Chapter 5

Gendered Violence and Victim–Blaming: The Law’s Troubling Response to Cyber–Harassment and Revenge Pornography

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ABSTRACT

Cyber-harassment and Revenge pornography are international problems that can cause psychological, financial and physical harm to their victims. And yet, despite legal efforts in several countries, the law has yet to fully address these issues. Instead, enactment and enforcement of laws is undermined by the gendered nature of these acts, which leads to (typically male) police and prosecutors to treat victims with ambivalence and even scorn. This article shows that, despite the prevalence and dangers involved with cyber-harassment and revenge porn, victims are still often left without redress. This article also analyzes law enforcement’s tendency to minimize victims’ harm and blame victims for their own suffering. Finally, this article discusses how perceptions may begin to change, which could lead to a better understanding of the full range of behaviors and effects of cyber-harassment and revenge pornography and, consequently, better legal outcomes for victims.

1. INTRODUCTION

Over the past few years, cyber-harassment and revenge pornography have frequently been in the news. From to hateful twitter campaigns against prominent actresses to photo-hacking of celebrities, the internet has proven to be fertile ground for harassment and threatening behavior (Gauthier & Morris, 2016; Valenti, 2014). Moreover, both cyber-harassment and revenge pornography are international acts; they are prevalent throughout the world and, by using the internet, these acts can cross international lines. In response to increases in cyber-harassment and revenge pornography, some popular internet fora such as Facebook and Reddit have changed their policies to allow victims to have their images removed or

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the perpetrators blocked (Elise, 2015; Peterson, 2015). But the problem is so widespread on so many platforms that scholars and activists have called for a more direct response to cyber-harassment and revenge pornography.

In addition, scholars have attempted to grapple with the causes, effects and potential remedies of revenge pornography and cyber-harassment. Feminist scholars have identified gender-based causes of both revenge pornography and cyber-harassment, noting that women are much more likely to be targets (Citron & Franks, 2014, p. 354). Other scholars have analyzed the harms inherent in revenge pornography and cyber-harassment using a variety of lenses (see, e.g., Stroud, 2014). Finally, several scholars have turned to the law as a potential solution to these harmful acts, though mindful of the existing limitations of legal solutions such as claims of freedom of expression (Martinez, 2014; Linkous, 2014).

This article focuses on the practical impediments to a legal solution to revenge pornography and cyber-harassment, looking at a world-wide sampling of efforts to use the law to help the victims of these acts and analyzing why these efforts have not been as successful as they could be. In Section 2, this article defines both cyber-harassment and revenge pornography, shows how prevalent these acts are, and discusses the harms associated with them. In Section 3, this article examines the criminal and civil laws that have been applied to both cyber-harassment and revenge pornography and why those laws fail to capture all of the actions that can make up those wrongful behaviors. Finally, in Section 4, this article shows that some of the law’s problems are due to the gendered nature of both cyber-harassment and revenge pornography, which causes those in power (typically, men) to minimize the harms or blame the victims.

2. DEFINING THE ACTS

2.1. Cyber-Harassment

Cyber-harassment can be difficult to meaningfully discuss because scholars and commentators appear to have no set definition for it and use the terms cyber-stalking, cyber-bullying, and cyber-harassment almost interchangeably (Schwartz, 2009, p. 411; Melander, 2010, p. 263). Cyber-stalking has been defined by scholars and government entities as simply an online form of stalking (Adam, 2002, p. 135; U.S. Department of Justice, 1999), though one scholar has emphasized that it leads to the victim to fear for her safety (Melander, 2010, p. 263). In the United States, the National Conference of State Legislators (“NCSL”) defines cyber-bullying as “the willful and repeated use of cell phones, computers, and other electronic communication devices to harass and threaten others” (NCSL, 2010a). In contrast, scholars and other organizations have limited cyber-bullying to actions that involve minors (Schwartz, 2009, p. 411; National Crime Prevention Council, n. d.; Humphrey & Petta, 2011, p. 29). Finally, the NCSL distinguishes cyber-harassment from cyberstalking in that cyber-harassment is “generally defined as not involving a credible threat” (NCSL, 2010b). Instead, cyber-harassment is characterized by “threatening or harassing email messages, instant messages, or … blog entries or websites dedicated solely to tormenting an individual” (NCSL, 2010b). Scholars have likewise defined cyber-harassment as threatening or insulting messages targeting an individual (Citron, 2009, p. 380).

For this article, in order to capture the largest possible amount of online targeting, the term “cyber-harassment” will include cyber-stalking and cyber-bullying with regard to adults. This is not to suggest
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