishes to keep hidden? Sontag (1977: 14-15) provides a response, noting that "there is something predatory in the act of taking a picture" because seeing them in a way that they never see themselves violates the subject. Such an understanding of the person symbolically possesses them by turning them into an object; to photograph someone is to commit a soft murder because of the transformative process from subject to object. Aggression is a potentiality in every use of the

camera and the person or thing photographed is the ‘target’ in the literal and figurative sense of the term (Sontag 1977). When considering objectification, an implicit relation between this understanding of photography and the violation of both autonomy and agency becomes apparent. Analysed through Nussbaum’s (2010) first principle of objectification – *instrumentality*, the objectifier (the photographer) uses the objectified as a tool for his or her purposes. As an “ideal arm of consciousness”, to photograph someone is to appropriate them and render them a thing. In the case of upskirting, the ideal arm of consciousness extends vision to men so inclined to use technology to capture sights not normally visible to the naked eye (Sontag 1977: 90).

The introduction of the camera set into motion new ways of seeing and was the catalyst for new regimes of visibility. Such shifts occurred as a direct consequence of technological advancements that fostered changes in how both distance and proximity and public and private were understood. The media archaeology thus far has outlined the crucial relationship between media and the codes of vision they have created. One of the chief concerns in this chapter is how we can understand the construction of subjectivity through visual media and in doing so analyse how “representation places people in particular positions ... mak[ing] people actors, or subjects” (Sassetelli 2011: 129). This is a profoundly political act and occurs as a product of the broader social and cultural environment which structures both representations and the ways of seeing these representations. In what follows, I return to visual representations of women and examine the codes of vision fostered by cinema as they relate to women’s bodies and peeping. Closely associated with the production of the camera and the still photograph, the motion picture in many ways opened new possibilities in vision that was not possible with the still photographs produced by the camera. By 1927 when motion pictures were able to introduce both sound and moving images, a new style of art, form of entertainment and regime of visibility was born.

In a world ordered by sexual imbalance, the pleasure of looking is split between active/male and passive/female. Women are displayed as sexual objects which are an ongoing leitmotif of the erotic spectacle; from pin-up posters to erotic films “she holds the look, plays to and signifies male desire” (Mulvey 1975: 62). In analysing the representation of women in film, it would be remiss not to draw upon Laura Mulvey (1975), whose work is instructive for

thinking through issues of objectification, technology and gender.⁵⁶ Mulvey began one of the earliest reflection on how “technology shapes our visibility regime as much as [gender shapes] of our ways of seeing” (Sassetelli 2011: 125). While technology does not simply determine such ways of seeing, it nevertheless is crucial in affecting the context in which ideas are formed (Mulvey 2005: 9). Just as cameras used within a cinematic context encodes the male gaze by portraying women as objects to be looked at, so too does the smartphone or micro camera used by a man who upskirts women. These gendered regimes of visibility which some have described as the ‘patriarchal language’ of Hollywood, represent women as an object, rather than subject, and are evident in forms of image-based sexual abuse such as upskirting (Sassetelli 2011: 124).

Drawing on psychoanalysis, Mulvey asserted that there are two ways with dealing with the anxiety the female subject provokes when on film due to her lack of phallus: voyeuristic sadism and fetishistic scopophilia.⁵⁷ The latter is relevant to understanding upskirting and refers to “circumstances in which looking itself is a source of pleasure” (Mulvey 1975: 59). One of the principal features of scopophilia according to Freud is the taking of other people as objects and subjecting them to a curious and controlling gaze. Scopophilia can result in harmful behaviour, whether on screen, as a cinema viewer or as an upskirt perpetrator and these 'obsessive voyeurs' and peeping Tom's “only sexual satisfaction come[s] from watching, in an active controlling sense, an objectified other” (Mulvey 1975: 60). Such scopophilic looking can also be understood as objectification – including *denial of autonomy*, *denial of subjectivity and inertness* (Nussbaum 2010). Consuming and producing these kinds of representations of women as object reinforces gendered beliefs premised on sexual access, ownership and control.

An explicit manifestation of the male gaze and the objectification of women can be found in pornographic film, which MacKinnon (1985) describes as the eroticisation of hierarchy and sexualisation of inequality. It was not until the 1960s that sexually explicit films became

⁵⁶ Mulvey has since been criticised for her problematic understanding of the spectator, especially in relation to the sex-difference of spectators. While Mulvey has considered the role of the female spectator in subsequent essays, scholars such as Staiger (2005: 145) have argued that she has not adequately explained how female spectators view cinema constructed for the male gaze (see Doane 1982). Others, such as Ruti (2016: 41) argue that Mulvey’s work was reductive and her analyses were often too simplistic.

⁵⁷ In the first instance, a film can investigate the woman and punish her for her lack, resulting in what she dubs voyeuristic sadism.

popularised and mainstreamed. During the 1960s, viewing pornography became more prominent in intellectual circles, where such films became associated with the radical underground cinema movement in New York (Staiger 2005). While pornography has existed in various forms for centuries and is “as old as human history”, with the advent of cinema, film and micro cameras, pornography ceased to be bound by still images and fundamentally changed the representation of women in sexually explicit ways (Carrabine 2008: 4). As Staiger (2005: 179) highlights, “the ability to show sexually explicit acts rather than imagine them, means the media specificity matters”. This shift in representation was primarily due to cinema introducing narrative and with it, a whole new genre with its own parameters and dimensions, to representations of sexually explicit images of women. During this period when people often visited the cinema to view such material (prior to the arrival of home videos which begun to emerge in the 1950s) which was colloquially known as a ‘stag film’, these viewers were a “socially situated audience” (Staiger 2005: 180). Importantly, the viewing experience of stag films was a social one; many men were often part of the viewing experience, creating a homoerotic event like that of visiting a strip club.

During the rise of the pornographic film, conversations emerging at the time fluctuated from one extreme to the other. On the one hand, pornography was described as a form of high-art aesthetic by some second wave feminists suggesting that female orgasms were sexual rights. On the other hand, the censorship of such material was advocated for on account of its repressive and oppressive attitudes towards female sexuality. One of the leaders of the movement against porn was Morgan who, in 1974 argued that rape is the practice and pornography is the theory (see also Brownmiller 1975; Dworkin 1974). MacKinnon (1979; 1985; 1989; 1993) reflected on the relationship between vision and objectification by asking ‘how are the qualities we know as male and female socially created and enforced on an everyday level?’. For MacKinnon, the answer to this resided in deconstructing and critiquing the social and cultural imagery which reinforced this gender hierarchy, which she suggested was most dangerously and accurately depicted in pornography. MacKinnon asserted that:

Pornography defines women by how we look according to how we can be sexually used. Pornography codes how to look at women, so you know what you can do with one when you see one. Gender is an assignment made visually, both originally and in everyday life. A sex object is defined on the basis of its looks, in terms of its usability for sexual pleasure, such that both the looking – the quality of the gaze, including its

point of view – and the definition according to use become eroticized as part of the sex itself (MacKinnon 1985: 378).

This example of harmful gendered vision captures what I term gendered regimes of visibility. The above extract reflects on the relationship between visual codes and behaviour which emphasises the link between objectification and its connotations for how the person being objectified can be treated or ‘used’. Visual appropriation is merely the first step in the sexual abuse of women – sexual domination through forced sex, or sexual murder are not so distinct from pornography which she argues is a form of violence in and of itself for this reason (in Brownmiller 1975: 395). Such positions are grounded in the argument that pornography does not produce human female characters but positions them as objects for male sexual gratification, thus teaching viewers that women can be used as a means to an end.

MacKinnon similarly supported this view, stating that pornography “helps to sustain a culture where the violent and sexual exploitation of women is the norm” where women exist purely to serve male desire and as an object of sexual gratification (in Carrabine 2008: 5-8). This remains a heated debate that divides scholars and has resulted in the pro-porn, anti-porn and anti-anti-porn positions. It illustrates how contested and complex the issue of visual culture and its relationship to gender is, in all its manifestations.

One film that centres on an ‘obsessed voyeur’ and whose protagonist is a self-described peeper, is Michael Powell’s 1960 film *Peeping Tom*. Shown through the view of the camera for much of the film, it follows the story of Mark Lewis, a man who belongs to a film crew and wishes to be a filmmaker himself. *Peeping Tom*’s protagonist is portrayed as a psychologically unstable man who commits acts of voyeurism to cope with his history of child abuse. Throughout the film, Lewis meets with various women, many of whom he had previously watched with his camera and proceeds to film them under the guise of creating an amateur film, before murdering them with the camera, which has a hidden weapon concealed within it. Crucially, he never actually touches his subjects because “he doesn’t desire their bodies; he wants their presence in the form of finding images – those showing them experiencing their own death – which he screens at home for his solitary pleasure” (Sontag 1977: 13). As a film lover, Lewis represents the desire of the audience to watch through the camera, however, rather than committing the symbolic murder of rendering a subject an object, or what Barthes (1981) would term the death of the person through turning them into a total image, Lewis literally as well as metaphorically shoots his target with his camera, with

his ‘fantasy machine’ (Sontag 1977: 14). In this moment, he creates a permanent record of their ephemeral existence in the instant they cease to exist, their life obliterated as a consequence of his looking at them with his camera.



Figure 4.4: Mark Lewis in *Peeping Tom* looking at one of his victims with his camera. Source: <http://tinyurl.com/zwgqdyt>

While it would not be a large conceptual jump to frame upskirters as amateur pornographers, upskirting has largely been discussed as something that is distinct from porn until recently (see Powell 2010; Powell and Henry 2016; Powell, Henry and Flynn 2017; McGlynn and Rackley 2017; McGlynn, Rackley and Houghton 2017). Despite upskirting remaining a sub-genre on most pornography websites, it is rarely framed as pornographic, controlling or an action premised on gendered hierarchies of vision in discursive representations of it. Both the pornographic film and *Peeping Tom* point to the power that vision and looking have for conditioning how women appear and how others see them. The power of vision manifests not only in film but on the streets for everyday women who are victimised by men perpetrating image-based sexual abuse. Upskirting is just a contemporary reiteration of how the male gaze permeates everyday life for women appearing in public. For women, there is no everyday without the possibility of being subjected to various forms of such abuse – it is merely

another iteration of a gendered vision which has structured women's appearance in public space for many hundreds of years.

Video Voyeurism and the Surveillance of Women

As the use of cameras became increasingly part of the fabric of everyday life, so too did the video camera (Calvert and Brown 2000: 469). It was only in the 1980s that Sony released a portable 'camcorder' that was more mobile than the previous models, which were connected to tape machines and subsequently limited how far the video camera could be taken. Then, in 1992, Ampex released a digital video camera, enabling users to record hours of footage on one tape. Companies such as Panasonic and Sony were later inspired to produce commercial cameras for a more general audience in 1995. Like the camera, once the video camera was made both portable and affordable, its popularity increased exponentially and video recordings were no longer limited to television programs, Hollywood films and news segments, but enabled ordinary people to capture their lives on video.

I suggest we can understand the emergence of upskirting, known as video voyeurism during the 1990s and early 2000s, alongside the rise of video recording and surveillance practices more broadly. In tracing the evolution of upskirting practices through the media used to facilitate these gendered ways of looking, the emergence of the video camera signals a significant development. Described as one of the "defining features" of postmodern society, the video camera and the subsequent practices it has enabled have fundamentally changed social relations and social control (Staples 2014). Surveillance practices such as closed-circuit television (CCTV) and the technology used to undertake such surveillance is a vital component of the third historical phase of the everyday – the control and manipulation of the everyday by state administrators (Foucault 1977). The emergence of practices associated with this technology resulted in a culture where watching and being watched was normalised in everyday life (Staples 2014: 170). A culture of surveillance, or 'cultural voyeurism', has steadily evolved over the last few decades. This related to how daily life practices had been increasingly infused with technologies that "assess, track and control our bodies in new ways" (Staples 2014: 4).

As a form of social control and management of visibilities, surveillance entails “a purposeful and contextual asymmetrisation of visibilities, which enables the hierarchisation of different gazes” (Brighenti 2010: 160). Surveillance is inseparable from what Razack (1998) calls ‘interlocking oppression’ and it is unhelpful to approach technology as neutral, as this both decontextualises, depoliticises and makes invisible the power relations imbued in this regime of visibility (Dubrofsky and Magnet 2015). It is more beneficial to understand the new technics of everyday life such as the video camera and smartphone as cultural objects imbued in hierarchical power structures. Such power structures have tangible consequences, not only in terms of the gender dynamics at play but also for race and class too (Dubrofsky and Magnet 2015).

Such asymmetry and hierarchies in different gazes become crystallised when looking at the gendered nature of visibility. As with most forms of surveillance, but especially so with the various forms of video voyeurism, “implicit in most understandings of surveillance is the idea of real people being watched, often unknowingly, doing real things” (Dubrofsky and Magnet 2015: 2). When a woman appears in public, she is subjected to a gendered regime of visibility that fundamentally affects how she can engage with and use that space (Lupton 1999). Indeed “surveillance is a procedure for visibilising certain subjects and certain sites” (Brighenti 2010: 151). In the case of video voyeurism and upskirting, the subjects are overwhelmingly women and the sights are intimate sites the victims do not want to be seen (or captured). Even when subjected to ‘legitimate’ state-sanctioned CCTV, she is sexualised and objectified because of her appearance. Norris and Armstrong (1999) observed that the employees in the control room took advantage of the tilt and zoom of the cameras rendering “the thighs and cleavage of scantily clad women ... an easy target for those male operators so motivated” (Norris and Armstrong 1999: 174). Alarming, 10% of all targeted monitoring and 15% of operator-initiated surveillance on women in the study was conducted for voyeuristic reasons, outnumbering protective surveillance by five to one (Norris and Armstrong 1999: 176). This finding led Norris and Armstrong to conclude that CCTV was defined by a male gaze. For scholars such as Brown (1998), they argued that CCTV has little relevance for women’s safety in urban centres and can even undermine the rhetoric of security rather than provide it. This is significant as it highlights how even state administered forms of surveillance which are ostensibly for the protection of people, are implicated in these gendered regimes of visibility. From the individual on the street to the person in the control room, the objectification and sexualised watching of women permeates the everyday at all levels (see

also Overington 2016).

Such surveillance practices relate to what Lyons et al. (2003) dubs ‘social-sorting’: “powerful means of creating and reinforcing social differences ... enhancing the life chances of some while diminishing those of others” (Staples 2014: 13). Such social sorting can start to seem unremarkable as our ongoing enchantment with visual representations of ourselves and others signifies the normalisation of the camera’s gaze in everyday life (Staples 2014: 70). This obsession results in the blanketing of everyday life with recorded and still images and it is why Denzin (1991: 9) argued that we now belong to a looking culture “organised in terms of a variety of gazes”. While ‘social-sorting’ usually refers to the classification of individuals based on predetermined ‘risky’ attributes in relation to CCTV and other state-sanctioned forms of surveillance, this is also relevant for women who are subjected to non-consensual voyeuristic practices.

In the context of video voyeurism and upskirting, we can see precisely how this process of surveillance unfolds within gendered regimes of visibility that structure and make impossible a woman’s appearance in a public space. Upskirting is a surveillance practice so trained on the body, that the woman is divided into consumable parts in the same way a butcher might divide a piece of meat into a rump, breast or thigh cut. Similarly, upskirt images and recordings are centred on the ‘ass’, ‘tits’ and ‘pins’ of the women in these recordings (see also Caputi 1987).⁵⁸ The woman is sorted according to her body parts and in many cases, all that is seen is her genitals. What counts here is not the status of the woman as a person, but how desirable her intimate areas are to the person videoing or photographing her, whether this is conducted by someone in the control room or a video voyeur in a shopping centre, the result is the same.

Several different expressions of objectification are illustrated here. For example, this reflects the *reduction to body parts* in the focus on the woman’s genitals, but implicit in this is her *reduction to appearances* (only desirable women are targeted) and once online, principles of

⁵⁸ I refer here to the language employed on contemporary creepshot sites used to categorise and archive images of unsuspected women according to the most impressive physical attribute on display. This is sometimes decided by the ‘OP’ (original poster), the ‘admin’, or can be subjected to discussion amongst members on the page.

fungibility are also evident whereby images and recordings are categorised and streamed with similar images of other women (Nussbaum 2010; see also Morgan 1992 and MacKinnon 1979). Regarding the principles of objectification, the woman is divided into body parts through the process of zooming in on her genitals and breasts. This is a behaviour that is enabled by a denial of agency; the woman's consent is not sought, nor considered while such actions take place. As a result, women subjected to this form of surveillance are dehumanised and objectified. Like the scopophilic cinema viewer, the victim of video voyeurism and upskirting is turned into an object of sexual pleasure, their value derived from the total of their body parts and their status as human obliterated along with any recognition of her agency and autonomy.

Upskirting and video voyeurism can also be characterised as “meticulous rituals of power”: micro-techniques of surveillance and social monitoring enhanced by new technology (Staples 2014: 3). Indeed, one of the significant characteristics of postmodern surveillance is that it is methodical, systematic and automatic and often involves the monitoring of our bodies in new ways. Increasingly, we are under the impersonal gaze of surveillance technology, designed to track us as we move through space and subjecting us to a perpetual state of visibility (Staples 2014). However, as upskirting demonstrates, it is not just the official ‘deviant’ under their watchful gaze – the ‘deviant’ is now drawing on such technology to watch others in new and oftentimes problematic, ways.

Watching others has become at once both “deftly penetrating...[and] seamless and hidden”, the latter of which has become of utmost importance in the evolution of upskirting and video voyeurism (Staples 2014: 56). Monahan's (2009) ‘pleasurable surveillance’⁵⁹ and Staples's (2014) ‘eroticisation of surveillance’⁶⁰ take on new meanings within the context of video voyeurism and upskirting; a surveillance practice that is driven entirely by the desire to achieve pleasure (and exert power) through erotic, illicit looking at unsuspecting women. We see here a blurring between gazing and image production and distribution which is worth

⁵⁹ Monahan's (2009) work reflects on the relationship between surveillance, gender and social control which reinforces and reproduces the relationship between surveillance and sexual pleasure. This largely occurs because “surveillance techniques discriminate against female bodies resulting in the masculinisation of public space” (Godoy-Pressland 2016: 751).

⁶⁰ Where the lines between public and private are blurred and surveillance becomes normalised as a part of everyday life (Staples 2014: 170).

teasing out. While gazing is not an offence, leering is a form of street harassment (Kelly 1988; Tran 2015) and can be threatening and objectifying for women as de Beauvoir (1953) highlights. With the advancement of new technology, gazing with a human eye is no longer a pre-requisite for objectification; it is possible to angle a camera phone and tap the screen without even looking at the mobile phone (and indeed can assist in remaining unnoticed). However, in the case of upskirting and its various predecessors and successors, while the technology used to perpetrate the behaviour shifts shapes, the power to objectify remains unchanged.⁶¹ The hierarchisation of different gazes manifests in this gendered regime of visibility, or perhaps more accurately, this regime of *invisibility*, where the woman's status as a subject is compromised and where what is made visible reinforces and creates harmful social relations between men and women. This practice of surveillance using video technology emphasises once again how women are used as objects when they appear in public spaces, which reflects a deep-rooted inequality in the appearance of men and women in urban corridors crucial to everyday life.

Smartphones and the 'Information Superhighway'

Today, upskirt voyeurs are armed with equipment that facilitates their objectifying behaviour in different ways, enabling a degree of discretion and secrecy that was previously unattainable. As technology advanced, cameras became easier to conceal and upskirting pictures became much easier to take. Even during the 1990s as video voyeurism became more popular, upskirting was still limited and difficult to carry out covertly. Such difficulties arose primarily due to the size and bulkiness of hand-held cameras and camcorders, which could attract suspicion when placed in a peculiar angle in public. With the invention of micro cameras, however, devices have become so small that they can be concealed in tiny spaces such as the hole in one's shoe designed for shoelaces. Inexpensive and easily accessible, these devices are both covert and mobile, enabling voyeurs to stalk their subjects as they catch a train, do the grocery shopping, or complete a work out at the gym (Calvert and Brown 2000). The peeping To of yesterday "is now armed with a new arsenal that threatens more than just the unsuspecting victim standing by an open window" (Pope 1998: 1167). As

⁶¹ I pick up this discussion in more depth in Chapter Six in my analysis of Burton's contextual consent and the wording of section 41B of the *Summary Offences Amendment (Upskirting) Bill 2007*.

houses become increasingly more securitised and the development of gated communities continues to rise (Bauman 2000), it has become easier for voyeurs to participate in this “predatory sport” (Calvert 2004: 722) in public places than ever before.

As technology has developed over the last several centuries from painting, photography, film and videotaping, the modes of representation (the tool to create visual culture) have advanced. However, the kinds of representations of women have remained largely unchanged. Furthermore, the practices, while fundamentally driven by a desire to see women in certain ways, have undergone shifts in how they were named and labelled, moving from peeping, to video voyeurism, to upskirting and finally creeping. Importantly, these shifts in how voyeurism was labelled, initially reflected the move from a non-digitised look to revealing the kind of technology used to facilitate peeping in the new label of video voyeurism in the 1990s.

The term ‘upskirting’ emerged as a result of media coverage colloquially naming this form of voyeurism as either ‘upskirting’ or ‘downblousing’ depending on which body parts were photographed. Such terminology eventually informed the Upskirting Bill whose specificity problematically eschewed a broader framework of image-based sexual abuse and encouraged the harmful media monikers popularised at the time. Naming practices such as this have been widely critiqued by scholars (McGlynn and Rackley 2017a; 2017b) as it is narrow, sensationalist and often results in a limited understanding of the practice as something that has a history with and relation to, other forms of image-based sexual abuse. We can similarly see this problem unfold within the context of the new terminology of ‘creeping’ which has normalised the non-consensual sexual photography of people to such an extent, that many thousands of people use the hashtag #creeper to boast about images taken not only of women, but men, dogs and food also. Blurring the line between men who creep on women and individuals who creep on a stranger’s dog serves to muddy this boundary between image-based sexual abuse such as upskirting and other forms of non-consensual photography. This ultimately obfuscates the harm that image-based sexual abuse can cause by normalising the practice and situating it amidst a running newsfeed of other #creeper activities, a point I explore in more depth below.

The evolution of creeping has also been supported by the “disruptive technology of [the] camera phone” (Ku 2004: 681) which has become prevalent since the turn of the twenty first

century. The camera phone and later the smartphone, reconfigured the coordinates of everyday life through the new technics of the everyday unlike any other piece of technology (Greenfield 2017). During this period, upskirting began appearing in news reports more frequently and steadily replaced the term ‘video voyeur’ in popularity. It is unsurprising, then, that given the mobile phone’s ubiquity and incorporation into everyday life, they have caused “considerable challenges for the conduct and regulation of private and public spheres” and ultimately allow for “far greater dissemination of ... abuse” (Goggin 2006: 107-129). Indeed, as social media platforms increasingly became more popular (and are accessible on smartphones), the distribution of non-consensual sexual images became easier and faster than ever before, resulting in the greater dissemination of objectifying images of women online.

Hitting Japanese markets in 2001 and the United States and Australia by 2003 (Ku 2005), camera phones became so popular that they surpassed digital camera sales (Ku 2005). Around this time, most mobile phone brands begun manufacturing mobile phones with inbuilt cameras which, when first introduced in the early 2000s, became difficult to distinguish from the mobile phone without this inbuilt feature (Ku 2005). Now it is rare to find a mobile phone that does *not* come equipped with a powerful camera. In 2014, the Australian Mobile Phone Lifestyle Index revealed that 89% of those surveyed owned a smartphone, a figure which is comparable to other developed Western countries (Rogers 2015). As Greenfield (2017: 9) remarks, smartphones have altered the texture of everyday life and have become “the universal, all-but-indispensable mediator of everyday life”. The proliferation of the smartphone might be read as both a response to, and expression of, the second historical phase of everyday life flagged by Lefebvre, which arose alongside urbanism. For Lefebvre this second phase of everyday life was defined by the colonisation of consumer culture – the use of the camera phone and its popularity would reinforce this statement.

It is the commonplace and everyday nature of the camera phone that renders it so dangerous. Non-consensual sexual images can now be taken at the hands of ordinary citizens, as opposed to select individuals with access to highly expensive and largely inaccessible recording devices (Lum 2005: 379). For this reason, we can see how the mobile phone has “become a taken-for-granted and relatively invisible part of our daily lives” (Pink et al. 2016: 44-45). It is this very ubiquity which has rendered the camera invisible; not only is it easy to conceal but it is nowadays accepted as part of the backdrop to everyday life; mundane, unremarkable

and utterly ordinary. Whilst these devices have enabled a freedom and flexibility unimaginable twenty years ago, they also “offer new pathways for the circulation of anxieties, as well as themselves being triggers of moral panics” (Goggin 2006: 109). Such anxieties around new technologies in public spaces were apparent in Australia in the lead up to the criminalisation of upskirting (see Chapter Five).

Mobile media such as smartphones and digital cameras became increasingly popular at the turn of the twenty-first century and exemplify Lefebvre’s assertion that the “commodity manages to insinuate itself into the most minute crevices of everyday life” (Butler 2012: 29). As objects that have come to define the everyday, they have not only had a profound effect on time and space, similarly collapsing and expanding spatial and temporal boundaries to an even greater extent than the railway, but have also triggered a fundamental shift in socialities. It has become a common sight to see two people dining out in total silence, absorbed in the screens of their smartphones, taking pictures of their meal to upload to Instagram, or communicating with others not physically present (Reyes et al. 2015: 116). A physical attachment to the devices can also be observed – the individuals’ mobile devices would often be held in their hand or placed on a table within sight (Reyes et al. 2015). Beer (2012) similarly observes the comfort that mobile media plays when moving through everyday spaces, identifying how such objects come to occupy the role of a companion rather than just a simple tool with instrumental power. Therefore, such technology must be understood not only as tools which carry out certain acts but as objects that constitute the very materiality of the everyday that transcends instrumentality to resonate on an affective level.

The use of mobile media in new online spaces as well as the urban corridors identified above has implications for how we understand the practice of upskirting and its successor – creeping. As has already been evidenced, the divide between public and private has become increasingly blurred and challenged with the advent of the new visual technics of everyday voyeurism. One of the leading changes in late modernity that has contributed to this shift in how public and private space is understood, has been the ubiquitous use of Internet-enabled devices. The rise of the Internet and Web 2.0 has seen the creation of the information superhighway alongside the built environment that facilitates an increasingly complex system. Within these environments’ men are able to congregate in a public community of online creepers to discuss, assess and improve their covert practices. As Nussbaum (2010: 79) observes – “with a little savvy, he can create a world in which his target exists only as a

thing, a spoiled identity and he, the spoiler, has complete power”. It is here in these online communities, where men are encouraged and accepted and harmful misogynistic views and practices are reinforced. I argue that this exertion of power, enabled by algorithms, mega-platforms and online communities, proliferate today and are intimately connected both to upskirting and other forms of image-based sexual abuse more broadly.

Creepshots and Folksonomies of Misogyny

Below, I detail two changes to the technological terrain of the early 2000s and post 2010. This also coincides with the increasing use of the term ‘upskirting’ in relation to the capture of images using micro cameras and mobile phones. This language shift took place alongside the recentralised Web 2.0 and social media sites, which saw the rise of the practice of ‘creeping’, the most recent incarnation of upskirting.⁶² Again, we see a shift in naming practices which coincides with the technology used to facilitate this behaviour. In excavating the technology of the past, we simultaneously uncover the transformation of these voyeuristic behaviours and the subtle, yet important changes in how such actions were facilitated through the technology available. In what follows, I investigate how the mobile phone and Internet have had profound effects on upskirting and creeping, however, I focus primarily on the latter as the transformations facilitated by new media have triggered fundamental shifts in not only the capture but the distribution of non-consensual sexual photography. Alongside sexting (Karaian 2012; 2014; 2015), revenge pornography and upskirting, creepshots are a recent and harmful iteration of sexual images that are shared and distributed without consent online.

Through analysing the online archives available on websites such as creepshots.com, creepshot pages on Tumblr and Metareddits dedicated to creepshots, I suggest that such spaces reinforce and actively encourage misogynistic attitudes towards women. In addition to generating ‘folksonomies of misogyny’, whereby members tag upskirts and creepshots into varying objectifying categories, these online domains aggregate not only creepshots but

⁶² The term ‘creepshot’ did not entirely subsume ‘upskirts’ in popularity and, in fact, from 2016 onwards, there has been an increased use of the term ‘upskirting’ over ‘creepshots’ in Australian and international media. This illustrates that the label used to identify this kind of image-based sexual abuse is not static and can fluctuate back and forth between one iteration and another.

creepers. In doing so, they provide a forum for the celebration and affirmation of the behaviour of taking a creepshot and the beliefs that underlie what it means to be a creeper. The term ‘creepshot’ came into vogue around 2010 and refers to the practice of taking covert and usually sexual, non-consensual images of strangers in public places. The most recent incarnation of the upskirter is now referred to as the ‘creeper’ – a person who not only takes ‘creepshots’ but uploads them to popular social media websites like Twitter and Tumblr. Moreover, whilst these images have been available online since at least 1997 (Calvert and Brown 2000), there are some qualitative differences in the online presence of upskirt images from 2010 onwards, including the shift in the label attached to this voyeuristic practice. Aside from the development in how such photographs are shared and distributed on these mega platforms, the creepshot also differs qualitatively to the traditional upskirt photograph in several ways.

One of the crucial differences between the upskirt and the creepshot is that a creepshot is not *necessarily* an upskirt shot. While often including shots up unsuspecting women’s dresses, a creepshot can also include pictures of women wearing yoga pants, jeans, or shorts in addition to pictures taken up victims’ dresses and skirts. Additionally, there are several other popular variations of the creepshot that fall under this label. These include Tumblr and Twitter pages devoted to stealthy pictures that passers-by take of other people’s dogs (Treasure 2013); the Instagram tag “DILFs of Disneyland” created to share users covert photographs of fathers with their children visiting Disneyland (House 2014), and a website called TubeCrush.net dedicated to posting pictures of men riding the London subway which has attracted a considerable following in China (Barrie 2015). Despite these sub-varieties within the creepshot genre, they nonetheless target, affect and harm women disproportionately as female victims remain the emphasis of most creepshot websites.

The ways in which creepers frequent online platforms and interact with one another marks another key difference between the video voyeur and upskirter of the late 1990s/2000s and the creeper. Whereas the video voyeur of the early 2000s might also disseminate upskirt material online, these were often fetish or pornography websites and were isolated from most Internet users. Today, however, the popularity of mainstream social media websites and the recentralisation of the Internet, has changed the way in which information is disseminated and received by users. Social media platforms provide forums for the celebration and affirmation of creepshots and the beliefs that underlie what it means to be a creeper. The

technological affordances of social media websites have enabled creepers to congregate together in an online misogynistic community where creeping is actively celebrated on these websites. This often creates an atmosphere of acceptance both implicitly through the viewing and sharing of such images and explicitly through the proud use of the ‘creeper’ label.

In addition to examining the changing conditions for image production, research into non-consensual sexual photographs of women should consider the changing context of information storage, classification and retrieval. As Derrida (1996: 17) reminds us, owing to the technical structure of the archive, “the archivization produces as much as it records the event”. In the case of taking creepshots, we must examine the changing conditions provided by participatory social media sites for archiving footage of creepshots and upskirts. In the information age, the archive is no longer confined to physical storage centres; they are dynamic, constantly changing and renegotiated through everyday practices of network culture (Parikka 2013: 133). The archive is principally concerned with the inscription of meaning and the categorisation of artefacts. One form of archival categorisation that has emerged with the advent of social media and has played a crucial role in creepshot communities is the folksonomy.

A portmanteau of the words ‘folk’ and ‘taxonomy’, folksonomy can be defined as an online system of classification and organisation built on users electronically ‘tagging’ content into different categories. As Trant (2009: 4) explains, “we can think of tagging as a process ... of folksonomy as the resulting collective vocabulary ... and of social tagging as a socio-technical context within which tagging takes place”. Similarly, folksonomy can be defined as a form of “user-generated classification, emerging through bottom-up consensus” (Quintarelli 2005: np). Importantly, these practices pre-date the online platforms fostered by the Web 2.0, however, this new media enables practices (such a tagging) to result in folksonomies and new ways of producing gendered regimes of visibility.

In line with other techno-optimist writings concerned with the democratisation of the Internet, folksonomy has been frequently, but not universally, praised. As a mode of information classification, it has often been lauded by academics, technologists and journalists for its non-hierarchical, bottom-up and democratic nature. Timo Hannay (2004: np), for example, argues that folksonomy “cleverly harnesses selfish acts and directs them towards the common good”. Further, numerous popular and academic articles have extolled

folksonomies for their perceived ability to improve information retrieval (Weinberger 2007). Folksonomies of tagging may foster the creation of interest communities focused around classification – a by-product he frames in entirely positive terms (Quintarelli 2005). Finally, folksonomy has also heralded a shift away from traditional hierarchies and classification systems by disrupting the single authorship practices apparent in print-media and earlier forms of communication (Nicotra 2009: 260). However, this conflates collective aggregation practices as more democratic and equal than previous communication technologies (because they enable more people to participate) and overlooks the power relations apparent in everyday interactions between users by beginning from the position that all users can participate in multi-user tagging in an equal capacity. As in other public spaces, (technologically literate) white men often have the loudest voice both online and offline, resulting in a greater volume of messages (or tags, in the case of creepshot images) (Highfield 2016: 156).

Through incorporating collective social tagging systems, creepshot websites have generated folksonomies of misogyny: multi-user tagging practices that function to tag content in a way that fosters harmful sexist attitudes. If Twitter, Reddit and Tumblr act as (some of) the platforms where the creepshot archives are stored, then folksonomies of misogyny can be conceptualised as the system of order responsible for structuring both visibility and reality on these domains. Folksonomies of misogyny are not limited to creepshot and upskirt images, however, and can also be observed on websites that host revenge pornography and subsequently tag content in sexist ways. Hierarchical power relations, a crucial aspect of gendered regimes of visibilities, are clearly apparent on these social media platforms. Here the gaze of male perpetrators is transformed from one man looking at a woman (or at an image of a woman) to a collective of like-minded men coming together to look at and *classify* the content of such images. Each stage of the process (capturing the image, distributing it and classifying it) embodies objectification and the very act of classifying is an expression of power.

In the context of creepshot sites, folksonomy provides a tool for developing and reifying a misogynistic lexicon. This lexicon is used for classifying and objectifying women's bodies through a new architecture of voyeurism and objectification, which is built around crowdsourced, non-consensual sexual photography, distributed classification and improved findability. Given that folksonomies reflect a population's conceptual models (see Quintarelli

2005), folksonomies constructed on creepshot and upskirt websites offer a barometer of the vocabulary used to objectify women. But much more than just reflecting existing classificatory regimes for objectifying women, the folksonomies developed on creepshot and upskirt sites represent a new gendered regime of visibility erected through social-tagging affordances, ‘bottom-up’ classification and networked misogyny (Banet-Weiser and Miltner 2015).

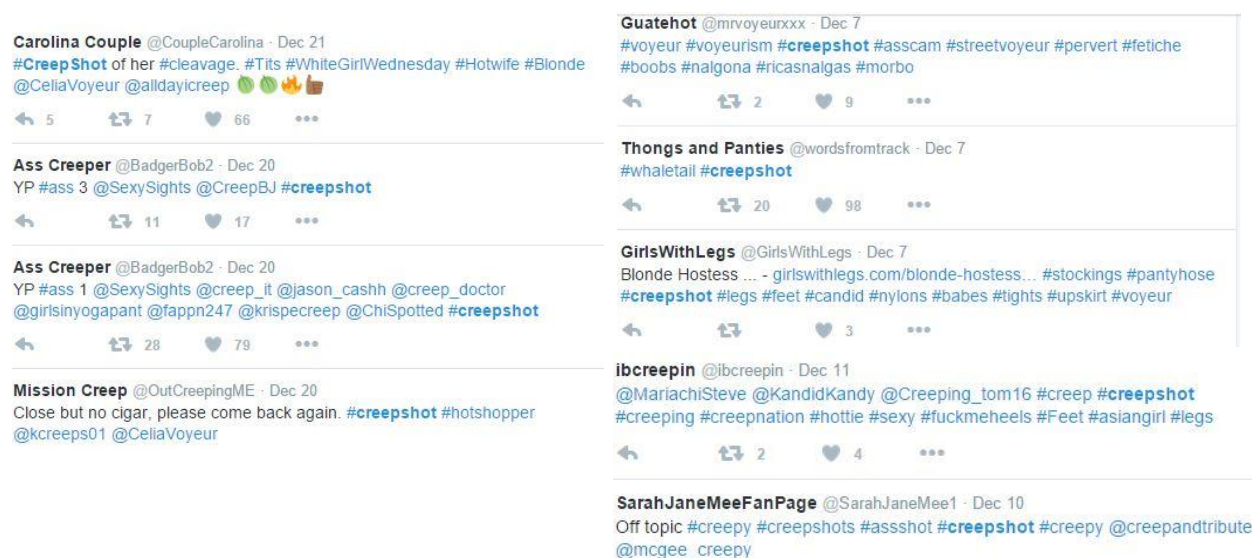


Figure 4.5: Screenshots taken from Twitter following the #creepshot hashtag.

Source: <https://twitter.com/search?q=%23creepshot>

In online communities anchored around the distribution of creepshot images, women are known only through the various tags identifying physical attributes, while men identify and tag themselves as proud #creepers, #voyeurs and #perverts. They are the ones who see, judge and assign a value to the images of their targets online, and the women in these photographs and recordings are known only through the male gaze of their perpetrators. Women are divided into parts (‘booty’, ‘tits’, ‘cunt’) and identified as #hotshoppers, #asiangirl or #blonde. Through this multi-user tagging practice, women are evaluated based on their (faceless) body and subjected to misogynistic attitudes that revolve around objectifying their target in various ways.

Before their image even reaches the online domain, unsuspecting women victims of creepers have been subjected to objectification in three distinct ways: firstly, their *agency is denied*, secondly, a process of *fungibility* is undertaken and thirdly she is *reduced to her appearance*,

valued only for how she looks and treated as an object. The women in these photograph's autonomy, agency and subjectivity are denied, ignored or considered subordinate to the desire of the perpetrator to capture non-consensual images, which subsequently become sexualised and decontextualised from the context in which they were taken (Nussbaum 2010). This happens both because the objectifier treats the objectified person as lacking in any boundaries and because he uses the objectified as a tool for his own purposes, in this case, to upload, assess and discuss the images they have acquired. Frequently these images are treated as trophies of their conquests and badges of bravery (for getting close enough to take a clear image of their target). Once uploaded to social media platforms, the victim undergoes a transformative process where their humanness is stripped away and their identity is reconstructed according to what is made visible in the photograph or recording. In undergoing these folksonomies of misogyny, the victim is treated as interchangeable with other images of a similar nature. For example, she might be categorised under the hashtag of #booty or #asiangirl, transporting her image to a running newsfeed of other related images and identifiable only through her association with these labels.

During the tagging process, she is reduced to both body parts and appearances and her presence online is structured entirely around her physical body. In a multidimensional process of objectification (Nussbaum 2010; Langton 2009: 228-229), she is treated according to how desirable (or undesirable) her body parts appear to the men responsible for tagging and re-Tweeting (or otherwise sharing) these images. In doing so, she is silenced through a process of *violability* (see Nussbaum 2010); she cannot speak because she has been converted into an object that has been appropriated, filed and sorted according to the male gaze of the various members engaged in the multi-user tagging practice associated with folksonomies of misogyny. Through the power of the Web 2.0 and Internet connectivity, "the objectifier can create an entire world in which [Jane] DOE 1 exists as a mere thing, a cunt, a set of tits" (Nussbaum 2010: 80). The capture and distribution of creepshots are not victimless activities, or less serious than other forms of sexual harm (see Kelly 1988 for hierarchies of sexual violence). Rather, it constitutes the participation in and promotion of, a culture of everyday misogyny that sees the objectification of women as a pastime, a hobby. Like Powell (2010) and McGlynn and Rackley (2017a; 2017b), I argue that upskirting and creepshots need to be conceptualised on a spectrum of violence amidst other forms of image-based sexual abuse. The framing of the behaviour as a form of image-based sexual abuse attends to its relationship as one iteration of gendered abuse. Subsequently, this works to overcome

arbitrary hierarchies and systems of categorisation which fail to capture the harm of the non-consensual recording and/or distribution of women's photographs.

Feminist research on folksonomy has primarily paid attention to Twitter hashtags as a form of social tagging and folksonomy production and especially their potential to promote gendered solidarity and facilitate online feminist activism, feminist digilantism (Jane 2016), awareness raising and popular feminism (Banet-Weiser and Miltner 2015; Clark 2014; Drücke and Zobl 2016; Williams 2015). While the merits of 'hashtag feminism' have been the subject of much discussion in feminist literature (see, for example, Khoja-Moolji 2015; Stache 2015; Wood et al. 2018), comparatively few studies have examined the potential for folksonomies to promote solidarity among men holding misogynistic views (see Jane 2016). Social media platforms aggregate not only creepshots but also creepers, creating networks where sexist attitudes and behaviours are not only discussed but actively encouraged through the collective sensemaking of online tagging.

To use Castells' (2009: 47) terminology, the novelty of creepshot sites and their associated social tagging practices (and what separates them from pre-Internet media used to facilitate misogyny) is that they have 'programming power': the ability to generate new networks, rather than simply strengthening existing networks. Creepshot sites, in other words, provide forums for what Banet-Weiser and Miltner (2015) term 'networked misogyny': violence and hostility towards women in online environments. Whilst Banet-Weiser and Miltner conceptualise networked misogyny as systemic online abuse and harassment directed at women in online environments, here, I suggest expanding the definition to encompass homosocial online environments that legitimate misogyny through their programming power – and specifically, their ability to aggregate men holding misogynistic attitudes.

On numerous creepshot sites, networked misogyny is explicitly didactical. One creepshot website, for example, offers 'guidelines' for taking 'good' creepshot images and a code of conduct governing its community of users (see Figure 4.6 below). Further, such sites provide affordances for members to share tips and threads specifically dedicated to improving the quality and success in taking creepshot and upskirt photographs. Within this gift economy of tips, trade secrets and freely shared images, these modes of interaction offer new ways to objectify and perpetuate gendered harms. Moreover, they provide a networked community where likeminded individual can actively reproduce misogynistic attitudes and induct new

members into the creeping subculture. This therefore rationalises, reinforces and so contributes to the perpetuation and growth of these attitudes and behaviours.

