

Cyberbullying and Cyberstalking as a Moral and Legal Concept*

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Abstract—Modern digital life can be characterized by both new possibilities and challenges. However, if we assume that digital life has its own natural course which establishes a balance between threats and promises, human culture always tends to reflect upon new experiences, communication methods and ways of behavior, some of them attract more attention and concern — problematic behavior and crimes in the first place. Some cybercrimes are just a new method to commit the offences already laid down in criminal codes. Cyberbullying and cyberstalking, on the other hand, offer new questions and challenges to courts and legislature. Nevertheless, the problem of cyberbullying and cyberstalking is among the most evident and maybe the least studied, and it is the problem that involves both law and ethics. Our study is an attempt to review the traditional concepts of stalking and bullying, to trace their transitions and to summarize the related problems.

Keywords—bullying; stalking; cyberbullying; cyberstalking; cybercrimes

I. INTRODUCTION

Cyberbullying and cyberstalking are probably among the most discussed cyber-misbehaviors today. Both concepts are problematical, and a lot of uncertainties arise as early as at the stage of conceptualization and defining the most basic notions. Cyberbullying as well as cyberstalking is unwanted online behavior that implies following, threatening and harassing a person which usually has few to no means to defend themselves. But are cyberbullying and cyberstalking crimes, or are they just socially harmful deeds which however shouldn't be punished as crimes? Many different approaches are possible here based on different theoretical argumentations. Most of them emphasize either ethical reasoning not presented in most modern legal systems or legislative traditions lacking moral grounding. This article attempts to study the issue of moral and legal conceptualization taking both aspects into account.

II. BULLYING, STALKING AND THE WAYS TO DEFINE THEM

The first fact that catches the researcher's eye is the terminological unoriginality of notions "cyberbullying" and "cyberstalking". Both these terms were coined by adding "cyber-" to "bullying" and "stalking", so, first, it should be made clear what bullying and stalking are. Both bullying and stalking are legal terms used in most modern systems of law, but they also can be met in everyday language. According to Collins Online Dictionary, bullying is "the repeated use of threats or violence in an attempt to harm or intimidate others", and stalking is "the act or crime of pursuing or following someone persistently or threateningly" [1]. So, both bullying and stalking imply the persistence of a bully / stalker, and the fear of the victim.

Another trait common for both bullying and stalking is their connection with the widely used notion of harassment. Harassment is a type of behavior that annoys, upsets or troubles someone or continued unwanted and annoying actions of one party or a group, including threats and demands [2]. Some dictionaries explain bullying and stalking through harassment and vice versa.

Bullying, however, also implies the coercion to do something against one's will [3]. Another trait specific only for bullying is the difference in "strength" between a bully and their victim: bullying is "an abuse and mistreatment of someone vulnerable by someone stronger, more powerful" [4]. This difference can be real or can be taken as such by a bully since a bully is "a person who habitually seeks to harm or intimidate those whom they perceive as vulnerable" [5]. So, it is widely thought that schools and educational institutions are spaces where bullying can take place most often - for example, because of differences in physical strength between students of different grades or even classmates.

Stalking, on the other hand, doesn't imply this difference. A person who has more physical or social power can stalk somebody who is "weaker", but the reverse situation is also

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possible. Instead, a person who is being stalked feels insecure and exposed to unknown dangers and this makes them, in a sense, weaker than the stalker. For example, a person who receives unwanted messages mentioning that their author knows this person's residential address often rightly feels vulnerable.

Another important difference between stalking and bullying is that the behavior of a bully usually consists of actions each of which can be classified as socially unacceptable. However, according to the Free Dictionary (Legal Dictionary) "sending flowers, writing love notes, and waiting for someone outside her place of work are actions that, on their own, are not criminal". It means that defining what stalking is a much more difficult task and the notion itself is vaguer. Further we will see how this vagueness complicates legal definitions.

