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Cyberbullying from Psychological and Legal Perspectives

Philip C. Rodkin* and Karla Fischer**

I. INTRODUCTION

This symposium by the Missouri Law Review is a vital opportunity to find common ground between psychological and legal knowledge with respect to bullying and cyberbullying. Bullying, whether or not it is electronically mediated, is an emotionally charged area. To provide balance to the ongoing discussion, it is helpful to consider current findings, thoughts, and limitations of social science research in this area.

In this Article, we begin Part II by a brief exploration of the history of bullying in social science research. Part III is a description of the ways that social scientists have attempted to define bullying, and by extension, cyberbullying. We pay particular attention to understanding the roles that the intentionality of the bully, the repetition of the problematic behavior, and the power asymmetry of the bully-victim dyad play in distinguishing bullying from other negative behavior. In Part IV, we track the relationship between bullies and their social worlds, noting that some bullies are marginalized within a broader peer culture while others are popular and influential. We suggest that children’s peer cultures also influence cyberbullying. Part V of this Article applies a relational view to the problem of cyberbullying, taking into account the relationship between bully and victim, the importance of children’s broader social networks, and how sex, gender, and sexual orientation create an additional layer of complexity to understanding relational issues among children. We conclude this section with a discussion of how teachers and school climates relate to bullying. In Part VI, our concluding thoughts center around how bullying and cyberbullying may be both similar and different from each other, and the implications this has for further research in the social sciences.

II. A BRIEF HISTORY OF BULLYING IN SOCIAL SCIENCE RESEARCH

Recent interest in bullying has increased because bullying was dramatized powerfully in 2011 by a controversial documentary film called Bully.¹

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Viewers who watch *Bully*, or any of the innumerable bullying clips posted on the internet, feel an irrepressible sense of outrage, an outrage that curiously may not be shared by those who witness or participate in a bullying episode as it unfolds. Our outrage springs from the violation of our democratic spirit that youth should be free to learn, in peace and safety, making the most of their talents and goals. As Olweus put it:

> Every individual should have the right to be spared oppression and repeated, intentional humiliation, in school as in society at large. No student should have to be afraid of going to school for fear of being harassed or degraded, and no parent should need to worry about such things happening to his or her child[].

Tragedies, more than theories or findings, may have played the largest role in spurring interest in bullying. In 1982, bullying may have helped cause the suicides of three 10- to 14-year-old boys in northern Norway. The Norwegian government responded with a campaign against bullying that included research and intervention led by Dan Olweus. Olweus was trained as a trait psychologist with presumably few illusions about the difficulty of reducing aggressive behavior, yet he pushed ahead in the 1980s to design and implement a pioneering program for anti-bullying intervention. The effectiveness of the Norwegian campaign, both for the specific work of Olweus and for the larger efforts of the country’s anti-bullying campaign, has proved remarkably far-sighted in identifying bullying and improving the welfare of children around the globe.

While scientists in Norway started studying bullying in the 1980s, interest for the subject started comparatively later in the United States. School
shootings and suicides by children, too many to count but too few to study prospectively, largely account for the growing interest in bullying since the first decade of the 2000s. Columbine High in 1999 is particularly memorable. Columbine exposed a narrative of marginalized youth lashing out indiscriminately against a tormenting popular peer culture. Columbine and other similar shootings show that the heartbreaking youth suicides that motivated the Norwegian campaign are still present around the globe today.

III. DEFINITIONS OF BULLYING AND CYBERBULLYING

Although research on bullying started in Norway in the 1980s, interest in the subject has been relatively recent in the United States. The place to begin is with the question of what is bullying, its definition, and detection. This inquiry is followed by the question of whether and how this definition needs to be changed to account for bullying behavior that occurs over electronic media. For the most part, definitions of cyberbullying adopt the prevailing definition of physical bullying, but specify “cyberbullying” as an additional form of bullying along with the more common physical, verbal, and relational manifestations, which as we hope to show here may not be entirely appropriate. Cyberbullying has the potential to differ from traditional bullying along multiple dimensions. Cyberbullying is: (a) ubiquitous, in that one can be cyberbullied whenever an electronic device is on, 24/7; (b) anonymous, in that the harasser may not have his or her actual identity revealed to the victim of harassment; (c) extended in physical distance, as the cyberbully could conceivably be halfway across the globe from the victim of harassment; (d) hard-to-detect, particularly by adults who may not be as technologically savvy as children and youth; (e) of variable duration, because humiliating pictures or messages may stay on the Internet or be downloaded so that the cyberbullying event leaves an indelible trace; and (f) in

7. See KATERNIE S. NEWMAN, RAMPAGE: THE SOCIAL ROOTS OF SCHOOL SHootINGS 63 (2004) (“Bullying at school is probably the most commonly accepted explanation for school shootings”).
8. See id. at 286.
9. See BULLYING AT SCHOOL, supra note 2, at 9 (defining physical bullying).
13. Id. at 651.
14. Id. at 652.
15. See id. at 652-53.
16. See id. at 653.
view of a potentially unknown, infinite audience, as the victim may never know who has or will witness the harassment that is experienced.  

Olweus’ 1993 book Bullying at School provides a definition of bullying that has largely been adopted nationwide:

A student is being bullied or victimized when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other students . . . . In order to use the term bullying, there should be an imbalance in strength (an asymmetric power relationship): [t]he student who is exposed to the negative actions has difficulty defending him/herself and is somewhat helpless against the student or students who harass.

The Olweus definition thus has three components: intentionality, repetition, and power imbalance. The question is how electronic propagation of bullying behavior influences these components, making them more or less practical or realistic.

