Article

A case study on fake news as a new form of crime or harm in the modern world

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Abstract:
The concept of fake news has been around for many years, dating back centuries. However, it must be argued that the emergence of the world wide web and the recent ascendancy of social media have facilitated an explosion of fake news due to the ease of communication becoming a tool for the spread of misinformation. This article will provide a clear argument for online fake news being considered a "new" site of online communication that generates social harm. To achieve this, there is a dedicated focus on (a) the apparent popularity of conspiracy theories, (b) how the COVID-19 pandemic appeared to be a watershed moment for understanding the potential impacts of fake news, and (c) the utility of moral panic analysis for making criminological sense of these recent developments.

Keywords: zemiology, fake news, crime, social harm, internet

Firstly, this article shall provide an in-depth overview of social harm, focusing on the theoretical perspective of Zemiology, and in particular the effects and implications of the rise and proliferation of the internet in everyday life. Following this shall be a review of the impact of fake news as an example of how the internet can play a significant role in facilitating harm in everyday social life. More specifically, the following will focus on the perceived rise of conspiracy theories and fake news to further evaluate how the internet and social media may have facilitated an increase in the supposed legitimacy of conspiracy theories. This article will then conclude with an outlining of the case for the utilisation of the well-founded criminological concept of 'moral panics' (Cohen, 1972; Garland, 2008) for understanding the rise and consequences of fake news as a potential site of social harm. Finally, this article will summarise recent responses to the rise of fake news and outline current considerations of what can be done to assess the potential dangers it presents in a supposedly post-COVID world.

Zemiology is one of the most well-known criminological perspectives seeking to highlight and understand social harms that fall outside the remit of formally defined crime. It first emerged in the late 1990s when a group of academics began thinking about how criminologists and sociologists could

develop 'social harm' into a theoretical category that provided a means to consider how damages, losses, and harms are experienced in everyday life but do not come under the formal definition of being "criminal". All their work and research were collated, and this would inevitably be published in a book called 'Beyond Criminology: Taking Harms Seriously' (Hillyard et al., 2004). There were nine fundamental criticisms of the discipline of criminology and these ranged from: crime has no ontological reality where what is defined as a crime changes through time and can vary in different societies and cultures; criminology perpetuates the myth of crime where criminologists typically take crime as an unproblematic concept with little or no attempt to offer a definition; and, criminology excludes serious and widespread harms (Hillyard and Tombs, 2004). These criticisms are highlighted further by Roberts (2011: 13) who argues "the process of criminal justice mystifies rather than clarifies what is harmful and what might be done about it". Boukli (2018) argues that criminology should also focus on any act that may be harmful to oneself or others, regardless of if it is defined as a crime or not. Social harm can come in many different forms, whether this is physical, economic, psychological, environmental, or even cultural. It is seen as a wider recognition of the inability to have needs met, damages not recognised in law, long and short-term damage to bodies and loss or absence of social essentials. Boukli (2018: 33) argues for the importance of the concept of social harm and states that "harm is seen to be a fundamentally more useful concept than crime for understanding a whole host of harmful social phenomena". This is not to say harm can overrule the notion of crime; however, it is two concepts that could work together in harmony to help us further understand and gain insight into the 'hidden' or 'disregarded' problems people are facing.

The emergence of the World Wide Web and the creation of social media has become a huge part of people's everyday lives and even though it comes with many positives, it would be unfair to say it did not come with equal to, if not more, dangers for society. The arrival of 'new' media, such as the creation of the radio, television and comics, has always been greeted with mass concern from the public. However, as Newburn (2017) argues, no new medium has ever raised as much concern or scepticism as the internet, which he suggests can be a testimony to the immense power and reach it holds, further reflecting the vast extent of the harms and dangers it can bring to society. The internet has provided promises of privacy and freedom of speech since its public inception. However, Atkinson and Rodgers (2016) argue that the internet, particularly digital and social media are 'cultural zone of exception' where actions *are* largely free from any consequences, but that this freedom must not be mistaken for pro-sociality. These spaces of cultural exception are seen as places where real and virtual harms are permissible due to a lack of prohibition or sanction (Atkinson, 2019). Wood (2017)

previously researched social media platforms, more specifically Facebook, and argued that these sites create an online phenomenon that he termed anti-social media. He explained antisocial media as "transgression aggregators: sites dedicated to hosting (1) footage of illicit acts, (2) discourses that condone or legitimise these acts, and (3) forums for individuals to discuss these acts" (Wood, 2017: 169). He also proposed the concept of algorithmic deviancy amplification where individuals increasingly encounter content that promotes or condones illicit acts because of their use of the internet. This research shows the dangers of online platforms and how easy and widespread information has become.

