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Reframing Risqué/Risky: Queer Temporalities, Teenage Sexting, and Freedom of Expression

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Academic Editor: Jane Bailey

Received: 17 June 2014 / Accepted: 24 December 2014 / Published: 14 January 2015

Abstract: Canada recognizes young people’s constitutionally protected freedom of expression and consequently their right to engage in a narrow subset of consensual sexually expressive practices without being prosecuted as child pornographers. Nevertheless, numerous anti-sexting campaigns decry the possibility of voluntary and “safe sexting” let alone the affordances of adolescents’ self-produced and consensually shared sexual imagery. In this article, we argue that these actors have erred in their construction of youths’ risqué imagery as inherently risky and thus governable. We propose that anti-sexting frameworks—which conflate consensual and nonconsensual sexting and which equate both with negative risks that purportedly outweigh the value and benefits of the practice—rely on a calculus that is fundamentally flawed. This article consists of two main parts. In Part I, we map and trouble the ways in which responses to consensual teenage sexting emphasize the practice’s relationship to embodied, financial, intimate and legal risks. In Part II, we suggest that research examining consensual adolescent sexting and young people’s rights to freedom of expression consider alternative theoretical frameworks, such as queer theories of temporality, when calculating the risk of harm of adolescent sexual imagery.

Keywords: teenage sexting; adolescent sexuality; risk; queer time; queer temporalities; freedom of expression

1. Introduction

The criminalization of consensual teenage sexting—defined here as the creation and distribution of nude, semi-nude and sexually explicit imagery via digital means—is now well documented in the US and Australia ¹. Conversely, since the Supreme Court’s decision in *R. v. Sharpe* in 2001, Canada has recognized young people’s right to engage in a narrow subset of consensual sexually expressive practices without being subject to child pornography prosecution [4] ². In *Sharpe*, the Court was faced with a constitutional challenge to the criminalization of the possession of child pornography set out in s. 163.1(4) of the Canadian *Criminal Code* [5], the purpose of which is to protect children from exploitation and abuse by prohibiting possession of material that presents a “reasoned risk of harm to children” [4]. When considering the dual concerns of protecting children and protecting free expression, Chief Justice McLachlin, writing on behalf of the majority, found that prohibition against possession of child pornography “captures in its sweep materials that arguably pose little or no risk to children, and that deeply implicate the freedom [of expression] guaranteed under s. 2(b)” ([4], para. 105) ³. Thus, to remedy the law’s over breadth the court upheld the law’s constitutionality but determined that it must not be applied to two categories of material—minors’ “self-created, privately held expressive materials” and minors’ “private recordings that do not depict unlawful sexual activity” ([4], para. 99) ⁴.

¹ Teenagers for the purposes of this article are those between the ages of 13 and 17. This age group is also referred to as adolescents, teens and minors throughout the article. Recent studies of arrest trends for child pornography possession and production in the US have found that child pornography possession and production arrests grew significantly between 2000 and 2006 and again in 2009 [1,2], and that a large segment of the population being criminalized were minors. Twenty-three percent of people arrested for child pornography production in 2009 were 17-years-old or younger ([2], p. 2). Approximately one-third, or 134, of these young people created these images ‘in the context of romantic relationships or for sexual attention-seeking’ ([2], p. 2). According to another US study of arrests, of the cases involving ‘youth-produced sexual images’ that constituted child pornography in 2008 and 2009, 33 percent were classifiable as ‘experimental’ or those which ‘did not involve adults or appear to include any intent to harm or reckless misuse’ ([3], p. 3). Nevertheless, ‘in 18% of the experimental cases, in which there was no other criminal or malicious activity beyond the making or transmission of images, there was an arrest’ ([3], p. 6) meaning that 47 youth who consensually ‘sexted’ for ‘romantic’, ‘attention seeking’ or ‘other’ purposes were subject to criminal prosecutions.

² The Court in *R. v. Sharpe* sites section 2(b) of the Canadian Charter of Rights and Freedoms which reads as follows: “everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication.” A discussion of the facts and the decision reached in *R. v. Sharpe* is discussed below.

³ Chief Justice McLachlin goes on to write: The legislation prohibits a person from articulating thoughts in writing or visual images, even if the result is intended only for his or her own eyes. It further prohibits a teenager from possessing, again exclusively for personal use, sexually explicit photographs or videotapes of him- or herself alone or engaged with a partner in lawful sexual activity. The inclusion of these peripheral materials in the law’s prohibition trenches heavily on freedom of expression while adding little to the protection the law provides children. To this extent, the law cannot be considered proportionate in its effects, and the infringement of s. 2(b) contemplated by the legislation is not demonstrably justifiable under s. 1. ([4], para. 110).

⁴ The private use exemption is subject to a number of very significant and mandatory limitation and prerequisites, most notably, for our purposes partnered monogamy and the requirement that:

(c) the recording must be kept in strict privacy by the person in possession, and intended exclusively for the private use by the creator and the persons depicted therein ([4], para 116).

Indeed, the court went so far as to acknowledge that such imagery may be “of significance to adolescent self-fulfillment, self-actualization and sexual exploration and identity” ([4], para. 109). As such, as long as youth consensually create and exchange sexual imagery with other minors with whom they are in an intimate and non-exploitative relationship, for their personal and private mutual enjoyment, such imagery ought to be constitutionally protected.