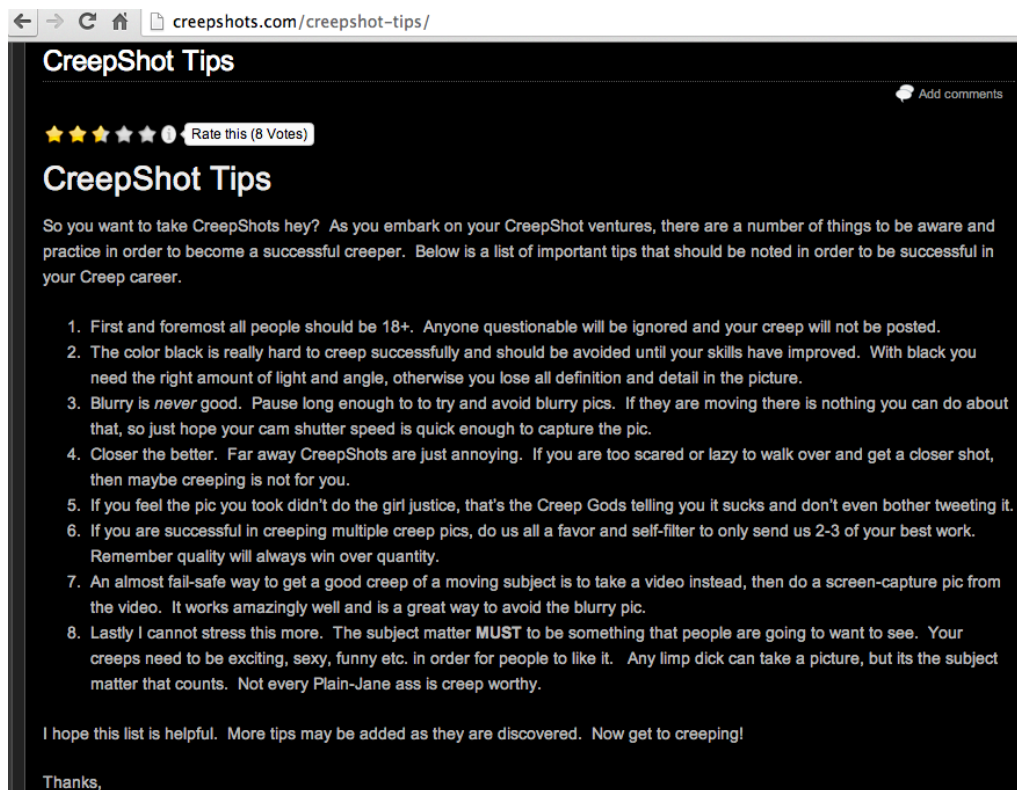


Figure 4.6: Creepshot tips taken from www.creepshots.com

In the tips above in Figure 4.6, a toxic and hegemonic masculinity is promoted as not only desirable but necessary to participate in creeping behaviours. Men who do not get close enough to their target are labelled as ‘lazy’ and ‘scared’. Furthermore, it is emphasised that ‘any limp dick’ can take a picture, but it takes skill, guts and confidence to take a ‘good’ creepshot. Here we can see a demonstration of Connell’s (2005) work on how social relations of gender are realised and symbolised through the body and its performances. The act of taking a creepshot is a performance of one’s masculinity and failing in this community means risking being labelled in any number of aggressive, sexist insults. One’s status as a successful creeper (and man) is determined by the community who assesses not only the desirability of the target (“not every Plain-Jane ass is creepworthy”) but the quality of the images (blurry could be interpreted either as a lack of skill or as having the confidence to get close to the target). If a perpetrator takes a picture of a target the community deems unattractive, then their status and position in the hegemonic masculine order may be called into question. On these social media platforms, we can see that the gendered relations are not only harmful to

the women who are objectified, but fraught with risk for the men who participate in these forums. Not only are their visual trophies up for assessment but their position in the hegemonic masculine order is also under scrutiny.



Figure 4.7: Forum discussion of creepshot by users.

Source <http://anon-ib.co/ci/res/3105.html>

In Figure 4.7, taken from a website dedicated to image sharing, the original poster has surreptitiously captured images of a friend's girlfriend and asked users whether they would like him to share his content with them. The anonymous poster exclaims that "she needs some dick! Nice lil phat ass" which we can understand as reflecting a cultural pattern of violence where members of the privileged group (men) use violence not only to assert or sustain their dominance but also as a homosocial transaction between other men (Connell 2005). In the exchange above, the threat of sexual violence represents not only a threat to the woman but also functions as a way of interacting with the original poster. Another poster responds by encouraging the original poster to further violate his friend's girlfriend (here she is referred to as property, as belonging to her boyfriend) by breaking into her phone to acquire nude pictures to distribute online in the community. Exchanges such as these demonstrate the subcultural capital creepshots may afford those who upload and gift them to a group. In doing so, they demonstrate that creepshot and upskirt forums create a networked misogyny, offering the once solitary peeper a thriving community of practice.

Conclusion

Today, "networked digital information technology has become the dominant mode through which we experience the everyday" (Greenfield 2017: 6). The Internet is a part of everyday

life and media technologies have become so ubiquitous that they are deeply embedded now in our daily routines and social relations with other people. This chapter has examined how technology past and present has structured gendered regimes of visibility and has investigated how the materiality of visual media influences, limits and extends the capacity for visibility within the context of peeping, upskirting, video voyeurism and creeping. Like Carolyn Marvin (1988) who wrote on the newness of old technology in her famous piece *When Old Technologies Were New*, this chapter has sought to understand how a media archaeology “reveals less about the evolution of technical efficiencies in communication than a series of arenas for negotiating issues crucial to the conduct of social life” (Hier 2003: 399). This chapter also offers an answer to the first of my research questions, which asks how we can understand upskirting in relation to the technology used to perpetrate such behaviour: the emergence and practice of upskirting can be understood as a recent iteration of image-based sexual abuse (McGlynn and Rackley 2017a; 2017b) and as a product of gendered regimes of visibility. Importantly, while the technology does not *cause* the harm (for such a view omits the agent responsible for taking upskirt images), it and its historical antecedents are inextricable aspects of the activity, its capacities and affects. In order to attend to the harm such behaviour engenders, “as individuals and society we desperately need to acquire a more sophisticated understanding of how technologies work in the world and who benefits most from the way they accomplish that work” (Greenfield 2017: 299). In the case of upskirting, the technology primarily serves to benefit men to the disadvantage of women both online and offline, and such behaviour reinforces unequal social relations which have existed for many centuries.

The issues I take up in this chapter relate to the asymmetrical social relations between men and women, and how these become apparent when examining the gendered regimes of visibility that conditions how women are looked at and how they are visibilised in various social fields. As with many discursive relations that are unequal and hierarchical, gendered regimes of visibility are not always evident. In fact, part of the effectiveness of structuring and reproducing visibilities is that they become invisibilised as they are absorbed into the fabric of everyday life. In subsequent chapters, I observe how this plays out in the arenas of media and law. Rather than addressing the persisting and perennial objectification of women at the hands of male perpetrators, the responses by journalists and lawmakers that I analyse in Chapters Five and Six sought instead to address how to regulate technology, rather than expressions of harmful, but normalised gendered relations. As scholars such as Bennett-

Moses (2013) highlight – focusing only on technology in the law-technology-regulation nexus as the solution will only ever yield partial results. My subsequent chapters detail my closer examination of the political climate surrounding the criminalisation of upskirting in Australia, and how it emerged as an issue of social concern. Moreover, I look at the responses of lawmakers to the socio-cultural risk posed by the techno-pervert of the mid-2000s. In doing so, I uncover the way in which such visibilities were managed and how the systemic cultural conditions responsible for producing such behaviour were frequently invisibilised through various strategies of linguistic avoidance.

Chapter Five: The Emergence of the Techno-Pervert in Australia

Australia, like most other countries, has struggled with issues arising from the use of cameras in public spaces. Such anxieties, or what Goggin (2006) dubs ‘mobile panics’ – anxieties relating to the proliferation of new dangers posed by mobile media – are not a new phenomenon. Indeed, when Kodak introduced its instant camera in 1888, concern broke out in the United States due to growing public concern that individuals may be “photographed in undignified poses” (Clark 2005: np). As the author of an editorial in the 19th century Connecticut paper *The Hartford Courant* forewarned, “the sedate citizen can’t indulge in any hilariousness without the risk of being caught in the act and having his photograph passed around among his Sunday School children” (Clark citing Lindsay 2005: np). The use of cameras in public areas is further complicated when those spaces include public swimming pools and beaches – spaces where debates about modesty have been particularly vehement (Morrell 2005; Naughton 2005). Prior to the criminalisation of upskirting in Victoria, Australia more broadly was struggling to manage anxieties over the inappropriate uses of cameras within these spaces. This parallels a much broader international anxiety around private bodies and public spaces – namely, what can, should and should not be seen and captured.

This chapter focusses on how new optical recording technologies were received in Australia upon their introduction and became an issue covered by Australian news media outlets. ‘Issue-creation’ is the framing of a phenomenon or event as problematic or in need of remedy and is the first step in understanding the processes involved in lawmaking. In the following discussion, I outline how upskirting emerged as an issue in Australia in the lead up to its criminalisation in Victoria. Important factors to consider in such analyses of issue creation include not only “variability inherent in the timing, content and institutionalisation of criminal law” (Jenness 2004: 154), but also the spaces associated with emergent issues. Unlike the upskirting that occurs in urban centres, the sites of voyeurism that generated public concern and new media coverage in the years prior to 2007 were beaches, aquatic

centres, public toilets and changing rooms.⁶³ The representation of these spaces must be understood through the symbols, meaning and language employed to construct and reify socio-spatial norms of privacy and space.

As a social concern in the mid-2000s, upskirting was not unprecedented. The changing technics of voyeurism has been a repeated issue within news media reports, with concerns that changes to the technological landscape would enable and extend the illicit behaviour of “paedophiles” (No Author 2005a: np), “perverts” (Naughton 2005: np) and “outsiders” (No Author 2013a: np) in new ways. During the period in which upskirting emerged as a social concern in Australia, the country was governed by a conservative Liberal-National Coalition. Upskirting should, therefore, be understood amidst wider conversations and political sensitivities during the mid-2000s. Mindful of this context and these continuities, in what follows, I first examine the chronology of events leading up to the upskirting legislation in Victoria in 2007 by analysing media articles on upskirting in Australia from 2005 to 2007. Drawing on work from Bauman (2000), Billig (1995), Douglas (1966; 1992), Skey (2009), Urry (2011) and Zinn (2008), I scrutinise the media rituals and banal nationalism that pervaded the media coverage of the Muto case and investigate what understanding of the everyday was invoked in these reports.

Synthesising various theoretical work, I suggest that the Muto case signifies an example of boundary transgression. The advent of new technology magnified existing concerns over child sex offenders and voyeurs in 2005 and 2006. The media coverage heightened these anxieties in 2007, channelling them into one articulation of the criminalisation of the other – the techno-pervert – when Muto was arrested for upskirting. The techno-pervert is a term which was coined within the news media and refers to a particular kind of framing of offenders who engage in image-based sexual abuse. Like other naming practices for acts of image-based sexual abuse such as ‘revenge porn’ (McGlynn and Rackley 2017a; Powell et al. 2017), the construction of the techno-pervert in upskirting discourses was problematic. It simultaneously disconnected upskirting from other forms of gendered violence in its emphasis on trivial perversions and creepiness; it detracted attention away from ordinary men

⁶³ It should be noted that Muto, the man accused of the Australian Open upskirt images, photographed women at the hostel he was staying at which ultimately led to his arrest. It was not the upskirting at the Australian Open which was the focus of the news media reports on his actions.

who perpetrated upskirting and it denied the everyday misogyny underpinning upskirting through pathologising the ‘sick’ offender from beyond the community.

Breasts, Beaches and “Dodgy Types”

Beaches hold a special significance for Australia. As Verghis (2005: np) states “the beach is far more than simply a place of leisure. Its cultural value in reflecting and defining Australian society proves both money-spinner and creative inspiration” (see also Morris and Frow 1993). As Anderson (1983: 48) observed in his work on nationalism, the nation is an “imagined political community” and the role of the environment, including forests, deserts and particularly beaches, is an aspect of Australia’s self-imagination that can be evidenced in much of the material promoting Australia to international tourists. Spaces are constructed not only from material, and objects, but meaning, language and symbols; they are injected with a politics that bears ramifications for how the spaces of social life are produced (Lefebvre 2002). Australian beaches are imbued with symbolism and politics just as much as the urban spaces of city centres where upskirting more commonly takes place.

The tradition of beach photography is also deeply entrenched in Australian culture; take the famous pictures taken in 1908 at Collaroy Beach of several female swimmers for example (see Figure 5.1). Until several years earlier, there had been a ban placed on bathing during daylight hours. Against this context of prohibition, the image conveys a political significance that depicts shifting community standards relating to modesty and the policing of how women’s bodies appeared in space (Verghis 2005).⁶⁴

⁶⁴ Women’s bodies are not only policed on beaches. Such environments have been and remain key sites of violence as evidenced by the rape of women in the early 2000s, leading to intensified racial relations in Sydney and culminating in the Cronulla riots in 2005 (Lattas 2007).



Figure 5.1: Five women in bathing suits pose for a picture at Collaroy Beach in 1908. Source: <https://tinyurl.com/h9ap94d>

In addition to holding cultural significance, beaches are environments that are charged with competing discourses of sexuality, normativity and the explicit and implicit policing of these heteronormative discourses. “Sexuality is an ever-present but clandestine reality on the beach” and, as one participant in Holmes’s study remarked, “it’s visually pleasing for a guy to look at a naked girl . . . certainly men come here to enjoy the scenery” (Holmes 2006: 36-41). Public nudity, however (or, in the instance of the topless sunbathers, partial nudity), only becomes a legal matter “when it is seen by another person” (Holmes 2006: 34). Yet, just as important is *how* such nudity is seen; namely, whether it is seen by the naked eye or aided with an optical device which transports the image into hybrid data spaces (Holmes 2006: 34). As the following discussion illustrates, those the media deemed in need of protection from beach and pool photographers and the deleterious effects of new optical technologies were, and continue to be, women and children – two populations who have long had a complex and precarious relationship with public space and safety.⁶⁵ Nearly a century after the Collaroy

⁶⁵ Of course, other groups have been victimised at beaches in Australian for decades such as gay men who have been the victims of dozens of homicides as Mouzos and Thompson’s research indicates (2000). Despite this research predating the anxieties around beach perverts in the mid-2000s, gay men were never identified as a population in need of protection and instead were often framed as perpetrators or deviant (see the discussion in

Beach picture was taken, another photograph of women at a New South Wales beach was captured, although in an altogether different context. Whereas the women in the Collaroy Beach picture were enjoying their new freedom to bathe after the ban was lifted, the picture taken almost a century later sparked renewed conversations on the regulation around beaches, bodies and photography. As indicated in Chapter Three, this phase of my research involved a discourse analysis of 317 media articles on upskirting in Australia over a ten-year period between 1 January 2005 and 31 December 2014. One of the primary goals of this diachronic-historical longitudinal analysis was to glean insight into the process of issue-creation leading up to the criminalisation of upskirting in Victoria in 2007. I observed some key cases in 2005 and 2006 relating to non-consensual sexual photography which contributed to the anxieties which were building at the time over the techno-pervert in public spaces.

On November 6th 2004, 25-year-old Peter Mackenzie took several photographs of women sunbathing topless at Coogee Beach. Using the camera on his Nokia mobile phone to capture the images, Mackenzie was confronted by the disgruntled partner of one of the women. The partner of the victim called the police and stayed with Mackenzie until they arrived. The following month, Magistrate Lee Gilmore ordered the phone be destroyed and warned him that “women are not objects of decoration for men’s gratification” (No Author 2004: np). MacKenzie was fined \$500. Remorseful for his behaviour, he stated, “I really feel like I’ve blemished 25-years of being a decent person” (No Author 2004: np). The following year, just three months after Mackenzie took those photographs, Diwakar Gaur, 25, and Rattanbir Singh, 22, were similarly charged by police with offensive behaviour for taking photographs of topless sunbathers with their mobile phones at a Sydney beach (Morrell 2005: np).⁶⁶

Conservative commentator Sally Morrell wrote in *The Herald Sun* on the 7th February 2005 that such charges were “ridiculous”: “if the girls didn’t want the attention, they should have put their tops back on” and mused that “surely someone could have simply told them to “grow up” and move away” (Morrell 2005: np). Morrell’s comments minimise any sense that this kind of photography was problematic or criminal by victim-blaming the women photographed at the beach. Underpinning these comments is the position that the women are

Chapter Six regarding the illicit photography of boys in a rowing competition and other comments made by Members of Parliament about gay beats).

⁶⁶ This fell under the *Summary Offences Amendment 1988 (NSW)* Statute, Division 1, Section 4 – Offensive Behaviour.

not only responsible for their victimisation for sunbathing topless, but also for not confronting the men, implied here as childish through the use of language such as “grow up”. Several months later Naughton (2005: np) coined the term techno-pervert when writing on the rise of mobile phones wielded by men to take unauthorised sexual images. As I highlight later in this chapter, the techno-pervert is one expression of Garland’s criminology of the other. The techno-pervert also bears some parallels with Jewkes and Wykes (2012: 934) ‘cyber-paeds’, which they suggest the news media created to describe “the monster of our age [that] orchestrated what some criminologists might term a moral panic about both ‘cyber’ and ‘paeds’”. The key difference between the use of the term techno-pervert and cyber-paed is that the latter was used to refer exclusively to implied sexual predators who preyed on children, whereas news media (and I) use the term techno-pervert to refer to the media fixation more broadly with the misuse of new technologies against women and children alike.

Media coverage of non-consensual sexual photography marked the convergence in Australian news media of two perennial social problems – the pervert and technology. Together this formed the techno-pervert of the mid-2000s (Naughton 2005) and begun the political agenda setting process (Walgrave et al. 2008: 815) which would later provoke the criminalisation of upskirting in Victoria. Used uncritically and as a media-moniker for non-consensual sexual photography, this term captures both the questionable naming practices in public discourse identified by image-based sexual abuse scholars (see McGlynn and Rackley 2017a; Powell et al. 2018) and the unyielding focus on perpetrators deployed in commentary on image-based sexual abuse. The use of the term techno-pervert in discourses on upskirting in Australian news media was problematically used to signal such behaviours as a threat from beyond the community by outsiders and, notably, not everyday men.

It is easy to characterise these concerns over unauthorised photography as an expression of a moral panic, a reaction which articulates itself in many different ways (see Cohen 1972; Goode and Ben-Yehuda 2010; Hall et al. 1978). However, given the emphasis on “the nastier side of modern technology” (No Author 2005b: np), the media coverage surrounding upskirting can be better described as an example of what Goggin (2010) terms a mobile panic: anxieties relating to the proliferation and new dangers posed by mobile media. As a subset of ‘media panic’, where “media are both the source and the medium of public reaction” (Drotner 1992: 44), mobile panics have emerged over issues as diverse as youth sexting (Karaian 2012; 2014; 2015), mobile phone facilitated bullying and various forms of

image-based sexual abuse (Lim 2013). Further, while the notion of morality is certainly referenced in occurrences of unauthorised photographs (particularly in relation to women and modesty), the technology, as much as the offender, was blamed for the behaviour in the representations I analysed. For example, in 2005 the *Western Daily Press* ran a piece with the headline “Technology gone crazy” in reference to the use of mobile phone cameras at beaches. Here, the emphasis is not on the “perverts” taking pictures of topless women and children but the “nastier side of modern technology” (No Author 2005b: np). This headline is an example of portraying *actions without agents* (see Lamb 1991) and disperses the responsibility of perpetrators by holding objects accountable for actions instead. While it is not unheard of to have moral panics about new technology (see Carrabine 2008: 9), casting these events as a moral panic misses one of the chief aspects of such representations of image-based sexual abuse; the problematic use of the term techno-pervert. This omits the harmful nature of the behaviour through utilising media-friendly monikers and simultaneously moves the conversation away from the harm experienced by victims, instead focusing on perpetrators. Moreover, the language of ‘pervert’, while eliciting disgust, lacks the same accountability as terms such as ‘perpetrator’ or ‘offender’ and avoids a central issue underpinning the illicit photography of women – everyday misogyny. This issue with the terminology used to describe sexual violence and those who perpetrate it is beautifully captured by Hannah Gadsby when she reflects on the problems of challenging men’s creepy behaviour:

Men are not creepy. Do you know what’s creepy? Spiders, because we don’t know how they move. Rejecting the humanity of a woman is not creepiness; it is misogyny (Gadsby 2018: np).

The different way in which (2005) and Morrell (2005) describe this act of image-based sexual abuse demonstrate the different poles of the response to non-consensual sexual photography. The subsequent debate and responses to upskirting oscillated between these poles before opting for criminalisation after the tipping point in early 2007. Whilst Morell’s comments blame women for either encouraging their victimisation or for not actively protecting themselves from unwanted sexual photography, Naughton’s framing of this is no less problematic. Described as an issue of law that was lagging behind the technological revolution in our society and subsequently resulted in privacy invasions, the gendered nature of these kinds of offences are ignored by Naughton. Despite the examples in the article

pointing to women who are upskirted while on the catwalk and an unauthorised device installed in women's showers, the commentary around the issue described how recent cases "were revealed in a list of techno-pervert examples police handed to a parliamentary committee examining laws on the criminal use of surveillance devices" (Naughton 2005: np). This results in a focus on the misuse of new technology as the issue of concern, rather than the sexual and gendered nature of the offence. While Morrell conversely focussed on gender, it was not to attribute blame for the behaviour to male offenders but to trivialise the issue as one that was childish and not worthy of concern. These two articles signal the beginning of an emerging concern in Australia surrounding cameras and safety in public places, where patrons are often dressed in swimsuits or can be seen in various stages of undress. Moreover, these concerns were predominantly anchored to anxieties relating to new technology and the implications this had for privacy.

In another incident at Coogee Beach, this time in January 2005, 24-year-old Tia Larson noticed a man photographing her and other topless sunbathers. The police were called and the man was apprehended with over 70 photographs on his camera of the sunbathers. McCausland (2005: np), a journalist reporting on the incident, stated that "the line between appreciating the natural beauty of our beaches and the natural beauties on them" was crossed when the man's actions led the women to "feel dirty and embarrassed and self-conscious". Other women "expressed their anger ... that men photographed them both overtly and covertly" and that their "liberty to go topless [wa]s taken advantage of" (McCausland 2005: np). Regular beachgoer Edward Scott said he often patrols the beach to rebuke individuals recording topless sunbathers: "I told someone off for doing it ... yesterday. They just sit there and film or take photos. It's unethical, it's not cool. It's not Aussie" (McCausland 2005: np). As Souter states:

Here on the beach, the rules are supposed to be different. The bleached light, the proximity to raw nature, puts everything at a remove. There is none of the furtive dimness or spangled artificiality that signals sleaze. These breasts, most of us agree, are bared for the pleasure of their owners. Nakedness here becomes natural, healthy, liberating. It is to be regarded as sensual, not sexual and men are not to find it remarkable or god-sent. Context is everything (Souter 2007: np).

Not everyone shared this view, however. Many commentators felt that men who photographed women engaging in topless sunbathing were “just taking photos of what was on display” (Morrell 2005: np). Contrary to the opinion held by Edward Scott in Coogee, one man interviewed by Souter stated that “every single bloke on the beach is [staring at topless sunbathers] ... the ones who say they’re not are lying or gay” (Souter 2007: np). This illustrates at least two conflicting, but common views held by men; either they need to protect women from the predatory behaviour of potential beachgoers or they ought to be actively engaging in the behaviour themselves. The former relates to what Susan Griffin dubbed the ‘male protection racket’ whereby women are protected by men, against other men thanks to heteronormative gender norms rooted in chivalry. She argued that “this is not unlike the protection relationship which [organized crime] established with small businesses in the early part of this century. Indeed, chivalry is an age-old protection racket which depends for its existence on rape” (Griffin 2015: 11). As Patricia Sexton (in Donaldson 1993: 646) reminded us, “male norms stress values such as courage, inner direction, certain forms of aggression, autonomy, mastery, technological skill, group solidarity, adventure and considerable amounts of toughness in mind and body”. If we recall the case of Mackenzie in 2004, it was the sunbather’s boyfriend who detained the voyeur at the beach while awaiting police to arrive, reinforcing this narrative of women needing protection by the men in their lives. Similarly, Edward Scott was a self-described beach patroller on the lookout for perverts who might take pictures of women sunbathing.

Even after 2005-2006, topless sunbathing remained an issue. In 2008, surf lifesaving clubs in the state of Queensland initiated a “no-jiggle” rule for female beach-goers to help address the issue of unwanted staring and beach photography (Michaels 2008: np). Enforced at the Gold Coast, Arlie Beach and Cairns, this rule stated that “women could legally take their tops off as long as they did not strut about, swim in the pool, play beach volleyball or fling a Frisbee” (Michaels 2008: np). Using language such as “jiggle” connotes titillation and sex; it evokes specific imagery for the audience reading this article. Discussions such as these are inherently tied up with modesty – a deeply religious concept that in many cultures is connected with male honour and female chastity, submission, shyness, propriety and self-restraint (Moxnes 1993: 170-171). Modesty can be defined as having a moderate opinion of one’s self, lacking in pretentiousness, denying responsibility for successes and accepting responsibility for failures and is “embedded within the communal orientation expectations for women...the modesty norm pressures women” to conform to gendered stereotypes (Smith and Huntoon

2014: 447-448). With topless sunbathing labelled as a “festival of flesh” by some life savers (Michaels 2008: np), these responses to the unauthorised recording of women sunbathing topless reminds us that the policing of female bodies in public space is still very much connected to these antiquated and problematic gendered notions.

A “no jiggle” rule was never enforced on any of the male patrons – their movement in this environment was not restricted. The consequences of being a woman in the leisure spaces of the beach is evident; by occupying a female (presenting) body there are ramifications for not simply being in space, but also moving through space as a woman. Women, whether in swimsuits or topless, had a “no jiggle” rule informally enforced upon them while they moved along the beach. This required women to walk slowly to ensure their breast movement did not cross the threshold into “jiggle” territory. Limiting women’s mobility in public space is a fundamental component of women’s subordination, as how it limits their movement and reinforces the exclusion and confinement of women from public space (Massey 1994). The “no jiggle” rule on beaches thus illustrates the way that spatial arrangements “help to reproduce structures of gender and sexual difference” and simultaneously act as a form of spatial control with social, cultural, economic, political and physical ramifications (Tonkiss 2005: 94).

Between 2004-2006, competing ideologies over spatial norms were apparent in media discourses on upskirting and unauthorised sexual recordings. The language and rhetoric deployed in the articles above reflects the contentious nature of image-based sexual abuse when the victims are topless women sunbathing. In some respects, the issue of non-consensual sexual photography at public beaches and swimming pools aligns with some common media tropes pertaining to sexual victimisation and women. As with upskirting, the men perpetrating these offences were strangers, feeding into problematic social beliefs about gendered victimisation detailed by Stanko (1990: 9) and others which posits that ‘real’ violence disrupts public safety and is committed by strangers. This occurs to the detriment of seeing ordinary violence committed in private spaces by men who are both familial and familiar (Stanko 1990). While upskirting also represents a form of ordinary violence as women lead their everyday lives in public spaces, the kind of representation detailed above reinforces this stranger-danger trope. Constructing offenders in this way not only serves to reinforce harmful stereotypes about ‘real’ and ordinary violence, but also excuses the men

who perpetrate upskirting as though they are not part of a community fraught with gender inequality.

As Burton (2005; 2007) discusses in her analysis of non-consensual sexual photography laws in Australia, images taken of topless sunbathers are a violation of what she dubs ‘contextual consent’ in relation to privacy. This approach takes as its starting point social practices related to privacy and potential disruptions to these practices in a given situation. While topless sunbathers may consent to be viewed by other individuals visiting the beach, this does not extend their consent to having an image of them taken, or to that image being circulated. The news reports discussed above, were often at odds with this, perhaps due to the assumptions news media employ to characterise women’s experiences of gendered harm and violence (Humphries 2009: 26). As Humphries asserts, “the media frame how and what we view as social problems, what we define as good or bad or acceptable or unacceptable and who we label as criminal offenders or legitimate victims” (Humphries 2009: 34). The contestation in the articles discussed reflects the disagreement in a broader narrative over victimhood, blame and whether non-consensual sexual photography even constituted a legitimate issue of social concern. The combination of these factors did not trigger a tipping point into criminalisation like the Muto case, as the media framing did not create a heightened sense of urgency.

When sunbathing topless, women were rarely constructed as ideal victims, to use Nils Christie’s (1986) term. As Jewkes (2011: 127-128) notes, “women invariably fail to live up to this impossible ideal and, across the whole range of offences, women are sexualised...[and] are further punished symbolically by the media more harshly”. Because of their breach of the modesty norm, the topless sunbathers’ status as a victim was questioned, as demonstrated by *Herald Sun* writer Morrell (2005), who blamed the victims for not confronting the men making them uncomfortable. By labelling the issue “ridiculous”, this representation failed to see both the problem of gendered violence and the harm of violating contextual consent. Feminist scholars writing on image-based sexual abuse (Powell 2010; Powell and Henry 2016; McGlynn and Rackley 2017a; 2017b; McGlynn et al. 2017; Powell et al. 2018) have identified persistent difficulties in getting such forms of gendered harm to be counted as legitimate. Because of the hierarchies of harm and victimisation, the incidents of image-based sexual abuse in the news reports detailed above were dismissed, trivialised and ignored.

Media discourse not only constructs ideal (and non-ideal) victims but also creates ideal (and non-ideal) offenders. In an article written by Souter in *The Age*, the journalist interviewed people visiting an Australian beach to discuss topless sunbathing. Breasts are described as “God’s gift to mankind” (a sentiment also affirmed by a Member of Parliament in the upskirting debate in 2007). One beach-goer comments that the men are “just taking photos of what was on display” and those that were not interested in looking were said to be either “lying or gay” (Souter 2007: np). This illustrates several things simultaneously: first, the presumption of sexual access (Kelly 1988) by men to women they saw as “on display” for men to stare at. As noted in Chapter Four, objectification is connected to the gendered regimes of visibility which structures how women appear and are looked at. Secondly, the men who were engaging in non-consensual sexual photography are represented as simply partaking in normal behaviour. Third, the boundaries of this normalised masculinity were reinforced through exclusionary tropes: the statement condemns any claims of *not* looking as emanating from men who were “lying or gay” (Souter 2007: np).

Heteronormative stereotypes of gender are subsequently reinforced; stereotypes that encourage the sexualisation and abuse of women as one way of legitimising masculinity. If, as Tabbert (2016) observed, the construction of the victim is a labelling process and a contribution to the labelling of offenders, the legitimisation of offenders’ behaviour as normal serves to reposition gendered violence within a grid of normal relations. Between the ‘normal’ expression of masculinity described in some articles and the questionable modesty of the victims in others, we have a combination of representations that work to legitimate non-consensual sexual photography as a normal behaviour at worst, and a trivial annoyance by immature ‘boys’ at best. As such, no measure or response was offered to the topless sunbathing women. In what follows, I explore how the photography of children gathered much more sympathy in the news media coverage and resulted in a proposed camera ban.

Protecting the Fantasy of Australian Childhood

At the same time that topless sunbathers were attracting media attention between 2004 and 2006, concerns surrounding children in public space were bubbling into public

consciousness.⁶⁷ The perceived need to protect children from so-called paedophiles and other imagined predators was a much more prevalent and enduring concern than bare breasts on beaches.⁶⁸ Although the term ‘paedophile’⁶⁹ only came into popular vernacular in the late 1980s and early 1990s (Melville and Marsh 2007), there has long been a fixation on protecting children’s innocence from sexual predators in public spaces. Since the 1980s, child sex offenders have featured in both political and popular discourse and have remained “of the highest priority for the criminal justice system to manage and contain” (Lynch 2002: 529). Child sex offenders are often stripped of human status in media representations of this group, constructing them through using signifiers of monsters or animals in media reports, which highlight these offenders as a “nefarious threat to children” (Spencer 2009: 220). McDonald (2012) has written on the consequences of creating a monster out of child sex offenders, which he argues often detracts from and overshadows the far more prevalent form of child abuse that occurs through family violence.

In 1960, Phillippe Ariès sketched out the modern creation of what we now widely recognise as childhood. Ariès proposed three different representations of the child: innocent, sinner and *tabula rasa* (blank slate). In relation to the child as an innocent, asexual individual, Ariès identified a distinct shift at the end of the sixteenth century where “the image of the child shifted from a sexually indifferent individual to a sexually innocent one whose purity was constantly in danger of being corrupted by immoral influences” (Ulanowicz 2016: 4). To ensure the child remained unharmed from corrupting moral influences, a dual approach was developed through both familiar and educational processes. These two approaches manifested through the contradictory desire to coddle the child “to protect his innate innocence from evil influences” and to discipline him harshly to ensure he would not be enticed to “turn to sin by his own devices” (Ulanowicz 2016: 4). This understanding of the child and childhood has endured and remains today.

⁶⁷ Fear over the safety of children in public spaces, particularly beaches, has a long history in Australia and elsewhere predating this period. For example, the infamous disappearance and suspected murder of the Beaumont children in 1966 in Geelong, Victoria, captured the nations interest and caused a panic in the aftermath (Garcia 2018).

⁶⁸ Only one article relating to topless sunbathing in Australia appeared after 2008 in my sample. This referred to Kate Middleton, the Duchess of Cambridge, who was photographed topless by covertly positioned paparazzi while on vacation.

⁶⁹ The term ‘child sex offender’ is used here rather than ‘paedophile’. There are a number of reasons for this but the primary motivation is that the use of the word paedophile in popular discourse carries with it ambiguous and unhelpfully negative connotations.

In my analysis, 49 of the 317 articles that reported on upskirting in the Australian media between 2005-2014 directly referenced children who had either been victimised or were perceived to be at risk of victimisation. After women, children were the second most reported population at risk from illicit photography and in the lead up to the criminalisation of upskirting in Victoria, public anxieties in many states were more preoccupied with the threat such photographers posed to children rather than women. As Faulkner (2011: 122) asserted in her work on the relationship between childhood and innocence because a child's "innocence is always at risk – children become society's greatest liability as well as its most precious asset". Children are a popular go-to in media reporting across a range of issues, given their victimhood is considered legitimate because of their perceived vulnerability. As Jewkes (2011: 67) notes, offences are made eminently newsworthy when children are involved, whether as victims or offenders.

Representations of childhood in Australia are often deeply connected to the beach. Albury and Lumby (2010: 56) note, for example, that "images of Australian childhood frequently show children playing on the beach, a place that symbolises the allegedly easy-going, egalitarian and unpretentious Australian character". Given that the reports on illicit photography in the lead up to the introduction of the Upskirting Bill in Victoria primarily focussed on photography at beaches, it is important to understand the role of this space and the spatial norms connected with this milieu. The symbolic meaning imbued in beaches is considerable; not only are they a site for the Australian imaginary of the nation but also deeply connected to Australian children and innocence. As beaches and pools came under threat in the years leading up to the criminalisation of upskirting, "anxiety about an emerging sexuality highlights, once again, the risk attached to the promise and vulnerability of the next generation of adults. It is not just the risk of an individual, but also the risk of society that emerges in these debates" (Nakata 2015: 122). Just as the existence of child soldiers or criminals threatens this common-sense understanding of childhood, so too does the child sex offender represented in the media articles discussed here. Moreover, given the connection between both childhood and risk to society (Nakata 2015), and between beaches and Australian national identity, the perceived threat was amplified as a result of a convergence of multiple anxieties.

Nude pictures of children frequently end up on display at 21st birthday parties and other such occasions. Most people would not find these images controversial or sexual and taking these

‘happy snaps’ has become a right most parents have come to expect. As Verghis stated “any image can be sexualised – it all depends on the viewer” (Verghis 2005: np); or, more accurately, it all depends on what the viewer sees in the image and on what others think you are viewing and why. Parents, however, also “expect a reasonable amount of privacy” when it comes to other people photographing their children in such places – a point where things get complicated (Clark 2005: np). The need to act in defence of children photographed at pools and beaches was clearly being built in the media narratives surrounding these incidents in 2005-2006.⁷⁰ However, identifying a palatable response proved difficult.

This wave of concern began in Victoria and was also evident in Queensland and New South Wales. In Melbourne 2002, several 14-year-old schoolboys competing in a rowing competition had their images uploaded to pornographic websites – an event that reportedly caused the boys to be “extremely distraught” as they worried that older men would look at them as sexual objects (Standing Committee 2005: 12). Furthermore, the boys reported “feelings of anger, a sense of violation, anxiety about going out in public places, feelings of exploitation and invasion of privacy” (Standing Committee 2005: 12). As one Member noted in the Second Reading of the Upskirting Bill (2007a: 2596), “a lot of parents were horrified to find their sons’ image on a gay website [and] it took a while to have those images removed”. Following an incident several years earlier in which pictures of boat race competitors’ in their swimsuits were uploaded to pornographic websites, the boat racing event itself was banned. In 2005, a website hosting hundreds of images of children in swimming suits at Brisbane’s South Bank Parklands and other recreational sites was discovered by the community, provoking the creation of sections 227A and 227B of the *Criminal Code* (QLD). At the same time in New South Wales, Waverly Council released a statement to the press claiming that a new camera ban was being considered after men were caught taking inappropriate images of toddlers in a children’s swimming pool at Bondi Beach and other locations in New South Wales.

In most of the cases where men were accused of committing child pornography outlined above, media coverage focused on the photographing of young male adolescents or children

⁷⁰ Since the advent of social media where uploading images to platforms such as Instagram and Facebook have become commonplace, these issues have been further heightened, as well as implicating the parents themselves who chose to upload pictures of their own children.

by men and reinforced the harmful conflation of paedophilia and homosexuality, a trend which I also observe in the Upskirting Bill. When concern over child sex offenders emerged surrounding photography on beaches and swimming pools in 2005, councils around Sydney revised their policies to only permit children to be photographed by their parents. This effectively placed a blanket ban on all photography given the prevalence of children in these spaces, as patrons required written consent from parents whose children they might also end up photographing at the venue. Parents' feared that imagined paedophiles might abuse their child, fears that were distilled by Morrell who stated:

As we've found out to our disgust and alarm, paedophiles are attracted to places where there will be lots of young children in various states of dress. But worse, they can now be armed with tiny cameras – even an unobtrusive mobile phone with a lens, of which we have four million already – and take snaps of children that by the end of the day will be splashed over Internet porn sites for evil perverts everywhere to fantasise over (Morrell 2005: np).

Recalling Morrell's comments on topless sunbathing earlier, in the same article she compared the "ridiculous" concern over photographing topless sunbathers with what she described as a "growing problem" of technology in the hands of "sick puppies" attempting to photograph children (Morrell 2005: np). Here we can see the conflation of two key folk devils to create the techno-pervert of the mid-2000s, a journalistic trope not uncommon for stories covering these kinds of events (Jewkes and Wykes 2012). The first sentence expresses "disgust" and "alarm" over paedophiles congregating in places that should be safe for children – pools and beaches. In the following two sentences, Morrell builds on this by connecting paedophiles with mundane technology, "even unobtrusive mobile phones", which she argues makes them "worse" than those who do not use technology, because of the potential to upload and share the captured images. The harm is linked to the ability for perpetrators to not only take photographs and recordings at beaches and pools, but to move them into an online domain for "evil perverts everywhere to fantasise over". Here, Morrell reiterates two common themes pertaining to cultural constructions of paedophilia: the need to preserve childhood innocence and the need to protect children from stranger danger; in this case from the lascivious stranger's digitally enhanced eye at beaches and swimming pools.

There are two significant framing techniques in Morrell's passage above. Firstly, the emotive language of "evil", "alarm" and "disgust" are deliberately employed to evoke a strong sense of disdain for the offenders. As indicated earlier, the paedophile is a popular scapegoat and common offender in news media coverage on crime because of their perceived and actual danger to children (a victim group widely accepted as legitimate) who require the protection of adults and society. Secondly, Morrell contemplates the issue of new technology causing further harm through its violation of contextual consent by transporting content into online spaces. In the very same news article, she dismisses the harm caused to topless sunbathers suffering the same kind of privacy invasion, claiming that "if the girls didn't want the attention, they should have put their tops back on" (Morrell 2005: np). This dichotomy of deserving and undeserving victims serves to reinforce who is worthy of blame and who is worthy of protection. While the identification and construction of victims and offenders in relation to the imagined paedophiles and children were likely to resonate with audiences, the proposed solution of banning cameras was less well received.

In 2005 for example, Waverly Council in New South Wales proposed a ban on cameras at their beaches and pools in a bid to "crack down on perverts" using technology to photograph patrons (No Author 2005a: np). The reaction was met with hostility from parents, with some stating that the ban was "ridiculous" and "a bad idea and impossible to police" (No Author 2005c: np). Such bans were criticised in media coverage with headlines such as "Cocooned children: protection or paranoia?" (Duffy 2005), "Beach camera ban fail" (No Author 2005c) and "Camera ban at pool makes a splash" (Carapiet 2005). At the same time, there was a contradiction in the reporting on this given that members of the community simultaneously called for camera bans to protect women and children while also bristling at being told to put their own cameras away when taking photographs at these venues. In one case in 2008, members of the public were mistakenly accused of being voyeurs at the beach when a man ripped the film out of their camera after suggesting they had taken photographs of his wife (Mikkelsen 2008: np). This outburst was labelled as 'beach rage' and it was suggested that "this is going to happen a lot more in the future given the available technology and the rate at which that technology is increasing" (Mikkelsen 2008: np), an interesting comment given the man in question was using an older style camera with film at the time of the incident. We see a shift in blame from the person to the technology in this report, but also the suggestion that such wariness around cameras in public places had become (or soon would become) normalised. Concerns over the sexual predation of children through photography continued to

bubble towards public consciousness for several years after this initial period.⁷¹ In 2007, however, one event shifted conversations around illicit photography away from predation on children – the Muto case. I turn to this triggering event in the next section of this chapter and explore the processes of issue-creation regarding upskirting in Victoria.

Responding to the Exceptional: The Australian Open and Banal Nationalism

Upskirting made headlines in Victoria in January 2007 when a 34-year-old man, Takuya Muto, was arrested and later sentenced to imprisonment after women noticed he was covertly filming them in a hostel's showers (Butcher 2007). Once in police custody, it was discovered that he had also captured images of spectators' and players' thighs and buttocks at the Australian Open tennis tournament (Medew 2007). Muto was charged with stalking and offensive behaviour and sentenced to six months' imprisonment. This led to criticism of the State Government for the lack of an appropriate offence to cover this behaviour, resulting in pressure to create "legislation that ensures there is no opportunity for loopholes" (Holroyd 2007: np). It was frequently suggested that the law needed to be changed in order to address the perceived rise in upskirting. In one interview in the *Herald Sun*, Attorney-General Rob Hulls said "our laws need to reflect new technology producing smaller and more discreet cameras, such as mobile phone cameras" (Tinkler 2007: np). The Upskirting Bill was subsequently created. Following on from the expression of anxieties over camera use at beaches and pools in Australia, reporting on the Muto case created a sense of urgency, implying that upskirting was on the rise and becoming more common. Of further significance was the fact that 2007 was a state election year. Political tension on both state and federal governments was heightened, such that the publicity of the Muto case was arguably compounded in order to produce the law and order response of (quickly drafted) new legislation.

⁷¹ It is hardly surprising, then, that Bill Henson's nude photographs provoked heated controversy in 2008 and that a federal inquiry into the Sexualisation of Children in the Contemporary Media was also published at that same time.

Media coverage of the event overwhelmingly referred to the incident as the “Australian Open” upskirting case, an interesting act of naming considering Muto was actually caught perpetrating image-based sexual abuse at the hostel where he was staying.⁷² It was later discovered that Muto had also taken recordings up women’s and tennis players’ skirts and dresses while visiting the Australian Open. It was, however, his behaviour targeting ordinary, everyday women and not celebrities that saw him arrested. Because upskirting is routinely perpetrated against women as they move through everyday spaces – women who are rarely made aware of their victimisation and who will not have news articles written about their victimisation – I deliberately refer to this incident as the ‘Muto case’ rather than the ‘Australian Open’ case. This not only avoids becoming entangled in harmful media naming tropes that functions to obscure less ‘sexy’ forms of harm in favour of newsworthy incidents, but also firmly places the offender as the responsible agent at the centre of my discussion. While I would prefer to focus on victim narratives of upskirting, in the context of such narrow understandings of this behaviour and the covert nature of the crime, such narratives were rare.

