Law's Haze, Police Ways, and Tech's Maze: Relationships between American law, crime, and technology

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In this dissertation, I explore the role of law in policing operations targeting cyber sex offenders in the United States. Specifically, I examine enforcement in this crime arena as part of an ongoing expansion within the carceral, surveillance, risk-based state. I argue that imprecision and lack of clarity within American law – particularly in the evolving world of online interactions – generate hazy, arbitrary applications in law enforcement. On this point, I submit that absence of legal clarity undermines law enforcement efforts to address crimes – both within and beyond the cyber world. Distinctive spaces of online and tech-based socialization, paired with the rapid evolution of technology, produce complex conditions for law enforcement. These components are further nourished – indeed, created – by a pervasive lack of clarity within the law. In short, law is unable to keep pace with the evolving nature of crime, the technologies of crime, and finally, the technologies of crime response, deterrence, and prevention. In chronicling the history of American sex crimes law enforcement broadly and cyber sex crimes specifically, I trace the role of unclear law in the ongoing project of carceral state development. Through my work on a State-mandated taskforce reviewing the Connecticut Sex Offender Registry, I also document impetuses of carceral state construction in the criminal justice apparatus for cataloging, monitoring, tracking, and surveilling of offenders. Moreover, I detect within the shift toward risk-assessment criminal justice sanctions the move to predict and identify not-yet-offenders among the civilian population – a premise of the carceral state drive to subsume the legal into those rendered illegal; the nonpunitive into the punitive; the civil into the penal.
Law’s Haze, Police Ways, and Tech’s Maze

*Relationships between American law, crime, and technology*

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Law’s Haze, Police Ways, and Tech’s Maze

*Relationships between American law, crime, and technology*

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I could not have walked this journey alone.
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Prologue
In preparation for dissertation work, I had the opportunity to take Dr. Andrew Deener’s Sociology Qualitative Methods I Seminar during the Fall of 2013 at the University of Connecticut. For the course, I conducted semi-structured interviews with a primary contact, “Trooper A,” who at the time was a state police detective and twenty-one-year veteran on the force. We held weekly meetings and conversations in public spaces usually lasting upwards of two to two and a half hours. Trooper A put me into touch with another state Trooper B, with whom I was able to speak on several occasions via phone and on occasion in-person. The following exchange comes from one of those conversations with Trooper A.

“So you still focusing on computer crimes?”

“Well, I think that the focus will remain on technology-assisted, technology-based crimes, but that I am more flexible to shifting the focus to major crimes policing as well.”

“Yeah, good choice. I mean, most of the crimes today do revolve around some sort of technological device: phone, IPad, laptop. You name it. Besides, the computer crimes lab doesn’t even work with phones. They don’t have the equipment or training really to do so. We usually send our guys up there to process the evidence on some of the equipment there. But again, it’s our own guys. It’s not the computer crimes people doing it. I mean, look around and think about it. Would you say you spend time on the phone more than your laptop?”

“Oh, yeah, I would say it’s probably more in favor of the phone actually in terms of the breakdown. Maybe only when I am writing do I rely on my laptop more.”

“Exactly, so there you go. Same with people who commit crimes. They are going to use the convenience of the phone. It’s like the alpaca case. I’ll never forget the kid in that one. I sat him down for questioning and all he was doing was texting, thinking that I couldn’t see his thumbs moving on the phone keypad. Trying to be covert. I shut him down right away.”

“The alpaca case? Oh, the one from a couple of years ago when the two kids allegedly murdered all those alpacas on that farm in No-Name-Town?”

“Yes, that’s the one. And so anyway, here this kid is sitting before me for questioning and he’s trying to be all like ‘oh, you can’t see me texting my partner in crime, ha!’ Well, after I question him, I tell him that I am seizing his phone. He gets all arrogant and says, ‘You can’t take my phone, you need a warrant for that!’ I tell the punk, actually, I don’t need a warrant for this item. So you’re going to hand it over.”

“And what did he do?” I ask with bursting curiosity.

“He did. He did it reluctantly, but he handed it over. And boy, did I have to quickly make sure I got that to the lab for processing. Didn’t want to give him and his buddy time to disconnect the

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1 Pseudonym used to protect anonymity of law enforcement source.
phone and erase information. You know, you can do that with an IPhone. Erase any information, data, remotely. It’s horrible for us as police. I mean, it’s a privacy thing for the phone’s owner. But it really makes it hard for us police to make sure we get the evidence we need right then and there before it disappears. And you know, here he is trying to tell me how to do my job. Can’t stand that, I wanted to tell him not to tell me how to do my job. Little did he know that there are seven exceptions to the search warrant mandate. Seven exceptions that we can apply – like, for example, in exigent circumstances – situations where we have strong reason to believe that if we don’t get the item now, important evidence may be lost forever. But even then, I could only take his phone. I could only seize it for processing. It’s not like I could go through it and start scrolling for information. I had to then write up a search warrant for the contents of the phone after his questioning.”

This manuscript is about law, police, sex, crime, and technology. It is about how American law enforcement – and American society – is positioned in the crosshairs of Information Age law and order. It is about how law – along with its enforcers and breakers – operates in the wending rabbit-hole that is the online world. It is about how law, police, sex crimes, and technology come together to fuel the fire and fan the flames of the expanding carceral, surveillance-obsessed, risk-based state. And maybe, just maybe, it is about how citizens can do something about it.
Chapter One
Law’s Haze, Police Ways, and Tech’s Maze

*Relationships between American law, crime, and technology*

Sex offenders are our modern-day monsters, producing tidal waves of public demand.2

As the Internet filled with people, people filled the Internet with everything that was the worst and best about humanity...[i]n response, all police became the Internet police.3

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Introduction

The policing of cyber sex offenders marks a continued expansion of the carceral, surveillance, risk-based state. This expansion of the carceral state seeps into society, producing what I here call the “carceral-civil society.” This expansion and seepage come as direct results of increasingly blurred lines – whether deliberately crafted or not – between penal institutions, criminal justice practices and civil society. In this dissertation, I argue that imprecision and lack of clarity within American law generate hazy, arbitrary applications in law enforcement.

Given the rapid evolution, escalation, and ubiquity of communicative technologies, policing becomes especially challenging when rules of the game within social media websites or cell phone apps change from day to day. Indeed, cyber policing provides a useful example of shifts in contemporary law enforcement concepts and practices. More, these shifts are no accident, for they are tethered to the unclear role of law in policing on this emergent front of human socialization and engagement. That is, absence of legal clarity undermines law enforcement efforts to address crimes – both within and beyond the cyber world. My argument

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proceeds along three points corresponding to shifts in concepts and practices of American law, crime, and policing.

First, contemporary cyber policing replaces physical proximity with online ubiquity. Officers exchange spatial closeness for virtual closeness. Second, criminal justice measures such as public sex offender registries or GPS-tracking devices intersect online sex crimes with offline repercussions. Illicit virtual identities and behaviors – which complicate constitutional First Amendment doctrines on thought versus expression – exact criminal, social, and political penalties. Third, online dynamics of police-cyber sex offender interactions reveal heightened norms of self-surveillance and self-discipline despite tenuous mechanisms for compliance (e.g., problematic enforcement of sex offender registration). On the one hand, police aim to uphold the law in the increasingly volatile social realm of online communications. On the other hand, cyber sex offenders aim to hide from, subvert, and defy law. In both instances, abilities of law enforcement agent and cyber sex offender to succeed are provisional. Success in either case is contingent on technological prowess, cyber world know-how, and a new facility with self-discipline. For the agent, this skill takes form through “the how” – namely, speaking in ways understandable to a cyber sex offender in order to conduct sustainable online sting operations. For the cyber sex offender, however, self-discipline takes form through a discernment of the “who” – a determination of whether the individual at the other end of the dialogue box is an actual child or instead a police officer masquerading as one. Both scenarios, I contend, require a unique combination of restraint and engagement in ways not replicated or sustained in offline sex crimes policing operations.

In all, these dimensions (which are not altogether unique to cyber policing), resonate with broader components of the contemporary American carceral, disciplinary, surveillance state.
Distinctive spaces of online and tech-based socialization, paired with the rapid evolution of technology, produce complex conditions for law enforcement. More, these components are further nourished – indeed, created – by a pervasive lack of clarity within the law. In short, law is unable to keep pace with the evolving nature of crime, the technologies of crime, and finally, the technologies of crime response, deterrence, and prevention.

I examine the policing of sex offenders broadly, with a particular eye toward offenders who employ technology in the commission of their crimes in the United States. Since the internet’s advent in the 1970s and 1980s, the topic of online sexual offenses against minors has gained increasing attention to the United States.\(^5\) One in five minors receives sexual solicitations from individuals they meet in online chat rooms or instant messaging forums (Mitchell, Wolak and Finkelhor 2005).\(^6\) A 2008 NCMEC survey reports that one in seven U.S. children and teens receive online sexual solicitations (McGhee et al. 2011). Between 1996 and 2002, online child pornography increased by approximately 2,000% (Federal Sentencing Reporter 2011). Between 2005 and 2009, the United States housed the largest share of commercial child pornography websites, accounting for nearly half of global volume (Federal Sentencing Reporter 2011). In 2016, NCMEC’s CyberTipline, which the organization touts as a “national mechanism for the public and electronic service providers to report instances of suspected child sexual exploitation,”

\(^5\) The internet as we know it today has gone through multiple iterations, the first of which was the primitive yet impressive ARPAnet, developed by a scientist at the Massachusetts Institute of Technology. During the late 1970s, computer scientist Vinton Cerf developed the transmission control protocol and the internet protocol, which enabled computers from any part of the world to communicate with one another – no matter the distance. See “The Invention of the Internet.” http://www.history.com/topic/inventions/invention-of-the-internet. Accessed 24 April 2017.

received 8.2 million reports pertaining to complaints involving online enticement, child sex trafficking, child sexual molestation, and evidence of child sexual abuse images.  

In 1990, Congress passed the first law banning child pornography possession (SpearIt 2011). In the midst of rising usage of, and concern about, the internet, the Office of Juvenile Justice (under U.S. Department of Justice authority) created the Internet Crimes Against Children task forces (ICAC) in 1998. According to its website, ICAC helps state and local law enforcement agencies tackle technology-assisted, internet-facilitated crimes against children. In a survey of U.S. police departments serving cities with populations of 50,000 or above, Marcum, Higgins and Freiburger (2010) document an increase in police taskforces specializing in and conducting, child pornography investigations. Writing for the *Journal of Sexual Aggression*, Hackett, Oelrich and Krapohl (2011) note that child pornography offenders are increasingly becoming a major concern for criminal justice authorities and psychological treatment providers. Describing public perception of the internet and cybercrime, Lincoln and Coyle (2012) note how Americans fear the “capacity for deception” and anonymity that cyberspace fosters. Likewise, Belvins, Holt and Burkert (2009) explain how the “ubiquity” of computers

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and the internet have generated online-based criminal “subcultures” or communities.\textsuperscript{13}

Researchers make clear that cyber sex crimes against minors is an issue warranting public scrutiny, law enforcement response, and academic study (Simon 1998; Farkas and Stichman 2002; Harrison 2006; Hebenton and Seddon 2009; Quayle and Taylor 2011; Roos 2014).\textsuperscript{14}

A plethora of research exists on policing, cybercrime, technology, and sex offenders. While there is considerable attention given to the “new penology,” on the one hand, and cybercrime, on the other, scholars have yet to pursue questions about the ways that policing cyber sex offenders expands the contemporary carceral, surveillance, risk-based state. At the same time, there is little research by scholars exploring the ways that policing cyber sex offenders carries significant implications for – perhaps even shifts in – the politics of criminal justice in the United States.

Psychologists and sociologists have done extensive work investigating differences between sex offenders and cyber sex offenders (Gudjonsson and Sigurdsson 2000; Bensimon 2007; Babchishin, Hanson and Hermann 2011; Elliott, Beech and Mandeville-Norden 2013; Babchishin et al. 2015). Legal and constitutional scholars have examined sex offender defense issues pertaining to First Amendment, Fourth Amendment, and entrapment issues (moore and McGrain 2010; Urbas 2010; Wynton 2011; Eagan 2013). Several law and society scholars also discuss how trends in criminalization and punishment of sex offenders highlight a “new


penology” as well as a politics of crime (Feeley and Simon 1992; Simon 1998; Scheingold 2011). According to this new penology, American criminal justice shifted from the rehabilitative model of disciplining and later integrating criminals into society with management practices of contemporary neoliberal economics. Under the new penology model, criminal, deviant populations are identified as risks to society and are managed through governmental mechanisms of tracking, surveillance, and monitoring.15

Nonetheless, these scholars have not yet applied these insights to the increasingly urgent pressing matter of cyber sex crimes. Nor do they discuss – as I do – the ways in which cyberpolicing reveals tenuous relationships between law, enforcement, and technology. I contend that policing cyber sex offenders discloses an expanded model of the managerial, actuarial approach to deviant, risk-bearing, crime-enacting individuals – but in ways that amplify how the unclear, imprecise role of law gets translated in enforcement concepts and practices. It is at this juncture that a productive merger of insights about neoliberal managerial, actuarial practices on the one hand and insights about the ever-expanding, intrusive compulsions of the carceral state into civil society vis-à-vis the hazy roles and implementations of law on the other, is necessary for a comprehensive understanding – particularly in the context of ambiguity inherent to online worlds of law-breaking and law enforcement.

When I talk about the carceral state, I signify two things: the continuing arc of development within the mass imprisoned population on a quantitative level (the sheer number of Americans in jail) and the outgrowth of all manner of criminal sanctions which follow offenders beyond time served. For example, the work of Marie Gottschalk is useful on this front. In her

15 As David H. Bayley and Clifford D. Shearing pointed out in 1996, “[p]olicing is now being widely offered by institutions other than the state, most importantly by private companies on a commercial basis and by communities on a volunteer basis.” See their prescient article: “The Future of Policing.” Law Society Review 30(3): 585-606.
recent text, *Caught*, Gottschalk traces the development of the burgeoning American prison or carceral state in tandem with the “growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship.”\(^\text{16}\) The carceral state describes more than the fact that the United States has an estimated 2.2 million individuals in prison.\(^\text{17}\) Indeed, the state is carceral in nature, as its reach subsumes more than 8 million individuals under some kind of state control – whether that be in the form of parole, probation, community supervision, detention and the like.\(^\text{18}\) As Gottschalk points out, one in 23 adult Americans are under the carceral state’s watch in some format of surveillance, detention, or ostracization.\(^\text{19}\)

Unlike Michelle Alexander, whose work is likewise prescient in its observations on racial impetuses of the carceral state, Gottschalk seeks to identify and articulate the wider cadre of sociopolitical and socioeconomic forces – not just the racial factors - driving growth of the carceral state. Here, Gottschalk correctly points out that:

> [t]he intense focus on the racial dimension of the carceral state sometimes obscures the importance of other factors in determining who is punished and for what. In particular, it obscures how certain shifts in the wider political economy pose major impediments to the emergence of a successful broad-based political movement to dismantle the carceral state.\(^\text{20}\)

As we see in the context of sex offenders and cyber sex offenders, race is not necessarily an explanatory factor in the carceral state’s efforts targeting this population. Racial, ethnic, and socioeconomic diversity among sex offenders is pronounced. In fact, a majority of sex offenders and cyber sex offenders are white males. To be clear, racial dimensions are certainly present within the carceral state. That said, neoliberal socioeconomic and political practices, flowing
from fiscal policies emphasizing efficiency and managerial expediency, are significantly instrumental to the tenacity of carceral state development in the United States. As a consequence, these policies impact Americans of all races and ethnicities.

Thus, I seek to link work on the carceral state and new penology with work on technology, law and society in order to understand better the broader intersections and trends constituting and constituted by, law, crime, technology, and society. All in all, scholarship combining concepts from the carceral state and new penology with concepts drawn from scholarship on law and technology to form fruitful inquiries is relatively new and underdeveloped. Policing in an era of cyber space also presents puzzles in terms of anonymity behavioral versus speech parameters, and boundaries between legality and illegality.

I, therefore, aim to contribute to a growing field of study about intersections of law, cyberspace, crime, and politics. Specifically, I offer an initial contribution to the understudied topic of the practices and politics surrounding policing, sex crimes, and cyberspace. Furthermore, I mean to offer a better understanding of how unclear, imprecise inflections of the law refract onto the daily practices of policing and carry ambiguous, even adverse, ramifications for members of society.

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Methods

I focus the dissertation research on policing cyber sex offenders in the state of Connecticut. The state is a founding member of the national Internet Crimes Against Children task forces (ICAC).21 As such, Connecticut has been at the forefront of cutting edge cyber policing efforts and forensics expertise and is “a national leader in the fight against online child

sexual exploitation.” In addition, the Meriden-based Connecticut Computer Crimes and Evidence Laboratory frequently assists local, state, and federal agencies with computer crimes investigations. Before I discuss methods further, I address reasons why I ground the research in Connecticut. There are two major reasons. One, Connecticut is a founding member of the ICAC task forces. As a result, it has been a long-time participant in local, state, and national cyber sex crimes policing operations. Two, Connecticut residents play a key role in child pornography distribution and child sex trafficking (through online and offline groups).

Originally, my plan was to conduct field work consisting of semi-structured interviews and hours-long sessions spent following individuals at Connecticut State Police Sex Offender Registry Units, Connecticut State Police Computer Crimes Lab, Connecticut Department of Corrections, and the Connecticut Department of Mental Health and Addiction Services. Based on preliminary research, I identified these agencies and/or units as integral to the day-to-day criminal justice apparatuses and processes to which sex offenders become subject.

In this project, I pose an overarching inquiry: how does the policing of sex offenders function as a microcosm for understanding broader trends in the politics of American law and order. What do we learn about the relationships between law, crime, sex, and technology that help generate evolving trends in this mode of law enforcement? What can this slice within the law and order pie reveal about the status of the “carceral state,” the new penology, and law in the Information Age? I craft a tripartite argument. First, technological methods of cyber policing

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22 Ibid.
23 Manuel Castells has written extensively on the Information Age and what this era of rapid globalization and technological advancement heralds for sociopolitical processes and society. See Castells, Manuel. 2010. *End of Millenium: The Information Age: Economy, Society, And Culture Volume III.* Malden, MA: Wiley-Blackwell. Also, in *Network Culture: Politics for the Information Age* (2004), Tiziana Terranova deploys the moniker to describe the network-linked, social media-centric world in which we live and engage politics. She examines questions of
have replaced physical proximity with online ubiquity. Second, criminal justice mechanisms such as public sex offender registries deliver physical repercussions and penalties for virtual, cyber behavior. Third, online interactions between police and sex offenders (e.g., chatroom dialogue, instant messaging) indicate intensified levels of self-discipline due to anonymity at the core of the cyber universe. For example, online pseudonyms permit cover for law enforcement agents; whereas, that same kind of anonymity can make it difficult to identify sexual offenders. For their part, online criminals can exploit the anonymity cyberspace provides – or better yet, an agent’s lack of perpetrator know-how (for example, an offender may be able to detect something is amiss if a police officer uses chat room speech clumsily or with exaggerated affect (e.g., emojis - 😊, 😜) as to elicit suspicion. Each of these considerations entails a distinctive question. Each question triggers a different method for addressing it. Consequently, I have chosen methods that are suitable for each inquiry.

Understanding the substitution of online ubiquity for physical proximity requires an historical account as well as an empirical examination of the ways cyber policing sex offenders is changing U.S. law enforcement. Here, I turn both to theory-rich sources of data and empirical-rich sources of data. My plan is two-fold. First, I detail the history of U.S. policing practices – in particular those targeting sex offenders. Second, I identify implications of the changes that cyber policing brings to U.S. law enforcement. My fieldwork, which offers the perspectives of actual police officers, contributes to this understanding of broader changes and implications in law enforcement efforts.

Accordingly, I had envisioned semi-structured interviews with Connecticut State Police forming a vital component of the project. I had imagined that interviews with Connecticut power and subjectivity in the context of the internet, e-newspapers, and a landscape in which anyone can send out a Tweet or write a blog.
Department of Corrections workers would be similarly valuable. In addition, I had expected interviews with employees of the Connecticut Department of Mental Health and Addiction Services to yield crucial data about the ways that cyber sex criminality and virtual behavior carry distinctive tasks for conventional law enforcement and agents of rehabilitation. I had thus presented the following plan for interviewing individuals with the following agencies:

➢ Connecticut State Police Computer Crimes Lab in Meriden (detectives and forensic analysis involved in cyber sex crimes against minors investigations)

➢ Connecticut State Police Sex Offender Registry Unit in Middletown (troopers involved with registering, monitoring, and tracking sex offenders)

➢ Connecticut State Police Major Crimes Squad (Central District troopers whose caseloads involve sex crimes against minors, technology-facilitated sex crimes against minors)

➢ Connecticut Department of Corrections (DOC workers and sex offender prisoners)\(^{24}\)

➢ Connecticut Department of Mental Health & Addiction Services (DMAS workers who work with sex offenders, cyber sex offenders)

Other methodologies like surveys are highly useful and informative in specific contexts. My dissertation project is not one of those contexts. The kinds of data I seek are sensory-based, experientially-located among the actors engaged in the practices, processes, lived experiences of law enforcement and law breaking (McCann 1994; Ewick and Silbey 1998; Gilliom 2001; Engel and Munger 2003). I pursue the “how” and “constitutive” questions – the processes of meaning-making, identity-shaping, norm-developing within American law and order narratives and practices (Becker 1998; McCann 1996). I seek to know the ground-level perspectives,

\(^{24}\) In consultation with my dissertation committee, I made the decision early into the dissertation project that interviewing sex offenders was more appropriate for a separate, later project when temporal considerations and financial resources would be more conducive. The focus for the dissertation is therefore on the law enforcement side of this topic.
conversations, and actions of individuals intertwined in licit and illicit lives – and the politics which attach to those. More fundamentally, is the cognizance of the researcher’s position in relation to the subject-matter and interviewees. I aim to build the theoretical framework on two symbiotic foundations: interpretative and discursive moorings (McCann 1996, 1998). Researchers come to projects with unconscious and conscious biases, prejudices, and assumptions (Ewick and Silbey 1998; Engel and Munger 2003; Pine 2012). Bearing this mind, I pursue the project through an interpretative lens (Rabinow and Sullivan 1979). An interpretivist researcher seeks to become attuned to the cultural, contextual, social specificities of people’s thoughts and lives.

According to this framework, the researcher takes interviewee data at a level rooted in the individual’s lived perspectives and experiences – without judgment (Geertz 1972; Gilliom 2001; Pine 2012). Abiding by an interpretative method means recognizing that those lived perspectives and experiences are the data (Geertz 1972; Ewick and Silbey 1998; McCann 1998; Gilliom 2001; Engel and Munger 2003). In turn, the project takes seriously the idea that ways of speaking matter for people, politics and society. Discourse is powerful and valuable in ways that prepare conditions for identity-making and action-taking (Foucault 1971; Lyotard 1979).

In September 2015, I received approval from the University of Connecticut’s Institutional Review Board (IRB) to begin contacting personnel with the Connecticut State Police (CSP), Department of Corrections (DOC), and the Department of Mental Health & Addiction Services personnel (DMHAS), I began my reach-out efforts. The DOC promptly responded by e-mail, but in the negative. I decided against reaching out to DMHAS, as I would no longer be interviewing sex offenders for this dissertation. The CSP was delayed and variegated in its response. This was a bit surprising, because I anticipated that having previously conducted two internships for the
agency would have expedited the process.\textsuperscript{25} I did receive positive responses from several individuals that they would like to move forward, and I received one response that was positive pending approval from the State Police Legal Affairs unit. At this point, the fieldwork had in effect stalled. I continued solicitation, but as I would soon find out, this too, was in vain.

I renewed the IRB application September 2016 in order to continue solicitation of individuals associated with the State Police. Then, as I continued receiving positive responses to begin interviews with state police personnel, I received a letter and e-mail October 2016 notifying me that I would not be permitted to utilize the data I had obtained during the two internships I held with the State Police.\textsuperscript{26} Moreover, my request to conduct doctoral level research at the agency was denied. I was, however, encouraged to file Freedom of Information Act (FOIA) requests for information and was wished the best in my career.

Following two urgent phone meetings with my dissertation advisor and UConn IRB staff, it was determined that I had to dispense with the interviews and pursue an alternate route to obtain data on policing efforts targeting sex offenders, including offenders who utilize technology in the commission of their crimes.

Auspiciously, however, another opportunity arose several weeks after receiving the DESPP letter. Over the summer of 2016, I had been recruited by an adjunct faculty member at Central Connecticut State University’s Institute of Municipal and Regional Policy to assist on a Connecticut General Assembly-mandated taskforce authorized to re-evaluate the state’s sex offender registry. The independent panel, the Connecticut Sentencing Commission’s special

\textsuperscript{25} I conducted one internship with the Middletown-based State Police Sex Offender Registry unit during the Fall of 2014 and one with the Meriden-based Computer Crimes Lab, in the Division of Scientific Services during the Spring of 2015. Both units are housed within the Department of Emergency Services and Public Protection (DESPP).

\textsuperscript{26} A copy of the letter/e-mail in its entirety is in the Appendix.
committee on sex offenders, was established by the legislature in 2015. Its final report will be
due to state legislators December 2017. According to an August 4, 2015 Hartford Courant
article, one of the committee’s “chief objectives” is to “assess the effectiveness of the state’s sex
offender registry.”

Since December 2016, I have been officially interning with, and providing
assistance for, the sex offender committee. As of May 2017, I was placed on the Institute’s
payroll as an adjunct faculty member and researcher.

In order to evaluate the registry’s utility and efficacy, as well as to provide the state
legislature with recommendations, the committee has requested data from the CSP, CSSD (Court
Support Services Division), and DOC. These data, which have been de-identified by an
independent party at CCSU prior to analysis, pertain to all of the sex offenders currently on the
state registry. Data include: information on the sex-based offenses for which the individual was
placed on the registry; race/ethnicity of the offender; gender of the offender; age of the offender
at time of conviction; the date of appearance on the registry; and the expected exit from the
registry. Certainly, these data are not the kind of personalized information that qualitative
interviews with police would yield. Nevertheless, they provide a factual basis for understanding
sex crimes law enforcement in Connecticut broadly and, in particular, a bird’s-eye view of a
ubiquitous tool (one which is present in all fifty states) for that enforcement: the public sex
offender registry.

After all, my over-arching goal in this dissertation is to understand better and analyze
more precisely the kinds of disciplinary, surveillance-based, carceral-civil society patterns we
detect in this microcosm of policing. What does the sex offender registry illustrate in terms of
law, policing, technology, and society? Does the registry continue the ongoing project of a polis

27 Daniela Altimari, “State set to review policies, laws relating to sex offenders,” The Hartford
Courant, 4 August, 2015.
in which penological concepts, practices, and institutions bleed into civil society? Does the registry service the expansion of the carceral-civil society, a sociopolitical terrain in which law and order, criminal and civilian, prison and society, state surveillance and private monitoring become entangled? In short, does the registry support the expansion of the carceral state in the Information Age? How does the lack of clarity within the law – as seen in the registry’s operations – foster and amplify the carceral state? If the expansion of the carceral state relies on the continuous seepage of the punitive into the civil, how do imprecise and arbitrary legal mechanisms facilitate this structure? How does the registry exacerbate the blurring of lines between jail and community, discipline and freedom, surveillance and privacy? I pursue these higher-level inquiries by engaging with data from the state of Connecticut sex offender registry.

While I ultimately had to switch gears with the method of acquiring data, I am able to retain content from several semi-structured interviews I conducted with two state troopers during the Fall of 2013. At that time, I had taken a qualitative methods seminar; the interviews and conversations were covered under the group IRB protocol. In consultation with IRB staff and in accordance with this IRB coverage, I am permitted to include the relevant components of these dialogues within the dissertation.28 The dissertation combines theoretical discussion, historical/genealogical accounts, and empirical data.

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Engaging the Scholarship

I engage with a number of literatures. I draw primarily from the theoretically rich law and society scholarship on the constitutive character of law, law as social control, and the new

28 The subject matter of the interviews was more wide-ranging and pertained to myriad dimensions of law enforcement, but did include an emphasis on technology, sex crimes, and policing.
penology, found in the works of Malcolm Feeley and Jonathan Simon. In addition, I draw from the scholarship of David Garland, Marie Gottschalk, Jonathan Simon, and Loic Wacquant on the carceral state. I also look to sociolegal and constitutional analyses of technology-society connections pertaining to questions about the meaning of virtual behavior and the role of law in this emergent communicative terrain.

**Constitutive Theory of Law**

The complex character, functions, agents, relationships and processes of law undergird conceptual as well as empirical orientations of this dissertation. The term “law” maps onto a variety of epistemological understandings. Clarity surrounding the use of “law” conceptually, theoretically, and empirically is an ongoing effort in the project. For purposes of clarity and coherence, I place my project within the theoretically and empirically rich law and society scholarship.

Following the tradition of law and society scholarship, I take seriously the idea that law is not an abstract *a priori*. Law is neither external to society nor separate from it. Rather, law *becomes* through societal relations; law develops in and because of, society. In turn, society *becomes* through law; society emerges from within the meaning-making and identity-shaping processes of law. In this dissertation, I grapple with the topic of policing cybersex offenders. Understanding the interrelations of law and society is paramount to analyzing the talk (discourses) and walk (practices) that emerge in U.S. law enforcement efforts to address cyber sex crimes.