Despite the existence of this exemption, present day social, political, and extra/legal debates surrounding teenage sexting in Canada tend not to acknowledge the constitutionality of this subset of teenagers’ consensual sexual expression⁵. Although we have yet to witness the prosecution of teenagers for scenarios that fall within the exemption’s parameters, or for consensual distribution that falls outside of these parameters, we have seen the development of numerous anti-sexting campaigns by police and child protection agencies which decry the very possibility of consensual and ‘safe sexting’, let alone the affordances of the practice as acknowledged by the Supreme Court [9,10]. In this article, we argue against the construction of youths’ ‘risqué imagery’ as inherently risky and thus potentially subject to legal censure⁶. We suggest that young people’s consensually created and

⁵ William Eskridge argues that the meaning of sexual consent has changed over time and in response to women’s and queers’ increased power ([6], p. 48). Consent is not a simple volitional category but rather is inherently concerned with legal status and social policy ([6], p. 55). That is, the recognition of a valid choice cannot be separated from the *status* of the chooser(s) and the chosen (55). The legal meaning of the same act may differ depending on one’s status as a minor or an adult. However, as Eskridge notes, “status and consent are both conceptions serving a larger cultural script... [which is] socially regulatory” ([6], p. 55). Childhood is a culturally specific social construct. There are limits to relying on one’s status as a “child” to deny their ability to consent to sexual relations and expression. In making this argument we do not deny that there very well may be important difference between a 13 year old and a 25 year old sexter, especially when we take into account gender, sexual orientation, race, class and other intersecting forms of power and oppression, however, blanket understandings of vulnerability based on age does not always accurately account for young people’s assessment of their experiences [7]. We share with Angelides a concern about adults’ willingness to accept uncritically an adolescent subjectivity that claims to have been harmed and victimized, but not accept an adolescent subjectivity that claims desire, autonomy, and consent [8]. Given that one’s agency is always partial and constrained by internalized norms and structural constraints (for both adults and young people), in this article we start from the position that consensual teenage sexting ought to be acknowledge as a valid expressive choice notwithstanding our complex cultural context.

⁶ Ideas about the inherent riskiness of teenage sexting are likely an extension of the Court’s finding in *R. v. Sharpe* [4]. In it the Court was faced with a constitutional challenge to the criminalization of the possession of child pornography as set out in s. 163.1(4) of the Canadian *Criminal Code*, the purpose of which is to protect children from exploitation and abuse by prohibiting possession of material that presents a reasoned risk of harm to children. With respect to the harms of child pornography the court wrote:

The very existence of child pornography, as it is defined by s. 163.1(1) of the Criminal Code, is *inherently harmful to children and to society*. This harm exists independently of dissemination or any risk of dissemination and flows directly from the existence of the pornographic representations, which on their own violate the dignity and equality rights of children. The harm of child pornography is inherent because degrading, dehumanizing, and objectifying depictions of children, by their very existence, undermine the Charter rights of children and other members of society. Child pornography eroticises the inferior social, economic, and sexual status of children. It preys on preexisting inequalities ([4], para. 158) (Emphasis added).

distributed sexual imagery, including their distribution of imagery to those whom they are not in an intimate relationship with, poses little risk to children. We suggest that this warrants a reconsideration of Canadian crime prevention practices which, in essence, render the constitutionality of consensually self-produced and shared sexual imagery moot⁷. Recognizing that the adjective *risqué* derives from the French *risquer*, literally meaning ‘to risk’⁸, we nevertheless start from the position that “Nothing is a risk in itself; there is no risk in reality. But on the other hand, anything can be a risk; it all depends on how one analyses the danger, considers the event” ([17], p. 199). We propose that extant frameworks, which conflate consensual and nonconsensual sexting and which equate both with negative risks that purportedly outweigh the value and benefits of the practice, rely on a calculus that is fundamentally flawed. As Dean notes, “[r]isk is a way—or rather, a set of different ways—of ordering reality, of rendering it into calculable form. It is a way of representing events so that they may be made governable in particular ways, with particular techniques, and for particular goals. It is a component of diverse forms of calculative rationality for governing the conduct of individuals, collectives and populations” ([18], p. 25).

This article consists of two main parts. In Part I, we map and trouble the way in which academic, police, and child protection responses to consensual teenage sexting emphasize the practice’s relationship to embodied risks (including mental, physical and sexual health and bodily integrity), financial risks (including ‘future prospects’), intimate risks (such as sexual assault and ruined reputation), and legal risks (including criminalization of minors and their parents)⁹. In Part II we assert that the risk regimes documented in the previous section act as a proxy for moralizing and thus governing youth sexuality [9,20–22], and suggest that any research examining sexting’s risks ought to consider additional and alternative variables and theoretical frameworks¹⁰. In an effort to reconsider and resist the risk based moral regulation of adolescent sexual expression we reframe consensual

However, as is discussed at a later point in the article, this claim is undermined by the creation of the existence of the private use exemption as well as other extant defenses to the law, such as artistic merit. It is this contradiction that largely drives this article’s analysis.

⁷ Indeed, *risqué*—which is defined by the Oxford dictionary as “slightly indecent and liable to shock, especially by being sexually suggestive” [11]—is a commonly used adjective by media when describing teenage sexting [12–14].

⁸ As derived from a compilation of sources, including: The American Heritage Dictionary of the English Language [15] and the Encyclopedias of Academic Dictionaries [16].

⁹ Of course these distinctions bleed into, are therefore are somewhat falsely distinguished from, one another. Another classification of risk is advanced by Ringrose and Barajas who suggest that literature examining adolescent sexuality online has tended to focus on what they call “*outside-unknown*” dimensions of minimal sexual risks such as high profile criminal phenomena such as pedophilia. In contrast they “seek to expand [and complicate] an understanding of gendered and sexual risk into the everyday relations in the young people’s immediate, *inside-known* realm of peer-to-peer relations in their social networks both online and offline” ([19], p. 125) (Emphasis in original).