Whilst the media might reveal and crystallise what is considered important in society, they were nonetheless entangled in the very practices they condemned in relation to upskirting. Although it is more common to find upskirt images on online pornography websites or dedicated Twitter and Tumblr pages than in newspapers and magazines, there are nonetheless upskirt images which are published in mainstream media newspapers and widely disseminated. For example, numerous upskirting images of celebrities have been taken not by voyeurs but by media paparazzi.⁷³ Splashed across the covers of newspapers like the *Herald Sun* and magazines such as *Woman’s Day* and *Famous*, pictures of female celebrities’ anal or genital region often garner front page attention. Legislatures that vowed to balance the rights of freedom of expression and newsgathering activities with the need to protect women from the invasion of privacy caused by upskirting failed to realise that in many instances, journalists and media organisations *were* the upskirt voyeurs responsible for perpetrating

⁷² Only one article in my sample had a headline that referred to Muto’s behaviour in the hostel where he was staying as “Shower Voyeur Receives Two Months Jail” (No Author 2007e). The majority of the articles not only focussed on the incidents at the Australian Open but omitted reflecting on the harms done to the victims, instead writing about Muto’s motivations for undertaking the upskirting.

⁷³ However, with the proliferation of smartphones, many images that are reproduced in mainstream news media are not taken by professional photographers, but rather ‘citizen paparazzi’.

these harms.

Googling “celebrity upskirt” generates thousands of images of female celebrities caught off guard. In my examination of Australian media between 2005 and 2014, several articles referred to celebrities who had fallen victim to journalists taking degrading upskirt pictures. In 2014, *Who Magazine* published a photograph of Kendall Jenner from a low angle that revealed part of her buttocks (No Author 2014a: np). Angry, she later uploaded the picture to her Instagram account along with a tag of the offending journalist, inscribed with the comment “Perv”. Miley Cyrus was 17 when she was upskirted by a paparazzi during which time she was still legally considered a minor in the United States. She was photographed by infamous celebrity reporter Perez Hilton as she was exiting her car in what he called a “very unladylike fashion”, because her underwear was visible beneath her dress, nicknaming her “slutty Cyrus” because of this (No Author 2010: np).

In another incident, the Duchess of Cambridge stood next to a helicopter that blew up her dress in front of a crowd of photographers during a 2014 visit to Australia. As a result, an upskirt image was sold to a German newspaper named *Bild*. Most tabloids refused to purchase the images because they would have resulted in worldwide condemnation. Baxter (2014: np) celebrated the media’s refusal to purchase the images, stating that the tabloids demonstrated a “stringent, respectful adherence to morality”. When the photographer later attempted to donate the \$180,000 proceeds of the photo to the Blue Mountain Fire Appeal, Mayor Mark Greenhill reportedly refused to accept the money because it was “a source of humiliation for the Duchess ... that put her in a position of embarrassment” (No Author 2014b). Kate Middleton hired a minder after this incident to ensure her dress did not fly up for the remainder of her visit (No Author 2014c). It is worth noting that Kate Middleton is in many ways quite different from other celebrities because of this semblance of protection afforded to the royals owing to their status and connection as symbols of their country. To violate a royal is an act of disrespect to the United Kingdom as much as (or problematically, more than) to Kate Middleton. Because of her place in the monarchy, the kind of treatment she is subjected to in the media is markedly different to other celebrities, who are not granted the same protection or exemptions. Indeed, few publications would refuse an upskirt image of an actress or musician in the same way that the international media almost unanimously rejected the images of Kate Middleton taken in Sydney.

These examples emphasise the contrast between the publication of some upskirt pictures in mainstream media outlets and the condemnation in others. It reinforces the double standards imposed on women and the extraordinary policing of their bodies. The presumption of sexual access, whether to everyday women on the street or famous actresses or musicians, underpins both the paparazzi and the men taking upskirt photographs of unknown women. Even the outcry over the upskirting of Kate Middleton reflects a deep sense of patriarchy – she was not just a woman but represented the United Kingdom more broadly because of her association with the monarchy. To violate her was to violate the country she represented. The outrage over her modesty being threatened was not truly an outrage in defence of her as a woman, as a human with agency, but was merely another expression of how women are objectified and imbued with symbolism devoid of human-ness.⁷⁴

As the headline to one article, *All women's bums are not created equal* (Baxter 2014: np) suggested, there is a hierarchy that implies that unless you are the Duchess of Cambridge, your privacy is not secure. Media coverage (and reproduction) of celebrity upskirt images is a reiteration of the covert upskirt image discussed in Chapter Four with one crucial difference. Rather than hidden on personal computers or online pornography websites, these images are made public and visible in such a way that the victim almost always knows that her genital or anal region has been splashed across tabloid magazine and newspaper cover pages. Moreover, the audience these images are distributed to is larger given the fixation our (popular) culture has with celebrities. Calvert (2004: 722) attributes this to female celebrities' private parts being newsworthy, symptomatic of a culture that has eroded notions of privacy and “panders to our voyeuristic tendencies”. Only when images are deemed to be of an un-newsworthy nature can “privacy rights can trump voyeurism” (Calvert 2004: 726). In the following discussion, I reflect on the way in which privacy rights did trump voyeurism in the Australian news coverage of the Muto case and why this occurred.

⁷⁴ The inscription of national values onto women's bodies is not isolated to celebrities and has a long history in other contexts. Mostov (1995) and Bracewell (2000) contend that nationalist projects were structured with reference to ideals of masculinity and gender relations within the context of wartime rape in Kosovo and the Balkans. As Mostov (1995: 519-520) argues, “women serve as custodians of national values, as signifiers of the boundaries of group identity, marking its difference from alien others”.

The media are elements of culture and society and form part of our cultural landscape; they transform raw events into news stories and participate in cultural currents (Moore 2014: 2). Moreover, the media both “mediate the event and provide a framework for the community experience. They are the symbolic locus for events” (Sumiala 2012: 17). My analysis taps into these currents and seeks to understand how the Muto case was transformed from raw event into a crime news story. The following analysis is divided into three sections. First, I seek to unravel why the Muto case received the extensive media coverage that it did: to do so, I draw from media criminology and observe ‘news values’ (Jewkes 2011) at work in a way which explains why this incident contributed to the new legislation subsequently enacted later that year. Secondly, I critically analyse the coverage itself to identify what this tells us about the everyday. In doing so, I examine how the everyday was represented as threatened by those outside our borders, such as foreigners, Takuya Muto. Having established how the previous incidents at beaches and pools in 2004-2006 did not meet the threshold or ‘tipping point’ earlier, I set out to uncover why the Muto case triggered the criminalisation of upskirting in 2007.

I analysed 58 documents from 1 January 2007 to 31 December 2007, including nearly 50 media reports from around Australia on upskirting specifically.⁷⁵ Not only did the Muto case trigger the criminalisation of upskirting in Victoria, but it was also the most cited incident in my sample of media reports.⁷⁶ In 13 of the articles, the perpetrator of the Muto case was directly referenced and in over one-third of the media articles from 2007 (n.24) was referenced at least once. It was helpful to think through why the Muto case was considered to be highly newsworthy to determine what seemed to be qualitatively different about this case of image-based sexual abuse to the others that preceded it and failed to trigger any legislative response. Moore’s (2014: 26) work on newsworthiness is instructive in thinking through the Muto case – she asserted that to say something is newsworthy simply means that it is of public interest. Originally coined by Galtung and Ruge (1965), the concept of news values was first brought to academic attention in 1965 through a study of Norwegian newspapers, as a system by which news items were selected and prioritised for publication.

⁷⁵ Ten documents only looked at ‘peeping’ (usually into a person’s dwelling), while 48 focused on upskirting.

⁷⁶ In nine different articles, the case of a commuter taking unauthorised photographs of female travelers using a hidden camera in his shoe was also cited as another example of upskirting occurring at the same time as the Australian Open incident in January 2007.

More recently, Jewkes (2011) identified 12 distinct news values in reporting on crime.⁷⁷ Four are particularly relevant here: sex; celebrity; threshold; and proximity.⁷⁸ Firstly, as Jewkes (2011) notes, crimes involving titillation or sex are considered highly newsworthy. The act of upskirting, as this thesis has argued, is a form of image-based sexual abuse that involves men objectifying women through taking non-consensual photographs of their anal and genital region. When news coverage frequently refers to Muto as a “sneak” (Hunt 2007), “pervert” (Best 2007) and “bandit” (No Author 2007b) for his sexual behaviours, the coverage utilises the news value of sex in relation to Muto’s sexual expression, rather than as a sex crime affecting women. The reference to sex is used here as a media hook to attract readers attention rather than as a form of titillation. It reinforces both a moral position on acceptable and aberrant sexual expressions and normalises the notion of the sexual deviant outside of the community. Muto is therefore constructed as a techno-pervert and exemplifies what Kelly (1988) described as one of the ways in which men, as a group, benefit from limited definitions of sexual violence. Such definitions “function to distinguish a small group of ‘deviant’ men from the ‘normal’ majority” (Kelly 1988: 27). Furthermore, news coverage also identifies the technology and not the individual as blameworthy for upskirting and other forms of non-consensual sexual photography. As Hunt (2007: np) noted, “this type of activity involving camera technology invading a person’s privacy is becoming too common”. This statement is important as it demonstrates the congruence of the “sick” (Morrell 2005: np) pervert and new technology as a target of blame, resulting in the construction of the techno-pervert (Naughton 2005).

Secondly, Muto was caught filming patrons and tennis players whilst at the Australian Open, the latter of which were sports stars and fall into the category of ‘high-profile’. Because of the public profile of these individuals, they garner more media attention than other everyday people without comparable social status. Mason (2003: 15) describes this as the ‘celebrity angle’. Whilst Muto was also found to have covertly recorded individuals at his hostel, it was his behaviour at the high-profile sporting event which attracted attention by virtue of its implication of famous athletes.⁷⁹ This was despite the fact that it was his behaviour at the

⁷⁷ These are: threshold, predictability, simplification, individualism, risk, sex, celebrity or high-status persons, proximity, violence, spectacle or graphic imagery, children and conservative ideology.

⁷⁸ Individualism and simplification will be discussed below.

⁷⁹ It is worth noting here that the media have historically upskirted female tennis players by showing shots up their skirts as they dive for the tennis ball.

hostel and not the Australian Open tennis tournament that resulted in his detection and arrest. A third element that contributed to Muto's case becoming newsworthy was the Australian Open itself, as an *event*. Threshold is a news value that Galtung and Ruge (1965) and Jewkes (2011) identify as crucial in determining the newsworthiness of an event. This threshold is not fixed and varies for local, national and international news outlets; it relates to a perceived level of drama or importance that an issue must reach (Moore 2014). The Muto case meets the requisite level of perceived importance for a number of reasons. Held annually since 1905, the Australian Open has become a staple in the Australia sporting landscape. It is a prime sporting highlight during the summer in Melbourne and in 2016 the event generated more than \$278.1 million into the economy (Australian Open 2016). It is also a vital tourism event – of the 720,363 people who attended in 2016, 48% were from beyond Melbourne and in a survey conducted by the Australian Open, 98% of Victorian residents said that it was either very important or important for Victoria to host the Australian Open each year (Australian Open 2016).

The Australian Open is what Hobsbawm and Ranger (1983) would call an invented nationalistic tradition – something that emphasises a community's continuity with the past. According to Sumiala:

This continuity is maintained by invented traditions, which reinforce the community's conformity to norms. According to Hobsbawm, invented traditions assume increasing significance in situations where power structures within the community are in flux (Sumiala 2013: 80).

As noted in the previous chapter, the proliferation of the new technics of voyeurism into everyday life provoked anxiety which scholars such as Goggin (2006) label a mobile panic. With several years of news reports covering the ways in which technology was being used to take covert, non-consensual sexual images, it is likely that the Muto case triggered the response that it did because of the reach of the sporting event on such a large international platform. Already existing anxieties over new optical technology were magnified because of the enhanced visibility of the Australian Open. Muto's actions escalated existing anxieties pertaining to the new technics of everyday voyeurism because of the connection his offending had with the Australian Open. Combined with his status as a foreign 'other' and the intersection his

offending had with both the Australian Open and the celebrities playing at the tennis, the amalgamation of these factors culminated in a ‘tipping point’ that resulted in the criminalisation of upskirting in August 2007.

Finally, the news value of proximity was also apparent, which Jewkes states can be both spatial and cultural (2011: 60-63). Whereas spatial proximity refers to an event’s geographic nearness, cultural proximity relates to the relevance of an event for a specific group of people. Because of the centrality of sport to Australia’s imagination of itself (Anderson 1983), the tradition of the Australian Open creates a common bond that invites the viewer to participate in an imagined community. It is familiar because it involves the competition of celebrities; in this case, athletes, where year after year, the media present events such as the Australian Open as highlights of the season (Sumiala 2013: 80). Moreover, this tradition creates a collective investment in the event – a sense of proximity is formed and we identify with these women who feel known to us. Within this context, we can begin to understand why the actions of Muto taking upskirt pictures at the tennis were said to have “marred” (Tinkler 2007: np) the sporting event.

The violation of spatial norms is deeply connected to value judgements, which are pillars of the criminalisation process (Millie 2011: 278). Value judgements relate to behaviour that “becomes unacceptable and liable to censure if it is seen to cause sufficient harm or offence to the victim (individual, group, society at large, or environment)” (Millie 2011: 280). Recalling Cresswell’s (1996: 7) observations that actors behaving out of place call attention to the legitimacy of a law, we can see such processes similarly unfolding in January 2007 in relation to Muto. Cresswell argued that public spaces are often taken-for-granted and that the consequence of transgressive actions within these spaces is the disruption of common-sense assumptions over appropriate and inappropriate uses of, and behaviour in, such everyday spaces. In the case of the Muto incident, Muto’s behaviour was problematic because it transgressed spatial norms pertaining to the use of shared leisure spaces, but also because it violated the tradition of the Australian Open – a sporting event which has been running for over a century.

The Muto case resulted in the criminalisation of upskirting because the behaviour was seen to be sufficiently threatening. However, the question remains as to who was threatened. The case is significant given the previous attention to topless sunbathers and children being

photographed without consent at beaches and pools, which failed to gain the traction that the Muto case obtained. I suggest that a number of factors resulted in this different response: the space that such behaviour transpired within (Olympic Park), the scale of the event (a tradition with international recognition attached to the event), the kind of offender who committed the offence (a foreign techno-pervert, that is, an unknowable deviant from beyond the community) and the news values deployed during the media coverage (sex, threshold, celebrity and proximity). Together, these were key contributing factors that produced the response from the state to legislate against this social harm.

Overall, one of the most fundamental components of newsworthiness is novelty. If something is unexpected, unusual, infrequent, or is in some other way novel, it is more likely to be reported than more ordinary, frequent events. Upskirting was regularly portrayed as exceptional and as something which ruptured the routine in news media discourse. One of the leading media tropes in my analysis was the connection between upskirting as a novel behaviour and new technology being used for prurient purposes. For example, one journalist stated that “photographic technology has moved on in the intervening decades and so has the nature of the male gaze, especially at the fringes” (Nguyen 2007: np). This implies both that upskirting has only occurred because of new technology (a claim that I debunk in Chapter Four) and that the male gaze has changed as a result of this technology, as if the technology and not the men taking upskirt images are the cause of upskirting. Furthermore, the reference to the male gaze “on the fringes” reaffirms the novelty of upskirting and relegates it to the actions of those on the margins, or outside of society, further distancing the behaviour away from actions undertaken by ordinary men. Such views are further enforced by claims such as those made by Muto’s lawyer who asserted that Muto became curious about a new function on his video camera after a friend showed it to him earlier and that “had it not been pointed out to him, it would not have occurred to him to do something like this” (Hunt 2007: np).

However, a brief perusal of Twitter or Reddit quickly emphasises the commonplace nature of upskirting and creeping, suggesting that it is not, in fact, unusual or extraordinary, but a form of everyday violence that women are frequently subjected to as they go about their daily lives. Indeed, as McGlynn and Vera-Gray (2018: np) recently asserted “no women in a public space is free from the risk of upskirting” owing to the proliferation of this kind of behaviour. Continuity with broader trends in sexual harm perpetrated against women is rarely reported on through this lens in media discourse, however. My own analysis supports this as

upskirting was rarely framed as a form of sexual violence in 2007 and was never portrayed as a manifestation of misogyny premised on sexual access and the objectification of women. Instead it focussed on techno-perverts and routinely portrayed upskirting not as a form of sexual violence, but as an exceptional, “perverted” (No Author 2007c: np) or “creepy” (Tullberg 2007: np) behaviour undertaken by those from outside the community, or “on the fringes” (Nguyen 2007: np). Importantly, there was an absence of any narrative around sexual harm, with not a single media report in my sample of 58 referring to upskirting as a form of gendered violence perpetrated by men against women.⁸⁰

When upskirting was reported on in mainstream news media, it often concerned cases that were novel in some way. Examples in my analysis include a woman who was a Kung Fu expert who attacked a man who attempted to upskirt her in Queensland in 2005 (Dullroy 2005), a father who installed CCTV at his house when he discovered a man was peeping into his daughter’s bedroom (Artfield 2006) and five school boys who upskirted their female teacher and were suspended as a result (Kimmorley 2014). Sensational incidents of upskirting serve to disconnect the act from the more mundane, everyday expressions which are logged and recorded on online platforms as a running newsfeed of upskirt images. Recent research by McGlynn and Vera-Gray (2018: np) found that over 2,500 videos on the landing page of the top three United Kingdom pornography websites hosted content categorised as image-based sexual abuse, particularly videos containing upskirting footage. We now know thanks to the ground-breaking research by Powell et al. (2017: 3) that one in twenty Australians have experienced upskirting and that one in ten have experienced image-based sexual abuse more broadly.⁸¹ Framing upskirting as unusual severs it from a broader history of men’s abuse of women and more banal instances of image-based sexual abuse. Combined with a refusal to name upskirting as a form of gender-based violence, this framing by the media distorts the reality of upskirting and denies the harm engendered by this form of image-based sexual abuse through *non-naming* (Rich 1978: 18).

⁸⁰ Over a decade later, the framing of upskirting in media discourse has shifted radically and such problematic framing techniques are considerably reduced.

⁸¹ As emphasised in this thesis, many victims do not know that they are victimised. The participants in this research are those who became aware of their victimisation, indicating that the actual proportion of women upskirted is likely to be much higher than this conservative estimate.

The coverage of the Muto case simultaneously participates in these same problematic media tropes of sensationalising upskirting and distancing it from the everyday, while also bringing to the fore these very issues of everyday women who were targeted by men engaging in acts of image-based sexual abuse. The attention paid to the celebrities and tennis tourists in the coverage and the limited attention given to the women upskirted in the hostel.⁸² This illustrates the harmful framing device used by mainstream media. In the media coverage, the more mundane, everyday act of upskirting at the hostel, despite truly being the triggering event for the criminalisation of upskirting, was overlooked repeatedly for the more newsworthy connection the case had with the Australian Open. Had Muto not taken upskirt images of women at the Australian Open, it is questionable whether the upskirting legislation would have been drafted at all given the cursory attention paid to the women victims at the hostel in the news media coverage during January 2007. Moreover, the narrative around upskirting in these popular discourses eschewed an acknowledgement of the gendered nature of upskirting and even engaged in victim-blaming rhetoric. From Morrell's (2005: np) comments that women were "ridiculous" to become upset at men taking non-consensual images of their breasts as they sunbathed topless, to comments made by Muto's lawyer that he was merely curious to see how a new video camera setting functioned (Hunt 2007: np), it was rare that media discourse reflected the serious harm image-based abuse causes to victims. Part of this was attributed to an overwhelming focus on the perpetrator and their motivations, rather than an emphasis on the harm done to victims of upskirting.

Boundary Transgression: The Polluting Gaze of The Techno-Pervert

Some might argue that it can be difficult to perceive the everyday in media coverage that is, by its nature, concerned with the fantastic, the extraordinary and the chaotic. This is especially true of crime news, as crime is often portrayed as a transgression of moral boundaries and as an extraordinary occurrence, as was illustrated above in relation to Muto. There are relatively few stories that report on the mundane compared to those that report on the unusual and shocking which ruptures the taken-for-granted everyday (see Jewkes 2015). As Carrabine (2008) observes, crime is the most frequent subject of news and is

⁸² Only one of the 24 articles from 2007 identified that the recordings at the hostel were the triggering event for Muto's arrest, the remaining articles referenced the hostel incident in passing or not at all.

disproportionally represented in daily news coverage. This calls into question the dynamic between the spectacle and the routine. From this position, if we look at the context in which the Muto case emerged, we can get a better sense of how the everyday was constructed (and disrupted) in these media discourses. One way we can understand the everyday in these discourses is as something that was threatened by technologically equipped foreigners exercising a deviant tourist gaze at the Australian Open.

In analysing the media coverage after Muto was apprehended and sentenced, his status as a tourist, foreigner and international Japanese student was repeatedly referenced in media reports. The focus on the foreign status of offenders reflects a common trend in media coverage not only during 2007, but of upskirt incidents across the 10-year period between 2005-2014. Of the 95 distinct incidents reported in Australia, 11⁸³ reported on foreigners upskirting Australian women. In 17 of the articles reporting on the Muto case, Muto was referred to not only as a student but as a foreigner – specifically a “Japanese student” studying in Sydney. Butcher (2007: np) for example described him as “a Japanese student who took photographs underneath a woman's skirt at the Australian Tennis Open”.⁸⁴ Five years later, another incident involving a Japanese man upskirting a flight attendant resulted in news headlines such as “Japanese peeping Tom escapes charges on domestic flight” (No Author 2012). Japanese culture has long been fetishised in the West, however, it has also been ridiculed, particularly in relation to sex (Padey 2009; Wagenaar 2016). The Japanese pervert, or ‘hentai’ is a common stereotype in Western media and has recently been reinforced through the sharing of game show segments on social media. This might include clips of contestants performing a lewd act to win to the derision of the Western talk show host narrating the coverage (WatchMojo.com 2016).

We can understand this phenomenon in relation to both the ‘tourist gaze’ (Urry 1992; 2011) and ‘banal nationalism’ (Billig 1995). In his work on the tourist gaze (1992/2011), Urry dissects the complex relationship between mobility, travel and vision. His central contention is that photography and the tourist gaze are not separate processes, but each derives from and enhances the other. Indeed, had it not been for the production of the Kodak camera in the

⁸³ A further seven cases made reference to cases of upskirting overseas and to men in Australia who were caught upskirting or peeping whose nationality was implicitly alluded to.

⁸⁴ This also reiterates the omission of the hostel incident in the reporting discussed earlier in favour of the Australian Open incident.

1880s, the contemporary tourist gaze would undoubtedly look quite different. Given that “photographs are not objective or innocent but produced within asymmetrical power relations” (Urry and Larsden 2011: 129), we need to “situate tourism representation politically, examine what they include and exclude and expose whose interests they serve” (Mellinger 1994: 776). As Chapter Four illustrated in regard to upskirting, these asymmetrical power relations emerge from gendered regimes of visibility and the long history of the harmful ways in which women’s bodies have been visually represented.

Repeated reference to visiting tourists who were caught upskirting Australian women signified a different kind of tourist gaze, one that broke with the scripted and “choreographed” commercial mediascapes (Urry 2011: 140). This unfolded in relation to Muto’s characterisation as both a foreign student and as a tourist visiting the tennis. Muto was guilty of both violating an Australian tradition (the Australian Open) and violating women while visiting Melbourne. In five of the 24 articles, the tennis was explicitly referenced and in numerous reports, Muto’s behaviour was claimed to have negatively impacted on the event. In one report Muto’s actions are said to have “marred” the Australian Open Tennis Tournament (Tinkler 2007: np), while another said that Muto’s “arrest caps off a horror week for Australian Open organisers” (Evans and Nguyen 2007: np).⁸⁵ Commercial photographs are desire-producing, power/knowledge machines that are deeply implicated in post-Fordist consumer capitalism. Fundamentally, the knowledge-power art of commercial photography in tourism involves crafting images that stimulate “desires for ‘transporting one’s body’ to the photographed place” (Urry 2011: 142). This is an act of imaginative mobility where seductive images of destinations play a twofold role to both produce desires for bodily travel and script destinations with extraordinary imaginative geographies (Urry 2011). The tourist gaze is always imbued with desire – encouraged to visit, look and capture a foreign country’s landscapes before returning home with pictures that act as eternal evidence of the vacation.

Upskirting is an act of desire and objectification, of scopophilic and voyeuristic looking. If commercial tourist photographs “arouse desires by ‘staging’ geographies that thrill and

⁸⁵ In addition to anxieties around upskirting at the Australian Open, racial tensions between rival gangs were also a concern in 2007, with over 150 Croats, Serbians and Greeks thrown out of the Open for brawling (Doherty, Halloran and Webb 2007: np).

seduce the eye” (Urry 2011: 143) and women have often been depicted as being merely part of the scenery,⁸⁶ then it is helpful to see how a kind of tourist gaze has evolved within the context of upskirting. Both the tourist who photographs landscapes and the tourist who photographs up a woman’s skirt are, to draw on Sontag’s conception of the photograph, entangled in an act of consumption, desire and objectification (1977). The tourist gaze manifests in these cases of upskirting as another iteration of how the “contemporary consumer body is a seduced body and a body that *wants* to be seduced, restlessly searching for new sensations, experiences, identities and places” (Urry 2011: 144). In media discourse, Muto was framed as a foreigner who participated in undesirable practices of consumption, tarnishing one of Melbourne and Australia’s leading tourism events – the Australian Open. In the media cases I examined, the language used to describe foreign travellers who photographed Australian women were more emotive and condemnatory than descriptions of Australian upskirters, who were often framed positively in relation to their character. As Sparks and Loader remarked, “crime and punishment are inherently *political*” – and what a media report does (and does not) say about a sex offender can reveal much about the underlying ideology underpinning these articles (Sparks and Loader 2010: 60).

Other coverage that centred on foreigners often emphasised the outsider trope in relation to nationalism and Australian values. In addition to the extensive coverage of Muto, in 2013 Filipino sailors docked at Port Hedland were found to have engaged in upskirting in a nearby shopping centre. Echoing the sentiments in news media covering the Cronulla race riots from December 2005, the media report on international tourists found upskirting stated that “they don’t understand how we in Australia view things” (No Author 2013a: np). In another example in 2014, Greek national Apostolos Kipouros was found guilty of upskirting women in the Australian Capital Territory. In one article covering this incident, it was reported that:

Kipouros was interviewed by police and later admitted to filming the women; something he said he’d done to impress his friends. He said he’d filmed women in his homeland of Greece before coming to Australia (Knaus 2014: np).

⁸⁶ See for example the Graham case discussed in Calvert and Brown (2000: 490).

Here, a distinction is made between Australian and foreign values. This quote functions to do two things – first it implies that this behaviour is something he brought into Australia, that is, he learnt it in his homeland and had taken similar images in Greece “before coming to Australia”. This suggests that this is something that he did not learn in Australia but is an attitude that he brought into the country resulting in behaviour one prosecutor described as “alarming” (Knaus 2014: np). This focus on Kipouros’s nationality also frames the behaviour as something that other men do to Australian women, which distances the issue of upskirting away from something that is carried out by everyday Australian men. While the expression of heteronormative masculinity captured in this quote reflects the same kind of bravado and sexism articulated by Australian beachgoers in relation to topless sunbathers, the subsequent sentence detailing how Kipouros had filmed women in his “homeland” of Greece, signifies a distinction between Australian men and ‘other’ men.

Billig (1995) and Skey (2009: 331) observed that nationalism is often portrayed in Western media coverage in “hot outbreaks of national passion”, particularly in relation to Eastern “exotic” countries. When nationalism is discussed in a country’s “home turf”, it is associated with extreme political movements which served to create a “dichotomy between ‘their’ hot nationalism and ‘our’ invisible brand” (Skey 2009: 332). Billig (1995: 68) argues that the mundane nature of national identity needs to be conceptualised as “a form of life which is daily lived...it is a form of life so entrenched and taken-for-granted...it is rarely commented upon” (Skey 2009: 332). The sheer volume of reports on foreigners photographing women in Australia (Muto was referenced in 24 articles in 2007 alone), exemplifies a form of banal nationalism through the fixation on outsiders perpetrating these acts on Australian soil.

In direct contrast to the trope of the outsider, reports on upskirting also fixated on perpetrators who were teachers. Whereas the more traditional imagining of a child sex offender (as a dirty, predatory and dangerous stranger hiding in the shadows of public spaces) elicits disgust and horror, the male teachers who committed acts of upskirting were reported on in a notably different way. The news stories of these men were marked with disappointment and a struggle by the media to reconcile the upskirters ostensibly good character with their harmful actions. Failing to neatly fit into the media categories of techno-pervert or the child sex offender, both frequently portrayed as deviants ‘out there’ beyond the community, the media discourses on teachers who upskirt had to reconcile their dual occupation as both a part of the community and a techno-pervert. In total, there were over 30 articles that reported on

incidents of teachers charged with upskirting and coverage centred on six specific cases. Of these reports,⁸⁷ the cases of Ian Drummond (charged with upskirting a 14-year-old school girl at a local shopping centre in Sydney 2008) and Robert Emmett (a private school teacher in Sydney who took upskirt images of his own students in 2014) were the most covered incidents.

In the case of Drummond, the magistrate determined that notwithstanding the offence, he was “otherwise of good character” and his behaviour was “at the lower end of the scale”, especially because the victim was never intended to know of the behaviour (Berdon 2008: np). This both reaffirms Drummond’s place in the community while simultaneously trivialising the harm done to the victim. Emmett was described as being from a prominent legal family as “the son of NSW Court of Appeal judge and the grandson of former chief justice” in addition to being the son of a federal magistrate and whose two brothers were also lawyers (Morri 2013: np). Emmett taught at a popular Catholic school in Sydney before he was found guilty of upskirting young women, including students (who were minors) at the school he taught at. At a school assembly informing the students of the incident, the principal stated that the incident “was a one-off” and that the school community “should show compassion towards him out of consideration to his family” (Ralston 2013: np). Owing to the status of Emmett’s family, the harm to the victim is minimised and students and teachers at the school were encouraged to sympathise with Emmett to limit the disrepute his family may have endured as a result of his actions. By suggesting the behaviour was a “one-off” this likewise trivialises the action by re-framing it as a mistake. Notably, in framing it as a mistake, this also implies a sense of harm reduction, that is, because Emmett did not intend to harm anyone, any harm that eventuated from his actions should therefore be lessened by this admission. This exemplifies the fixation on perpetrator motivation rather than the harm done to victims, a recurring issue with discourses on image-based sexual abuse that McGlynn (2018) has criticised.

While the media tropes of ‘scandal’ and ‘sensation’ were still deployed, the media both implicitly and explicitly attempted to reconcile male teachers’ offending by emphasising their

⁸⁷ Other frequently reported on cases include: Robert Ian Drummond, Robert Emmett, Stefan Janse Van Vuren, Mr Pleydell and Marinko Jankovic. Prior to 2008, another teacher Ian Kerry, was also identified in the news media as someone charged with taking upskirt photographs up school girls’ dresses.

character, or what Clementine Ford (2017a: np; 2017b: np) refers to as portraying men as “good blokes”. The representation of offenders as good men who made mistakes resulted in downplaying, ignoring or dismissing the harm they committed while trivialising the experience of the victim. Notably in the reports, male offenders were rarely framed as child sex offenders or paedophiles, unlike those men found photographing children at beaches and pools. These teachers, who were ‘ordinary men’ within the community, were not labelled as techno-perverts or paedophiles *because* of their status as members of society. However, rather than reflect on the everyday nature of this kind of image-based sexual abuse and the regime of visibility which encourages men to objectify women as objects of sexual access, the media representations instead focussed on the good character of these men who “lost their way”.⁸⁸

As everyday men within the community, teachers accused of upskirting compromises the communities coping strategies (such as constructing the techno-pervert who threatens the community as an outsider). The upskirting teacher does not neatly fit into the ‘stranger danger’ trope; instead, it garners a different kind of attention and is framed in a different way. Such men were repeatedly framed as either “mentally ill” (Lewis 2012: np), ranging from having a “defeatist mentality” (Berdon 2008: np), to “los[ing] their way” as a result of dealing with personal problems (Hosking 2013: np).⁸⁹ This demonstrates the difficulty the Australian media has in reconciling sexual offenders found to be in plain sight, inside the community in positions of power and trust. Representations of offenders as men who made mistakes results in downplaying, ignoring or dismissing the harm they caused and trivialises the experience of the victim. Ford observes:

Rape culture isn’t just about the impulse to excuse or deny perpetrators’ actions. It also manifests in the way people – many of them in positions of power in their own communities – will bend over backwards to defend and diminish culpability of perpetrators, despite recognizing the reality of their predatory and violent actions (Ford 2017b: np).

⁸⁸ This argument will be returned to in the conclusion of this thesis.

⁸⁹ In the Kurtzer case in 2011, the offender went so far as to blame his mother’s “unhealthy sexual appetite for driving him to take covert, up-skirt footage” (McGregor 2011: np).

In one article discussing Drummond, a remark by his lawyer is quoted: “one thing that cannot be underestimated is the damage he has done to himself. His career is in absolute ruins” (No Author 2008b: np). This emphasis on the effects of upskirting for the offender is a common occurrence in relation to the sexual abuse of women by men. In a high-profile media case in the United States, a man, Brock Turner, was accused of raping a woman. Turner happened to be an elite swimmer and the ill-repute his actions had engendered for his swimming career was repeatedly referenced as a factor which should inform his sentencing (implying he should have a lesser sentence). As Ford (2017a; 2017b) observed, rather than being represented as a rapist who could swim, Turner was represented as a swimmer who happened to rape a woman. Further, the reputational damage caused by his actions was itself represented as a punishment that should mitigate the severity of any sentence by the criminal justice system.

This syntax consistently works to produce representations that draw attention to the abuser’s status first and his action second. Similarly, teachers and other men found to have upskirted who would be considered ‘everyday men’, are framed as respectable members of the community. A bus driver in New South Wales for example was positioned as having made “a terrible mistake” and, as his lawyer claimed, “after this incident he began to realise that is not a preferable hobby” (No Author 2012). It is quite astonishing that upskirting was framed as a “hobby”. Framing upskirting in this way trivialises the behaviour and normalises acts of everyday misogyny where women are objectified. This narrative refuses to acknowledge upskirting as a form of gendered harm that manifests as an intimate intrusion into women’s everyday lives and instead positions their bodies as objects to which men can presume sexual access to when engaging in a pastime time or “hobby”. This downplays the action of upskirting and refocuses the discussion on the effects this had for the offender, rather than the victims who had been objectified.

Considering these two different portrayals of upskirters – the foreigners and the teachers – is instructive in thinking through the discursive construction of upskirting. The abundance of articles that fixated on foreign nationals who were caught upskirting not only illustrates how the media participate in nation-building but also simultaneously functions to direct the focus outwards and away from Australian perpetrators. There is a direct juxtaposition in the way in which offenders (and victims) are framed when considering the example of teachers who perpetrate upskirting offences and the foreigners. In relation to the foreigners invading

Australian women's boundaries and symbolically invading the boundaries of the nation, a male-protection racket is evoked through the strong emotive language employed in the news coverage. Readers are encouraged to rally together in order to protect women from this foreign invasion. Conversely, in the case of teachers who are considered insiders and Australian men – even when they were found guilty of perpetrating crimes against children and fell into the category of child sex offender, reports minimise the seriousness of their actions through employing the “good bloke” and other stereotypes to excuse their actions.

What are the continuities between media representations of discrete upskirting incidents and what can they tell us about risk, blame and boundary transgression? As Garland argued:

in late modern society...the state is deemed to have failed in its efforts to deliver physical and economic security to key social groups. The politics of crime control provide those emotions with a ready-made, deeply unpopular, target population against whom they could be directed (Garland 2001: 133).

In the context of upskirting, the deeply unpopular target group is the techno-pervert (Naughton 2005) of the mid-2000s. The construction of the techno-pervert in news media coverage of upskirting provides a scapegoat onto which anxieties about the changing conditions of social life can be projected. Such representations result in what Garland (2001) dubs the criminology of the other and what I term the criminalisation of the other. Scapegoating and the construction of the techno-pervert as ‘other’ implicitly reflect a risk management strategy that simultaneously seeks to abate concern over a rapidly changing technological landscape, while also displacing attention away from the everyday-ness of upskirting perpetrated by Australian men.

Zinn writes about the everyday management of risk, particularly what he calls the ‘in-between’ strategies between the rational and irrational responses to risk such as trust, intuition and emotion (2008; 2016). For Zinn, the fluid conditions of late modernity are characterised by risk and uncertainty, or what Giddens (1986) calls ‘ontological insecurity’ – the absence of trust in processes, systems and people which results in risk becoming a central component of postmodern life and thinking. There is limited time and resources in everyday life to respond to the barrage of risks experienced by individuals and this results in a lack of time for fully rational decision making (Zinn 2008: 446). In-between strategies might thus be

more useful than rational ones for overcoming the suffering provoked by excessive uncertainty (2016: 349). Importantly, such strategies are culturally and institutionally framed. In the response to both increased anxieties over cameras, the use of these new technologies at beaches and pools and the Muto upskirting incident, the mobilisation of such in-between strategies were evident.

The socio-political climate in Australia and other Western nations more broadly during the years leading up to upskirting's criminalisation in Victoria, demonstrated a reiteration of concerns over privacy, technology, "perverts" (Naughton 2005: np) and circulation – both of the offender and the unauthorised visual recordings captured by perpetrators. If "who [or what] we blame reveals much about who we are ... and gives shape to the social world by endowing it with moral meaning" (Douglas 1992: 6-7) then *why* we blame is equally revealing. I suggest that the emerging unease over the techno-pervert and the weapons in his arsenal (Naughton 2004: 70) signified anxiety over the invisible, dirty and dangerous 'other' targeting women. When considered as a socio-political risk (Haines 2011), emotive responses can be understood within Mary Douglas' work of risk, blame and boundary transgression. Whilst not without its limitations (see Lash 2000), Douglas's reflections on boundary transgression, risk and blame are instructive when applied as a critical lens for understanding transgression in everyday spaces of leisure, circulation and consumption.

Douglas (1966) explored the concepts of pollution and dirt as matter out of place and argued that such matter "exists between states and threatens the order of things". Dirt is depicted as disorder that threatens to contaminate "the ideal order of society which is guarded by dangers and threaten[s] transgressors" (Douglas 1966: 3). These themes exemplify how societies create and maintain symbolic boundaries and establish and maintain a relationship between the individual and society (Douglas 1970: 93). Communities respond to and cope with fear using the concepts of dirt and pollution which are the fundamental components which organise society and the nexus of these concepts demonstrates how symbolic boundaries are created and preserved.⁹⁰ The notions of pollution, boundary transgression, risk and blame are able to provide one explanation for the reactions to the 'outsiders' detailed above.

⁹⁰ There are four different kinds of social pollutant identified by Douglas (1966): those that press on external boundaries; dangers from transgressing the internal lines of the system; dangers in the margins of the lines; and danger from internal contradictions.

The action of taking and/or disseminating non-consensual sexual imagery can be understood as contaminating ‘matter out of place’ twice over – normatively and physically. Upskirting threatens the spatial and symbolic order and renders the space, norms and individuals in these environments at risk. First, the transformation of the swimming pool, beach, or urban thoroughfare from a mundane landmark intended to facilitate leisure, consumption and urban flows into a site of criminality, inscribes such sites with new (deviant) meanings. These spaces no longer signify sites of entertainment, consumption or circulation, but potential venues in which women and children may be victimised. As sites in which we live out our everyday lives, this re-inscription functions to recode these everyday spaces as sites of danger. Moreover, this demonstrates the violation of a society’s symbolic order, evidenced by the misuse of an everyday space for the anti-social activity of taking and/or disseminating unauthorised visual recordings. In this instance, upskirting (once discovered) is ‘out of place’ as it *displaces* the spatial and social order.

By invading an individual’s personal space, the act of taking and/or disseminating unauthorised visual recordings of a person’s intimate areas violates the victim’s internal boundaries. The physical body is a microcosm of the social body and the penetration of the boundaries demarcating the public/private divide of physical body (the genital and anal region which is typically covered from public view) wounds the social body, violating the symbolic order and blurring the boundary between self and other (Lupton 1999). These boundaries are crucial as they are created to “maintain boundaries between the self and other, deal with social deviance and achieve social order” (Lupton 1999: 36). In voyeuristically violating the victim, the symbolic order of society is exposed to contamination and disorder from “the wrong behaviour” of the techno-pervert (Douglas 1992: 45). In this respect, the victim suffers a violation both at the time the images are taken and when/if they are uploaded online. The dissemination of these images online represents quite literally, de-contextualised matter out of place and is seen as particularly polluting when perpetrated by an outsider.

The actions of the techno-pervert can, therefore, be conceptualised as an assault on both the individual and the social body. By behaving out of place, the offenders draw attention to the legitimacy of legal mechanisms in place to protect both the social and individual body (Cresswell 1996). This is exacerbated when the body cannot be detected easily or at all as was often the case with unauthorised voyeuristic recordings in the media representations above. As Douglas (1966: 38) observed, “anomalies and ambiguities are considered with

anxiety and are therefore treated as ‘risky’ or threatening”. In this way, the physical body of the techno-pervert disrupts the spatial *and* symbolic order and can be conceptualised as matter out of place. As illustrated in the mobile panics (Goggin 2006) over new optical technologies, the colonisation of the everyday by new visual technics results in a renewed fear around technology in spaces and subsequently produces the techno-pervert. Furthermore, when there is no identifiable perpetrator, the technology itself is blamed in its place, something I discuss at length in Chapter Six.

I finish this chapter by reflecting on the relationship between pollution and risk in relation to the techno-pervert and their equipment. Risk should not be conceptualised as a thing, but rather as a way of thinking that is consistent with Beck’s (1992) risk theory. Risk selection is particular; only certain threats will be identified as dangers and those responsible for them blamed. The techno-pervert may have been construed as risky because they threatened the order of things by transgressing the boundaries put in place by society. The word risk now means danger and high risk means a lot of danger. Risk is ultimately danger dressed in scientific language – affording the term a degree of authority that danger lacks (Douglas 1992: 24). These concepts of risk and danger are exemplified in the case of the techno-pervert as “the modern risk concept ... is invoked to protect individuals against the encroachments of others” (Douglas 1992: 28). In the case of the techno-pervert, this invocation of the modern risk concept is undertaken to protect children (at beaches and pools) and women from the encroachment of the unauthorised taking and distribution of visual recordings of their intimate body parts.