The UK government has put policies in place to try and keep the internet a safe space for all involved through their Online Safety Bill. UK Parliament (2022: 1) explains it as "a bill to make provision for and in connection with the regulation by OFCOM of certain internet services; for and in connection with communications offences; and for connected purposes". This bill did get paused in the summer of 2022 due to Conservative Party turmoil, however, they have stated it will come back to fruition in December 2022. The Online Safety Bill has a key focus on regulating user-generated content, it will hold social media accountable for protecting children online and the government said it will also criminalize the encouragement of self-harm where platforms will be required to remove any content that may encourage someone to physically harm themselves – or else risk penalties under the legislation.

Fake news and the spread of misinformation are not new phenomenon, and it cannot be said that they arose due to the emergence of the internet (Levi, 2019). However, what must be acknowledged is that today's communication ecosystem, and technology in general is not identical to that of the 19th or even 20th century. This field of communication has been substantially changed by the internet and the increasing prominence of social media platforms, which Lazer et al. (2018) argue is due to access being made cheaper and new channels being offered for the dissemination of information. Disinformation of information is considered as deliberately trying to create harm to a person, social group, organisation, or country by spreading fake news meanwhile misinformation is seen as fake news being spread but not created with any intention of harm being caused (UNESCO, 2018). False communication, lies, propaganda and media bias have always been prominent, extending back centuries, however, the concept of fake news as online misinformation today (either as deliberate misinformation or accidentally believing and spreading misinformation) is widely recognised as a real harm and a potentially dangerous consequence of the rise and proliferation of the internet (Cover et al., 2022). Finding references in relation to the new concept of fake news before 2016 proves to not

be an easy task (Tandoc et al., 2017). Singh (2020: 1) defines online fake news as a "specific type of digital misinformation that poses serious harm and threats to democratic institutions, misguides the public and can lead to radicalization and violence". This definition gained popularity during the 2016 presidential campaign (McGonagle, 2016), where for the first-time newspaper articles highlighted and drew attention to the increase of fake news being distributed through Facebook, regarding issues related to the political contest at the time (Silverman and Alexander, 2016). Following the surprise victory of the Republican candidate, many authors started linking fake news with disinformation being spread by social media platforms (Lazer et al., 2018; Tandoc et al., 2017).

Miró-Llinares and Aguerri (2021) argued that this election was the turning point which brought the idea of needing to regulate fake news online public, whether this is through requiring social media platforms to prevent its dissemination or through the criminalization of those who purposely spread misinformation. Singh et al. (2021) argue that not only individuals but society itself can suffer the consequences of fake news, due to it being so easy to spread in a timely manner. This is because it can break the authenticity that the news is responsible to keep balanced and it results in readers being persuaded to read and welcome false or biased ideas, hence why it is a common theme used by propagandists to convey their political agendas or messages (Khaldarova and Pantti, 2016). The traditional way of verifying online sources was always manually going through the content and having individuals that are specialised in that area fact-check what is written, however, this is something made very difficult, if not impossible, because of how easily content can be diffused to a large volume of people (Conroy et al., 2015). With the influx of social media usage, consumers create and distribute more information than ever (Jermsittiparsert, 2019). As Suangpang et al. (2021) argued, even professionals in a specific field must consider a plethora of factors before judging an article's validity. An automated response would be needed to battle this, however, something of that magnitude is very hard to create, plus people will almost always find a way around it.

The COVID-19 crisis is argued to have "increased the perception that fake news and disinformation are a threat" (Miró-Llinares and Aguerri, 2021: 3). The magnitude of fake news being spread in this period of time was so prominent that the World Health Organisation (2020) had to warn the public that the pandemic was accompanied by an infodemic of information. The United Nations Interregional Crime and Justice Institute (UNICRI, 2021) published a report about the misinformation spread during COVID-19 titled 'Stop the virus of disinformation'. Antonia Marie De Meo, the UNICRI director, stated that "violent extremists, terrorists and organized criminals are trying to take advantage of the COVID-19 pandemic to expand their activities and jeopardize the efficiency

and credibility of response measures by governments". According to the situation review conducted on COVID-19, the population has been heavily influenced by fake news in a plethora of areas, the main one being the side effects of the vaccine. As a result of this, the influence of fake news had a detrimental effect on many people's decision-making, and many refused to get the vaccine. Therefore, not only is fake news causing emotional harm in that people are being deceived but also, as Pattaya Mail (2021) argued, the refusal to undergo the vaccine can create physical harm as it may mean COVID can spread around faster, causing harm to the national health system, economy, and people's quality of life.