According to dictionaries, there is also another type of stalking. The above-mentioned examples imply that someone is following another person persistently or threateningly, i.e. there is some kind of contact between the stalker and their victim (at least eye contact) so that the victim is not only threatened but also feels threatened - the stalked person knows that he or she is being stalked. On the other hand, Cambridge Dictionary says that stalking means also "following another person as closely as possible without being seen or heard". If understood this way, stalking turns into a very broadly applicable concept and it becomes very difficult to define when relatively harmless behavior should be considered stalking. Nevertheless, today there is a tendency to broaden the terms "bullying", "stalking" and "harassment" which can be exemplified by changes in laws and policies of several large corporations.

For example, Netflix introduced an anti-harassment rule which prohibited looking at anyone for longer than five seconds. This rule is designed to protect people from unwanted and persistent attention [6]. Nevertheless, it may look too simplistic and not considering many important factors. For example, this rule doesn't take into account if someone is talking on the phone and looking at someone's face without noticing it or if the "victim" is looking back. Such approach to harassment prevention quickly became criticized. A member of Netflix team remarked that "it has sparked jokes with people looking at each other, counting to five, then diverting their eyes".

Another example is the Criminal Law (Amendment) Bill that was passed by Lok Sabha, the Lower House of Indian Parliament, in 2013. One of the articles of this Bill stated that any man who "monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking". In this context it remains unclear what exactly can be considered as "monitoring". If some man is commenting on some woman's tweet on his own Twitter page, does it mean that he monitors her using the internet and therefore commits the offence of stalking? This amendment to the law was labeled "seriously draconian" by several journalists, because "it does not require unique skills to imagine the sheer abuse and misuse of this particular portion in the provision on stalking" [7].

Nevertheless, the above-mentioned questions and ambiguities are only a small part of the problems we encounter when we try to give explicit definitions and, above all, legal assessments. How can we draw the line between annoying and offensive but legal behavior and a transgression subject to prosecution? What actions are socially harmful but not sufficiently so for authorities to interfere, and what actions should certainly draw their attention? What exactly should be examined in the first place: actual moral damage or the mens rea, subjective blameworthiness? Most of these questions are, however, more or less traditional and understandable for most modern systems of law. Nevertheless, the appearance of online counterparts of bullying and stalking challenges traditional legal principles. Further we will examine how these questions transform when applied to cyberbullying and cyberstalking.

III. THE CYBER SIDE OF BULLYING AND STALKING

One of the most prominent cases of cyberbullying was the story of Megan Meier which horrified the world in 2006. Megan was an American teenager who attended a public school in O'Fallon, Missouri. When she was in 3rd grade she started visiting a psychiatrist and was diagnosed with attention deficit disorder and depression. Several years later she moved to another school after being frequently mocked by her classmates. Soon after creating a MySpace account she found a new friend there, a 16-year-old boy named Josh. They never met in person but had long conversations online. Megan's family noted that this relationship made her happier. However, several weeks later Josh started behaving mean for no obvious reason. They traded insults online and the last message Megan received from Josh was "the world would be a better place without you". Soon after this Megan committed suicide.

Several weeks after Megan's death it turned out that there was no "Josh", and the MySpace account with this name was a fake. There were three persons behind this account: Lori Drew, the mother of Sarah Drew, a former friend of Meier, Sarah herself and Ashley Grills who worked for Lori. Later it turned out that it was Ashley Grills who created the fake persona of "Josh" and wrote most of the messages addressed to Megan Meier including the final one. However, she insisted that Lori Drew was the main initiator of this hoax while she was only taking a secondary part in it. She also claimed that the final message aimed to end the joke that had gone too far, not to push Megan over the edge. Lori Drew, for her part, insisted that she hadn't created any MySpace accounts and hadn't written any messages using "Josh" account or any other one. Later Ashley Grills complained that she had become the target of threatening messages; some of them nudged her towards suicide - which she indeed attempted and was hospitalized afterwards [8]. Finally, Lori Drew was found guilty of only a misdemeanor.

This case is very indicative from several points of view. Though both bullying and cyberbullying have many traits in common, there are many traits specific only to cyberbullying. Since cyberbullying is a part of digital world, its manifestations share the features of digital communication.