This addresses the question – why was the techno-pervert selected as a target in 2004-2006 and again in 2007? Socio-political risks are “dangers to social structure, coming from internal deviants, especially risks from human violence” (Lash 2000: 51) and help us unpack *who* we blame for the risk or danger. However, I am also interested in *why* these people were selected as targets. Risk and danger were utilised in a way to legitimate policy and uphold judgements that continued to reproduce a particular imagination of the everyday and with it, a gendered social order (see Douglas 1992). After all, “our everyday existence is experienced as a series of encounters with risk either in actuality or in the shape of fears and apprehensions. We feel both materially insecure and ontologically precarious” (Young 1999: vi). It is the responses and reactions to these fears that lead to dangers being politicised and coded as threats to institutions and illustrate how risk perception and detection depend on shared culture and not

merely on individual psychology (Douglas 1992: xix). This process through which dangers are politicised demonstrates how attitudes and judgments about risk, social justice and responsible governments are embedded in cultural relationships founded upon shared expectations and the value systems of people belonging to that distinctive group (Tansey and O’Riordan 1999). Because risk is “a socially constructed interpretation and response to ‘real’ danger that objectively exists” it can only ever be understood and mediated through socio-cultural processes (Lupton 1999: 39). Therefore, what is identified as risks by both experts and lay people are the product of socio-cultural processes, which tend to serve cultural, social and political functions (Lupton 1999).

While I have argued that technology is frequently positioned as directly and indirectly responsible for voyeuristic visual recordings, in rare instances when a perpetrator is either apprehended (as in the Muto case) or has been discovered taking/disseminating visual recordings of children and women, they are identified as risky individuals worthy of blame. Labelled as “dirty” (McCausland 2005), “disgusting” (No Author 2006), “perverted” (Wheatley 2006) and “sick” (Giles 2005), such individuals, or techno-perverts (Naughton 2005) can be understood as a certain kind of socio-cultural risk. By virtue of their representation as people who contaminate spaces and the symbolic order associated with them – within the media representations on these individuals, they can be understood as representing a criminalisation of the other. Such socio-cultural risks are something which are “generated from within a given place. It arises from the need for social cohesion and a sense of individual belonging. It is inevitable” (Haines 2011: 47). Concerns about socio-cultural risks focus on threats to the community or society that posed a hazard to collective integrity and cohesion. The techno-pervert should be understood as one such threat to the community as they are constructed as risky individuals because they are a shapeless, unidentifiable and unknowable stranger that violates the external boundaries of a community, coming into our society to perpetrate harm.

I return here to the concept of managing visibilities as a way of maintaining social order and suggest that the techno-pervert provokes the need to make visible the management of the disorder their behaviour provokes. Because seeing is conflated with knowing (Sontag 1977), when a perpetrator is caught, a cathartic process of exposing and cleansing these contaminating individuals is undertaken in media and political discourses. This is demonstrated in the media coverage of Muto’s which involves the identification of the ‘dirty’

individual, through bringing their presence and the consequence of their actions to public attention. The next step is the re-drawing of boundaries in order to re-establish the appropriate order in society (recall the comment whereby “They just sit there and film or take photos. It's unethical, it's not cool. It's not Aussie” [McCausland 2005: np]). Finally, a plan is put in place to maintain order in the future through increased vigilance against risky matter. In the example of the beach and pool photography of children, we see this unfold in relation to the failed plan of camera bans followed by the more palatable response of Victoria's Upskirting Bill.

Conclusion

A critique of everyday life ... encompasses a critique of political realms by everyday social practice and vice versa (Lefebvre 2002: 19).

News media responses to the Muto case resulted in the production and maintenance of a certain kind of everyday. In this everyday, the techno-pervert existed outside of societal boundaries in popular imaginations of this threat. In media discourses this category was identified as the threat that victims required protection from and not men from within the community committing upskirting and related forms of image-based sexual abuse against women as they went about their daily life. Acknowledging more mundane forms of upskirting perpetrated by men from within the community (and not the techno-pervert) would have resulted in a reconfiguration of the boundary transgression violation. Rather than a risk from outside of the community, it would need to be reframed as a risk from within – a risk that blurs internal lines of cohesion and presents an infinitely more difficult risk to manage with a lack of borders and order.

As Douglas (1992: 5-7) asserted, “in all places, at all times, the universe is moralized and politicized [and] ... certain risks come to perform cultural, moral and political tasks”. This chapter has addressed research question two which asked how upskirting became an issue of social concern. It has done so through an examination of the risks which provoked community concern over upskirting in the years before its criminalisation in Victoria. In exploring the wider context prior to, and during, the Muto case, it became apparent that, while upskirting was emerging as a concern in various Australian jurisdictions, it was

unauthorised photography more broadly and specifically photography at beaches and pools targeting children and women, which dominated community concern between 2004-2006. Only after Muto was apprehended and his offending behaviour was connected to the Australian Open was the criminalisation of upskirting triggered later that year. Technology was often identified as polluting, risky and dangerous; responsible either partially or entirely for voyeuristic visual recordings. In no articles were ordinary men held accountable for image-based sexual abuse and when they were identified as culpable, it was accompanied by strategies of avoidance and derailment. Nor was such abuse constructed as a product of harmful cultural attitudes underpinning everyday misogyny which was, and remains, endemic within Australia.

Chapter Six: Skirting Around the Issue

As Lyria Bennett-Moses (2007a: 240) observed, “technological change is often the occasion for legal problems”. The introduction of new optical technologies into Australia caused pockets of anxiety to burst through to public consciousness before the criminalisation of upskirting in Victoria. However, it was not until the Muto case that new legislation was finally created in response to the perceived inadequacy of existing legislation to respond to these new technological changes. Having established how the technics of everyday voyeurism evolved over the last one hundred years in Chapter Four and having examined the effects of those changes within an Australian context in Chapter Five, this final findings chapter shifts the focus to how everyday life was represented in political discourses on upskirting in Victoria 2007. After all, “ordinary, everyday life is a consistent theme of state politics [and is] used in a number of forms but is primarily a vehicle of protection against all kinds of real-and-fantastical threats” (Highmore 2002: 20). In this chapter, I examine the emerging conversations in the Western legal sphere in the lead up to Victoria’s legislation in 2007. I interrogate the Second Reading for the Victorian Upskirting Bill to answer my final research questions, “How did political...discourses represent upskirting in Australia?” and “How was the everyday imagined in these discourses?”.

Regulating the Routine: Legal Responses to Upskirting in the West

While technology has always been regulated, the radical shift in everyday life to incorporate new technologies into our practices and movements has caused ‘technology regulation’ to become a subfield of the legal doctrine. In discourses on technology regulation, technology and law are often thought of as opposed to one another and discussed via the metaphor of a race where law is inevitably the loser lagging behind the new technological advancements that continue to change how everyday life unfolds. The problem with framing discussions about law and technology in this way, however, is that it assumes that both are things at a measurable stage of development and sophistication (Bennett-Moses 2007a: 242). One of the central problems of regulating technology is the challenge of regulatory connection. This disconnection occurs when a mismatch arises between current laws and regulatory approaches which are “designed for the technological landscape of the past” (Bennett-Moses

2013: 7). As the technics of everyday life become more diverse and complex, these problems persist today.

One way to address this issue is to focus less on the technology and instead direct efforts to the problems technology provokes, which are often found across history and pre-date the disruptive technology legislators tend to direct their attention to. Similarly, talking about technology regulation causes both problems and questions to be framed in these terms and results in compartmentalised discussions which focus on technologies within specific technological contexts (Bennett-Moses 2013: 14-18). This ultimately results in “beginning the story at the wrong moment in time” (Bennett-Moses 2013: 19) by thinking of technology regulation in ‘one-at-a-time’ frames. Such an approach can mean that we become so fixated on the technological dimension of things, that we are unable to see the broader problem. This is evident in discussions about upskirting, which focused on the specific technologies of micro-cameras and mobile phones and so occluded objectification and everyday misogyny.

In the late 1990s and early 2000s, upskirting, better known at the time as ‘video voyeurism’, came to the attention of law enforcement officers and legal scholars. As Justice Michael Kirby (2003: 34) said, “privacy is a global topic and technology laughs at paltry attempts to make [it] subject to purely local laws”. Countries all over the world were beginning to come to terms with the colonisation of the quotidian by the new technics of everyday life. At the forefront of these discussions were United States scholars, who were some of the first to grasp the problematic relationship between video voyeurism and the laws that regulated the illicit use of video technology. The combination of newly developed optical devices falling “into the wrong hands” (Russell 2007: np) and the ramifications this held for privacy in public places, were central focal points for scholarly and legal debates in the United States. As technologies developed and their potential harms became apparent, lawmakers scrambled to keep pace with the changing technological landscape.

Indeed, as Rothenberg (2000: 1128) stated, “in a society perpetually altered by human innovation, we are faced with the elementary problem of keeping the law apace with technology”. Despite only recently being criminalised in some states as a specific offence (in New Jersey, Texas and Massachusetts for example), upskirting has a long history within the

American legal sphere under video voyeurism laws.⁹¹ The United States experienced this issue acutely as legislation began appearing in multiple states during this time to address video voyeurism. Video voyeurism was not criminalised under specific legislation in the United States until the early 2000s (Calvert and Brown 2000). Citing the now infamous 1961 case of *Graham v. The Daily Democrat*, Calvert and Brown (2010) reviewed one of the first recorded instances of upskirting in United States law. Bell Graham from Alabama was attending a public event with her husband and children when a gust of wind generated from a machine in a funhouse blew her skirt up, momentarily revealing her underwear. A photographer from *The Daily Democrat* who was there to photograph the event happened to take a photo of Graham and subsequently printed it in their publication. When Graham attempted to sue for damages, she lost the case because it was determined that “she was part of the public scene” (Calvert and Brown 2000: 490). This would not be the last time that women were denied protection from voyeurs in public spaces.

Graham v. The Daily Democrat was a catalyst for problematic voyeurism laws throughout the United States that emphasised physical place as a determining factor in whether one could expect privacy. In 2003 the *Video Voyeurism Prevention Act 2003* was passed through the United State Senate. It addressed the more traditional kind of peeping Tom voyeur who peered through windows and private venues.⁹² However, this Act explicitly stated that such provisions to protect one’s privacy would not be extended to those who were photographed in a public place. Just as Graham lacked legal recourse in 1961, during the 1990s and early 2000s, it became apparent that women who were victims of video voyeurism and upskirting in public spaces had limited legal avenues. Freedom of expression was frequently cited as the reason for refusing to afford women privacy in a public place; a concern echoed multiple times in the Victorian parliamentary debates on upskirting years later. Legal practitioners often stated that it was unreasonable to expect privacy in public because of the implication for those seeking to exercise their First Amendment rights. As Calvert and Brown (2000: 494-495) highlighted:

⁹¹ By 2000, this included Connecticut, Louisiana, California, Oregon, Virginia, Alaska, Ohio, Florida, Pennsylvania, Wisconsin and Missouri (Calvert and Brown 2000: 523).

⁹² Georgia (1919) and North Carolina (1923) have had peeping laws for nearly a century.

If reasonable people come to understand and recognise that video voyeurs are lurking in shopping malls with hidden cameras aimed up under women's skirts, do women then assume the risk of video voyeurism if they wear short skirts or dresses... acceptance of it imposes, essentially and quite literally, a legal dress code on women.

Calvert and Brown called for states to close the legal loopholes that enabled voyeurs to participate in invasive forms of watching, which they feared would become more prevalent in the future. This fixation with limiting women's privacy in public spaces by refusing to afford them legal protections has persisted as an issue in the United States until very recently.⁹³

Owing to the issues presented by defining privacy in relation to the public/private divide, scholars (Rothenberg 2000; Calvert 2004; Tran 2015) argued against the problematic reasoning underpinning various laws in the United States. Calvert (2004) suggested that the notion of privacy would be better placed not in a geographic location such as a bathroom, shopping mall, or private dwelling, but with the person instead. Such a reconfiguration would require a shift in State laws to understand the skirt or dress of a woman as a physical barrier in the same way that walls and windows function to allow and prohibit vision within a house. Privacy could then be understood as a concept tethered not to specific spaces but within a broader context that transcends whether one's body is inside or outside a building. Therefore, a person wearing any clothing at all would "signal to the world that the person expects the garment to shield that area from the world, inferring a reasonable expectation of privacy (Tran 2015: 204). Rothenberg argued that "rather than viewing bodies as discrete particles moving from public to private spaces, the law must recognise that the surface of the body is, itself, a private space" (Rothenberg 2000: 1158). This change, whilst radically different in its approach to historical understandings of privacy, was and is, necessary to "preserve human dignity from offensive intrusions" (Calvert 2004: 731) and would go some way to protecting women from image-based abuse such as upskirting perpetrated by men.⁹⁴

⁹³ In September 2015 Texas received global attention (and condemnation) for declaring that upskirting images were legal if taken in a public place because of a legal loop-hole that was subsequently addressed in the following months.

⁹⁴ This model of privacy is also reflected in Don Mitchell's work on SUV individualism.

Around the same time as these scholarly discussions were emerging in the United States, other countries were similarly grappling with upskirting. In 1998, Ireland produced the *Report on Privacy: Surveillance and the Interception of Communications* which recommended that individuals be afforded privacy in circumstances in which that expectation was reasonable. Hong Kong also put together a subcommittee on privacy in 1999 that discussed voyeurism and suggested that an individual's claim to privacy depended "mainly on whether the individual has a reasonable expectation of privacy in the area in which he ... is located and that such an expectation is held to be unlikely when the subject is in a public place" (New Zealand Law Commission 2004: A85). Canada published the *Voyeurism as a Criminal Offence: A Consultation Paper* in 2002, which explored the issues with voyeuristic behaviour such as upskirting and potential legislative options to address the issue. This was followed by the United Kingdom passing the *Sexual Act 2003* to encompass some forms of voyeurism, specifically those actions that aligned with the DSM-IV's definition of voyeurism.⁹⁵

In 2004, New Zealand produced a study paper entitled *Intimate Covert Filming* that recommended that voyeuristic acts such as upskirting be criminalised. Importantly, New Zealand argued for upskirting to be considered both an invasion of privacy *and* a form of sexual violence, a marked distinction from the approaches in the United States and later in Australia (New Zealand Law Commission 2004). The New Zealand legislation not only framed upskirting as a Summary Offence, but also as a sexual offence. This distinguishes it from the Australian responses which criminalised image-based sexual abuse primarily under Summary Offences (commonly perceived to be regulatory offences of a lower status than more serious offences such as offences against the person).

Responses also varied in terms of their focus on perpetrator intent. The New Zealand approach framed their legislation using the wording "intentionally or recklessly" (rather than for sexual gratification which is often used to determine perpetrator motivation). This was a

⁹⁵ Some 15 years later, in 2018, a private member's Bill was proposed in response to a high-profile case of upskirting specifically which resulted in significant media commentary, including from image-based sexual abuse expert Clare McGlynn (McGlynn 2018). In her piece in *The Huffington Post*, McGlynn advocated for the legislation to focus less on perpetrator intent (for example, whether the perpetrator took images or recordings for sexual gratification, or to intimidate or threaten the victim) and to instead focus on the harm done to the victim.

broader way of framing the behaviour than the United States responses that followed shortly after, which did not frame upskirting as a sexual offence. In all legal responses, only some unauthorised visual recordings (and/or their distribution) were criminalised while others were not. For instance, those images featuring topless sunbathers were not captured under Queensland's new legislation. Amidst this context, the 2005 Australian Standing Committee of Attorneys-General released a Discussion Paper, reflecting on privacy and unauthorised visual recordings and their distribution on the Internet.⁹⁶ At the time of its release, however, upskirting was still on the periphery of the federal and State Government's radar and the focus was instead on the illicit photography of minors.

Australian Responses to Unauthorised Visual Recordings

Owing to the growing concern over the unauthorised making and/or distribution of visual recordings in Australia (particularly in New South Wales, Victoria and Queensland), the Standing Committee of Attorney-Generals released a Discussion Paper entitled *Unauthorised Photographs on the Internet and Ancillary Privacy Issues* in August 2005.⁹⁷ The Standing Committee (2005) reviewed both criminal and civil law approaches to the unauthorised making and distribution of visual recordings in Australia and also considered international approaches to this phenomenon. The Discussion Paper paid attention to the use of unauthorised photographs, rather than the act of taking images and proposed several legislative and non-legislative options to address unauthorised images of children on the Internet taken in public places like beaches, parks and pools. This emphasis was quite distinct from the emerging legislation in the United States during this time which focussed on the illicit photography of adult women.

In the Standing Committee paper, it was first proposed that new criminal offences be created to address the unauthorised photography of children that a reasonable adult was likely to consider exploitative, offensive, or taken for sexual gratification (Standing Committee 2005:

⁹⁶ In contrast to the New Zealand legislation, the intent of the perpetrator was irrelevant in Queensland's new s.227A and s.227B that came into action in 2005.

⁹⁷ In this section I use the term 'unauthorised visual recordings/images' as it was the language adopted in Australia at the time. While I use it principally to refer to instances of upskirting, it also encompasses pictures taken of topless sunbathers, children in public places and of people in private dwellings.

33). It was also suggested that voyeurism offences similar to those in New Zealand, Canada, the United States and the United Kingdom might be helpful in an Australian context. The authors acknowledged the need for a more general offence that would also apply to adults and considered take-down notices and re-evaluating classification of online content. Further, the report evaluated the usefulness of the Dutch approach, which looked at copyright law in relation to uncommissioned portraits of an individual. While ostensibly different to the United States and Australian approach, the reasoning behind the Dutch approach was to assess how the law managed the public distribution of an image of a person without their consent. This was approached from a reputational position (for example, defamation), but the interrogation of privacy was subsumed within this broader focus on appearance in the public sphere. Non-legislative reform options primarily emphasised education campaigns to “increase community awareness of the existing mechanisms for making complaints about Internet content” (Standing Committee 2005: 36, such as education campaign concerning the appropriate use of mobile phone cameras.

While unauthorised images of topless sunbathers were also an issue of concern, the Standing Committee (2005: 8) was focused on instances only when they involved children and adolescents and specifically photography focused on physical attributes. The report’s authors were particularly concerned with unauthorised images taken of 14-year-old Melbourne school-boys engaged in a rowing competition. In this case (the case referenced in Chapter Five), photographs were taken of boys who had half removed their rowing suits, in addition to “close up shots of the boys’ bodies in tight clothing ... rather than on their faces or while actually playing sport” (Standing Committee 2005: 8). Despite the increasing awareness of upskirting, the issue of the victimisation of adult women was not considered. Like the United States legislation, the conclusions in the Standing Committee paper indicated a lack of privacy protection to women in public spaces who, like in the Graham case, had routinely been considered ‘part of the background’ when appearing in public spaces.

Unauthorised visual recordings garnered minimal Australian scholarly attention during this period. The principal authority on unauthorised recordings in Australia at the time was Kelly Burton, a leading scholar on Australia’s legal response to this behaviour who has written extensively on this issue (see Burton 2005; 2006; 2007; 2009). Burton’s work analysed the regulation of the unauthorised making/distribution of visual recordings in Australia and over the span of five years and included an analysis of the criminalisation of image-based sexual

abuse, the making and distribution of unauthorised visual recordings and the limits of criminalisation. For Burton (2009), the unauthorised taking and/or distribution of visual recordings illustrated how the boundaries of the criminal law could be tested with non-fatal offences. Moreover, it interrogated whether the criminal law should keep expanding in what she perceived to be a random, reactive and unprincipled way when dealing with contemporary problems. In addition to contemplating how upskirting might be understood using a living-standard analysis tool of law, Burton also considered how a contextual approach to consent might be used within the context of unauthorised sexual imagery.⁹⁸

Reflecting on the Standing Committee paper (2005), Burton argued that any proposed legislation would result in the case of the topless sunbather being afforded no right to privacy in Australia (as it would not in any of New Zealand, Canada, or the United Kingdom). She noted that the “privacy rights of topless sunbathers at a public beach are being eroded because the criminal laws in Australia have not kept up with the pace of technology to prevent people from taking photographs of topless sunbathers and disseminating them on the Internet” (Burton 2006: np). She argued that it could not be inferred that topless sunbathers have surrendered all privacy rights just because they have tacitly consented to other members of the public observing them by the removal of their tops (Burton 2006: np) and concluded that “topless sunbathers must hope that members of the public abide by unspoken social rules relating to ‘personal space in public spaces, civil inattention and limitations on staring’” (Paton-Simpson 2000: 326 in Burton 2006: np). Burton drew upon McClurg’s (1995: 990) assertion that it is inaccurate to conflate the exposure of a person’s body at the beach with implied consent to having their body photographed as this exposes their body to “other audiences...in other contexts”. The significant role of context in consent is inherently linked with unauthorised photography and led to Burton’s (2009: 168) work on contextual consent.

⁹⁸ Elsewhere, Burton (2007) employed a living-standard analysis tool to determine whether the making and/or distribution of unauthorised images of children in a park, topless sunbathers, upskirt recordings and housemates showering should be criminalised. The living-standard analysis tool was first devised by von Hirsch and Jareborg (1991) and is used to gauge the seriousness of criminal harm based on four generic-interest dimensions that may be affected by crime including physical integrity, material support and amenity, freedom from humiliation and privacy and autonomy (Burton 2007: 469). It was applied in order to estimate the degree to which the living standards of a typical victim would be affected in a typical case. Burton (2007: 474) concluded that under the living-standard analysis tool, that all four unauthorised acts used as case studies in her article would be classed as a category four and subsequently not be eligible for criminalisation as they “are more likely to fall on the side of the dividing line”.

Contextual consent takes as its starting point the commonly held belief that to appear in public is to forgo a reasonable expectation to privacy. Such an approach stems from Prosser's (1960) infamous assertion that as soon as someone leaves their home, they have no right to be left alone in a public place, a normative view that privacy in public is not worthy of protection (Burton 2009: 157). This is problematic for several reasons, namely that it conflates knowledge with consent and that awareness of the risk of privacy invasion is the same as a waiver to privacy (Paton-Simpson 2000). Further, it fails to recognise the distinction between consenting to be in a public place and consenting to be visually recorded (McClurg 1995). Such an assumption:

treats observing another person with a naked eye the same as making a visual recording of another person, when in fact the two are very different and the latter may involve a permanent record (Burton 2009: 156).

As Burton wrote elsewhere (2005: np), the harm to those who have photographs of their body parts taken and/or disseminated is much greater than simply observing a topless sunbather at the beach, or the underwear of a woman from underneath her skirt or dress with the naked eye. The contextual approach to consent understands privacy to be a matter of degree and holds that it is possible to have privacy in a public place. At its core, a contextual approach to consent takes social practices related to privacy and potential disruptions to these practices in each situation as its starting point. Importantly, a contextual approach would protect the rights to privacy for those recorded undressing, toileting and for victims of upskirting. Therefore, any proposed amendment to state and commonwealth laws should, according to Burton, encompass unauthorised photographs taken of both children *and* adults, should cover photographs taken in *both* public and private places and should not limit offences to those motivated by sexual gratification (Burton 2005: 2). Burton's work and the concurrent conversations emerging in Australian state and Federal Government show the beginning of a redefinition of privacy for women in public space. Like many tools of law, the traditional conceptualisation of privacy was unable to attend to the nuances of upskirting, particularly in the wake of the technological revolution taking place during that time. Redefining privacy to include such abuse was one step towards confronting the everyday harm women encounter and experience as they move through urban corridors.

This altered approach to privacy can also be understood through Don Mitchell's notion of 'SUV Individualism'. Interested in the American Courts' reaction to anti-abortion protests and their ruling that citizens have an innate right to be left alone in public space, Mitchell asserted that the conceptualisation of being left alone in public resulted in a reconfiguration of property rights. To protect citizens' rights to access health facilities, a law was passed in the United States that created an eight-foot impenetrable bubble of protection for anyone within a 100-foot radius of the entrance to any health clinic (Mitchell 2005); a level of privacy that had previously been unattainable within public space.

Mitchell's analogy to the SUV becomes apparent here. The SUV is a machine described as a militarised vehicle offering protection and immunity from the uncertainty of urban life (Bauman 2000: 93). Just as the car irreversibly set into motion new socialities of movement; similarly, the bubble laws created a new form of citizenship premised on the right to safe, unobstructed passage through space. Mitchell suggests that whether the person is encased in steel or "an empty volume" produced by law, the consequences are profound as it enables individuals to travel through space unimpeded. While Mitchell emphasises citizenship and property rights, it can also be used to reflect on the way in which law functions as a regime for governing conduct. The primary objective of such governance is to facilitate the safe passage and unobstructed movement of pedestrians as they circulate through everyday urban spaces (Blomley 2007). As highlighted in Chapter Two, pedestrianism cannot be divorced from the body in which a person moves through space; both Mitchell's example and the case of upskirting relate to the obstructed passage of *women* as they move through public space. Going about daily life in a female-presenting body attracts unwanted sexual harassment from strangers. This forms part of women's everyday journeys through public space, as they alter their behaviour to avoid these interactions and daily intrusions (Vera-Gray 2016a; 2016b; 2018). If a state's objective is to facilitate the safe passage of objects and people, it cannot achieve this goal without paying attention to the intersection between gender, mobility and space.

The implementation of laws that create buffer zones is founded upon an understanding of what it means to move through and be in everyday spaces - that "we want to move freely through public space, encased in an impregnable bubble of property (made real through law)" (Mitchell 2005: 96). The application of this to upskirting similarly results in a reconfiguration of moveable bodily privacy. Calvert and Brown advocated for a redefinition of privacy

marked by the victim's clothing (a Mitchell-esque bubble law); and Burton called for consideration of contextual consent. Combined, we can see the beginning of the redefinition of privacy for women moving through public space. Like many tools of law, the traditional conceptualisation of privacy was unable to attend to the nuances of the phenomena particularly in the wake of the technological revolution that occurred in the early-mid 2000s. Redefining privacy to capture harms such as upskirting was one step towards confronting the everyday women encounter and experience as they move through urban corridors. However, considering privacy is not enough in and of itself and can even work to create a "false dichotomy" between privacy invasions and sexual harm (Powell 2010: 80). As such, more than just a reconceptualisation of privacy was needed during the Second Reading of the Upskirting Bill in 2007.

Summary Offences Amendment (Upskirting) Bill 2007

The Victorian Summary Offences Amendment (Upskirting) Bill 2007 (hereafter 'the Upskirting Bill') was created in response to the Muto case in January 2007. The legislation proposed amendments to create a new 41A – 41G in the Summary Offences Act (1966).⁹⁹ The overall purpose of the Bill was to make it an offence to, in certain circumstances, observe, capture, or distribute visual images of a person's anal or genital region and to confer the power to issue a search warrant in respect to the upskirting offence (Explanatory Memorandum 2007: 1). The Explanatory Memorandum for section 41 emphasised that it did not matter whether upskirt recordings were captured in private or public spaces; the illegality of such behaviour would remain.

This legislation was a significant development from Victoria's *Surveillance Devices Act 1999*, one of the previous leading pieces of legislation used in similar cases until the introduction of legislation such as the Upskirting Bill.¹⁰⁰ The Explanatory Memorandum

⁹⁹ 41A-41C cover new offences; 41D-41G outline exceptions to the offence, search warrant powers, announcement before entry and the repeal of the Act.

¹⁰⁰ The *Surveillance Devices Act 1999* replaced the *Listening Devices Act 1969* which prohibited the use of audio devices to eavesdrop on private conversations. With the increasing availability of surveillance technology (described as technology that combined audio, data, tracking or visual devices) the *Surveillance Devices Act 1999* was introduced to prohibit the installation of surveillance devices in buildings that would enable the surveillance of private conversations or activities. One of the issues with this piece of legislation

stated, “this new section makes it clear that the location of the proposed offence is immaterial and may include a public place (depending on the elements and circumstances surrounding the alleged offending)” (Victorian Parliament 2007b: 1). The Bill also defined what was meant by “visually capture”, which the Bill proposed should include both still and moving recordings by a camera or “other similar means”. This last part of the Explanatory Memorandum was thus broad enough to cover future technological developments, including live streaming, smartphones and applications to facilitate the practice of upskirting. Interestingly, the references to technology were broad and what Bennett-Moses would dub ‘technologically-neutral’; however, the name of the Act, referencing only upskirting, rather than framing it more broadly as a form of image-based sexual abuse was quite narrow. This isolated focus on one specific form of image-based sexual abuse was replicated in the United Kingdom in 2018, to the criticism of scholars such as McGlynn (2018).

Section 41A of the Upskirting Bill prohibits the observation of the genital or anal region with the aid of a device in circumstances where it is reasonable that the person would expect that his or her anal and genital region could not otherwise be observed. Under the definitions section of the Bill, ‘device’ is described as “any kind capable of being used to observe a person’s genital or anal region” including a mirror, ladder, or tool to make an aperture (Summary Offence Amendment [Upskirting] Bill 2007: 2). The Upskirting Bill was intended to prohibit deliberate and covert observation with a device in circumstances where a reasonable person would not otherwise expect to be observed. It stipulated that if a person’s anal or genital region could be seen by the naked eye alone, then this would not be covered in section 41A. The penalty for breaching section 41A is up to 3 months imprisonment.

Section 41B prohibits the visual capturing of the anal or genital region (whether this region is covered by underwear or not). ‘Visually capture’ is defined as capturing “moving or still images of that region by a camera or any other means in such a way that a recording is made of those images, or those images are otherwise capable of being distributed” (Summary Offences Amendment Upskirting Bill 2007: 3). The penalty for breaching 41B is up to 2 years’ imprisonment. Finally, section 41C criminalises the distribution of an image of the genital or anal region. It stipulates that a person must not intentionally distribute a captured

that the Law Reform Commission of Victoria noted was that “the SDA offers no protection against highly intrusive visual surveillance in outdoor places” (LRCV 2010: 109).

image of another person's anal or genital region and that the offence stands "whether or not in contravention of section 41B" (Summary Offence Amendment Upskirting Bill 2007: 5). The penalty for 41C is up to 2 years' imprisonment.

Section 41D describes exceptions to the offences outlined in 41A and 41B, which includes situations where a person gives express or implied consent; if someone observes or visually captures an image while accessing the Internet or a broadcasting service or if the images are captured by a law enforcement officer acting in the performance of their duty. Section 41C does not apply if the subject is a child or other person incapable of giving consent, the capturing was not made in contravention of 41B, or it is a situation in which a reasonable person would regard the distribution of the image as acceptable (for example, someone consents to having their image taken and it is then distributed in a magazine or on a website).

The creation of section 41 is significant for several reasons. Section 41B is "based on the understanding that it is not currently an offence to take unauthorised photographs of ... people when they are in public" (Explanatory Memorandum 2007: 3). It also stipulates that the test to be applied to determine if an offence has occurred is whether a reasonable person in the position of the person who was photographed would expect that his or her intimate areas could not be photographed. As mentioned above, upskirting was not previously criminalised if it occurred in a public place, as the *Surveillance Devices Act 1999* only covered activity that occurred in a building. In Victoria, as in the United States at that time, this was designated by whether someone occupied public space (outside a building) or private (inside a dwelling) space. While the language used in the Upskirting Act still refers to public and private space, the way the Act is worded signals a drawing of a privacy bubble around the anal and genital region of a person (in certain circumstances in which a reasonable person would expect that their anal or genital region would not otherwise be able to be seen without the assistance of an aid or device). However, as noted by Burton in relation to the Standing Committee paper however, such privacy affordances were not extended to topless sunbathers or women whose breasts are exposed.

There are parallels Mitchell's (2005) work on bubble laws and how Victoria implemented its own buffer zone. Victoria reconfigured privacy to accord with clothing rather than traditional and outdated understandings of public and private space. While the Upskirting Act only refers to privacy in certain situations, it criminalises some intrusive behaviours in public

space, enabling people (and especially women) “to move freely through public space, encased in an impregnable bubble of property (made real through law)” (Mitchell 2005: 96). The right to be left alone, to move through everyday thoroughfares unimpeded, was protected by a law, saying, in effect, “you cannot look here; you cannot photograph this”.

Section 41B also recognises the “particular harm” that can result if another person makes a recording of someone’s intimate region (Explanatory Memorandum 2007: 3). The Explanatory Memorandum refers to ‘ordinary’ public life and the expectations that a person’s anal or genital region is not generally visible to the naked eye. As noted in Chapter Four, there is a relationship between media and looking that cannot be understated. As I argued, however, the fundamental element of this regime of visibility is not defined (at least solely) by the technology employed to look, but by the desire and impetus motivating men to objectify the women subjected to their gaze. The Explanatory Memorandum gives the following example:

a woman standing on a tram wearing a skirt may be photographed without her knowledge. This would not be an offence per se. However, under this new section it would be an offence to take a photograph up her skirt. This is because it is reasonable to expect that her genital or anal region could not ordinarily be visually captured as the region is covered by her skirt (Victorian Parliament 2007b: 3).

This approach is reductive and makes no distinction about the kind of harm, or what is particular about it. It alludes to the qualitative difference between photographing a woman in a skirt as a commuter and taking a picture *up* her skirt. However, this says nothing about the difference between the two, other than that it is reasonable that she expects that that region would otherwise not be visible to the naked eye of others. It does not capture the gendered nature of this kind of offence and thus illustrates how the inherent patriarchal roots of law can result in its piecemeal application in situations where women require protection (Smart 1989; Munro 2017a). By not framing upskirting as a sexual crime, hate crime, or form of discrimination, the essence of upskirting (everyday misogyny and objectification of women) is not adequately addressed through law.

Similarly, section 41C concerns the distribution of photographs taken of a person’s anal or genital region. While defamation laws previously existed to protect the distribution of

inappropriate personal documentation including photographs, this was the first offence that specifically prohibited upskirting (except for child pornography laws). This offence was designed to prevent the deliberate distribution of photographs taken of another person's anal or genital region without their consent. It recognises that "distinct harm can result from distribution, namely the public exposure of, for example, an intimate photograph of a person's private region" (Victorian Parliament 2007b: 4).

Section 41 was drafted in order to keep pace with changing technology and to protect people's privacy. However, it was rarely observed that this piece of legislation referred to a specific form of gendered harm, despite its title of "upskirting", which indicates that women are the primary targets of the men committing this form of abuse. Women experience sexual abuse such as upskirting as a product of their everyday lives (see Stanko 1990; Kelly 2010; Pain 2014) and "chronic exposure to violence is part of girls' everyday reality" (Berman et al. 2000: 36). The kind of objectification and harm women experience as a part of their everyday life, whether cat-calling, upskirting, intimate partner violence or rape, was wholly omitted from the parliamentary debates on the Bill. Recent research by McGlynn and Johnson with victims of upskirting, one of the first studies in the world to do this, found that:

What is striking from our discussions with victims is how many describe their lives in terms of Before and After. They talk of immense 'social rupture' – marking the moment they became aware of their victimisation as one of sudden violation and utter devastation. One woman said to us: '*my whole world just crumbled*': and this '*destroyed everything*' when she learned her images were shared without her consent and uploaded to pornography websites. Victims spoke of their experiences as causing radical change in their lives – they distinguished between their life experiences and sense of self Before and After the abuse (McGlynn and Johnson 2018: np).

This everyday reality and the harm engendered by upskirting was not recognised by lawmakers and was actively hidden through various strategies and tactics that legitimised and denied men's violence against women (Romito 2008). The objectification inherent in upskirting was not addressed, despite the reference to gendered dress (skirts) in the title of the Bill. As many feminist scholars (Smart 1989; MacKinnon 1989; Eisenstein 1988; Munro 2017a) have highlighted, the law has functioned as a patriarchal tool to silence, deny and hide women's experiences of abuse for centuries. This demonstrates Romito's (2008: 5)

observation that “it is acceptable to talk about violence, but never male violence”. Instead, the Upskirting Bill focused on a specific version of harm, thereby removing it from the spectrum of abuse that was recognised by lawmakers.

Even today, feminist legal practitioners must conform to a masculinist legal discourse where ‘reasonableness’, a vital component of the Upskirting Bill and a founding pillar of the juridical institution, must be performed to be heard.¹⁰¹ The law exercises power to disqualify women’s experiences and its fundamental ‘malevolence’ continues to ignore women’s victimisation (Smart 1989). It has been and remains, a fundamental signifier of male power and the Upskirting Bill and its Second Reading illustrate this in the use of linguistic avoidance and discursively constructing an everyday in which ordinary men are exonerated from accountability for image-based sexual abuse. Unlike the New Zealand offence that framed upskirting as an act of sexual violence (2005),¹⁰² the Victorian Bill made no reference to what this “particular harm” of men photographing a woman’s intimate body parts actually was. Section 41 did not address the gendered nature of upskirting — an act of cognitive dissonance especially impressive given the title of the Bill — which was similarly reflected in the Second Reading.

Linguistic Avoidance and the Violence of Denial

By the end of the 20th century, parliamentary discourse¹⁰³ was increasingly becoming an important object of research in the fields of sociology, history and the political sciences (Ilie 2010). After all, “it is in the parliamentary arena...that political issues, ideological definitions and discursive practices can be authoritatively constructed and legitimated” (Ilie 2010: 1). As a formal setting where utterances are planned and structured parliamentary speeches are often

¹⁰¹ As Fineman and Thomasden (2012: 3) assert “various kinds of abuse...condition and shape people in ways that make it easy to label them ‘unreasonable’”. This lack of reasonableness makes the victim less worthy of belief, respect and sympathy and has resulted in women seeking justice for abuse they have experienced via traditional criminal justice pathways being at best ignored and at worst, condemned.

¹⁰² This was not without issue. As McGlynn highlighted making image-based sexual abuse a criminal offence can be problematic when the *mens rea* of ‘sexual gratification’ must be proven. If a perpetrator, for example, takes and distributes a non-consensual sexual image for the purpose of humiliating or harming the victim, but not for sexual gratification, as is often the case for perpetrators of image-based sexual abuse, then they may escape punishment under such laws.

¹⁰³ Defined as an oratorical discourse targeting an audience asked to make a decision by evaluating the strengths and weaknesses of a position or direction.

delivered using a specific rhetorical effect. Participation in parliamentary interactions is often driven by participants' need to constantly promote their own image in competitive performance-oriented institutional interactions (Williams 2014). It is for this reason that word choice and syntax hold increased importance and this "increases the weight of the use of connotation-laden words" (Williams 2014: 4).

MPs are often concerned with self-presentation; parliamentary interactions are antagonistic and MPs commonly compete, challenge and derail propositions from opposing political parties. As Ilie (2010: 14) observes, "in parliamentary debates, the structuring and understanding of statements is conditioned by what the interlocutors assume about each other's mental representations of the world, such as cognitive structures, social constraints and political experience". Importantly, parliamentary proceedings are highly ritualised, prepared and structured interactions. They generally unfold in a single-narrator style where rights to the floor during the duration of a speech are allotted to one narrator and other participants must wait to take turns at speaking (Fairclough 1992: 151). Interruptions are rife in parliamentary debates but are however, discouraged during the readings of Bills and sometimes punished by MPs being ejected from parliament.

Notably, the discourse of a debate is different before and after an election – in the lead-up to a State election it is common to observe a greater proportion of debate focussing on political-point scoring, opposition politics and attempts to attract newspaper attention through controversial comments (Williams 2014). The political agitation evident in the Second Reading of the Upskirting Bill was heightened by the disruption caused by the resignation of the then Labor premier Steve Bracks several weeks prior. This resignation resulted in the Treasurer, John Brumby, stepping into the role of Premier in mid-July of 2007, prior to the Second Reading on August 8th, 2007. The Second Reading resulted in 50-pages of Hansard transcription, lasted several hours and involved many MPs and heated debated.

In the subsequent discussion, I reflect on how this debate, a sub-genre of parliamentary text (Ilie 2010), reflected the social institution of government and the ideological-discursive formations (IDF) it employed. I unravel how the discursive norms were constructed through the parliamentary debate and consider the rhetorical strategies of the MPs during this interaction. These interactions were highly ritualised, structured and prepared encounters that unfolded in a single-narrator style, where speakers took turns presenting to the room. As

McConnell-Ginet (2008: 70) asserts, “labels often identify social, political and attitudinal groupings into which people quite self-consciously do or do not enter”. I observe below how MPs employed specific labels in the naming of upskirting, the cause of the behaviour, the perpetrators and the victims.

As highlighted in Chapter Three, there are seven key categories of linguistic avoidance – *valence, proximity, specificity, evidentiality, degree, urgency and imaginary* – many of which were present in the Second Reading of the Upskirting Bill. These techniques of avoidance can fall into one of two categories – techniques that legitimate acts of violence and those that deny them (Lamb 1991; Romito 2008). Legitimising male violence refers to instances where male violence is visible and defined as acceptable behaviour. Such examples include the historical treatment of marital rape as well as the excusing of intimate partner homicide under the provocation defence. When legitimising men’s abuse of women becomes socially unacceptable however, other methods are employed to hide men’s abuse of women. Linguistic avoidance is one kind of denial – a set of practices that minimises responsibility for actions through linguistic devices ranging from presenting acts without agents (for example, through using nominalization or the passive voice), presenting victims without agents, obfuscating gender and diffusing responsibility (Lamb 1991). As a technique, linguistic avoidance can be deliberate or unconscious and results in men “disappear[ing] from discourses and texts on male violence” (Romito 2008: 45). Such acts of linguistic avoidance are always systematic in their distortion of language and the subsequent distortion of reality it engenders.

Forms of denial expressed during the Second Reading include the following six categories. First, *attributing another meaning to something that has happened* (for example, something has happened, but it is not violence). Second, *selective perception allowing part of a problem to be ignored* (and only isolated incidents to be seen). Third, *denying responsibility* (where problems are seen as individual issues and not collective issues of concern). Fourth, *psychologising* (a depoliticising tactic that portrays men’s abuse of women as something committed by mentally unwell individuals). Fifth, *euphemising* (using language to deliberately be imprecise and misleading in order to obscure the seriousness of an act). Finally, sixth, *compartmentalisation* (giving different names to forms of violence to disrupt the continuity in seeing these actions are perpetrated by the same category of people) (Romito 2008: 90). While there are many different forms of denial, “the most direct form consists of

not seeing the violence and its consequences” (Romito 2008: 95). At its core, this is what I suggest occurred during the Second Reading of the Upskirting Bill. As Kelly (1988: 139) asserted, “naming involves making visible what was invisible, defining as unacceptable what was acceptable and insisting that what was naturalised is problematic”. By MPs refusing to name upskirting as an act of men’s abuse of women, MPs exonerated ordinary men and committed a form of linguistic violence. I argue that linguistic avoidance can be grouped around three central focus points – the invasion of privacy, the dangers of new technology and the need to protect the community against the “disturbed mind” of the upskirt perpetrator (Victorian Parliament 2007a: 2588).

The Invasion of (Wo)Men’s Privacy

In the Second Reading as well as media coverage of upskirting more broadly throughout 2007, a focus on privacy prevailed and discussions focused on upskirting as an invasion of privacy rather sexual harm.¹⁰⁴ This obfuscated the gendered reality of upskirting. During the Second Reading, there were only nine references to women’s privacy being violated, compared to 14 referencing the invasion of privacy of both men and women, despite there being no recorded instances of men having their genital and/or anal region photographed without their consent in my analysis. Most MPs present at the Second Reading speech either discussed the victimisation of women only fleetingly and in passing, or not at all, preferring to discuss the right to privacy for men and women and the need to protect “people” in general from upskirting. Three MPs also voice their concern over the potential for Scotsmen to be violated. One speaker, Janice Munt of Mordialloc, reflected on the implications of upskirting for her friend David, beseeching her fellow MPs to also consider “David’s right of privacy ... to wear his kilt without offensive acts being perpetrated on him” (Victorian Parliament 2007a: 2598). Several MPs discussed the effects of upskirting on men only, illustrating the derailment of the conversation of a behaviour in which women are almost solely victimised

¹⁰⁴ I should make clear that I have no issue with framing upskirting as an invasion of (women’s) privacy, as something that is facilitated because of advancing technology, or that some people who engage in the practice of upskirting do so because they suffer from the clinically recognised, DSM-V form of voyeurism. What I take issue with is that upskirting was almost universally portrayed as *only* an invasion of privacy, as *only* occurring because of the changing technological landscape and as something that *only* ‘sick perverts’ engaged in.

by men.¹⁰⁵ Other MPs deliberately focused on men as victims of upskirting in addition to women:

We need to ensure that women's and men's dignity and privacy are protected and we need to give police the powers to penalise offenders – Jeanette Powell [LNP], Member for Shepparton (in Victorian Parliament 2007a: 2596).