Law and society scholars have written extensively about “law’s variable and complex character” (Ewick and Silbey 1998, 18). In contrast to earlier conceptions of law as *a priori* and outside society, law and society researchers demonstrate myriad ways law is both shaped by and
shapes, society. Law and society scholars tend to advance the view that law does not exist separately from the social and political lives and relations that influence, mold, or challenge it (Ewick and Silbey 1998). Society makes and places political, social, and cultural stampings on law. And law makes society. Thus, law and society intersect, interact, and engage in ways that are “mutually constitutive” (Yngvevsson 1993). Law is not simply a byproduct of society. Nor is society simply a byproduct of law. To assume law produces society or vice versa is to accept a static, unidimensional perspective. Rather, law and society researchers focus on the fluid, mobile, malleable dynamics through which law and society emerge. The two are intertwined in sociopolitical processes of identity-making and norm-making. As Ewick and Silbey explain, law and society work seeks to ground its epistemological understandings in a “social construction of law.” In basic terms, law is a social construct. In turn, its production furthers processes for the construction and evolution of identities, norms, values, and institutions in society. Law is of, works within, engages with, and develops through, society. Hence, “law is both an embedded and an emergent feature of social.”

An important distinction to make is that many law and society scholars do not perceive law-society dynamics as solely interactional or intersectional. In many instances, law and society work supports the notion that law and society are neither easily separable nor isolable. Processes of law and society are woven together in mutually developing, reifying or opposing ways. They are intertwined. Delineating his epistemological differences with Rosenberg’s scholarship on legal impact and social change, McCann explains well the alternative conceptual terrain of law

30 Ibid., 22.
and society. Distinguishing his *Rights at Work* from positive, linear, causal accounts of law’s impact on society, McCann states:

I instead work within a very different interpretative tradition that is skeptical about the value of this causal frame (positivism for making sense of human interaction. This tradition emphasizes at the outset that causal explanations are partial, imperfect, problematic intellectual contrivances to help us to make sense of ourselves and the world in which we live but cannot fully ‘know’ (461).\(^{31}\)

From a particular law and society vantage point, it is not the simple case that law impacts y or z. Rather, law and society engage with one another – reinforcing, supporting, or challenging symbols, ideas, norms and practices of the ideational yet ever-actualizing “other.” Law and society scholarship treats “contexts as complex webs of multiple dynamically interactive, contingent ‘social’ relations that both constrain and facilitate the reflexive actions of research subjects.\(^{32}\) Indeed:

no contextual factor alone is determinative or autonomous. Human relations are viewed as ongoing, dialectical processes rather than as aggregations of isolated causal collisions.\(^{33}\)

Simply put, law is not a variable to isolate as *one* factor among many in explanatory accounts of politics and society. On the contrary, law constitutes an integral facet, dimension, practices of the “dialectical, contingent, pluralistic, multidimensional” ways individuals live.\(^{34}\) Admittedly, interpretative orientations of law and society research make for a complex analysis. That which interpretative scholars gain in the capacity to understand and delve deeply into undergirding sociopolitical processes of law and society, they lose in explanatory elegance. Accepting the trade-offs and costs, I choose this approach because it best fosters a more holistic picture of ways


\(^{32}\) Ibid., 462.

\(^{33}\) 461.

\(^{34}\) 465.
by which policing cyber sex criminals reveals the political values and practices that inform American citizenship.

Law and society are created, constituted, and developed together along a countless array of societal domains. Law and society relationships, for example, find expression through arenas in the United States like its constitutional, political, and criminal justice systems. Canvassing law and society dynamics in more holistic terms, Engel and Munger’s work stands as an exemplar. *Rights of Inclusion* (2003) interrogates “whether – and how – legislative enactments of [disability protections] actually intersect with the ‘day-to-day’ experiences of persons with disabilities.”35 As with Ewick and Silbey, this in-depth, interview-filled piece of research finds that disability rights-claims “and social and cultural settings ‘mutually shape’ one another.”36 Those with disabilities who view the American Disabilities (ADA) as efficacious in recognizing and protecting their rights may do so due to particular experiences in home, work, and leisure. Engel and Munger observe that “the relationship between law and actual life experiences is extraordinarily complex.”37 During interviews of individuals with disabilities, Engel & Munger find that people’s specific life experiences shape perceptions of the ADA as well as decisions to use it (or not). Those who are disenchanted with the failed promises of the ADA may not view it in the same positive light as those who have found it helpful or who have not yet mobilized its provisions.

Taken together, examining how law interacts, intersects, and relates to those who break it rests on an understanding of law’s mutually constitutive dynamics in society. The mutually

36 Ibid., 11.
37 7.
constitutive dynamics operating in Americans’ constitutional faiths, rights-claiming, and identity-shaping are operative as well in the police-offender dynamics within cyberspace.

**Law as Social Control: New Penology and the Carceral State**

I have discussed some of the multiple ways law and society scholars conceptualize law. Thus far, I have sketched the constitutive theory of law – one of many approaches to understanding law. Another strand of this constitutive theory is when scholars frame law as social control. This literature helps inform my understanding of how law functions specifically in the criminal justice system.

Influential law and society scholars argue that law is a mechanism for social control (Scheingold 1974, 1984, 2004; Garland 2001, 2011, 2016; Feeley and Simon 1998; Simon 1983, 2004). They form a distinctive stream of law and society scholarship which argues that law enforcement and the judiciary are institutions of social control. Law has controlling and disciplining effects. To a great degree, this idea makes sense. On its face, law is designed to install order, organization, and boundaries. We are familiar with law’s modalities of control – whether we consciously absorb them or not: the criminal code, education, code, and the tax code. Insights that law and society scholars contribute are ones that point out ways law functions to control, coerce, discipline, and punish in subtle as well as systemic ways. Mandatory K-12 education is one example of law’s role in social control. In this instance, education is a programmatic means for instilling social norms, values, skills and discipline into this nation’s youth. A minimum age requirement for civilian alcohol consumption (age twenty-one) is another example of law as social control; law regulates social behavior by incorporating assumptions about a minor’s maturity. Yet, law as a mechanism for social control is not always readily
apparent. Indeed, examples just cited reflect the ways law attempts to order a society in subtle ways.

Legal scholar Robert Cover was particularly incisive on law’s disciplining effects. According to Cover (1985), law possesses coercive – even violent – effects. As Cover sees it, “legal interpretation takes place in a field of pain and death.”

To corroborate this thesis about law and violence, Cover analyzes the drastic implications of a judge’s decree. He discusses the specific instance of a death penalty sentence, whereby a judicial order can end an individuals’ life. More generally, Cover underscores the subtle dimensions of violence accompanying law in trials and sentencing procedures.

The act of sentencing a convicted defendant is among these most routing of acts performed by judges. Yet it is immensely revealing of the way in which interpretation is distinctively shaped by violence...[t]he defendant’s world is threatened. If convicted, the defendant customarily walks – escorted – to prolonged confinement, usually without significant disturbance to the civil appearance of the event. It is, of course, grotesque to assume that the civil façade is ‘voluntary’ except in the sense that it represents the defendant’s autonomous recognition of the overwhelming array of violence against him, and of the hopelessness of resistance or outcry.

Note that this argument is not the suggestion that it takes weapons and war to transform law into a mechanism for social control. In contrast, law and society scholars show the multiple modes of law’s inherently disciplining, controlling, and coercive work.

In a similar vein, Jonathan Simon and Malcolm Feeley (1992) write about ways in which legal institutions act as social control and management mechanisms. According to

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39 Ibid., 1607.
41 Simon’s *Governing Through Crime* (2007) is also evocative of law and society scholarship on politics surrounding law, violence, and social control. Throughout the book, Simon provides
Simon (1998), the criminal justice system has turned away from a focus on prisoner rehabilitation as a means of justice and societal reintegration. Instead, Simon argues that the orienting basis for the “new penology” in American law and order lies in the management of high-risk individuals, a premise more reminiscent of actuarial sciences. Accounting and managing practices supplant the more traditional priorities of law enforcement. Consequently, law as social control transitions to a sharper iteration of law as a mechanism for publicly identifying and managing irredeemable, socially deviant citizens – whether in the virtual, cyberworld or the “real,” offline world.42

Simon observes three major shifts within the criminal justice system ushered in by new penology practices. First, the deviant class is to be policed, tracked, and managed, as opposed to responding to individuals on a case-by-case basis. Simon writes that what “distinguishes the new priority of groups is the dominance of statistical over characterological conceptions of group boundaries.”43 A second major shift is in the narrative, or discourse, that law enforcement professionals, academics, and citizens apply to criminals formerly “[s]ubjects defined as aberrant and in need of transformation,” are criminals in the new penology “now seen as high-risk subjects in need of management.”44 Not coincidentally, the criminal justice system now has population(s) management as its priority. Framing criminals or deviants as always and already risk-bearing individuals drives the new penology’s dangerousness-evaluating impetus. Finally, there is a shift from the reliance on community members for the efficacy of law and order or evidence of the ways by which the U.S. government acquires and enhances political power through criminal justice programs, public fears about crimes, and legislative pushes to punish.

42 Consider the public nature of sex offender registries. See Craun’s “Evaluating Awareness of Registered Sex Offenders in the Neighborhood” or Moskowitz’ “Not in my digital backyard: proposition 35 and California’s sex offender username registry” for detailed discussions about sex offender registries and their effects.

43 Simon, 452.

44 Ibid., 453.
criminal justice operations to the reliance on “internally generated and largely technocratic forms of knowledge, such as drug tests and compliance with administrative rules.”⁴⁵ In this way, the new penology places a premium on scientific expertise and bureaucracy as the fount of knowledge, as opposed to leaning on families, communities, schools, or places of faith for deterrence, rehabilitation, and re-assimilation.

But what are the impacts of new penological practice? On the one hand, what are the felt impacts on society when managerial, actuarial methods of offender management fail? On the other hand, what are the effects on law-society dynamics when lack of clarity in the law bleeds into enforcement practices and thereby extends to the objects of enforcement – both within and along its periphery (i.e., offenders, non-offenders, and not-yet-offenders)? How do law and enforcement advance conditions for the creation of the carceral-civil society? In short, I explore how new penological practice, for my purposes epitomized in the public sex offender registry, has been integral to the rise of the contemporary American carceral state.

I follow Loic Wacquant and Marie Gottschalk in their critical formulations of a state in which mass penological mechanics (e.g., mass incarceration) function as means for exercising power over various populations under its control. According to Wacquant, the rise of punitiveness – which he locates both in sites of carceral programs (e.g., prison and offender registries) and social programs (e.g., welfare) reveals “a shift from the social to the penal management of urban marginality” (81).⁴⁶ Workfare and prisonfare together, Wacquant argues, indicate state responses to social insecurity as a consequence of depressed economic conditions as well as labor uncertainty. For Gottschalk, the carceral state can be traced to the rise of

neoliberal practices, among a myriad of other social, political, and racial trends. Meanwhile, Jonathan Simon and David Garland see the entrenchment of carceral practices as state responses to criminal insecurity, which they diagnose as a consequence of mixed sociopolitical and socioeconomic conditions including the existence of cycles of violence and criminogenic behavior. While Scheingold, Wacquant, Feeley, Simon, Gottschalk, and Garland frame the reasons for its emergence and evolution in slightly differing registers, consensus is that the carceral state is the current mode of post-industrializing, neoliberal Information Age governance.

To varying degrees, all the aforementioned scholars observe that it is often the socially and economically marginalized – the poor, the racial and ethnic minorities – who are always, already objects of the carceral state. Scheingold points out the punitive dimensions of the law and order narrative, whose desired targets are often impoverished racial and ethnic minorities. Simon notes that zero-tolerance, punitive policies are applied in settings ranging from the classroom to the prison cell. Garland underscores the punitive dimensions of the welfare state – particularly as they are felt by the lower class and minority racial populations. Over the last decade, Wacquant has sought to clarify his theory pertaining to the carceral state by replacing the term “mass incarceration” with “the more refined concept of hyperincarceration.” By hyperincarceration, Wacquant means:

To stress the extreme selectivity of penalization according to class position, ethnic membership or civic status, and place of residence – a selectivity which is a constitutive feature (an not an incidental attribute) of the policy of punitive management of poverty…I recount that punishment is not just a direct indicator of solidarity and core political capacity for the state…it is also the paradigm of public dishonor, inflicted as a sanction for individual moral, and thus civic, ‘demerit’ (1689). 

Here, Wacquant urges a shift in the way we think about the carceral state. On this view, the state has as its primary targets specified class, racial, and ethnic populations for its punitive, surveillance-based, risk assessment-driven policies and programs. I sympathize with this position. But this kind of singular view lacks explanatory power as applied to sex crimes in ways that law and society formulations do not. No one population or groups of people are being caught in the carceral state’s net. In addition, whereas Michelle Alexander hones a racial analysis of the carceral state – to the exclusion of other analyses, Gottschalk pursues a wider articulation of the panoply of logics (neoliberal, racial, sociopolitical) undergirding growth in the carceral state and its impact across demographics.

When it comes to the policing of sex crimes, it appears that all bets are off. Those who commit sex crimes span the gamut of class, occupation, race, ethnicity, and age. One cannot say with certainty that the carceral state is targeting a specific class, racial, or ethnic population as applied to the sex offender context – other than the fact that most offenders are male. As Michael Lawlor, Under Secretary for Criminal Justice Policy and Planning Division within Connecticut’s Office of Policy and Management, wrote in a 2012 report, “…individuals who have committed sex offenses do not constitute a single, homogenous population.”

More, when we speak of offenders who utilize technology and/or cyber means in the commission of sex crimes, statistics show that 99.3% of them are male and 88.7% are white.

Under the carceral state logic urged by Wacquant, then, it would seem that the white male is being targeted in this instance. Yet, such a view is incompatible with the acknowledgment that the most serious of sex offender classifications (“Level 3” or “Tier III”) and punishment regimes are often reserved for racial

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49 SpearIt 2011.
minorities. For example, in a 2006 letter to then-New York Governor George Pataki, the New York City American Civil Liberties Union objected to the fact that at the time, blacks made up 15.9% of the state’s population but comprised 37.2% of Level 3 sex offenders listed for New York’s online public registry.\textsuperscript{50} In reviewing county-by-county demographics, the ACLU’s New York branch concluded that “the empirical evidence raises serious doubt that the over-representation of blacks…reflects the actual rate of offending among that population.”\textsuperscript{51}

At the same time, we can sharpen the carceral state model, building on current law and society formulations to provide an account that more fully describes ways in which the role of unclear, imprecise, arbitrary law lends to the creation, expansion, and entrenchment of the carceral-civil society in the Information Age. Together, potent synergies of unclear law, on the one hand, and rapid technological advancements, on the other hand, form a combustive mix by which the carceral seeps into the civil; punitive into the nonpunitive; the law enforcer into the vigilante citizen; the sex offender one day into the sex offender marked for life. Or, as Gottschalk puts it,

\begin{quote}
\[\text{[r]egistered sex offenders are subject to an Alice-in-Wonderland maze of civil commitment laws, and community notification, registration, and residency restrictions that amount to a kind of ritual exile.}\textsuperscript{52}\]
\end{quote}

A key feature of the American carceral state fabric is the institution of law enforcement. The concepts and practices of policing help fortify the melding of the punitive and civil. Enforcement of the “Alice-in-Wonderland maze” of laws is part and parcel to the carceral state project. Indeed, it is through enforcement of hazy, arbitrary, and unclear sex offender and cyber sex

\textsuperscript{51} Ibid.
\textsuperscript{52} Gottschalk, 196.
offender laws that the carceral state is preserved. Moreover, in a context in which confusion abounds within and is heightened by, Information Age technologies and social media communicative networks, it is important to understand the circuitry between the carceral state, policing, and the cyber world.

Just as the carceral state feeds off a lack of legal clarity and resolution, the cyber world both cultivates and is cultivated by an unclear, imprecise social culture in its premises of blurred identities (vis-à-vis anonymity of the internet), blurred boundaries (vis-à-vis absence of geographical parameters online), and blurred lines between thought and action (what constitutes an “action” online?).

**Policing and Society**

Law and society scholars have long been interested in the relationships between police and the public they protect and serve. Relationships between police and civilians can be strong. They can be weak; or they can unequivocally hostile. On the one hand, community policing methods have achieved improved results in terms of building trust with communities – particularly those in minority neighborhoods. On the other hand, recent events over the last three years have reignited clashes between law enforcement and civilians – clashes often rooted in racial fears and animosities. Clearly, public perceptions of the police directly impact individual and community relationships with the law. In their examination of the role public

53 The city of New Haven, Conn. revived its community policing program in 2011 after the murder rate had climbed during the time the program had been “de-emphasized.” Once New Haven returned community policing to its neighborhoods, the number of murders declined – as did non-fatal shootings. See the full account at http://articles.courant.com/2013-07-07/news/hc-new-haven-community-policing-20130707_1_esseriman-non-fatal-shootings-community-policing.

54 I note some of the most recent police-involved shooting killings in Ferguson, Missouri; Staten Island, New York; and South Carolina. I note also the spate of shootings in which law enforcement officers have been targeted and killed in places ranging from California to New York, Montana to Texas.
perceptions about justice and governmental legitimacy play in citizen support for police, Sunshine and Tyler (2003) find that police-citizen cooperation “is engaged when people in the communities being policed experience the police as exercising their authority fairly.”

When people perceive police to be enforcing the law with justice and equity, the civilian-police relationship can strengthen. The inverse appears to be accurate as well; community mistrust of police can lead to public hostility and lack of cooperation.

While scholars have done a substantial amount of work documenting police-civilian relationships, they do not explicitly address perspectives both of citizens and cops. A notable exception to this is Peter Moskos’ *Cop in the Hood* (2008). Still, this is a personal account – one written by a graduate student who became a police officer for one year in the Baltimore, Maryland Police Department. Its scope is necessarily limited to the perspectives of a scholar. It is not an account spotlighting the perspectives of individuals who have been on the force for years. To an extent, therefore, I seek an understanding – if basic and preliminary in this project – of the multiple actors involved in policing cyber sex crimes. I believe that comprehending the role, experiences, and perspectives of law enforcement will strengthen law and society insights about the mutually constitutive relations among cyberspace, policing, cyber crimes, and society.

*Cyberspace, Technology, Law, and Society*

Some scholars have explored “cyberspace itself, considered as an entity or site” (Ross 2002). Some law and society scholars pose questions about the ways internet and new technologies impact law, regulatory frameworks, and the legal structure. In turn, they ask whether and how law keeps pace with the unwieldy, nebulous character of the cyberworld.

Katsh, Collins and Skover (1995) posit for instance that the:

whole framework for thinking about law and working through problems in a legalistic manner is challenged by media that store, process, and communicate information in digital form (16).

Once more, we find hints of the mutually constitutive dynamic of law and society. Here, cyberspace and technological innovations are the microcosm in which to reveal ways that law and technology mutually shape one another. Take, for example, the issues of child pornography production, distribution, and consumption. Online users can produce, share, and download child pornography through the convenience and ease of their computers, laptops, and cell phones.

With the rising ubiquity of these technological media, “growing concern” has mounted about the sexual exploitation of minors (Chisholm 2006; Hackett, Oelrich and Krapohl 2010; Roos 2014). The United States judiciary has been especially attentive to the role of technology in facilitating and empowering sex offenders (Harrison 2006; Wynton 2011). Technology has deeply impacted the way society’s members communicate and act. Wynton (2011) writes:

Social networking sites have changed the way Americans communicate, share ideas, learn information, and organize themselves. No longer confined to personal social uses, these sites now also serve as accessible platforms for political and social organizations (1860).56

Certain members of society build illegal attachments through online social networking. Individuals interested in perpetrating acts of luring, stalking, and grooming minors into sexual dialogue and activity employ cyber technologies.57 Cyberspace and technology broaden ways to commit sexual crimes against youth (Griffin-Shelley 2003; Quayle and Taylor 2011).

Technology bears its imprints on society – both negative and positive. Technologies which

57 McGhee et al. (2011) discuss the Luring Communication Model (LCM). This model posits a five-phase process by which cyber sex offenders pursue minors through: gaining access, deceptive trust development, grooming, isolation, and approach. In specific, grooming involves “the subtle communication strategies that sexual abusers use to prepare their potential victims to accept the sexual conduct” (4).
“serve as accessible platforms for political and social organization” double as devices for crime (Wynton 2011). Meanwhile, judicial orders barring sex offenders from accessing social media accounts have become models for legislation throughout the states (Wynton 2011). There are laws that also require sex offenders to register online pseudonyms or identities with the government (Wynton 2011).

Technology, society, and law again weave together in these instances (Doring 2009). Another example of the mutual constitutive relationship of technology, law, and society lies in the creation and proliferation of sex offender registry databases. The 2006 Adam Walsh Child Protection and Safety Act nationalized the requirement for sex offender registries (Federal Sentencing Reporter 2011). Prior to that, states held discretion about the decision to create a registry. These state registries documenting the name, age, residence, and sexual criminal acts emerge from a context in which public fears about technology and sexual predators have steadily increased since the 1980s (Farkas and Stichman 2002; Lynch 2002; Wright 2008; Eagn 2013). Emergent public concerns in tandem with rapidly developing technologies to generate calls for legal and political actions – further evidence of the connective sociopolitical tissues between technology, law, and society.

Yet, law and society scholarship on cyberspace is relatively new and underdeveloped. I aim to contribute to a growing field of study about intersections of law, cyberspace, crime, and politics. Specifically, I envision this research as an initial contribution to the understudied topic of the practices and politics surrounding policing, sex crimes, and cyberspace in law and society scholarship.

Political science research does exist on policing, cybercrime, technology, and sex offenders. Scholars, however, have not yet pursued questions about the ways policing cyber sex
offenders differs from previous versions of U.S. law enforcement efforts to address sex crimes. Likewise, research is scant on the topic of exploring ways in which policing cyber sex offenders carries distinctive implications for law enforcement, law breaking, and the politics of criminal justice in the United States.

Scholars hailing from psychology and society, meanwhile, have done extensive work investigating differences (if any) between sex offenders and cyber sex offenders (Gudjonsson and Sigurdsson 2000; Bensimon 2007; Babchishin, Hanson and Hermann 2011; Elliott, Beech and Mandeville-Norden 2013; Babchishin et al. 2015). Legal and constitutional scholars examine the cyber sex offender defense issues pertaining to First Amendment, Fourth Amendment, entrapment concerns (Moore and McGrain 2010; Urbas 2010; Wynton 2011; Eagan 2013). As I mentioned earlier, a few law and society scholars discuss how trends in criminalization and punishment of sex offenders highlight a “new penology” as well as politics of law and order (Scheingold 2011; Feeley and Simon 1992; Simon 1998). Nonetheless, these scholars do not address the rising matter of cyber sex crimes and how cyberpolicing reveals a mode of policing and criminality that supersedes the “new penology” identified in the late 1990s – a mode that is part and parcel to neo-liberal, carceral state governance.

I see three central contributions of the dissertation. First, I highlight the understudied topic of policing sexual cybercrimes and cyber sex offenders. Second, I add to existing research on policing, law, and society by demonstrating how policing sex offenders reveals an iteration of criminal justice politics and neo-liberal, carceral state governance in the Information Age. Third, I show how this mode of law enforcement continues and expands the carceral state into the civil society, the blending of which I call the “carceral-civil society.” Here, I contribute to the constitutive theory of law by demonstrating how law intersects, shapes, and is shaped by virtual
behavior in the cyber world. On this front, I synthesize insights drawn from carceral state scholarship, sharpening concepts from new penology scholarship - with ideas drawn from the technology and law scholarship. In so doing, I show the nebulous, hazy nexuses between law, crime, technology, and society.

More importantly, I show how these nexuses provide fodder for the imprecision and lack of clarity in the law. I show how law’s inability to keep pace with realities of cyberspace and new communicative terrain adversely impacts policing on the ground. We can train, however, to see through the carceral-civil society and how the technology-armed new penology becomes more about “identifying and managing unruly groups.”\textsuperscript{58} We can discern law’s haze as well as the subtle yet insistent unfolding of the carceral-civil society before us.

To these ends, I organize the manuscript as follows. In Chapter Two, I present a historical account chronicling significant milestones in terms of patterns and shifts within United States policing of sex crimes against minors. By doing so, I build a framework for understanding the ways in which law’s often unclear, indeterminate, and confusing role in enforcement impacts policing concepts and methods. I show how legal imprecision in part leads to the development of the carceral state – particularly during a time in which criminal behaviors are exacerbated by cyberspace and other contemporary technological platforms. In Chapter Three, I focus specifically on the online, virtual, cyber, internet-related dimensions of sex crimes and sex crimes policing. Here, I explore and analyze what these technological aspects of sex crimes and policing entail for law and society dynamics within the context of the carceral state. I show how policing online sex crimes functions as a microcosm for discerning penological patterns in the thriving “carceral-civil” society. In doing so, I also foreshadow the instrumentality of the public

\textsuperscript{58} Feeley and Simon 1992, 455.
sex offender registry within Information Age carceral state development and expansion. In Chapter 4, I identify the public sex offender registry as a locus in which unclear law provides the blueprint for carceral state development in the Information Age. Here, I argue that sex offender registries mark a tech-infused, invasive legislative and law enforcement response to crime in ways that render the criminal justice system disorderly and further riddled with imprecision, inaccuracy, and error. In Chapter 5, the concluding chapter, I continue discussion of the sex offender registry – this time, focusing on the move from an offense-based registration system to a risk-based registration system (as is currently being proposed in Connecticut and implemented elsewhere). Although touted as a return toward more individualized justice, I detect mechanisms of ongoing social categorization, surveillance, and ostracization in this shift toward risk-assessment methods contrary to the spirit of anti-carceral state practices. On this front, caution and acumen are required in order to evaluate whether risk-assessment systems will slow or enhance the expansion of the carceral state. Ultimately, precise analysis ought continue vis-à-vis an understanding of how various criminal justice procedures fit into the fabric of the carceral state.
Chapter Two
Law’s Imprecision and Indecision: Sex Crimes and Law Enforcement in the United States

[Kansas’ Sexual Abuse Treatment Program] serves a vital penological purpose, and offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment.59

There are many things innocent in themselves, however, such as cartoons, video games, and candy, that might be used for immoral purposes, yet we would not expect those to be prohibited because they can be missed.60


Introduction

In the preceding chapter, I introduced my argument: policing sexual cybercrimes against minors marks an expansion of the American carceral, surveillance, risk-based state. This expansion is aided and abetted by the unclear, hazy role of law. Law often plays a tenuous, unclear, indecisive role in policing sex crimes – particularly those that are committed with the assistance of various technologies and online apparatuses. Law thus plays an integral part in the carceral state’s expansion.

In particular, the lack of legal, constitutional, and statutory clarity, exacerbated by an incapacity to keep pace with rapid technological advancements, does more to complicate law enforcement work than what the law is expected to do as far as clarifying and outlining policing parameters.\(^6^1\) For example, in commenting on rules for search warrants and crime scene procedures, one former Connecticut State Police (CSP) Major Crimes unit detective put the impact of “law” on policing this way:

> You know, Meg, these rules are made by people who are not police. They have no idea what it means, what it is to be a police officer, and collect evidence of a murder at 3 a.m. on a Thursday. They just don’t know. They can’t know.\(^6^2\)

Encapsulated in these remarks is a theme on which I center my dissertation. It is my claim that policing of sexual cybercrimes against minors affords us a deep look at the ways law\(^6^3\), crime,

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\(^6^1\) Urbas (2010) points out the potential pitfalls in covert online police operations such as offenders employing the entrapment defense during legal representation – or whether a sexual crime against a minor has even been committed for example, in the case of officers “posing” as children online in order to nab the suspect for engaging in luring or stalking activities (415).

\(^6^2\) Personal Correspondence, Trooper A, September 2015.

\(^6^3\) In the law-society tradition, I follow Ewick and Silbey (1998) specifically in terms of what I mean to denote by “law.” According to this vein of scholarship, law is broadly construed. Laws are more than written codes and rules. Law does not exist apart from social relations but rather is both a producer and a product of, them (19). Likewise, the norms, codes, and rules – both delineated and not – which govern policing, shape and are shaped by the ongoing melding of law enforcement, law breaking, and technology I explore in this project.
policing, technology, and society intersect, cohere, or collide. To that end, I examine the uneasy relationship between technology, law, and policing along three main axes.

First, technological methods of cyber policing operations replace physical proximity with capacity for online ubiquity. Officers exchange spatial closeness for virtual closeness. Second, criminal justice measures, such as public sex offender registries, intersect online sex crimes with offline repercussions. Third, interactions between police officers and cyber sex offenders reveal heightened norms of self-surveillance and self-discipline precisely due to tenuous mechanisms for compliance (e.g., problematic enforcement of sex offender registration).