¹⁰ In making this claim we are not proposing an alternative formula or analysis that guarantees a reliable and quantifiable yield. As Hunt writes, “holding out such a promise...all too often functions as a form of normative judgment” ([20], p. 175). Nevertheless, given that Canadian obscenity case law has largely conflated notions of risk and harm and denied the need to demonstrate harms (such as the risk of harm posed to women by pornography as advanced in *R. v. Butler* [1992]) and given that some form of normative judgment is reproduced in law we offer a line of reasoning that ought to be considered by legal actors who are responding to this practice.

teenage sexting through queer theorizations of temporality and futurity, in particular Judith Halberstam's theorization of "queer time" and risk [23,24].

2. Constructing Teenage Sexting as Risqué/Risky

Canadian policing and child protection agencies have emphasized the risks of sexting since 2005 when Cybertip.ca—Canada's national tipline for reporting the online sexual exploitation of children—issued a public alert about "the growing trend of young girls posing nude for webcams and the distribution of the resulting photos and videos on the Internet" [10,25]. Subsequently, provincial and federal policing units across Canada released warnings about the myriad risks that sexting poses for both teens and their parents. One such warning issued by the Royal Canadian Mounted Police (RCMP) in 2011 claims:

From a legal perspective, each photo may be constituted as child pornography and individuals can be charged with Possession of Child Pornography as defined by the *Criminal Code* of Canada. Further, a person sending a photo or video, even of themselves, can be charged with Distributing Child Pornography. In some instances, parents will be at risk of Criminal charges if their child's phone is in their name [26].

While the legal risks of sexting have loomed large in media and crime control coverage as well as academic responses to the practice since 2008¹¹, also present in these warnings are references to the intimate and financial risks that sexting may pose to minors', and particularly to girls', reputations and future prospects [10,27]. Notably, despite the fact that the legal rationale for criminalizing child pornography rests on fears about the risk of sexual exploitation, this fear plays a very minor role in anti-sexting PSAs and warnings¹². For instance, a notice released by the Ontario Provincial Police's Child Sexual Exploitation Unit titled "Warning for Teens on Dangers of Irresponsible Texting", claims: "teens need to become aware that ...[sexting is a] risky activity [that] has very real dangers associated with it that includes many unintended consequences and permanent long term threats to their identity and reputations" [30]¹³. This caution is repeated in an undated "Message from your Local RCMP" which reads: "minimum sentences for child pornography offences can be jail time. But what carries a longer sentence is how your actions online can follow you for a lifetime" [32]. Here and elsewhere, the RCMP suggests that sexters will inevitably lose control of their sexual images which will then make their way onto the internet thus affecting teens' chances to obtain higher education and employment given that: "post-secondary institutions and employers often use the internet to help with the hiring or acceptance" [26]. While this claim is not completely unfounded [33], a survey of college-bound students conducted by Kaplan found that more than three-quarters of respondents said

¹¹ See Hasinoff for a brief history of the sexting panic that emerged after early incidents of teenage sexting that occurred in the US were discussed as legal curiosities because teenagers were charged with producing child pornography ([27], p. 133). See also Bailey and Hanna [28] and Slane [29] for discussions of the some of the issues with a criminal law response and alternatives to it.

¹² See Hasinoff for a discussion of the shift in the on-line danger rhetoric from the late 1990s onwards [27].

¹³ Kath Albury *et al.* in their analysis of Megan's Story argue, "Young girls are 'supposed' to preserve their 'reputations' by avoiding overt demonstrations of sexual knowingness and desire" ([31], p. 465).

they would not be concerned if a college admissions officer Googled them [33]. Part of this confidence had to do with youths' increased online savviness and their attention to "strengthening privacy settings and circumventing searches [as demonstrated by the fact that] 22% had changed their searchable names on social media, 26% had untagged themselves from photos, and 12% had deleted their social media profiles altogether." The study also acknowledged that such online searches might in fact be beneficial for youth if they "turn up postings of sports scores, awards, public performances or news of something interesting they've undertaken" [33]¹⁴.

In addition to police issued warnings, a growing number of quantitative studies continue to focus their attention on sexting's prevalence and its correlates to embodied sexual risk behaviours [34]. Most popular among the empirical work in this area are studies examining the links between sexting and 'high-risk sexual behaviours' such as having multiple partners, having 'friends with benefits', performing and receiving oral sex, using alcohol and drugs while having sex, and engaging in unprotected sex [35–39]. For example, the study by Huock *et al.* discovered that sexting was associated with same-sex sexual behaviours, and those who "sexted endorsed more intentions than their peers to have sex in the next 6 months, suggesting that targeted interventions with this group are warranted" ([35], p. 5). This study further emphasizes that "attention should be paid to adolescents' electronic communication because sexting may be a marker for sexual risk behaviours that can have significant consequences, including pregnancy or disease" ([35], p. 6). Results such as these, however, ought to be scrutinized for a variety of reasons. To begin with, unprotected sex and sex combined with *excessive* alcohol and drug use ought to be of concern for youth, and adults, regardless of whether a relationship to digital technology exists. Nevertheless, neither the sheer number of sexual partners one has, nor the nature of the sexual relations that one engages in (straight/queer) is inherently harmful. An individual who has 10 sexual partners with whom they consistently and correctly use condoms has an exceedingly low risk of contracting an STI compared to an individual who has sex with only one person and does not use a condom [40]. Similarly, to equate queer sexuality with increased risk of harm relies on assumptions about the diseased and contaminating nature of that orientation and the sexual acts being engaged in. Heterosexuals, for instance, also practice anal sex in high numbers, whereas not all gay men do. Moreover, as Klettke and co-authors note in their systematic review of the literature regarding sexting's prevalence rates, risks, and protective factors, researchers ought to be wary of drawing causal relationship between sexting and risky behaviours ([34], p. 51). For example, individual studies may be methodologically flawed if they fail to consider the possibility and relevance of a third variable (such as a lack of progressive sexual education) that could explain the correlation between certain practices. As an example, while the long-term trend of declining teen pregnancy rates in Canada appears to have come to an end, at least for the moment, claiming that this rise is caused by increased sexting behaviours would ignore solid evidence that suggests "teenage girls are more likely to get pregnant when they have fewer education or employment opportunities to postpone child-bearing for" [41]. Indeed, even those sexual health experts who have drawn correlations between economics and pregnancy are quick to note that myriad factors may also be at play [41].