A. Intentionality

Intentionality is a common element across bullying and aggression. The definition of “intent” is important because bullies are susceptible to harassment claims and these claims require that a specific type of intent be proven. All bullying is aggressive, but not all aggression is bullying. How does electronic propagation of what otherwise might be seen as bullying affect attributions of intent? From the perspective of the school attempting to determine whether they have jurisdiction to intervene, cyberbullying may involve additional considerations of foreseeability. Is it foreseeable that

17. BAUMAN, supra note 10, at 25.
18. BULLYING AT SCHOOL, supra note 2, at 9-10 (first emphasis omitted).
20. See Smith, supra note 19, at 66.
harassing, bullying messages will affect student learning at school, even if bullying originated off-campus?

Judgments of intentionality, which can be as elusive within child development research as in courts of law, become even more difficult in the case of cyberbullying. Did the alleged cyberbully intend for his or her message to be distributed to a large audience, or was the harassing message forwarded on by a third party? Boyd and Marwick warn that: "young people who bully others rarely see themselves as perpetrators." Even judgments of perceived harm to the victim may not be clear given that physical distance and the absence of face-to-face contact promotes ambiguity. In the case of cyberbullying and children, there is a case to be made that a strict interpretation that only requires general intent rather than any specific intent may be too harsh or unfair in its application.

The issue of what kind of intent to include in the scientific definition of cyberbullying parallels the distinction between specific versus general intent broadly located in criminal law and discussed in the context of domestic violence legislation, particularly harassment. General intent refers to intentionality with respect to engaging in the behavior, while specific intent requires proof that the actor intended to achieve a particular result by engaging in the behavior.

A general intent standard is more appropriate in the cyberbullying context, as specific intent in the context of people in close relationships leaves open plausible arguments that behavior was committed for a purpose other than to cause distress or fear to the person. For example, an individual who harasses a victim by repeatedly calling, texting, leaving flowers, cards, and other gifts could claim that these actions were intended for the purpose of showing the victim how much he cares for her. A general intent standard in a civil legal action such as a court order of protection for a domestic violence victim requires the petitioner to show that the respondent intended to engage in the harassing behaviors. In Illinois, the standard for "harassment" for the purpose of obtaining a court order of protection does not require specific in-

22. A school's jurisdiction to intervene with outside-of-school events has been interpreted as limited to behavior that can cause significant disruption at school. This is the "material and substantial disruption test" outlined by the Supreme Court in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).


25. BAUMAN, supra note 10, at 24.

26. See, e.g., Christine B. Gregson, California’s Antistalking Statute: The Pivotal Role of Intent, 28 GOLDEN GATE U. L. REV. 221, 244-45 (1998).

27. Id. at 247.
tent.28 The statute does not focus on the perpetrator's intent at all, and instead requires that the harassing conduct be of the nature that would cause a "reasonable person emotional distress" and that the victim was in fact distressed by the harassment.29

Anyone who has attempted to use a smart phone to text or conduct activity on the Internet is aware of how easily mistakes can be made, and most people have had the experience of accidentally receiving or sending email to the wrong individuals or a mistaken "reply all." Because children are still developing their sense of understanding the impact their behavior has on others and what the consequences of particular actions are likely to be,30 the inquiry into a more specific intent might be warranted depending on the perpetrator's age, sophistication with technology, and personal experience or knowledge of social media.

For younger children who are less likely to understand consequences in general,31 those who are less experienced with technology, and those who are less familiar with social media, it might be important to understand what they thought would happen when they engaged in the bullying behavior, bounded by how they make sense of what is customary and expected in the social media sites. With older children, whose cyberbullying will be increasingly cross-gender in nature,32 the domestic violence paradigm of general intent makes the most sense.

Thus, legal scholars and policy makers might want to revisit the criterion of intentionality in judgments of cyberbullying. There may be good reasons for defining cyberbullying to include behavior that is not intentional in action, but reckless or negligent in the use of electronic media. Certain kinds of deliberate actions, such as sending humiliating messages about a person, but not to that person directly, do not fit into the "general intent" of cyberbullying because the intentional recipient of the messages is not the victim. However, a definition of cyberbullying that focuses on a failure to reasonably foresee the possibility that these kinds of messages often make their way to the victim may be consistent with a general intent standard in spirit even if it differs in its technical application.

B. Repetition

One slap, threat, or libel is indeed aggressive, but would not constitute bullying. Why not? For Olweus, repetition is a proxy for severity, included

28. 750 ILL. COMP. STAT. ANN. 60/103(7) (West 2009).
29. See id.
30. See BAUMAN, supra note 10, at 73, 77.
31. See id. at 77.
32. See Christian Berger & Philip C. Rodkin, Male and Female Victims of Male Bullies: Social Status Differences by Gender and Informant Source, 61 SEX ROLES 72, 73 (2009).
in order to exclude from bullying "occasional nonserious negative actions." Repetition and severity are correlated (a chronic condition is usually worse than an acute one), but they are not the same. In neither the case of repetition nor severity has there been much research on dosage-response relationships between bullying and adjustment. The problem with the repetition criterion is that it is not possible to tell a student, parent, or principal that one incident of bullying "doesn't count," and it would be a grievous mistake for school officials to dismiss even a first episode of what would otherwise be a clear instance of bullying.