There are a number of reasonings as to why groups and individuals may create and spread fake news, however, one of the main running themes is economic gain. Fake news makers tend to create sexy, deceptive, or entirely false headlines to enhance their readership, online sharing, and revenue made from internet views. Similar, to the 'clickbait' headlines, online news stories and social media platforms are financially dependent on advertisement money, regardless of if the material is true or not (Ahmad et al., 2020; Suanpang et al., 2022). This can relate to research by Box (2002) who developed a theory of crime and power through the concept of mystification. The internet can be an example of what Box would call an ultra-competitive capitalist market where, due to its competitive nature, it actively encourages people to break the law in complex and specialised ways, or in this case to commit harm and spread false information for their own gain. Apart from economic gains, there are alternative reasons why fake news is created, such as it may be used for political gain involving manipulative techniques, psychological persuasion or it could be used for the creation of conspiracy theories to confuse consumers and cast doubts on what is facts or evidence (Ahmad et al., 2020).

Stanton (2020) described the era we are now living in today as the golden age of conspiracies. From claims that the moon landing was a hoax to claims that of a conspiracy among airline pilots to hide the fact that the Earth is flat, social media has seen an array of conspiracies stated as 'facts'. The term 'conspiracy theories' encompasses factually unverified attempts to explain certain phenomena (Cover et al., 2015). As Singh Grewal (2016) states, they usually take the form of narratives that allege secret plans by powerful entities (the government or the super-rich for example) to harm or destroy a section of the population. The concept of conspiracy theories precedes the modern and most recent definition of fake news by about a century; however, it is argued that fake news "extends, exacerbates, and affirms the reach of conspiracy theory beliefs" (Cover et al., 2015: 79). Throughout the 20th century conspiracy theories emerged and waned, often in response to a significant or controversial event occurring, for example, who killed US President John Kennedy was a popular one that resurfaces

from time to time. This idea of conspiracy theories being more prominent in times of controversiality or in times of crisis is a relevant and established one. Dacombe (2021) found that these ideas are not always prominent in society, but have certain peaks throughout time, commonly during a catastrophic event or a time of social upheaval. Conspiracies were recognised in previous pandemics that occurred around the world, including the Black Death, the Russian flu of the late 19th century and the 1918 flu pandemic. However, as previously stated, the way in which people communicate with each other has changed rapidly over the years due to the emergence of social media platforms, which means that it is significantly easier to share and consume information which is produced by what appears to be reliable sources. Conspiracy theories serve as a "compensatory explanation when, among some people, an existential need is threatened" (Douglas et al., 2019: 8). Social media and the internet generally, encourage individuals to go out and 'discover' information being promoted by their online networks as a substitute to passively accepting data and facts produced by established sources.

Conspiracy theories have a common theme of taking advantage of people, due to them only becoming prevalent in times of crisis, a time in which people are at their most vulnerable. In addition to this, conspiracy theories also offer and allow individuals to find a degree of stability in a confusing or unsettling time. Vittert (2019) found in a study that 50% of Americans believed at least one conspiracy theory they have heard, this ranged from the theory that the 9/11 attacks were fake to the idea that Barack Obama was born in Kenya, not the USA as required under the US constitution and many more. In June 2020, Pew Research produced a survey on conspiracy theories and found that most Americans (71%) have heard of a conspiracy theory from some type of online source that powerful people intentionally planned the coronavirus pandemic. A quarter of those adults saw at least some truth in it, with 20% arguing it is "probably true" and a further 5% saying it is "definitely true" (Pew Research, 2020). These two pieces of research are obvious examples showing how conspiracy theories have such a vast outreach to those who do have access to the internet and how a large percentage of those do believe, even if it is only somewhat, that these theories are facts.

To provide a clear understanding of the dangers and harms of fake news and conspiracy theories on individuals and society, a key concept that should be utilised is that of moral panic. The concept of moral panic was first coined by Young (1971) but was expanded and popularised by Cohen (1972) in his book about mods and rockers in the 1960s. Another key piece of literature that was created about moral panics was by Stuart Hall (1978) where he focused on the wide media coverage of muggings over a course of 13 months in 1972-1973. He argued that the media coverage and response to these crimes created a moral panic throughout the country and this in turn created a

