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Democracy denied, youth participation and criminalizing digital dissent

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ABSTRACT

Attention is given in this article to recent action by many liberal states to regulate and criminalize certain forms of political dissent reliant on new media. I ask how those working in the fields of youth studies and social science more generally might understand such processes of criminalizing political dissent involving young people digital media. I do this mindful of the prevailing concern about a 'crisis in democracy' said to be evident in the withdrawal by many young people from traditional forms of political engagement, and the need to encourage greater youth participation in democratic practices. A heuristic or guiding frame is developed to analyse how new laws, amendments to existing laws and other regulatory practices are being implemented to contain certain forms of political participation, performed in large part by young people. A case study of 'Distributed Denial of Service action' is offered to examine government responses to political practices which I argue constitute legitimate forms of protest and civil disobedience.

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Democracy as a form of government is threatened by democracy as a form of social and political life, and so the former must repress the latter. (Ranciere 2010, 47)

A large and growing body of research and theory testifies that young people drawing on digital media have mobilized support for democratic principles such as freedom of speech and assembly and for institutions like free elections since the early twenty-first century. New media has been used in direct political action such as Distributed Denial of Service (DDoS) activities. The new media have also been used by organizations like WikiLeaks to publish unprecedented amounts of intelligence data and diplomatic documents which revealed the illegal conduct of many Western governments. Digital media has been central to movements such as the anti-Austerity campaigns in Europe (2008+), the global Occupy movement (2009+) and pro-democracy movements driving the 'Arab Spring' (2010+). In response, many governments including those identifying as liberal democratic have moved to criminalize these forms of dissent.

Against the criticism that online political action (e.g. 'slacktivism') is replacing more traditional forms of political action, I argue here that new media involving activities like those just mentioned augment and enhance political participation and the public sphere. While

digitally based action can create its own discrete forms of activism, it is also often a component of actions involving offline action, thereby integrating online and offline activities.

A sense of the problem

To appreciate efforts by governments and other organisations to criminalize or regulate various forms of political activity, I offer a brief survey of the context. This is not to presume that criminalization of dissent is a new phenomenon, indeed it has a long history. It does, however, appear to be intensifying and involves increasing numbers of young people.

A scholarly consensus exists that the past few decades have seen dramatic increases in popular anxiety about crime and official reactions to that concern (Garland 2001). Opinion polls indicate that crime is the source of considerable fears and 'law and order' has become a staple in most election campaigns across the globe. Western governments everywhere became purveyors of 'risk governance', evident in their increased use of surveillance technologies, the deployment of more police and calls for a more punitive approaches to 'offenders' (Carlen 2009).

It is possible to be precise about when popular concern over terrorism and security began and when governments started introducing measures ostensibly designed to protect their citizenry. The 11 September 2001 was when we began living with 'a permanent fear of terrorism' (Aoude 2002). Those attacks unleashed an American-led 'war on terror' urged on by political posturing and calls for sacrifice to ensure national security.

As a result, many Western states began shifting the balance towards security at the expense of civil liberties and human rights. As Hogg notes, legal academics and lawyers were 'deeply' concerned about the fate of the rule of law and liberal democratic institutions in the 'war on terror' (2007, 84). Hocking similarly observed, developments since 2001 in Western democratic states of counter-terrorist law and policy have allowed 'for the pre-emptive control of political conflict and dissent, which may or may not protect individual citizens but which certainly protects the state itself' (Hocking 2001–2002).

Against this backdrop, we saw the increased criminalization of traditional political protests or public assembly in democracies such as the UK and USA which included the regular use of 'anti-terror' legislation. In this context the potential of a 'threat' 'justified' the use of mass police action and anti-personnel weapons against civilians.

In Australia, the Australian Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000 became a benchmark for dealing with protestors. Similar amendments in other countries saw increases state powers to search, seizure and detain without a warrant or formal arrest. In 2010, the G20 'March for Justice Toronto', Canada, saw 10,000 strong police contingent corral protestors into confined spaces where they were contained for hours (Salter 2011, 211–238). They were tactics repeated in the UK against students protesting education funding cuts and other 'austerity' measures.

Animal and environmental groups faced court as some corporations intensified their efforts to criminalize dissent. Meanwhile specific groups and individuals are described as 'domestic terrorists' and 'eco-terrorists', language embedded in legislation such as the US Patriot Act. Similarly, young satirists, such as the Spaniard, Facu Diaz, are charged with breaches of anti-terrorist laws and breaching the 'glorification of terrorism laws' for mocking the government (Berrerdá 2015).