Repetition is not really a definitional component of bullying, but instead a gatekeeper to separate wheat from chafe, serious from nonserious, judgments of which will vary according to the eye of the beholder and other elements of the incident(s). Repetition is an index of the severity of bullying but does not define it. Repetition can have multiple meanings in cyberbullying – that harassment occurs more than once, or that a single instance of harassment is repeatedly transmitted to an unknown and ever-growing audience, effectively extending the duration of an incident or giving it a multi-episodic character. As with the criterion of intent, cyberbullying concerns are nuanced when it comes to repetition and what it means for the temporal duration of a cyberbullying incident. Repetition is also essential in considering when an interaction that has bullying elements becomes a more sustained and negative interpersonal relationship.

C. Power Imbalance

Aggression in an asymmetric power relationship is the ugly heart of traditional bullying and its distinctive element as compared to aggression more generally. Early on, Olweus pointed to the popularity of aggressive and bullying behavior and to the psychological power that high social status may entail. What this means is that children and adolescents sometimes have a tendency to nominate children who bully as also those peers whom they nominate to be most liked, or popular. Youth who get into trouble can be seen as cool, as a movie like Bully shows. It is power asymmetry that elicits outrage. Unequal, coercive power is what distinguishes bullying from other forms of aggression, such as a game of the dozens or rough-and-tumble play. What kind of power does a bully really have? A bully can have physical power over his or her victim. "His poor neighbour is bully’d by his big appearance," writes Samuel Palmer in 1710, according to the Oxford

33. Bullying at School, supra note 2, at 9.
34. See id.
35. See generally Aggression in the Schools, supra note 6, at 93-102; Aggression and Peer Acceptance, supra note 6.
36. See Bullying at School, supra note 2, at 9-10.
English Dictionary the first known written use of the term “bully.” A bully may also have psychological power relative to the target of harassment — more friends, more status and prestige, greater access to valued resources. In bullying a child may also attempt to derive power by constructing weakness and deviance in the children being harassed.

Cyberbullying has additional implications for the traditional understanding of power imbalances in bullying. What is the meaning of power imbalance in the cyberbullying context? Certainly, adolescents give high priority to social status and do not often come forward, as either victims or perpetrators of bullying, because of its disempowering consequences. Beyond that, it is very hard to say what power imbalance means in an environment where the bully and victim are not in physical contact, and the audience of bystanders is indistinct. Possibly the mere fact of anonymity, if indeed the electronic harassment is anonymous, is enough to constitute a threat and a power imbalance.

IV. THE TWO WORLDS OF BULLYING

With respect to traditional bullying, there is a dramatic difference in how bullies are portrayed in different research papers: as adaptive Machiavellians or as basically just another way to say “at-risk.” These divergent portrayals have been framed as “two social worlds” of bullying: marginalization...


40. Boyd & Marwick, supra note 24.

41. Robert Faris & Diane Felmlee, Status Struggles: Network Centrality and Gender Segregation in Same- and Cross-Gender Aggression, 76 AM. SOC. REV. 48 (2011) (noting that bullying is perceived as a means of gaining status); Tjeert Olthof et al., Bullying as Strategic Behavior: Relations with Desired and Acquired Dominance in the Peer Group, 49 J. SCH. PSYCHOL. 339 (2011) (arguing that bullying behaviors is a strategy used to obtain social dominance); Anthony A. Volk et al., Is Adolescent Bullying an Evolutionary Adaptation?, 38 AGGRESSIVE BEHAV. 222 (2012) (arguing that bullying has social benefits for perpetrators).

tion on the one hand, integration on the other. Socially marginalized bullies “may be fighting against a social system that keeps them on the periphery,” while socially integrated bullies “may use aggression to control” others. There are a number of behavioral and social characteristics that seem to co-occur with these two kinds of bullies.

A. Socially Marginalized or Socially Integrated?

With respect to marginalization, many bullies seem to continuously come into conflict with others, to run against the world. These children, mostly boys, tend to be characterized by a clear pattern of deficits in broad domains of developmental functioning. They are consistently identified as being at-risk, even from bullying and harassment by others. These children represent what Olweus terms “bully-victims.” Their aggression is impulsive and overly reactive to real or perceived slights. Cook writes that this type of bully,

has comorbid externalizing and internalizing problems, holds significantly negative attitudes and beliefs about himself or herself and others, is low in social competence, does not have adequate social problem-solving skills, performs poorly academically, and is not only rejected and isolated by peers but also negatively influenced by the peers with whom he or she interacts.

Farmer reports that marginalized, unpopular bullies, whether girls or boys, are often shunted into peer groups with other bullies, and sometimes even with the children they harass. Marginalized bullies have a host of problems and bullying behavior is but one manifestation. Their bullying might stem from an inability to control their impulsive actions or from a desire to gain status that generally eludes them. These youth would benefit

44. Id. at 386.
45. Much of this section is largely modeled after the following article: Philip C. Rodkin, White House Report: Bullying – And the Power of Peers, 69 EDUC. LEADERSHIP 10 (2011) [hereinafter Rodkin, Bullying – And the Power of Peers].
46. See id. at 12.
47. See Cook et al., supra note 42, at 75-76.
48. See id. at 76 (discussing the common characteristics of a bully-victim).
49. See, e.g., BULLYING AT SCHOOL, supra note 2, at 1.
50. Cook et al., supra note 42, at 76.
from services that go beyond bullying-reduction programs per se, such as violence reduction therapies and social skills training.\textsuperscript{52}