In this chapter, I trace the most significant milestones in the ways United States law enforcement communities conceptualize and respond to sex crimes against minors throughout history. In so doing, I present a historical account of the American policing of sex crimes. Such

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64 A key insight scholars give us is the fact that law-society relations are messy, dynamic, and complicated. Ewick and Silbey (1998) explore how citizens comply with law, exploit the gaps and “loopholes” in law, or resist the law. In these instances, individuals often do not stick with one modality of legal consciousness or behavior. For example, individuals who speed on a daily basis may not necessarily find it acceptable to rob a bank. Exploitation of gaps within the legal order (e.g., speeding in areas in which a local resident knows cops typically do not arrange speed checks) in one way is juxtaposed with passive compliance in another (e.g., not robbing a bank may not exactly entail an active decision to obey laws against theft but rather a passive acknowledgement about potential risks and penalties involved).

65 Belvins and Hott (2009) note that the “ubiquity of computers and internet in modern society have led” to the “direct creation of new forms of crime and deviance.” What technology does for those breaking the laws, so it does for those enforcing the laws: police are able to pursue more efficient forms of undercover investigation vis-à-vis an online combination of anonymity and pseudonyms.

66 Sex offender registration can be problematic, as the examples of post-Hurricane Katrina New Orleans or computer glitch-ridden California demonstrate. Cohen and Jeglic (2007) record that the state of California lost track of 33,296 sex offenders who had been registered. In the wake of Hurricane Katrina, an estimated 2,000 registered sex offenders who were forced to flee their homes.

67 To limit the scope of this dissertation, I examine policing sex crimes against minors. That said, I fully recognize the urgent topic of peer-to-peer sex crimes perpetrated among adults. For an important, recent work that addresses it in a very detailed fashion, see Powell, Anastasia and
an account is vital to highlighting and understanding how societal norms and practices are not static but rather malleable and subject to continuous shifts. Finally, I identify instances in which law’s indeterminate role in policing sex crimes becomes evident. As I will show, law’s haze has always been a part of policing sex crimes. Such a demonstration is crucial to the analysis I undertake beginning in Chapters Four and Five about the impacts of law’s inadequacy, imprecision, and lack of clarity on policing and society – as seen especially in the public sex offender registry; what those impacts mean for the growth of the carceral state; and how those impacts are amplified by the distinctive problems presented by cyberspace and other contemporary technological platforms.

As scholars demonstrate over and again, law and its shapers are inexorably connected. Laws governing sex crimes are products of a confluence between policymakers, the public, and the police. Changes in how professional communities, the media, law enforcement, or the public perceive sex crimes do not occur in societal vacuums hermetically sealed from other communities and domains. Changes shape and in turn are shaped by the ways in which professionals, politicians, pundits, the public, and police respond to sex crimes.

As Ewick and Silbey explain, a substantive body of law and society scholarship investigates the “social construction of law.” In turn, its construction furthers processes for the construction and evolution of identities, norms, values, and institutions in society. Crime, law enforcement, and cyberspace are part of these dynamic law-society processes and relationships.

Policing, crime, cyberspace, and society are affectively, cognitively, and empirically


68 Ewick and Silbey, 18.

Below, I discuss the impactful changes in law enforcement perceptions and practices. This is not an exhaustive or comprehensive account. Rather, the purpose is to provide a historical sketch that specifically assists with a more in-depth exploration of policing sex crimes, technology, and the complicated, indeterminate role of law in Chapter Three.70

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Police Responses to Sex Criminals and Crimes in the United States

Policing practices are not sui generis. They emerge and flow from the society – the polis – which police are expected to protect and serve. Following in the law and society tradition of understanding societal praxes and human agency, I submit that there is likewise always and already a sociopolitical context for understanding law enforcement concepts and practices. Law enforcement developments operate within a circuitry of societal influences: criminal justice practitioners, jurists, legislators, political pundits, the media, and the public (Scheingold 2004, 2011; Simon 2007). In short, law enforcement talk (i.e., concepts) and walk (i.e., practices) stem from a confluence of various actors, discourses, and policies.

69 Epistemological debate over empirics possesses an especially spirited legacy in the subfield of law and society scholarship. One finds a classic example in the Stuart Scheingold-Gerald Rosenberg discussion about civil rights litigation efficacy in mobilizing systemic social changes such as school desegregation in the 1950s and 1960s; women’s abortion rights in the 1970s; gay and lesbian rights in the 2000s. Scholars’ positions on the character and functions of law shape their assessments of its societal roles and powers. See Stuart Scheingold’s The Politics of Rights and Gerald Rosenberg’s The Hollow Hope.

70 Although I segment these discussions into separate sections, the demarcations by no means express my belief that historical changes and shifts occur in isolation. Rather, it is an organizational choice for the purposes of clarity and concision.
On a basic level, too, it is crucial to recognize that the notion of a necessary and constitutive congruence exists between legislation (law-making) and policing (law enforcement). Police and legislators remain dependent on one another for perspectives and actions alike. The former expect and hope that laws are clear; the latter expect and hope that laws are implemented. Such a congruence, however, between law and its enforcement is not an easy one. In particular, when lawmakers use crime legislation as bids for expanded political power, police often become caught in a web of politics based on social (which are oftentimes racialized) fears and anxieties (Simon 1992, 2007; Farkas and Stichman 2002; Wright 2008; Eagan 2013).

Beyond the relationship between cops and legislators lies arguably a more important dynamic: police-citizen relations. Public views of the police directly impact individual and community relationships with the law. For example, Sunshine and Tyler (2003) find that police-citizen cooperation “is engaged when people in the communities being policed experience the police as exercising their authority fairly.” When people perceive that police are enforcing the law with justice and equity, the civilian-police relationship can strengthen. The inverse appears to be accurate as well: community mistrust of police leads to hostility and reduced cooperation.

All of the above notions about policing practices center on the idea of mutual constitution: institutions, practices, and relationships shape and are shaped by each other. I believe that when taken together, understanding law enforcement perspectives and experiences will strengthen law and society discourses about mutually constitutive relations among policing, crime, cyberspace, and citizens. Furthermore, the history of sex crimes policing is one in which law’s indeterminacy, imprecision, and confusion directly shape the ways crimes are defined (or

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71 Sunshine and Tyler, 535.
ill-defined) and enforced (or ill-enforced). It is to these ends that I organize the chapter which follows.

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**Governing Through Sex Crimes: Sex regulation in America across the centuries**

At best, the relationship between law and policing in the U.S. has been murky. At worst, it can be described as schizophrenic. Enforcing the law is not a simple one-to-one formula. That is, law enforcement does not always comport with the meaning or intent of the law. Nor is legislation consistent with on-the-ground realities and praxes both of police officers and civilians. Although he objective is for there to exist a seamless connectivity between law on the books (legislation) and law on the ground (police), Scheingold (1974; 1984; 1991) and Ewick and Silbey (2004) have notably pointed out that discrepancies exist more often than does the connective tissue. On this point, Scheingold observes that legal symbols and concepts Americans have come to take for granted – the U.S. Constitution, courts, liberty, rights, or justice – are in fact part and parcel of “a faith in the political efficacy and ethical sufficiency of law as a principle of government.”

While factors weighing on these uneasy relationships between law and policing are many, I argue that some of it has to do with law’s lack of clarity – and how this lack of clarity filters to policing. Such unease is palpable on closer inspection of sex crimes legislation. I

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discern three levels of confusion on which law operates: a) the incongruity in the law itself (i.e., the text of the law, the way it is worded); b) incongruity between law and its implementation (i.e., intent versus actualization); c) generation of unintended consequences that may actually border or be antagonistic to the purported missions of law and its enforcement (i.e., contravening public goods such as safety and security). Numerous law and society scholars have investigated the notion of “gaps in the law,” the idea that law implemented in practice can be vastly different – even contrary – to law in theory and on the books (Skolnick 1967; Wald 1967; Muir 1967; Abel 1973, 1980; Trubek and Galanter 1974; Feeley 1976; Macaulay 1984; Sarat 1985; Ewick and Silbey 1998; Scheingold 2004; Pojanowski 2014; Verma 2015; Reisberg 2017).

*Enforcing Laws of Morality: Policing sexual deviants in 17th-19th century America*

Sex laws in America date to European contact. According to Jenkins (1998), “the earliest colonial codes contained lengthy lists of sexual offenses…with fornication, adultery, bestiality, and homosexuality” earning the most stringent of physical penalties. Legality and morality were intensely intertwined; religious and moral injunctions formed the basis for regulating sexual behaviors. For example, the state of Connecticut enacted a sodomy statute in 1642 whereby one William Plaine of Guilford was sentenced to death for “masturbating a

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number of young men in the area.” The age difference between Plaine and the young men is unclear from the historical record; what is certain is that Plaine paid the price for a sex crime with his life. Indeed, laws delineating violations of sex norms, and penalties for them, existed from the days when colonial America was young.

These laws were tethered to understandings of a Biblical-based moral code. In fact, as Friedman notes, the colonies were first and foremost theocratic. As theocracies, the colonies cultivated a criminal justice system that “was in many ways another arm of religious orthodoxy.” To that end, “[t]he colonies in general made little or no distinction between sin and crime…[i]t was the duty of law to uphold, encourage, and enforce true religion.” Under such a system, it is not surprising that sexual offenses were taken seriously. For instance, sex outside of marriage was punished by fines, whipping, or the stocks. Bastardy was also not viewed kindly—with women receiving lashes for bearing children out of wedlock. Nathaniel Hawthorne’s *Scarlet Letter* may have been a fictional account, but its roots were anchored in truths and practices of the Puritan vision.

But what about enforcement? Who ensured compliance with the law? Who held people accountable when the laws of morality were broken? Religious leaders of the colonies held laypeople to account. During early European contact with America, laws governing sex crimes

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78 Friedman, 31.
79 Ibid., 32.
80 Ibid., 32.
81 17th-century ecclesiastical giants such as Cotton Mather and Jonathan Edwards delivered jeremiads detailing at length the moral sicknesses afflicting their communities. For example, see Edwards’ powerful classic “Sinners in the Hands of an Angry God” in *Early American Writing* (1994).
had their moorings in Biblical injunctions and moral conventions. Likewise, primary enforcers of moral conventions pertaining to sex were men (and only men) of the cloth. At the same time, laypeople – ordinary individuals – also assisted with enforcement in the preservation of moral, theocratic order. Night watches consisting of ordinary citizens tasked with spotting persons engaged in suspicious activities date to the 1630s. Formal police forces did not organize until 1838, when Boston installed the first American police force. Indeed, law enforcement resided primarily in the hands of the people in the 17th, 18th, and early 19th centuries. Church leaders dominated the arbitration of law and criminal justice during this time. Police as we know them today – let alone an independent police force – was yet a distant concept.

In 1636, the colonial city of Boston created the first night watch. More than twenty years later, New York would borrow the model – establishing a night watch in 1658. As for Philadelphia, it was not until 1700 that the city installed its night watch. Scholars document how watchmen often slept through or became drunk on duty during these nascent years of “police” work. In 1833, Philadelphia created the first day watch; New York followed suit in 1844. Despite the dramatic break from England that was etched into the core of America’s founding, many ideas and practices were nonetheless patterned after the mother country’s

85 Ibid.
86 Ibid.
87 Ibid.
88 Ibid.
institutions to a degree. For example, the London Metropolitan Police, which was established in 1829, served to “inspire American experiments with a standing army of professional law enforcers.” Boston established a day watch in 1838; but this proved insufficient to handle its rapidly growing population. Boston also saw its official Boston Police Department take shape in 1854. New York City, New Orleans, Newark, and Baltimore took similar steps to organize police forces in subsequent years. In 1903, Connecticut Governor Abiram Chamberlain signed a bill that authorized creation of the first state police department.

Police entities which cropped up during these years would be far more recognizable to us than were the previous iterations of 17th century night and day watches. Beginning in the mid 1800s, the structure of police agencies more closely aligned with the independent, bureaucratic structure we know today. Individuals received training and resources. Scholars such as Robert Wadman and William Allison attribute the formalization of law enforcement to a number of social, economic, and political factors – among them urbanization, industrialization, and perceptions about the rise in crime and vice. Law enforcement expanded as a profession to keep pace with the increased concentration of human populations in urban centers as well as the

89 Friedman observes the common “stimulus” of fear operative in the creation of both the formal English and American police organizations.
90 Ibid., 68.
93 By “independent,” I signal the shift in locus of policing from ecclesiastical hands to external, political ones. To the extent though that police departments became tethered to political party bosses in places like Chicago, for example, independent policing did not achieve complete actualization at the time.
perceived rise in social disorder and crime. The evolution from a band of ordinary citizens taking watch to a professionalized group of trained individuals took time. Despite structural and organizational shifts in law enforcement, moral and Biblical teachings continued to undergird the premises of policing. For instance, public displays of drunkenness and prostitution were classified as disorderly conduct. Displays of this kind were viewed as immoral. Consequently, police were instructed to respond to these examples of moral disorder in society.

The moral approach to regulating, prosecuting, and policing sexual behaviors continued through the 19th century. Moral teachings and sensibilities provided fundamental groundwork for law. From the time of early colonial night watches through the 19th century, sexual offenses were both conceptualized and policed in terms of morality. In addition, racial scripts often underwrote sexual mores – as seen in American slave codes, for example. Acts such as “fornication” or sodomy may or may not have been victimless “crimes,” but what was standard among their prosecution is the perspective that these acts violated the moral as well as pure racial bedrock of the community (Bremer and Webster 2006; D’Emilio and Freedman 1997). In one way or another, sex crimes law and enforcement – whether pertaining to masturbation or sexual

97 In fact, the Progressive Era renewed calls for morality-based legislation. The genre of “blue laws” such as prohibitions on alcohol, drunkenness – along with other behavior perceived as depraved – emerge from this historical context of policing morality.
assault of a child – are best understood in a moral context in which social discipline, self-control, and racial purity were placed at a premium (Stoler 1989; Bush 1993; Wallenstein 1994). 99

Enforcing Laws of Science: Policing (and diagnosing) sexual offenders in 20th century America

During the 20th century, a burgeoning scientific, technical approach began to supplant the more traditional, moral approach to legislating, enforcing, and punishing sexual offenders. As cities expanded and industries modernized, so, too, did law enforcement change. In the United States, the turn of the century saw “recorded serial murders and sex killings accelerate[e].” 100 Jenkins attributes the uptick to reported sex-related murders to enhanced “police detection” and media reporting. 101 This does not surprise, as the police had become more formalized, organized, and effective as an institution by the late 1830s in the United States.

Equipped with resources, experience, and knowledge to deal with crime – particularly in growing urban centers – law enforcement now had a more mature capacity to deal with the increased frequency of sex crime reports. 102 After all, as Friedman points out, the “invention of the police was, in part, a response to the violence of cities.” 103 Of course, more sophisticated police methods and a growing media industry are just part of the story. At work as well were persistent public anxieties and fears about crime – fears that have been consistently exploited,

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100 Jenkins, 39.
101 Ibid., 36.
103 Friedman, 173.
capitalized, and politicized throughout the chronicles of U.S. law, crime, and society history (Scheingold 1984, 2004, 2011; Simon and Feeley 1998; Farkas and Stichman 2002; Robin 2004; SpearIt 2011; Roos 2014). For example, Rogin’s pointed observations about racial overtones and undertones present in everything ranging from American film culture (e.g., *Birth of a Nation*) to President Wilson administration’s move to separate white and black coworkers, so that white females were not ‘forced unnecessarily to sit at desks with colored men’ reveal the racially-fused politics of policing sex crimes – especially in the urban setting (1985, 155).  

At the same time, the disciplines of medicine and psychiatry were also professionalizing in the United States. It was also the advent of Freudian psychoanalysis. Developments in law enforcement, medicine, and psychiatry are neither coincidental nor mutually exclusive. As Foucault notes, the “intervention of psychiatry in the field of law” and the accompanying “psychiatrization of criminal danger” had become prevalent during the 19th century. In other words, criminal actions originated from dangerous insanity and harmful urges which the “legally responsible agent” cannot “even control because he is frequently not even aware of it.” Changes in these fields precipitated a paradigm shift that recast sex crimes as a mental abnormality, rather than an intentional choice. Based on medical and psychiatric findings, the criminological consensus came to hinge on the notion that sexually “deviant” actions were actually symptoms of underlying mental illness and/or biological “flaws.” Indeed, to this day, sexually deviant tendencies and behavior such as paraphilia (including pedophilia) are thought to

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106 Jenkins, 21.
be manifestations of mental disorders. If sexual offenses were unintentional expressions of subterranea mental, biological, and behavioral disorders, traditional criminal justice conceptions about individualized justice and personal responsibility could no longer hold (Feeley and Simon 1992; Simon 1998; Hebenton and Seddon 2009). Instead, medical intervention and psychiatric therapy – not imprisonment – were billed as the adequate, targeted methods to fulfill criminal justice aims of crime prevention, societal order, and public safety. These shifts in criminology are accompanied by changes in theories and practices of punishment as well.

Thus, the medical view of sexual deviance stood opposite the conventional law enforcement view that sex crimes are premeditated acts motivated by malice. Sexual deviance was a symptom of mental and biological processes gone awry. It was not necessarily a matter of choice, argued doctors and psychiatrists. Under the banner of science and medicine, the sex criminal was now an individual in need of therapy – not punishment. In effect, the sex criminal had been mislabeled, erroneously subjugated to moral judgments and criminological misnomers. The implications of modified conceptions about sex criminals were made plain to U.S. law enforcement. Namely, police departments needed to dismantle punitive procedures and replace them with purportedly promising mechanisms of therapeutic intervention. Yet, such incorporation of psychiatric insights into policing methodologies made for an interesting and oftentimes unclear, confusing combination.

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Psychiatric diagnoses began finding their way into law; likewise, legal processes became vehicles for medical assessments. As encapsulated in Foucault’s prescient words, legal justice within the modernizing criminal justice system has at least as much to do with criminals as with crimes. Or, more precisely, though for a long time the criminal had been no more than the person to whom a crime could be attributed and who could therefore be punished, today the crime tends to be no more than the event that signals the existence of a dangerous element – that is, more or less dangerous – in the social body.\footnote{Foucault, 13.}

Criminals were individuals who posed dangers to the body politic. More specifically, under this medical-legal logic, just as sexual deviants exhibit to their own mental and psychological well-being, they equally pose risks to a society’s technological, industrial, and scientific progress. In this way, a particular mode or technique of medical treatment and policing sex criminals came into vogue in the early 20\textsuperscript{th} century.

Consider the story of Kenneth Elton, a repeat offender of female minors, as recounted by Jenkins. The following account aptly illustrates the constitutive, relational shifts that were occurring in the treatment and policing of sex offenders:

Elton presented himself as merely a teenage boy with a taste for girls a little younger than himself. While working at an army camp during World War I, he associated with girls of thirteen or fourteen in preference to the ‘gold-digger’ women frequented by soldiers, figuring that the youngsters were probably disease-free…\footnote{Jenkins, 20.} In 1922, after approaching a young girl on the street, he received a one-year jail sentence; in 1925, after being caught performing cunnilingus on a girl of nine, he was committed to St. Elizabeth’s Hospital in Washington, D.C. Elton was puzzled by the tough official reaction, and he minimized his offenses as ‘a kind of masturbation, just to get the gun off’.

The above passage indicates the application of a particular medical-criminal justice regime to sexual deviants. The sexual deviant therefore was (and is) seen as posing a danger to society that...
warrants punishment and/or separation from society either in the form of imprisonment or confinement in the hospital.

Four key aspects of this regime become evident from Kenneth Elton’s case. One, the prison sentence for soliciting a minor (i.e., “approaching a young girl on the street) in the 1900s is fairly light as compared to today’s sentencing structure. If committed in the state of Connecticut now, for example, such an act against a child under thirteen years of age would carry a penalty of 5 years minimum prison time.\textsuperscript{110} In addition, it is notable that Elton’s performance of an oral sex act on a minor likewise did not warrant a prison sentence under the law at the time. In fact, Elton was sent to a hospital for that act – not a jail. Today, individuals who commit sexual assault in the first degree can expect imprisonment and “special parole” lasting “at least” ten years.\textsuperscript{111} Second, the variation in “punishment” and “treatment” is striking for the commission of different criminal acts.\textsuperscript{112} On the one hand, the American system metes out criminal penalty for online solicitation of a minor – presumably an act that may not result in any kind of sexual consummation. On the other hand, the American system does out a decidedly medical – perhaps even therapeutic – treatment for actual performance of a sex act against a minor. The seemingly lesser offense receives a more traditional criminal justice penalty; the seemingly more serious offense meanwhile receives a hospitalization. Third, that Elton feels “puzzled” by the “tough official

\textsuperscript{111} https://www.cga.ct.gov/2011/pub/chap952.htm#Sec53a-70.htm.
\textsuperscript{112} Some scholars question the substantive differences in character – or at least in implementation – between criminal sanction and court-ordered therapy imposed on sex offenders. See Cohen and Jeglic’s “Sex Offender Legislation in the United States: What Do We Know?” (2007). The practice of civil confinement for sex criminals in hospitals or mental institutions from the 1930s-1950s was not radically different from the criminal sanction of imprisonment. Decades ago, Foucault contested the premise that the medical field functions as a neutral arbiter of health and well-being.
reaction” reveals the possibility that both the law enforcement and medical responses had been heretofore not enacted in meaningful ways with respect to his situation. Without reading too much into this one instance, it nonetheless suggests that these fields had yet to ramp up efforts to identify, deter, and address sex offenders with a systematic approach — despite the increasing professionalization of both. Finally, a constitutive dynamic among the law enforcement and medical fields is palpable. A shift from criminalization to medicalization of sexual offender suspects is located in Elton’s case: where he first receives a criminal sanction, then several years later experiences a mandated hospital stay.

During this era of flourishing psychiatric research and local government-mandated exploratory committees on sex criminals, the over-arching conclusion was that sex crimes “usually” did not occur as the result of “obsessive recidivists.” In addition, political leaders and law enforcement found that first-time sex offenders committed the majority of sexual misdeeds in urban epicenters like 1930s New York City. For this reason, psychiatrists “wished to promote therapeutic intervention as a benevolent alternative to the punitive assumptions of the prevailing [criminal justice] system.” Importantly, law enforcement accepted the wisdom that fields of medicine and psychiatry purveyed. Feeling intense political and public pressure, police sought a solution to what appeared to be an exploding sex crime crisis across the nation. After all, there were daily media reports of sex crimes and daily arrests of suspected sex criminals.

During the late 1940s, police departments began to accept psychiatric experts on sex offenders into their departments. Law enforcement combined conventional policing techniques with the resources of psychiatric profiling and understanding of who sex criminals were and how

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113 Jenkins, 66.
115 Jenkins, 44.
they acted. Even now, psychiatric and medical insights permeate professional discourses about sex offenders and cyber sex offenders. Child abusers, it is said, suffer from depression and anxiety. Pedophiles, a subset of child abusers (not all child abusers are diagnosed with pedophilia), tend to be socially awkward and introverted. Or, according to sociologist Keith Durkin, who has conducted in-depth interviews with sexual offenders, “a striking characteristic of pedophiles is the ability to minimize, rationalize activities.” Thus, the lineage of these insights is nearly a century old, applicable to today’s burgeoning carceral state as much as they were to the nascent criminal justice system 100 years ago.

This rosy vision of therapy and medical intervention, however, soon faced doubts. In realistic terms, psychiatrists and police alike recognized that certain segments of the sex “psychopath” population ought to undergo a dual experience of just punishment and targeted therapy. Routines for psychiatric therapy were simply not making good on the pledge to rehabilitate and normalize sexual deviants. Highly publicized sex crime cases in the U.S. like that of William Heirens in 1946 (who allegedly committed multiple murders, one of which included the dismemberment of a six-year-old female victim) also fostered skepticism about the

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118 Durkin, Keith. 2009. “There must be some type of misunderstanding, there must be some kind of mistake, the deviance disavowal strategies.” Sociological Spectrum 29(6): 661-676.
efficacy of treatment. On a note left at one particular murder scene, Heirens had written: “For Heaven’s sake, catch me before I kill more. I cannot control myself.” To be sure, Heirens’ words did not help to alleviate the accelerating train of second-guessing about pursuing the therapeutic route for sex criminals. If the objectives of psychiatric therapy are to diagnose, treat, and rehabilitate individuals with mental illnesses, including “disordered” sexual behavior, the failures of therapy (i.e., sex criminals recidivating) will understandably trigger wholesale critiques.

The profession was struggling to grapple with public perceptions of a diagnosis and treatment regime gone awry. Media coverage across the nation exacerbated the public’s concerns about sex crimes. Prescribing therapy stood as the weakest of the tools in the law enforcement toolbox. 1930s and 1940s newspapers in St. Louis, Missouri, for example, greeted readers with the following headlines: “KINDERGARTEN GIRL ACCOSTED BY MAN;” “MAN ACCUSED BY 8-YEAR-OLD BOY OF MOLESTING HIM IN THEATRE;” “6-YEAR-OLD GIRL AT ASHLAND SCHOOL MOLESTED;” “9 CHARGES AGAINST MOLESTER OF GIRLS.” In this light, the pairing of psychiatry and policing had made for a less than clear, decisive strategy to address sex crimes across the nation.

Equally important, the issue of sex criminal recidivism posed a major hurdle to the realization of the medical vision. Even after receiving court-mandated treatment, individuals were re-offending. In this light, therapy (in conjunction with conventional criminal sanctions) was not the panacea as originally conceived. As was noted in New York City, ‘[t]he repeatedly arrested but released sex offender is a special bogey.’ Documenting a particular case

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120 Jenkins, 58.
122 Jenkins, 79.
illustrative of the limitations law and enforcement faced – and the debuting concept of the “sex psychopath” at the time, Jenkins writes about a man who received a year’s imprisonment in 1942 for indecent exposure to two young girls. Released in 1943, he soon received thirty days in prison for exhibitionism. The year 1944 brought probation for molesting a five-year-old girl and then another year in jail for indecent exposure to more little girls. The man was rearrested again each year from 1946 through 1949, when he was finally committed indefinitely as a sex psychopath.123

Between the 1930s and 1950s, reported sex crime waves ebbed and flowed in American politics, media, and society as a whole. Public fears alternated among peaks and zeniths, coinciding with the country’s political, social, and racial scripts of the day.

In this context, social, political, and legal conditions ripened for the construction of a new genre of American law: sexual psychopath statutes. These laws sought to salvage the remaining insights of psychiatry and combine them with the grit of law enforcement. Farkas and Stichman (2002) discuss how the first “sexual psychopath” laws were passed beginning in the 1920s and 1930s in response to high-profile sex crimes.124 Media coverage documenting alleged “waves” of sex crimes against minors ignited public fears about the vulnerability of American youth. Forming a partial template for the sexually violent predator (SVP) legislation that would appear in the 1990s and early 2000s, sexual psychopath laws provided for the civil commitment and treatment of offenders.125 Yet, these psychopath statutes nonetheless retained treatment-oriented content and objectives in language, if not in practice.

123 Ibid., 79-80.
125 As Farkas and Stichman distinguish, these sex psychopath statutes were still very much treatment-oriented, as opposed to today’s SVP legislation, the provisions of which (such as requiring a certain distance from schools or playgrounds) take effect even after an offender has completed one’s prison sentence.
The United States saw the generation of a mid-20th century, post-war sociopolitical climate, in which “the ‘crime problem’” became “more intense in people’s minds, and in their lives.” In this setting, then, it is not surprising that politicians, physicians, psychiatrists, police, and the public coalesced around efforts to wage a new war – a domestic pursuit of justice against the sexual predators and “sex fiends” who roamed the country, menacing children. Heated calls for swift action materialize in the form of law and order legislation. States throughout the nation promptly put pen to paper and crafted the genre of the sex psychopath statute, as has been just discussed (Lave 2009).

The politics of sexual law and order developed freely during the mid-20th century, without much judicial interference in the beginning. For example, the Supreme Court had yet to weigh questions of indecency and obscenity or set constitutional parameters in any systematic way. In other words, law makers and law enforcers had vast powers with which to fashion laws covering sex crimes. In effect, law-making and law-enforcing capitalized on the absence of decision and clarity within sex law itself. Meanwhile, municipalities like New York and Chicago pioneered “sex bureaux to catalog sex offenders against children.” Initiatives to catalog and track sex offenders were part of an extensive, multi-pronged campaign to address the sex crime

126 Friedman, 449.
127 Jenkins, 85. Introduced during the 1880s, “sex fiend” was a conceptual canopy – one covering many assumptions and definitions.
128 Michigan was the first state to enact a sex psychopath statute. Following the Supreme Court’s decision in Pearson v. Probate Court 309 U.S. 270 (1940) that found civil commitment/special treatment of “highly dangerous” sex offenders constitutional, nearly half the states (26) and D.C. had passed some form of the statute by the end of the 1960s. See Lave, Tamara Rice. 2009. “Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws.” Louisiana Law Review 69(3): 549-591.
129 In 1897, the Supreme Court upheld a conviction for the circulation of a newspapers called the “Chicago Dispatch,” which was deemed to have “obscene, lewd, lascivious, and indecent” content in Dunlop v. U.S. This is the earliest Supreme Court case on the constitutional issue of obscenity.
130 Jenkins, 80.
problem (part perceived, part actual) in the United States.\textsuperscript{131} Again, these efforts did not occur in a vacuum, but rather were one response of many to growing anxieties about broader changes within the social order, such as the African-American civil rights movement, emergence of youth culture, and the growing presence of women in the workplace.\textsuperscript{132} Other pieces of the law enforcement pie entailed states carving out sex psychopath statutes.\textsuperscript{133}

Two key premises secured the foundation of sex psychopath statutes. Exploratory committees tasked with writing the statutes touted the notion that there were sex offenders who were not insane yet still turned to atypical methods of “satisfying sexual desires” and so thus posed risks to the public. The first basis of sex psychopath statutes is that certain sex offenders pursue abnormal means to satiate sexual desires. On balance, sex psychopath statutes ought to regulate or altogether prohibit those means. Advocates for sex psychopath statutes also argued that the population of “compulsive,” violent sex offenders must be contained in specific areas – away from general prison populations or other conventional institutional settings. Here, the

\textsuperscript{131} As is often the case with crime “epidemics,” the combination of increased reporting in allegations and media coverage foster the perception that crime has risen. Whether an actual increase in the incidence of crimes is not always clear. However, this is not to suggest that perceived crime “waves” are not rooted in actual occurrences. See Scheingold, Stuart A. 2010. The Politics of Law and Order: Street Crime and Public Policy. NY: Quid Pro Books. Also see Monkkonen, Eric H. Police in Urban America, 1860-1920. MA: Cambridge University Press, 1981.