As revelations by whistleblower Snowden indicate, some governments led by the US extend the scope of their electronic surveillance to track all citizens on the premise we are potential criminals or terrorists. Since 9/11, many governments expanded their already extensive surveillance technologies to retain and analyse mega-data without the regulation implicit in judicial warrants.

Liberal democracies

While there may be little surprise when authoritarian or one-party states criminalize dissent, there is good reason to be surprised when liberal democratic states repress legitimate dissent.

Brabazon asks if liberal democracies pride themselves on civil liberties such as freedom of association and democratic rights such as the right to free and contested elections, 'Why would these states and their decision-makers not welcome social movements and dissent of all kinds as a natural part of the rich fabric of citizen participation in decision-making?' (2006, 3). In this article I ask how might scholars in the fields of youth studies and social science generally understand such criminalizing processes? How should we make sense of moves to criminalize dissent involving young people engaged in new forms of online political activity such as DDoS activism.

To address these questions, I clarify what is meant by 'the political'. I argue that a significant obstacle to inquiring into contemporary youthful politics relates to the ways 'the political' has been understood. Quite divergent assessments of young people's politics exist (Bessant 2004, 2014; Farthing 2010; Manning 2009). Young people tend to be either chastised as apolitical heralding a 'crisis of democracy', or hailed as the progenitors of technologically mediated forms of new politics. This binary reveals differences in how 'the political' is understood.

They are differences that can be conceptualized in a few ways. One way is to focus on the incapacity of liberalism to apprehend the political (Mouffe 2005). For Mouffe, proponents of liberal tradition assume that individualism, rationality and pursuit of consensus define the modern practice of politics (2005). That is, liberal accounts of politics expressed in the deliberative democracy tradition rely on restricted framings of the political, ones that omit the value of opposition and dissent, while acting 'as-if' dissent is valued.

My own argument aligns with Ranciere's view that 'the essence of politics is dissensus' (2010, 38; Mouffe 2005). It is a notion of dissensus understood not simply as conflict between interests, opinions or 'values', but as a reconfiguration of the status quo, as a rearrangement of more common experiences or what is sensible and known¹ (Ranciere 2010, 69).

I begin with a case study to identify a distinctive form of political activism – DDoS then offers a brief account of how youth studies and social science make sense of this politics, then use a heuristic to analyse responses from the state to it, which include the criminalization.

DDoS action

DDoS is designed to make a computer or network of computers temporarily or indefinitely unavailable. It involves mobilizing numerous computers to target a website at a set time so

the site is inundated with traffic until it reaches the maximum capacity after which it cannot process requests, or if it can, it does so slowly. Typically this does not compromise the security of files or databases of the site. DDoS is the digital equivalent to traditional protests such as sit-ins, which flood a space, create bottlenecks, disrupt or deny access (Sauter 2014).

DDoS is used for political protest. It is used by collectives like 'Anonymous' and can involve thousands, even millions of people. Government sites in the USA, Israel, Australia, Tunisia, Uganda, Tunisia, Egypt, Libya and Yemen have been subject to DDoS action as part of anti-government protests. DDoS has been used in anti-Church of Scientology campaigns, and in protests against the CIA and against gaming companies such as Sony and Nintendo. LulzSec, Anonymous and others targeted credit and payment companies such as PayPal and MasterCard in retaliation to their decision to suspend processing payments to WikiLeaks after WikiLeaks disclosed 'classified documents' to the public. Each of these actions was motivated by interests in securing liberal values such as public accountability, freedom of information, speech and the right to privacy (Coleman 2014).

DDoS activism was also used in the USA when the US Congress attempted to enact the *Stop Online Piracy (SOPA)* legislation in 2011–2012. If it had passed it would have expanded the powers of law enforcement by criminalizing certain online activities backed by penalties of up to five years' imprisonment. The use of DDoS helped persuade Congress to drop the legislation. DDoS was part of a mass demonstration by approximately 9000 people who targeted government departments such as the FBI and Department of Justice who were supportive of the legislation (Bessant 2014).

There are also closely related activities such as DNS Zone transfers which re-direct users from one site to another. An example of this took place in 2011 in the wake of the UK News Corporation phone-hacking scandal which saw activists hack the British tabloid's website. *Sun-Herald* readers were directed from the newspaper's website to a mock site which carried a fake headlines announcing that the paper's owner, Rupert Murdoch, was dead. It produced caused disruption and the temporary closure of the websites for *The Sun*, *The Times*, BSKyB and *News International* (Moses and Gardiner 2011).