To me polite words do not have a place in describing actions like that, because you should call a spade a spade. Ethnic cleansing means genocide and here upskirting means invading women's or men's privacy – George Seitz [ALP], Member for Keilor (in Victorian Parliament 2007a: 2611).

I am very pleased that the government has taken the opportunity to bring such a Bill into the house, not only to protect women, as we have all said, but also, I suspect, men – Judith Graley [ALP], Member for Narre Warren (in Victorian Parliament 2007a: 2606).

The second example is notable for the assertion by Seitz that “you should call a spade a spade”, followed by the claim that upskirting means the invasion of “women's or men's privacy”. The syntax is noteworthy; the clichéd statement of calling “a spade a spade” followed by the claim of what upskirting is, implies that Seitz statement reflects the inherent nature of upskirting, that is, the invasion of women *and* men's privacy. There are two issues with presenting things in this order, however. This implies that upskirting is fundamentally an invasion of privacy and suggests that both men and women are equally likely to be victimised. There is no qualifying statement to clarify that it is overwhelmingly women who are victimised by this behaviour at the hands of men. Furthermore, the reference to genocide and ethnic cleansing is an incredibly extreme comparison and an overt act of derailment. Seitz's comments are markedly different to those made by MP Judith Graley, who observed that women's privacy needs to be protected “as we have all said”, but men's must *also* be protected.

¹⁰⁵ Of all 317 documents analysed only one referenced the unauthorised photography of boys – the rowing incident in which Melbourne schoolboys were photographed competing in a rowing tournament and later uploaded to a pornography website. None of these images were taken of their genital or anal region, however.

The focus on privacy in discussions of unauthorised sexual imagery has been explored at length by Powell (2010), who investigated how unauthorised images including upskirts were represented in discourses of privacy in public spaces. By framing upskirting as privacy violation, mainstream media and legal discussions take place at a distance from issues of gender and sexual violence (Powell 2010). Moreover, they ignore the prolonged harm possible due to information communication technology (ICT). Powell suggests that “a false distinction currently operates in law, policy and public debates between unauthorised sexual imagery as distinct from sexual violence” (Powell 2010: 80). Crucially, this false distinction is unable to recognise the full impact of such behaviours for victims who sustain ongoing stress and trauma from the distribution of the unlawful imagery. In the Second Reading, this false distinction operates not only to deny the sexual harm that arises because of upskirting through a limited focus on the privacy dimensions of the behaviour, but also serves to derail attention from everyday men as perpetrators of upskirting. This false distinction also exemplifies one of the forms of denial identified by Romito – *selective perception* – which allows part of a problem to be ignored (and only isolated incidents to be seen). While privacy invasion is certainly a harm engendered by men who take upskirt images, by focussing on privacy alone and as a behaviour that is something that is equally as threatening to both men and women, discussions avoid directing attention to the sexual harm involved in upskirting – harm that disproportionately affects women.

This false distinction was most apparent when MPs repeatedly framed upskirting as an invasion of privacy and not also as a form of sexual harm. For example, the leader of the Nationals, Peter Ryan, suggested that the Bill be renamed the Summary Offences (Invasion of Privacy) Bill rather than the Upskirting Bill (as it “does not do the overall situation appropriate justice” (Victorian Parliament 2007a: 2587), or alternatively the Offensive Conduct Bill or Voyeuristic Conduct Bill. Ryan also states that upskirting is “conduct of the worst kind” because it is an invasion of privacy (Victorian Parliament 2007a: 2587). By focussing on upskirting as an invasion of privacy without considering the gendered nature of the harm, Ryan ignores the broader cultural conditions that normalise such behaviour.

The emphasis on male victims in the Second Reading debate is unusual given the actual victims of upskirting are overwhelmingly women (and in my sample of 317 media articles, not a single report referred to female perpetrators). The emphasis on male victims is a form of derailment in much the same way as the recent Men’s Rights Activists hijacked popular

discussions of men's violence against women to claim that "not all men" perpetrate violence against women, or to lament the lack of discussion of men's victimisation at the hands of female partners (Ford 2017a; 2017b). While the ideological rhetoric around upskirting is much subtler, it nonetheless shifts the attention away from women's victimisation. Moreover, by positioning men as victims also, it reinforces an everyday where 'good' citizens, irrespective of their gender, are subjected to intimate intrusions and privacy invasions by the "sick" (Giles 2005) techno-pervert, the unknowable, undetectable 'other'. This framing is similar to that underpinning the "not all men" catchphrase which argues that discussions of gendered harm should stipulate that it is the deviant minority – or in the case of upskirting, the techno-pervert – who is to blame. Such linguistic manoeuvres position men as victims and ensure that ordinary men are not held accountable for harm against women.

While linguistic avoidance was common throughout the Second Reading debate, not all MPs engaged in this form of avoidance. For example, Christine Fyffe of Evelyn asserted that upskirting is committed by "men – and I say 'men' because there has not yet been any evidence that women have been guilty of upskirting" (Victorian Parliament 2007a: 2592). Fyffe asserted that upskirting is like rape of victims' personal privacy and that the behaviour would be "demeaning and sickening to every woman ... it is threatening to women, it makes them feel vulnerable, it makes them feel insecure and it is demeaning" (Victorian Parliament 2007a: 2593). The word choice used by Fyffe reflects the seriousness of the behaviour and the potential harm that upskirting can cause. Similarly, female victims who become aware of image-based sexual abuse describe it as a rape of their privacy and echo the feelings of violation, anger and emotional distress such behaviour causes (see McGlynn and Johnson 2018). Importantly, Fyffe's comments demonstrate a direct acknowledgment of how gendered the act of upskirting is and the specific ramifications this has for women victims.

Only two MPs, both women (Mrs Fyffe and Ms Karen Overington), reflected on how upskirting might make them feel and spoke to the feelings of fear (including of rape), degradation and objectification noted by victims. My analysis of Australian reports on upskirting set out in Chapter Five included discussion of media interviews with women who experienced such abuse. For the small portion of women who became aware of their victimisation, the harm is evident – a victim known as 'Mary' (one of many photographed by Ross Sargent in Victoria in 2007) claimed that she was angry, hurt, fearful and distrustful of others and said that she "felt like I had been raped" (Russell 2007: np). In addition, studies

(Bowman 1993) often identify fear of rape and the invasion of privacy as common themes in women's accounts of street harassment (Vera-Gray 2016a; 2016b) and others have recognised the connections between voyeurism and more violent sexual offending (Brenzinger 1998).¹⁰⁶

Other MPs discussed the need to balance “the competing interests of people's rights to privacy while protecting artistic and journalistic freedoms and the ability for ordinary members of the public to take photos in public places” (Victorian Parliament 2007a: 2592). As in the discussions of pool and beach photography outlined in the previous chapter, MPs expressed concern about impingement on media rights to take photographs in eight occasions. Eight MPs also referred to the right to photograph newborns and family members in various stages of undress in public. This focus on families and the media further removed the issue gendered harm. Two kinds of denial are in play in this form of avoidance - firstly, *attributing another meaning to something that has happened* (a concern that upskirting laws may impinge on artistic freedom) and secondly, *selective perception* that allows part of the problem to be ignored (upskirting as an invasion of privacy rather than image-based sexual abuse).

Families were described by one MP, Mr David Hodgett of Kilsyth, as “the fundamental group in society” that demanded protection. He stated that (Victorian Parliament 2007a: 2609):

The Bill makes it clear that taking unauthorised photos of a person's intimate body parts will be prohibited. Such behaviour is unacceptable to the community and should not and will not be tolerated. Families are the fundamental group in society and are entitled to be protected by the state. Furthermore, every child has the right, without discrimination, to such protection as is in his or her best interests.

This positions families as the pillar of the community and children as the most likely to be threatened. This statement is loaded with strong value judgements on behalf of ‘the community’, such as “this behaviour should not and will not be tolerated”. The combination

¹⁰⁶ For example, a 1983 FBI study of 41 incarcerated sex offenders found that 68% admitted to engaging in voyeuristic behaviours during their childhood or adolescent years (Brenzinger 1998).

of the syntax (the value statement followed by the identification of the group most likely to be threatened by upskirting) and word choices (“a person’s intimate body parts”, “fundamental group”, “tolerated”,) produces a number of effects. First, the gender-neutral term of person is used, followed by an assertion that “the community” will not “tolerate” this behaviour. This is proceeded by the statement that families are “the fundamental group of society” which appears as somewhat of a non-sequitur, as was the last sentence of every child being afforded the right of protection by the state. Taken together, the syntax of the whole speech fragment connotes that: 1) recording a person’s intimate body parts will be prohibited; 2) the community will not tolerate this behaviour; 3) families are the fundamental group of society and 4) children, as constitutive elements of the family, are the most likely to be targeted and should be afforded special protection. This speech-fragment says nothing of women-victims or male perpetrators and instead repositions the issue as one of the community, families and children. This illustrates a form of linguistic avoidance which functions to remove attention from men’s abuse of women.¹⁰⁷ Moreover, the connotation of the claims made by the MPs noted above produced an everyday where upskirting was an invasion of privacy only (and not also a sexual harm), an invasion of privacy suffered equally by men and women and an invasion of privacy perpetrated by another from outside the Australian community. Taken together these acts of avoidance constitute a form of denial by side stepping the gendered nature of upskirting.

Diffusing Responsibility to the Digital

As has been argued thus far, the criminalisation of upskirting was a response to the infiltration of technology into everyday life as much as (and often, even more than) a reaction to the risk engendered by those wielding these new optical devices. As noted by Highmore:

¹⁰⁷ Scholars such as Lamb (1991), Romito (2008) and Spender and Bardin (1985), have written on how the dominant group— generally white, heterosexual males— influences the development of language and actively constructs it so that it supports their perception of reality (Lamb 1991). This in turn supports and maintains the hierarchical status of the group. Many criminologists including Scully and Marola (1984) and Young (1998) have documented the various ways in which language is used to maintain this hierarchical status of violent men. This neutralising of the many kinds of men’s abuse of women ranges from techniques of neutralisation (Sykes and Matza 1957) to judges’ comments and lawyers’ interrogation of women victims in the courtroom and to the construction of women in media coverage of crime (Jewkes 2015; Moore 2014).

the everyday becomes the setting for a dynamic process: for making the unfamiliar; for getting accustomed to the disruption of custom; for struggling to incorporate the new; for adjusting to different ways of living. The everyday marks the success and failure of this process (Highmore 2002: 2).

The sense of threat apparently experienced by the MPs is a reaction to Victoria's failure to adapt to these changes. This is shown in the Second Reading whereby the cause of upskirting is attributed to the technology rather than the person who used it to perpetrate intimate intrusions. This serves to both frame the discussion as technology regulation (something which Bennett-Moses [2013] warned against) and diffuses responsibility for upskirting away from perpetrators, instead framing it as an act without an agent. This suggests that 'upskirting is new and would not be happening if not for the rise of new optical technologies', a trope well explored in literature on criminalisation, where appeals to the past are made by older generations concerned with the problems in society today (Pearson 1984). The frequent references to technology being accountable for upskirting echo the arguments made by Muto's lawyer that without the creation of new video camera technology, "it would not have occurred to him to do something like this" (Hunt 2007: np). The blame for upskirting is attributed to new technology, positioned as something harmful and perceived to be colonising the everyday. As shown in Chapter Four, however, various media have long been used to facilitate the objectification of women by men and it is far from a new phenomenon.

During the Second Reading, MPs often identified micro cameras and smartphones as the responsible agent. This suggested that the most important issue was not the objectification of women, but the spread of technology in everyday life. Communal concern over the increasing ubiquity of technology (discussed in Chapter Five) is apparent, a concern which emerged as a result of the fourth phase of everyday life (postmodernity) and provoked significant ontological insecurity (Giddens 1986). The perceived riskiness such technology signifies is evidenced by the emphasis on technology as a cause of harm in society. This is established in several claims by MPs:

It is a great shame in my opinion that this legislation is necessary at all, but it has become very necessary; I guess it is a reflection of the twenty first century and the era we live in. There is no doubt that society has a different view of the world to even 20 years ago, let alone 50 or 100 years ago. There are changed moral and technological

environments – Mr. David Morris [LNP], Member for Mornington (Victorian Parliament 2007a: 2610).

However, the importance of this Bill is that it creates these specific new offences that have been made necessary because of advances in technology in recent times...

Because of the ability for people to carry concealed cameras and the like, these sorts of acts of upskirting have become possible in recent times and of course the law needs to adapt and evolve to take account of those sorts of developments. – Mr. Tony Lupton [ALP], Member for Prahran (in Victorian Parliament 2007a: 2609).

In this day and age [where] we have to change so many things, even our right to the expectation of privacy. Our innocence is being destroyed. – Ms. Christine Fyffe [LNP], Member for Evelyn (Victorian Parliament 2007a: 2592).

In the first extract, Mr Morris reflected on the changed “moral and technological” environment that he asserted is qualitatively different to the world of 20, 50 or 100 years ago. The syntax, word choice and connotation in this extract works to produce an emotive statement on what Mr Morris perceives to be the lamentable state of the twenty first century. In the first sentence, Mr Morris opened with an assertion that it is “a great shame” that the Upskirting Bill is required, but that it is nonetheless “very necessary”. The use of the adverb “very” is used to qualify Mr Morris’s assertion – it is then followed by a less certain statement “I guess it is a reflection of the twenty first century”. Janney’s (1999) fourth form of linguistic avoidance ‘evidentiality’ is apparent here, where something appears less certain through the use of phrases such as ‘I think’, or, in this instance, “I guess”. Furthermore, the speech fragment shows an appeal to the past, whereby older generations lament the current, asserting that things were different when they were younger (Pearson 1984). This is confirmed by the following sentence which stated that “society” views things differently because of the “changed moral and technological environments”. Taken together, Mr Morris’s view is that the advancement of technology has created a changed moral landscape which has caused society to view the world differently and that this is a great shame. Mr Morris’s comments are vague and reflect Janney’s (1999) third form of linguistic avoidance of *specificity*, or, in this instance, a lack of specificity. Moreover, this speech-fragment captures the anxiety expressed by many members over the changing technological environment.

Mr Lupton's comments explicitly erase men as the responsible agent for upskirting, instead shifting the blame to advancements in technology. Mr Lupton links the first sentence to the second by asserting that three new offences have been made as a result of the upskirting legislation and that new technology has caused this Bill to be created. In the third sentence, Lupton uses the vague noun of "people" when talking of perpetrators carrying cameras and then states that "these sorts of acts of upskirting have become possible in recent times". The connotation is twofold: firstly, "people" carry micro cameras around – there is no identification of men as the most common group known to perpetrate upskirting - and secondly, upskirting is something which has only occurred because of new technology.

Ms Fyffe's comment, the most emotive of the three extracts, similarly appeals to the past by reflecting on the need to, "in this day and age...change so many things". Using the adverb of "even" in the sentence "even our right to the expectation of privacy" suggests disbelief or shock – we must change so much already and now we must *even* change our expectation to privacy. She finished her statement by claiming that "our innocence is being destroyed". The syntax implies that because of the constant compromise and changes we must make, our innocence (used here to refer to a simpler time prior to these technological innovations), is under siege. Anchimbe's (2008) contribution of *urgency* to Janney's (1994) framework of linguistic avoidance is apparent here. The urgency for action is highlighted through comments such as "our innocence is being destroyed" (Ms Fyffe). Innocence is frequently evoked as something in need of protection, of childhood and simpler times; technology is framed as the responsible agent for complicating life and threatening the community with the unknown ways in which it might penetrate everyday life.

The metaphor of technology as a plague or scourge is shown in the Second Reading. Technology is framed as a virus attacking people's innocence by facilitating behaviour such as upskirting. MP Robin Scott of Preston, for example, stated that upskirting "raises [a] fundamental issue for us as a society as to how we deal with the spread of technology" (Victorian Parliament 2007a: 2602). Here technology was subtly referred to as a plague spreading and "taking over" – a phrase which implies an involuntary situation in which everyday life is colonised by technology. Postmodernity and the new technology facilitating this turn, is identified as the real culprit of the harm underpinning upskirting. The spread of everyday misogyny and its manifestation through acts of upskirting is not scrutinised during the Second Reading in the same way that technology is. MP for Footscray Marsha Thomson

of Footscray also asserted that “there are going to be more and more ways in which technology can invade our lives and take over” (Victorian Parliament 2007a: 2616). This repetition of technology invading “our lives” and “taking over” solidifies technology as the key object of concern and blame. Throughout the Second Reading, through word choice, hyperbole, emotionalisation, appeals to the past and urgency, the IDF (the norms and language deployed within a specific speech community) is produced. The IDF constructed during the Second Reading is that technology is negatively spreading throughout the everyday and is the cause of social ills such as upskirting.

It is surprising then that several MPs propose to use technology as a solution to combat the problems brought about because of technology. Specifically, noises on cameras and camera phones are suggested, so that the covert nature of the practice would be compromised. Christine Fyffe, asserted that (Victorian Parliament 2007a: 2593):

law makers of all persuasions in all states and all countries should be fighting so that every camera ... must make an audible noise before it is operated so that you are aware that someone is taking a photograph.

Other MPs referred to both South Korea and Japan who pushed manufacturers to install loud auditory beeps on phones to alert people that a photograph was being taken. While this could be an effective joint measure with other initiatives, at least three different MPs suggested that combatting technology with technology should be considered – without proposing any other measures to combat upskirting. The implication is that upskirting is a product of technology and could be addressed by altering the technology used to perpetrate the behaviour. Once more, the objectification of women and the everyday misogyny at the core of this behaviour and the men perpetrating this form of image-based sexual abuse, are totally omitted from discussions. This serves to derail conversations away from gender-based harm and focus instead on the scourge of new technology in everyday life.

In such accounts *acts are presented without agents*, which obfuscates the gendered nature of the behaviour by reducing it to an act (without an agent) occurring because of new technology (Romito 2008). This framing is an example of the issue identified by Bennett-Moses (2007; 2013) who warned against compartmentalised analyses of technology to the detriment of more holistic analyses that account for the broader socio-political contexts in

which legal problems emerge. Within this context, having three MPs offer auditory beeps as a solution to upskirting is problematic as it actively participates, whether intentionally or not, in directing attention away from the gendered violence of which upskirting is a part. Instead, the issue identified is the rapid expansion of the new technics of everyday voyeurism and the inability for the law to cope with these changes. Only one speaker, Nicholas Kotsiras of Bulleen, suggests education or awareness as a solution however, his emphasis is on the appropriate use of new technologies rather than educating young boys and men that upskirting is a form of image-based sexual abuse that degrades and objectifies women. The only discussion on broader cultural representations of women focuses on slut-shaming and women's bodies, with women held accountable for posing provocatively and looking like "trash".

In one notable example, Tony Robinson of Mitcham laments the portrayal of the girl band, The Pussycat Dolls, in their music videos. He asserts that anyone who watches the music videos, in which the musicians are wearing short skirts or shorts, may "actually start to believe that the visual recording of intimate body regions is in some way acceptable" (Victorian Parliament 2007a: 2589).¹⁰⁸ At best, this is a failed attempt at calling attention to the way in which women are portrayed in media representations in ways that objectify them. At worst Mr Robinson himself participates in 'slut-shaming' the women with comments such as "this is allegedly a group of young women who sing, but anyone watching that video could be mistaken for thinking that far from it being about singers it is more like a travelling lingerie show" (Victorian Parliament 2007a: 2589). He then goes on to assure the MPs that he is not a prude and enjoys gyrations and watching slim and attractive women on the television "as much as the next punter", but that music videos such as those produced by the Pussycat Dolls are "simply trash". What is trashy about these videos, according to Mr Robinson, is the invitation by the singers for men watching them to upskirt them because of their choice of clothing and dance movements. Such rhetoric steers dangerously close to the kind of victim-blaming sentiments regularly expressed in mainstream media outlets relating to women who are framed as deserving their assault/harassment/rape because of their promiscuous behaviour or attire (Benedict 1993).

¹⁰⁸ The MP's comments were reminiscent of the hypodermic needle model of media effects (Jewkes 2015) as it infers a one to one causal relationship between viewing music videos of the Pussy Cat Dolls wearing short skirts (and short shorts) and taking upskirting recordings.

As Brown and Levison (1987) note, avoidance can be achieved through *hedging*, which involves the ways a sentence is framed, the emphasis on certain elements within the sentence and its order. A significant degree of hedging and IDF was at work in Robinson's comments. Value judgements in his statements are conveyed through his word choice and the general emotionalisation of his remarks. It is noteworthy that Robinson uses the term "punter", generally taken to refer to gamblers, consumers and ordinary people and to refer to himself as part of this group of ordinary people who enjoy the "gyrations" of "slim and attractive women". This obscures his identity as a heterosexual male who belongs to the group of other heterosexual males engaging in and enjoying in the objectification of women by referring to himself as a "punter" rather than a man. It also references the hierarchy of women's bodies who are deemed desirable and who should be gyrating (for men's pleasure), in this instance "slim and attractive" women. Robinson attributes another meaning to objectification, a form of denial identified by Romito (2008) as "euphemising". This form of denial serves to soften a statement by dodging the intended meaning using euphemisms. Rather than draw attention to the implicit message in Mr Robinson's statement, that the "punters" are heterosexual men who enjoy the gyrations of women, the use of "punters" both normalises the objectification of women and detracts from the seriousness of upskirting (by suggesting that enjoying the objectification of women as a fellow "punter" is what normal heterosexual men do).

Similarly, Mrs Powell from Shepparton also blamed media representations and referred to the 'call-me' advertisements in magazines and on late night television. She remarked that "one example I would like to put on the record involved the images of scantily and provocatively clad women in those call-me adds which are constantly on at a certain time of night" (Victorian Parliament 2007a: 2596). She suggested that the provocative poses and bodies of the women in these advertisements may lead to people thinking that such images are appropriate and suggested that laws need to be tightened up to "ensure women and men's dignity and privacy are protected" (Victorian Parliament 2007a: 2596). While Mrs Powell also indicated that such images resulted in the exploitation of women and that they are disrespectful, like Mr Robinson, Mrs Powell focused on women's bodies and placed the blame on how the women, in this instance, in 'call-me' advertisements, appeared. Rather than discussing the men responsible for upskirting and their participation in the systemic gendered hierarchy that objectifies and harms women, the attention shifted to amoral women responsible for encouraging upskirt images.

In both remarks, women are shamed and degraded for what they are wearing – the call-me women and the Pussycat Dolls are examples of ‘bad women’ who contribute to their own objectification and the objectification of other women. Nils Christie’s ‘ideal victim’ (1986) categorisation through binaries between deserving and undeserving victims. Christie (1989) describes the process whereby a young woman who is modestly dressed and in a legitimate place is considered a worthy victim while women who are dressed in more revealing clothing and are perceived to be in dubious situations (for example, they might be at a party, have consumed alcohol or other substance, or be a sex worker) are deemed less worthy of victimhood. Both MPs referred to women who dress provocatively as a cause of upskirting rather than blaming the male perpetrators. Not only were these women bringing disrepute on themselves, according to the rhetoric at work in these statements, but they are also to blame for the upskirting of other women by virtue of what their behaviour or attire communicates to others.

Another way in which technology is discussed in the Second Reading is in positioning it as the cause of a new behaviour and, subsequently the reason a new offence is needed. Such framing often occurs in tandem to references to ‘new language’ where, as Mrs Fyffe asserted, “Melburnians [woke] up to the fact that we had a new phenomenon that few had heard of before” (Victorian Parliament 2007a: 2592). Through *compartmentalisation*, Fyffe’s statement severs continuities between upskirting and other older forms of image-based sexual abuse in the past. As such, it is another form of linguistic avoidance that again, draws attention away from the gendered nature of upskirting. In framing upskirting as a novel phenomenon, such statements deny that upskirting is just another manifestation of everyday violence against women perpetrated by ordinary men. This works to reinforce the sense of crisis evoked by the upskirting trend and implicit in this is that upskirting too is a new phenomenon.

The connotation is that upskirting is a new issue produced by new technology and that new language is required to understand the behaviour. These statements worked to distance the MPs from the long history of the objectification of women and worked to *compartmentalise* upskirting, separating it from other forms of gender violence, rather than seeing it as existing on a continuum of harm (Kelly 1988). This attention ironically became centred on visibilising the very technology responsible for producing unauthorised visions of people. As tools that can transport matter out of place and into online domains, the focus on cameras and mobile

phones resulted in increased suspicion and distrust in the appearance of technology in everyday spaces. Indeed, it is easier to blame a piece of technology that produces a permanent record as evidence of its crime, for they are easier to identify than the techno-pervert behind the camera. Moreover, the focus on technology also enabled the cognitive dissonance of separating ordinary men as perpetrators of upskirting. By displacing the blame, the broader systemic structural conditions that are responsible for producing gendered regimes of visibility were obfuscated. This allowed attention to be shifted towards the figure of the techno-pervert, instead of unequal sexual power relations embedded in our culture.

As argued in Chapter Four, the language used to name a concept is crucial. A shift from peeping to upskirting was evidenced in my media sample- in 2005-2006 there were more articles devoted to peeping, whereas from 2007 onwards this substantially declined, as the term upskirting came into vogue. Some MPs lamented the use of such colloquial terminology, especially Mr Seitz, Mr Lupton and Mr Ryan. While MPs stated that new words like upskirting reflected “new issues” and “new types of offences” (Victorian Parliament 2007a: 2609), three MPs asserted that the behaviour is in fact, nothing new. Incidentally, all three MPs were women. I do not think that it is a coincidence that several of the women MPs identified that upskirting is not a new occurrence, while all of the male MPs either argued to the contrary or made no comment on the newness/oldness of the behaviour. The failure to place upskirting under the umbrella of men’s violence against women acts as a form of compartmentalisation and consequently as a form of linguistic avoidance. Below I trace the way MPs framed upskirting as a new behaviour, severing it from its past. I also note the absence of the male perpetrator in these discourses that are instead populated with imaginings of “perverts” and “disturbed” individuals preying on women in Victoria (Victorian Parliament 2007a: 2588-2615).

‘Sick Perverts’ and the Exoneration of Ordinary Men

Joanne Duncan of Macedon asserted that “it is not unusual and it is not new that men look up women’s skirts”. This statement simultaneously acknowledged the history of upskirting while normalising the behaviour of looking up skirts by asserting that men’s desire to do so is not “unusual”. These kinds of statements work to reinforce a certain IDF; Fyffe, for example, argued that “men looking up women’s skirts is not a new phenomenon” while Liz Beatie, of

Yuroke, stated that “upskirting is not a new offence, but indeed an old offence” (Victorian Parliament 2007a: 2593-2619). They stated that the only thing that is new is the technology used to facilitate these acts. Fyffe and Duncan reflect on their own experiences with their bodies and the male gaze – the former on her concern while walking upstairs as a young girl because boys would stand underneath the stairwell to try and see her underwear; the latter on an incident from her schooldays where girls were discouraged from wearing patent leather shoes in case their underwear was reflected in the shiny material, allowing boys to see their underwear. Much like my realisation as a 12-year-old girl that I was expected to be responsible for guarding the area under my school dress (even with extra layers of clothing), here we see an indirect acknowledgment of gendered regimes of visibility. The three MPs identify the long history of how men have looked and objectified women and reflect on experiences they have had with being looked at by men in ways that made them uncomfortable. As they suggest, the advent of new technology has simply made such behaviour easier, but the offence is most certainly “not new” despite the arguments to the contrary by other male MPs present during the Second Reading.

In contrast to the three female MPs who expressed that the desire by men to look up women’s dresses was not surprising or novel to them, many MPs conceptualised perpetrators as exceptional and abnormal. Men continue to benefit from the inherent power relations conveyed through legal discourse which includes the limited definitions of how sexual violence is defined which “functions to distinguish a small group of ‘deviant’ men from the ‘normal’ majority” (Kelly 1988: 27). Along with framing upskirting as an invasion of men’s (and occasionally women’s) privacy and as something that only occurs because of advancing technology, the construction of upskirting as something perpetrated by “sick perverts” (Victorian Parliament 2007a: 2605) rather than by ordinary men is one of the most significant acts of linguistic avoidance in the Second Reading.

One tactic is to talk of upskirting as abnormal and uncivilised behaviour. Mr Scott explicitly stated that upskirting “in no way relates to a normal expression of sexuality” and is something that is reprehensible and that does not “belong in civilised society” (Victorian Parliament 2007a: 2601). The word choice conjures norm infraction and emphasises what a “civilised” society should entail – a community free from people who commit upskirting. The use of the word “normal” reiterates that upskirting is committed only by those with abnormal sexual appetites. This extract reiterates the IDF shared by several MPs that “normal” people

do not commit upskirting. This is interesting given that several other MPs reflect on the perennial nature of looking up women's dresses by boys and the normalcy of this behaviour. In addition, other MPs such as Robinson talk about enjoying gyrations as much as other "punters" – reaffirming his place in the very heteronormative social order which encourages the objectification of women by men.

There is a tension between affirming the normative order, or IDF, that encourages the gendered regimes of visibility that produce a culture of objectification and the condemnation of "uncivilised", "abnormal" people who engage in this behaviour (Victorian Parliament 2007a: 2605). The use of the word 'uncivilised' is powerful as it denotes a primitive or lascivious way of behaving. This 'us' vs 'them' dichotomy pushes the discussion of upskirting further away from something that occurs as part of women's everyday and positions it as extraordinary and unusual. Perpetrators are also framed as wrong-thinking through their juxtaposition to the 'rest' of the community as illustrated in the following examples:

Most right-thinking people would think that the sort of behaviour that is needed to be legislated against would not occur in our community – Mrs Danielle Green [ALP], Member for Yan-Yean (in Victorian Parliament 2007a: 2595).

I'd like to delve into the reasoning and rationale of the disturbed mind that is behind this practice – Mr Tony Robinson [ALP], Member for Mitcham (in Victorian Parliament 2007a: 2588).

It is basically the criminal act of unlawful hooligans and mentally ill people who stoop to acts like that – George Seitz [ALP], Member for Keilor (in Victorian Parliament 2007a: 2611).

In the above examples, upskirters are described as people with a "disturbed mind" and upskirting as something "unlawful hooligans" commit and that "mentally ill" people "stoop" to. Green stated that "most right-thinking people" would not condone this kind of behaviour, which implies that someone must be "wrong-thinking" to approve of or commit upskirting. The way the perpetrator is framed creates a dichotomy between 'good' and 'bad' citizens, 'normal' and 'abnormal' people and 'right' and 'wrong' thinking people. In all the examples

above, the perpetrator is never identified as anything other than the “sick” other. Ordinary men are further distanced from upskirting by *pathologising* offenders through invoking the social imaginary of the “sick” (Giles 2005) pervert. This invocation of *imaginary* reflects Anchimbe’s (2008) last addition to Janney’s list of linguistic avoidance techniques and also presents victims as subjected to harm from the uncivilised techno-pervert.

Elsewhere a *non sequitur* by one speaker involved a reference to gay men having sex in public. When talking about safety in public and the peepholes drilled in toilets to facilitate upskirting and peeping, Mrs Fyffe commented that “this society tolerates the fact that toilet blocks are used for homosexual activity ... why do we put up with it?” (Victorian Parliament 2007a: 2593). This statement shows what Mrs Fyffe perceives as a slipping standard of morality and sexual abnormality. The inference is that upskirting is a sexual behaviour because the speaker is linking it with another sexual act. This subtle but important link is rarely stated explicitly by MPs. While Mrs Fyffe may reflect on this behaviour because they both occur in the same location (a toilet block), the framing of homosexual sex as something to be “tolerated” and “put up with” is derogatory. Moreover, conflating upskirting and male-male sex is problematic for a range of reasons, least of all that one is a non-consensual act of gendered violence and the other (generally) involves consensual sexual encounters between adult men. This harks back to out-dated and harmful stereotypes that homosexual men are sick and are dangerous predators that do not belong in public space (Dalton 2006). Fyffe’s comment holds profound implications, given that the upskirter is frequently framed as sick and abnormal. To juxtapose homosexual sex in toilets alongside upskirting implies they have something in common. Aside from (sometimes) occurring in the same space, gay sex and upskirting are not comparable and framing the upskirter as “sick”, followed directly by a reflection on public male-male sex shows thinly veiled homophobic sentiments.

Perhaps the most interesting comments are those made by Bill Tilley of Benambra, who constructs a profile of the kind of offenders Section 41 sought to target. He positioned himself as an expert by referencing past experience with sex offenders as a police officer and recalling times when “I had to run a bit harder and quicker to catch these predators” (Victorian Parliament 2007a: 2598). Mr Tilley used the first-person narrative to reflect on his personal experience with “these predators”. After establishing that he has some authority as an ex-police officer and has experience with such individuals, he reflected on the mindset of perpetrators, which he argued is “quite peculiar” and how upskirting acts as a “stepping stone

to other offences” (Victorian Parliament 2007a: 2598). He then profiled upskirt offenders as people who have a compulsion, as offenders who have an appetite that needs to be “fed”: “they have a drive to be fed and to quench their thirst for whatever perverted desire they have” (Victorian Parliament 2007a: 2598). The way Mr Tilley spoke of upskirt offenders frames them as insatiable and uncontrollable monsters that prey on unsuspecting women. The techno-pervert is again invoked here as someone outside of society that threatens the community and requires a strengthening of the symbolic and legal borders to maintain cohesion and safety. This construction of upskirt perpetrators as mentally unwell or abnormal illustrates the linguistic technique of *psychologising* once again, whereby a social issue is reduced to a problem of individual psychology and pathology.

On the rare occasions when men and not ‘sick perverts’ were identified as perpetrators of upskirting during the Second Reading, they were discussed either as little boys who did not know any better or dirty old men. Mrs Fyffe reflected on the way in which young men would loiter under stairwells to try and catch a glimpse of young women’s knickers as they walked up a flight of stairs. The boys were described by the speaker as annoying but relatively harmless “dirty little boys and [who should be] told to go away” (Victorian Parliament 2007a: 2592). Mrs Fyffe’s comment was one of the only references to upskirting as something that is not abnormal but a somewhat common experience that many have encountered, even if they were unaware of their victimisation. This runs parallel to the stereotype of the “grotty old man” which is also apparent in media coverage of upskirting. One media case from 2008 referred to “shoe cam Len” for example, an older man who was caught and arrested for upskirting and described as a “dirty, old, lonely man who enjoyed what he did” (No Author 2008a: np). *Hedging* techniques were used here by the MPs, demonstrating the distancing of this behaviour as something the very young do when they do not know better, or as something that old men do because they are lonely. The way in which offenders were repeatedly framed as ‘other’ through positioning the behaviour as something at either end of the lifespan and again, something that “not all men” do, shifted the blame from men as a group to aberrant individuals. A criminalisation of the other – criminalisation that is premised upon and foregrounds the perceived otherness of offenders – is illustrated here. It worked to distance MPs from everyday misogyny rampant in our society and produce gendered regimes of visibility that encourage acts such as upskirting.

The Patriarchal Resistance of Misdirection

Political risk, defined as “risk to an elected government of a failure to secure legitimacy”, is one of three forms of risk that Haines (2011: 48) details in her typology of risk. Based on the work of political theorists such as Habermas (1979), political risk intersects with both actuarial and socio-cultural risks. Inherent in political risk is an ongoing struggle to retain legitimacy that arises from the inability of governments to simultaneously manage the economy and reassure the community that they will protect them from a variety of risks and dangers such as the threat posed by the ever-expanding technological terrain and the use of such technology in the hands of a techno-pervert (Haines 2011: 52). To maintain legitimacy, it is imperative that political actors and governments become attuned to socio-cultural concerns which can be utilised for strategic gain. The criminalisation of upskirting in 2007 represented a response to the political risk posed by technology and the risk of the “sick” upskirter to the privacy of all Victorians. (Victorian Parliament 2007a: 2605). The public condemnation of techno-perverts such as Muto and the subsequent criminalisation of upskirting that ensued from this event demonstrated how a legitimacy crisis was managed by the government of the day. As the level of vulnerability rose, the need for reassurance increased and it is for this reason that:

Politicians have vested interests in promoting certain levels of fear about particular (often socio-culturally based) risks in order to be seen to be protective and caring in what might loosely be termed a kind of political ‘protection racket’ (Haines 2011: 53).

Looking closely at the analysis in the previous section revealed that the concern expressed in the upskirting debate was over particular kinds of risk posed by particular kinds of objects and groups. Through using strategies of linguistic avoidance, MPs articulated their concern with the threat posed by technology to men and women’s privacy. They managed it by discursively identifying and containing the threat. When a person was identified as a culprit, they were framed as the aberrant techno-pervert. A genderless “sick” individual psychologised by MPs as dangerous and distinct from normal “right thinking” people” (Victorian Parliament 2007a: 2605).

I argue that each of the examples provided earlier relating to the invasion of men and women's privacy, the role of technology and the "sick" individual, exemplify strategies of linguistic avoidance and denial ranging from *compartmentalisation*, *psychologising*, *focussing only on one part of an issue* and *euphemising*. However, the existing work on linguistic avoidance requires a further addition to capture the linguistic manoeuvres at work – what I dub 'misdirection'. Misdirection is a sub-type of linguistic avoidance which serves to direct attention away from an issue by focussing on another issue instead. While other forms of linguistic avoidance evade an issue through other means, such as through denying something is a problem or talking around an issue, misdirection derailed the discussion from upskirting as another example of men's abuse of women. While Janney (1994) and Anchimbe's (2008) work on linguistic avoidance focussed on political texts, I draw more heavily on the work of Lamb (1991) and Romito (2008) who focus on linguistic manoeuvres which serve to deny gender-based harm.

Misdirection is a particular form of avoidance speech but is also a crucial element of magic. In 2018, magician David Kwong identified the seven principles of magic in a brief video. Two of the principles: 1) misdirection (or what magicians refer to as conjuring an out); and 2) employing the familiar – are useful within the context of my new extension of linguistic avoidance, misdirection. The familiar is used to direct attention away from one part of a performance to another. Using the ordinary not only distracts attention away from the sleight of hand but placates audiences so that their expectations is that "nothing is out of the ordinary". The magician will shatter this illusion at their leisure when the misdirection is completed so that the trick can be performed. Conversely, in the context of the parliamentary reading of image-based sexual abuse, I noted that misdirection was used to move attention away, whether intentionally or not, from systemic issues of violence, to instead employ a false distinction between privacy and sexual harm, an emphasis on technology regulation and a criminalisation of the other. Moreover, the familiar is used to convey a sense of threat – techno-perverts besiege the everyday and the routine is at risk. Within the context of magic, misdirection is entertaining, within the context of language and the systemic refusal to see men's abuse of women, it was markedly less so.

Whereas Hall et al. (1978) suggested that political diversion is generally an overt, deliberate action and a calculated political tactic, I suggest that misdirection in the Second Reading was much subtler and may have occurred as a product of unconscious everyday misogyny.

Magicians use misdirection as a key part of their magic routines to create the illusion that something astonishing has occurred. Through sleight of hand and distraction of the audience, the magician's trick is not to make something disappear and reappear but to command and direct the audience's gaze to where they want, when they want. In this respect, magicians employ a form of deception in their attempts to mislead the spectator's senses to distract them from other details crucial to performing the trick. It is for this reason that Hay described misdirection as "the manipulation of interest" (Hay 1972: 2). Whereas magical misdirection is commanded by the magician – a conscious and deliberate actor – misdirection is commanded by language and the scripts and ideologies that are often unconsciously (re)produced through its use. In the case of the criminalisation of upskirting, misdirection arose out of the symbolic violence of language (Bourdieu 1991), which directed MPs' attention away from the structural causes of image-based sexual abuse. Because men's abuse of women has been routinely ignored, invalidated and trivialised (Kelly and Radford 1990), the Second Reading showed a lack of attention and inability to see and address the cultural foundations from which practices such as upskirting emerge. In the following analysis, I revisit each of the three themes found in my previous analysis and outline how misdirection was used to derail conversations from men as the group responsible for perpetrating this form of image-based sexual abuse.

In the first theme – a preoccupation with privacy to the detriment of discussion of the sexualised nature of the harm engendered by upskirting – we see the false distinction between privacy invasion and sexual harm (Powell 2010) and a refusal to acknowledge upskirting as something which disproportionately affects women. Three extracts noted earlier – which highlight potential male victimisation - misdirect attention away from women's victimisation to male victimisation. When men are framed as equal victims of upskirting and positioned in conjunction with statements that talk of a genderless "sick" pervert, it puts distance between men and their accountability for this kind of sexual harm (Victorian Parliament 2007a: 2605). Instead of taking steps to confront these issues, MPs redirected attention to other issues that may, or may not, have arisen as a result of the Upskirting Bill, such as the impingement on artistic freedom and families right to civic life. This misdirects the issue of upskirting from objectification of women by men to other matters such as the need to protect "artistic and journalistic freedoms and the ability for ordinary members of the public to take photos in public places" (Victorian Parliament 2007a: 2592). As Anchimbe (2008: 168) observed; "politicians have a tendency to move away from threatening objects" and misdirection is thus

used as a face-saving strategy when people are confronted with a threatening concept or idea. Given that two-thirds of the MPs were men it is perhaps not unsurprising that they focussed on men having their privacy invaded, rather than the fact that upskirting is a harm almost always perpetrated by men against women.

Similar strategies of misdirection were at work in the second theme – upskirting as something caused not by men, but by advances in technology. The attention afforded to advances in technology during this discussion misdirects attention away from what I contend is the principal issue of upskirting – the everyday misogyny which structures interactions between men and women where sexual access is presumed and assumed by men. An example of this is Mr Morris’s comments on the effect of technology on everyday life – specifically, that this legislation is necessary because of “the twenty first century-era we live in” (Victorian Parliament 2007a: 2610). This variant of misdirection sees the diffusion of responsibility away from men and instead on advancing technology as the means, cause and agent responsible for perpetrating this form of image-based sexual abuse. Misdirection relocates the onus of upskirting onto technology by framing emerging technology as the underlying cause of upskirting and encourages MPs to examine technology in a vacuum away from socio-structural issues. Upskirting is depoliticised as an issue of men’s abuse of women. The everyday imagined by MPs is not one assailed by misogyny, but rather by technology.

In my earlier analysis, I reflected on the way media technologies communicated information and on some MPs’ dismay at the perceived correlation such media had with pro-upskirting views. Mr Robinson’s comments on the Pussycat Dolls show misdirection from gendered regimes of visibility to slut shaming. Rather than acknowledge the harm caused to women as a result of a misogynistic culture, Robinson instead blamed the musicians for producing music videos he claimed encouraged upskirting. He commented both that the music videos by virtue of the women in them are “simply trash” and stated that: “this is allegedly a group of young women who sing, but anyone watching that video could be mistaken for thinking that far from it being about singers it is more like a travelling lingerie show” (Victorian Parliament 2007a: 2589). Use of the adverb “allegedly” before the word ‘musician’ implies that the women are not really worthy of the title musician, a move confirmed in the subsequent clause in the sentence (that they appeared more like a “travelling lingerie show”). Finally, by labelling their videos as “simply trash”, he engaged in an active form of slut-

shaming and deliberately shifted the blame for behaviours such as upskirting to women like the Pussycat Dolls for their “trashy” appearance and music videos.