¹⁴ Indeed additional efforts by teens to control the meaning, if not the content, of their digital footprints is discussed at a later point in the article.

A greater acknowledgement of the fact that correlation does not necessarily imply causation is of particular importance in light of claims that directly link sexting to the development of mental health issues and suicide [42]. Much of the media attention generated with respect to sexting flows from the incredibly sad but exceedingly rare stories about sexting-related suicides, such as that of Jesse Logan in 2009 in the US and Amanda Todd in 2013 in Canada [43]. These exceptional stories exemplify, and are an extension of, what Cassell and Cramer argue are historically recurring moments of anxiety about the dangers of girls' use of new communication technologies [44]. Nevertheless, the Canadian Royal Mounted Police in its anti-sexting warning to minors and their parents caution that "these acts have been linked to suicides" [26]. Similar warnings have been issued by provincial police forces. The Ontario Provincial Police (OPP) warns teens that officers are "increasingly seeing more teens that are unable to cope with the self-inflicted personal shame and embarrassment that they have unknowingly created" (emphasis added) [30]¹⁵. These warnings explicitly and implicitly perpetuate the widely held belief that a direct and uncomplicated link exists between sexting and fatal consequences. More recently, however, a large-scale study found no correlations between sexting and sexual risk behaviors or psychological health [45]. Increasingly the media has highlighted the results of emerging studies which suggest that "the cause-and-effect link made by the media, politicians and parents between persistent bullying and the victim's decision to end their life...oversimplifies teen suicide and cyberbullying at the expense of recognizing the complex set of mental health issues that are usually at play in many cases" [46,47].

While these collective risks have generated a great deal of concern as well as institutional responses [9,27,31], legislators and the courts have historically framed the key risks of child pornography as its facilitation of child sexual abuse. Thus, to the extent that youths' self-created and distributed digital sexual imagery may technically be classified as "self-produced child pornography", youthful sexters have been constructed as a menace not only to themselves but also their peers [48]. The harms of child pornography, as constructed by the Supreme Court of Canada, include the risk that "explicit sexual photographs and videotapes of children may promote cognitive distortions, fuel fantasies that incite offenders, enable grooming of victims" ([5], para. 103). Censorship is thus advanced as a key means of preventing child sexual abuse [5,48]. In addition, the Court in *R. v. Sharpe* claimed that:

[C]hild pornography creates a risk of harm that flows from the possibility of its dissemination. If disseminated, child pornography involving real people immediately violates the privacy rights of those depicted, causing them additional humiliation. While attitudinal harm is not dependent on dissemination, the risk that pornographic representations may be disseminated creates a heightened risk of attitudinal harm ([5], para. 164).

Thus, the legal risks of sexting, noted above, flow from the claim that teens ought to be held criminally responsible for the *potential* risk of harms that their images *may* facilitate at some unknown point in the future. Critics of this line of argumentation note that the causal relationship between such imagery, attitudes and acts is generally unsupported by the evidence which "tends to be 'soft', diffuse

¹⁵ For a discussion of the responsabilization the teenage creators of sexual imagery, rather than those who redistribute their imagery without their consent, for the harms that may flow to them see Karaian [10].

and hardly conclusive” ([49], p. 102) and that it is unjust to make youth who create sexual expression responsible for a secondary offense, such as their potential sexual abuse and the abuse of their peers, at some point in the future.

Central to legal analyses of the possession and distribution of “self-produced child pornography” are questions about how one ought to understand the practice and calculate the extent to which it poses a *realistic* and *reasonable* risk of harm to minors that necessitates the infringement of their expressive rights. A common rejoinder to those who seek such an infringement is to reference legislator’s original intentions when drafting child pornography laws, specifically the fact that they were never intended to police the expressive acts of youth. Another response is to highlight that youth who engage in this practice rarely have either the intent or the power to exploit themselves and their peers¹⁶. While these are important interventions, we suggest that any assessment of the “reasoned risks” of sexting also requires legislators and courts to reconsider how the risks of sexting are given meaning and made real, as well as the value and affordances that may flow from the practice¹⁷.

3. Calculated Risk and the Role of Queer Time

The escalation of risk discourses has given rise to calculative approaches for determining uncertainty, danger, and responsibility (such as statistics, actuarial tables and epidemiology), despite the fact that risk is a contested concept subject to debate about its nature, causes, effects and management. While some risk theorists suggests that “it has become almost nonsensical to associate ‘risk’ with a positive outcome or to use it in a positive manner” ([52], p. 110, referencing [53,54]), other socio-cultural, socio-legal and queer perspectives have highlighted the complex and dynamic processes involved in understanding and assessing risk’s negative effects and its affordances [20,23,55]. These theorists often speak to the different valuations of risk as both potentially negative and positive, and as interwoven in processes of identity formation and group constitution [55].