Then there are the bullies highlighted by Olweus whose social worlds are networked and integrated – these children do not lack for peer social support.\textsuperscript{53} Socially integrated bullies are more evenly split between boys and girls.\textsuperscript{54} They have a variety of friends, some bullies but others not,\textsuperscript{55} and strengths that are easy to recognize, like social skills, athleticism, or attractiveness.\textsuperscript{56} Socially integrated bullies tend to be proactive and goal-directed in their aggression.\textsuperscript{57} They have significant experience with peers, perhaps as far back as the day care years.\textsuperscript{58} Some integrated bullies incorporate prosocial strategies into their behavioral repertoire, for example reconciling with their targets after conflict, or becoming less aggressive once a clear dominance relationship has been established.\textsuperscript{59} They may have lower physiological reactivity to stressful situations than aggressive children who also report being harassed.\textsuperscript{60} Socially integrated bullies are both underrecognized as seriously aggressive, and popularized in the media as in, for instance, \textit{Mean Girls}.\textsuperscript{61} Vaillancourt, McDougall, Hymel, and Sunderani go so far as to call these socially connected bullies "Machiavellian": "popular, socially skilled and competent . . . [with] high self-esteem . . . low on psychopathology . . . [and] many assets."\textsuperscript{62} There is little doubt that a substantial proportion of very aggressive children and youth have moderately low to surprisingly high levels of popularity among their peers, and among this group are children who tend to bully others but not be harassed themselves.

\textsuperscript{52} Cook et al., supra note 42, at 79. \textit{See generally} Karen L. Bierman & C.J. Powers, \textit{Social Skills Training to Improve Peer Relations, in Handbook of Peer Interactions, Relationships, and Groups} 603 (Kenneth H. Rubin et al., eds., 2009) (discussing the effects of social skills training on youth).

\textsuperscript{53} \textit{See Aggression in the Schools, supra note 6, at 164; Aggression and Peer Acceptance, supra note 6, at 1311.}

\textsuperscript{54} Rodkin, \textit{Bullying – And the Power of Peers, supra note 45, at 12.}

\textsuperscript{55} Olthof et al., \textit{supra} note 41, at 340.

\textsuperscript{56} Rodkin, \textit{Bullying – And the Power of Peers, supra note 45, at 12.}

\textsuperscript{57} Id.

\textsuperscript{58} \textit{See generally} Phillip C. Rodkin & Glenn I. Roisman, \textit{Antecedents and Correlates of the Popular-Aggressive Phenomenon in Elementary School, 81 Child Dev. 837 (2010).}

\textsuperscript{59} \textit{See generally} Anthony D. Pellegrini et al., \textit{Bullying and Social Status During School Transitions, in Handbook of Bullying in Schools: An International Perspective} 199-210 (Shane R. Jimerson et al. eds., 2010).

\textsuperscript{60} See Wendy Kliwer et al., \textit{Physiological Correlates of Peer Victimization and Aggression in African American Urban Adolescents, 24 Dev. & Psychopathology} 637, 647 (2012).

\textsuperscript{61} \textit{See Mean Girls} (Paramount Pictures 2004).

\textsuperscript{62} Tracey Vaillancourt et al., \textit{Respect or Fear? The Relationship Between Power and Bullying Behavior, in Handbook of Bullying in Schools: An International Perspective, supra note 59, at 211, 218.
The two social worlds of bullying represent two central but seemingly inconsistent views of aggressive behavior: as dysfunctional and maladaptive, or functional and adaptive. Aggression can be maladaptive or adaptive depending on why the aggression occurs, the time frame (e.g., "good in the short run, but bad in the long run"), the consequences of aggressive acts, and one’s perspective. Educators and parents need to ask why bullying is working from the perspective of the bully and what goals are being served by bullying behavior, as they will be different for different children.

B. Are Bullies and Cyberbullies Generally One and the Same?

So far, there is little reason to think that this portrayal of two social worlds of bullying is much different in cases of cyberbullying. However, the research literature on cyberbullying is not extensive and extant studies rarely study cyberbullying as it unfolds. Instead, cyberbullying has been assessed by asking youth whether they have been a perpetrator or victim of cyberbullying in the same format as researchers ask youth about physical or relational bullying. Self-report questionnaires have their admirers, but there are plain human biases involved when children (of all ages) are asked whether they are a perpetrator or victim of some harmful event. As Boyd and Marwick write, "[m]any teenagers who are bullied can’t emotionally afford to identify as victims, and young people who bully others rarely see themselves as perpetrators."

With this caveat in mind, researchers have asked whether the electronic environment enables children who would not otherwise bully to harass others. Perhaps these youth are victims in real life, displacing their aggression onto others in cyberspace. Perhaps youth who would not feel efficacious as a traditional bully get a sense of mastery, power, and status in a virtual environ-

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63. See generally Philip C. Rodkin & Travis Wilson, Aggression and Adaptation: Psychological Record, Educational Promise, in AGGRESSION AND ADAPTATION: THE BRIGHT SIDE TO BAD BEHAVIOR, supra note 19, at 235.


65. See, e.g., Dan Olweus, Understanding and Researching Bullies, in HANDBOOK OF BULLYING IN SCHOOLS: AN INTERNATIONAL PERSPECTIVE, supra note 59, at 9, 12.

66. See Boyd & Marwick, supra note 24.

67. Id.
ment, and so only in this context are prone to bullying.\textsuperscript{68} Other work suggests a spill-over from traditional bullying into cyberbullying, with the same children involved in both.\textsuperscript{69} As Espealge, Rao, and Craven write:

"[g]iven the substantial predictive power of face-to-face bullying to cyberbullying, bullying prevention programs need to consider how face-to-face encounters in school might spill over into cyber-space where adult monitoring and intervention is relatively absent.\textsuperscript{70}

The tentative conclusion that cyberbullies and traditional bullies often (but not invariably) overlap is surprising given the differences in ubiquity, anonymity, and modality that cyberspace entails. Nonetheless, researchers, educators, parents, and lawyers should be aware that cyberbullying and traditional bullying may be gateways for one another, that the existence of one makes the other more likely.