\textsuperscript{133} The multi-pronged approach to dealing with sex criminals continues today. Sex offender registries have become an integral component in law enforcement responses. At the legislative level, interesting contours of the legal response involves addressing sex crime in the form of chemical castration laws. In fact, California, Montana, and Oregon have chemical castration laws, which make release of sex offenders contingent on subjecting their sexual organs to “chemical castration” procedures. During these procedures, chemicals are released into the organism which kill or neutralize all sexual desire. See Daley, Matthew W. 2008. “Flawed Solution to the Sex Offenders Situation in the United States: The Legality of Chemical Castration for Sex Offenders.” Indiana Health Law Review 5(1): 87-122.
second basis for sex psychopath statutes is that certain sex offenders; especially sexual deviants need to be ostracized from society.

Prior to the advent of sex psychopath laws, legislators and police did not have the statutory resources to counter the persistent problem of sex crime recidivism. Jenkins discusses how “[a] need for prolonged incarceration was suggested” by cases of individuals with long histories of sexual violence against children. For example, in 1938, a 53-year-old man was reported to have begun his criminal record in 1910 – serving prison time for “indecent assault and carnal abuse of a child.” He was consecutively re-arrested and re-released in 1921, 1925, and 1936 for other sex crimes against children. Once identified as psychopathic under these laws, individuals went straight to indefinite civil confinement and therapy. Insanity thus voided constitutional protection even as psychopathic sex criminals were subjected to criminal sanction.

During the 1940s and 1950s, states began to craft legislation targeting sex offenders both for medical/psychiatric diagnoses, and for government surveillance. In 1947, California became the first state to pass a law that authorized police tracking of the whereabouts of sex offenders upon release from a prison – a practice that continues to this day and has extended to all fifty states. By 1998, 49 states and D.C. had created centralized sex offender registries, which shared information in common. And which state was the last one to join the sex offender registry movement? Connecticut. However, beginning in May 1998, “legislation…establishing a centralized State sex offender registry” made Connecticut’s membership in the club official effective October 1, 1998.

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134 79.
135 79.
136 79.
Connecticut also retained a sexual psychopath statute on the books as late as the 1990s.\textsuperscript{138} Interestingly, in the 2003 case of \textit{Connecticut Department of Public Safety v. Doe}, the U.S. Supreme Court rejected the argument that sex offenders in the state were denied due process as a result of language in the law that disallowed them from a hearing to determine whether they posed dangers to the public. Both law makers and law enforcers exercised a broad scope of power to legislate as well as police sex criminals who were identified as psychopathic, compulsive, and dangerous.\textsuperscript{139}

Yet following a “flurry of legislation” a slight, temporary reprieve from the punitive energies crystallized in the form of the President’s Commission Report of 1968, requested by President Lyndon B. Johnson.\textsuperscript{140} “This report emphasized improvements in rehabilitation as central tasks for the future of corrections.”\textsuperscript{141} The narratives and framing of crime in this report synced with the attitudes of the 1960s and Civil Rights-era during which Americans as a whole turned less sympathetic toward law enforcement responses to sex crimes. In the midst of increased awareness about rights and liberties, stringent punishments and confinements enshrined in the sex psychopath legal schematic became less acceptable. In particular, identification of all sex offenders as “psychopaths” was losing its appeal in the eyes of activists and politicians seeking to be on par with changing sensibilities. To a significant degree, police
departments were caught in the middle. The punitive trajectory of law enforcement appeared to stall at precisely the gap between disciplinary and rehabilitation models. Indeed, “[w]hen fear or crime…reduced from a boil to a slow simmer, professionals…put through programs of reform and rehabilitation.” Police had to pivot and change course.

In conjunction with (perhaps more accurately, as a result of) Civil Rights-era activism, which both responded to and re-ignited racialized anxieties at that time, shifting expert opinion impacted the ways media portrayed, the public viewed, and law enforcement respond to sex crimes in the 1960s and 1970s. Walking back from prior narratives about sex offenders as fiendish persons demonizing America’s children in mass droves, medical and psychiatric experts changed tunes – and so did the media and public. In the same vein, legislative and judicial officials searched for immediate mechanisms to modify punitive and therapeutic mechanisms for dealing with sex criminals. The United States law enforcement communities had to follow suit.

Beginning in the 1960s, lawmakers and judges limited drastically the “powers of forcible civil commitment and discretionary sentencing that had earlier been the foundation of official policies toward sexual deviants.” Consequently, police found the powers to identify and arrest suspected sex offenders in the lurch. Media coverage and public opinion veered far afield from previous conceptions of panics surrounding sex crimes. As experts in the fields of medicine and criminal justice downplayed sex crime, people developed a skepticism about its actual gravity and extent. Illustrative of the time, a leading criminological work from 1959 depicted the sex crime issue in the following tone:

the most serious [of sex crimes] are associated with rape, particularly forcible rape, or with assaults on young girls or elderly women. But...there are few outright cases of this type. Most of the rape cases deal with statutory rape...So far

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142 Friedman, 306.
143 Jenkins, 95.
as forcible rape is concerned, it has been much overrated. In many cases the female has offered little resistance, and in other cases she has ‘framed’ the male.\textsuperscript{144}

This text marks a vast conceptual distance between treatment of sex offenders in the earlier decades of the 1900s and that of the mid-century. The sentiments contained in the above passage squarely place blame on the gendered (i.e., female) victim for doing one of three things: overreacting; not doing enough to resist the offender’s attentions; or actually conniving to accuse the male perpetrator without factual basis. On this position, then, law enforcement responses to sex crimes are rooted in baseless accusations made by weak – even devious – females who are acting on a malicious thirst for attention. In this context, police actions would therefore appear illegitimate and unnecessary.

Keeping a sense of the academic, social, political, and media scripts underlying changing attitudes toward sex crimes in mind, one realizes that these depictions are moored in relaxed judgments about both the act itself and the agent behind it. Jenkins reports that experts on the subject pronounced “early sexual contacts” as not having “harmful effects on many children unless the family, legal authorities or society reacts negatively.”\textsuperscript{145} Again, these determinations sounded a far cry from previous narratives of sexually deviant behaviors and sex crimes that prevailed through the 19\textsuperscript{th} century and early 20\textsuperscript{th} century.

Certainly, the transformation from early 17\textsuperscript{th}, 18\textsuperscript{th}, and 19\textsuperscript{th}-century perceptions of sex crimes to views proliferating in the mid-20\textsuperscript{th} century was a far-reaching, extreme one. During the earlier decades, sexual deviants were deemed pernicious, violent, and malevolent predators of

\textsuperscript{144} Ibid., 98.
\textsuperscript{145} 104.
youth. The mandate for law enforcement was clear and carried out without question. Police investigated and arrested sexual offenders of children in a highly intense, specialized way. The sheer volume of arrests for rape, sexual assault, and battery from the 1920s-1950s speaks to this mandate. Yet, during the later decades, that clarity of mission and purpose diminished; police did not have the wide berth of official backing and public opinion behind them they previously possessed. Attitudes toward sexual activity were loosening; age of consent was now a topic for debate.

To this day, variation abounds among the states when it comes to setting the legal age of consent. As is the case with many states, the age of consent is sixteen to Connecticut. Still, as UCLA’s School of Law Eugene Volokh says, while thirty states set consent at sixteen (including Connecticut), eight states mark it at seventeen years of age, and twelve states set it at the ripe old age of eighteen. Finally, differences between age of the victim and age of the rapist provide the basis for yet more variety in how states treat offenses like statutory rape and aggravated

147 The increase in arrests occurred, despite continued uncertainty over whether there was in fact an increase in the rate of sex crimes. Even the FBI has issued the caveat that though it gathered crime data beginning in the 1930s, methods were far different than the more sophisticated statistical work conducted now (Lazer 2009).
sexual assault.\textsuperscript{151} For example, many states provide that if the age difference between offender and victim is fewer than two or three years, the felony offense can be downgraded to a misdemeanor.\textsuperscript{152} Sex crimes law was disparate and inconsistent then; it is now as well. If, during the sexual revolution, sexual relations between adults and youth were no longer perceived as troubling an issue as they once were, then enforcing sex laws on the books became a logistically cumbersome and politically unpopular move. As states revised statutes governing sex crimes, police witnessed their arrest powers and enforcement authority revised as well.

\textit{The War on Sex Offender: The Policing Comeback in the 1970s-1980s}

Just a few years later, however, the idea of rehabilitation would subside, as American politics returned to traditional understandings of the disciplinary, yet rehabilitative role of law enforcement. After two decades spent unraveling legislative and policing initiatives deemed too harsh a response to sex crimes, political winds began to blow the opposite direction once again. Legislators, activists, and the broader public, questioned whether the pendulum had swung too far to the side of leniency toward sex criminals.

In the wake of altered laws and reduced policing targeting sex criminals, renewed calls for strengthened law enforcement emerged. Scholars - including Friedman, Scheingold, Simon, and Garland - have noted that during the 1980s War on Drugs, in conjunction with the wake of the not-so-coincidental welfare state expansion, twin emphases on the more punitive goals of retribution and deterrence were back with a vengeance. Politicians set their sights on tightening the screws on drug and sex legislation. The “war” model replicated itself in various legislative arenas.

\textsuperscript{151} Koon-Magnin and Ruback, 1923.
\textsuperscript{152} For an excellent justification of the exception to enforcing statutory rape laws against minors, see Flynn, Daniel. 2013. “All the Kids Are Doing It: The Unconstitutionality of Enforcing Statutory Rape Laws Against Children & Teenagers.” \textit{New England Law Review} 47: 681-1071.
Factors fueling this reinvigorated drive for policing were many, but the chief of which was the merger of the War on Drugs context with the feminist campaign (in the midst of the emergent landscape of social work). Most noteworthy among them were the following two: feminists launched a campaign to highlight the prevalence of rape in the nation; and medical and social work professionals successfully brought attention to the prevalence of child abuse in American families and homes.\footnote{Jenkins, 118.} With activists on the one hand and child experts on the other hand decrying child abuse as a widespread and serious threat, police resources and skills were in high demand.

basis of minimal information” and how “[t]hese judgments could result in unwarranted intrusion of the government.”

Local, state, and federal agencies cropped up in order to meet the new federal requirements. In the same year, the Department of Health and Human Services established the National Center on Child Abuse and Neglect (NCCAN). Private organizations also materialized to direct expertise and funding for addressing the new national crisis of child abuse in its physical as well as sexual dimensions. Legislators detected the broad political salience of the moment and so quickly attached themselves to the crimes against minors movement renaissance – conservatives and liberals; feminists and evangelicals alike.

The movement brought together conventionally cacophonous voices around the singular issues of child physical and sexual abuse. The American public needed the specialized knowledge and skill sets of law enforcement once again – this time, to address cases of child abuse, molestation, rape, and incest. The topic of child pornography and its intrinsic exploitation of youth came to a head as well during this time. Activists wielded an influential hand in pressuring municipal agencies and police departments to investigate child pornography.

In response to activism and political pressure surrounding the issue, New York City police descended on Times Square in 1977 and initiated a major “crackdown” on purveyors of child pornography. That same year, Chicago police uncovered operations and the headquarters of what they determined to be a nationwide “homosexual” ring involving sex trafficking of male

157 304.
159 Jenkins, 122.
youths for the purposes of prostitution and pornographic modeling. Meanwhile, the House Judiciary Committee prepared to hold hearings on child pornography, prostitution, and other forms of exploitation, with New Jersey Congressman Peter Rodino, Jr. saying that it was “a matter to be dealt with as quickly as possible.”

The case for an inevitable linkage between child pornography and child abuse was made nearly immediately at the outset of the 1970s tough-on-sex crimes comeback. According to activists and law enforcement experts (then as well as now), consumption of child pornography involves the emotional, physical, and sexual abuse of children. As one advocate put it, victims of child pornography featured in film and on page “were emotionally and spiritually murdered.”

Today, feminist scholars contend that child pornography “works to eroticize a child’s powerlessness” and the “existence of a booming child pornography market validates viewers’ desire to sexualize children.” In 1977 Congress passed the Kildee-Murphy bill, which banned the “manufacture, distribution, and possession of child pornography. Just as CAPTA had to fend off constitutional challenges, so, too, the Kildee-Murphy bill faced First Amendment challenges.

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161 Ibid.
162 It is worth noting that countries like England, Wales, and the United States were among the first states to enact law designed specifically for tackling child pornography. Prior to the 1970s, governments did not distinguish between adult and child pornography in terms of content or legal repercussions.
163 Jenkins, 123.
questions pertaining to whether definitions of “child” and “pornography” were overbroad, thereby constituting invalid incursions on protected speech (Clough 2012; Roos 2014).166

Equally important, police practices mirrored growing consensus over child abuse. Law enforcement agencies vigorously investigated allegations and prosecuted child abusers to the fullest extent of newly stringent laws. With the debut of National Center for Missing and Exploited Children (NCMEC) in the 1980s, police pursued sex abusers of children with a heightened sense both of institutional and public support. Likewise, in 1986, the federal Children’s Justice Act funded programs to improve the prosecution of child abuse and neglect cases.

In effect, policing sex crimes against minors had returned in full force by the 1980s. Therapeutic intervention and rehabilitative practices for sex criminals failed to staunch the seemingly persistent increase in sex crimes perpetrated against children. The medical-criminal justice regime of treating sex offenders in civil confinement fared no better. Worse, these practices failed to pacify activists, who opposed the sexual psychopath legislation on the basis of what they saw as unjust, arbitrary, and racist law.

Finally, in the 1970s and 1980s, Americans began to turn their backs on the rehabilitative ideal for criminals across the board – but especially with respect to sex offenders. Simon notes the “decline of the rehabilitative ideal” in the 1970s and the subsequent return to criminal justice norms of retribution and deterrence in the 1980s.167 In sum, the 1970s and 1980s marked a shift back to a more energized, clear-sighted, forceful mode of policing sex crimes against minors. The 1960s approach to legislating and policing sex crimes had all but vanished by the 1980s.

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Sex Crimes, Meet the Internet: Policing at the dawn of the Information Age

Enter the 1990s, the last decade of a century during which the nation experienced a debilitating Great Depression, two tumultuous World Wars, the Civil Rights revolution, and the psychological pain of Vietnam. The 1990s saw the Generation X-ers coming of age and the cradle of the technology boom in California’s Silicon Valley take shape. The 1990s also saw the internet take center stage in crimes, particularly those involving sex crimes against children. Just as the internet revolutionized communications, it transfigured both the perpetration and policing of sex crimes.¹⁶⁸

In Chapter Three, I sketch an account of contemporary policing of sex crimes and cyber sex crimes. In taking up such an account, I do so with an eye toward the constitutive, dynamic, contingent relationships between law enforcement, crime, technology, and society. What does the role of law look like when crime goes online? What does it mean both for law enforcement and society to function in the Information Age? How does the complex, confusing, maze-like geography of cyberspace further complicate law making and law enforcing in the United States? How do these constitutive series of relationships among law enforcement, criminals, and technology function as microcosms for broader penological patterns in the emerging carceral-civil society? What is the relationship of the carceral state to sex offenders – or as Gottschalk observes them to be, ‘the modern-day untouchables’?¹⁶⁹ I explore these inquiries next and lay the

¹⁶⁹ Gottschalk, 200.
conceptual groundwork for understanding the role of the public sex offender registry within the carceral state.
Chapter Three
Walking the Beat on the 21st Century Cyber Block: Police and Cyber Sex Offenders

On the Internet, nobody knows you’re a dog.

On the Internet, nobody knows you’re a cop.

The Internet is ubiquitous, so ever-present in our lives now, that unlike a dog here or a dog there, it’s become like a huge, baying pack of hounds that won’t ever shut up.

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170 Etymological origins of the phrase “walk the beat” are somewhat unclear. Modern usage of the phrase expresses the idea that police conduct a foot patrol in a particular neighborhood. In other words, officers are assigned to specific sections of a city, for example. Additionally, “the beat” is closely associated with a resurgence in community policing practices. Community policing centers on the development of personal ties with people living in the neighborhood; police and citizens cultivate relationships – ones built on mutual trust and respect. Through these mutually constitutive, trusting, respectful relationships, the objective is to provide more targeted, responsive public service on the one hand as well as to strengthen the capacity for police to do their investigative work on the other hand. At its core, practitioners of community policing practices seek to foster trust in the police and cooperation on the part of residents. A March 2015 Wall Street Journal piece describes the return to community policing practices in places across the nation – including the city of New Haven. Political observers and scholars see this return as part of a corrective program to certain perceived law enforcement abuse of power in the highly publicized police-shootings of adolescent African-American males, such as in the cases of Trayvon Martin and Michael Brown. See “Putting Police Officers Back on the Beat.” http://www.wsj.com/articles/putting-police-officers-back-on-the-beat-1426201176.

171 This phrase comes from the caption to the “most reproduced” cartoon in The New Yorker history. In 1973, cartoonist Peter Steiner created the now-iconic drawing of one dog sitting behind a desktop computer telling a fellow canine beside him the following: “on the internet, nobody knows you’re a dog.” In a July 13, 2013 Washington Post article, Michael Cavna observes that neither the cartoon creator nor his readers could anticipate the prophetic portent of the caption. Computers and cyberspace were foreign objects and concepts to a majority of Americans in the 1970s. Even Hollywood films like the 1968 2001: Space Odyssey or the 1983 War Games did not portray computers in ways yet practicable for the average American. Instead, computers were imaginatively configured as personified objects belonging either to space expeditions or elite military operations, respectively. “Steiner acknowledges that the cartoon, upon its 20th anniversary, remains just as relevant – yet in 2013, the resonance is magnified,” Cavna writes. In Steiner’s words, “the Internet is so ubiquitous, so ever-present in our lives now, that unlike a dog here or a dog there, it’s become a huge, baying pack of hounds that won’t ever shut up.” Whether law enforcement investigate hacking, phishing, bullying, or child pornography, police confront the various “baying pack of hounds” roaming cyberspace.


Introduction

In Chapter Two, I traced the evolution in the sociopolitical construction and policing of sex crimes within the United States. In this chapter, I document the ways by which law enforcement grapples with sex crimes of a digital, virtual – or, non-physical, if you will – character in a relatively new space (cyberspace, online world) which nonetheless have potential for actualization in the far more long-standing, established spaces (physical, offline world).

After undertaking this historical account, I identify as well as analyze implications for law and society dynamics embedded in police-criminal-cyberspace linkages. In order to understand this constitutive series of relationships among law enforcement, criminals, and technology – and how they function as microcosms for broader penological patterns in the emerging “carceral-civil” society, I explore how cyberspace complicates principles and practices of law enforcement across the United States generally and in Connecticut specifically.¹⁷⁴

I also investigate how the law’s lack of clarity and precision inform – or better, misinform – the ways the internet and communicative technologies are likewise reshaping and transforming nexuses between law, crime, and technology. Two primary inquiries therefore guide the conceptual and analytic framework for this chapter. First, how does cyberspace impact and transform enforcement of law and policing of sex crimes against youth in the United States?

¹⁷⁴ As I noted in the introductory chapter, Connecticut is an important, valuable case study for the purpose of understanding policing cyber sex crimes against minors. One, the state is a founding member of the Internet Crimes Against Children task forces (ICAC) – a vital player in U.S. law enforcement efforts on this type of crime. Two, Connecticut was a litigant in the 2003 U.S. Supreme Court case (Connecticut Department of Public Safety v. Doe). At issue was the constitutionality of the state’s public sex offender registry and whether the database violates an offender’s due process rights. The High Court did not address the specific question of the registry’s constitutionality. Instead, the Court ruled that the registry was based on the offender’s conviction alone. For these reasons, Connecticut provides a trove of data to examine the following: information on law enforcement approaches to cyber sex crimes; information on the legal, social, and political debates surrounding policing crime in the Information Age.
Second, how does policing impact the way cyberspace functions as a terrain with its potential both for communication and crime (as will become clear later in this chapter, sexually explicit communication between adults and minors constitute crimes).

To these ends, I explore the unique ways by which cyber policing operations diverge from traditional policing practices. During this exploration, I have uncovered specific reasons for the distinctive turns law enforcement takes directly related to the character, features, and functionality of the cyber world. From their inception, cyber policing operations of sex offenders absorb tools of anonymity, masquerade, temporal flexibility the online universe fosters – the very aspects criminals exploit for their own purposes. The history of internet technologies, which is ongoing, is one of rapidly-increasing availability and convenience. The internet’s ubiquity allows for uniquely easier modes of law-breaking and law-enforcing. At the same, elements of anonymity, masquerade, and ubiquity likewise present challenges to traditional methods of law enforcement.

I believe that these changes contained within cyber policing herald subtle, yet important expansions to the new penology – the logic of which nourishes the carceral state. Feeley and Simon argue that the new penology frames the criminal justice system as managing populations according to different risk level individuals pose to society. Groups or communities deemed high-risk receive more intensive management and control than those deemed low-risk. For instance, individuals (and communities) suspected of association with terror or terror-related activities warrant exacting scrutiny from U.S. law enforcement authorities. Alternatively,
individuals (and communities) suspected of prescription opioid drug abuse are deemed more of a risk to themselves than to the broader society.\textsuperscript{175}

In addition, policing cyber sex offenders presents a distinctive expansion to the new penology equation of risk management. I see three over-arching factors for why this population of offenders pushes the bounds of the new penology. First, cyber sex offenders are not easily categorized in terms of risk level they carry to society: the “mere” consumer of child pornography stands as a far different case than the child porn producer as well as a years-long abuser of his niece. Second, they are not easily pegged into demographic boxes: the cyber sex offender can be your elderly black neighbor, your local Asian-American pharmacist, or your white, unemployed cousin. Third, the criminal justice system follows cyber sex offenders in ways it does not with regard to other prisoner populations such as violent offenders, drug offenders, and deadly weapons offenders. Here, I mean that the management and surveillance of cyber sex offenders continues into their lives post-incarceration in ways distinctive from other offenders’ post-incarceration lives.\textsuperscript{176} Specifically, all 50 states – including Connecticut – require sex offenders to register their names, addresses, and places of work with the state police. This registration, which can vary from ten years to life (depending on the offense) is available for public perusal.

In my view, the sociopolitical impetuses for intensive surveillance of sex offenders and cyber sex offenders are even more pervasive than the new penology’s managerial explanation would allow. In other words, the new penology logic undergirding the carceral state – a state in which the disciplinary blends into the civil, punitive into the nonpunitive, the public into the

\textsuperscript{175} There has been an uptick locally here in state and nationally insofar as robberies are becoming increasingly related to heroine and other opioid-drug addictions.

\textsuperscript{176} I am sensitive to the fact that post-prison life for all offenders is riddled with problems re-integrating, finding work, re-establishing relationships with family, friends, and community.
private, takes on more powerful, concentrated energy in the context of Information Age law and order. The dynamics between police, criminal, and cyberspace are not static. Rather, they are dynamics built on fluidity and contingency – ones that simultaneously reach and are part of, politics, social trends, and cultural mores.

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**Contextualizing Police and Crime in Cyberspace**

To ground the aforementioned queries, I draw three aspects or insights from arguments within the technology, law, and society scholarship.177 These aspects center on the ways through which the online world becomes differentiated from the offline world – as well as the ramifications of such differentiation on socialization, culture, and politics.

One, cyberspace is not solely anchored to a geographic location in the traditional meaning of a stationary, physical “space.” Yes; computers have a specific IP (Internet Protocol) address, which does constitute a geographic marker of sorts. IP is an online network that organizes data into packets or messages. These packets or messages contain the source of the data (the sender’s information); the destination of the data (the recipient’s address); and the

actual message content. Practically speaking, it is the internet’s version of physical mail correspondence conventions: sender’s address, recipient’s address, envelope, and stamp. In this technical sense, then, internet network mechanisms exist to mark identifiable, specific computer and phone geographies – or addresses – of technology users (senders and recipients in the case of emails, for instance). Nonetheless, the online world breaks and exceeds territorial, physically-based demarcations. Marcum, Higgins, and Freiburger (2010) explain, for instance, how policing cybercrimes is a vastly different enterprise than policing involving “a physical crime scene in a neighborhood or office building.”

For example, an adult in Colorado is able to engage in illegal, sexually explicit dialogue with a minor from Hartford, Connecticut, arrange to meet that youth, whisk her away to his apartment, and spend days engaging in sexual acts with her. In 2014, Timothy Wind, of Colorado, took a liking to a 14-year-old Hartford girl – conversing with her through the Disney social chat room “Pixie Hallow’ and other apps or features such as “Skype” and “Tumblr.” Mr. Wind drove to Connecticut to take the girl on what he described as their “honeymoon.” Nearly two weeks later, police located the teen and arrested the man for kidnapping, sexual assault, and internet exploitation, among other charges. To this point on the ways in which cyberspace muddles physical parameters and settings, Brenner writes:

> Cyberspace does not require physical proximity between the victim and the perpetrator. Cybercrime is unbounded crime; the victim and perpetrator can be in different cities, different states, or different countries. All a cybercriminal needs is

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180 Ibid., 518.
a computer linked to the Internet. With this, he can attack a victim’s computer, defraud someone, or commit any of a host of cybercrimes.\textsuperscript{182}

Closer to home, former Hartford, Connecticut school administrator Eduardo Genao was charged with one count of felony child-endangerment after sending sexually explicit text messages to a thirteen-year-old female. After meeting the girl at a local race and equity conference, Genao obtained her number (under the pretext that he wanted her to send him pictures of a particular professor’s slide show presentation), and began requesting that she send him “‘daring’ photos of herself” as well as inquiring about her level of sexual experience.\textsuperscript{183} In the end, though, high-powered defense attorney Hugh Keefe made the case that Hartford prosecutors lacked jurisdiction in his client’s case. Why? Genao sent the text while he was in Atlanta, Georgia, and the teen had returned to her home in New York. No alleged criminal activity occurred in the geographic, physical, city space of Hartford; it occurred in the transmission of data along cellular networks and across state lines.

Scenarios like the ones just mentioned illustrate an increasingly common reality about questions over jurisdiction: perpetration of cyber sex crimes often crosses municipal, state, or even country lines. Marcum, Higgins, and Freiburger (2010) thus describe the “internet as an intercontinental information highway.”\textsuperscript{184} As host to these “intercontinental information” highways and communication networks, the cyber world functions as a terrain in which the meaning of space is strikingly amorphous, unstructured, and boundless. Yet, the ability to navigate this seemingly limitless space – with its wending information “highways” and communicative pathways – testifies to exercises of power. In his 1996 case study of the Los

\textsuperscript{184} Marcum, Higgins, and Freiburger, 519.
Angeles Police Department (LAPD), Herbert examines the relationship between territoriality and police authority: in effect, the geography-power connection.\textsuperscript{185} Herbert links exercises of police power directly to the mechanisms by which the LAPD defines, cordons, and controls geographic zones and L.A. neighborhoods.

In a similar vein, cyberspace is budding with instances of power and geography – albeit in ways distinct from the offline world. For the individual intent on engaging in some kind of sexually explicit expression or activity with minors online, that person would do well to become fluent in the “dark net” – those otherwise clandestine corridors of child pornography production and distribution networks or child sex trafficking forums.\textsuperscript{186} From the perspective of the computer crimes specialist intent on preventing and/or responding to illicit online expression and activity, it might take understanding how to converse with a child offender in order to make for a compelling “twelve-year-old girl” online. As Trooper A explained to me in an off-site interview, “the offenders will always be there online…there’s always a new app and social media platform” for child predation; “there’s never an end to these kinds of investigations,” Trooper A continued.\textsuperscript{187} During another off-site interview, Trooper B described the furious pace with which law enforcement “have to keep up” with all of the online tools, social media forums, and apps that make illicit sexual expression (and potentially, sexual activity) so easy to pursue.\textsuperscript{188} Meanwhile, if the offender is savvy, he or she will ask questions to try to ascertain whether the “child” is actually a child or an undercover cop. For this reason, police receive extensive training

\textsuperscript{186} For a detailed examination of the wide-ranging roles (including the dark web) the internet plays in everything from democratic revolutions to commission of crimes, see Morozov, Evgeny. 2011. \textit{The Net Delusion: The Dark Side of Internet Freedom}. NY: Perseus Books Group.  
\textsuperscript{187} Trooper A, personal correspondence, November 2015.  
\textsuperscript{188} Trooper B, personal correspondence, October 2014.
in how to conduct online operations.\(^{189}\) The cop-suspect interactions within cyberspace make apparent just some of the space-power plays at work. Command of cyberspace – and the subsequent exercise of control (whether legally or illegally) – is content on the ability to navigate social media, phone apps, chat rooms, and other networking sites with technological know-how. Cops and criminals alike need to be cyber street-smart if they are to achieve their objectives.