In this context, some have sought to draw attention to the limits of “interpreting activities and identities solely through the reductive lens of measuring risky behavior found in neo-liberal, audit culture” ([19], p. 123). Ringrose and Barajas, for instance, have noted the ways in which opportunity appears to be set in opposition to risk, “as its positive, healthy, safe, exploratory counterpoint” ([19], pp. 122–23). They suggest, however, that we “need to trouble the risk framework and exceed the risk/opportunity binary, since...activities can be both risky and opportunistic at the same time” ([19],

¹⁶ That said, a growing and related anti-sexting discourse has developed in the Canadian context which constructs all forms of sexting, consensual or otherwise as self/peer-exploitation. For a critical consideration of the structural integrity and effects of such a move see Karaian [50].

¹⁷ For example, the notion of attitudinal or communicative harm, as Calder and Beaman note, is a vestige of the claims regarding the communicative and social harms of pornography stemming from dominance feminists’ arguments in *R. v. Butler* (1991) wherein the Supreme Court of Canada accepted the argument that pornography deemed obscene might give rise to ‘social harm’ of a form cognizable by the criminal law, thus producing, according to Calder and Beaman, a “legal recognition *as real* of something whose metaphysical status was deeply contested—a certain form of harm [that has long buoyed the criminal law]” ([51], p. 79).

pp. 122–23)¹⁸. This is particularly necessary, they claim, given a postfeminist media culture within which “gender relations are more messy and complex than rational agents doing risk aversion *vis-à-vis* risky or healthy options” ([19], p. 123)¹⁹.

We agree that young people’s online sexual practices may be simultaneously risky and opportunistic, and that any attempt to calculate the effects of this consensual practice will be impacted by the social context within which the practice is experienced and by the social characteristics of those involved ([52], p. 124). We also acknowledge that girls, and particularly privileged ‘good’ girls whose ‘protection’ has largely driven the call to keep teens safe from sexting’s harms [9,10,27] may be navigating the “risky implication of the postfeminist porno-chic discourses of sexual performance”, as Ringrose and Barajas suggest ([19], p. 134). Nevertheless, given the use of risk discourses as a proxy for moralizing and thus governing youths’ sexual behavior, we contend that alternatives to hegemonic legal and post-feminist sexualization frameworks ought to be considered in any analysis of sexting’s risks [9,20,22]. This is necessitated, in part, by what Alan Hunt argues is a significant shift in the way in which moral regulation functions.

In the nineteenth century ‘the moral’ was a distinctive genre; things were condemned as ‘wrong’ or ‘immoral’. Increasingly, morality has come to function through proxies, not in its own voice, but in and through other discursive forms, the two most important and closely related being the discourses of ‘harm’ and ‘risk’...The moral dimension is not excluded, rather it becomes subsumed within discourses whose characteristics have a utilitarian guise ([20], pp. 166–67).

This hybridization of moralization and risk, according to Hunt, works to blur “the boundary between objective hazards and normative judgments” ([20], p. 167). Such a blurring lies at the heart of the legal and extra-legal policing of teenage sexting witnessed across North America [9,10,50]. For instance, this is evidenced in the US Court of Appeal decision *Miller v. Mitchell* [2010] [57]—the first American case to challenge the constitutionality of prosecuting teens for sexting—wherein the court found: “[A]n individual District Attorney may not coerce parents into permitting him to impose on their children his ideas of morality and gender roles...While it may have been constitutionally permissible for the District Attorney to offer this education voluntarily (that is, free of consequences for not attending [the criminal diversion program]), he was not free to coerce attendance by threatening prosecution” (as cited in [9], p. 62). The role of moralization in anti-sexting efforts is also outlined by Karaian in her analysis of Canadian child protection/crime prevention efforts wherein she illustrates the central role that sexual respectability plays in internet safety campaigns which emphasize

¹⁸ Risk scholars have also argued that we must recognize the “importance of ‘risk and pleasure’ as a counter discourse, especially risk taking, which Featherstone (1995) and Lupton (1999) recognize can be a means to transcend the mundane nature of everyday life” ([52], p. 124).

¹⁹ They define post-feminism as “a discourse where feminist recognition of sexism is vehemently rejected or viewed as obsolete leaving a space for intensified stereotypes of femininity and masculinity to thrive” ([19], p. 123). See also, Salter and colleagues who suggest that portrayals of teenage sexuality which reinforce teen girls as “agentic, knowledgeable, [and] savvy” reproduce a simplistic victimization/empowerment dualism “that does not account for the participation of teenage girls in the self-production of media such as sexts and ignores the complexity of young people’s engagement with new technology in a cultural environment characterized by significant gender disparities” ([56], p. 304).

abstinence and responsabilize white, middle-class, heterosexual, able-bodied teenage girls for the prevention of sexting's purported harms [10]. Such efforts, she suggests, go some distance to demonstrating "adults' fear[s] [that] 'good' girls will not only be (dis)graced, but that raced and classed boundaries will be blurred, marring [their daughters] as 'white trash'—immodest, immoderate and subject to under/un-employment, thus simultaneously devaluing the moral authority of the white, middle-class, heterosexual family in the process" ([10], p. 291; see also [21]).