V. SOCIAL NETWORKS OF BULLYING

As much as the Olweus definition of bullying\textsuperscript{71} has been chewed over, one central aspect remains understudied: bullying is a relationship, albeit a coercive, unequal, asymmetric relationship characterized by aggression. This section considers the relationship between the bully and the victim, the importance of child and youth social networks for socially marginalized and socially integrated bullies, and implications of a relational viewpoint for cases of cyberbullying.

A. A Relational View of Bullying.\textsuperscript{72}

Ordinarily, law enforcement officers are interested in quickly establishing a relationship between an alleged perpetrator and victim. However, in the area of bullying research, little is known about the relationship between a bully and the child whom he or she targets. Instead, the focus has been on identifying children who fall into bully, victim, and bully-victim (i.e., children

\textsuperscript{68} Ybarra et al., supra note 64, at 68-69.
\textsuperscript{69} Justin W. Patchin & Sameer Hinduja, Cyberbullying: An Update and Synthesis of the Research, in CYBERBULLYING PREVENTION AND RESPONSE: EXPERT PERSPECTIVES 13, 26-27 (Justin W. Patchin & Sameer Hinduja eds., 2012); Raskauskas & Stoltz, supra note 64, at 570; Wang et al., supra note 64, at 532.
\textsuperscript{70} Dorothy L. Espealge et al., Theories of Cyberbullying, in PRINCIPLES OF CYBERBULLYING RESEARCH: DEFINITIONS, MEASURES, AND METHODOLOGY 49, 55-56 (Sheri Bauman et al. eds., 2013).
\textsuperscript{71} See supra note 18 and accompanying text.
\textsuperscript{72} The following section is largely modeled after Rodkin, Bullying – And the Power of Peers, supra note 45, at 12-14.
labeled as both victims and bullies) categories, and then determining prevalence rates and behavioral characteristics of bullies, victims, and bully-victims. This procedure puts bullies and victims into separate boxes and overemphasizes their separateness. In practical terms, this could mean that there is no known relationship between a bully and victim, or something of a random targeting.

Reality is more complicated. Bullies and victims often have a previously existing relationship that presages bullying before it happens. If this pre-existing relationship was known, it could alert adults to future bullying. One clear predictor of bullying is reciprocated dislike and animosity. Potential bullies, particularly socially connected bullies, actualize angry thoughts into aggressive behavior towards low status peers whom they already dislike, and who dislike them. Socially integrated children choose same-sex bullying as part of a struggle for dominance, particularly in the beginning of the school year or between transitions from one school to another, when the social hierarchy is in flux and unpopular children can be targeted. The bullying behavior of socially integrated children is thus quite responsive to changing opportunities in the peer social ecology.

B. Bystanders and a Theatre of Bullying.

Socially integrated bullies may hide in plain sight because they are more prominent than marginalized bullies, yet less likely to be recognized as bullies or as at-risk. Marginalized bullies who are also victims and who predominately aggress in reaction to provocation, stand out through their segregation from most peers as isolates or as members of deviant, peripheral peer cliques. Where feasible, the social ties of marginalized bullies should be broadened to include a greater variety of peers. In contrast, because socially integrated bullies affiliate with many peers, there is an unhealthy potential for

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73. E.g., Cook et al., supra note 42, at 66.
74. See Marsh et al., supra note 42, at 703-04.
75. Rodkin, Bullying – And the Power of Peers, supra note 45, at 13.
78. Id. at 133.
79. See generally Pellegrini et al., supra note 59, at 200.
80. This section is largely modeled on Rodkin, Bullying – And the Power of Peers, supra note 45, at 14.
81. Id.
widespread acceptance of bullying among students in some classrooms and schools.82 A pernicious theatre of bullying can emerge.83 This theatre can encompass not only the bully-victim dyad, but also children who encourage and reinforce bullies, others who silently witness harassment and abuse, and hopefully still others who intervene to support children being harassed.84 As Pepler writes, “bullying is a social event,” with an audience of peers in almost 90% of observed cases.85 Youth who witness bullying describe it as entertainment – linked to such rubbernecking attractors as popularity and sexuality.86

Thus, the problem of bullying is also a problem of the unresponsive bystander, whether that bystander is a classmate who finds harassment to be funny, or a peer who sits on the sidelines afraid to get involved, or an educator who sees bullying as just another part of growing up.87 The banality of bystanders clashes with the outrage of outside observers. To Latané and Darley, bystander intervention is a social-cognitive decision process entirely grounded in the situation in which the bystander “notices an event or not, perceives it as an emergency or not, feels personal responsibility or not, is able to think of the kinds of intervention necessary or not, and has sufficient skills to intervene or not.”88

C. Social Networks in Cyberspace.

Youths’ social networks in cyberspace bear more than a passing resemblance to their social networks in real life, as “people still tend to connect to those comparatively few others who are spatially prominent.”89 Research has not reached a point where these elements of digital social networks are simu-
lated or experimentally varied to test their effects on the experience of harassment in cyberspace. Still, digital environments can be frighteningly large, with no definite upper bound, expanding the theatre of bullying to unknown proportions. The characteristics that make cyberbullying potentially “more pervasive, relentless, and cruel”\(^\text{90}\) than traditional bullying involve social networks in cyberspace – a diffusion of responsibility and anonymity that inhibits bystander intervention, and the ability to keep an incident of harassment alive though an ever-enlarging social network.\(^\text{91}\)