Two, scholars contend that cyberspace provides unprecedented opportunities for individuals to assume different identities. In addition, cyberspace enables individuals to secure anonymity in ways far more difficult to achieve in the physical world. I have had the opportunity to see the ease with which law enforcement can utilize the anonymity-rich and identity-fluid conditions of cyberspace to facilitate online investigations into suspected sex offenders.\(^{190}\) Detectives may log into a chat room of known value as a virtual meeting space for adults to message children and teens. They will do so with a contrived screen name that may allude to age and gender (for example, hdprtygurl13), await a message from another person in the chat room or other similar social networking apparatus, and converse with a suspected offender upon receiving a message.\(^{191}\) When conducting this kind of work, law enforcement agents are never to initiate the conversation.\(^{192}\) As has been explained to me, the online investigation proceeds in

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\(^{189}\) September 2014-May 2015 work conducted with monies generously awarded from the 2014 Political Science Pre-Doctoral Fund. Through this initial field work, I had opportunities to engage in a sustained (nearly year-long), trust-building series of relationships with law enforcement professionals.

\(^{190}\) Trooper A, personal correspondence, November 2015.

\(^{191}\) This is a fictitious screen name in order to protect past, ongoing, and future investigations.

\(^{192}\) This has been confirmed to me by state troopers who explain that receipt of Department of Justice (specifically through the Office of Juvenile Justice and Delinquency Prevention) grant monies in contingent on adhering to strict investigative and process protocols. In 1998, the Justice Appropriations Act provided that the Office of Juvenile Justice and Delinquency create as well as fund ICAC – the Internet Crimes Against Commission Task Forces. The ICAC protocol manual is closely guarded among the relevant law enforcement agencies involved in sexual
accordance with strict rules, which supply clear “dos” and “don’ts” for law enforcement as well as protection from the entrapment defense – a classic defense lawyers often use to contend that the cyber sex offender was lured into a sexually explicit conversation by an undercover law enforcement agent.193

On the one hand, in the context of these technology-assisted law enforcement methods, police can masquerade as minors in order to nab the suspect. On the other hand, savvy offenders can likewise shift identities in order to be more appealing to an adolescent – for example, taking on the emoticon-driven linguistics familiar to and common among, youth online users. Mitchell, Wolak, and Finkelhor (2005) note the duality of cyberspace anonymity – how the benefits accrue to police on the one hand and to criminals on the other.194 They write:

Anonymity is a unique aspect of the Internet that advances these crimes. A 40-year-old man who would not be appealing to a teenage girl crossing his path at the mall can create an online persona that will make him seem to be the perfect boyfriend for a 14-year-old he meets in a chat room. This same anonymity is an advantage to law enforcement because it allows a 40-year-old investigator to go online posing as a 14-year-old girl. This permits law enforcement to be proactive in investigations in ways they previously could not, and it allows them to detect some offenders before they victimize an actual child.195

cybercrimes investigations; I was advised by my interviewees that I was barred from reading the manual per regulations.

193 Mitchell, Wolak, and Finkelhor (2005) point out that ICAC task forces are “governed by explicit guidelines regarding their conduct online.” These protocols and guidelines are developed in conjunction with the Department of Justice Child Exploitation and Obscenity Section (CEOS). In addition, CEOS created a High Technology Investigative Unit in 2002 to focus specifically on child exploitation cases perpetrated online and with associated technologies. See https://www.justice.gov/criminal-ceos.


Just as the online world offers a communicative terrain without conventional boundaries, it also becomes a relational site in which users can cultivate an unparalleled level of fluidity in names, personalities, and identities.

Three, the concept of cyberspace forces scholars to reconsider what we mean to express by “behavior.” According to conventional accounts of behavior, scholars intend to signify physical, embodied acts with subsequent effects and consequences. For example, a child who throws tantrum is exhibiting intense emotions in a physical, embodied manner: characterized by a combination of crying, yelling, screaming, and flailing of limbs. Yet, the idea that cyberspace plays host to such physical, embodied acts becomes more complicated. Instead, digital transmission of information (i.e., emails or text message); online conversation (i.e., chat rooms, social media network chat rooms); expressing sadness or behaving excitedly (i.e., 😞 or rly? Omg! 😊) occur without the necessity of actualization. “Virtual” has come to mark a number of societal trends and aspects in richly-textured ways. To many communications researchers, “virtual” denotes ways that technology (e.g., computers, the internet, cell phones) mediates social experiences. Thus, “virtual” worlds or realities span technological components and experiential dimensions. Rather than individuals physically carrying out actions in the offline world, experiences are now created or navigated through digital means.

196 Psychology Today published a piece in 2012 entitled “What is Behavior Anyway?” Clearly, scholars are asking this seemingly simple question. Indeed, it is not a term to be taken for granted. In that piece, Dr. Lee Dugatkin, presents different definitions of behavior from multiple scholars. The definitions encompass responses to “external and internal stimuli” (Starr & Taggart 1992) as well as “observable activity…anything…that involves actions and/or response to stimulation” (Wallace et al. 1991). See https://www.psychologytoday.com/blog/the-prince-evolution/201207/what-is-behavior-anyway.

197 The popular social media network, Facebook, launched “Rooms” in 2014. “Rooms” is an anonymous chat application, in which invite-only users can discuss common interests without having to divulge name or town. See http://time.com/3534690/facebook-anonymous-app-rooms/. Almost immediately, concerns have arisen as to whether this type of explicitly anonymous cyber setting will once again trigger illegal online “behavior” or activity.

world, internet users can express ideas, emotions, and words online and then, if they wish, can act on them – but they do not have to.

**Policing and Crime in the “Brave New World” of Cyber**

Policing in the United States has come a long way since the 1900s, as has crime. From the formation of quintessential vigilante groups of night watchmen enforcing firebrand versions of justice to today’s highly institutionalized, organized, and bureaucratic law enforcement systems, police have faced major changes in ideas and practices.\(^{199}\) Likewise, committing crimes against persons (e.g., inflicting injury, death) is moving from a physical pursuit of victims to the sophisticated use of online technologies and other computer-associated devices to wreak havoc on people’s minds, emotions, and bodies (e.g., identity theft, cyber bullying, cyber stalking, producing and/or sharing child pornography via social networks). As Trooper C said to me, “Meg, there’s not a sex crime that we investigate nowadays that is not somehow helped out with a cell phone or laptop.”\(^{200}\) This is not to say that physical commission of crimes is vanishing, however. Rather, the increased availability and variety of technological devices is shifting – albeit not yet a complete migration – criminal behavior from the physical, tangible world to the amorphous, online world.

Moreover, the kinds of sex crimes perpetrated with technology (the agents directly involved with cyber sex crimes investigations call them “technology-assisted crimes”) span a much broader range. For example, according to former Trooper X, the “infant” genre of child

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pornography is becoming increasingly popular and available through online production and distribution channels.\textsuperscript{201} This genre covers sexually explicit materials involving actual children of toddler age and younger. Prior to the advent of the internet and heightened technological sophistication, production as well as distribution of child pornography would have been quite difficult. Individuals would have had to isolate a baby or child, place the baby in sexually explicit positions, and then photograph or video record the infant. Now, adults can troll publicly-available Facebook or Instagram photos online and subsequently doctor the images.\textsuperscript{202} Next, with the click of a button, they can share these distorted images to people in Connecticut, Canada, or Croatia.\textsuperscript{203} As another example, consider the ease with which adults can engage with children and youth – in ways far easier online than in the offline world. Adults can pretend to be a peer and strike up a conversation online with minors – without detection from the child’s parent or legal guardian. Cyberspace offers a unique kind of mobility and agility to sex offenders that is absent in offline social worlds.

It is important to note that much debate exists within internet and technology scholarship as to whether online technologies and spaces contribute to the creation of “new” crimes (e.g., hacking) or simply facilitate the expansion of traditional crimes in ways that would otherwise be difficult, or at the least, fettered by obstacles in the physical world (e.g., stalking).\textsuperscript{204} For example, Durkin (2009) contends that technological innovations such as the internet help to

\textsuperscript{201} Trooper X, personal correspondence, October 2014.
\textsuperscript{202} Unless the user chooses to privatize photos, the default setting for Facebook or Instagram images and videos is “public.” Even after having taking this precautionary step of making private these images and videos, the user’s profile and cover photos on Facebook are searchable by and viewable to, the online public.
\textsuperscript{203} Incidentally, according to some of my contacts, eastern European bloc countries are some of the primary geographic offenders in terms of pornography production and distribution – as well as child sex trafficking.
\textsuperscript{204} Marcum, Higgins, and Freiburger (2010) distill clear demarcations between traditional, cyber, and hybrid crimes.
constitute “new forms of deviance” like cyberstalking and cyberbullying. Meanwhile, Wall (2007) crafts a test for determining whether crime is “cybercrime” as follows: “the test of a cybercrime must focus on what is left if those same networked technologies [the internet] are removed from the equation” (34). According to Brenner’s perspective, “[m]ost of the cybercrime we see today simply represents the migration of real-world crime into cyberspace” (2010).

For my purposes, the debate over the constitutive components underlying traditional, cyber, or hybrid crimes is less germane than the substantive discussion about how cybercrime is transforming U.S. law enforcement ideas and practices. Nevertheless, I want to make clear my position on this matter: I consider online crimes against minors to be true, authentic cyber crimes. In the course of field work and semi-structured interviews, I learn from police on the ground that they believe – and treat – sexual cyber crimes as a different animal from traditional sex crimes. In other words, while traditional sex crimes and cyber sex crimes share common ground (such as pursuit of illicit and/or violent sexual acts), cyber sex crimes take on lives of their own- lives that are unique to the technology world. Again, consider the examples of child pornography and chatting with minors online as instances created sui generis from the availability of technology and the cyberworld.

Both the enforcement and violation of laws have evolved into sophisticated, complex, yet efficient enterprises. Development of communication, information, and computer technologies

208 Sophisticated in the ways that individuals with criminal intent are able to manipulate the security of passwords and servers to hack into governmental databases, for example. Complex in the ways that individuals interested in child pornography can locate a relevant site, connect with
plays an integral role in the increasingly complicated societal problems law enforcement communities confront and criminals exploit. As an example, consider the ease with which child traffickers operate in what some scholars (Terranova 2004; Castells 2010, 2011; Lyon 2014) have dubbed the Information Age – an era of networked communications and data on demand at the fingertips of cell phone, laptop, and tablet users. Specifically, traffickers can arrange shipments and meetings online, communicate with their partners online, and, by shutting down governmental websites, exploit security gaps in the countries, states, or cities to which their “goods” are set to arrive.  

The internet has altered the fields of law enforcement and criminal activity in significant, irrevocable ways. Indeed, the creation of cyber crimes units within police departments at the local, state, and federal levels in a recognition that cyber crime is here to stay. According to an April 2014 Police Executive Research Forum publication, for example, 42% of 498 responding law enforcement agencies in the survey reported having a specialized computer or cyber crimes unit. Based on the findings of that same document, the recognition that cyber crime is

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209 Belvins and Hott (2009) observe that the “ubiquity of computers and the internet in modern society have led to the growth of criminal subcultures centered on technology.” See their piece, “Examining the Virtual Subcultures of Johns” in the *Journal of Contemporary Ethnography* 38(5): 619-648.

drastically transforming the enterprise of policing becomes clear.\textsuperscript{211} Broadly speaking, the internet and ways people use it have without doubt impacted sociolegal, sociopolitical, and cultural domains across the United States.\textsuperscript{212} Whether it involves comedy, communication, copulation, crime or crime control, the use of online, networked technologies entails distinctive methods for engaging in social relations with other people.\textsuperscript{213} On the flip side, users of internet technologies can also operate as well as further encourage, distinctive mechanisms for violating those social relations.

Application of the term “behavior” to online activities does not possess the exactness or clarity it has as applied to the offline world. One cannot be said to “behave” in the physical sense within cyberspace. To the extent that online expression is nonetheless intentional and purposive, internet users do participate, however, in a richly-textured circuitry of online activities and conversations. Furthermore, the fact that online expression and activity may or can lead to subsequent behavior in the physical world demonstrates potential linkages between online expression and offline behavior.

\textsuperscript{212} Despite its unprecedented impact, the internet is not immune to armchair forecasters or to survey questions posed to digital experts. For example, the Pew Research Center issued a 2014 summary of survey questions entitled the “15 Theses about the Digital Future.” Respondents shared a vision in which they “foresee an ambient information environment where accessing the Internet will be effortless…” Certainly, this conception of an “ambient information environment” also attaches to potentiality for greater ease in committing crimes. See http://www.pewinternet.org/2014/03/11/digital-life-in2025/.
\textsuperscript{213} A recent \textit{Hartford Courant} article explored some recent inventions – like the OhMiBod company’s latest product, TASL (The Art of Science and Love) toy and app designed to augment sexual experiences. See http://www.courant.com/consumer/hc-ls-sexbots-0124-20160122-story.html.
For example, an adult may initiate conversation with a minor online but consummate the relationship with a physical meeting at a mall or motel. Scholars and practitioners alike wrestle with the question of whether online offending of children necessarily leads to offline abuse. Law enforcement practitioners in the Connecticut State Police community with whom I am in contact are unequivocal in their position that consumption of child pornography increases the potential for offline offending.214 Equally important, these law enforcement agents also underscore the fact that production of child pornography materials (e.g., images, videos) inherently involves child abuse.215 Even on this point, however, scholars raise the issue of virtual pornography as an instance in which physical harm is not committed against an actual child.

Interestingly, the Supreme Court has struck down provisions in the 1996 Child Pornography Prevention Act that barred “any visual depiction…including computer or computer-generated image or picture” of a minor “engaging in sexually explicit conduct.”216 The Court agreed with an adult-entertainment trade association (the Free Speech Coalition) that the provisions were overly broad. Again, note that behavior in cyberspace traverses lines: production and consumption of virtual child pornography (production of material in the expressive sense) may or may not lead to sexually offending an actual child (behavior). The “Wall of Shame” in a law enforcement unit puts this connection into blunt terms: it displays arrested and convicted sex offenders.

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offenders who began as online purveyors of sexually explicit materials involving minors or participants in conversations and video-sharing with minors – or a combination.\textsuperscript{217}

Furthermore, I mean to underscore the ways that expression and behavior in cyberspace carry different implications for law’s preservation – as well as its violation.\textsuperscript{218} Humorously mundane videos “go viral”\textsuperscript{219} on YouTube – spreading like a virus across the cyberscape.\textsuperscript{220} School districts announce weather-related cancellations on their websites or in mass text messages. Individuals need not gather over dinner at a local pub to catch up. They can begin a group message on Facebook from the comfort of their own home or apartment.\textsuperscript{221} While they are at it, this same group of friends can share food photos on Instagram – the next best thing to breaking bread in physical space and time.\textsuperscript{222} Instead of holding up a bank, an individual can

\textsuperscript{217} Unit A field/site work, October 2015.
\textsuperscript{218} I delineate these differences more specifically as this chapter progresses and especially in Chapter Four’s focus on the criminal justice sanction of the sex offender registry.
\textsuperscript{219} For an engaging introduction to the phrase, “going viral,” and what it means for cyberspace, society, and culture, see Nahon, Karine and Jeff Hemsley’s \textit{Going Viral} (2013).
\textsuperscript{220} The term “cyberscape” is intended to evoke the analogy of a landscape. See Rosenbaum, Mark S. 2005. “Meet the cyberscape.” \textit{Marketing Intelligence & Planning} 23(7): 636-647.
\textsuperscript{221} Crucial work is being conducted to assess the impacts of online interactions on socialization processes and the development of social bonds. Professors Jodi Dean and Hubertus Buchstein, among others, have advanced critical theories of technology, society, and democracy in the political theory journal, \textit{Constellations}. See Dean’s 1997 “Virtually Citizens” in \textit{Constellations} 4(2): 264-282 or her 2003 “Why the Net is not a Public Sphere” in \textit{Constellations} 10(1): 95-112. There is considerable debate resolving around the social benefits to technology-mediated communications may obscure the expression of genuine emotion and thought, leaving both senders and receivers confused about intent, purpose, and truths.
\textsuperscript{222} Again, plenty of discussion rages – from scholarly pieces to news items – exploring technology’s effects on relationships. In some cases, authors contend that technology is not the next best thing. Laura Klein, writing for a University of California Berkeley website, opines that technology – among them social networks and smart phones – “burn through the precious social capital” found in person-to-person interactions. See Klein’s “Does Technology Cut Us Off from Other People.” http://greatergood.berkeley.edu/article/item/does_technology_cut_us_off_from_other_people. Accessed 29 November 2015.
hack into personal accounts, access credit or debit card numbers, and siphon monies.\textsuperscript{223}

Conversely, police need not solely walk the beat in New Haven to respond to calls for help and identify suspects.”\textsuperscript{224} They can use computers and the method of “pinging” an individual’s phone to triangulate accurately the person’s physical location.\textsuperscript{225} In fact, as we have seen, police can engage suspects online, interact with them in a chat room or social network dialogue – aided by the inherent undercover of anonymity the internet provides – and thereby build a standard law enforcement investigation with evidentiary support.\textsuperscript{226}

\textsuperscript{223} Interestingly, the history of hacking is rooted in fairly benign origins. The early days of hacking largely consisted in young males fascinated by and knowledgeable, in computer use. Curiosity – as opposed to ill intent – primarily drove these individuals to hack governmental or corporate databases. In both the literature and layperson parlance, these individuals were “white hat hackers.” As hacking developed and became more sophisticated, some became more bent on malicious objectives; these were called “black hat hackers.” These phraseologies are evocative of the “good” versus “bad” cowboys in the American Wild West, who distinguished themselves by wearing white or black hats. See Brenner, Susan W. 2010. Cybercrime: Criminal Threats from Cyberspace. CA: Praeger, for a concise, informative review of this history.


\textsuperscript{225} Pinging involves using the GPS (Global Positioning System) of a suspect’s cell phone, in conjunction with cell phone towers in the area, to triangulate the person’s geographic location. In 2013, the United States Supreme Court ruled that pinging is exempt from Fourth Amendment protections, because it does not reach the threshold of a “search.” See a detailed summary and exploration of the ruling in Harvard Law Review 126(3): 802-809.

The Dinosaur Age of Computers to the Information Age of Cyberspace

The internet did not suddenly catapult to rock star status as an accessible, ubiquitous communication tool in society for all Americans to use. After all, it took Gutenberg nearly two decades from initial development of the prototypic printing press and the printing of the Bible. While cyberspace may appear to have taken on a life world of its own, the fact is that computer engineers, scientists, and academics were, and continue to be, crucial to its expansion and refinement. A 2015 Pew Research Center survey found that 84% of American adults use the internet, compared to 52% of American adults in 2000. For comparison, while 5,000 computers were reported to have been in use within the U.S. by 1960, that number would jump to 80,000 merely a decade later. America’s love affair with the computer had begun. And that love affair would effectuate real, important, and impactful trends to American politics, law, and society.

Americans’ engagement with computers and later on, the internet, would bring dramatic changes to the politics of social relations, policing, and criminality. French political theorist

227 The term cyberspace does not originate from the halls of academe or military intelligence. Instead, the term comes from literature. Author William Gibson coined the term “cyberspace” in his 1984 novel, Neuromancer.
228 While technological development in general does seem to abide by Thomas Kuhn’s notion of revolution as quick upheaval and turning, expansion of the internet was neither instantaneous nor universal. Of course, the tech world as we know and experience it today does feel to be an ever-changing arena: consider as just one example how often Apple debuts yet another version of the iPhone.
230 Brenner, 10. Indeed, the exponential growth in computer use during a relatively brief time frame is worth noting. Internet access, however, appears more elusive – particularly with respect to elderly and most minority populations (with the notable exception of Asian-Americans). See http://www.pewresearch.org/fact-tank/2016/02/18/english-speaking-asian-americans-stand-out-for-their-technology-use/.
Jean-Jacques Lyotard speaks helpfully to this point, Outlining the various ways that computerized societies transform the status, production, and value of knowledge, Lyotard wrote:

These technological transformations [e.g., cybernetics, computer language, informatics] can be expected to have a considerable impact on knowledge. Its two principal functions – research and the transmission of acquired learning – are already feeling the effect, or will in the future.231

Lyotard did not end with analysis of technology’s impact on knowledge. Rather, he argued that the fundamental changes in knowledge will in turn impact the ways citizens relate to the state, the economy, and each other. In a similar vein, Horkheimer and Adorno issued siren calls about the potentially deleterious consequences flowing from intersections between technology and society.232 Today, these analyses and warnings reverberate through societal discourses and practices in the Information Age – including those pertaining to policing, crime, and sex.

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Cyberspace: The New “Wild West” for Police and Criminal233

“Meg, it’s all computers now…not a sex crime that happens nowadays without some kind of texting, sexting, or stalking by phone and laptop.”234 Commenting on the role of technology, this state police detective observers that it has become a regular – if not yet integral – feature to the commission of sex crimes. Cyberspace, along with the vehicles that traverse this communicative, interactive terrain (e.g., cell phones, laptops, tablets) are fast becoming the

233 Yen explores the different metaphors used to describe cyberspace – such as the “Wild West” moniker. Yen concludes that cyberspace is more similar to a feudal society, rather than the romanticized notion of the “Wild West.” See Yen, Alfred C. 2002. “Western Frontier or Feudal Society? Metaphors and Perceptions of Cyberspace.” Berkeley Technology Law Journal 17(4): 1207-1263. Yen argues that by shifting to the trope of feudal society, law can play a more important role in “shaping the future of the Internet.”
234 Trooper C, personal correspondence, August 19, 2015.
common tools of criminal sexuality and illegal sexual deviance. It’s tough for us just to keep up with these guys and all their video and messenger apps and networks they use,” Trooper A tells me. Trooper B agrees with the assessment that cyber sex offenders are constantly shifting to new mechanisms for child luring and predation, saying that “there seems to be a new app every day.” From the law enforcement standpoint, the rapidly, consistently expanding variety of technologies proceeds in tandem with the ever-widening availability of technologies – creating a terrain that is conducive for increased, and more efficient, criminal access to minors.

As it has more or less always been, policing offenders is a classic cat and mouse game. At its core, policing is a pursuit of someone (law breaker) who has broken or violated something or someone (rule, objective, or victim). It is a quest to identify and arrest in order to enforce laws. Law enforcement makes those identifications in part on the basis of the particular cyberspace geographies individuals occupy. “This guy is a regular of this forum, up to no good, he’s on this thing all day, just waiting to get off [sexually].” Trooper A describes a man who frequents a specific online networking venue in order to fill sexual appetites for dialogue with little girls. The man has not yet physically offended a minor, but Trooper A has cyber police eyes on him in order to prevent that from ever occurring. Trooper A will likely agree to an arranged in-person meeting – in the event the man extends the invitation – and arrest the man for a number of sex crimes-related charges such as endangerment of a minor. To be sure, the man’s presence within the online social network by itself does not constitute criminal activity. Once he initiates a

235 There are vast psychiatry and psychological literatures debating pedophilia as sexual deviance symptomatic of abnormal sexual desires – rather than an outcome of criminal intent.
236 Trooper A, personal correspondence, Spring 2015.
237 Trooper B, personal correspondence, October 2014.
238 Friedman discusses the persistent or “recurrent” issue in criminal justice is defining just who is bad/illegal – let alone what is bad/illegal. See Friedman, 140-1.
239 Trooper A, personal correspondence, Spring 2015.
sexually explicit dialogue with someone whom he presumes to be an under-aged female, however, the boundary between online expression and online illicit activity dissolves.

Online expression thus becomes initial evidence of illegal activity. Accordingly, expression can quickly become stark evidence for criminal behavior in the online world. While online sexual expression with a minor may remain confined to the online space and not materialize in a physical assault of a child, enforcement of law necessitates treatment of this expression as a criminal action in process. In the offline world, the standard for criminalizing expression is much more rigid and clear-cut. Such bright lines are not readily available in the online realm.

In this cyber policing sting game, the mouse is found. And the cat’s true identity as a police officer remains intact. An officer’s cover is easier to maintain during online policing operations – as long as the officer does not “screw up” the cyber lexicon, according to Trooper A. The police agent has to become familiar with how female or male users (some lingo can differ depending on gender) actually “talk” online. If they can adhere to the expectations and tropes of online youth discourse, police can avail themselves the anonymity and temporal flexibility cyberspace affords: officers can take the time to think before they type. In an offline sting, police often need to make quick decisions based on evolving conditions on the ground. In an online sting, police can build a strong case for arrest in practical and temporal ways offline operations complicate.

Simply put, cyberspace uniquely impacts the temporal dimensions of policing practices. On the one hand, troopers can gather evidence during the course of an hour-long conversation. On the other hand, they can extend that time by “leaving” the chat room or other communicative

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240 Trooper A, personal correspondence, October 2015.
venue for a time, then return to the conversation with a suspect later that day, the next day, or that week – depending on the urgency of the operation. For example, troopers can pursue and monitor multiple online operations simultaneously – sometimes three or four conversations in different chat sites at a time. In this context, cyber policing improves the efficiency of law enforcement practices by permitting officers to multi-task in ways and to a degree they could not in offline sting operations. Moreover, online investigations do not compromise the officer’s physical safety in the same way offline investigations potentially can.

From the law enforcement position, however, cyber policing does not usher changes all for the better. The cat-and-mouse game becomes more difficult along two significant dimensions to policing: criminal profiling and enforcing law on thought versus behavior. Conventional premises and practices of law enforcement are less portable to cyberspace policing in these two facets. I take each in turn.

Constructing a profile for cyber sex offenders is a complex enterprise – one that defies conventional wisdom with the law enforcement community (and for that matter, assumptions undergirding opinions of the American public writ large). Use of profiles for identifying potential suspects has been a traditionally accepted component of law enforcement efforts. Police devise profiles to assemble a detailed, descriptive picture of a suspect’s physical features. Investigators connect bits of information they have on hand (e.g., images from surveillance video, eyewitness accounts) or information they receive from the public (e.g., when citizens call a tips hotline). By doing so, police are able to piece together a descriptive picture of the suspect.

In addition to describing physical features of the suspect’s appearance, profiles can extend to relevant behavioral aspects – such as “acting suspiciously,” “pacing the floor,” “issuing verbal threats to strangers passerby.” Consider the Department of Homeland Security injunction:
“If You See Something, Say Something.” This urgent command can be construed to cover both physical and behavioral components of a “suspicious” individual – one who looks and acts suspiciously. Police profiles of suspects are more than an object, however.

When police construct profiles of suspects, the process often proceeds in five stages: 1) “assimilation (collecting the evidence); 2) classification (integrating the information and classifying the offender); 3) reconstruction of the behavioral sequence involved in the crime; 4) looking for any signature (or idiosyncrasies of the perpetrator; 5) and constructing a profile.”

Put another way, law enforcement agents gather data. Next, they categorize the suspect on the basis of the assembled data. Then, they attempt to retrace the steps by which the suspect allegedly committed the crime(s). After taking these measures, law enforcement is prepared to craft an in-depth profile of the suspect. Here, the objective of profiling is to strengthen accuracy in a criminal investigation. In cyber policing operations, however, traditional profiling mechanisms are not available.

Cyber sexual offenders are not a discriminatory lot. They span the racial, ethnic, class, age, and education gamut. Some are teachers, engineers, or high school drop-outs. Some are


Leitzel argues that the focus of law enforcement should center on identifying suspicious behavior – as opposed to the race of the individual. He contends that “[p]olice should, in general, not use race as a basis for deciding whom to watch, or, after a crime has been committed, whom to question or arrest on grounds of suspicion” (39). See Leitzel, Jim. 2001. “Race and policing.” Society 38(3): 38-42.


The one exception to this demographic variety is gender. Most (certainly, not all) cyber sex offenders are male. Broadly speaking, most sex offenders are male.
priests, druggies, war veterans, sailors, or police officers. 245 According to the 2011 Federal Sentencing Reporter, 99.3% of child pornography offenders are male. 88.7% are white. 17.5% are college graduates. 27.2% are 50 years of age and older. 246 Indeed, NCMEC surveys have confirmed that among the approximately 740,000 registered sex offenders in the United States, most are male, a majority (53%) are white. These statistics are consistent in Connecticut as well. 247 Nevertheless, there is little predictability especially on the cyber sex offender front, other than the fact that sexual offenders are likely to be male and also possess the strong likelihood to have been sexual abuse victims in the past. 248 It is not the case that police can build a profile on the basis of a priori assumptions or descriptions of previous cyber sex offenders: the next suspect can present a litany of entirely new, unique circumstances and characteristics.