In his analysis of the relationship between the rise of risk discourses and moral regulation Hunt suggests that our world is not necessarily safer or more secure, rather, it is transected by dimensions of security and danger. That is, safety and danger stand in some non-linear relation to security, anxiety and fear and discourses of risk "play a significant part in how risks are experienced and lived" ([20], p. 168). The non-linearity of this dialectic informs much of the work of continental philosophers', and more recently queer theorists', analyses of time, space and sexuality ([58], p. 138)²⁰. Within the last decade, a body of queer theorists have argued that contemporary politics of normalization are anchored in a particular normative temporal disposition. Winnubst writes that dominant social norms, including heteronormativity, capitalism, patriarchy, whiteness, nationalism, religion, and even homonormativity are "energized by and grounded in a temporality that orients us always and only towards the future" and that our "unwitting obedience to the future" renders us docile ([58], p. 138). Given the seeming naturalness of our relationship with time, however, temporality is not often interrogated, nor do we interrogate its "power over our lives and the norms that we unconsciously enact" ([58], pp. 138–39). Queer theorists have sought to do just this and in doing so have raised important questions for any analysis of the risks of adolescent sexual expression.

"Queer time", according to Judith Halberstam, is a different mode of temporality that arises out of an immersion in queer sex subcultures which develop in opposition to the institutions of family, heterosexuality, reproduction and "kinship-based notions of community" ([24], pp. 313, 328).

Queer time for me is the dark nightclub, the perverse turn away from the narrative coherence of adolescence—early adulthood—marriage—reproduction—child rearing—retirement—death, the embrace of late childhood in place of early adulthood or immaturity in place of responsibility. It is a theory of queerness as a way of being in the world and a critique of the careful social scripts that usher even the most queer among us through major markers of individual development and into normativity (as cited in [59], p. 182).

Halberstam's notion of queer time is elsewhere described as a model of temporality which "disassociate[s] from the hierarchical dyadic construction of 'risk/safety'" ([60], p. 258). As such, Ummni Khan has used this queer temporal framework to argue against the legal regulation of consensual

²⁰ Winnubst's sets out some of the distinctions between continental philosophy's and queer theory's engagement with time. According to Winnubst, "Several different philosophical quarters have influenced this work on temporality: Lacanian psychoanalysis, Husserlian phenomenology, Bataillean general economy, Foucaultian genealogy and, recently, a Deleuzian kind of relationality and becoming. But queer theorists have also taken up the dynamics of temporality as they emerge out of different cultural, political, and literary archives—*i.e.*, out of historical and contemporary resources, ranging from ethnographies and interviews to film and popular culture that are common to the interdisciplinary scholarship in cultural studies, but not to scholarship in philosophy—and these subsequently inform the kinds of theoretical elaborations at work in various strands of this debate within contemporary queer theory" ([58], p. 138).

sadomasochistic sexual relations on the grounds that it “fails to acknowledge that some people may have a sexual bent that creates an entirely different relationship to risk and desire” ([60], p. 258). In her analysis of *R. v. J.A.*—a Canadian case which considered the issue of consent within an s/m context involving “edgeplay”—activities that are considered extreme or risky—Khan argues that “timing was the linchpin” to the Supreme Court’s finding that one could not give prior consent to sexual acts experienced while being unconscious as a result of erotic asphyxiation ([60], p. 258). Despite the messy facts of the case and the good intentions of the Court, Kahn suggests that the Supreme Court’s finding that consent requires a ‘contemporaneous and conscious mind’ reinforces a normative sexual agenda, one which perpetuates what Halberstam refers to as a hegemonic, gendered and sexualized construction of time and space [23]. Kahn argues that the risks of erotic asphyxiation considered by the court—such as the risk that the conscious lover may misinterpret the desires of the unconscious party or that they may purposefully exceed the boundaries of her consent—fail to consider how the person rendered unconscious, “find such a risk irrelevant, or even exciting” ([60], p. 258). Centering the practice of “risk-aware consensual kink” or RACK, Kahn notes how some members of the s/m community not only assert their “right to engage in activities considered more ‘extreme’ but also [to] challenge [] the binary opposition between ‘safety’ and ‘risk’”, thus “foregrounding the fact that all sexual activity—including vanilla sex—carries some risk” ([60], p. 259). Khan claims:

If we thus take into account the challenges offered by queer theory and the RACK approach to s/m, it become apparent that the process of deciding which risks and desires will be considered unacceptable, and which will be ignored or naturalized, depends on sexual ideology that privileges vanilla risk aversion over non-normative desire—whether or not there is a claim or evidence of non-consent ([60], p. 259).

Ultimately, Khan concludes that the majority decision in *R. v. J.A.* “imposes a sexual normativity that disregards kinky understandings of acceptable or even desirable risk in queer time, where sensation and satisfaction can happen out of sequence. In their place, the context of domestic violence and sexual danger becomes the master narrative for interpreting erotic asphyxiation” ([60], pp. 259–60).

To the extent that consensual teenage sexting has been constructed by mainstream culture and law as on the margins of normative sexual relations and expressive practices and as a threat to young peoples’ future selves, we suggest that it can be reframed as enacting a “nonnormative logics and organization of community, sexual identity, embodiment and activity in space and time” ([23], p. 6) and that the implications of this beg further consideration. We raise the framework of queer time and the example of *R. v. J.A.*, as dissimilar as it may first seem to the issue at hand, in order to highlight the limitations of contemporary theorizations of, and responses to, sexting’s risks. Given that young people, according to Green and colleagues, “are constantly engaged in risk assessment, actively creating and defining hierarchies premised upon different discourses of risk as ‘normal’ and acceptable or ‘dangerous’ and out of control” ([52], pp. 123–24) the master narrative/sexual ideology and linear notions of time and space that frame determinations of ‘childhood’ and ‘risk’, require further consideration. Ultimately, we suggest that it is necessary to consider whether youth have a different relationship to risk and to reframe how we determine whether that relationship is “reasonable”.