Robinson’s comments both misdirected attention away from male perpetrators and simultaneously enforced a hierarchy of victimisation, whereby women such as the Pussycat Dolls are not only condemned, but blamed for causing men to upskirt women because of their clothing and the dance moves (or “gyrations”) they engaged in. These statements arose without any further discussion on the male perpetrators of this gendered violence which, taken as a whole, resulted in upskirting being attributed only to ‘call-me’ women and the “trashy” musicians of the Pussycat Dolls. Blaming women based on their dress functions as another example of misdirection – the implication is that the wrong agent is being identified as the cause of upskirting. In both Mr Robinson and Mrs Powell’s statements, there is no reference to a broader culture of toxic hegemonic masculinity and no discussion of male perpetration of violence against women.¹⁰⁹

Regarding theme three, by suggesting that upskirting is only conducted by the monstrous or “sick pervert” (Victorian Parliament 2007a: 2605), attention is misdirected away from collective responsibility and ordinary men’s accountability for upskirting. This illustrates Garland’s (2000) criminology of the other, or what I prefer to term a criminalisation of the other whereby a scapegoat - in this case the techno-pervert – is constructed in response to the crisis of the everyday evoked by upskirting “predators”. Problematically, by concentrating on the threat ‘out there’ it misdirects attention away from the everyday violence committed by men ‘in here’. Therefore, the ‘normal’, everyday men who are overwhelmingly responsible for acts of upskirting remained unseen.

Upskirting was framed as something that ordinary men do not partake in, an action committed only by those who are cognitively immature, approaching senility, or otherwise mentally ill (Victorian Parliament 2007a: 2611). Responsibility for upskirting is thus diverted

¹⁰⁹ Another member did, however, have a more sympathetic approach to upskirting victims. Mrs Fyffe (Victorian Parliament 2007a: 2593), claimed that: “It has been said that some women might attract these photographs because of what they wear. That is a stupid defense. Everyone has the right to dress according to their wish and just because a woman may be wearing a shorter skirt than the ones I tend to favour – that is not a protection against upskirting, it is a presentation thing – it does not give anyone the right to take a photograph of her body parts”.

from ‘normal’ men (Kelly 1988; Lamb 1991; Romito 2008; Lazar 2007) and the ‘everyday’ can be presented as under siege from technology in the hands of techno-perverts. This IDF is understood within Victorian parliament as a discursive norm which underpins the shared beliefs of the institution. This ‘background knowledge’ acts as a naturalised ideological representation seen as common sense; the everyday here is threatened by the techno-pervert who is an abnormal or sick outsider (Fairclough 1995: 31). A criminalisation of the other functions to create boundaries through enacting the binary between ‘us’ and ‘them’. This further serves to construct the perpetrator as an ‘other’ from beyond the community, rather than a product of a misogynistic culture which actively encourages the objectification of women.¹¹⁰

Within the context of gendered violence, there has been significant work on the representation of the rapist and the consequences of channelling blame on the individual. Rape is rarely framed as anything other than “a matter of individual psychology” (Moore 2014: 65) and as Soothill and Walby (1991: 1) note, the typical sex offender is the “stranger pouncing out of a bush ... the crazed or sick individual”. This means that people are actively encouraged to see rape as a problem caused by a few sick men and as something that has nothing to do with the gender hierarchy (Moore 2014). This ultimately dampens critical debate and obfuscates the social causes of sexual violence and its relationship to power (Moore 2014: 66). As Moore (2014) notes, rape is a political device, an act of oppression that is wielded by members of a powerful group over people who are less powerful. Like upskirting, rape is presented as something that occurs sporadically rather than something that is structurally generated (Dowler 2006). Isolating upskirting to individual cases perpetrated by a societal monster who requires criminalisation is one of the most evident examples of misdirection.

As Rose (2015) has argued in relation to intimate partner violence, sexual violence can be understood as a state crime due to the active complicity of powerful state-based and state-authorised institutions in its perpetration. Through fixating on perpetrator accountability, most of the MPs present for the Second Reading accord with culturally acceptable

¹¹⁰ Misdirection is a common strategy that transcends gender and power relations. McDonald (2012) highlights how this plays out in relation to the monstrous paedophile, which has severe ramifications for understanding other forms of child abuse and family violence that are much more common.

mainstream narratives on men's violence against women which frame it as unusual and aberrant rather than commonplace, everyday and systematic (see Kelly 2010). As DeKeseredy and Schwartz (2013) discuss, these types of discourses are acceptable for the 'malestream' (Kelly and Radford, 1990) as they "exonerate men as a collective and allow social, cultural, systemic and structural factors to go unexamined" (Wood et al. 2018). As Rose (2015) explains, intimate partner violence, for example, persists on such a scale not *despite* the state and society, but precisely *because of* it. Thankfully, the notion of perpetrator responsibility is now broadly reflected in the mainstream (see the Royal Commission into Family Violence Report, 2016) however, the way in which upskirting was discussed during the Second Reading was inconsistent with these changing cultural attitudes.

In examining how the everyday was imagined, represented and discursively constructed, I argue that misdirection illustrates a specific expression of patriarchal resistance (Berns 2001). Patriarchal resistance includes *the normalisation of men's abuse of women, the diversion of attention from men's responsibility and the cultural and structural forces that foster violence and the distortion of women's violence* (Berns 2001: 277). Berns (2001) describes how those guilty of executing patriarchal resistance can simultaneously condemn the abuse of women while excusing it by advancing counter-feminist movements. This is achieved through de-gendering an issue and camouflaging the cultural factors that contribute to the perpetuation and perpetration of men's abuse of women. As Kivel (1992: 104) asserts: "those with power have many resources for having their view of reality prevail and they have a lot at stake in maintaining the status quo". There are many ways of achieving this power, including the silencing of women's abuse by men through *namelessness, fragmentation, veiling, lying, encoding, omission, false-naming, secrets, taboo subjects, erasure and non-naming* (Rich 1978: 18). Fundamentally, misdirection is an articulation of patriarchal resistance which is realised through fragmentation, false-naming and non-naming and which serves to protect everyday men from accountability for everyday misogyny and the objectification of women, which are at the heart of upskirting and other forms of image-based sexual abuse.

In the everyday invoked in the Second Reading, the exceptional pervert is vilified, technology is blamed and privacy is invaded. In this everyday, ordinary men do not abuse women. Rather, technology in the hands of sick voyeurs violated men and women's privacy. A criminalisation of the other unfolds which serves to exonerate ordinary men from accountability for the gendered violence caused by image-based sexual abuse. By considering

to the word choice, syntax, connotation, rhetorical tools and context (Williams 2014) of the Second Reading speech, I demonstrate how misdirection diverted attention away from the gendered dimension of upskirting. An acknowledgement of upskirting as a gendered harm perpetrated by men and as an offence which disproportionately victimises women was largely sidelined.

Discourses on men's violence against women have long been associated with 'linguistic avoidance' and other communicative strategies that obscure the responsibility of male perpetrators. Through the use of passive voice, normalisation and other distancing strategies, violent assaults on women are regularly presented as 'acts without agents' – offences without a clearly delineated offender. Linguistic avoidance need not only obscure the responsibility of male perpetrators, however. Such strategies also serve to obscure the norms, attitudes and beliefs that underpin much of men's violence against women. When employed in this way, such techniques represent a form of patriarchal resistance, what Berns refers to as the diversion of attention from men's responsibility and the cultural and structural forces that foster violence (Berns 2011: 268). Through individualising and de-gendering men's violence against women, techniques of linguistic avoidance misdirect attention away from several of the root social causes of such behaviour. Rather than simply obscuring the responsibility of individual offenders, then, such techniques also obscure the responsibility of cultural norms and with them, the very 'everydayness' of men's violence against women.

Conclusion

[There are] complex ways power structures everyday encounters between men and women and the extent to which intrusion and aggression may be a routine feature of these interactions. The manifestation of men's gender power through the routine use of aggression against women is connected to 'non-routine' assaults, such as rape, which are extensions of more commonplace intrusions (Kelly 1988: 15).

In the Second Reading, misdirection was evidenced in MP's focus on the invasion of men and women's privacy, the advances in technology and the role of the sick individual. Importantly these three illustrations also reveal how blame was used, what this said about upskirting and the discursive representations of the everyday. The three expressions of my

category of linguistic avoidance show various forms of denial. From denying that men abuse women to compartmentalising this form of violence as distinct from the continuum of harm (Kelly 1988) women were subjected to at the hands of men, MPs engaged in a variety of techniques to misdirect attention away from the everyday misogyny of upskirting and diffuse responsibility away from ordinary men responsible for these harms. The exclusive attention given to who committed upskirting, what happened as a result and how this practice occurred created a monolithic, narrow and simplified framework to examine an incredibly complex issue. Above all, this IDF systematically neglected and as a product of this neglect, denied the reality that upskirting was a practice involving ‘normal’ everyday men committing image-based sexual abuse against women.

In response to the third and fourth research questions – “How did political and media discourses represent upskirting in Australia” and “How was the everyday imagined in these discourses?” – the everyday that was invoked was one where Victoria was at risk from advancing technology used by “sick perverts” (Victorian Parliament 2007a: 2605) to invade men and women’s privacy. The everyday was not conceived as a place of sexist violence perpetuated by the state or society. The ills of upskirting were instead identified as occurring through no fault of the state and through no fault of a broader systemic cultural climate that cultivates such attitudes and behaviours (given the lack of acknowledgement that this even exists). The everyday was a landscape of denial. The gendered regimes of visibility that control how women are looked at and why they are looked at were as insidious and covert as the male upskirters taking photographs underneath a woman’s skirt. This ultimately trivialised the violence produced by these “social processes wherein diverse forms of violence inform, transform and minimise each other across social spaces” (Henriksen and Bengtsson 2016: 2). This underlying ideology was occasionally made explicit, such as in this utterance by Mr Robinson: “there is a *limit* to the way in which women should be exploited” (Victorian Parliament 2007: 2589) (my emphasis). Such a statement, whether intentional or not, suggested that some degree of exploitation of women was acceptable.

As Shroeder and McDonagh assert:

To gaze implies more than ‘to look at’...it implies a social psychological relationship of power in which the gazer is superior to the object of the gaze (Shroeder and McDonagh 2007: np).

The gaze of the male upskirt perpetrator is one of power, making the woman into its object. The Second Reading indicated a refusal to see and engage with upskirting as a gendered offence in any real depth. This half-hearted engagement with gendered harms is characteristic of a country that has alarming rates of violence-supportive attitudes (VicHealth 2017). “Australians are less inclined to see non-physical forms of control, intimidation and harassment as serious” and that one in five respondents in the Vic Health survey believed there were circumstances in which women should bear responsibility for violence (Vic Health 2017). As such, it is not surprising that the Second Reading was characterised by a refusal to engage with upskirting as a form a gendered violence. This occurred as a specific form of linguistic avoidance, which I term misdirection. While MPs rarely uttered any violence-supportive attitudes, there were serious ramifications from the kinds of attitudes shown. For these reasons, I cannot share Member Helen Shardey’s sentiments when she congratulated the (primarily male) members on what a satisfactory job they had done discussing the upskirting Bill (Victorian Parliament 2007a: 2613).

The male MPs and many of the female MPs involved in the Second Reading were happy to speak on only certain facets of the problem of upskirting, offered limited solutions and blamed the sick individual or the technology they used. This produced a “male protection racket” (Griffin 2015: 11), which at times resulted in MPs reflecting on women in their lives and the desire to protect ‘our’ women from perpetrators. Mr Russell Northe of Morwell, for example, remarked that “obviously those potentially affected could be our mums, our sisters, wives, girlfriends or daughters and certainly we do not want to see any crimes perpetrated against those we love” (Victorian Parliament 2007a: 2606). MPs skirted around the issue of upskirting by looking at fragments of the phenomenon, resulting in a refusal to look at the unconscious gendered attitudes that cultivate men’s abuse of women. By not discussing the role of beliefs that underpin objectification of women and indeed even acknowledging upskirting as a form of men’s objectification of women, this constituted an act of denial and in turn, an act of violence. In ignoring the issue, further violence ensues because it can continue unchallenged, which accepts it and signals to the world that it is not worth confronting. As Calvert and Brown (2000: 500) note, “unfortunately for the victim of the voyeur’s gaze, a wrong often goes unpunished because it goes unnoticed”. While they referred to the covert nature of upskirting, here I use it to reference the inability of lawmakers to see the objectification and everyday misogyny at the heart of upskirting.

Failing to conceptualise upskirting as another form of men's abuse of women simply because most victims do not know they are being photographed, is dangerously close to the claim some perpetrators make that upskirting is a victimless crime (Tran 2015). However, most victims who are made aware of their victimisation feel violated, humiliated and degraded because of men's behaviour (Calvert and Brown 2000). Upskirts are doubly harmful because victims are rendered powerless and unable to defend themselves against something they have no knowledge of happening as they are excluded from participating in the exchange. Reflecting on Tran's (2015: 188) argument on street harassment:

Individual instances of street harassment do not occur in a vacuum; a simple interaction between one man and one woman on the street implicates gender and hierarchy and failure to acknowledge and address this reinforces the objectification and subordinate of women.

As Morgan (1992: 238) asserted; "if I had to name a single characteristic of patriarchy, it would be compartmentalisation, the capacity for institutionalising disconnection". By not situating upskirting as men's abuse of women and as a product of this gender hierarchy, this defining characteristic of patriarchy reigns throughout the Second Reading. To frame upskirting as only an invasion of privacy perpetrated by "sick" individuals and occurring as a product of technological advancements, overlooked the gendered nature of the behaviour and the objectification that is central to the act of upskirting (Victorian Parliament 2007a: 2605).

The everyday that was imagined by the MPs in the Second Reading was one where men's abuse of women remained unchallenged and unnoticed. The problem of the everyday in the paroxysmal moment evoked by the Muto case and the subsequent criminalisation that ensued was the inability to see upskirting as a form of image-based sexual abuse perpetrated by ordinary men. Simultaneously, this obscured the more common variant of upskirting which targets women going about their everyday life as they move through urban thoroughfares. Perpetrated by normal everyday men, such instances of upskirting would force MPs to confront the reality of men's abuse of women and collective responsibility for upskirting. To truly see the everyday as something other than colonised by advancing technology and techno-perverts, a criminalisation of the self was needed. This would purge such discourses of its scourge and expose the everyday reality that the MPs talked around and through using various strategies of linguistic avoidance, including misdirection.

Chapter Seven: Fraying the Familiar

From the realisation as a young woman of what it meant to move through the schoolyard in this female body, my encounter with the world has been one dictated by my gender and the norms and values inscribed upon it. The expectation that I should police what was under my school skirt by adding further layers to ensure the boys did not see my underwear would not be limited to my time as a teenager. This policing and vigilance to minimise my own potential victimisation, while simultaneously minimising the responsibility of boys and men to not objectify or harm me, is a theme which still repeats itself over and over in my life and the life of most women.

During the final year of my PhD, I began my first full-time job as a policy officer to develop my skills as a practitioner and supplement my student stipend which could no longer support my on-going medical expenses. My everyday was now structured by a routine of waking at 5am to write before starting my 9-5 job with the public service. I fell into the habit of arriving at the office in Melbourne's CBD before 7am each morning to clock some quality thesis writing time and in doing so, I became accustomed to sharing the office space with early risers who worked a 7-3pm day. One encounter with a male colleague in my first few weeks on the job, who asked what I was working on, has stuck with me the way my first day of high school still follows me. Having provided the 'elevator pitch' I had perfected over the last few years, I was confronted with an incredible and yet incredibly familiar display of misogyny.

After describing my work to my colleague briefly, turning my chair to return to writing this conclusion, he began to rebuke me for sounding like 'one of those radical feminists' and explained how I ought to reconfigure my dissertation in case my examiner 'got the wrong idea'. Forced to adhere to polite conversation and still unsure of office etiquette, when I noted that I appreciated the input (I didn't) and politely tried to end the conversation, he continued to describe what he saw as the 'real' problem with the practice of upskirting.

"Upskirting", he explained, "only happens when women wear revealing clothing and walk alone at night. If they don't want to be photographed, they shouldn't put themselves on display where men will see them, and they shouldn't be in places they are likely to be

victimised'. Mr Robinson's comments regarding the Pussycat Dolls echoed through my head as my work colleague uttered this statement. The similarity was uncanny. When I interjected that most upskirt shots actually occurred in broad daylight (you cannot be a successful #creeper if you do not take a clear image of your target, after all) and that many creepshots were of women in yoga pants and work attire, he patiently explained that normal women 'like that' wouldn't be subjected to upskirting.

When I prodded him further on what he meant when he talked about 'normal women' and the hierarchy of victimhood he had in mind, he became defensive. He assured me that he wasn't sexist because he had daughters of whom he was very protective and proceeded to explain that he was merely stating a fact – that women should take measures to ensure they don't fall victim to the whims of the 'perverts' he imagined were responsible for perpetrating upskirting. When I asked whether he thought 'normal' men would upskirt women he looked as affronted as if I had asked whether he might be guilty of such a thing, and said that most men were good guys who respected women and wouldn't treat them like that.

Confronting the Creepers: The Rise of an Online Call-Out Culture

My exploration of the ordinary manifestations of misogyny has sought to explicate the problems of the everyday as they pertain to recent iterations of image-based sexual abuse – upskirting and creeping. What can we learn from an analysis of upskirting as a form of image-based sexual abuse within a conceptual framework premised on the everyday? I included the anecdotal account at the beginning of this chapter because it illustrates not only how everyday misogyny punctures the familiar, but because it provides me with an opportunity to confront the culture that cultivates creeping and keeps it hidden in plain sight. Of course, I am not alone in this movement. Twitter hashtags such as #everydaysexism encourage women to recount daily instances of abuse, while the *Hollaback!* website and mobile phone app track misogyny and empower women to speak out together (Highfield 2016). Alternatively, some women have used humour to respond to unsolicited ‘dick pics’ in order to shame the men responsible (Vitis and Gilmour 2016). The social media site Reddit also provides a space for victims of sexual assault to seek support through connecting to a sympathetic online collective (Powell and O’Neill 2017). Finally, 2017 saw the productive use of hashtag feminism,¹¹¹ with the #MeToo movement revealing the prevalence of sexual violence for women all over the world.

Early forms of viral shaming were not without issue. One of the most frequently reported cases in my data occurred during 2006 in Marsden, Queensland, when Ricky Vivian discovered a peeping Tom looking in his 18-year-old daughter’s bedroom window. In response to this discovery, Vivian installed CCTV cameras around his house in order to catch the offender in the act. He remarked that:

I thought, if he's peering at me, I'll peer back at him. This time, I'm going to get his face and put it everywhere I possibly can. I don't think he'll ever think of doing that again – it'll stop him, it'll definitely stop him (Atfield 2006: 3).

¹¹¹ Hashtag feminism has been criticised, however. As Wood et al. (2018) state, it is similar to ‘keyboard activism’ where, when confronted with an arresting image online, people may be compelled to share or like it, but do little else. The efficacy of this form of activism has recently been questioned by commentators (Clark 2014; Khoja-Moolji 2015; Stache 2015).

Grappling with the desire to “knock his block off” (Atfield 2006: 3), Vivian instead decided to use the footage to expose the identity of the assailant to “let everyone know who he is. They’ll keep an eye out – someone will know him, someone lives next door to him”. In all articles, Vivian’s daughter was not interviewed and did not speak about her victimisation; her story was known only through her father’s voice.¹¹² Such articles obscured female voices and emphasised the stereotype of women requiring protection from men. In these fantasies, women were protected from others by their fathers, partners and male family members, the masculine legal instrument of law (Smart 1989), or, as in the Vivian case, through technology used to turn the gaze back on the offender.

New technology has enabled women to respond to men seeking to perpetrate image-based sexual abuse against them. This is achieved through female victims and their allies filming the men who attempt to capture images and recordings of women victims. In one such case, on Monday 21st March 2016, 22-year-old Tegan Portener fell asleep on a train from Newcastle, New South Wales and awoke some time later to discover the man in front of her attempting to take upskirt videos and photographs up her shorts as she slept. After watching the man continue to do this for over half an hour, she “finally mustered up the courage to tell him to stop” (Noyes 2016). In Portener’s video, the man looks surprised and offers no explanation, only shrugging his shoulders and acting confused when she asks why he keeps sliding his phone under the train seat. The video was later picked up by news websites and prominent online commentators such as Clementine Ford, after Portener shared a post (see Figure 7.1) to her social media page which resulted in the story going viral. Here we see an example of ‘viral justice’: the outcome of a victim’s online justice-seeking post ‘going viral’ and quickly being viewed and shared by thousands of social media users (Wood et al. 2018).

Portener appeared on the popular Australian television program ‘The Project’ and gave several interviews to news outlets including *The Age*, news.com and the *Herald Sun*, where she claimed that:

¹¹²Similar to Ricky Vivian’s comments, in the Second Reading of the Upskirting Bill, many MPs remarked on the need to protect ‘our’ women from violation. Mr Russell Northe of Morwell remarked that “obviously those potentially affected could be our mums, our sisters, wives, girlfriends or daughters and certainly we do not want to see any crimes perpetrated against those we love” (Victorian Parliament 2007a: 2606).

It was so rough but I'm also a raging feminist and I know I would've regretted it so badly if I didn't say anything, I wasn't prepared to hate myself over this guy for being weak (Fellner 2016: np).

Several days later a 30-year-old man was arrested for this incident and charged with one count of filming another person's private parts without consent (*Crimes Act 1900, s91L*) which carries a maximum sentence of 2 years imprisonment and one count for offensive conduct (*Summary Offences Act 1988, s4*) which carries a maximum prison sentence of 3 months. The case points to the potential for the watchers to become the watched (Wood and Thompson 2018) and to the potential new media platforms afford victims who can amplify the reach of their experiences, particularly when they are acknowledged and shared by powerful gatekeepers. What was encouraging about this instance was that the victim was able to assert her humanness (MacKinnon 2007) and confront the perpetrator in a way that enabled her to challenge her own objectification. That the video was 'liked' by over seventy-two thousand people and shared thousands of times enabled the offender to be afflicted with the 'digital mark of shame' (Hess and Waller 2014) which enables men who have previously committed offensive and harmful behaviours without repercussions to face public condemnation for their actions. Within the context of gender-based harms, this kind of platform provides significant potential to rectify the power imbalances that have long kept women silenced in the face of sexual harm. However, it is not without its problems. As Wood et al. (2018) highlight, such exposure can also lead to trolling and online abuse. Indeed, in Portener's case, while she claimed that she was glad that she had spoken out, she was subjected to online harassment in the wake of her upskirting incident (Esposito 2016).

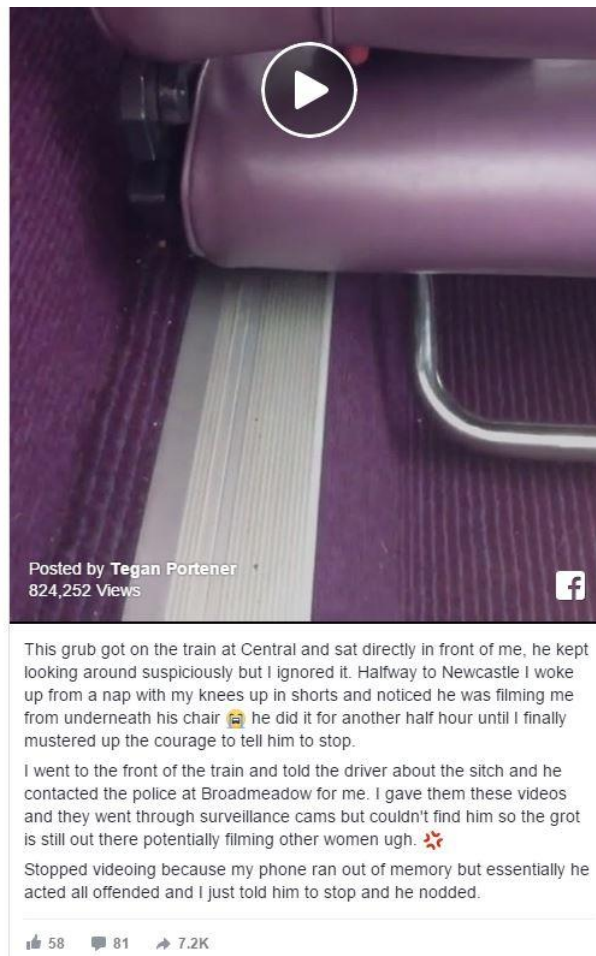


Figure 7.1: Tegan Portener’s Facebook post about her encounter with the Newcastle train upskirter.

Of course, the percentage of women who catch a man engaged in the act of upskirting is likely to be quite low, such is the nature of the behaviour. However, this case demonstrates the move towards what Highfield (2016) has dubbed a ‘call-out culture’ in his reflection on everyday social media and online misogyny. Wood et al. (2018) have discussed the potential promises and pitfalls for women using new social media as a platform to engage in activism and challenge everyday sexism and misogyny and the technological affordances of new media may prove to be part of the solution in pushing back against this kind of behaviour. If nothing else, then shaming offenders online and exposing them to thousands of people may discourage a behaviour that routinely goes undetected. Such a call-out culture enables offenders to experience online shaming rituals whilst simultaneously empowering women to resist everyday misogyny and sexism, and to reclaim ownership of public space. Unfortunately, this can also expose victims to further harm through victim-blaming, as happened to Portener, who was attacked online by various men who claimed that she “should

not have had [her] feet on the seat with [her] knees up to start with” and that maybe she “should [not] wear a short skirt next time. [W]onder why girls get into trouble” (Fellner 2016: np). Online spaces are riddled with misogyny and are often dominated by vile, sexist discourses which circulate and are reinforced (see Wood 2017a). But this does not mean they cannot be co-opted for feminist purposes, they can serve as one part of both an online and offline strategy to challenge sexual harms.

I also push back against the ambient fear (Hubbard 2002) that heightened risk awareness can foster. Women should not have to be wary of such behaviour when they move through the public sphere; we should turn our attention from worrying about the presence of so-called sick individuals and technology that outpaces our regulatory mechanisms to thinking about the gendered regimes of visibility and everyday misogyny responsible for structuring gendered relations. We should look at the fabric of the everyday and see how it is frayed not by moments of exceptional transgression, but by the insidious and unnoticed harm of misogyny and sexism. In so doing, we can challenge the cultural techniques and systemic harm our society produces to protect everyday men from accountability. I worry, however, about Portener’s internalisation of fear that not confronting men would render her “weak”, as this frames women as somehow responsible for calling out men’s violence. It perpetuates the long history of placing the onus on women to manage, confront and challenge men’s abuse (Kelly 1988).

The way forward is complex, convoluted and challenging. For women unable to verbally confront offenders as Portener did, one way forward might be to covertly capture and expose the men who likewise attempt to covertly capture and expose their most intimate areas. Hollaback! and other sites provide places for women to post content in a safe space. More mainstream platforms such as Twitter and Facebook, however, can be riddled with trolling and abuse, as Australian feminist writers Clementine Ford and Jane Gilmore experience on a daily basis (Caggiano 2015). However, even spaces previously considered rife with toxic masculinity, such as Reddit, are now providing spaces for victims of sexual assault to seek comfort and advice (O’Neil 2018).

The everyday is politically charged. Above all, it is affected by an overarching culture of everyday misogyny, sexism and violence (see Stanko 1985). In understanding the everyday as value or quality, context (space and time), practice (movement and mobility) and object

(im)material or otherwise), these various elements of the everyday are visible in the structural conditions that encourage men's abuse of women. Many Western nations are permeated with the imagination of an everyday that criminalises the other and that directs, derails and diffuses conversations focusing on ordinary men's abuse of women. A process of normalisation works to render image-based sexual abuse and other gendered harms invisible through trivialising the harms they engender. In the case of the Victorian Upskirting Bill, this occurred through a process of redefinition which absolved men as a group from accountability, through misdirection and through a criminalisation of an 'other'. Each tool employed in this examination, from media archaeology to CDA, has sought to uncover how upskirting could be understood in relation to the everyday – not only as something emerging in everyday places, with everyday objects and through everyday practices, but as an action which brings to the foreground the taken-for-granted background. In this way, my analysis of the emergence of an offence relating to upskirting has been used to examine how crime disrupts the routine, but also functions to maintain the status quo.

The New Criminology of Everyday Life: Towards a Criminalisation of the Self

Another question emerges – what do my findings mean for the future? Over a decade after Victoria introduced legislation criminalising upskirting, Britain prepared to introduce its own upskirting legislation.¹¹³ The introduction of the legislation was prompted after Gina Martin caught two men upskirting her at a music festival after she turned down their advances. Martin started an online campaign to criminalise upskirting when the police dropped her case because of the limited legal avenues available to them to prosecute the accused (Bowcott 2018). Like Portener's shaming of the man who upskirted her on the train in 2016, Martin's campaign demonstrates the potentials afforded by online media. Without the online campaign and the traction it lent her activism, it is doubtful whether the new legislation would have been proposed. While still a reactive response (that is, requiring a victim to be subjected to

¹¹³ Legislation also emerged in almost every state and territory around Australia by 2017, and Commonwealth legislation criminalising image-based sexual abuse was introduced in 2018 – the Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018. With recent scholarly attention from Powell, Henry, Flynn, McGlynn, Rackley and others, image-based sexual abuse is firmly on the research agenda in both Australia and the United Kingdom.

upskirting before they engage in activism online), viral justice nonetheless is a powerful pathway that can work in tandem with traditional justice avenues to achieve better outcomes for victims.

Submitted as a Private Member's Bill, the proposed legislation garnered considerable local and international interest. Reports appeared in *The New York Times* (de Freytas-Tamura 2018) and Prime Minister Theresa May stated that she wanted to see the Bill pass with government support (BBC 2018). However, the Bill was initially blocked in June by Sir Christopher Toph (who objected to Private Members' Bills on principle), resulting in the legislation being re-submitted for consideration in July (BBC 2018). In September, Labour MP Stella Creasy advocated for the Bill to be amended: she proposed that gendered abuse, including upskirting of women, should be considered a hate crime. Creasy argued for the inclusion of misogyny in the Bill given that the overwhelming number of known victims were women. She asserted that the true extent of crimes against women was being masked in the criminal justice system because they were not being recognised as hate crimes (Cole 2018). Prefacing her statement by clarifying that her push for this amendment was not about "telling men they are rapists", Creasy argued that "it is about recognising existing crimes that are motivated by hostility towards somebody because of their gender, because of what they are – hate crimes" (Cole 2018: np).

As the Parliamentary conversation continued, internationally renowned image-based sexual abuse scholar McGlynn (2018) argued that the required *mens rea* (which would include proving an intention to seek sexual gratification through upskirting) was problematic and perpetuated the harm of focussing on the offender and not the victim. McGlynn stated that taking the image without consent should be the threshold for determining culpability, as in many other sexual offences; the requirement to prove that the perpetrator took an upskirt photograph or recording for sexual gratification would only serve to make the threshold higher, and prosecution more difficult. Since Scotland recently passed laws that included a focus on sexual gratification and have only achieved three prosecutions in a year, McGlynn suggested that following suit would likely see similarly low numbers in England and Wales. Framing upskirting laws in this way overlooks the way in which toxic masculinity underpins these behaviours which are about:

power, control, entitlement, punishment, humiliation, recreation and the sexual act. Sexual offences are so labelled not because of the motivation, but because of the mode of perpetration; harm through a sexual act. Sexual offending is not about sexual arousal (McGlynn 2018: np).

As my analysis has evidenced, it is difficult to see the power, control and entitlement behind acts of upskirting when techniques of linguistic avoidance such as misdirection work to re-focus our attention elsewhere. Like the magician's magic routine, the misogyny woven into the fabric of the everyday is hidden by gendered regimes of visibility that structure what we see and how we see it. We need to learn to see the ordinary violence committed against women for what it is. Crimes such as creepshots, already hard to detect and prevent, are further obscured if they are framed as extraordinary and undertaken by techno-perverts, or in respect of what Douglas (1966: 64) calls the social pollutant pressing on the external boundaries of a community: dangers from outside of society. However, it is equally harmful to frame perpetrators such as teachers (and other respected community members found to have engaged in image-based sexual abuse) as making a "mistake" (Morri 2013: np), engaging in an undesirable "hobby" (No Author 2012: np) or as "family guys who like to hang out" (Maley 2012: np). These techniques of avoidance distort conversations away from the reality of gendered harm women encounter in their everyday lives. Such coping mechanisms re-frame everyday men who upskirt women. They are positioned as a benign or trivial threat, engaging in a harmless "hobby" (No Author 2012: np) and illustrate a strategy employed to manage one of Douglas' (1966: 64) four kinds of social pollutants – danger from internal contradictions. It is in these moments when internal contradictions become apparent that we must pay attention – we must not allow misogyny's magic routine to misdirect our attention to the imagined threat from without, when the real danger remains from within.

Throughout, I have argued that upskirting is a form of everyday violence, consistent with claims made by feminists such as Kelly (1988; 1990), Pain (2014), Pateman (1988) and Scheppele and Bart (1983). The harmful and destructive gender dynamics in women's everyday lives "have remained effectively invisible both within academic and in other communities" and remain an ongoing problem (Pain 2014: 535). Upskirting is not an exceptional behaviour perpetrated by techno-perverts from beyond the community. Like intimate partner violence, image-based sexual abuse must be understood as something which emerges *within* the everyday, not as something external which ruptures it. To rework

Garland's (2001) typology, the remarks made by Members of the Victorian Parliament during the Second Reading not only signify a form of patriarchal resistance but constitute a classic example of a criminology based around the *criminalisation* of the other: that is, criminalisation that is premised upon and foregrounds the perceived otherness of offenders. Like Garland's notion of criminologies of the other, criminalisation of the other treats individuals who commit offences as intrinsically different from law-abiding individuals. In the criminalisation of the other, the offending individual is held up as separate from society, rather than a product *of* society. Upskirters are framed as social pollutants who encroach on the external boundaries of the community, rather than as dangerous individuals who exist within the community. In addition to providing an identifiable threat 'out there' to defend society against, the figure of the techno-pervert also serves to absolve the criminalising society from its role in producing such harms and functions to manage the political risk such offenders engender.

Criminalisation of the other may take two forms. Firstly, it may involve the criminalisation of practices associated with an 'othered' section of the population. Secondly, as I have shown throughout my thesis, it may involve the criminalisation of socio-culturally patterned harms in such a way that elides their structural origins. In criminalising the other, the self, along with its social, cultural, economic, and political markers, is able to endure unchallenged and unchanged. It is for this reason we must:

learn to hear ordinary women about ordinary violence...But all too often, in so many areas around the world, we still do not listen enough or effectively. If we did, perhaps we would challenge violence against women—and all violence—more effectively (Stanko 2006: 547).

In order to hear these voices and see the gendered regimes of visibility which structure how and what we see, we need a *criminalisation of the self* acknowledging the everydayness and everynightness of violence against women (see Kelly 2010). Unlike the criminalisation of the other, the strategy of a criminalisation of the self does not correspond completely with its counterpart in Garland's theory, that is, the criminologies of the self that are centred around rational choice theories of crime (see Felson 1994). Instead, this criminalisation of the self requires us to pay attention to taken-for-granted assumptions about our own complicity in producing and accepting an everyday that protects men from accountability for their abuse of

women. To overcome the criminalisation of the other, and the avoidance strategies it requires, a criminalisation of the self, which turns inward to locate the cause of social harms, is needed. This demands attention to the everyday as a place of harm for women who are seen as objects to which men presume sexual access. It is an everyday where ordinary men, concealed under the veil of systemic misogyny, take covert images of women's private areas to share with other men online as a trophy but who stay unseen, while society remains vigilant against imagined techno-perverts. We must, therefore, be aware not only of outright ruptures to the everyday, ruptures which are typically caused by social pollutants from outside the community, but also the subtle and insidious intimate intrusions which go unnoticed and unchallenged. A criminalisation of the self frays the familiar and encompasses not only a culture of perpetrator accountability, but also a recognition of our culture's accountability in violence against women. Everyday misogyny manifests in actions, representations, language and institutions, it appears on the front page of the newspaper, the chambers of parliament, on social media platforms and on the screen of an iPhone angled up an unsuspecting woman's skirt. A criminalisation of the self does not, therefore, individualise offending and treat the self as an island. Rather, it targets the all too familiar norms implicated in harmful acts. Fraying the familiar is, therefore, an act of resistance and an essential precursor to participating in a call-out culture: after all, you cannot call-out what you cannot see.

I return to Lefebvre, who asked "How can everyday life be defined?" (2002: 43). The everyday as conceptualised in discourses on the emergence and criminalisation of upskirting was invoked in a paroxysmal moment of upheaval. However, if the everyday can only be read in isolated moments, we must also bring forth the dynamic historical forces that bubble below the surface (Lefebvre 2004) when law's convulsions ripple in response to these momentary crises. As I have demonstrated, we are encouraged to "look here" and not there, to blame "this" and not "that", to see "this part" of the problem but not the other; we engage in a criminalisation of the other but not a criminalisation of the self. Fixated on the dangers posed from the imagined social pollutants outside of the community, we do not tend to the toxic contamination caused by the unchecked, unchallenged everyday misogyny which is both mundane and malignant.

If the everyday is, as Hegel suggested, the prose of the world (cited in Butler 2012: 30) then we must learn to hear the whispers of the unequal, asymmetrical and abusive nature of the everyday that is so frequently drowned out by the booming responses of law in temporary crises. Only when we learn to read the everyday as the most well-hidden yet obvious domain of patriarchy, will we be able to confront the disappearance of men from the everyday in discourses on upskirting and other forms of image-based sexual abuse. I agree with Lefebvre's assertion that "man must be everyday or he will not be at all", although my reading is rather different to that which he intended (2002: 24). Man must be everyday: we must see ordinary men and their abuse of women as part of the everyday or we will never confront its systemic and ongoing violence. Like many forms of violence against women, it is concealed beneath a social fabric stitched by patriarchy and misogyny. We must pay attention to mundane matters *because* the mundane *matters*. To unravel the everyday so that we may come to see the gendered regimes of visibility which produce a culture of objectification and which lie at the heart of acts of image-based sexual abuse such as upskirting, we must participate in a call-out culture that condemns men's abuse of women. The first step is to locate Lefebvre's everyday man, and this must begin with a criminalisation of the self. We can then fray the familiar responses that frame acts of everyday misogyny as exceptional and extraordinary, perpetrated by unknown, polluting techno-perverts beyond the community. In doing so we can create a counter narrative locating an everyday that recognises women's abuse at the hands of men, *our* men, is commonplace and ordinary.

Appendix One – Co-author Declaration

I, Dr. Mark Andrew Wood, hereby grant permission to Chrissy Thompson to use the article entitled ‘A Media Archaeology of the Creepshot’, published in *Feminist Media Studies* in 2018. This was a co-authored publication in which I was second author. Chrissy Thompson contributed 80% of the content for this article which was drawn from research findings from her doctoral thesis. I contributed to specific sections, namely literature review material on media theory and on the media archaeology method. My contributions were relatively minor (amounting to no more than 20%).

Signed,

A handwritten signature in black ink, appearing to be 'Mark Wood', with a long horizontal flourish extending to the right.

Date 07/02/2019

Appendix Two – Online Observation

Archive.Is, (2016), ‘Creepshots/Candid’, *Archive.Is*. Available at:

<https://tinyurl.com/ycmlfbrr> [Last accessed: 7/1/18]

Creepshots.com, (2016), ‘Creepshots.Com About’, *Creepshots.com*. Available at:

<https://tinyurl.com/y8otxhbe> [Last accessed: 7/1/18]

Creepshots.org, (2016), ‘General Creepshots’, *Creepshots.org*. Available at:

<https://tinyurl.com/yb7b93o6> [Last accessed: 7/1/18]

Flickr, (2016), ‘Creepshots’, *Flickr*. Available at: <https://tinyurl.com/ybyqqfea> [Last accessed: 7/1/18]

Instagram, (2016), ‘#Creepshot Search’, *Instagram*. Available at: <https://tinyurl.com/ycrst3co> [Last accessed: 7/1/18]

Metareddit.com, (2016), ‘Where the Camera Captures for Eternity, What the Eye Sees for Only a Moment’, *Metareddit.com*. Available at: <https://tinyurl.com/yacswgy4> [Last accessed: 7/1/18]

Reddit.com, (2016), ‘Reddit Upshorts’, *Reddit.com*. Available at:

<https://tinyurl.com/yd85t259> [Last accessed: 7/1/18]

Tumblr, (2016), ‘Creepshot Search’, *Tumblr*. Available at: <https://tinyurl.com/y7kmp7ac>

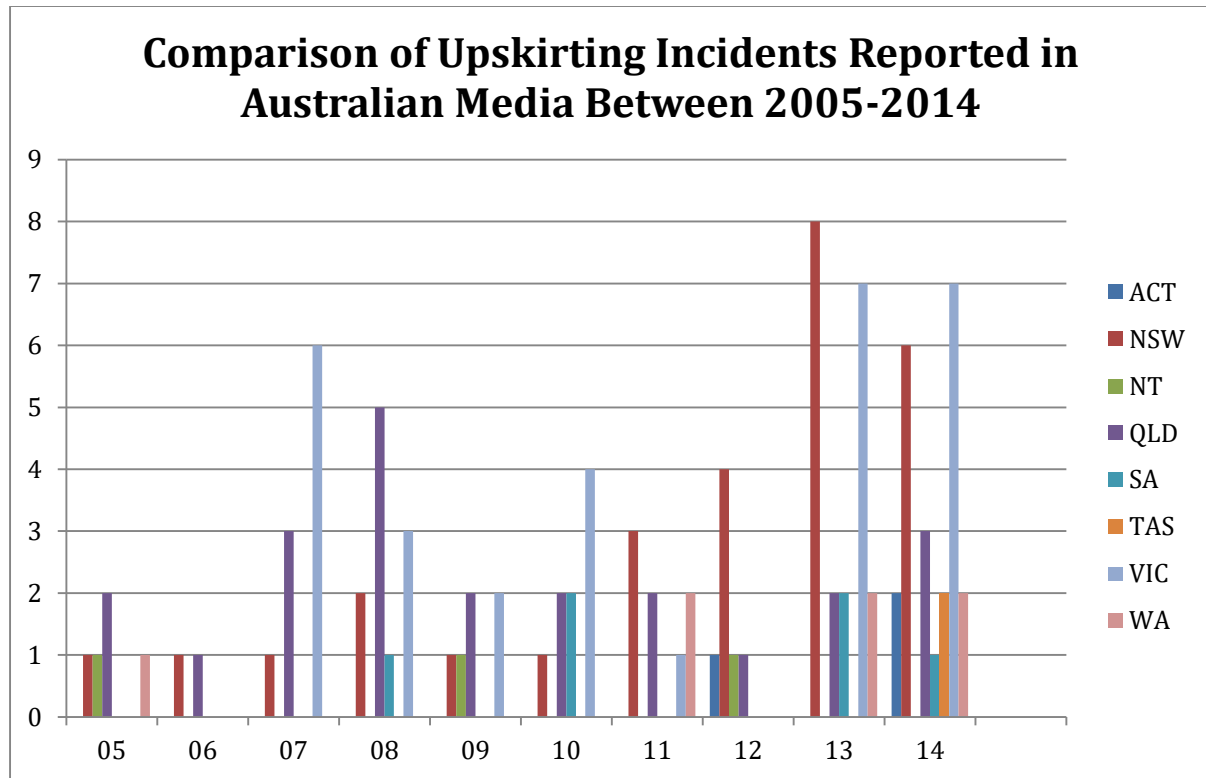
[Last accessed: 7/1/18]

Twitter, (2016), ‘#Creepshot Search’, *Twitter*. Available at: <https://tinyurl.com/yajzn2t2> [Last accessed: 7/1/18]

VoyeurHit, (2016), ‘VoyeurHit Official Facebook Page’, *Facebook.com*. Available at:

<https://tinyurl.com/ydh9k9kf> [Last accessed: 7/1/18]

Appendix Three: Upskirting Incidents in Media Sample by Year and State



X axis=year, Y axis= n. discrete upskirt incidents

References

- Aas, K.F., Pickering, S., Bosworth, M., (2014), 'The Criminology of Mobility', in Pickering, S., Ham, J., (Eds), *The Routledge Handbook on Crime and International Migration*, London, UK: Routledge.
- Adey, P., Bevan, P., (2006), 'Between the Physical and the Virtual: Connected Mobilities', in Urry, J., Sheller, M., (Eds.), *Mobile Technologies of the City*, London, UK: Routledge.
- Albury, K., Lumby, C., (2010), 'Introduction: Children, Young People, Sexuality and the Media', *Media International Australia*, 135(1): 56-60.
- Alcoff, L., (1988), 'Cultural Feminism Versus Postructuralism: The Identity Crisis in Feminist Theory', *Signs: Journal of Women in Culture and Society*, 13(3): 405-436.
- Alheit, P., (1994), 'Everyday Time and Life Time: On the Problems of Healing Contradictory Experiences of Time', *Society and Time*, 3(3): 305-319.
- Allen, J., (2003), *Lost Geographies of Power*, Oxford, UK: Blackwell.
- Amin, A., (2006), 'The Good City', *Urban Studies* 43(5/6): 1009-1023.
- Amin, A., Thrift, N., (2002), *Cities: Reimagining the Urban*, Cambridge, UK: Polity.
- Anchimbe, E.A., (2008), "Veto the War But Let No French Head Fall": Linguistic Avoidance Strategies in Jacques Chirac's Pre-Iraq War Interview Transcripts', *Journal of Language and Politics*, 7(1): 156-170.
- Anderson, B., (1983), *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London, UK: Verso Books.
- Aries, P., (1960), *Centuries of Childhood: A Social History of Family Life*, London, UK: Jonathan Cape.
- Armstrong, G., (1999), 'CCTV and the Social Structuring of Surveillance', *Crime prevention studies*, 10(1): 157-178.