Actions like these often spill offline and on to the streets. 'Zombie flash mobs' were part of the anti-Scientology campaign run by Anonymous which saw thousands of people dressed as ghoulish zombies walking or roller-skating along the streets of New York City to occupy the front of the scientology Church on a monthly basis.

When asked about their motivations, activists point to a mix of political reasons. Some refer to the fun involved (the 'lulz'), and the thrill of transgression that comes from 'straddling serious political protest and carnivalesque shenanigans' (Coleman 2014). Many participants are best described as political provocateurs and saboteurs committed to exposing shoddy security systems, racism and other unfair practices. In many cases, their interest can be traced back to 4chan imageboard launched in 2003 (Coleman 2014).

Understanding the 'political' and young people's politics

While it is difficult to make too many generalizations about a field as eclectic as 'youth studies', it can be said that mainstream youth studies attempts to offer a 'neutral' and 'objective' research that informs law, policies and programmes for young people. The oldest versions of this intellectual practice drew on 'classical sociological-functional'

social control narratives, presenting 'youth transition models' reliant on successful–failed socialization models which encourage an interest in 'delinquent' and 'criminal' young people. More recently mainstream youth studies embraced a 'risk society discourse' (Beck 1992; Giddens 1991) and an accompanying 'individualisation thesis' which argues that 'traditional' 'social structures' such as gendered expectations about work, family formation or class-based structuring of education and employment have been weakened as we transitioned from modernity to 'late modernity'.

The result is a equivocal political framework, with the tendency to talk about 'youth at risk' becoming 'the fulcrum of the basic ideological and strategic tensions' that inform youth studies and associated human service practices (Poynting and White 2004, 40). This is said to produce tensions or uncertainty about whether to support 'social justice' or a 'social control function'. The interest in social justice promotes 'radical forms of advocacy and collective youth empowerment' while a 'social control' function promotes a 'treatment model or conservative advocacy' (Poynting and White 2004, 40).

The underlying problem becomes clearer when paying attention to how the political is conceived within fields of inquiry into young people politics. As I document here the contradictory stories about young people and politics point to important differences about how we conceptualize the political.

Young people as apolitical

A large body of research indicates that young people are disengaging from political life and civic participation (Arvanitakis and Marren 2009; Henn and Weinstein 2006; Henn, Weinstein, and Wring 2002). It is a pessimistic, even alarmist account that began emerging in the 1990s which highlights disengagement, declining electoral participation and trends towards 'depolticization' by many young people. Young people we are told are the most apolitical generation ever and threaten the future of liberal democracy (Bauerlein 2009).

It is an account that often draws on 'risk' discourses (Beck 1992; Giddens 1991), ideas about 'liquid modernity' (Bauman 2000), the break-down of traditional identities and practices, and 'life-cycles' or what some call changing 'life patterns and personal biography' (Mayer 2003). It also relies on long-standing problem setting agendas about 'youth deficits' (Arvanitakis and Marren 2009) and stereotypes of 'youth as trouble and troubled', as a narcissistic generation replete with a sense of 'entitlement' (Twenge and Campbell 2009). Such deficit models are used to explain how 'they' are 'unmotivated and unskilled'. This, we are told, is because key social institutions failed to educate, to cultivate the requisite civic dispositions and values. Given this framing, 'the solution' is more civics education designed so 'they' can understand their obligations to vote and engage civically.

Young people as political

A second and different account of young people's politics recognizes the political engagement of many young people. This account relies on evidence that many young people have clear civic identities and are engaged on-line and offline (Martin 2012; Vromen and Collin 2010; Xenos, Vromen, and Loader 2014). It identifies civic values, a variety of political activism (Bennett, Wells, and Rank 2009; Weinstein 2014, 210–233), and pays

attention to what is happening digitally as possibly the beginning of significant changes in how we practice and understand politics.

One thing this binary highlights is a problem with the way the political is conceptualized.

It is this binary that overlooks the complexity of young people's relationship with contemporary politics (Bessant 2014; Farthing 2010; Manning 2009). As O'Toole et al. argue, without understanding how young people define 'politics' it is difficult to demonstrate they are disengaged (2003; see also Martin 2012).

For McCaffrie and Marsh:

a pervasive problem with the mainstream participation literature [is that] a restrictive conception of politics forces a restrictive understanding of participation. (2013, 116).

Indeed the limited ways people are encouraged to think about politics which often discounts their own political activity may indicate reasons for their apparent disinterest in conventional politics.