**D. Gender, Sexual Talk, and Sexual Orientation.**

Gender, sexuality, and sexual orientation comprise the hidden underbelly of bullying. Youth suicides that seem to coincide with bullying often involve issues of sexual orientation.\(^\text{92}\) Sexual banter is not uncommon among adolescents in cyberspace. Underwood, Rosen, More, Ehrenreich, and Gentsch, in an ambitious study, provided 175 15-year-old boys and girls with free BlackBerrys and service plans, where communication from these devices were transmitted to a secure server and made available for analysis.\(^\text{93}\) Underwood notes that their “archive is replete with examples of youths using text messaging to be wonderfully supportive of each other, terribly mean, and surprisingly intimate with parents as well as peers.”\(^\text{94}\)

Disturbingly, in possibly half of all cases, aggressive boys are harassing girls.\(^\text{95}\) Olweus first reported this overlooked finding, writing that “boys carried out a large part of the bullying to which girls were subjected”: 60% of fifth through seventh grade girls whom Olweus reported as being harassed said that they were bullied by boys.\(^\text{96}\) Similarly, the American Association of University Women reported that 38% of girls who experience sexual harass-

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\(^\text{90}\) Goodno, supra note 11, at 684.

\(^\text{91}\) Stringer, supra note 21, at 1136.

\(^\text{92}\) Dorothy L. Espelage & Melissa K. Holt, Understanding and Preventing Bullying and Sexual Harassment in School, in 2 HANDBOOK OF EDUCATIONAL PSYCHOLOGY: INDIVIDUAL DIFFERENCES, CULTURAL VARIATIONS, AND CONTEXTUAL FACTORS 391 (Karen R. Harris et al. eds., 2012); Ari Ezra Waldman, All Those Like You: Identity Aggression and Student Speech, 77 MO. L. REV. 653, 682 (2012); Boyd & Marwick, supra note 24.

\(^\text{93}\) Marion K. Underwood et al., The BlackBerry Project: Capturing the Content of Adolescents’ Text Messaging, 48 DEV. PSYCHOL. 295, 296-97 (2012).

\(^\text{94}\) Id. at 299.


\(^\text{96}\) BULLYING AT SCHOOL, supra note 2, at 18-19.
ment "say they first experienced it in elementary school." 97 Unpopular, rejected, aggressive boys are most likely to harass girls, 98 whereas socially connected bullies tend to demonstrate within-sex bullying and dominance against unpopular targets. 99

Still, boys' physical and verbal aggression against girls can too often become an accepted part of peer culture. Peer sexual harassment is often seen as a purely adolescent phenomenon, but its origins may be linked to when and how boys harass girls in early and middle childhood. 100 Rodkin and Fischer explore the psychological and legal ramifications of bullying and peer sexual harassment in schools, with reference to literature and case law in domestic violence. 101

Peer groups of boys in middle and high school can socialize their members into promoting homophobia. 102 Boys use and are called homophobic epithets with increasing frequency over seventh to twelfth grade, 103 and this homophobic banter when directed at classmates increases children's sense of anxiety and depression. 104 In one study among LGBT young adults, associations between participant reports of adolescent gender nonconformity and mental health was accounted for by their retrospective reports of homophobic victimization; in the absence of victimization, gender nonconformity was not

99. Pellegrini et al., supra note 59, at 206.
100. See Claire F. Garandeau et al., The Popularity of Elementary School Bullies in Gender and Racial Context, in Handbook of Bullying in Schools: An International Perspective, supra note 59, at 119, 125; Barri Rosenbluth et al., Integrating Strategies for Bullying, Sexual Harassment, and Dating Violence Prevention: The Expect Respect Elementary School Project, in Bullying in North American Schools, supra note 64, at 241, 242, 250; Ybarra et al., supra note 64, at 63; see Laura D. Hanish et al., Girls, Boys, and Bullying in Preschool: The Role of Gender in the Development of Bullying, in Bullying in North American Schools, supra note 64, at 132, 132.
103. V. Paul Poteat et al., Changes in How Students Use and Are Called Homophobic Epithets over Time: Patterns Predicted by Gender, Bullying, and Victimization Status, 104 J. Educ. Psychol. 393, 402 (2012).
104. V. Paul Poteat & Dorothy L. Espelage, Predicting Psychosocial Consequences of Homophobic Victimization in Middle School Students, 27 J. Early Adolescence 175, 175 (2007).
related to reports of poor mental health. Perceptions of adult support among youth experiencing homophobic victimization may also lessen associations between victimization and negative school adjustment. This speaks to the important role that adults have in mentoring youth away from bullying and peer harassment.

E. Teachers and School Climate.

While child and youth social networks can seem unmanageable, these networks of children – peer social ecologies, really – are in continual interchange with the people and products of adult society, such as parents, teachers, schools, and communities. Peer social ecologies also have an endogenous, self-organizing capacity. Sherif showed how unacquainted boys at summer camp rapidly formed group organizations characterized by status and role differences, unique traditions and folkways. Sometimes, children’s peer ecologies can manifest forms that are conducive to bullying, such as a strongly hierarchical structure or high levels of mutual animosity. Part of teacher development should consist of training in classroom management that increases attention and responsiveness to the development of unhealthy peer social dynamics.

An early indication of the importance of childhood social structures can be seen in the work of child psychologist Kurt Lewin. With clouds of war gathering, German émigré and child psychologist Kurt Lewin and his colleagues created clubs for 10-year-old boys that were organized in an authoritarian (fascistic) or democratic fashion. Victimization and scapegoating were highest in groups with an autocratic atmosphere, with a dominant group leader and a strongly hierarchical structure. Victimization was lowest in groups with a democratic atmosphere, where relationships with group leaders were more egalitarian and cohesive.