Identifying perpetrators of cyber sex abuse becomes a more exhaustive enterprise because the range – or rather, pool of possible suspects is so expansive. Interestingly, in terms of child pornography offenders taken in isolation (as opposed to offline sex offenders), most are likely to be employed, in a relationship, and possess no prior criminal history. For example, one cyber sex case the Connecticut State Police (CSP) investigated involved not just one individual – who was the primary purveyor of child pornography – but a familial network was ultimately questioned. Police pursued leads pointing to involvement by an uncle, niece, and cousin in illegal activities.

245 Home to the U.S. Coast Guard Academy (New London) and the Naval Base (Groton), Connecticut news stories from time to time feature coverage of sailors getting arrested for possession of child pornography and other illegal sexual cyber activities. For instance, see http://wfsb.com/story/24449099/groton-man-charged-with-possession-of-child-pornography.
online activities. In another case, a husband and wife had joined forces to engage in child pornography sharing.

In cyberspace this cat-mouse game becomes simultaneously easier and more difficult. On the one hand, the cyberspace cat and mouse game becomes easier in the sense that both police officer and criminal can adopt – even shift identities. The officer can take on the identity of an interested buyer of child pornography. Police can accomplish this behind a computer screen. Conversely, the offender can assume the identity of a youthful peer – again behind a computer screen. Whereas traditional sting operations require the physical presence of police – in the alley, street corner, or safe house – cyber ops furnish officers the benefits of safety and convenience. In a similar vein, individuals with criminal intent can take advantage of the anonymity cyberspace is built on. On the other hand, the cyberspace cat and mouse game becomes far more difficult because the mouse is able to switch plays at a moment’s notice. If the suspect becomes wise to the possibility that he may be chatting with an undercover police officer masquerading as a minor, the individual will shut down conversation – perhaps even migrate to a different online forum altogether – in search of the most redoubtable “dark net” subterfuge. The online world, therefore, both aids and challenges mechanisms for law-enforcing as well as law-breaking.

The second dimension along which I see significant albeit incremental upheaval in law enforcement practices is the unique problem of legislating and policing child pornography possession, sexting, and engagement of sexually explicit materials and/or conversations with

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249 Trooper A, personal correspondence, April 2015.
250 Trooper A, personal correspondence, April 2015.
minors via technological devices and space. In my view, these technology-specific problems of law and order are germane loci for identifying the confused and confusing role of law.

In Connecticut, possession of child pornography in the first degree is a Class B felony punishable up to 5 years. First degree requires one of the two factors: a) possession of 50 images or more; b) possession of one or more images in which serious physical injury is depicted or the threat of serious physical injury is depicted. In 1990, Congress passed the Crime Control Act, which served as the first child pornography possession law on the books. Still, prosecutors must prove beyond a reasonable doubt that the individual in question knowingly possessed these images.

An individual who purchases a used computer from Craigslist and then finds child pornography stores on it upon returning home with it will not be prosecuted; however, the previous owner who downloaded the illegal media will be, for example. Although possession offenses can occur in tandem with production and distribution crimes, they do not have to. The offense of possession is separate from production or distribution of child pornography. An individual can possess child pornography without participating in the production of it. Similarly, an individual can possess child pornography without acting as the initiator of distribution. The person can elect to receive the media, without proceeding to share them with other users. The distribution question becomes a bit murkier, as the receiver must actively show interest in the receipt of such materials within the online distribution network. This idea that possession of

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253 Ibid.
child pornography may not necessarily occur in connection with its production or distribution raises legal questions of harm and constitutional First Amendment questions.

On the legal front, one may ask about the harms of child pornography: does possession of this pornographic genre on its own perpetuate sexual abuse and physical violence to children? That is, does consumption of child pornography lead to actual offending of children on the part of the viewer; additionally, does consumption of child pornography help support demand for this illegal market? The federal courts are somewhat divided on these questions. In 2013, a split 9th Circuit Court of Appeals ruled that an individual’s possession of child pornography is probable cause for a police investigation into suspected sexual abuse.  Another matter complicating these queries is the fact that age of consent may not necessarily match the ages of the youth depicted in the images or videos. The “child” in child pornography may actually be 18, not 15.

On the constitutional front, one may ask about the First Amendment ramifications of criminalizing child pornography possession: does criminalizing possession constitute an incursion on protected speech? That is possession – without actions consequent to it (in other words, the possessor does not act upon those images, neither distributing the proscribed materials nor sexually abusing children) may be a category of protected speech. Does criminalizing

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257 This harm approach which, Congress as well as many feminist scholars have taken, is built on the premise that consumption of child pornography will ultimately lead to individuals seeking out children for the purpose of inflicting sexual abuse. For a particularly powerful argument explaining the harm approach, see Roos, Hanna. 2014. “Trading the sexual child: child pornography and the commodification of children in society.” Texas Journal of Women and the Law 23(2): 132-156.


possession represent an unconstitutional encroachment onto speech – when speech remains just that and does not lead to action (which would necessitate enforcement)? Or does possession of child pornography function as incitement to sexual abuse? Roos (2014) suggests that individuals who engage solely in fantasizing of sex with minors should not be punished. Whereas, those who act on those fantasies ought receive full weight of the criminal sanction. More broadly, how does legislation governing cyber sex crimes foster the growth of the carceral state? What are the linkages between criminalizing thought or expression and the premises of the carceral state, which find their roots in the identification of citizens as always, already actual or potential offenders?

On the constitutional questions, the United States Supreme Court has intervened to say that creating virtual child pornography (computer-generated images) is a protected speech act, as no direct harm is done to real children (Clough 2012). Of course, the question about whether virtual child pornography leads to actual offending against minors lingers in the backdrop of the Court’s ruling. As Congress maintains the harm approach and the courts debate the constitutional ramifications thereof, police are left with a legal structure that metes out harsher punishment to child pornography possessors than child sex abusers (although, these populations may overlap). For example, under Connecticut law and in compliance with federal sentencing guidelines, an individual who commits first degree sexual assault receives a two year mandatory minimum sentence. In contrast, a person convicted of child pornography possession in the first

260 For a solid argument demonstrating that the Supreme Court erred in its ruling that virtual child pornography is constitutional and that by doing so, it upended its earlier harm doctrine, see Mains, Benjamin A. 2010. “Virtual Child Pornography, Pandering, and the First Amendment: How Developments in Technology and Shifting First Amendment Jurisprudence Have Affected the Criminalization of Child Pornography.” Hastings Constitutional Law Quarterly 37: 809-827.

degree is sentenced to a mandatory minimum of five years imprisonment.\textsuperscript{262} Or consider that the average federal sentence length for child pornography in 2010 surpassed lengths for all federal crimes except kidnapping and murder.\textsuperscript{263} Police conducting cyber operations face the curious situation of enforcing the criminalization of fantasies – however disturbing – to the same degree as the criminalization of actions. In sum, law enforcement of cyber sex crimes is further augmented and problematized by the unclear legal and constitutional terrain.

\textbf{Patrolling the Cyber Beat, Monitoring the Cyber Sex Offender}

In this chapter, I have explored the unique ways by which cyber policing operations diverge from traditional policing practices. During this exploration, I have uncovered specific reasons for the distinctive turns law enforcement takes directly related to the character, features, and functionality of the cyber world. From their inception, cyber policing operations of sex offenders absorb tools of anonymity, masquerade, and temporal flexibility the online universe fosters – the very aspects criminals exploit for their own purposes. The history of internet technologies, which is ongoing, is one of rapidly-increasing availability and convenience. The internet’s ubiquity allows for more facile modes of law-breaking and law-enforcing. At the same time, elements of anonymity, masquerade, and ubiquity likewise present challenges to traditional methods of law enforcement. The opaqueness of the online world, in conjunction with the absence of clear legal mandates in regulating cyber sex crimes, make for a muddled context in which law enforcement takes places and the carceral state continues to take shape.


\textsuperscript{263} Gottschalk, 200.
Thus far, I have been making the case that the carceral state thrives on exactly a lack of legal clarity, indeterminate boundaries, and imprecise mandates. For what drives the carceral state is the blurring of lines between the punitive and nonpunitive, and the melding of the penal and civil. Unclear law and murky enforcement therefore make up the fuel that feeds the carceral state’s fire. In this context, key lessons from this chapter’s account of cyber sex crimes policing as they relate to carceral state development and expansion are two-fold.

First, the online world (cyberspace) is inherently riddled with an unboundedness. It is an arena of communicative behavior that is for all intents and purposes built on an absence of parameters or borders. Individuals and groups can socialize online without ever disclosing their offline identity, residence, or occupation. They can interact in a universe wholly of their doing or undoing. Elements of anonymity (whereby a criminal can potentially go undetected for months in a chatroom or social media networking site) or high-tech masquerade (whereby the individual with the Twitter handle #hotgurl1980 may in fact be an elderly male in his 70’s) pervade cyberspace. By the same token, police can conduct online investigative operations with the equally instrumental dimensions of anonymity and masquerade. Agents can infiltrate child pornographer social networks or trafficking rings online and gather intelligence necessary for a solid legal case – all from the comfortable distance of a police unit or office (unlike traditional undercover efforts that require physical proximity). As identities of both offender and agent are fluid, their interactions amorphous, and the carceral state can develop, expand, and thrive in the online interstices of law-breaking and law-enforcing, between the dynamics of law-breakers and law-enforcers. Here, the carceral state and its impact migrates online, eventually subsuming cyber sex offenders in its catch-basins of online public registries.
Yet, it is these very borderless, boundless, features characteristic of cyberspace which can also complicate law enforcement work. Such complications form the second half of the cyber policing-carceral state connection. State legislatures, the courts, and federal government struggle to craft laws and criminal justice sentencing schemas that keep pace with evolving technologies (along with the kinds of communications and behaviors that they enable). As these bodies of law-making and adjudicating stumble their way through, police are nonetheless expected and required to act decisively. As long as laws pertaining to cyber crimes are still in their infancy stages, it is difficult for enforcement to “keep up” with the criminals – let alone be coherent. When law is unclear, enforcement has the potential to take on exaggerated features of police and judicial discretion. The carceral state derives its energy from precisely these issues of inexactness, indeterminacy, and lack of clearly-defined boundaries.

In Chapter Four, I specifically examine the criminal justice mechanism of the sex offender registry as an instance of the convoluted law-crime-technology-society force field within the broader arc of the carceral state. I examine the registry as a means by which the carceral state derives its power and persistence from law’s imprecision and confused implementation – as well as from the evolving, ambiguous character and functionality of cyberspace.
Chapter Four
‘Sex offenders are a serious threat in this Nation…[w]hen convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sex assault.’ Connecticut, like every other State, has responded to these facts by enacting a statute designed to protect its communities from sex offenders and to help apprehend repeat sex offenders.264

Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the…registration and dissemination provisions, but from the fact of convictions, already a matter of public record.265


Introduction

In Chapter Three, I explored the often-tenuous relationships between law and policing within the murky, nebulous context of cyber (internet and technological-based) sex crimes.\textsuperscript{266} I documented ways in which imprecision in the law – both on the statutory and constitutional levels – leads to confusion at best, disorder at worst in policing practices on the ground. To this point, I have shown how the unique social terrain of cyberspace only exacerbates complexities of law enforcement work. Equally so, this emergent arena of communication and crime also renders legislative intent more difficult and unclear – which is designed to clarify and guide police practices in the first place.

In this chapter, I inspect what I argue constitutes and epitomizes a logical outcome of the murky, fraught relationships between law and policing – particularly as those relationships converge at the law-technology-society nexuses: the public sex offender registry. As repositories for offenders’ identifiable information (name, age, residence and workplace addresses, sexual offenses), sex offender registries on a basic level function as a tool for documenting individuals convicted of sex offenses.\textsuperscript{267} According to the U.S. Department of Justice office overseeing sex offender policy implementation:

\begin{quote}
[n]early all registration requirements in the United States are initially triggered by a conviction for a criminal offense. More jurisdictions limit their registration and notification systems to persons convicted of sex offenses and non-parental
\end{quote}

\textsuperscript{266} Whether perpetrated via phone, laptop, and sundry technological devices or apps.
\textsuperscript{267} Not all sex offenses trigger public registration with law enforcement, but nearly most do; such an approach is consistent across the 50 states. For example, even non-violent offenders in Connecticut need to register for ten years with the state police; repeat and/or violent sex offenders must register for life. See https://www.cga.ct.gov/2006/rpt/2006-R-0030.htm for more specific details on the registry. In many states, there are public registries and private law enforcement-use only registries. Connecticut is one of them. I explore Connecticut’s sex offender registry in-depth later in this chapter.
kidnapping of a minor. Some states also include other violent or dangerous offenders in their registration and notification system.²⁶⁸

Sex offender registries contain information on those offenders who have been convicted; they do not contain information on arrestees.²⁶⁹

On a deeper level, I submit that sex offender registries mark a tech-infused legislative and law enforcement response to crime. Yet, these registries simultaneously refract law, technology, and policing in ways rendering the criminal justice system disorderly and further riddled with imprecision, inaccuracy, and error. Borrowing from Ewick and Silbey’s interpretation of legal consciousness as a “cultural practice” by which “individual action and understanding are implicated in the production of legality,” I call two ways of understanding the sex offender registry “the rights of the accused viewpoint” and the “law enforcement viewpoint.”²⁷⁰ In other words, different individuals in different stations of life construe and experience the registry in different – even divergent ways. By describing the criminal justice system (as it pertains to sex offenders specifically, and criminal offenders across the spectrum more broadly) as riddled with imprecision, I mean the registering of offenders whom I believe ought not to be registered in the

²⁶⁹ So-called DNA “databanks,” law enforcement collection and storage sites for DNA profiles taken from individuals – do contain information on those convicted as well as arrestees. Joh (2014) writes that as of 2013, these databases contain profiles for “10.7 million offenders and 1.7 million arrestees.” See Joh, Elizabeth E. 2014. “Policing by Numbers: Big Data and the Fourth Amendment.” Washington Law Review 89(1): 35-68. Interestingly, then, at this point, sex offender registries differ in terms both of the nature (sex offender registries are public, with some that are private in addition; DNA databases are private) and the kinds of offenders’ data they contain (sex offender registries publish information on convicted persons; DNA databases hold information on convicted persons and persons who were arrested but never convicted).
first instance – or at the least, that registering them does not make the public safer in any tangible sense.  

This point marks a classical constitutional position that sex offender registries are overbroad and not narrowly-tailored to the target population of offenders who are dangerous to society (as opposed to an 18-year-old sex offender who finds himself needing to register after sleeping with his 15-year-old girlfriend). According to this critique, that in order for registries to pass constitutional muster, they must survive judicial “strict scrutiny” because they abridge fundamental rights (for example, First Amendment rights of association and movement) by design. By inaccuracy, I mean the registering of offenders whom I believe ought be registering for services from a mental health practitioner, rather than publicly registering with police authorities; I speak here about the inaccurate application of law’s force in cases of mentally ill individuals – when medical assistance, as opposed to public identification of one’s sexual deviance under law’s rubric, is more appropriate. Imprecision and inaccuracy in the law can generate systemic errors within its enforcement. Systemic errors range from the seemingly

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mundane, technical issue of offenders’ registration and compliance letters getting lost through the U.S. Postal Service to more complicated, substantive matters of sex offenders not registering due to plea bargaining and judicial decision-making outcomes by which sex crimes charges are dropped to a lesser charge that would not trigger registration\textsuperscript{274} or sex offenders getting reclassified into higher-risk categories in compliance with the federal 2006 Adam Walsh Child Protection and Safety Act (AWA).\textsuperscript{275}

From the American law enforcement perspective, imprecision and inaccuracy within the law complicates the century-old dual missions of public protection and service.\textsuperscript{276} For police to carry out these missions effectively, they must have the correct tools and resources at their disposal. If the sex offender registry fails at the point of a technical error in the mail, the work of enforcement becomes more challenging in an already difficult setting. On the one hand, law enforcement may become hamstrung by the very legal mechanisms that are designed to facilitate it. If, on the other hand, the sex offender registry captures only those who did not have the financial resources and wherewithal to retain a clever attorney, the work of enforcement becomes a pursuit of justice in which the scales are already tipped. Whether it is the case that the tools and resources are flimsy or that the system has succumbed to the weight of bureaucracy, I argue that the challenges of policing become more amplified.

\textsuperscript{275} See Harris, Andrew J., Christopher Lobanov-Rostovsky, and Jill S. Levenson. 2010. “Widening the Net: The Effects of Transitioning to the Adam Walsh Act’s Federally Mandated Sex Offender Classification System.” \textit{Criminal Justice and Behavior} 37(5): 503-519.
\textsuperscript{276} As Bayley observes, American law enforcement is distinct in its relative openness and responsiveness to citizen demands; that is, police work is often in response to citizen needs – this is in contradistinction to police in other regimes of which the sole purpose is to defend the regime, rather than the citizenry. See Bayley, David H. 1998. “Policing in America.” \textit{Society} 36(1): 16-19.
To these ends, I explore the sex offender registry as a microcosm of broader law, policing, crime, technology, and society linkages. In this area of study, scholars look at the sex offender registry from a number of angles. I highlight three major themes. One way is to analyze the sex offender registry in terms of efficacy (Levenson, Grady, and Leibowitz 2016; Ackerman, Sacks and Osier 2013; Prescott 2012; Letourneau et al. 2010; Wright 2008; Velasquez 2008; Terry 2007; Cohen and Jeglic 2007). Does it help law enforcement protect the public? Does it help reduce recidivism among offenders (i.e., do offenders return to criminal behaviors post-incarceration)? Another way is to analyze the sex offender registry in terms of constitutionality (Eagan 2013; Wynton 2011; Yung 2008; Carpenter 2006; Lewis 1996). Does it remove due process rights for the accused? A third topic of analysis I note here focuses on whether the sex offender registry fosters vigilantism and reprisal (Wright 2008; Cohen and Jeglic 2007; Jenkins 1998). I address these inquiries in turn and in doing so trace a brief history of the sex offender registry in the United States.

Next, I move to my central interest in the sex offender registry as a site for political interrogation. Namely, I examine how the registry functions as an extension of the “carceral state” (Garland 2016; Gottschalk 2014; Alexander 2010; Simon 2004, 2014; Feeley and Simon 1998). Gottschalk (2014) frames the idea in the following terms:

[t]he carceral state includes not only the country’s vast archipelago of jails and prisons but also the far-reaching and growing range of penal punishments and controls that lie in the never-never land between the gate of the prison and full citizenship...[i]t encompasses more than 7 million people – or 1 in 31 adults – who are under some form of state control, including jail, prison, probation, parole, or community sanctions.\(^{277}\)

In this context, the sex offender registry is part and parcel of the carceral state; it is a resource in the “governing-through-crime” mode of governance.\textsuperscript{278} I look at the idea that the registry is a continuation of penal practices in civil society. The registry blurs lines between the penal arena and civil society – one among many tools within our criminal justice system that does so. Substantively speaking, the registry both symbolizes and concretizes the leakage of criminal disciplinary mechanisms into civil society. The registry continues and extends chronological, geographic reach of punitive measures begun upon arrest, conviction, and sentencing.

I submit that these points map onto and coincide with, my over-arching argument about the lack of precision and clarity within the law adversely impacting law enforcement – especially within the evolving arena of technology-based crimes. When the law and its borders are unclear, enforcement and its borders become unclear as a consequence. I contend that we are witnessing an expansion of the carceral state in the cyber crime world; that this expansion thrives on the lack of clarity and bright lines drawn between penal institutions and civil society. Finally, in Chapter Five, based on work I am doing with the Institute for Municipal and Regional Policy (IMRP) on the General Assembly task force re-evaluating Connecticut’s sex offender registry, I examine whether the shift from the current offense-based sex offender registry to a risk-based registry will address the lack of clarity in law or in fact exacerbate it.\textsuperscript{279}

**Brief history of the sex offender registry**


Despite increasing debate – within legal, political, and academic circles – over sex offender registries in the United States, the notion of archiving and recording criminals names, whereabouts, and occupations in this country is not new. The first statewide criminal registry dates to 1937, in the state of Florida. While the Florida registry did not specifically target sex offenders, it constituted the beginning of a now-universal (across the 50 states) criminal justice mainstay: the offender registry – both for law enforcement consumption as well as public consumption. In describing the origins of the criminal registry, Velazquez (2008) explains:

[t]he practice of requiring offenders to register began in the 1930s in response to the increased mobility of criminals. At the time, offender registries were viewed primarily as tools for law enforcement, which needed a way of keeping track of high-risk offenders.

The emergence of registries in response to individuals’ increased capacity for movement – with assistance from the automobile (truly, automating one’s ability to be mobile, to move), makes sense. Historically, the emergence of registries in response to law enforcement’s needs to keep tabs on high-risk offenders also makes sense, especially as policing was still coming into its own as a modernizing, professionalizing arm of the state in the 20th century. Interestingly, though, these initial registries were much more localized than they are now, “primarily” targeting high-stakes felons of the day like mobsters and gangsters rather than sex offenders. Ten years later, in 1947, the first sex offender registry in the United States was created in 1947. California’s inaugural sex offender registration law required “offenders convicted of specified offenses to

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281 Ibid., 2.
282 Ibid., 2.
register with their local law enforcement agency.”284 Until the 1990s, however, sex offender registration systems were neither widespread nor uniform in structure throughout the country. In 1994, congressional passage of the Jacob Wetterling Crimes Against Children Act changed all of that.

This legislation was the first foray into the sex offender registration policy-making arena at the federal level.285 As is the case with all law-making, the Jacob Wetterling Crimes Against Children Act did not emerge in a vacuum bereft of political or social factors animating it. We knows, as Werhan (2001) has put it, that “law and culture are intertwined and mutually reinforcing.”286 Keeping this social fact in mind, that “[a] society’s laws…do not exist in isolation but instead are a constituent part of a larger, more complex “normative universe.”287 The social, political, and cultural forces driving the Jacob Wetterling Crimes Against Children Act are many.

I want to underscore three that I believe are particularly relevant to understanding subsequent sex offender legislation: the factual force, the moral panic force, and the tough-on-crime force. More broadly, understanding these forces will assist in an analysis of the relationship between law and policing on the ground.

The first factor that precipitated the Wetterling law is a factual force: the actual abduction, sexual assault, and murder of Jacob Wetterling, a boy from St. Joseph, Minnesota. While biking with a friend as well as a sibling, eleven-year-old Jacob was kidnapped on October

284 Ibid.
287 Ibid., 898.
22, 1989. Although police questioned Daniel Heinrich as an initial suspect, he was ultimately let go, with Heinrich declaring his innocence. Twenty-seven years later, after a new lead opened with the assistance of new DNA technology, Heinrich was arrested, charged with one count of child pornography, and sentenced to twenty years in prison. Following the disappearance of their son, Patty and Jerry Wettering turned grief into action and “became national advocates for missing children.” In particular, Patty was instrumental in helping to create Minnesota’s sex offender registry. An organization called Team HOPE (Help Offering Parents Empowerment) and The Jacob Wetterling Resource Center have also formed to provide educational and support resources for families. On the factual level, therefore, the law’s premise was anchored in an abduction, sexual assault, and murder of a minor.

The second factor I identify is a moral panic factor. Scholars have coined this term to describe societal responses to a perceived or real problem in the form of a physical, social, religious, or political threat and enemy. The “panic” component comes into play when society or community reacts to an imagined or actual problem in disproportionate ways. Goode and Ben-Yehuda (2009) explain the concept this way:

From time to time in every society, charges of terrible and dastardly deeds committed by evildoers erupt; sides are chosen, speeches are delivered, enemies

289 Ibid.
290 Investigators revisited the case decades later after finding Heinrich’s DNA on clothing of another boy who had been sexually assaulted nine months before Wetterling disappeared. Police obtained a search warrant for Heinrich’s home and discovered a collection of child pornography. See http://www.cbsnews.com/news/jacob-wetterlings-killer-danny-heinrich-i-am-truly-sorry-for-my-evil-acts/.
291 Ibid.
are named, and atrocities are alleged...when the moral concern felt by segments of the society or the community is disproportionate to the threat or harm, sociologists refer to them as ‘moral panics.’

Initially, many moral panics may begin as a response, albeit an “exaggerated” one, to an actual threat. Indeed, moral panics have at their core a factual logic – whether it is political, religious, social, cultural, or a combination in construct and content, that subsequently succumbs to inflated, uncontrollable reactions across a community or society at large.

Moral panics are familiar tropes throughout U.S. history: among them, the religion-inspired witch hunts in Salem, Massachusetts and elsewhere throughout 17th century New England; the politically, diversionary, and racially-motivated fears of black men raping white women (the effects of which continued on legal and constitutional bases until 1967, when the Supreme Court upheld biracial marriage in Loving v. Virginia); the 1950s political witch hunt that the U.S. government, with the Federal Bureau of Investigation at the helm, undertook to ferret out the “commies;” and the more recent crusade against homosexual relationships.

Notably, a common thread tying these moral panics together is the theme of sex. Goode and Ben-Yehuda (2009) write:

_many moral panics are about sex…sex is a special and unique sphere in which rules are abundant, and strict, and within which the human drama plays out and the status of wrongdoing and even abnormality is applied._

In the case of witch hunts, much of the court trial revolved around women’s sexuality.

Interestingly, most of the men who claimed to have experiences or visions cast by the “witches”

294 Ibid., 17.
295 As Tim Weiner points out, the FBI’s priority mission was gathering secret intelligence on individuals deemed political threats to American democracy. See Weiner’s (2012) Enemies: A History of the FBI. NY: Random House.
296 Goode and Ben-Yehuda, 18.
spoke of titillating physical encounters. Thus, the witch hunt served to castigate the wily woman. In the case of anxieties about biracial mixing, the sexuality of black bodies was condemned. In the case of hesitations about homosexual relationships, sexual deviance takes center stage. Moral panics also include the 19th century temperance movement that gave way to the Prohibition Era, which was successfully enacted into law but not in enforcement as well as more recent moral panics of the War on Drugs in the 1970s and 1980s. In all of these instances, factual concerns generated and animated the panics but were capitalized on, amplified, misrepresented, and exploited for public consumption.

In this light, the Wetterling incident is best legible as “a sudden eruption of hostility towards a specific group out of proportion to…harm they cause” and occurring within the new penology-based, risk-obsessed, carceral-civil state in which “increased state involvement and government surveillance” are modus operandi.” The abduction and sexual assault of Jacob and other boys in the area ushered in the moral panic that morphed into an amplified, intensified national call for action.

The third factor I identify is a sociopolitical factor: what I notate as a tough-on-crime factor, or following Scheingold (1984, 33), the “politicization of crime” phenomenon whereby “[p]ublic anxiety about crime” generates a “climate of fear” in which “politicians promise to ‘crack down on crime.’” By tough-on-crime, I specifically mean legislative (laws) and executive responses (executive orders) that are punitive – more for symbolic effect and public consumption than for practical outcome. In interesting ways, the moral panic and tough-on-crime factors are congruent in that both present heightened, intensified responses to an imagined or

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tangible problem facing society. In this sense, moral panic and tough-on-crime factors are complementary, each reinforcing the other. The tough-on-crime factor is evident in provisions of the Wetterling law. It is therefore worth inspecting portions of its text.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was part of a congressional omnibus bill, a broader spending package focusing on criminal justice policies, programs, and funding.299 For the purposes of this chapter, I focus on Section 170101 of the Act, which establishes the federal sex offender registry program. Title XVII directs the U.S. Attorney General to establish guidelines for that program, requiring states to mandate that individuals who are convicted of an offense against a minor victim, convicted of a sexually violent offense (against victim regardless of age), or are sexually violent predators must register “a current address with a designated” state law enforcement agency. The Act also provides that unless and until a sentencing court receives a report produced by “experts in the field of the behavior and treatment of sexual offenders” indicating that the individual is no longer a “sexually violent predator,” the designation stands.300 Consequently, an offender’s criminal status is subject to a technician’s evaluation.

Based on language in the law, most offenders are placed on the registry for ten years – and that clock begins once they are “released from prison, placed on parole, supervised release, or probation.”301 For those offenders classified as sexually violent predators, registration may be longer than ten years and only after it is determined that they no longer suffer from mental disorders that would make them “likely to engage in a predatory sexually violent offense.”302 In

301 Ibid.
302 Ibid.
these cases, registration may be for life. In all cases, though, offenders are looking at a decade of registration as the minimum. If an offender knowingly fails to register or keep registration status “current,” the person “shall be subject to criminal penalties” of the state in which one resides.

State and local police are also empowered to make “relevant” information on registrants available to the public; the exception to publicly available information is victim identity. One can search for offenders’ names, addresses, and sex convictions online and for free.\(^{303}\) Finally, the federal government promises to withhold ten percent of monies for state funding under the 1968 Omnibus Crime Control and Safe Street Act. In all, the Wetterling Act encapsulates tough-on-crime mores. It specifies the mechanisms for punishing, monitoring, and keeping track of sex offenders both in conventional penal institutions and civil settings.