Online messages that are acts of cyberbullying can usually be read only by their recipients, (while public verbal insults and threats can often be heard by other people), they can be deleted or become corrupt or missing.

Furthermore, since there were three people using the "Josh Evans" account, another important question arises. Most cases of usual, "offline" bullying and stalking imply that, provided there are several people involved in bullying or stalking, it takes much less effort to discover which of these people committed the most serious offences and who prompted the others. A person that verbally offends someone "offline" always remains a single person with their unique voice (or, in some cases, handwriting) which can be distinguished from other voices, can be recorded and identified. Cyberbullying and cyberstalking are always something that happens via electronic IDs and accounts and this mere fact makes it sometimes very difficult to ascertain connections between people and their deeds.

Moreover, "offline" bullying always implies that a bully should be present during the act of bullying - otherwise it won't have the effect desired by the bully. Cyberbullying, however, is a thing that can happen anywhere at any time, it can be instant or delayed. In other words, cyberbullying is not restricted by time and place.

Another important question is whether Ashley Grills should be considered an initiator of cyberbullying - or a victim as well: she attempted suicide under circumstances that were similar in some sense. She received many threatening messages from accounts most of which weren't probably fake. Should all these people be counted as cyberbullies? Or were their motive quite different or maybe justifiable by their "righteous anger"? In a sense, cyberbullying can spread like a virus, sometimes turning recent aggressors into victims.

It might sound strange but traditional, "offline" bullying imposes several requirements on those willing to bully: once they've made up their minds, they have to act self-confidently and keep in mind that the victim can try to repel their aggression. Sometimes it means that a person voluntary exposes themselves to the risk of physical harm. Cyberbullying is quite different: a cyberbully can perform harmful actions while staying relatively safe. To sum up, cyberbullying breaks up the face-to-face context of traditional bullying.

There is also another important observation connected with the above-mentioned circumstances: in the digital world it's usually much easier to become a bully, i.e. to put oneself into the corresponding state of mind. In the offline world there are much more factors which can avert a potential bully from taking real action. As Notar, Padgett and Roden notice, "in fact, the anonymity of cyberbullying may cause students who normally would not bully in the tradition-sense to become a cyberbully" [9]. Most of the above-examined traits also pertain to cyberstalking.

However, one of the most distinctive traits which distinguish cyberstalking from cyberbullying is that cyberstalking in most cases is a part of traditional, offline

stalking. As we have seen on example of Megan Meier, cyberbullying can lead to the most tragic consequences without going over to verbal, physical etc. aggression. Cyberstalking, on the other hand, is usually one of the methods of pursuing the same goals that ordinary stalking is aimed at. We can see this on many examples such as the case of Christine Belford, a woman murdered in 2015 by Thomas Matusiewicz. His son and her ex-husband, David Matusiewicz, got divorced with Christine Belford in 2006 and the court decided to leave their three children with Christine [10]. Custody wars started shortly thereafter. In 2007 Thomas Matusiewicz and her mother kidnapped the three girls and left the USA. They were found in Nicaragua two years later and were sentenced to prison. However, the imprisonment of Thomas didn't help Christine feel much safer: from prison she received tons of both electronic and paper letters with accusations and threats. There were also multiple YouTube videos, defamatory comments and emails written to people who knew Christine. After David's release from prison he demanded a new investigation - as it turned out later, only to let his father meet Christine and shoot her.

Cyberstalking and physical stalking often tend to happen concurrently. Again, while we can conceptualize bullying and cyberbullying as phenomena with a common stem which however can take very different forms, stalking and cyberstalking usually are mutually reinforcing types of behavior aimed at causing of psychological and physical pain while the latter is more important. Ordinary stalking can take place without any elements of cyberstalking, but not vice versa. This is a possible reason why women at ages 18-29 become targets of cyberstalking much more often than any other social group: most people have roughly the same vulnerabilities online irrespective of their sex which renders them equally exposed to cyberbullying. Since cyberstalking is often aimed at achieving "offline" goals, young women which are physically (and morally when it comes to personal contact) vulnerable become affected more often than anybody else [11].