- Artble.com, (2016), 'The Swing', *Artble.com*. Available at:
https://www.artble.com/artists/jean-honore_fragonard/paintings/the_swing [Last accessed: 05/04/18].
- Atfield, C., (2006), 'Dad Snares Pervert on Spycam', *The Courier Mail*, Oct.2. Available at:
<https://tinyurl.com/y89dhssw> [Last accessed: 5/1/18].
- Australian Open, (2016), 'Tennis Australian Open Championship – A Historical Synopsis', *Australian Open*, Jan.13. Available at: <http://www.ausopen.org/tennis-australian-open-championship-a-historical-synopsis/> [Last accessed: 5/01/18].
- Bærenholdt, J.O., (2013), 'Governmobility: The Powers of Mobility', *Mobilities*, 8(1): 20-34.
- Banet-Weiser, S., Miltner, K.M., (2016), '#MasculinitySoFragile: Culture, Structure and Networked Misogyny', *Feminist Media Studies*, 16(1): 171-174.
- Barrie, J., (2015), 'China is Obsessed With a Website That Features Creepshots of London's Hottest Commuters', *Business Insider Australia*, Mar.5. Available at:
<http://www.businessinsider.com.au/china-obsessed-with-tubecrush-net-2015-3> [Last accessed: 06/01/18].
- Barthes, R., (1981), *Camera Lucida: Reflections on Photography*. London, UK: Macmillan.
- Bassett, E. H., O'Riordan, K., (2002), 'Ethics of Internet Research: Contesting the Human Subject Research Model', *Ethics and Information Technology*, 4(3): 233–247.
- Bauman, Z., (2000), *Liquid Modernity*. Cambridge, UK: Polity Press.
- Baxter, H., (2014), 'All Women's Bums Are Not Created Equal, 2014', *The Guardian*, May.27. Available at:
<http://www.theguardian.com/commentisfree/2014/may/27/women-bums-duchess-cambridge-daily-mail> [Last accessed 03/04/16].
- BBC History, (2014), 'Ancient History in Depth: An Anglo-Saxon Tale: Lady Godiva', *BBC History*. Available at:
http://www.bbc.co.uk/history/ancient/anglo_saxons/godiva_01.shtml [Last accessed: 04/01/18].

- BBC, (2018), 'May Disappointed at Upskirting Law Block', *The BBC*, Jun.21. Available at: <https://www.bbc.com/news/uk-politics-44496427> [Last accessed: 2/1/18].
- Beck, U., (1992), *The Risk Society: Towards a New Modernity*. Thousand Oaks, US: SAGE Publications.
- Beck, U., Giddens, A., Lash, S., (1994), *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order*. Palo Alto, US: Stanford University Press.
- Beebeejaun, Y., (2017), 'Gender, Urban Space and the Right to Everyday Life', *Journal of Urban Affairs*, 39(3): 323-334.
- Beer, D., (2009), 'Power Through the Algorithm? Participatory Web Cultures and the Technological Unconscious', *New Media & Society*, 11(6): 985-1002.
- Beer, D., (2012), 'The Comfort of Mobile Media: Uncovering Personal Attachments with Everyday Devices', *Convergence*, 18(4): 361-367.
- Bell, V., Hemmens, C., Steiner, B., (2006), 'Up Skirts and Down Blouses: A Statutory Analysis of Legislative Responses to Video Voyeurism', *Criminal Justice Studies*, 19(3): 301–314.
- Benda-Beckmann, F., Benda-Beckmann, K., (2014), 'Places that Come and Go', in Braverman, I. (ed.), *The Expanding Spaces of Law: A Timely Legal Geography*. Palo Alto, US: Stanford University Press.
- Benedict, H., (1993), *Virgin or Vamp: How the Press Covers Sex Crimes*. Oxford, UK: Oxford University Press.
- Benjamin, W., (1972), *A Short History of Photography*, Oxford, UK: Oxford University Press.
- Bennett-Moses, L., (2007a), 'Recurring Dilemmas: The Law's Race to Keep Up With Technological Change', *University of Illinois Journal of Law Technology & Policy*, 2007(2): 239-285.
- Bennett-Moses, L., (2007b), 'Why Have a Theory of Law and Technological Change', *Minnesota Journal of Law, Science & Technology*, 8(2): 589-606.

- Bennett-Moses, L., (2013), 'How to Think About Law, Regulation and Technology: Problems with 'Technology' as a Regulatory Target', *Law, Innovation and Technology*, 5(1): 1-20.
- Bentham, J., (1791), *Panopticon or The Inspection House (Vol. 2)*, London, UK: T. Payne.
- Berdon, C., (2008), 'NSW: Teacher Who Filmed Up Girls' Skirts Walks Free From Court', *AAP*, Jul. 28. Available at: <https://tinyurl.com/y89vdvy4> [Last accessed: 25/01/19].
- Berger, J., (1972), *Ways of Seeing*, London, UK: Penguin.
- Berger, P., Luckmann, T., (1972), *The Social Construction of Reality*, Harmondsworth, UK: Penguin.
- Berman, H., McKenna, K., Arnold, C. T., Taylor, G., MacQuarrie, B., (2000), 'Sexual Harassment: Everyday Violence in the Lives of Girls and Women', *Advances in Nursing Science*, 22(4): 32-46.
- Bernasconi, R., (1997), 'The Violence of the Face: Peace and Language in the Thought of Levinas', *Philosophy & Social Criticism*, 23(6): 81-93.
- Best, J., (1999), *Random Violence*. Berkeley, CA: University of California Press.
- Best, C., (2007), 'Shower Camera Pervert Jailed for Two Months', *The Australian National News Wire*, Jan.25. Available at: <https://tinyurl.com/y96tmbpy> [Last accessed: 5/01/18].
- Berry, M., Hamilton, M., (2010), 'Changing Urban Spaces: Mobile Phones on Trains', *Mobilities*, 5(1): 111-129.
- Berns, N., (2001), 'Degendering the Problem and Gendering the Blame: Political Discourse on Women and Violence', *Gender and Society*, 15(2): 262-281.
- Beyens, K., Christiaens, J., Claes, B., de Ridder, S., Tournel, H., Tubex, H., (2013), *The Pains of Doing Criminological Research*. New York, US: Academic and Scientific Publishers.
- Billig, M., (1995), *Banal Nationalism*. London, UK: SAGE Publications.

- Bissell, D., (2018), *Transit Life: How Commuting is Transforming Our Cities*. MIT Press.
- Blomley, N.K., (1994), *Law, Space and the Geographies of Power*, New York, NY: Guilford Press.
- Blomley, N., (2007), 'How to Turn a Beggar Into a Bus Stop: Law, Traffic and the Function of the Place', *Urban Studies*, 44(9): 1697-1712.
- Blomley, N., Delaney, D., Kedar, A., (2014), *The Expanding Spaces of Law: A Timely Legal Geography*. Palo Alto, US: Stanford University Press.
- Blum, A., (2003), *The Imaginative Structure of the City*. Ontario, Canada: McGill-Queens Press.
- Born, E., (2016), 'Media Archaeology, Cultural Techniques and the Middle Ages: An Approach to the Study of Media Before the Medium', *Seminar – A Journal of Germanic Studies*, 52(2): 107-133.
- Bourdieu, P., (1977), *Outline of a Theory of Practice*, Cambridge, UK: Cambridge University Press.
- Bourdieu, P., (1991), *Language and Symbolic Power*. Cambridge, US: Harvard University Press.
- Boutros, A., Straw, W., (2010), *Circulation and the City: Essays on Urban Culture*. Ontario, Canada: McGill-Queen's Press.
- Bowcott, O., (2018), 'Upskirting to Become a Criminal Offence Punishable by Two Years in Jail', *The Guardian*, Jun.15. Available at: <https://mail.google.com/mail/u/0/#inbox> [Last accessed: 02/10/18].
- Bowman, C., (1993), 'Street Harassment and the Informal Ghettoization of Women', *Harvard Law Review*, 106: 517-535.
- Bracewell, W., (2000), 'Rape in Kosovo: Masculinity and Serbian Nationalism', *Nations and Nationalism*, 6(4): 563-590.
- Brenzinger, M., (1998), 'Voyeurism: A Harmless Erotic Preference or a Sexual Predator in the Making?' *Crime and Justice International*, 14: 13-14.

- Bridge, G., Watson, S., (2010), *The City Reader*. Oxford, UK: Wiley-Blackwell Publishing.
- Brighenti, A., (2010), *Visibility in Social Theory*. London, UK: Palgrave MacMillan.
- Brown, S., (1998), 'What's the Problem, Girls? CCTV and the Gendering of Public Safety', in Norris, C., Moran, J., (eds.), *Surveillance, Closed Circuit Television and Social Control*, London, UK: Routledge.
- Brownmiller, S., (1975), *Against Our Will: Men, Women and Rape*. New York, US: Simon & Schuster.
- Bryson, N., (1984), *Tradition and Desire: From David to Delacroix*, Cambridge, UK: Cambridge University Press.
- Burton, K.J., (2005), *Submission to the Standing Committee of Attorneys General, Unauthorised Photographs on the Internet and Ancillary Privacy Issues*.
- Burton, K.J., (2006), 'New Visual Recording Offences', *Queensland Lawyer*, 26(4): 188-191.
- Burton, K.J., (2007), 'Criminalisation: Applying a Living-Standard Analysis to Non-Consensual Photography and Distribution', *Queensland University of Technology Law and Justice Journal*, 7: 464-476.
- Burton, K.J., (2009), 'Sexual Offences', in McArdle, J., (ed.), *The Queensland Law Handbook: Your Practical Guide to the Law*, Brisbane, Australia: Caxton Legal Centre Inc. pp.594-605.
- Butcher, S., (2007), 'Sobbing 'Upskirt' Peeper Jailed', *The Sydney Morning Herald*, Jan.25. Available at: <http://tinyurl.com/2dqvog> [Last accessed: 29/10/13].
- Butler, J., (1993), *Bodies that Matter: On the Discursive Limits of "Sex"*. New York, US: Routledge.
- Butler, C., (2009), 'Critical Legal Studies and the Politics of Space', *Social and Legal Studies*, 18(3): 313-332.
- Butler, C., (2012), *Henri Lefebvre: Spatial Politics, Everyday Politics and the Right to the City*, London, UK: Routledge-Cavendish.

- Caffi, C., and Janney, R.W., (1994), Toward a Pragmatics of Emotive Communication. *Journal of pragmatics*, 22(3-4), pp.325-373.
- Caggiano. A., (2015), 'Man Shamed for Trolling Clementine Ford Apologises for Attack'. *The Age*, 26. Jun. Available at: <https://www.smh.com.au/national/man-shamed-for-trolling-clementine-ford-apologises-for-online-attack-20150625-ghxz24.html> [Last accessed:25/01/19].
- Calvert, C., (2004), 'Revisiting the Voyeurism Value in the First Amendment: From the Sexually Sordid to the Details of Death', *Seattle University Law Review*, 27: 721-1063.
- Calvert, C., Brown, J., (2000), 'Video Voyeurism, Privacy and the Internet: Exposing Peeping Toms in Cyberspace', *Cardozo Arts & Entertainment Law Journal*, 18: 469-651.
- Cameron, D., (1992), *Feminism and Linguistic Theory*. London, UK: Springer.
- Campbell, E., (2013), 'Transgression, Affect and Performance: Choreographing the Politics of Urban Space', *British Journal of Criminology*, 53(1): 18–40.
- Canzler, W., Kaufmann, V. and Kesselring, S., (2008), *Tracing Mobilities: Towards a Cosmopolitan Perspective*. Burlington, US: Ashgate Publishing.
- Caputi, J., (1987), *The Age of Sex Crime*. New York, US: Women's Press.
- Carapiet, L., (2005), 'Camera Ban at Pool Makes a Splash', *The Sydney Morning Herald*, Feb.24. Available at: <https://tinyurl.com/y8xlgjx7> [Last accessed: 5/1/18].
- Carline, A., Eastal, P., (2014), *Shades of Grey-Domestic and Sexual Violence Against Women: Law Reform and Society*. London, UK: Routledge.
- Carrabine, E., (2008), *Crime, Culture and the Media*. Cambridge, UK: Polity.
- Carrabine, E., (2011), 'Just Images: Aesthetics, Ethics and Visual Criminology', *The British Journal of Criminology*, 52(3): 463-489.
- Carvalho, M., Smith, P.K., Mahdavi, J., Fisher, S., Russell, S. and Tippett, N., (2008), 'Cyberbullying: Its nature and impact in secondary school pupils', *Journal of child psychology and psychiatry*, 49(4): 376-385.

- Castells, M., (2009), *Communication Power*. New York, US: Oxford University Press.
- Chibnall, S., (1975), 'The Crime Reporter: A Study in the Production of Commercial Knowledge', *Sociology*, 9(1): 49-66.
- Christie, N., (1986), 'The Ideal Victim', in Fattah, E.A., (ed.). *From Crime Policy to Victim Policy*. London, UK: Palgrave Macmillan. pp.17-30.
- Clark, A., (2005), 'These Photos May Be Illegal'. *The Sydney Morning Herald*, Nov.16. Available at: <https://tinyurl.com/y97pknzy> [Last accessed: 5/01/18].
- Clark, R., (2014), '#NotBuyingIt: Hashtag Feminists Expand the Commercial Media Conversation', *Feminist Media Studies*, 14(6): 1108-1110.
- Cohen, S., Taylor, S., (1976), *Escape Attempts: Resistance to Everyday Life*. London, UK: Allen Lane.
- Cohen, S., (1972/2011), *Folk Devils and Moral Panics*. London, UK: Routledge.
- Cole, H., (2018), 'Female HATE LAW: Misogyny Could Become Hate Crime Under a New Review After PMs Finally Pass Upskirting Law', *The Sun*. Sep.5. Available at: <https://www.thesun.co.uk/news/7188313/law-bans-upskirting/> [Last accessed: 2/10/18].
- Commonwealth Law Bulletin, (2004), 'Intimate Covert Filming', *Commonwealth Law Bulletin*, 30: A85. Available at: <https://tinyurl.com/ydf6uysa> [Last accessed: 5/01/18].
- Conaghan, J., (2013), *Law and Gender*. Oxford, UK: Oxford University Press.
- Connell, R.W., (1987), *Gender and Power*. Cambridge, UK: Polity.
- Connell, R.W., (2005), *Masculinities*. Berkeley, CA: University of California Press.
- Cornish, D., Clarke, R., (1986), 'Situational Prevention, Displacement of Crime and Rational Choice Theory', in Heal, K., Laycock, G.K., (eds.), *Situational Crime Prevention: From Theory Into Practice*, London, UK: HMSO. pp.1-16.
- Crang, M., Thrift, N., (2000), *Thinking Space: Critical Geographies*. New York, US: Routledge.

- Creepshot.com, (2016), 'About', *Creepshot.com*. Available at: www.creepshot.com/about [Last accessed: 5/01/18].
- Cresswell, T., (1996), *In Place/Out of Place: Geography, Ideology and Transgression*. Minnesota, US: University of Minnesota Press.
- Cresswell, T., (2006), *On the Move: Mobility in the Modern Western World*. New York, US: Routledge.
- Cresswell, T., (2010), 'Towards a Politics of Mobility', *Environment and Planning D: Society and Space*, 28(1): 17-31.
- Cresswell, T., Merriman, P., (2011), *Geographies of Mobilities: Practices, Spaces, Subjects*. Farnham, UK: Ashgate Publishing Ltd.
- Cuzin, J.P., Fragonard, J.H., (1988), *Jean-Honoré Fragonard: Life and Work: Complete Catalogue of the Oil Paintings*. New York, US: Harry N Abrams Inc.
- Dalton, D., (2006), 'Surveying Deviance, Figuring Disgust: Locating the Homocriminal Body in Time and Space', *Social & Legal Studies*, 15(2): 277-299.
- Dant, T., (2004), *Materiality and Society*. London, UK: McGraw-Hill Education.
- Dant, T., Gilloch, G., (2002), 'Pictures of the Past: Benjamin and Barthes on Photography and History', *European Journal of Cultural Studies*, 5(1): 5-23.
- De Beauvoir, S., (1953), *The Second Sex*. London, UK: Jonathan Cape.
- De Certeau, M., (1984), *The Practice of Everyday Life*. Berkeley, US: University of California Press.
- De Freytas-Tamura, K., (2018), 'U.K. Backs Bill to Make 'Upskirting' a Crime', *The New York Times*, Jun.15. Available at: <https://www.nytimes.com/2018/06/15/world/europe/uk-upskirting-crime-parliament.html> [Last accessed: 2/19/18].
- DeKeseredy, W., Schwartz, M., (2013), *Male Peer Support and Violence Against Women: The History and Verification of a Theory*. Boston, MA: Boston University Press.

- Delaney, D., (2015), 'Legal geography I: Constitutivities, complexities and contingencies', *Progress in Human Geography*, 39(1): 96-102.
- Delyser, D., (2011), 'Flying: Feminisms and Mobilities – Crusading for Aviation in the 1920s', in Cresswell, T., Merriman, P., (eds.), *Geographies of Mobilities: Practices, Spaces, Subjects*. Farnham, UK: Ashgate Publishing.
- Denzin, N.K., (1991), *Images of Postmodern Society: Social Theory and Contemporary Cinema*. London, UK: SAGE Publications.
- Department of Justice (Canada), (2002), 'Voyeurism as a Criminal Offence: Summary of the Submissions (2002)', Available at: <https://tinyurl.com/ydz22hzy> [Last accessed: 7/1/18].
- Derrida, J., (1992), 'Force of Law: The 'Mystical Foundation of Authority'', In Cornell, D., Rosenfeld, M., Carlson, D.G., (eds.). *Deconstruction and the Possibility of Justice*. London, UK: Routledge. pp.3-29.
- Derrida, J., (1996), *Archive Fever: A Freudian Impression*. Chicago, US: University of Chicago Press.
- De Souza e Silva, A., (2006), 'From Cyber to Hybrid: Mobile Technologies as Interfaces of Hybrid Spaces', in Bell, D., Kennedy, P., (eds.), *The Cybercultures Reader 2.0*. London, UK: Routledge. pp.757-772.
- Doane, M.A., (1982), 'Film and the Masquerade: Theorising the Female Spectator', *Screen*, 23(3-4): 74-88.
- Doherty, B., Halloran, J., Webb, C., (2007), 'Gangs Warn of More Ethnic Violence', *The Age*, 16. Jan. Available at: <https://tinyurl.com/y9xa9b6k> [Last accessed: 17/01/19].
- Donaldson, M., (1993), 'What is Hegemonic Masculinity?' *Theory and Society*, 22(5): 643-657.
- Donoghue, D., (2002), *Lady Godiva: A Literary History of the Legend*. Malden, US: Wiley-Blackwell.

- Douglas, M., (1966), *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*. London, UK: Routledge.
- Douglas, M., (1970), *Natural Symbols*. London, UK: Routledge.
- Douglas, M., (1992), *Risk and Blame: Essays in Cultural Theory*. London, UK: Routledge.
- Dowler, K., (2006), 'Sex, Lies and Videotape: The Presentation of Sex Crime in Local Television News', *Journal of Criminal Justice*, 34(4): 383-392.
- Drotner, K., (1992), 'Modernity and Media Panics', in Skovmand, M., Schroder K.C., (Eds.), *Media Cultures: Reappraising Transnational Media*. New York, NY: Routledge. pp.42–62.
- Drücke, R., Zobl, E., (2016), 'Online Feminist Protest Against Sexism: The German-Language Hashtag# Aufschrei', *Feminist Media Studies*, 16(1): 35-54.
- Dubrofsky, R.E., Magnet, S.A., (eds.), (2015), *Feminist Surveillance Studies*. Durham, US: Duke University Press.
- Duffy, M., (2005), 'Cacooned Children: Protection or Paranoia?' *The Daily Telegraph*, Feb.25. Available at: <https://tinyurl.com/yc5l34k6> [Last accessed: 5/01/18].
- Durkheim, E., (1984 [1893]), *The Division of Labor in Society*. New York, NY: Macmillan.
- Dworkin, A., (1974), *Woman Hating*. New York, US: Dutton.
- Dworkin, A., (1983), *Right-Wing Women: The Politics of Domesticated Females*. New York, US: The Women's Press.
- Eisenstein, Z.R., (1988), *The Female Body and The Law*. Berkeley, US: University of California Press.
- Elias, N., (1994), *The Civilizing Process: Sociogenic and Psychogenic Investigations*. Cambridge, UK: Blackwell.
- E-Safety Commission, (2017), *Image-Based Sexual Abuse: Qualitative Research Summary*, Office of the E-Safety Commission, Australian Government.

- Esposito, B., (2016), 'This Woman is Being Trolled After Publicly Calling Out a Man For 'Upskirting' Her', *Buzzfeed*, Mar.24. Available at: <https://www.buzzfeed.com/bradesposito/tegan-portener> [Last accessed: 24/1/17].
- Evans, C., Nguyen, K., (2007), 'Second Man Arrested for Upskirt Pics', *The Age*, Jan. 23. Available at: <https://tinyurl.com/2a3och> [Last accessed: 25/01/19].
- Explanatory Memorandum, (2007), *Summary Offences Amendment [Upskirting] Bill 2007*, Parliament of Victoria, Melbourne. Available at: http://classic.austlii.edu.au/au/legis/vic/bill_em/soab2007413/soab2007413.html [Last accessed: 6/11/18].
- Fairclough, N., (1992), *Discourse and Social Change*. Cambridge, UK: Polity.
- Fairclough, N., (2001), *Language and Power*. London, UK: Pearson Education.
- Fairclough, N., Wodak, R., (1997), 'CDA', in van Dijk T.A., (ed.), *Discourse as Social Interaction*. London, UK: SAGE Publications. pp.258–84.
- Faulkner, J., (2011), 'Vulnerability and the Passing of Childhood in Bill Henson: Innocence in the Age of Mechanical Reproduction', *Parrhesia*, 11: 44-55.
- Featherstone, M., Thrift, N.J., Urry, J., (2005), *Automobilities*. London, UK: SAGE Publications.
- Feenberg, A., (2002), *Transforming Technology: A Critical Theory Revisited*. Oxford University Press.
- Fellner, C., (2016), 'Newcastle Train Upskirting Incident Goes Viral', *The Herald*, Mar.23. Available at: <https://tinyurl.com/yb7h2jkr> [Last accessed: 5/1/18].
- Felson, M., Cohen, L.E., (1980), 'Human Ecology and Crime: A Routine Activity Approach', *Human Ecology*, 8(4): 389-406.
- Felson, M., (1994), *Crime and Everyday Life: Insight and Implications for Society*. Thousand Oaks, CA: Pine.
- Ferrell, J., (2001), *Tearing Down the Streets: Adventures in Urban Anarchy*. New York, UK: Palgrave Macmillan.

- Ferrell, J., (2001), 'Remapping the City: Public Identity, Cultural Space and Social Justice', *Contemporary Justice Review*, 4: 161–180.
- Ferrell, J., (2004), 'Boredom, Crime and Criminology', *Theoretical Criminology*, 8(3): 287–302.
- Ferrell, J., Hayward, K.J., Young, J., (2008), *Cultural Criminology: An Invitation*. London, UK: SAGE Publications.
- Fineman, M.A., Thomadsen, N.S., (eds.), (2013), *At the Boundaries of Law: Feminism and Legal Theory*. London, UK: Routledge.
- Flood, M., (2011), 'Involving men in efforts to end violence against women', *Men and Masculinities*, 14(3): 358–377.
- Flynn, A., Powell, A., Henry, N., (2017), 'Responding to Image-Based Sexual Assault: Results From a National Study', *Paper presented at ANZSOC 2017*. Dec.6.
- Flynn, A., Powell, A and Henry, N.,(2018), 'The Challenges of Policing Image-Based Sexual Abuse', *Paper presented at ANZSOC 2018*, Melbourne.
- Ford, C., (2017a), 'What it Means to Be a Good Bloke', *The Sydney Morning Herald*, Apr.6. Available at: <https://tinyurl.com/y85zrz3o> [Last accessed: 5/1/18].
- Ford, C., (2017b), 'Committing Sexual Assault is Never Out of Character', *The Sydney Morning Herald*, Apr.19. Available at: <https://tinyurl.com/y8astr9o> [Last accessed: 5/1/18].
- Foucault, M., (1972), *The Archaeology of Knowledge*. New York, NY: Pantheon Books.
- Foucault, M., (1975), *Discipline and Punish: The Birth of the Prison*. New York, NY: Vintage Books.
- Foucault, M., (1980), *Power/Knowledge: Selected Interviews and Other Writings*. New York, NY: Pantheon Books.
- Fagnord, J., (1767), *The Swing Picture*. Available at: <http://tinyurl.com/kllcxbf> [Last accessed: 20/11/13].

- Frankland, A., Brown, J., (2014), 'Coercive Control in Same-Sex Partner Violence', *Journal of Family Violence*, 29: 15–22.
- Frisby, D., Featherstone, M., (eds.) (1997), *Simmel on Culture: Selected Writings*. London, UK: SAGE Publications.
- Gadsby, H., (2018), 'Hannah Gadsby Calls out Hollywood on Their Hot Takes on Misogyny', *Vulture*, Dec. 5. Available at: <https://tinyurl.com/y9399dyf> [Last accessed: 30/12/18].
- Galtung, J., Ruge, M.H., (1965), 'The Structure of Foreign News: The Presentation of the Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers', *Journal of Peace Research*, 2(1): 64-90.
- Garcia, S., (2018), 'Beaumont Children Search Continues to Capture the Nation 52 Years After Their Disappearance', *The ABC*, Feb.5. Available at: <https://tinyurl.com/y8jupxvg> [Last accessed: 31/12/18].
- Gardiner, M., (2002), *Critiques of Everyday Life*. New York, US: Routledge.
- Garland. D., (2000), *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, US: University of Chicago Press.
- Garland, D., (2001), 'The Culture of High Crime Societies', *British Journal of Criminology* 40(3): 347–375.
- Gerodetti, N., Bieri, S., (2006), '(Female Hetero) Sexualities in Transition: Train Stations as Gateways', *Feminist Theory*, 7(1): 69-87.
- Giddens, A., (1986), *The Constitution of Society*. Berkeley, US: University of California Press.
- Giles, D., (2005), 'New Law Blitz on Peeper Perverts', *The Sunday Mail*, Nov.6. Available at: <https://tinyurl.com/yc3925fp> [Last accessed: 5/1/18].
- Giuliano, G., (1979), 'Public Transportation and the Travel Needs of Women', *Traffic Quarterly* 33: 607–16.

- Godoy-Pressland, A., (2016), 'No Hint of Bulging Muscles': The Surveillance of Sportswomen's Bodies in British Print Media. *Journalism*, 17(6): 744-759.
- Goffman, E., (1956), *The Presentation of Self in Everyday Life*. New York, US: Random House.
- Goggin, G., (2006), *Cell Phone Culture*. London, UK: Routledge.
- Goode, E., Ben-Yehuda, N., (2010), *Moral Panics: The Social Construction of Deviance*. London, UK: John Wiley & Sons.
- Green, S.P., (2018), 'To See and Be Seen: Reconstructing the Law of Voyeurism and Exhibitionism', *American Criminal Law Review*, 55: 203-258.
- Greenfield, A., (2017), *Radical Technologies: The Design of Everyday Life*. London, UK: Verso Books.
- Greer, C., McLaughlin, E., (2012), 'Media justice: Madeleine McCann, Intermediatization and 'Trial by Media' in the British Press', *Theoretical Criminology*, 16(4): 395–416.
- Gribaldo, A., Zapperi, G., (2012), *Lo Schermo Del Potere: Femminismo e Regime Della Visibilità*. Verona, Italy: Ombre corte.
- Griffin, S., (2015), *Rape: The Politics of Consciousness*. New York, US: Open Road Media.
- Gusfield, J.R., (1986), *Symbolic Crusade: Status Politics and the American Temperance Movement*. Urbana, IL: University of Illinois Press.
- Habermas, J., (1962/1991), *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois*. Cambridge, MA: MIT Press.
- Habermas, J., (1979), 'Conservatism and Capitalist Crisis', *New Left Review*, 115: 73-84.
- Habermas, J., (1981), *Lifeworld and System: A Critique of Functionalist Reason*. Boston, US: Beacon Press.
- Hagan, J., (1980), 'The Legislation of Crime and Delinquency: A Review of Theory, Method and Research', *Law and Society Review*, 14(3): 603-628.

- Haines, F., (2011), *The Paradox of Regulation: What Regulation Can Achieve and What it Cannot*. Cheltenham, UK: Edward Elgar Publishing.
- Hall, S.C., Critcher, C., Jefferson, C., Clarke, T. J., Roberts, B., (1978), *Policing the Crisis: Mugging, the State and Law and Order*. London, UK: Macmillan.
- Hall, T., (2009), 'Footwork: Moving and Knowing in Local Space(s)', *Qualitative Research*, 9(5): 571-585.
- Hall, T., Barrett, H., (2012), *Urban Geography*. London, UK: Routledge.
- Hannam, K., Sheller, M., Urry, J., (2006), 'Editorial: Mobilities, Immobilities and Moorings', *Mobilities*, 1(1): 1–22.
- Hannay, T., (2004), 'Introduction', *Tagsonomy*. Available at: <http://tagsonomy.com/index.php/introduction-timo-hannay/> [Last accessed: 20/11/16].
- Hartsock, N., (1990), 'Foucault on Power: A Theory for Women?' in Nicholson, L. (ed.), *Feminism/Postmodernism*. New York, US: Routledge. pp.157-175.
- Hay, H., (1972), *The Amateur Magician's Handbook*. New York, US: Crowell.
- Hegel, G.W.F., (2015), *Hegel's Aesthetics: Lectures on Fine Art*. Oxford, UK: Oxford University Press.
- Henry, N., Powell, A., (2014), *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture*. Basingstoke, UK: Palgrave Macmillan.
- Henry, N., Powell, A., (2016), 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law', *Social & Legal Studies*, 25(4): 397-418.
- Henry, N., Powell, A., Flynn, A., (2017), *Not Just 'Revenge Pornography': Australian's Experiences of Image-Based Abuse: A Summary Report*. Melbourne, Australia: RMIT.
- Hesford, W.S., (2004), 'Documenting Violations: Rhetorical Witnessing and the Spectacle of Distant Suffering', *Biography*, 27(1): 104-144.
- Hess, K., Waller, L., (2014), 'The Digital Pillory: Media Shaming of 'Ordinary' People for Minor Crimes', *Continuum*, 28(1): 101-111.

- Hier, S.P., (2003), 'Risk and Panic in Late Modernity: Implications of the Converging Sites of Social Anxiety', *British Journal of Sociology*, 54(1): 3-20.
- Highfield, T., (2016), *Social Media Everyday Politics*. Cambridge, UK: Polity.
- Highmore, B., (2002), *Everyday Life and Cultural Theory*. London, UK: Routledge.
- Highmore, B., (2011), *Ordinary Lives: Studies in the Everyday*. London, UK: Taylor and Francis.
- Hine, C., (2015), *Ethnography for the Internet: Embedded, Embodied and Everyday*. London, UK: Bloomsbury Publishing.
- Hobsbawm, E., Ranger, T., (eds.), (1983), *The Invention of Tradition*. Cambridge, UK: Cambridge University Press.
- Holmes, J.S., (2006), 'Bare Bodies, Beaches and Boundaries: Abjected Outsiders and Rearticulation at the Nude Beach', *Sexuality and Culture*, 10(4): 29-53.
- Holmes, M., (2009), *Gender and Everyday Life*. New York, US: Routledge.
- Holroyd, J., (2007), 'Privacy Chief Demands 'Upskirting' Ban', *The Age*, Jan.23. Available at: <http://www.theage.com.au/news/national/privacy-chief-demands-upskirting-ban/2007/01/23/1169518697781.html> [Last accessed: 3/1/18].
- Hosking, W., (2013), 'Upskirt' Text by Teacher', *The Herald Sun*, Jul.9. Available at: <https://tinyurl.com/yb2zutyc> [Last accessed: 5/1/18].
- House, A., (2014), 'Disneyland Dads: Cool or creepy?' *The Daily Telegraph*, Sep.18. Available at: <http://www.dailytelegraph.com.au/travel/hot-dads-at-disneyland-the-instagram-account-you-must-see/news-story/cd809313fe8819afb4efc237d3dbccfa> [Last accessed 03/04/16].
- Hubbard, P., (2003), 'Fear and Loathing at the Multiplex: Everyday Anxiety in the Post-Industrial City', *Capital and Class*, 27(2): 51-75.
- Hughes, J., (2010), 'Restraint and Proliferation in Criminal Law', *Review of Constitutional Studies*, 15: 117-148.

- Huhtamo, E., Parikka, J., (2011), 'Introduction: An Archaeology of Media Archaeology', in Huhtamo, E., Parikka, J., (eds.), *Media Archaeology: Approaches, Applications and Implications*. Berkeley, US: University of California Press. pp.1-24.
- Humphries, D., (ed.), (2009), *Women, Violence and the Media: Readings in Feminist Criminology*. Lebanon, US: University Press of New England.
- Hunt, E., (2007), 'Jail for Peep Filming; Shower, Tennis Sneak Gets 2 Months', *Herald Sun*, Jan.26. Available at: <https://tinyurl.com/ycjt7aqq> [Last accessed: 25/01/19].
- Husserl, E., (1936), *Die Krisis: The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy*. The Hague, Netherlands: Martinus Nijhoff.
- International Commission of Jurists, (2015), *Sexual Violence Against Women: Eradicating Gender Stereotypes and Assumptions in Laws*. Geneva, Switzerland: International Commission of Jurists.
- Ilie, C., (ed.), (2010), *European Parliaments Under Scrutiny: Discourse Strategies and Interaction Practices* (Vol. 38). Amsterdam, The Netherlands: John Benjamins Publishing.
- Iveson, K., (2008), 'Putting the Public Back into Public Space', *Urban Policy and Research*, 16(1): 21-33.
- James, S., Palmer, S. (eds.), (2002), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy*. London, UK: Bloomsbury.
- Jane, E.A., (2016), 'Online Misogyny and Feminist Digilantism', *Feminist Media Studies*, 30(3): 284-297.
- Janney, R.W., (1999), 'The Whole Truth and Nothing But the Truth. Linguistic Avoidance in the OJ Simpson Transcripts', in Lipka, L., Falkner, W., Schmid, H.J., (eds.), *Words, Lexemes, Concepts, Approaches to the Lexicon: Studies in Honour of Leonhard Lipka*. Tübingen, Germany: Gunter Narr Publishing House. pp.259-272.
- Jay, M., (1994), *Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought*. Berkeley, US: University of California Press.

- Jenness, V., (2004), 'Explaining Criminalisation: From Demography and Status Politics to Globalization and Modernization', *Annual Review of Sociology*, 30: 147-171.
- Jensen, O.B., (2009), 'Flows of Meaning, Cultures of Movements – Urban Mobility as Meaningful Everyday Life Practice', *Mobilities*, 4(1): 139-158.
- Jewkes, Y., and Wykes, M., (2012), 'Reconstructing the Sexual Abuse of Children: 'Cyber-Paeds', Panic and Power', *Sexualities*, 15(8): 934-952.
- Jewkes, Y., (2011), 'The Media and Criminological Research', Davies, P., Francis, P. (eds.), *Doing Criminological Research*. London, UK: SAGE Publication. pp.245-261.
- Jewkes, Y., (2015), *Media and Crime*. London, UK: SAGE Publications.
- Jones, A., (2013), *The Feminism and Visual Culture Reader*. London, UK: Routledge.
- Johnson, M., (2008), *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance and Situational Couple Violence*. Boston, MA: Northeastern University Press.
- Jørgensen, M.W., Phillips, L.J., (2002), *Discourse Analysis as Theory and Method*. London, UK: SAGE Publications.
- Kalekin-Fisherman, D., (2013), 'Sociology of Everyday Life', *Current Sociology*, 61(5-6): 714-732.
- Karaian, L., (2012), 'Lolita Speaks: 'Sexting', Teenage Girls and the Law', *Crime, Media, Culture*, 8(1): 57-73.
- Karaian, L., (2014), 'Policing 'Sexting': Responsibilization, Respectability and Sexual Subjectivity in Child Protection/Crime Prevention Responses to Teenagers' Digital Sexual Expression', *Theoretical Criminology*, 18(3): 282-299.
- Karaian, L., (2015), 'Data Doubles and Pure Virtu(e)ality: 'Headless Selfies': Scopophilia and 'Surveillance Porn', in Van der Meulen, E., Heynen, R., (Eds.), *Expanding the Gaze: Gender and the Politics of Surveillance*. Toronto, Canada: University of Toronto Press.

- Kelly, L., (1987), 'The Continuum of Sexual Violence', in Maynard M (ed.) *Women, Violence and Social Control*. London, UK: Palgrave Macmillan. pp.46-60.
- Kelly, L., (1988), *Surviving Sexual Violence*. Cambridge, UK: Polity.
- Kelly, L., (2010), 'The Everyday/Everynightness of Rape: Is it Different in War?' in Sjoberg, L., Via, S., (eds.), *Gender, War and Militarism: Feminist Perspectives*. Santa Barbara, CA: Praeger.
- Kelly, L., Radford, J., (1990), "Nothing Really Happened": The Invalidation of Women's Experiences of Sexual Violence', *Critical Social Policy*, 10(30): 39-53.
- Kertzer, D.I., (1988), *Ritual, Politics and Power*. New Haven, US: Yale University Press.
- Khoja-Moolji, S., (2015), 'Becoming an "Intimate Public": Exploring the Affective Intensities of Hashtag Feminism', *Feminist Media Studies*, 15(2): 347-350.
- King, A., (2004), 'The Prisoner of Gender: Foucault and the Disciplining of the Female Body', *Journal of International Women's Studies*, 5(2): 29-39.
- Kimmel, M., (2010), *Misframing Men: The Politics of Contemporary Masculinities*. New Brunswick, Canada: Rutgers University Press.
- Kirby, K., Emerson, L., (2016), 'As if, or, Using Media Archaeology to Reimagine Past, Present and Future: An Interview with Lori Emerson', *International Journal of Communication*, June: 3216-3229.
- Kirby, M., (2003), '25 years of Evolving Information Privacy Law', *Freedom of Information Review*, 105: 34-38.
- Kittler, F.A., (1986), *Gramophone, Film, Typewriter*. Palo Alto, US: Stanford University Press.
- Kittler, F.A., (1992), *Discourse Networks 1800/1900*. Palo Alto, US: Stanford University Press.
- Kivel, P., (1992), *Men's Work: How to Stop the Violence that Tears Our Lives Apart*. New York, NY: Hazelden.

- Knaus, C., (2014), 'Mobile Phone Peeping Tom Handed Community Service', *The Canberra Times*, Sep.25. Available at: <https://tinyurl.com/ydbmm5xu> [Last accessed: 5/1/18].
- Kogl, A., (2007), *Strange Places: The Political Potentials and Perils of Everyday Spaces*. Lanham, US: Lexington Books.
- Ku, A., (2005), 'Talk Is Cheap, but a Picture Is Worth a Thousand Words: Privacy Rights in the Era of Camera Phone Technology', *Santa Clara Law Review*, 45: 679-1055.
- Knox, P., (2007), 'Creating Ordinary Places: Slow Cities in A Fast World', *Journal of Urban Design*, 10(1): 1-11.
- Kwong, D., (2017), 'Magician Breaks Down How Illusion Works', *Wired*, Jan.8. Available at: <https://www.wired.com/video/2017/08/magician-david-kwong-breaks-down-how-illusions-work/> [Last accessed: 12/01/18].
- Lacey, N., Zedner, L., (2002), 'Legal Constructions of Crime', in Morgan, R., Maguire, M., Reiner, R., (eds.), *The Oxford Handbook of Criminology*. Oxford, UK: Oxford University Press. pp.179-200.
- Ladd, B., (2008), *Autophobia: Love and Hate in the Automotive Age*. Chicago, US: University of Chicago Press.
- Lamb, S., (1991), 'Acts Without Agents: An Analysis of Linguistic Avoidance in Journal Articles on Men Who Batter Women', *American Journal of Orthopsychiatry*, 61(2): 250-257.
- Langton, R., (2009), *Sexual Solipsism: Philosophical Essays on Pornography and Objectification*. Oxford, UK: Oxford University Press.
- Larsden, J., (2014), 'Distance and Proximity', in Adey, P., Bissell, D., Hannam, K., Merriman, P., Sheller, M., (eds.), *The Routledge Handbook of Mobilities*. London, UK: Routledge. pp.125-133.
- Lash, S., (2000), 'Risk Culture', in Caygill, H., Adam, B., Beck, U., van Loon, J. (eds.), *Risk Culture. The Risk SocietyTand Beyond: Critical Issues For Social theory*. London, UK: SAGE Publications.