The next major federal legislation on sex offender policy was Megan’s Law in 1996, just two years after the Wetterling Act. Similar to the circumstances surrounding the Wetterling Act, Megan’s Law was likewise a product of sociopolitical forces. The most immediate factor is the factual force – the spark that ignites the political, lawmaking, and law enforcement processes. On the surface, the law is a legislative response to an actual incident. A seven-year-old girl from New Jersey, Megan Nicole Kanka, was “lured into her neighbor’s home with the promise of a puppy.”\(^{304}\) After Megan entered the home, a two-time convicted sex offender (convicted in 1981 of an attack on a five-year-old and an attempted sex assault of a seven-year-old), sexually assaulted and murdered her.

\(^{303}\) One can visit the Connecticut sex offender registry at: http://www.communitynotification.com/cap_office_disclaimer.php?office=545767. When there, one can type in home address and a radius (say, ½ mile or 5 miles) to determine if there are registered sex offenders living nearby. There are half a dozen living within five to eight minutes of where I reside, for example.

Megan’s parents, Richard and Maureen Kanka, took swift action, obtaining nearly half a million signatures to petition for the first state law on the books mandating community notification of sex offenders. This the law required that the offender register with the authorities and that the information be made public to the community in which offenders reside. Two years later, the Kankas, along with other parents whose children had been sexually assaulted and murdered (including Patty Wetterling and John Walsh), successfully lobbied at the federal level to pass a national version of the public sex offender registry.

Unlike the New Jersey version, the federal iteration required all fifty states to release information to the public of known convicted sex offenders when necessary to protect the public’s safety, but it did not mandate active notification. According to Parents for Megan’s Law and The Crime Victim’s Center:

> If a state failed to comply with minimal release of information standards established by the federal government, then that state risk losing federal crime-fighting funding. The federal mandate to release information to the public is often mistakenly referred to as community notification when, in actuality, the federal mandate required just the release of information to the public – not active notification. There is a significant difference between simply releasing information (making it available for the public to access on its own) and active community notification, where law enforcement officers or designated government agents actively go door to door or send out mailings to inform neighbors and schools. The federal Megan’s Law did not require all 50 states to enact active notification laws, whereas New Jersey’s state Megan’s Law had specific requirements for active community notification.”

Notably, the state law – New Jersey’s Megan’s Law – was more reaching and punitive than the federal law. I suspect that the discrepancy in intensity may be due in part to the location of the incident. The driving politics may be more intense in relationship to the geography and proximity of the sex crime. Nonetheless, the federal law iteration delivers a one-two punch. First, the law permits the release of registrant information to be “disclosed for any purpose permitted

305 Ibid.
under the laws of the State.”306 Second, the law allows for a state’s law enforcement agency (or agencies) to “release relevant information that is necessary to protect the public concerning” sex offenders required to register.307

On the one level, Megan’s Law gives wide berth to states when it comes to the dissemination of information on registered sex offenders. On the second level, the federal law frames this dissemination within a paradigm evocative of a tough-on-crime impetus; in such a context, the release of “relevant information” is “necessary to protect the public” from risk-bearing, dangerous individuals. On closer inspection, too, the tough-on-crime content of this law is predicated on what is arguably a moral panic: sex crimes against minors. The fact of the actual sexual assault and murder of Megan Kanka, in conjunction with the moral panic that ensues from it and other instances like it, provides conditions ripe for tough-on-crime maneuvers that are as much socially palliative as they are politically profitable. As with the Wetterling Act, Megan’s Law both symbolizes and makes legible the sociopolitical underpinnings of sex crimes legislation.

The final, most recent federal legislation targeting sex offenders I want to highlight is the Adam Walsh Act, signed by President George W. Bush in 2006. The Walsh Act marked a significant expansion of the “scope, scale, and requirements of sex offender registration programs” initiated via the registries mandated in the Wetterling Act and the public/community notification components authorized in Megan’s Law.308 The law, in honor of John Walsh’s six-year-old son Adam, who had been abducted, murdered and decapitated, created three categories or classifications of sexual offenses to indicate the severity of the crime(s) for which the offender

306 Ibid.
307 Ibid.
is convicted (i.e., Tier III, Tier II, and Tier I). Tier III indicates the most severe of sex crime felonies (for example, actual or attempted aggravated sexual abuse, sexual abuse, abusive sexual contact against youth under 13 years of age). Tier II indicates sex crimes deemed “medium” severity (for example, soliciting a minor for prostitution, producing child pornography, distributing child pornography). Tier I indicates the least severe of sex crimes that do not fall within the other two categories (for example, indecent exposure which can be charged as a misdemeanor or felony in some states; it is a Class B misdemeanor in Connecticut).  

There are three titles within the Act, the first of which establishes the sex offender registration and notification act (SORNA). SORNA updates and essentially replaces Wetterling Act. It requires states to

- register all sex offenders (retroactively) who remain under criminal justice supervision; requires all states to register certain juvenile sex offenders over the age of 14; requires that states make “failure to register” a felony offense; creates three ‘tiers’ of offenders with corresponding registration requirements; requires the creation and regular maintenance of a searchable internet database.

_Brief history of the Connecticut sex offender registry_

In 1998, Connecticut passed a law authorizing then-Department of Public Safety (DPS), now known as the Department of Emergency Services and Public Protection (DESPP), to “establish and maintain a central registry of sex offenders.” The Connecticut law also required that “registry information be made available to the public through the Internet and at each local police department or State Police troop.” With the stipulation to make sex offender registrant

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310 Ibid.


312 Reinhart.

information publicly available, Connecticut joined the “national bandwagon.” According to data IMRP colleagues and I have compiled in 2017, there are 5,389 registered sex offenders in the state. Over the lifetime of the state’s registry (since its implementation in October of 1998 to present), a total of 9,070 convicted sex offenders have registered with the Connecticut State Police. During the registry’s first two years in 1998 and 1999, CSP registered 1,302 new registrants - including re-registration of persons convicted of sexual offences prior to 1998. Thus, the registry was retroactively applied to individuals with prior applicable sexual offenses. In 2000, the number of new registrants decreased 29%. From 2000 to 2010, the trend in new registrants remained relatively stable. Beginning in 2011 through 2016, however, there was a small decrease in new registrants.

Under the federally-mandated registry system, penalties apply to sex offender registrants in the state who fail to update their information – such as a change in residence or workplace address – within a timely fashion. The Connecticut law specifies that registrants notify the DESPP of address change(s) within five days of the change(s) as well as verify their home address every 90 days. If they fail to comply, registrants can be arrested for a class D felony – in the same company with offenses as retail theft under $10,000 or issuing a bad check. Federal law provides for up to ten years of jail time, but leaves discretion to the states.

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316 Ibid.
317 Ibid.
Since its inception, the Connecticut sex offender registry has had a stormy history – both legally and politically speaking. Over the last twenty years, power plays have emerged over the role of the law, its clarity, and precision. In 1997, prior to official creation of the Connecticut registry, then-state Attorney General, Richard Blumenthal (now a U.S. Senator) supported police chiefs across the state in seeking immunity from “any lawsuits that might result” from the new law requiring disclosure of information about sex offenders living in communities to the public.\textsuperscript{320} Specifically, the police chiefs wanted clarity from the General Assembly in terms of community notification procedures (protocols by which to inform communities where sex offenders reside). If guidelines were in place, then localities and police in their official capacities would be immune to lawsuits by offenders as well as victims (in the event release of information led to identification of a victim, for instance). “I want to protect my citizens,” said Anthony J. Salvatore, the Police Chief of Cromwell, Conn.\textsuperscript{321} But ought protection come at the cost of uncertainty in the law and potential for adverse effects?

At the same time, Michael P. Lawlor, then-state representative from East Haven (now undersecretary of criminal justice policy under Governor Dannel P. Malloy), who helped draft the Connecticut version of Megan’s law, explained the catch-22 in this way:

\begin{quote}
[t]hats the real controversy about Megan’s laws...If we tell people, ‘Don’t worry, we’ll let you know if there’s a sexual offender in your neighborhood,’ and we can’t deliver, what do we do? Do we create a false sense of security for people?\textsuperscript{322}
\end{quote}

Thus, anxieties on all sides took shape – whether they emanate from law enforcement fearing lawsuits if they either infringed on rights of the accused or failed to prevent sex crimes; or from politicians who did not want to be seen as soft on crime while maintain a veneer of reasonable

\textsuperscript{321} Ibid.
\textsuperscript{322} Ibid.
compassion; or from attorneys and activists who questioned the constitutionality of legislation like Megan’s Law.

The law, which took effect October 1998, required local police departments to make registries of sex offenders publicly available and accessible. But not all departments followed the new rules at first. According to a sample of six police departments in the state, just a third reported that the registries had become publicly available. Three others responded that they were uncertain; and the sixth, Fairfield Police Department, refused to make the list of sex offenders available to the public, pending guidance from the town attorney. In an attempt to reassure the public that clarity and consistency would come soon, Blumenthal said he was sending letters to every police department in the state to inform them of the public registry requirements, stating that “[t]here is some confusion among police departments about the provisions of the new law,” but emphasizing that “the law is quite clear that these registries are open to the public, no questions asked.” 323

One year after Connecticut mandated that the sex offender registry be publicly available online, an initial failure of the registry would come to pass: an eleven-year-old girl from Willimantic, Conn. was murdered by a neighbor, a convicted sex offender. 324 In the wake of this homicide, then-state Democratic senator Kevin B. Sullivan commented:

A law on the books is a beginning, not an end, People have to be aware of it, police departments have to be aggressive, and we in the legislature learn the strengths and weaknesses in the application. This is a terrible way to learn that you need to do something more. 325

325 Ibid.
From this rather detached comment, we detect the fragments of confusion the role of law can leave behind in its wake. Sullivan says that “[a] law on the books is a beginning, not an end.” In basic terms, the text of law does not have finality to the degree actualization of law does. “People have to be aware of it, police departments have to be aggressive…” Here, it takes the duality of public awareness and persistent law enforcement to concretize the law’s words into action. Finally, a frank reading of Sullivan’s suggestion that “we in the legislature learn the strengths and weaknesses in the application” discloses the idea that legislators experiment with law in the anticipation that it will undergo numerous rough drafts – even if those iterations come at the expense of livelihoods or lives.

It would seem that law is given permission to meander, to make itself clearer, more decisive, more comprehensible. Yet, the realities of law enforcement in society do not have that luxury of pause for re-doing or undoing. As a consequence, law recedes into obscurity and irrelevance if it cannot assist in securing the precision and determinacy required by law enforcement. The actual victims of law’s carelessness (for example, a murdered girl from Williamtnic) are simply a signpost for lawmakers that “you need to do something more.” If the registry already exists, however, what is that “something more”? Is it more surveillance of offenders on the registry? More monitoring and tracking of offenders? Expanding the registry to encompass more people – not only individuals who have committed sexual offenses, but to cover those who may commit sex crimes in the future? By bizarre turns, the failures of law enable it to clamor for more.

326 The allure of predictive policing and criminal justice mechanisms is also seen in the example of DNA collection discussion and practices. As some states are beginning to do, DNA collection for law enforcement purposes is moving beyond the orbit of individuals who have been convicted. DNA banks in states like California, Louisiana, Texas, and Virginia are collecting DNA from individuals who have been arrested. There has also been discussion about a move to
In 2002, the Connecticut sex offender registry faced yet another controversy – this time, involving a constitutional challenge. Critics, including the Connecticut American Civil Liberties Union (which had challenged the law in 1999) of the registry contended that it violated due process rights. Specifically, the ACLU and others identified the registry’s lack of means to identify an offender’s level of dangerousness or risk level to the community as a site for concern. To that end, they urged Connecticut to put in place a hearing process for a board of mental health experts or a judge to make such a determination – as had been done in several states, including New Jersey, home of the original Megan’s Law. Otherwise, as University of Connecticut School of Law Professor Timothy Everett, explained, ‘[y]ou couldn’t tell whether to be worried or not if you lived near one of the people of the Net.’ State officials, meanwhile, argued that it was not the state’s responsibility or “obligation” to determine a person’s level of risk, threat, or “dangerousness” posed to the greater community. Indeed, the website of the Connecticut sex offender registry posts the following disclaimer:

The Department of Emergency Services & Public Protection has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion within this Registry, and has made no determination that any individual included in the Registry is currently dangerous. Individuals included within the Registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual.

universalize the collection to include everyone in the United States within DNA data banks. Keeping these examples in mind, it is evident that the role of law is expanding to the “what if” questions of possible behavior in the future. See Simoncelli, Tania. 2006. “Dangerous Excursions: The Case Against Expanding Forensic DNA Databases to Innocent Persons.” The Journal of Law, Medicine & Ethics 34(2): 390-397.


Ibid.

Ibid.

In this case, the state’s registry is purportedly for public information not identification of individual risk.

Further separating the state’s obligation to public safety from the very task of assessing each offender’s risk to it, then-state Attorney General Richard Blumenthal declared that moreover, ‘…we have no clearly reliable predictors about dangerousness so the hearing would be elaborate, costly and in the end, perhaps, unreliable.’ Blumenthal acknowledges the limits of law while denying the possibility that those limits are rooted in lack of knowledge are best, omission of facts at worst. In this context, the expanding carceral state cannot be expected to bother with minutia of individual sex offenders; rather, it is the dangerous classes or groups of offenders that fall within the state’s purview: it is easier to regulate the population wholesale than it is to take on an exacting taxonomy of dangerous, risk-bearing persons. In the following section, I discuss a Connecticut case that ultimately reached the Supreme Court and was decided in 2003, Connecticut Department of Public Safety v. Doe.

In view of the state’s turbulent experiences with the creation and maintenance of its sex offender registry, it is fitting that the state’s General Assembly authorized creation of a taskforce to evaluate it. By doing so, the legislature has to an extent admitted the existence of conceptual and practical murkiness permeating the registry law’s stated objectives and operations. Interestingly, it will take the work of a law-created taskforce (the Connecticut General Assembly-authorized Special Committee on Sex Offenders) to remedy the law-generated problems plaguing enforcement and undermining law-society relations that have clung to the registry from its inception.

331 Ibid. Connecticut is one of twenty states that do not provide for a hearing to determine a sex offender’s level of risk to society.
Is it registering? Exploring the registry’s effectiveness, constitutionality, and unintended consequences

**Effectiveness**

Before moving into the constitutional questions surrounding sex offender registries, I address perhaps what is perhaps a more obvious, practical inquiry: Do sex offender registries enhance public protection and help to secure public safety? Scholars (Cohen and Jeglic 2002; Durling 2006; Tewksbury and Lees 2007; Terry 2007; Socia 2012; J.J. Prescott 2012; Benedet 2012; Levenson, Grady, and Leibowitz 2016) ranging from the fields of sociology to law to criminology have been pursuing this line of questioning since the burgeoning of sex offender registries in the 1990s. Some of their key inquiries and findings warrant substantive attention.

One question scholars ask begins at what is a more fundamental level: do sex offender registries make the American public safer? In other words, do sex offender registries accomplish their purported objective(s)? Namely, do they enhance law enforcement responsiveness to, and supervision of, sex offenders deemed serious risk for recidivating; and, if they are public, do the registries enhance community ability to know where offenders reside in the vicinity so that potential victims take measures to protect themselves by “facilitating the public monitoring and physical avoidance of those individuals”?332 If these are the aims, do sex offender registries get the job done? According to Prescott (2012), “sex offender registration laws appear to reduce the frequency of reported sex offenses,” especially in numerically large populations of registrants. Specifically, Prescott found that:

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average-size registry decreases the incidence of crime by approximately 1.21 sex offenses per year by 10,000 people, a 13 percent reduction from the sample mean.\textsuperscript{333}

Requiring registration does appear to be effective, particularly as that requirement is a component of active law enforcing procedures such as increased surveillance and tracking – mechanisms that have a deterrent effect as well. Is the picture of efficacy as sanguine as it sounds? Prescott cautions that:

even if registration and notification laws succeed at reducing the relative incidence of crimes against particular classes of victims believed to be especially vulnerable, one cannot assume that the overall recidivism rate – much less the sex offense rate across the board – has also fallen.\textsuperscript{334}

One can imagine that offenders may simply retreat to a different geographic area to avoid applicability of movement prohibitions. For example, if an offender is required to maintain a distance of 1,000 feet or more from schools, he may simply decide to contain his movement in another part of town – or a different town altogether. On the one hand then, registries do appear to reduce recidivism to a degree, at least in the immediate area to which an offender is confined. On the other hand, registries do not appear to have a deterrent effect on their own and do not in general “positively affect sex offense frequency.”\textsuperscript{335} Registries may be effective when it comes to reducing recidivism among individuals who have already offended, but less effective when it comes to deterring those who have yet to offend.

Levenson, Grady, and Leibowitz find that the reassuring effects of registries may end at the level of sentiment:\textsuperscript{336} while the concept and existence of sex offender registries make the

\textsuperscript{333} Ibid., 54. 
\textsuperscript{334} 52. 
\textsuperscript{335} 54. 
public “feel safer,” data “indicate that their actual effectiveness in preventing sexual recidivism is quite weak.” In their review of previous studies assessing the impact of sex offender registration and notification laws (SORN), Levenson, Grady, and Leibowitz observe that “[m]ost single-state studies have not detected significant reductions in sex crime rates that can be credited to SORN policies.” In addition, the note that studies examining multiple states’ registries also yield “mixed results,” with most showing “small or no effects on recidivism attributable to SORN” laws.

Interestingly, in ten states, there was an increase in rape rates in California after passage of SORN laws, whereas a handful of states (including Connecticut), showed “non-significant trends.” In addition, where registration does appear to “decrease the rate of recidivistic sex offenses,” public notification does not have the same effect. Thus, an offender’s awareness of public knowledge regarding his sex crime(s) does not have the deterrent effect envisioned with a publicly-accessible registry system. Further compounding obstacles to assessing the system’s efficacy is the enormous variety among the states in terms of implementation such that:

[i]t is difficult to keep track of whether the offenders are actually registering. The rules for which offenders are required to register, how they need to register, the type of information they need to provide, and who has access to this information varies from state to state.

Likewise, scholars, policymakers, and practitioners are questioning just how effective an offense-based registry system is – as opposed to a risk-based system. Although it may sound

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337 Prescott, 54.
338 Levenson, Grady, and Leibowitz, 7.
339 Ibid., 7.
340 7.
341 7.
counterintuitive to ask, the inquiry can become: are one’s crimes the appropriate basis for long-term registration as an offender? Do one or two illegal sex acts render an individual a pedophile or sexual predator for life? Without diminishing the horror of sex crimes against individuals of all ages, it is important to ask whether an offense-based system is a valuable tool for law enforcement; or, would a system anchored in the premise that one’s mental state is tethered to criminogenic behaviors be more targeted, more accurate, more precise, and better serve law enforcement? For all intents and purposes, the Connecticut sex offender registry does not appear to be working as originally envisioned. I explore these questions through my IMRP work in Chapter Five.

**Constitutionality**

Just as the utility of SORN legislation has proven to be a mixed bag, so, too, disputes over its constitutionality have yielded mixed and confusing outcomes. The jury is out when it comes to the question of sex offender registries’ overall efficacy in terms of reducing sex offender recidivism and as a deterrent. In a similar vein, the jury is out when it comes to the constitutionality of sex offender legislation – particularly as it concerns the sex offender registry and community notification provisions. At all levels of the judiciary, sex offender registries and community notification mechanisms have been deemed at times constitutional and at other times unconstitutional – in whole or in part.

The U.S. Supreme Court is no stranger to the legal fray over determining the constitutional status of sex offender laws. As I have shown in Chapter Three, the Court has taken a schizophrenic approach to constitutional questions bearing on sex-based acts such as child pornography and predation. For starters, in *Miller v. California* (1973), the Court ruled that obscenity was outside First Amendment protection – but that determining whether material was
beyond the pale required a rigorous three-part test. Yet, the Court decided in *Ashcroft v. Free Speech Coalition* (2002) that certain provisions of the Child Pornography Prevention Act were overbroad and therefore constitutional. As a result, virtual (computer-generated) child pornography was not deemed as outside free speech protection. Six years later, however, the Court upheld a federal law that criminalized the ownership and distribution of virtual child pornography.\(^{343}\) Likewise, mixed signals over the constitutionality of SORN have percolated throughout the judiciary. Lower courts often strike down laws within the sex offender genre on due process bases, with the higher courts overturning or affirming, and the Supreme Court preserving the laws.

Beginning with *Kansas v. Hendricks* (1997), the Court upheld the state’s Sexually Violent Predator Act.\(^{344}\) In so doing, the High Court reversed the state supreme court’s decision striking down the Act for violations of substantive due process. The Act provided for civil procedures to place individuals diagnosed with mental abnormalities or personality disorders associated with risks to engage in predatory acts of sexual violence into civil commitment. Leroy Henricks, the defendant, possessed a long history of sexually molesting children and had been scheduled for release from prison shortly after the Act become law. Was Hendricks’ “grandfathered in?” No. Writing the opinion, Justice Thomas held that:

> The Kansas Sexually Violent Predator Act comports with due process requirements and neither runs afoul of double jeopardy principles nor constitutes an exercise in impermissible ex post-facto lawmaking.\(^{345}\)


Five years later, in a case again involving the state of Kansas, *McKune v. Lile* (2002), the Court determined that its sexual abuse treatment program (SATP) did not constitute a violation of Fifth Amendment due process rights. Both the District Court of Kansas and the Tenth Circuit Court of Appeals had found in favor of Lile, ruling that the SATP amounted to coercion and violated his Fifth Amendment rights.

Robert Lile was a convicted sex offender, one whom a jury had found guilty of rape, aggravated sodomy (committed at the threat of gunpoint), and aggravated kidnapping. The Kansas Department of Corrections recommended that Lile enter into a prison treatment program to prevent him from recidivating upon release. The program requires the participant “to confront his past crimes so that he can begin to understand his own motivations and weaknesses.”

Respondent was informed by prison officials that if he did not participate in SATP, his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges automatically would be reduced and/or eliminated.

Lile contended that such a requirement and incentives to induce fulfillment thereof amounted to “compelled self-incrimination,” which the Fifth Amendment proscribes. The Court ruled that the program:

serves a vital penological purpose, and offering inmates minimal incentives to participate to compelled self-incrimination prohibited by the Fifth Amendment.

In authoring the opinion, Justice Kennedy acknowledges that “[s]ex offenders are a serious threat in this Nation.” Referencing 1995 statistics showing “an estimated 355,000 rapes and sexual

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348 Ibid.
349 Ibid.
350 Ibid.
assaults occurred nationwide” and that “[b]etween 1980 and 1994, the population of imprisoned sex offenders increased at a faster rate than for any other category of violent crime,” Kennedy paints a picture of urgency. In addition, Kennedy notes that for 1995, “a majority of reported forcible sexual offenses were committed against persons under 18 years of age. Nearly 4 in 10 imprisoned violent sex offenders said their victims were 12 or younger.” Finally, Kennedy remarks that “when convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault” – incidentally, a finding the veracity of which criminologists and others now question. Through the use of criminal justice data, Justice Kennedy attempted to bring statistical, technical clarity to constitutional questions pertaining to sex offender rights.

In Kennedy’s assessment, Kansas has a “vital interest in rehabilitating convicted sex offenders” in order to prevent recidivism and ensure public safety. What is more, Kennedy found that SATP’s impositions fall on prisoners, rather than “ordinary citizens” – a distinction that figures importantly into “weighing respondent’s constitutional claim.” An offender has less a claim to rights than an individual who has not yet violated the legal and/or constitutional bases for those rights. Kennedy reinforces the idea that rights can become abridged once a citizen violates the basis for those rights – for, “[a] broad range of choices that might infringe constitutional rights in a free society fall within the expected conditions of confinement of those lawfully convicted.” More, he states unequivocally that the SATP is certainly not a “mere

351 Ibid.
352 Ibid.
353 Ibid.
354 Ibid.
355 Ibid.
356 Ibid.
subterfuge” for a continued criminal proceeding (which otherwise would constitute a double jeopardy).

In sum, Kennedy determines that the Kansas SATP:

represents a sensible approach to reducing the serious danger that repeat sex offenders pose to many innocent persons, most often children. The State’s interest in rehabilitation is undeniable.

In one fell swoop, Kennedy deftly joins together strands of the more traditional rehabilitation impetus with threads of the post-modern carceral state logics of risk and danger assessment. On the one hand, the state’s program is necessary for reducing future threats posed by risky persons. On the other hand, the state’s program is necessary for rehabilitating persons into functioning, non-risky citizens. Which is it? Does Kennedy imply that risky persons can in fact be rehabilitated and transformed into unthreatening individuals? Or is rehabilitation a practical objective for certain offenders but not others? Again, the role of law and its intent remain unclear. Offenders seem forever consigned to the risk-bearing archetype – but under the canopy of rehabilitation. As a consequence of fuzzy law, it would appear that offenders can be rehabilitated but not fully removed from their risk profiles.

In *Smith v. Doe* (2003), the majority opinion of which was also authored by Justice Kennedy, the Court held that Alaska’s sex offender retroactive application does not violate the ex post facto clause. The District Court had upheld the law, but the Ninth Circuit Court of Appeals found the law was punitive; thus, conflict existed at different levels of the judiciary, and the Supreme Court intervened.

The Alaska law mandated placement of sex offenders on the public registry; registration status could extend beyond one’s incarceration status. This is the case with many states in the

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357 Ibid.
358 Ibid.
359 Smith v. Doe, 538 U.S. 84.
United States, including Connecticut, in which one can serve for one or two years, but remain on the registry for at least ten years. The Court concluded that the Alaska law was a civil (rather than a penal, punitive), nonpunitive means of identifying previous sex offenders for public safety purposes. In no uncertain terms, Kennedy makes clear that “a conviction for a sex offense provides evidence for one’s risk of returning to crime.” In the dissent, however, authored by Justice Ruth Bader Ginsburg and joined by Justice Breyer, the act was deemed “ambiguous in intent and punitive in effect” and therefore requirements incompatible with the ex post facto clause. Moreover, Kennedy casts the Alaska law as imposing but a “minor” condition of registration. In addition, the Court finds that registration requirements are not “excessive” but rather, are consistent with “empirical research on child molesters” which at the time showed that re-offenses among the “dangerous class of sex offenders” can occur many years after one’s release from prison. In these ways, the Court’s majority speaks the languages of technicality in order to ground the sex offender registry in actuarial sciences and data. The Court’s majority rationalizes the role of law within a context of surveillance, risk-assessment, and danger-monitoring that must be ongoing – a context that necessarily continues beyond the jail house.

In Connecticut Public Safety v. Doe (2002), Chief Justice Rehnquist delivered the unanimous 9-0 opinion upholding the state’s public, online sex offender registry. This ruling reversed the Second Circuit Court of Appeals decision barring public disclosure of the state’s sex offender registry. Primarily, the lower court had found that public disclosure deprived registered sex offenders of due process, as the state did not provide offenders a hearing to

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361 Ibid.
362 Ibid.
determine their risk or “dangerousness.” For the Highest Court, a key factor in determining that the registry did not violate an offender’s right to due process was that Connecticut:

Decided that the registry requirement shall be based on the fact of previous conviction, not the fact of current dangerousness. Indeed, the public registry explicitly states that officials have not yet determined that any registrant is currently dangerous.

Under the challenged law, conviction triggers registration – not the convicted individual’s level of dangerousness or risk to society. To this point, Rehnquist notes that “due process does not require the opportunity to prove a fact that is not material to the State’s statutory scheme.” In other words, the Court finds that a due process claim is irrelevant with respect to one’s level of risk or danger, because it is allegedly not the foundation for registration status. Rehnquist explains that:

[individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual.]  

An actual conviction – one that has already gone through legal, due process – triggers registration. Evaluation of an offender’s threat to the broader public in Connecticut via a risk of recidivating, is outside this factual basis for registration. Finally, the Court did not reach an inquiry of whether a substantive due process violation occurred, pointing to the fact that the respondent made only a procedural claim.

As I have discussed, the Supreme Court upheld sex offender registry laws in the Kansas, Alaska, and Connecticut cases. Yet, there is one glaring site of imprecision I detect in the Court’s decision-making: the issue of registries based on offender’s conviction or risk. Specifically, how

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365 Ibid.
366 Ibid.
367 Ibid.
do we pair Justice Kennedy’s contention in *Smith v. Doe* that a sex offense conviction is evidence of recidivism risk (within the same Court term, no less) with Chief Justice Rehnquist’s pronouncement that the Connecticut registry is designed to give the public information – not to warn it of “any specific individual” regarding his or her risk level. Does Rehnquist obfuscate Kennedy’s meaning of conviction equals risk? Is Kennedy incorrect to say that a conviction equals risk in the first place? What about offenders against whom prosecutors decide to drop charges or those who plea down to one count of child pornography possession when they could have been convicted on multiple counts of sexual assault? How does the role of sex offender registry serve to organize or alternatively, *disorganize* enforcement?

Confusion over sex offender registries persists – along both constitutional and practical fronts. In fact, 2016 brought significant challenges to the registry. It was the year in which a divided Pennsylvania Supreme Court (4-2 decision) ruled that offenders who commit certain sex offenses (like possession of child pornography) should not be required to undergo lifetime registration, unless they commit one or more sex crimes after the initial conviction. As one local journalist reported, “they have to become recidivists to qualify for the lifetime registration.”