105. Russell B. Toomey et al., Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment, 46 DEV. PSYCHOL. 1580, 1585-86 (2010).
107. The following section is largely modeled after Rodkin, Bullying – And the Power of Peers, supra note 45, at 14.
108. Espelage & Holt, supra note 92.
111. Id. at 277-79.
112. Id. at 281.
Lessons from Lewin’s study can be implemented in current classrooms. Classroom and school climates are built by the relationships peers have to one another and to their teachers. These interpersonal bonds need to be healthy, or bullying and antisocial behavior can overpower the learning environment. It is well worth asking whether today’s schools are characterized by a democratic or autocratic social climate, and whether differences in school climate are related to bullying. Classroom peer ecologies with more egalitarian social status hierarchies, strong group norms in support of academic achievement and prosocial behavior, and cohesive, positive social ties between children should deprive many socially integrated bullies of the peer regard that they require. In contrast, even children who are not themselves bullies will form pro-bullying attitudes in classrooms where bullies are popular, feeding a vicious cycle of bullying reinforcement and failure to stand up for victims of harassment.

In one recent case, a federal judge underscored the importance of the peer ecology in a student’s experience of bullying. T.K. vs. New York City Department of Education involved the parents of a 12-year-old girl with learning disabilities who brought suit against the New York City Department of Education (NYCDOE), alleging that the school’s lack of response to the parents’ repeated concerns about the bullying of their daughter deprived T.K. of the right to a Free and Appropriate Public Education (FAPE) specified under the Individuals with Disabilities Education Act (IDEA). The parents asserted that the bullying (not cyberbullying) “caused their daughter to resist attending school, hurt her academic performance, and damaged her emotional well-being.” NYCDOE responded that T.K. was still progressing academically, had a workable Individualized Education Plan (IEP), and therefore was not being adversely affected by bullying. The United States District Court for the Eastern District of New York found that students such as T.K. have a right to be protected from abuse at school, including psychological attacks, and very much in keeping with a peer ecological approach quoted the following passage from Weddle:

113. See Hai-Jeong Ahn et al., Effects of Classroom Embeddedness and Density on the Social Status of Aggressive and Victimized Children, 30 J. EARLY ADOLESCENCE 76, 93-94 (2010); Pellegrini et al., supra note 59, at 208; Philip C. Rodkin & Scott D. Gest, Teaching Practices, Classroom Peer Ecologies, and Bullying Behaviors Among Schoolchildren, in BULLYING IN NORTH AMERICAN SCHOOLS, supra note 64, at 75, 85-87.
116. Id. at 296.
117. Id. at 294, 296.
Current legal theories and approaches to bullying suffer from a common flaw: they view bullying from an incident-based perspective rather than from a school culture perspective. They focus on what school officials knew about a specific bullying incident rather than addressing what school officials have done to ensure a culture where bullying is unacceptable to everyone in the school. A serious gap exists between what educational research reveals about bullying prevention and what the law defines as adequate supervision. As a result, victims are left without protection in schools they must attend; and then, under both state and federal law, they are left without redress when their tormentors inflict serious and long-lasting injury.118

What might be the relevance to cyberbullying of the Weddle approach119 of considering the peer social ecology, the overall school culture of bullying as a possible legal standard with which to judge the FAPE guarantee of IDEA? The first point to recall is that traditional bullying and cyberbullying are often gateway activities to one another.120 The peer network structure that helps influence the popularity of bullying may also be relevant in cyberspace. Most cyberbullying incidents involve youth who already know one another, usually from school - but there is even less adult monitoring, even less adult knowledge in cyberspace.121 These factors add uncertainty into whether schools will know cyberbullying when they see it. This confusion is an extension of a more general problem concerning socially integrated bullies, as Weddle writes:

This seeming contradiction in students who seem to be “good kids” makes their behavior difficult to spot, hard to believe, and easy to excuse. Victims find out quickly that school officials will do little to intervene and next to nothing to follow up, so victims avoid telling adults to avoid retaliation from the bullies. Therefore, bullying is a largely underground phenomena; and school officials who do not look for it or take steps to prevent it are blissfully unaware of

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118. Id. at 308 (quoting Daniel B. Weddle, Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise, 77 Temp. L. Rev. 641, 658-59 (2004) [hereinafter Weddle, Bullying in Schools]).
120. Raskauskas & Stoltz, supra note 64, at 564.
121. Espelage et al., supra note 70, at 55-56; Rivera et al., supra note 89, at 105-07; Stringer, supra note 21, at 1135.
what is happening in their hallways, classrooms, and play-
grounds.122

With respect to traditional bullying, educators would benefit from re-
search-informed strategies to help structure school settings so that the likeli-
hood of bullying is reduced. What could be construed as radical is the notion
of routinely gathering information from youth on their social relationships.
These kinds of considerations were at the heart of mid-century teacher-
training programs.123 A strong step educators could take would be to periodi-
cally ask students about social relationships in the peer ecologies of their
classrooms and schools.124 Teachers can ask what kind of bully they face
when dealing with a concrete victimization problem. Is the bully a member
of a group, or a group leader? How are bullies and victims situated in their
peer social ecology?

Accurate knowledge of the peer ecologies of cyberspace is much more
difficult than within a physical environment such as a school.125 Interaction
in cyberspace is generally hosted by private companies who own the plat-
forms on which digital interactions occur. Therefore, constitutional changes
are required before the social structure of cyberspace may be studied and
differentiated from the school environment.