By way of example, it is useful to consider fears about the risk of privacy violations and the police issued imperative that youth maintain control of their image at all times. How are we to understand this

risk when, as boyd argues in her analysis of ‘networked privacy’, “[a]ny model of privacy that focuses on the control of information will fail” and “achieving true control is nearly impossible because control presumes many things that are often untenable” ([61], p. 349)? How might adults’ emphasis on the need for young people to limit access to their self-produced content fail to understand or acknowledge adolescents’ resistance strategies in a context of ‘networked privacy’? For instance, boyd writes:

Many of the teenagers I have interviewed have given up on controlling access to content... Rather than trying to limit access to content, *they work to limit access to meaning*. They use pronouns and in-jokes, cultural references and implicit links to unmediated events to share encoded messages that are for all intents and purposes wholly inaccessible to outsiders... Only those who are in the know have the necessary information to look for and interpret the information provided ([61], p. 349) (Emphasis added).

To answer questions about the risks of privacy violations, boyd asserts that privacy needs to be understood in context. However, which ‘context’ gets privileged in this meaning making process matters significantly. As we have already noted, sexting’s risk and opportunities have largely been framed as a byproduct of the media’s sexualisation of girls and women. As Hasinoff notes, this master narrative relies on normative assumptions about healthy sexuality and often erases girls’ capacity for choice [27]. Queer frameworks offer alternative contexts for understanding this practice, particularly with respect to the role that risqué expressive practices may play in the development of one’s identity, community and sexual subjectivity. Indeed queer theories of temporality may help make sense of a newly released study by MediaSmarts on *Sexuality and Romantic Relationships in the Digital Age* which found that “while the risks caused by sexts that are forwarded or shared with other recipients are obvious...approximately three quarters of students who send sexts have never had one forwarded by the recipient” ([62], p. 24) ²¹. A recent systematic review of the literature regarding sexting’s prevalence rates, risks, and protective factors, similarly found that despite knowledge of the potential risks of sexting, such as the unintended distribution of one’s sext to a third party, across most of the studies, “attitudes to sexting were more positive amongst those who had previously engaged in sexting behavior” ([34], p. 45) ²². Indeed a growing body of research suggests that, on average, engaging in sexting does not produce subsequent negative *attitudes* towards the behavior ([34], p. 51) despite knowledge that one’s image may be redistributed, presumably because negative consequences do not inherently flow from the behaviour.

There are a few different insights that can be taken away from these findings. The first, and most obvious, if not the most popular message, is that youth appear to demonstrate quite a reasonable respect for their peer’s privacy, despite media claims that would state otherwise. While it likely remains “necessary to exercise caution before concluding that trust serves as an antidote to risk” ([20], p. 170) these studies, at the very least, begin to trouble the claim that one’s image will inevitably be redistributed and thus the prominent classification of consensual sexting a “public safety risk” and a

²¹ The study also finds that “Although one-quarter of creators report that a sext they have sent was forwarded by the intended recipient, only 15 percent of students who have received a sext created from them report that they forwarded the sext to someone” ([62], p. 24).

²² Klettke and co-authors reviewed 31 sexting studies (out of a total of 128 articles which met their original inclusion criteria) ([34], p. 45).

“real criminal risk” [30]. However, these findings also allow us to consider the less popular possibility that, as is the case in ‘risk-aware consensual kink’, the pleasure of the practice may to some degree flow from knowing that the boundaries of their consent may be exceeded. If this is the case, the effects of such a breach cannot be solely be understood as negative or in binaristic safety/risk terms. This reading challenges risk theory’s construction of risk as bad, something to be avoided and instead recognizes “the positive face of risk as excitement and pleasure” ([20], p. 177) and even self-actualization.

This returns us to a discussion of the relevance of ‘risk-aware consensual kink’ and queer temporalities. That is, any analysis of teenage sexting’s risks would benefit from a consideration of not only the pleasures and affordances of risk—for one’s identity construction, development of community and sexual subjectivity—but also how the practice may not fully conform to any causal and linear mode of calculation. For instance, if we understand consensual sexting as enacted in a context of ‘networked privacy’, any calculation of sexting’s risks would need to acknowledge the blurred boundaries of the variables to be considered. If we acknowledge that the “boundaries [between the private and the public, or between the individual and the aggregate] aren’t so coherently defined and [that]... entities aren’t so easily articulated” ([61], p. 348), we can better acknowledge what Lupton and Tulloch have identified as a sense of risk as being shared [63–65]. Indeed, the risks of sexting are often framed as the possibility that one’s parents or grandparents may see their imagery, thus implicating the family in their risk taking and the shame that it may bring to them all ([10], p. 296). In this sense, we understand ‘shared risk’ as spread over more than one body/self. As such, it represents a blurring of identity, which is not recognized by the major tenets of the ‘risk society’ and its representation of the atomized risk-avoiding individual ([64], p. 324). This ‘shared risk’ provides opportunities for understanding how rewarding the payoff of such risk taking may be to the ‘risk taker’.

Boyd extends this line of thinking we she decides to use new technologies to reveal the secrets of her DNA. As a result of this DNA testing she claims that she not only revealed data about herself and her family, she also:

gave away data that provides insights into my mother, brother, grandparents, and even children that I don’t yet have. I never asked my future grandchildren for permission to offer their data to a scientific database. I made a decision about the privacy of my data that affects numerous people who are implicated but who have no say. And, in doing so, I learned information about them that they may not wish to know, let alone have me know ([61], p. 348).

Boyd’s example reveals for us the future moment in the present action in such a way that the linearity of time is queered. This, we argue, invokes Halberstam’s notion of “queer temporalities” and its implications for consent in ways that do not necessarily disqualify her actions in the present.