Until this ruling, Pennsylvania state police had been requiring first-time sex offenders to register for life if they have multiple sex crime convictions originating from a single criminal incident.

One journalist wrote of what the majority decision means practically speaking:

> [t]he majority decision means sex offenders convicted of “Tier 1” crimes including kidnapping of minors, child luring, institutional sexual assault, indecent assault, prostitution involving minors, possessing child porn and unlawful contact with a minor won’t be required to register for life on their first offense, no matter

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369 Ibid.
how many charges their first convictions entail. They will still have to register with police for 15 years.\textsuperscript{370}

Life registration may be out for some offenders, but the fifteen year-minimum registration period would still apply for first-time Tier 1 offenders. Commenting on the ruling, local defense attorney Brian Perry said that it “allows individuals to rehabilitate themselves and not have to deal with (registration) for the rest of their lives.”\textsuperscript{371}

It was the year that the Fourth Circuit Court of Appeals struck down a North Carolina sex offender law barring sex offenders from “visiting any place where minors gather for regularly scheduled activities.” As the court explained, “neither an ordinary citizen nor a law enforcement officer could reasonably determine what activity [is] criminalized” by the law. “As a consequence,” the court concluded, it “does not meet the standards of due process because it is unconstitutionally vague.”\textsuperscript{372}

It was the year that the Sixth Circuit Court of Appeals struck down Michigan sex offender statute amendments that among other things required offenders to maintain a distance of at least 1,000 feet from a school and ranked them according to levels of perceived dangerousness or risk to the public. Writing for a three-judge panel, Judge Alice Batchelder ruled that these stipulations were punitive and decried them as resembling ancient rituals of banishment and shaming. She noted how these statutes prevented offenders from being able to find housing or work. Finding that there was no “credible evidence that such laws prevent recidivism,” Batchelder writes that the statute:

\textsuperscript{370} Ibid.
\textsuperscript{371} Ibid.
brands registrants as moral lepers solely on the basis of prior conviction…consigning them to years, if not a lifetime, of existence on the margins, not only of society, but often…from their families, with whom, due to school zone restrictions, they may not even live.\textsuperscript{373}

Batchelder locates her impassioned critique in the fact that the statute effectively banishes offenders from sections of communities based on prior convictions. The irony of this is palpable. After all, many criticisms of sex offender registry and notification laws are directed at the idea that they are rooted in ambiguous, intangible evaluations of risk – rather than concrete realizations of a formal conviction.

In 2017, with Justice Neil Gorsuch now on it, the Supreme Court will be evaluating whether a North Carolina law that bars convicted sex offenders and minors from communicating on social media platforms (for example, Facebook, Twitter, YouTube) infringes on First Amendment rights with its overbroad language.\textsuperscript{374} The North Carolina Supreme Court upheld the law in a divided ruling. Opponents of the law argue that the statute is not narrowly tailored and covers too much speech – that the ban on sex offenders from online usage reaches access to online job postings or prevents them from “reading the daily musings of President Donald Trump.” In response, North Carolina Attorney General Josh Stein has stated that the law:

keeps registered sex offenders…social networking websites that kids use without denying the offenders access to the Internet. It just keeps them off…certain web sites.\textsuperscript{375}

\textsuperscript{374} Judge Neil Gorsuch, appointed by President Donald Trump and confirmed in the U.S. Senate, replaces the seat vacated following the death of Justice Antonin Scalia.
As of 2016, a “vast majority”\textsuperscript{376} of the 859,500 registered sex offenders in the United States are required to register personal information – ranging from their names and addresses to their social media user names.\textsuperscript{377} Will the Court uphold the North Carolina statute, as it has upheld associated sex offender legislation in other states in years past? Will the Court permit law to extend carceral bans (or, at the least, restrictions) on physical movement within an offender’s offline community to his mobility within the online world? At this point, the role of law and its parameters remain unclear.

\textit{Unintended consequences}

The sex offender registry’s efficacy and constitutionality have faced numerous challenges. Finally, there is the issue of unintended consequences. When the registry \textit{is} implemented successfully, what do the unanticipated results look like? A brief sampling reveals that unanticipated outcomes fall into three categories: vigilante responses; aiding and abetting offenders; and community fall-out. Wright discusses a 2006 incident that spanned national borders:

In April 2006, Stephen Marshall, a resident of Nova Scotia, Canada, identified the home addresses of two random sex offenders registered on the Main sex offender registry Web site. Marshall drove to the home of the two men, with whom he had no personal relationship, and shot and killed both.\textsuperscript{378}

In what constitutes a clear-cut case of vigilantism, a Canadian man crossed the border with the objective of killing two sex offenders, with whom he had no personal tie or connection – other than reading their names from a publicly accessible website. Under these circumstances, the registry did not deter crime, it bred it. The criminal registry gave information, and an individual

utilized that information to execute yet another criminal act. Seepage of the carceral state into the civil society is rendered most explicit in a vigilante act: the citizen becomes judge, juror, and executioner of the publicly-identified criminal. The citizen continues the carceral state’s project of criminal sanction albeit in a graphically violent manner. After all, if the carceral state thrives on the continual expansion of the criminal, the punitive, the illicit into the realm of civil society, it is fitting that some citizens would likewise willingly take up the mantle of this carceral state extension. Just as this expansion feeds the carceral state’s power, so too, it can feed one’s sense of power and purpose within this carceral-civil polis.

In addition to providing the informational basis for vigilante attacks, sex offender sentencing and registration laws have also incidentally promoted instances of what I call “aiding and abetting.” Until recently, there was an Arizona radio music station (mainly oldie tunes) that for two years aired a public service announcement encouraging people to hide potential evidence in child pornography cases, such as photos or images on one’s computer. When interviewed, the radio station’s owner, Paul Lotsof, said that while he does not agree with the idea of child pornography, he believes that the state’s ten-year minimum sentence for possession of each image “is too harsh and costly for taxpayers.” Lotsof added that “people don’t deserve life in prison, just because they have pictures of naked juveniles.” In his capacity as a private citizen and local media (i.e., radio) business owner, Lotsof acted on behalf of the sex offender who traffics in child pornography. In a word, Lotsof was the public defender. In a more cynical formulation, however, Lotsof can be seen as an aider and abetter to sex offenders. He sought to

380 Ibid.
381 Ibid.
provide cover for a class he believed had become the object of an exaggerated criminal justice schema.

Finally, the issue of public fall-out is quite possible when it comes to sex offender registration and community notification law applications. In 2014, for example, residents in Manchester, Connecticut erupted into anger over news that sex offenders were living in a half-way house there.\footnote{Logan, Erin. 2014. May 23 2017. ‘Neighbors outraged over Manchester sex offender house.’ http://wnhem.com/2014/10/06/neighbors-outraged-over-manchester-sex-offender-house/} Residents discovered that the state Department of Corrections had overseen a group of convicted sex offenders move into a house “across from a school bus stop.”\footnote{Ibid.} At a public gathering, Scott Semple, the Department of Corrections Commissioner, said that “virtually all the offenders” residing in the house “are on special parole.”\footnote{Ibid.} Tellingly, Semple further explained that his agency is obligated from a “statutory perspective” to “manage the population.”\footnote{Ibid.} Families expressed fury and shock that the state would permit such proximity between offenders and youth in the community. In this instance, the managerial drive of the state had hit a wall with public opinion. When inserted into the fabric of everyday lives of citizens, the carceral state’s actuarial management rationale and distended surveillance mechanisms unravel into disarray.

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Dazed and confused: registry a symptom of law’s un-clarity

As I have discussed, the sex offender registry, whether it is analyzed on practical or constitutional levels, cuts a striking example of just how tangled a web law, policing, technology, and crime weave. Imbued with stated objectives of enhancing public safety, reducing offender
recidivism, and amplifying deterrence, the registry does not readily appear successful – or, at the least, not consistently and significantly so – on these fronts.

As currently understood and implemented, the registry appears to validate continued carceral state applications. Lack of clarity in the law on the legislation side feeds into lack of clarity on the enforcement side. Imprecision within the law leads to imprecision without. Inaccuracies built into the law construct inaccuracies that touch real lives – of both enforcer and on whom the law is enforced.

In the final chapter, Chapter Five, I discuss findings from my work on behalf of the Institute for Municipal and Regional Policy for Connecticut’s sex offender task force. Specifically, I explore these findings in the context of how murky law creates perfect conditions for emboldened construction of a technology-infused new penology as well as the intensive unfolding of the carceral-civil society. Finally, I explain how proper discernment of these patterns within law making and law enforcing can lead to a sharper framework of analysis and response.
Chapter Five
Law’s Haze, Tech’s Maze

*Seeing through law’s haze and tech’s maze*

I recount that punishment is not just a direct indicator of solidarity and core political capacity for the state…it is also the paradigm of public dishonour, inflicted as a sanction for individual moral, and thus civic, ‘demerit.’

It has become appallingly obvious that our technology has exceeded our humanity.

If we continue to develop our technology without wisdom or prudence, our servant may prove to be our executioner.

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387 Albert Einstein.

**Introduction**

The title of this dissertation, along with the title of this chapter, suggests a central goal in this work, which is to move toward a better understanding about ways that law’s imprecision and lack of clarity can lead to impracticality and confusion in enforcement. Specifically, I have argued that policing cyber sex offenders marks a vital component in ongoing Information Age expansions of the surveillance, risk-based, carceral-civil society.

Here, I contend that imprecision and lack of clarity within the law generate hazy, arbitrary applications in enforcement thereof. More, I have shown that given the dizzyingly rapid evolution of communicative technologies, policing becomes particularly challenging when the rules of the game within social media websites or cell phone applications change day to day. For this reason, I submit that policing technology-assisted sex offenders provides a useful example of shifts in law enforcement concepts and practices.

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**Law’s Murky Effects on Enforcement’s Purveyors and Objects**

Throughout this dissertation, I have documented various – even competing – ways sex crimes have been legislated, policed, and tracked across the centuries in the United States. Using the state of Connecticut as the primary case study, I have identified, examined, and analyzed (with an eye toward the consequences of unclear, imprecise, confusing law as it is carried out in daily enforcement practices and mechanisms) the role of law in sex crimes policing as a microcosm for understanding more broadly the continued expansion of what I call the carceral-civil society. Carceral power – and by extension, its growth – thrives in the confusing spaces, gaps, and interstices of the law. Confusion in the law forms the breeding grounds for the melee.
that ensues either viscerally or more subtly. Furthermore, troubled law fosters the expansion of the carceral state and ultimately, the seepage of penal dimensions and functions into civil society.

I have chronicled the ways in which confusion lurks within legislation, permeates policing practices, and spreads among the law’s objects (i.e., offenders). Throughout American history, legislating sex crimes has never been an enterprise of consistency or continuity. Likewise, enforcement practices have necessarily mirrored the patchwork state of affairs within the law across the decades. This lack of clarity and precision gets further exacerbated by all that the new geographic communicative terrain of cyberspace entails: including but not limited to, the seemingly boundless, parameter-deficient topography characteristic – in fact, constitutive – of the online world. In tandem with hazy law (and its troubled enforcement), rapidly-shifting technologies providing breeding grounds for the continued progression and escalation of what I have identified as the merger between the carceral and the civil. The carceral-civil society is one that encompasses the practices and institutions by which the punitive and the nonpunitive; the penal and the civil; and the law’s doing and undoing are melded. What is more, Information Age technologies and behaviors precipitate the fusion of the carceral-civil society by making criminality on the one hand and surveillance on the other hand easier to do as well as more accessible to pursue.

In the state of Connecticut, my case study, there are myriad instances of sexual crimes that have been conducted with the aid of technology. Recent examples from 2017 alone are many. In May 2017, Southington police referred over a dozen students to a Juvenile Review Board of “inappropriate texting,” including the sharing of nude images via social media.\footnote{Glatz, Jennifer. June 4 2017. “Police: 14 students from Southington middle schools shared inappropriate texts.” http://fox61.com/2017/05/25/police-14-students-from-southington-middle-schools-shared-inappropriate-texts/}. In the
same month, an Avon middle school teacher was placed on administrative leave for posting pornographic materials on websites and social media viewable to students – an action that had been occurring over some time. 390 Meanwhile, the math director at Hamden Public Schools and adjunct professor at Gateway Community College in New Haven was arrested on May 4, 2017 for sending an 18-year-old female student “inappropriate text messages and Instagram communications.” 391 According to the victim’s account, she “didn’t know who was sending them” and initially thought the text “were from a classmate.” 392 On the national level, former New York congressman Anthony Weiner has been the focus of an investigation for sending sexually explicit messages and engaging in sexually-based Skype interactions with a fifteen-year-old female minor. As of January 2017, prosecutors were “mulling” whether to press child pornography charges. 393 Weiner had resigned from his congressional post in the wake of previous sexting scandals with adult women. In May 2017, Weiner pled guilty to one federal obscenity count (transferring obscene material to a minor) in a plea deal; he will have to register as a sex offender. 394

A common thread that unites these recent accounts highlighting crime-technology linkages in the facility with which the latter can be deployed in a constitutive maze of illegal behavior: whether it is peer-to-peer dissemination of nude images or persons in positions of power who exploit them for sexual purposes. I believe that these are pivotal moments in the Information Age. These are moments in which the distinctive ecosystems of technological and

392 Ibid.
online modes of being are effectuating dramatic breaks between how individuals interact, how individuals socialize (and break boundaries of socialization), how legislators make law, how police enforce the law, and how crimes are committed.

At the same time we observe the complicated relationships between law and technology in the policing of cyber sex crimes, we see the resilient development of the carceral state alongside – and indeed, as a result of – these intersections. In fact, the carceral state is resilient despite reform efforts to the contrary, as I will explain is occurring in the state of Connecticut.

In Connecticut, the General Assembly-authorized special committee on sex offenders (under the direction of the Connecticut Sentencing Commission) is undertaking a comprehensive review of the state’s sex offender registry. Under the auspices of Central Connecticut State University’s Institute of Municipal and Regional Policy (IMRP), I have been fortunate to participate in the data-gathering side of this review, which ultimately results in recommendations that will become state law. A major recommendation in the report is that Connecticut move from an offense-based sex offender registration system to a risk-based one. According to the report, recommendations are “aimed at increasing public safety and enhancing reintegration opportunities for released and supervised sex offenders.”  

Currently, a sexual offense is cause for placement on the public registry. Under the proposed formulation, offenders would be placed either on a private, law-enforcement-only registry, if they are deemed low-risk or medium-risk; or, they would be placed on a public registry, if they are deemed high-risk.  

396 Ibid. As of late, the taskforce has explored the suggestion of determining the private vs. public registration decision on a case-by-case basis for medium-risk offenders, as this group
To be clear, reasons for such a shift are numerous and evidence-based. First, the offense-based model does not take into account the offender’s specific potentiality to recidivate sexually. The offense is taken at face value, mostly foreclosing additional inquiry into mitigating factors. Second, the offense-based model does not consistently yield just, equitable sentencing outcomes. For example, an individual who sexually assaulted another person before committing arson on the victim’s home may be able to plea “down” to the non-sexual crime. Thus, there are offenders on the registry who may not be there for just reasons; on the other hand, there are offenders who are not on the registry who ought be. In this context, the appeal of a risk-based system, therefore, is clear. A risk-based system offers the potential for an individualized approach to each sex offender, by assessing his or her specific risk to re-offend. With a more individualized approach, there is the hope that low-risk as well as many medium-risk offenders will not be subject to public scrutiny and stigma. There is also the equally important objective of targeting precious law enforcement resources to that segment of offenders which poses the greatest threat to public safety. Thus, individualized punishment and more finely-tuning law enforcement efforts to protect the community are over-arching goals from Connecticut’s review.

But do risk-assessment based criminal justice structures yield more just outcomes? Of course, such is the express objective of a risk-assessment framework. Does praxis coincide with theory, however? To answer this question, it is helpful to return to the basics of what risk-assessment actually means.

Risk assessment entails the estimation or prediction of an offender’s potential to presents more challenges in terms of their risk scoring. For example, according to state police on the taskforce, there are medium-risk offenders whose criminal actions and risk score point toward a higher-risk classification.
recidivate (for example, re-offending sexually and/or violently). This assessment considers a number of factors alongside an offender’s risk, such as criminal history. Risk assessment is formally defined as the “use of various tools or instruments typically based on scientific evidence, to estimate an offenders’ potential for reoffending or causing harm to others and potential causes or sources of that risk.”^397^ Research has shown that the best supported, scientifically validated instruments for assessing risk – in our specific case, the likelihood of sexual recidivism – are the Static-99, Static-2002, MnSOST-R, and the Risk-Matrix-2000 Sex. For assessing the risk of violent recidivism (which include sexual components), the best supported instruments are the VRAG, SORA, Risk-Matrix Combined, SIR, LSI-R and its various iterations.^398^

In general, there are five methods to evaluating an offender’s risk to re-offend sexually that I have identified in the sex offender taskforce report. First, there is the unguided or unstructured clinical judgment. This method entails an evaluator reviewing case material and applying personal experience to arrive at a risk estimate – without consideration of a specific list of risk factors or any other underlying information and theory. Second, there is the guided or structured clinical judgment. This method calls for the usage of a specific list of factors theorized to be associated with risk – a list that is drawn from personal experience and/or theory – but empirical evidence is not utilized. Third, there is research-guided clinical judgment. The evaluator begins with a specified list of risk factors identified in the broader research or body of professional literature. In conjunction with other factors, considerations, and the use of the clinician’s judgment, this list is used to make a determination of risk. Fourth, there is the pure

actuarial approach. In this instance, an evaluator uses an instrument comprising a set of specified, weighted risk factors (factors that have been identified in the literature). This instrument is then used to identify either the presence or absence of each risk factor. An estimate of risk is reached via standard, prescribed means of combining the factors. Finally, there is the adjusted actuarial approach whereby the evaluator begins by administering an actuarial instrument to the offender. Next, the evaluator utilizes a set list of considerations that can be utilized either to raise or lower the assessed level of risk.

Methods for risk-assessment vary in terms of how structured or unstructured their parameters are. For example, the first method discussed above involves the clinician’s discretion to a great—possibly concerning—degree. Whereas, the latter methods tend to combine theory, empirical data, and the offender’s unique case factors, leaving less room for discretion or worse, arbitrary diagnoses.

Many states have sought to bring what the perceive to be more equity and justness to the sex offender criminal justice regime vis-à-vis a shift to risk-assessment registry systems. At the time of this writing, fifteen states - Arizona, Arkansas, California, Delaware, Indiana, Massachusetts, Missouri, Nevada, New Jersey, New York, North Dakota, Rhode Island, Utah, Wisconsin, and Wyoming have risk-assessment registration systems for sex offenders. Meanwhile, five additional states are contemplating the shift from an offense to a risk-based system: Connecticut, Florida, Idaho, Illinois, and Ohio. What are the results of these moves? Thus far, it has been a mixed bag.

401 Ibid.
From the scant research that has been conducted comparing risk-assessment with offense-based systems, the benefits of shifting to a risk-assessment structure are far from decisive. On the one hand, a 2013 found that Nebraska saw fewer sex offenders recidivating upon prison release under the risk-based system, as opposed to an offense-based system.\footnote{Spohn, Ryan E. 2013. “Nebraska Sex Offender Registry Study.” Criminology and Criminal Justice Faculty Publications. Paper 17. http://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1016&context=criminaljusticef acpub.} Interestingly, Nebraska originally had an offense-based system, choosing to move to the three-tiered offense-based system mandated by the Adam Walsh Act. According to the study, this move resulted in higher recidivism overall – sexually and non-sexually.\footnote{Ibid.} On the other hand, a separate 2013 study analyzing offender data of formerly incarcerated sex offenders sampled from Florida, Minnesota, New Jersey, and South Carolina, found that the sample’s sexual recidivism rate was 5.1% during a five-year period and 10.3% during a 10-year period.\footnote{See Zgoba et al. 2013. “A Multi-State Evaluation of Sex Offender Risk and Recidivism Using the Adam Walsh Act Tiers.” \textit{Corrections Today Research Notes.}} Researchers found that sexual recidivism rates differed among the four states selected, but that it did not reach statistical significance. The trend did reach statistical significance after the 10-year period – with Florida having the highest recidivism rate and South Carolina having the lowest recidivism rate amongst the sampled states. Another finding was that corresponding risk indicators (high, medium, low-risk) and the AWA-based tier designations (Tier III – most serious offenders; Tier II – medium-serious offenders; Tier I – least serious offenders) did not consistently pair. For example, the study found that Tier II designations actually had higher average risk scores, than any other Tier. An “unexpectedly high” sexual recidivism rate was found for the AWA Tier II and lower risk indicator category. Similarly, the study found that a higher AWA tier (for example, Tier III) was
“significantly associated” with sexual recidivism in the negative direction. That is, offenders in the AWA Tier III actually had lower recidivism rates than AWA Tier II or Tier I offenders – again, an unexpected finding. In fact, in three of the four states examined within the study, the “higher AWA tier was unrelated to reoffending” and in one state, was actually “negatively associated with reoffending.”\textsuperscript{405}

Apart from the mixed results in a move to a risk-based system – admittedly, only a few of which have been studied to this point, there are also the benefits and costs to keep in mind associated with such a move. As is the case with any criminal justice structure, costs and benefits accompany the risk-based system. Benefits include aid in setting appropriate sentence, custody level, or conditions for community supervision – in a word, tailoring the punishment to the crime. In addition, as I have pointed out earlier, law enforcement and broader public safety resources can be better allocated to protect the public.\textsuperscript{406} Meanwhile, costs include financial barriers. For example, the price tag involved with undertaking a detailed risk assessment of each sex offender may prove an insurmountable obstacle to already cash-strapped towns and municipalities. On another front, what about the availability of qualified personnel to conduct the risk assessments? If there is a shortage, to whom or what does the state or locality turn? Finally, how would law enforcement agencies (or what would be more likely the case, a board of mental health experts) address the difficulties of scenarios in which an offender disagrees with his or her risk assessment score and categorized level?\textsuperscript{407}

\textsuperscript{407} https://narsol.org/2017/01/the-difficulties-of-a-risk-based-system/.
Clearly, work needs to be done in terms of understanding more fully the mechanics, costs, and benefits of a risk-based sex offender registration system. Overall, what will the consequences of a risk-based criminal justice landscape look like? Feeley and Simon note the shifts associated with the new penology, which have proven to be instrumental in the construction of the carceral state and carceral-civil society. First, they highlight that the “language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgment.”\(^408\) In a bizarre way, sex offender risk-evaluation would meld clinical diagnosis with the language of risk. Second, they discuss the “new objectives” of the criminal justice system, one of which includes reducing “recidivism” in a systematized manner.\(^409\) Indeed, lowering recidivism is an explicit goal in the shift from an offense-based system to a risk-based system. Third, they identify the “deployment of new techniques” which involve targeting offenders “as an aggregate in place of…individualizing or creating equity.”\(^410\) Interestingly, while the risk assessment provides for an individual determination, the offender is nonetheless placed within a low-risk, medium-risk, or high-risk aggregate grouping – a basis on which varying levels of imprisonment, registration, and supervision are grounded. Thus, the assessment may be tailored to the individual, but the ultimate outcome is that the individual is placed into broader categories of dangerous, risk-bearing offenders.

Once they are identified in these various categories, sex offenders are subject to a host of criminal sanctions or not – such as registration requirements (for example, public registration and community notification of one’s offense(s) and residence), prohibitions on specified interactions with other individuals (for example, child relatives or friends), and surveillance procedures (for

\(^{408}\) Feeley and Simon, 450.
\(^{409}\) Ibid, 450.
\(^{410}\) 450.
example, checking-in with authorities each time one plans to leave the state on business or
tavel). As Gottschalk correctly states,

[e]ven if they are not subject to civil commitment after serving their time, many
former sex offenders remain deeply enmeshed in the carceral state. This is thanks
to the proliferation of registration, community notification, and residency
restrictions.411

Whether it is via the sex offender registry or risk-assessment schema, sex offenders face the
carceral state head-on. The vastness of the carceral state becomes cemented through the
pervasive mechanisms of risk-identification and different aspects of intensive surveillance
applied wholesale to the sex offender population in the United States. Here, new penology logics
of risk and neoliberal rationales of efficient managerial practices furnish the carceral state with
its conceptual foundation and practical power. Consequently, a risk-based registration system
may enlarge the carceral state’s verve, rather than contract it.412

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Law’s Cataracts and the Carceral-Civil Society

In addition to analyzing policing cyber sex offenders as a microcosm of the carceral state
in the Information Age, I also see this dissertation countering – both theoretically and
substantively – Wacquant’s criticism of “criminologists and assorted specialists in criminal
justice issues.”413 According to Wacquant, we:

411 Gottschalk, 204.
412 Arguably more disturbing is our inclination to participate voluntarily within the surveillance
network of social media and online consumerism, whereby we willfully and gleefully permit our
Instagram photos, Facebook statuses, and Amazon browsing to be catalogued by friends, family,
companies, and governments. See Gilliom, John and Torin Monahan. 2013. SuperVision: An
413 Wacquant, Loic. 2014. “Marginality, ethnicity and penalty in the neo-liberal city: an analytic
burrow away with zeal in the closed perimeter of the ‘crime and punishment’ duet [and] pay hardly any attention…shifts in class structure and formation, the deepening of inequalities and the broad revamping of urban poverty…\textsuperscript{414}

The work of Scheingold, Garland, Simon, Feeley, and Gottschalk, however, suggest otherwise – in the careful attention given to underlying socioeconomic conditions of crime and criminality. As just one example, Simon and Feeley (1998) have explicitly situated the new penology as a response “to the emergence of a new understanding of poverty in America.”\textsuperscript{415} Likewise, Gottschalk has also demonstrated a precise treatment of the neoliberal policies animating the carceral state. From the beginning, I have been clear that law-making and law-breaking are part of constitutive, sociopolitical concepts, praxes, and institutions.

In the final analysis, while this dissertation has focused on cyber sex crimes, this arena of crime is one text in a genre of instances in which to inspect the broader variegated, complex intersections between law, policing, crime, technology, and society. Identifying and understanding the intersections and their resultant outcomes in terms of impacting enforcement and society is just the beginning, however. Moving forward, additional inquiries should pertain to the exploration of law’s cataracts with respect to other nexuses of technology, law, and policing – whether criminal in intent and outcome or not.\textsuperscript{416}

Setting aside questions for future work, I attend to the silver-lining in this – the potential for “corrective surgery” to law’s blindness in Information Age crime and policing. In a real sense, people are actively working to reform the law from within. To be sure, it remains unclear whether that well-intentioned reform will yield beneficial outcomes. Connecticut, however, as

\textsuperscript{414} Ibid.

\textsuperscript{415} 467.

\textsuperscript{416} As someone who has congenital cataracts, for which I must have corrective surgery, I will say that the role of law functions in a shroud of cloudiness – burdened by a lack of clarity, lack of precision in relation to Information Age policing and society.
with other states, is pursuing reform albeit incrementally in how the criminal justice system – and for that matter, society – addresses sex crimes. The key is to see through the haze of law and the maze of technology. Particularly if thought and care are given to understanding how the carceral state operates – especially if the premises of the carceral state are uncovered, then corrective action may not be far afield. If that is done, then a move away from the carceral-civil society and toward civil society may still be a viable pursuit.
October 3, 2016

Ms. Meghan B. Peterson
51 Filley Road
Haddam, CT 06438

Dear Ms. Peterson,

Thank you for your recent request to conduct Ph.D. level research at the Department of Emergency Services and Public Protection. We appreciate your previous internship service for the Department at the Sex Offender Unit and Scientific Services, Computer Crimes Unit.

Although the benefits of your past internships and ideas for future research were carefully considered, the Department regrets to inform you that your request to undertake the described research for your dissertation has been denied. As an intern, you had access to oral and written information of a confidential or privileged nature. The use of this information for personal use, including reference to or incorporating of the confidential or privileged information into any existing or future research, writing, and/or publication is not permitted. Should you wish to obtain information from the Department via the Freedom of Information Act (FOIA), you are very welcome to do so. FOIA requests may be sent to the Legal Affairs Unit, 1111 Country Club Road, Middletown, CT 06457 or faxed to 860-685-8354.

We wish you the best with your academic and professional career, and thank you for your past internships at the Department.

Sincerely,

Lucinda Lopes-Phelan, MS
Deputy Director of Identification

c: Antoinette Webster, Esq.
Sharica Rose, HR
Meghan B. Peterson  
51 Filley Road  
Haddam, CT 06438

Dear Ms. Peterson,

Thank you for your recent internship application to the Division of Scientific Services dated August 15, 2016. We appreciate your previous internship service for the Department at the Sex Offender Unit and at Scientific Services, Computer Crimes Unit. While we recognize that your educational accomplishments in this field are substantial, the Department cannot extend an offer of internship to you at this time.

It is the goal of the Department to create internship opportunities that are competitive in nature and designed for the benefit of Department units, staff, and sworn officers. Interns are placed to serve the needs of the Department and are not permitted to engage in research for their own purposes. Internship experiences may be edifying in nature, but must be directed by Departmental goals and priorities.

The Department wishes you the best regarding your professional and academic career.

Sincerely,

Kristin Sasinouski, MS  
Laboratory Administrative Manager

c: Antoinette Webster, Esq.  
Sharica Rose, HR
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