IV. THE LEGAL CHALLENGES OF THE CYBER SIDE (THE EXAMPLE OF THE USA)

The phenomena of stalking can hardly be viewed as a new. However, until 1990s in most countries of the world there were no laws specifically to prosecute stalking. For example, in the USA the first law against stalking was enacted in 1991, and California became the first state to criminalize stalking. This was preceded by a number of high-profile murders, the victims of which were long persecuted by their future murderers and lived their lives in constant fear. For some of these cases it was characteristic that the police couldn't protect the people that were being stalked despite the fact that they had restraining orders. [12]. The new article (section 646.9 of the California Penal code) provided for the punishment of stalking which was defined as "willfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent to place that person in reasonable fear of death or great bodily injury or place that person in reasonable fear of the death or great bodily injury of his or her immediate family". Over the next

three years, all states of the USA have passed laws against stalking [13]. As technologies advanced modern society met the challenge of cyberstalking. A report from the Attorney General to the Vice President Al Gore stated that as of 1999, the penalty for stalking by means of electronic communication was explicitly provided for only in the codes of a minority of states. As we have already mentioned above, California was among these states. Section 646.9 was supplemented by an indication that the threat posed by the actus reus of stalking could have verbal and written form, including electronic communication. Electronic communication devices include but are not limited to phones, mobile phones, computers, video recorders, fax machines, or pagers [14].

Unlike stalking, bullying as well as cyberbullying is still not considered a crime in most states of the USA. Since bullying is a phenomenon usually typical for children and adolescents, it appears to be excessive to prosecute bullying as a crime except for certain blatant cases which are usually prosecuted in accordance with the rules of liability for other offences. An example of how bullying can be legally criminalized is Idaho Code, §18-917a, in which it is defined that student harassment, intimidation or bullying, including those committed via a wireless phone or computer as infraction (minor breaking of rules which is smaller than misdemeanor and felony; the usual penalty is fine). However, the legislation of all states in one form or another contains rules against bullying in the educational codes and model policies.

Quite indicative was the attempt of Albany County Legislature to criminalize cyberbullying in 2010. According to the adopted law, cyberbullying is the act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person. Cyberbullying was considered an unclassified misdemeanor punishable by a fine of up to \$1,000 and/or up to one-year imprisonment. However, in 2014 the New York Court of Appeals declared the law unconstitutional, pointing out that its overly broad description violates the First Amendment. Nevertheless, the court admitted that the prohibition of cyberbullying itself may not contradict the First Amendment if the wording of the law would be accurate enough to comply with the right to freedom of speech [15].

This example reveals one of the most important challenges for the legislature. On one hand, bullying and stalking often lead to the suicide of the victim or precede their murder, so we shouldn't underestimate the danger. Legal acts that do not provide for criminal liability usually don't have sufficient deterrent effect. On the other hand, since the actus reus of cyberbullying and cyberstalking implies that an attacker uses electronic means of

communication (usually instant messaging), practically there may be problems in determining whether a particular behavior is a crime or it is protected by the First Amendment. To answer this question, it seems necessary to establish whether certain ways of communication constitute a threat which is not protected by the First Amendment. For example, the 1969 *Watts v. United States* case formulated the position which can be applied by analogy to bullying and stalking. It has been decided that true threats, unlike political hyperbole, are not protected by the First Amendment. According to the California Penal Code, mens rea in this case involves an intention to bring the victim into a state of fear for their life and well-being which is enough to remove the protection of the First Amendment.

V. CONCLUSION

Cyberbullying and cyberstalking are problematic concepts for traditional law as well as ethics. Bullying and stalking can be conceptualized in a much simpler way, their destructive results are easier to measure. Cyberbullying and cyberstalking, in turn, pose a hidden threat which is difficult to prevent due to the way traditional state laws function. It is usually crucial to establish the mens rea since there can be little other indications that a crime is being or will be committed. Traditional law, however, relies more on actus reus which can be very difficult to reveal.

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