diversion away from the wider economic crisis that was happening at the time, and he argued that this demands some sort of criminalisation. Garland (2008) argues that the term moral panic has expanded throughout the years since the 1970s and has become a distinguished concept that has been used extensively in criminology and public debate. There are five key elements of a moral panic that have been identified by Thompson (1998) – firstly something or someone is identified as a threat, this threat is then depicted in an easily recognisable form by the media, following this there is a rapid surge in public concern and worry, after that, there is normally some form of response from authorities or opinion-makers and finally, it can end one of two ways; either the panic recedes over time or it results in a social change due to the widespread uproar. Even though Cohen's initial theory of moral panic was founded in 1972, a very different time technology-wise to that of modern-day, Simons (2019) argues that it is still a very relevant piece of work, which can be applied to the process that is underway concerning fake news and misinformation. This is most prominently seen in the early stages of moral panic, where someone or something is identified as a threat and then the spread and highlighting of this threat by the media. As Newburn (2017: 90) argues these moral panics are usually unjustified in that they are generally volatile, as they usually disappear as quickly as they appear and the social reaction of these 'threats' is "assumed to be greater than the group, behaviour or event would justify if analysed correctly".

Hall et al (1978: 57) highlight the critical role the news media play in society due to them having the power to define "for the majority of the population what significant events are taking place, but also, they offer powerful interpretations of how to understand these events". Marwick (2008) furthers research on moral panics and suggests that social networks have become the object of social anxieties that create what she termed 'technopanics'. She focused on the cyberporn panic in 1996 and the panic over online predators and the use of the social network platform, MySpace, which she would argue are two examples that demonstrate the link between media coverage and internet content legislation. Marwick stated that technopanics have three key characteristics; "firstly they focus on new media forms, secondly, they pathologise young people's use of media (for example, hacking or violent video games), and thirdly, cultural anxiety manifests itself in an attempt to modify or regulate young people's behaviour" (Marwick, 2008: 5). She would go on to argue that internet content legislation had direct links to forms of media-fuelled panics. Carlson (2020) argues that fake news created and produced by those in the communication and news field has created a deviant other where they present themselves as giving reliable and solid news but are doing the opposite of that.

As illustrated, the effects of fake news and conspiracy theories are very prominent in modern society and with the rapid expansion of the internet and the ease and rapidity of information being spread, the question on many sociologists' and criminologists' minds is: is there anything that can be done to combat this harm? Government action and social media platforms have made attempts to target sources of misinformation; however, as Suanpang et al. (2021) argue, individual participation can add another dimension to the issue through sharing and boosting links – the internet creates a space where distributing sources is made easy and accessible but also it is a space where it is reasonably hard to get rid of something (what goes on the internet stays on the internet somewhere). There have been many institutional responses to try and raise awareness of fake news and try to minimise the damage and harm it can create. These range from declarations by the state (Government of Spain, 2019) or supernational bodies (Europe Commission, 2018) which have tried to make apparent the need for action to try to combat this new phenomenon.

To try to regulate fake news, and all the issues that come along with it are not easy (Pielemeir, 2020), mostly because of the risk of limiting the freedom of speech that the internet has promised to its users (Kaye, 2019). This could be why many governments have not tried to put something in place or succeeded in creating any legislation, such as in the UK where the online safety bill has been "in (re)draft" for a number of years. On the other hand, there have been some, even though a very limited number, of laws passed. For example, Germany created a Network Enforcement Act requiring content censorship (Schmitz and Berndt, 2018). In addition to this, in 2018 Malaysia passed a law called Anti-Fake News Act which provisioned the possibility of prison sentences for those spreading fake news – however, this was redacted after only one year of being in place.

As previously stated, this case study has taken an in-depth look at the world of fake news as a new site of social harm in the modern world. The rise and proliferation of the internet have created many positives in people's everyday lives; for example, the ease and speed of communication, information and knowledge exchange, and anonymity and freedom of speech. However, as demonstrated, the internet is not an "all-good" space; it has many downfalls and harms that can impact individuals' daily lives. Just one of these social harms facilitated by the internet is fake news which has a direct relationship with emotional harm such as heightened anxiety, economic harm, and even physical harm (COVID-19 as an example) and many more. As previously stated, governments are struggling to compete with this new phenomenon due to the advantages of the internet and social network platforms also having a difficult time trying to balance between reducing fake news and limiting the freedom of speech they promised, risking losing engagement (and money) with the

platform. The lack of policies and legislation makes dealing with and recognising the harms of fake news and conspiracy theories on society extremely difficult. Due to the dated nature of moral panic analysis, it would be fruitful to further research recent examples of moral panics in the context of digital media to be able to apply the work to the social construction and consequences of fake news and conspiracy theories. This raises important questions about how the likes of Cohen and Stuart Hall would apply their work to recent examples of misinformation and fake news in relation to the rise of the internet; how, then, can their criminological work from over half a century ago be adapted and applied to the moral panics of today?

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