- Latham, A., McCormack, D., (2004), 'Moving Cities: Rethinking the Materialities of Urban Geography', *Progress in Human Geography*, 28(6): 701-724.
- Lattas, J., (2007), 'Cruising: 'Moral Panic' and the Cronulla Riot'. *The Australian Journal of Anthropology*, 18(3), pp.320-335.
- Law, R., (1999), 'Beyond 'Women and Transport': Towards New Geographies of Gender and Daily Mobility', *Progress in Human Geography*, 23(4): 567-588.
- Law Reform Commission Victoria (LRCV), (2010), *Surveillance in Public Places: Final Report*. Melbourne, Australia: Law Reform Commission.
- Lazar, M.M., (2007), 'Critical (feminist) discourse analysis: Articulating a Feminist Discourse Praxis', *Critical Discourse Studies*, 4(2): 141-164.
- Lefebvre, H., (1987), 'The Everyday and Everydayness', *Yale French Studies*, 73: 7-11.
- Lefebvre, H., (1991), *The Production of Space*. Malden, US: Blackwell.
- Lefebvre, H., (2002), *Critique of Everyday Life: Volume 2*. London, UK: Verso.
- Lefebvre, H., (2004), *Rhythmanalysis: Space, Time and Everyday Life*. London, UK: Continuum.
- Levinas, E., (1991), *Totality and Infinity*. Dordrecht, The Netherlands: Springer.
- Levison, B.P.S., (1987), *Politeness Some Universals in Language Use*. Cambridge, UK: Cambridge University Press.
- Lewis, D., (2012), 'Mental Health Fears About Creepshot Website', *The ABC*, Sep.29. Available at: <https://tinyurl.com/y7gykhdt> [Last accessed: 5/1/18].
- Lum, A.J., (2005), 'Don't Smile, Your Image Has Just Been Recorded on a Camera-Phone: The Need for Privacy in the Public Sphere', *University of Hawai'i Law Review*, 27: 377-549.
- Lupton, D., (1999), 'Dangerous Places and the Unpredictable Stranger: Constructions of Fear of Crime', *Australian & New Zealand Journal of Criminology*, 32(1): 1-15.

- Lupton, D., Tulloch, J., (1999), 'Theorizing Fear of Crime: Beyond the Rational/Irrational Opposition', *British Journal of Sociology*, 50(3): 507-523.
- Lynch, M., (2002), 'Pedophiles and Cyber-predators as Contaminating Forces: The Language of Disgust, Pollution and Boundary Invasions in Federal Debates on Sex Offender Legislation', *Law & Social Inquiry*, 27(3): 529-557.
- Lyons, D.M., Hsu, D.F., Usandivaras, C. Montero, F., (2003), 'Experimental Results From Using A Rank and Fuse Approach For Multi-Target Tracking in CCTV Surveillance', in *Advanced Video and Signal Based Surveillance, 2003. Proceedings. IEEE Conference on IEEE*. pp.67-72.
- MacKinnon, C.A., (1979), *Sexual Harassment of Working Women: A Case of Sex Discrimination*. Bellevue, US: Yale University Press.
- MacKinnon, C.A., (1986), 'Pornography as Sex Discrimination', *Law & Inequality*, 4(1): 38-49.
- MacKinnon, C.A., (1989), 'Sexuality, Pornography and Method: Pleasure under Patriarchy', *Ethics*, 99(2): 314-346.
- MacKinnon, C.A., (1993), *Only Words*. Cambridge, MA: Harvard University Press.
- MacKinnon, C.A., (2007), *Are Women Human*. Cambridge, MA: Belknap Press.
- MacLaren, L., (2002), *Feminism, Foucault and Embodied Subjectivity*. New York, US: University of New York Press.
- Maley, J., (2012), 'The Disturbing Phenomenon of 'Creepshots,' *Stuff.co.nz*, Sep.27.
Available at: <http://www.stuff.co.nz/technology/digital-living/7737701/The-disturbing-phenomenon-of-creepshots> [Last accessed: 5/1/17].
- Marvin, C., (1988), *When Old Technologies Were New: Thinking About Communications in the Late 19th Century*. Oxford, UK: Oxford University Press.
- Marsh, I., Melville, G., (2007), *Crime, Justice and the Media*. London, UK: Routledge.
- Marx, K., Engels, F., (1975/1848), *Manifesto of the Communist Party*, New York, US: International Publishers.

- Marx, G.T., (2016), *Windows Into the Soul: Surveillance and Society in an Age of High Technology*. Chicago, US: University of Chicago Press.
- Mason, P., (2003), *Criminal Visions: Media Representations of Crime and Justice*. London, UK: Taylor and Francis.
- Massey, D.B., (1994), *Space, Place and Gender*. Cambridge, UK: Polity Press.
- Massey, D.B., (1999), 'Space-Time, 'Science' and the Relationship Between Physical Geography and Human Geography', *Royal Geographical Society*, 24(3): 261-276.
- Massey, D.B., (2005), *For Space*. London, UK: SAGE Publications.
- McCausland, V., (2005), 'When Privacy Puts Beaches in the Frame', *The Daily Telegraph*, Jan.15. Available at: <https://tinyurl.com/ya3m96g5> [Last accessed: 5/1/18].
- McClurg, A.J., (1995), 'Bringing Privacy Law Out of the Closet: A Tort Theory of Liability for Intrusions in Public Places', *North Carolina Law Review*, 73(3): 989-2529.
- McConnell-Ginet, S., (2008), "What's in a Name?' Social Labelling and Gender Practices', in Holmes, J., Meyerhoff, M., (eds.), *The Handbook of Language and Gender*. London, UK: Wiley and Sons. pp.69-97.
- McDonald, D., (2012), 'Policing Obscenity', in Johnson, P., Dalton, D., (eds.), *Policing Sex*. London, UK: Routledge. pp.99-114.
- McGlynn, C., Rackley, E., Houghton, R., (2017), 'Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse', *Feminist Legal Studies*, 25(1): 25-46.
- McGlynn, C., Rackley, E., (2017a), 'Image-Based Sexual Abuse', *Oxford Journal of Legal Studies*, 37(3): 534–561.
- McGlynn, C., Rackley, E., (2017b), 'Why 'Upskirting' Needs to Be Made a Sex Crime', *The Conversation*, Aug.15. Available at: <https://theconversation.com/why-upskirting-needs-to-be-made-a-sex-crime-82357> [Last accessed: 5/1/18].
- McGlynn, C., (2018), 'The Upskirting Law Must Focus on Victims, Not Perpetrator Motive', *The Huffington Post*, Sep.11. Available at: <https://tinyurl.com/ybwzbnsx> [Last accessed: 02/10/18].

- McGlynn, C, Johnson, K., (2018), 'It's Time the Government Recognised the Harm of Upskirting and Image-Based Sexual Abuse', *The Huffington Post*, Dec.10. Available at: <https://tinyurl.com/ybgjchhv> [Last accessed: 14/12/18].
- McGregor, K., (2011), 'Man Blames Mum for Taking Up-Skirt Pictures', *The Advertiser*, Jan.15. Available at: <https://tinyurl.com/y9verj8r> [Last accessed: 5/01/18].
- McLuhan, M., (1964), *Understanding Media: The Extensions of Man*. London, UK: Routledge.
- Medew, J., (2007), 'Man, 34, in Court Over Tennis 'Upskirt,' *The Age*, Jan.25. Available at: <https://tinyurl.com/y98v5xhy> [Last accessed: 5/1/18].
- Mellinger, W.M., (1994), 'Toward a Critical Analysis of Tourism Representations', *Annals of Tourism Research*, 21(4): 756-779.
- Mellor, N., (2001), 'Messy Method: The Unfolding Story', *Educational Action Research*, 9(3): 465-484.
- Merleau-Ponty, M., (1964), *The Primacy of Perception*. Evanston, US: Northwestern University Press.
- Merriman, P., (2012), *Mobility, Space and Culture*. London, UK: Routledge.
- Metz, C., (1975), 'The Imaginary Signifier', *Screen*, 16(2): 14-76.
- Meyer, M., (2001), 'Between Theory, Method and Politics: Positioning of the Approaches to CDA', in Wodak, R., Meyer, M., (eds.), *Methods of CDA*. London, UK: SAGE Publications. pp.14-31.
- Michaels, P., (2008), 'Girls Told Not To Jiggle, Men Told Not To Ogle', *The Courier Mail*, Jul.5. Available at: <https://tinyurl.com/y9xujwhs> [Last accessed: 5/1/18].
- Mikkelsen, S., (2008), 'Video Rage at the Beach Warning Over Use of Cameras After Drama', *Noosa Journal*, Nov.6. Available at: <https://tinyurl.com/y7ad858k> [Last accessed: 5/1/18].
- Miller, D., (2010), *Stuff*. Cambridge, US: Polity.

- Millie, A., (2008), 'Anti-Social Behaviour, Behavioural Expectations and an Urban Aesthetic', *British Journal of Criminology*, 48(3): 379-394.
- Millie, A., (2011), 'Value Judgments and Criminalisation', *British Journal of Criminology*, 51(2): 278-295.
- Mitchell, D., (2005), 'The SUV Model of Citizenship: Floating Bubbles, Buffer Zones and the Rise of the "Purely Atomic" Individual', *Political Geography*, 24(1): 77-100.
- Moi, T., (1981), 'Representation of Patriarchy: Sexuality and Epistemology in Freud's "Dora,"' *Feminist Review*, 9(1), 60-74.
- Moore, S.E.H., (2014), *Crime and the Media*. London, UK: Palgrave Macmillan.
- Monahan, T., (2009), 'Dreams of Control at a Distance: Gender, Surveillance and Social Control', *Cultural Studies? Critical Methodologies*, 9(2): 286-305.
- Moran, J., (2005), *Reading the Everyday*. London, UK: Routledge.
- Morgan, D.H., (1992), *Discovering Men*. London, UK: Taylor & Francis.
- Morrell, S., (2005), 'Shooting Through a Lens Darkly', *The Herald Sun*, Feb.7. Available at: <https://tinyurl.com/y7hspfya> [Last accessed: 5/1/18].
- Morris, M., Frow, J., (1993), *Australian Cultural Studies: A Reader*. St Leonards, NSW: Allen and Unwin.
- Mostov, J., (1995), "Our Women's/'Their Women's' Symbolic Boundaries, Territorial Markers and Violence in the Balkans', *Peace & Change*, 20(4): 515-529.
- Mouzos, J., Thompson, S., (2000), 'Gay-Hate Related Homicides: An Overview of Major Findings in NSW', *Trends & Issues in Crime and Criminal Justice* No. 155. Canberra: Australian Institute of Criminology.
- Moxnes, H., (1993), 'Honor and Shame', *Biblical Theology Bulletin*, 23(4): 167-176.
- Mulvey, L., (1975), 'Visual Pleasure and Narrative Cinema', *Screen*, 16(3): 6-18.

- Mulvey, L., MacCabe, C., (1980), 'Images of Woman, Images of Sexuality', in MacCabe, C. (ed.), *Godard: Images, Sounds, Politics*. Bloomington, US: Indiana University Press. pp.79-104.
- Mulvey, L., (2005), 'Repetition and Return: Textual Analysis and Douglas Sirk in the Twenty-First Century', in Gibbs, J., Pye, D. (eds.), *Style and Meaning: Studies in the Detailed Analysis of Film*. Manchester, UK: Manchester University Press. pp.228-43.
- Munro, V., (2011), 'The Role of Power in Gender', in Dowling, K. (ed.), *The Encyclopaedia of Power*. London, UK: SAGE Publications. pp.276-279.
- Munro, V., (2017a), 'The Master's Tools? A Feminist Approach to Legal and Lay Decision-Making', in Burton, M., Watkins, D., (eds.), *Research Methods in Law*. London, UK: Routledge. pp.206-222.
- Munro, V., (2017b), 'Shifting Sands? Consent, Context and Vulnerability in Contemporary Sexual Offences Policy in England and Wales', *Social and Legal Studies*, 26(4): 417-440.
- Meyer, M., (2001), 'Between Theory, Method and Politics: Positioning of the Approaches to CDA', in Fairclough, N. (ed.), *Methods of Critical Discourse Analysis*. London, UK: SAGE Publications. pp.14-31.
- Nakata, S., (2015), *Childhood Citizenship, Governance and Policy: The Politics of Becoming Adult*. London, UK: Routledge.
- Nash, M., Williams, A. (eds.), (2010), *Handbook of Public Protection*. London, UK: Routledge.
- Naughton, K., (2005), 'Phone Pervs Anger; Laws Cannot Cope With New Technology, Say MP', *The Sunday Mail*, Apr.24. Available at: <https://tinyurl.com/ycuhdxgf> [Last accessed: 5/1/18].
- Nead, L., (1992), *The Female Nude: Art, Obscenity and Sexuality*. London, UK: Routledge.
- Newhall, B., (1982), *The History of Photography*. New York, US: The Museum of Modern Art.

- New Zealand Law Commission, (2004), 'Intimate Covert Filming and Current New Zealand Law', *New Zealand Law Commission*. Available at:
<http://www.nzlii.org/nz/other/nzlc/sp/SP15/SP15-3.html> [Last accessed: 3/4/16].
- Nguyen, K., (2007), 'Up-Skirting a Modern-Day Power Trip', *The Age*, Jan 24. Available at:
<https://tinyurl.com/yadmwwqxx> [Last accessed: 25/01/19].
- Nicotra, J., (2009), 'Folksonomy' and the Restructuring of Writing Space', *College Composition and Communication*, 61(1): 259-276.
- No Author, (2004), 'Fine For Topless Phone Photos', *The Age*, Dec.1. Available at:
<http://www.theage.com.au/news/National/Fine-for-topless-phone-photos/2004/12/01/1101577536993.html> [Last accessed: 5/1/18].
- No Author, (2005a), 'Beach Camera Ban Focuses on Perverts', *The Herald Sun*, Jan.17. Available at: <https://tinyurl.com/y7dpd7lh> [Last accessed: 5/1/18].
- No Author, (2005b), 'Technology Gone Crazy', *The Daily Press*, Mar.19. Available at:
<https://tinyurl.com/yb86mssw> [Last accessed: 5/1/18].
- No Author, (2005c), 'Beach Camera Ban Fails', *The Daily Telegraph*, Feb.3. Available at:
<https://tinyurl.com/yantxbvv> [Last accessed: 5/1/18].
- No Author, (2006), 'Alleged Spy Faces Court'. *The Townsville Bulletin*, Jul.12 Available at:
<https://tinyurl.com/y8et8kf> [Last accessed: 5/1/18].
- No Author, (2007a), 'Another Man Charged Over Upskirt Photos', *Australian Associated Press*, Feb.3. Available at: <https://tinyurl.com/y87fmcgn> [Last accessed: 5/01/18].
- No Author, (2007a), 'New Laws to Deal with Perverts: Bracks', *AAP Bulletin Wire*, Jan.26. Available at: <https://tinyurl.com/yagha6xc> [Last accessed: 5/1/18].
- No Author, (2007b), 'Jail for First Upskirt Bandit', *The Australian*, Jan.26. Available at:
<https://tinyurl.com/ybbrmrra> [Last accessed: 5/1/18].
- No Author, (2007c), 'Sydney Man's 'Pervert Pictures'', *The Daily Telegraph*, Jan. 24. Available at: <https://tinyurl.com/y7y9ytae> [Last accessed: 5/1/18].

- No Author, (2007d), 'Ross Sergeant Jailed for Toilet Spy Camera', *News.com*, Oct.3.
Available at: <https://tinyurl.com/y7kt2owl> [Last accessed: 5/1/18].
- No Author, (2007e), 'Shower Voyeur Receives Two Months Jail', *The Australian*, Jan. 25.
Available at: <https://tinyurl.com/y84rbrvl> [Last accessed: 22/01/19].
- No Author, (2008a), 'Leonard Marsden Jailed For Perving With Shoe Cam', *The Daily Telegraph*, Oct.7. Available at: <https://tinyurl.com/ycntskda> [Last accessed: 5/1/18].
- No Author, (2008b), 'Teacher Pervert Walks Free From Court', *The Sydney Morning Herald*, 28. Jul. Available at: <https://tinyurl.com/y8kpqemk> [Last accessed: 5/1/18].
- No Author, (2010), 'Miley Controversy Upskirt Furore Deepens', *MX*. Available at:
<http://search.proquest.com.ezp.lib.unimelb.edu.au/news/docview/497994716/CC9C9CBCE8E648DBPQ/13?accountid=12372> [Last accessed: 3/4/16].
- No Author, (2012), 'Spy Cam Pervert Was Jailed', *North Shore Times*, Jun. 20. Available at:
<https://tinyurl.com/y8nksht4> [Last accessed: 22/01/19].
- No Author, (2013a), 'Shopping Centre Upskirting Sparks Warning to Visiting Sailors', *ABC News*, Jul.11. Available at: <http://www.abc.net.au/news/2013-07-11/upskirting-incident-sparks-warning-to-visiting/4814226> [Last accessed: 7/01/18].
- No Author, (2013b), 'Cleaner Evicted From Flemington Racecourse for Alleged Upskirting', *The Age*, Nov.4. Available at: <https://tinyurl.com/ybhq9j9c> [Last accessed: 5/1/18].
- No Author, (2014a), 'Kendall Jenner Upskirt Photo Instagram Call-out Photographer', *Yahoo7*, Sep.11. Available at: <https://au.lifestyle.yahoo.com/who/latest-news/a/24974117/kendall-jenner-calls-out-photographer-for-upskirt-shot/> [Last accessed: 3/4/16].
- No Author, (2014b), 'Kate Middleton Upskirt Photo Sold to Newspaper', *Australian Women's Weekly*, May.29. Available at: <http://www.aww.com.au/royals/british-royal-family/kate-middleton-upskirt-photo-sold-to-newspaper-for-1000-9316> [Last accessed: 3/4/16].
- No Author, (2014c), 'Minder Hired to Protect Kate Middleton's Bum From Upskirt', *News.com.au*, Jun.3. Available at: <http://www.news.com.au/lifestyle/fashion/minder->

- hired-to-protect-kate-middletons-bum-from-upskirt-shots/story-fnet01u7-1226940667266 [Last accessed: 3/4/16].
- Noyes, J., (2016), 'Man Charged After Woman Caught Him 'Upskirting' Her On A Sydney To Newcastle Train', *The Sydney Morning Herald*, Mar.23. Available at: <https://tinyurl.com/ya6b9rzm> [Last accessed: 5/1/18].
- Nurka, C., (2014), 'Public Bodies', *Feminist Media Studies*, 14(3): 485–499.
- Nussbaum, M., (2010), 'Objectification and Internet Misogyny', in Levmore, S., Nussbaum, M.C., (eds.), *The Offensive Internet*. Cambridge, US: Harvard University Press. pp.68-90.
- O'Neill, T., (2018), "Today I Speak": Exploring How Victim-Survivors Use Reddit', *International Journal for Crime, Justice and Social Democracy*, 7(1): 44-59.
- Ortner, S.B., (1972), 'Is Female to Male as Nature is to Culture?' *Feminist studies*, 1(2): 5-31.
- O'Toole, L., Schiffman, J., Edwards, M., (2007), *Gender Violence*. New York, US: New York University Press.
- Overington, C., (2016), 'Does CCTV Help or Hinder the Reduction of Violence Against Women?', *The Conversation*, Oct. 24. Available at: <https://tinyurl.com/ybw5da9h> [Last accessed: 26/12/18].
- Pain, R., (2014), 'Everyday Terrorism: Connecting Domestic Violence and Global Terrorism', *Progress in Human Geography*, 38(4): 531–550.
- Pandey, R., (2009), 'Reconfiguring Sex, Body and Desire in Japanese Modernity. *Postcolonial Studies*, 12(3): 289-301.
- Parikka, J., (2013), *What is Media Archaeology?* Cambridge, UK: Polity.
- Pateman, C., (1988), *The Sexual Contract*. Palo Alto, US: Stanford University Press.
- Paton-Simpson, E., (2000), 'Privacy and the Reasonable Paranoid: The Protection of Privacy in Public Places', *The University of Toronto Law Journal*, 50(3): 305-346.

- Paul, T., (2011), 'Space, Gender and Fear of Crime', *Gender, Technology and Development*, 15(3): 411-435.
- Pearson, G., (1990), 'Crime and Criminology in Israel: A Personal Account of a British Study Tour', *British Journal of Criminology*, 30(2): 235–243.
- Philippopoulos-Mihalopoulos, A., (2012), 'Atmospheres of Law: Senses, Affects, Lawscapes', *Emotion, Space and Society*, 7: 35–44.
- Piccini, A., (2016), 'Media Archaeologies of The Olympic City', *Public*, 27(53): 58-74.
- Pink, S., (2003), 'Interdisciplinary Agendas in Visual Research: Re-Situating Visual Anthropology', *Visual studies*, 18(2): 179–192.
- Pink, S., (2012), *Situating Everyday Life: Practices and Places*. London, UK: SAGE Publications.
- Pink, S., Horst, H., Postill, J., Hjorth, L., Lewis, T., Tacchi, J., (2016), *Digital Ethnography: Principles and Practice*. London, UK: SAGE Publications.
- Pooley, C., Turnbull, J., Adams. M., (2005), *A Mobile Century? Changes in Everyday Mobility in Britain in the Twentieth Century*. Aldershot, UK: Ashgate.
- Pope, M., (1998), 'Technology Arms Peeping Toms with a New and Dangerous Arsenal: A Compelling Need for States to Adopt New Legislation', *John Marshall Journal of Computer and Information Law*, 17: 1167-1235.
- Postill, J., Pink, S., (2012), 'Social Media Ethnography: The Digital Researcher in a Messy Web', *Media International Australia*, 145(1): 123-134.
- Powell, A., (2018), 'Image Abused Sexual Abuse: The Extent, Nature and Predictors of Perpetration in a Community Sample of Australian Adults', conference Paper presented at the *British Society of Criminology*.
- Powell, A., Stratton, G., Cameron, R., (2018), *Digital criminology: Crime and justice in Digital Society*. London, UK: Routledge.

- Powell, A., (2010), 'Configuring Consent: Emerging Technologies, Unauthorized Sexual Images and Sexual Assault', *Australian and New Zealand Journal of Criminology*, 43(1): 76–90.
- Powell, A., Henry, N., (2017), *Sexual Violence in a Digital Age*. London, UK: Palgrave Macmillan.
- Powell, A., O'Neil, T., (2016), 'Cyber Justice: How Technology is Supporting Victim-Survivors of Rape', *The Conversation*, Apr.5. Available at: <https://tinyurl.com/y75j4zb7> [Last accessed: 7/1/18].
- Presdee, M., (2000), *Cultural Criminology and the Carnival of Crime*. London, UK: Routledge.
- Prosser, W.L., (1960), 'Privacy, a Legal Analysis', *California Law Review*, 48(3): 338-423.
- Quentin, S., (2007), *The Ludic City*. New York, NY: Routledge.
- Quigley, P., (2013), 'Realism and Eroticism: Re-Reading Bazin', *Paragraph*, 36(1): 31-49.
- Quintarelli, E., (2005), 'Folksonomies: Power to the People', *ISKO Italy – UniMIB Meeting*, Milan. Dec.13. Available at: <http://www.iskoi.org/doc/folksonomies.htm> [Last accessed: 7/1/18].
- Ralston, N., (2013), 'Up-Skirt Accused Needs Compassion, Says Principal', *The Sydney Morning Herald*, Aug. 9. Available at: <https://tinyurl.com/y9c5b2xx> [Last accessed: 25/01/19].
- Razack, S., (1998), *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms*. Toronto, Canada: University of Toronto Press.
- Reith, G., (2004), 'Uncertain Times: The Notion of 'Risk' and the Development of Modernity', *Time and Society*, 13(2/3): 382-402.
- Reyes, I., Dholakia, N., Bonoff, J.K., (2015), 'Disconnected/Connected: On the "Look" and the "Gaze" of Cell Phones', *Marketing Theory*, 15(1): 113-127.
- Richards, D.L., Haglund, J., (2015), *Violence Against Women and the Law*. London, UK: Routledge.

- Rich, A., (1978), *Women and Honor: Some Notes on Lying*. Pittsburgh, US: Motherroot Publications.
- Rogers, E., (2015), 'Survey: Australian Smartphone and Tablet Usage', *Snakk!*, Feb.6.
Available at: <http://blog.snakkmedia.com/survey-tells-us-how-australians-use-smartphones-and-tablets/> [Last accessed: 3/4/16].
- Romito, P., (2008), *A Deafening Silence: Hidden Violence Against Women and Children*, Cambridge, UK: Policy Press.
- Ronneberger, K., (2008), 'Henri Lefebvre and Urban Everyday Life: In Search of the Possible', in Goonewardena, K., Kipfer, S., Milgrom, R., Schmid, C., (eds.), *Space, Difference, Everyday Life: Reading Henri Lefebvre*, London, UK: Routledge. pp.134-146.
- Rose, E., (2015), 'A Reconceptualization of Intimate Partner Violence Against Women: A Crime Against Humanity and A State Crime', *Women's Studies International Forum*, 53: 31-42.
- Rose, N., Valverde, M., (1998), 'Governed by Law?' *Social & Legal Studies*, 7: 541–551.
- Rosenbloom, S., (1978), 'The Need For Study of Women's Travel Issues', *Transportation*, 7: 347–50.
- Rothenberg, L.E., (2000), 'Re-Thinking Privacy: Peeping Toms, Video Voyeurs and Failure of the Criminal Law to Recognize a Reasonable Expectation of Privacy in the Public Space', *American University Law Review*, 49: 1127–1165.
- Russell, M., (2007), 'Privacy Threatened by Rise in Hidden Cameras', *The Age*, Sep.30.
Available at: <https://tinyurl.com/y9o2ezlf> [Last accessed: 5/1/18].
- Ruti, M., (2016), *Feminist Film Theory and Pretty Woman*. London, UK: Bloomsbury.
- Sanghani, R., (2014), 'How Online Creeps Just Got Even Creepier', *The Telegraph*, Jul.24.
Available at: <http://www.telegraph.co.uk/women/womens-life/10987816/Creep-shot-Twitter-trend-how-creeps-just-got-creepier.html> [Last accessed: 5/1/18].

- Salter, M., (2016), 'Privates in the Online Public: Sex(ting) and Reputation on Social Media', *New Media & Society*, 18(11): 2723-2739.
- Sassetelli, R., (2011), 'Interview with Laura Mulvey: Gender, Gaze and Technology in Film Culture', *Theory, Culture & Society*, 28(5): 123-143.
- Schatzki, T., (2001), *Social Practice: A Wittgensteinian Approach to Human Activity and the Social*. Cambridge, UK: Cambridge University Press.
- Scheppele, K.L., Bart, P.B., (1983), 'Through Women's Eyes: Defining Danger in the Wake of Sexual Assault', *Journal of Social Issues*, 39: 63–80.
- Schmid, C., (2008), 'Henri Lefebvre's Theory of the Production of Space: Towards a Three-Dimensional Dialectic', in Goonewardena, K., Kipfer, S., Milgrom, R., Schmid, C., (eds.), *Space, Difference, Everyday Life: Reading Henri Lefebvre*. London, UK: Routledge. pp.27-45.
- Schroeder, J.E., McDonagh, P.M., (2006), 'The Logic of Pornography in Digital Camera Promotion', in Reichert T., Lambiase J. (eds.), *Sex in Consumer Culture: The Erotic Content of Media and Marketing*. London, UK: Routledge. pp.219-242.
- Schütz, A., (1962), *Collected Papers*. The Hague, Netherlands: Martinus Nijhoff.
- Schütz, A., (1967), *The Phenomenology of the Social World*. Evanston, US: North-western University Press.
- Scully, D., Marolla, J., (1984), 'Convicted Rapists' Vocabulary of Motive: Excuses and Justifications', *Social problems*, 31(5): 530-544.
- Seale, C., (ed.), (2004), *Researching Society and Culture*. London, UK: SAGE Publications.
- Sennett, R., (1977), *The Fall of Public Man*. New York, US: Knopf.
- Sennett, R., (1996), *Flesh and stone: The Body and the City in Western Civilization*. London, UK: WW Norton & Company.
- Shields, R., (2013), *Spatial Questions*. London, UK: SAGE Publications.
- Sheller, M., Urry, J., (2006), *Mobile Technologies of the City*. London, UK: Routledge.

- Simmel, G., (1971/1908), *On Individuality and Social Forms: Selected Writings [of] Georg Simmel*. Chicago, US: University of Chicago Press.
- Skeggs, B., (2004), *Class, Self and Culture*, London, UK: Routledge.
- Skey, M., (2009), 'The National in Everyday Life: A Critical Engagement with Michael Billig's Thesis of Banal Nationalism', *The Sociological Review*, 57(2): 331-346.
- Smart, C., (1989), *Feminism and the Power of Law*. London, UK: Routledge.
- Smith, D.E., (1987), *The Everyday World as Problematic: A Feminist Sociology*. Toronto, Canada: University of Toronto Press.
- Smith, J.L., Huntoon, M., (2014), 'Women's Bragging Rights: Overcoming Modesty Norms to Facilitate Women's Self-Promotion', *Psychology of Women Quarterly*, 38(4): 447-459.
- Shields, R., (2013), 'Lefebvre and the Right to the Open City?' *Space and Culture*, 16(3): 345-348.
- Smith, M., (2008), *Visual Culture Studies: Interviews with Key Thinkers*. London, UK: SAGE Publications.
- Soja, E.W., (1989), *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. London, UK: Verso.
- Sontag, S., (1977), *On Photography*. London, UK: Picador.
- Soothill, K., Walby, S., (1991), *Sex Crime in the News*. London, UK: Routledge.
- Souter, F., (2007), 'Beauty and the Breast', *The Age*, Dec.22.
- Loader, I., Sparks, R., (2010), 'What is to Be Done with Public Criminology?' *Criminology & Public Policy*, 9(4): 771-781.
- Spencer, D., (2009), 'Sex offender as Homo Sacer', *Punishment & Society*, 11(2): 219-240.
- Spender, D., Bardin, N., (1985), *Manmade Language*. London, UK: Routledge.

- Stache, L.C., (2015), 'Advocacy and Political Potential at The Convergence of Hashtag Activism and Commerce', *Feminist Media Studies*, 15(1): 162-164.
- Staiger, J., (2005), *Media Reception Studies*. New York, US: New York University Press.
- Standing Committee of Attorneys-General, (2005), *Unauthorised Photographs on the Internet and Ancillary Privacy Issues*, Standing Committee of Attorneys-General.
- Stanko, E., (1985), *Intimate Intrusions: Women's Experience of Men's Violence*. London, UK: Routledge.
- Stanko, E., (1990), *Everyday Violence: How Women and Men Experience Sexual and Physical Assault*. New York, US: HarperCollins.
- Stanko, E., (1995), 'The Commercialisation of Women's Fear', in Skogan, W. (ed.), *Reactions to Crime and Violence*. London, UK: SAGE Publications. pp.79-85.
- Stanko, E., (2006), 'Theorizing About Violence: Observation from the Economic and Social Research Council's Violence Research Program', *Violence Against Women*, 12(6): 543-555.
- Staples, W.G., (2014), *Everyday Surveillance: Vigilance and Visibility in Postmodern Life*, Lanham, US: Rowman & Littlefield.
- Stark, E., (2007), *Coercive Control: How Men Entrap Women in Personal Life*. Oxford, UK: Oxford University Press.
- Stevenson, D., (2013), *The City*. London, UK: John Wiley & Sons.
- Stewart, S., (1993), *On Longing: Narratives of the Miniature, the Gigantic, the Souvenir, the Collection*. Durham, US: Duke University Press.
- Sumiala, J., (2012), *Media and Ritual: Death, Community and Everyday Life*. London, UK: Routledge.
- Summary Offences Amendment [Upskirting] Bill 2007, (2007), 'Parliamentary Debates (Hansard): Legislative Assembly Fifty-Sixth Parliament First Session Wednesday, 8th August 2007 (extract from book 11)', *Parliament of Victoria*, Victoria. Available at: <http://www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Jul->

- Dec%202007/Assembly%20Jul%202007-Dec%202007%20Weekly%20Book%2011.pdf [Last accessed: 5/6/15].
- Sutherland, E.H., (1950), 'The Diffusion of Sexual Psychopath Laws', *American Journal of Sociology*, 56(2): 142–148.
- Sykes, G.M., Matza, D., (1957), 'Techniques of Neutralization: A Theory of Delinquency', *American Sociological Review*, 22(6): 664-670.
- Tait, A., (2018), 'One in Ten Men Don't Think Upskirting is a Form of Sexual Harassment – We Investigated Why', *GQ*, Oct.28. Available at: <https://www.gq-magazine.co.uk/article/what-is-upskirting> [Last accessed: 31/10/18].
- Tansey, J., O'riordan, T., (1999), 'Cultural Theory and Risk: A Review', *Health, Risk & Society*, 1(1): 71-90.
- Thompson, C., Wood, M.A., (2018), 'A Media Archaeology of the Creepshot', *Feminist Media Studies*, 18(4): 560-574.
- Thrift, N.J., (1996), *Spatial Formations*. London, UK: SAGE Publications.
- Thrift, N., (2005), 'Driving in the City', in Urry, J., Thrift, N, Featherstone, M. (Eds.), *Automobilities*. London, UK: SAGE Publications. pp.41–60.
- Thrift, N., (2004), 'Remembering the Technological Unconscious by Foregrounding Knowledges of Position', *Environment and planning D: Society and space*, 22(1): 175-190.
- Thrift, N., (2008), *Non-Representational Theory: Space, Politics, Affect*. London, UK: Routledge.
- Thrift, N., May, J., (2001), *Timespace: Geographies of Temporality*. London, UK: Routledge.
- Tinkler, C., (2007), 'Upskirt Picture Ban', *The Sunday Herald Sun*, May.27. Available at: <https://tinyurl.com/y7o5kz3q> [Last accessed: 5/1/18].
- Tonkiss, F., (2003), 'The Ethics of Indifference: Community and Solitude in the City', *International Journal of Cultural Studies*, 6(3): 297-311.

- Tonkiss, F., (2005), *Space, the City and Social Theory: Social Relations and Urban Forms*. Cambridge, UK: Polity.
- Tran, M., (2015), 'Combatting Gender Privilege and Recognizing a Woman's Right to Privacy in Public Spaces: Arguments to Criminalize Catcalling and Creepshots', *Hastings Women's Law Journal*, 26(2): 185-206.
- Trant, J., (2009), 'Studying Social Tagging and Folksonomy: A Review and Framework', *Journal of Digital Information*, 10(1): 1-44.
- Treasure, A., (2013), 'Comment: A Bone to Pick With Smartphone Camera Voyeurism', *SBS News*, Oct.31. Available at: <http://www.sbs.com.au/news/article/2013/10/31/comment-bone-pick-smartphone-camera-voyeurism> [Last accessed: 3/4/16].
- Tuan, Y.F., (1977), *Space and Place: The Perspective of Experience*. Minnesota, US: University of Minnesota Press.
- Tulbert, D.J., (2016), *Human-Machine Interface*. U.S. Patent Application 14/599,591.
- Tullberg, J., (2007), 'Peeping Tom's Sentence "Too Lenient"', *The Sydney Morning Herald*, Nov. 13. Available at: <https://tinyurl.com/yc4prffv> [Last accessed: 25/01/19].
- Ulanowicz, A., (2016), 'Philip Aries', *Representing Childhood*. Available at: <http://www.representingchildhood.pitt.edu/pdf/aries.pdf> [Last accessed: 5/1/18].
- Upskirt, (2008), 'Upskirt', *People.tribe.net*, Feb.4. Available at: <http://tinyurl.com/ktynm5w> [Last accessed: 20/11/13].
- Urry, J., (1990), *The Tourist Gaze: Leisure and Travel in Contemporary Societies*. London, UK: SAGE Publications.
- Urry, J., (1996), *Consuming Places*. Oxford, UK: Taylor and Francis.
- Urry, J., (2004), 'The 'System' of Automobility', *Theory Culture Society*, 21: 24–38.
- Urry, J., (2006), *Mobilities*. New York, US: Wiley.
- Urry, J., Larsen, J., (2011), *The Tourist Gaze 3.0*. London, UK: SAGE Publications.

- Valverde, M., (2012), *Everyday Law on the Street: City Governance in an Age of Diversity*. Chicago, US: The University of Chicago Press.
- Valverde, M., (2011), 'Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance', *Law & Society Review*, 45(2): 277-312.
- Valverde, M., (2014), 'Studying the Governance of Crime and Security: Space, Time and Jurisdiction', *Criminology & criminal justice*, 14(4), 379-391.
- Vera-Gray, F., (2016a), 'Men's Stranger Intrusions: Rethinking Street Harassment', *Women's Studies International Forum*, 58: 9-17.
- Vera-Gray, F., (2016b), *Men's Intrusion, Women's Embodiment: A Critical Analysis of Street Harassment*. London, UK: Routledge.
- Vera-Gray, F., (2018), *The Right Amount of Panic: How Women Exchange Freedom for Safety in Public Space*. Cambridge, UK: Policy Press.
- Verghis, S., (2005), 'Shutter Shutdown', *Sunday Morning Herald*, Feb.26. Available at: <http://www.smh.com.au/news/National/Shutter-shutdown/2005/02/25/1109180112027.html> [Last accessed: 6/1/18].
- VicHealth, (2017), *Gender, Equality, Health and Well-Being Strategy 2017*. Melbourne, Australia: Victorian Government.
- Victorian Government, (2016), *Royal Commission into Family Violence: Summary and Recommendations*. Melbourne, Australia: Parliament of Victoria.
- Victorian Parliament, (2007a), Summary Offences Amendment [Upskirting] Bill 2007. Parliamentary Debates (Hansard): Legislative Assembly Fifty-Sixth Parliament First Session Wednesday, 8th August (extract from book 11) *Parliament of Victoria*, Victoria. Available at: <https://tinyurl.com/yclrmql6> [Last accessed: 5/6/15].
- Victorian Parliament, (2007b), 'Summary Offences Amendment [Upskirting] Bill 2007. Introduction Print: Explanatory Memorandum', *Parliament of Victoria*, Victoria. Available at: <https://tinyurl.com/yclrmql6> [Last accessed: 5/6/15].
- Virilio, P., (1977), *Speed and Politics*, Cambridge, US: MIT Press.

- Virilio, P., (1991), *The Lost Dimension*. New York, US: Semiotext(e).
- Vitis, L., Gilmour, F., (2017), 'Dick Pics on Blast: A Woman's Resistance to Online Sexual Harassment Using Humour, Art and Instagram', *Crime, Media, Culture*, 13(3): 335-355.
- Von Hirsch, A., Jareborg, N., (1991), 'Gauging Criminal Harm: A Living-Standard Analysis', *Oxford Journal of Legal Studies*, 11(1): 1-38.
- Wagenaar, W., (2016), 'Wacky Japan: A New Face of Orientalism', *Asia in Focus: A Nordic Journal on Asia by Early Career Researchers*, (3): 46-54.
- Walgrave, S., Soroka, S., Nuytemans, M., (2008), 'The Mass Media's Political Agenda-Setting Power: A Longitudinal Analysis of Media, Parliament and Government in Belgium (1993 to 2000)', *Comparative Political Studies*, 41(6): 814-836.
- Warner, M., (2002), 'Publics and Counterpublics', *Public Culture*, 14(1): 49-90.
- Warren, C., (2011), 'The Eyes Have It', *Ethnography*, 12(4): 543-555.
- WatchMojo.com, (2016), 'Top Ten WTF Japanese Game Show Moments', *WatchMojo.com*. Available at: <https://www.youtube.com/watch?v=f-QSlmrV2JA> [Last accessed: 6/11/18].
- Westmarland, N., (2015), *Violence Against Women: Criminological Perspectives on Men's Violence*. London, UK: Routledge.
- Wheatley, K., (2006), 'Cracking Down on Perverts: Hidden Camera Laws Plan', *The Sunday Mail*, Sep.17. Available at: <https://tinyurl.com/ycv48556> [Last accessed: 5/1/18].
- White, M., (2006), 'The Camera Mind and Eye', in Traub, C., Heller, S., Bell, A.B., (eds.), *The Education of a Photographer: Vol. 10*. New York, US: Allworth Press. pp.123-144.
- Williams, R., (1958), *Culture and Society*. Harmondsworth, UK: Penguin.
- Williams, S., (2015), 'Digital Defence: Black Feminists Resist Violence with Hashtag Activism', *Feminist Media Studies*, 15(2): 341-344.

- Wodak, R., (1997), 'Introduction: Some Important Issues in the Research of Gender and Discourse', in Wodak, R., (ed.), *Gender and Discourse*. London, UK: SAGE Publications. pp.4-20.
- Wodak, R., (2001), 'The Discourse-Historical Approach', in Wodak, R., Meyer, M., (Eds.), *Methods of CDA*. London, UK: SAGE Publications. pp.63-94.
- Wood, M.A., (2017a), 'Antisocial Media and Algorithmic Deviancy Amplification: Analysing the id of Facebooks Technological Unconscious', *Theoretical Criminology*, 21(2): 168-185.
- Wood, M.A., (2017b), *Antisocial Media: Crime-Watching in the Internet Age*. London, UK: Palgrave Macmillan.
- Wood, M.A., Rose, E., Thompson, C., (2018), 'Viral Justice? Online Justice Seeking, Intimate Partner Violence and Affective Contagion', *Theoretical Criminology*, DOI: 1362480617750507.
- Wood, M.A., Thompson, C., (2018), 'Crowdsourced Countersurveillance: A Countersurveillant Assemblage?' *Surveillance & Society*, 6(1): 20-38.
- Wooffitt, R., (2005), *Conversation Analysis and Discourse Analysis: A Comparative and Critical Introduction*. London, UK: SAGE Publication.
- World Health Organization, (1997), *Violence Against Women: La Violence Contre Les Femmes*. Geneva, Switzerland: World Health Organization.
- Yavuz, N., Welch, E.W., (2010), 'Addressing Fear of Crime in Public Space: Gender Differences in Reaction to Safety Measures in Train Transit', *Urban Studies*, 47(12): 2491-2515.
- Young, A., (1998), 'The Waste Land of the Law, the Wordless Song of the Rape Victim', *Melbourne University Law Review*, 22: 442-465.
- Young, A., (2012), 'Criminal Images: The Affective Judgment of Graffiti and Street Art', *Crime, Media, Culture*, 8(3): 297-314.
- Young, J., (1999), *The Exclusive Society*. London, UK: SAGE.

- Young, J., Ferrell, J. Hayward, K., (2008), *Cultural Criminology: An Invitation*. London, UK: SAGE Publication.
- Zeronda, N.D., (2010), 'Street Shootings: Covert Photography and Public Privacy', *Vanderbilt Law Review*, 63(4): 1131-1159.
- Zerubavel, E., (2006), *The Elephant in the Room: Silence and Denial in Everyday Life*. Oxford, UK: Oxford University Press.
- Zinn, J.O., (2008), 'Heading into the Unknown: Everyday Strategies for Managing Risk and Uncertainty', *Health, Risk and Society*, 10(5): 439-450.
- Zinn, J.O., (2016), 'In-Between' and Other Reasonable Ways to Deal with Risk and Uncertainty', *Health, Risk and Society*, 18(7): 348-366.