VI. CONCLUSION

It is tempting to say that cyberbullying is similar to traditional bullying
in definition, but just takes on a distinct, twenty-first century form. While the
Olweus definition of bullying does have relevance to bullying in any envi-
nronment,126 this article has asked what intentionality, repetition, and power
imbalance means in cyberspace. The touchstone of cyberbullying might pos-
sibly extend to what is foreseeable and not just intentional;127 a repetition of
cyberbullying can encompass both multiple incidents and multiple forward-
ing; power imbalance, the core of what distinguishes traditional bullying from
aggression more generally, has an ambiguous meaning in the indefinite world
of cyberspace. As McDonald points out, definitions of traditional bullying
may have some fundamental tensions with the cyberspace context.128 This
tension may necessitate understanding what is actually happening within the

122. Weddle, You're on Your Own Kid, supra note 119, at 1088.
123. See e.g., NORMAN E. GRONLUND, SOCIOMETRY IN THE CLASSROOM 231-330
124. Weddle, Bullying in Schools, supra note 119, at 655-56.
125. See Stringer, supra note 21, at 1135-36.
126. See supra note 18 and accompanying text.
127. See supra Part III.A.
128. McDonald, supra note 21, at 732.

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cyberspace environment, and locating the proper nexus between harassment that originates off-campus but makes its presence felt during the school day.

Given that cyberbullying may be more than just another form of bullying, some general similarities between traditional bullying and cyberbullying may be surprising. What little research there is suggests that cyberbullying is linked to traditional bullying, with some of the same perpetrators and social networks involved in both.129 Bullying and cyberbullying may thus be gateways for one another. Practitioners be warned however that surface similarities between bullying and cyberbullying may simply be an artifact of how the constructs are measured. If youth are asked if they have perpetrated or experienced physical, relational, social, or cyberbullying, they generally answer all these questions similarly, and some would say in a similarly biased fashion.130

A new generation of cyberbullying studies that goes beyond self-reports and takes account of the technology and spread of information through social networks is needed to address bullying via digital means. One innovative study, though not directly related to bullying, is a report by Guryan, Jacob, Klopfer, and Groff on their experiences of giving middle school students Palm Pilots, collecting data on thousands of sequential micro-interactions between children as they interact electronically with one another.131 This technique allows for novel ways of determining how children are influenced by popular or academically oriented peers, and allows for a natural, dynamic accounting of how social influence spreads within networks of youth. The BlackBerry study that revealed the sexual themes of student text messages is likewise pioneering for dealing with the actual substance of communication in cyberspace.132

The connection between gender and sexual orientation to bullying and cyberbullying threatens to turn the problem of bullying into yet another front in the culture wars, but as Waldman writes the gender subtext of much bullying cannot be ignored.133 Bullying often crosses gender lines, bullying behavior often involves sexual epithets, and is disproportionately directed at victims due to perceived sexual orientation.134 Any notable difference between people that can be associated with power differentials, such as religion, disability, or ethnicity, has the potential to be seized upon as an object of harassment.

To develop more effective strategies for bullying prevention, new techniques must be developed that offer educators deliverable products that give

129. See supra notes 69-70 and accompanying text.
132. See Underwood et al., supra note 93.
133. See Waldman, supra note 92, at 690.
134. See generally Rodkin & Berger, Who Bullies Whom?, supra note 95.
information and advice about social dynamics. Translational work is needed for how to develop the powerful techniques of social network analysis so practitioners can profit from them.\(^{135}\) One goal for research on bullying should be to provide educators with knowledge and means to scaffold peer social ecologies, putting educators in a position to provide an ongoing risk assessment regarding student social networks rather than reactive zero-tolerance identify-and-segregate procedures that exclusively punish and exclude children who sometimes bully.\(^{136}\) The essential problem, as best expressed by youth focus groups in Guerra et al., is that when bullying is integrated into the peer social ecology: everyone bullies and “anyone can be a bully.”\(^{137}\) When the peer social ecology of a school or internet site values aggression, bullying and cyberbullying are bound to spring up.

In the educational context, Kärnä, Voeten, Little, Poskiparta, Kaljonen, & Salmivalli write that: “[t]eachers should view preventing and reducing bullying as one of their basic tasks, not some additional work imposed on them by the education authorities.”\(^{138}\) The hurdles that prevent teachers and schools (not to mention parents!) from considering the dynamics of peer social ecologies more seriously are not mainly technological, they are attitudinal,\(^{139}\) as educators can fall prey to low morale and limited resources. The ultimate challenge will not be to monitor every click and tweet of our youth, but to better integrate bullies and the children they harass into the social fabric of the school, to better inform educators of how to recognize, understand, and help guide the relationships of youth. Many of these same challenges exist in the lightly patrolled regions of cyberspace, where the emergence of a positive, self-directed peer culture may be all the more important, where relevant adult authority figures may be much less clear. The emergence of new modes of expression in electronic environments can and should increase the human potential for synchrony and connectedness, not alienation and outrage.

\(^{135}\) Laura D. Hanish & Phillip C. Rodkin, Bridging Children’s Social Development and Social Network Analysis, New Directions for Child & Adolescent Dev., Winter 2007, at 1, 1-3; Rodkin & Gest, supra note 113, at 209.


\(^{137}\) Guerra, supra note 86, at 303; see also Weddle, StillDisconnected, supra note 119, at 762-64.

\(^{138}\) Antti Kärnä et al., A Large-Scale Evaluation of the KiVa Antibullying Program: Grades 4-6, 82 CHILD DEV. 311, 326 (2011).