Queer theorizations of time also offer an important opportunity to reconsider adolescent sexters as a subculture with a different relationship to time and risk. As noted above, “queer subcultures”, according to Halberstam, “produce alternative temporalities by allowing their participants to believe that their futures can be imagined according to logics that lie outside of those pragmatic markers of life experience—namely birth, marriage, reproduction and death” ([23], p. 2). According to Halberstam, a theorization of queer subculture poses an important challenge to the notion of the subculture as a youth formation. While this allows for an expanded definition of subculture “beyond its most banal

significations of youth in crisis”, it also presents an opportunity to “challenge our notion of adulthood as reproductive maturity” ([24], p. 321). While youth who consensually sext constitute a broad and diverse category of individuals [34,66] and thus would not likely be considered a “queer subculture” in the way that Halberstam is using the term²³, they nevertheless invoke Halberstam’s call for us to “rethink the adult/youth binary in relation to an ‘epistemology of youth’ that disrupts conventional accounts of youth culture, adulthood and maturity” ([23], p. 2). This disruption is further necessitated by a consideration of adult sexters. As has been demonstrated in part I of this article, teenage sexting, shores up threats to the natural and normative progression of teens’ future selves as untarnished, economically self-sufficient, free (from imprisonment), and most important of all, alive. Whereas concerns about boys’ safety revolve around certain, privileged boys’ bright futures and the risks posed to their futures should they be imprisoned as distributors of child pornography, concerns about girls’ futures involve predictions of mentally and sexually damaged young women, or women with ruined reputations and hence circumscribed opportunities for higher education, employment, and although it is never explicitly stated, the opportunities to snag a mate in those spaces [9,10,21]. These fears about teens’, and in particular certain girls’ futures, are reliant on a heteronormative, gendered and raced and classed “logic of reproductive temporality” ([23], p. 4). However, while they revere the construction of the universalized, rational, and respectable “normal” neo-liberal sexual subject who is capable of making responsible decisions in their own interest, they conveniently disregard that the fact that the ‘future’ adult sexual subject who they set out to protect can, and does, in our current time and space, engage in the practice with equal regularity to adolescents and indeed accesses sexting tips from any number of mainstream print and online sources²⁴.

Finally, we would like to suggest that a queer theoretical framework introduces the possibility that hyperbolic responses to the risks of consensual teenage sexting may have increased its allure as a desirable and pleasurable practice, to be seized and embraced. That is, rather than frame young people’s decisions to sext as lacking in awareness of the practice’s risks and its future consequences, queer theories of time reframe the threat of a “constantly diminishing future” in such a way that young people can be understood as “creat[ing] a new emphasis on the here, the present, the now, and while

²³ Halberstam argues that “Queer subcultures produce alternative temporalities by allowing their participants to believe that their futures can be imagined according to logics that lie outside of those paradigmatic markers of life experience—namely birth, marriage, reproduction, and death” ([23], p. 2). Later in the text, Halberstam calls for “an understanding of subcultural life as a place of collectivity rather than membership” ([23], p. 179).

²⁴ YourTango, a popular site that provides expert advice about love, sex, dating and relationships, provided a list of 8 Do’s and Don’ts of Sexting. The list is as follows:

- (1) Don’t sext to soon—it is important get to know the person first and determine whether you can trust them
- (2) Don’t sext before having live sex—you don’t want to kill the curiosity as well as over deliver or under deliver the real thing
- (3) Do be a tease—look at it as foreplay; flirt and build up anticipation
- (4) Do mirror your partners mood—you want to ensure reciprocal interaction
- (5) Don’t be a selfish sexter—ensure both parties are comfortable and equally satisfied with the level of participation
- (6) Do focus on details—by being descriptive you can increase anticipation and maintain engagement
- (7) Don’t drink and sext—to prevent any unwanted sexting make sure you are sober
- (8) Don’t use sexting as a substitute for real thing—“Make sure to create a healthy balance between the different types of sex you have and keep the passion and excitement going” [67].

the threat of no future hovers overhead like a storm cloud, the urgency of being also expands the potential of the moment and...squeezes new possibilities out of the time at hand” ([23], p. 2).

4. Conclusions

In this article we have argued that a rethinking of the risk/safety binary is necessary given its role in precluding youths’ expressive rights and even subjecting them to criminal prosecution in ways that adults are not. To date, relatively little scholarship about consensual teenage sexting grapples with the affordances of teenage sexual expression explicitly referenced by the Supreme Court of Canada in its *Sharpe* decision. While the desire to do so exists, at least on our part, for the purposes of this article we have sought to consider how knowledges about risk are mediated through social and cultural frameworks and discourses and what alternative frameworks might offer to this analysis. In this way, we acknowledge that these knowledges are dynamic and historical. Part of the history of the extra/legal construction of, and response to, the risks of teenage sexting is undoubtedly Canada’s strong anti-porn legacy and its current rearticulating in fears about childhood sexualization, both of which infantilize adolescents and women and fail to theorize the pleasures of sexuality and its expression alongside its possible dangers [27,68]. As such, we suggest future work in this area consider whether, and to what extent, the risks of consensual sexting can be understood as affording teens “a means of extending the self” or as a means of “seeking and meeting challenges and gaining knowledge of one’s self and the world” ([64], p. 328).

Acknowledgements

This work was supported by the Social Sciences and Humanities Research Council of Canada.

Author Contributions

Lara Karaian is responsible for developing this article’s research questions and its theoretical framework. Katherine Van Meyl is responsible for researching and writing a large portion of Part 1 of this article. Lara Karaian is responsible for researching and writing a portion of Part 1 and all of Part 2 as well as the article’s introduction and conclusion. The article was co-edited by both authors.

Conflicts of Interest

The authors declare no conflict of interest.

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