There is plenty of evidence that many young people now operate with different and broader understandings of politics as 'participatory politics'. Yet unlike traditional political activity, it is highly interactive, peer-based, and not guided by traditional institutions such as political parties or newspaper editors (e.g. Cohen and Kahne 2012; Kahne, Middaugh, and Allen 2014).

The absence of clarity about the political is often apparent in research reliant on quantitative techniques that aim to 'measure' young people's political disengagement or engagement. It is an approach that tends to see researchers assume they 'share a common understanding about the definition and meaning of politics' (Henn, Weinstein, and Wring 2002, 168–169). Yet as McCaffrie and Marsh argue, these studies do not address what young people understand the 'political' to be (2013, 113). They continue:

a pervasive problem with the mainstream participation literature [is that] a restrictive conception of politics forces a restrictive understanding of participation (2013, 116).

With this in mind, it becomes clearer how an overly restrictive concept of the political produces restrictive understandings of politics and political participation.

The political

While a comprehensive discussion of 'the political' is beyond the scope of this article, some consideration of what is meant by 'the political' is needed.

There are two related points made by a body of distinguished critics of contemporary liberal politics. One is that certain defining features of liberalism, such as its privileging of rationality and consensus, have helped erode a normative conception of the political as an inherently 'agonistic' enterprise (e.g. Mouffe 2005; Unger 2014). The other points to the ways liberal states often create 'states of exception' (Agamben 2007) as they breach constitutive principles of liberalism, such as the rule of law and rights to freedom of speech and assembly in pursuit of order and 'security'. As my case study indicates, ostensibly liberal states are also repressing valuable kinds of political practice involving young people.

Some contemporary theorists refer to a crisis of liberal democracy (Furedi 2005; Mouffe 2005). For Mouffe, too many proponents of liberalism are 'blind to ... the political in its

dimension of conflict-decision' and cannot perceive the value of opposition in political life (2005, 3). As Unger argues, the liberalism assembled over many centuries (by e.g. Locke, Kant, Bentham, Mill and Rawls) privileges an excessively rationalist, universalist and individualist conception of human being and society (1977). It is a liberalism that assumes that rational consensus is possible, that it can eliminate conflict, that it is preferable to dissent and protest, and that electoral politics is the essential institutional device for a democratic polity. Habermas added the idea that a 'public sphere' connects rational deliberation to the democratic political process (1989).

Mouffe's point becomes clearer when she distinguishes between *antagonism* and *agonism*. *Antagonism* is a 'we-they' relationship where those involved are 'enemies' and do not share common ground. *Agonism* refers to a 'we' relationship in which conflicting parties declare commitments to shared ethical-political principles (e.g. liberal democracy). While agonists acknowledge there may be no immediate, or even long-term solution to their differences, they nonetheless recognize the legitimacy of their opponents' opposition and its value for democratic processes. Significantly that shared commitment makes them 'adversaries' not 'enemies'.

The preference for consensus over conflict and 'blindness' to the value of opposition encourages a taming of conflict and dissent. It encourages a movement to the centre so options 'too far' from that midpoint come to be seen as 'extremist'. It is a tendency exacerbated by the rise of a neo-liberal political imaginary that promotes the 'economization' and 'technicization' of politics which represent conflict as a source of economic inefficiency or political dysfunction (Buchanan and Tullock 1962). All this depletes the public sphere.

At the same time a different but parallel criticism draws on the early twentieth-century political theorists Carl Schmitt's critiques of liberalism in which he pointed out how liberal democracies are not consistently liberal especially when facing real or imagined threats to social order posed by internal enemies or external threats. Schmitt argued that while many may assume liberal cultures uphold democratic values (the rule of law, freedom, justice and equity before law), they regularly suspend legal principles, constitutional practices and values when faced with national emergencies such as war, civil riot or attempted coups (Schmitt 1988; also Agamben 2007). For this reason we act 'as if' these values and practices are central to democratic politics when they are not.

Contemporary theorists have applied Schmitt's critique of modern liberalism (Agamben 2007). Schmitt's conception of the political emphasized an existential will to power presupposing that anything a state needed to do to secure itself was right. Schmitt pointed to the ways Anglo-American liberal democracies were nihilist given the hegemony exercised by legal positivism and utilitarianism.

Other critics coming from different perspectives drew the same conclusions about the nihilism of liberalism arguing that liberal societies too easily accept the legal positivist proposition that for a law to be legitimate it only had to be made by the state (Finnis 1980). Within the legal positivist and utilitarian traditions, the 'why' question about the purpose or *telos* of political action went missing. So too did consideration of what constituted a good life and just society.

These insights into the paradoxes of liberal democracies are evident when observing moves to criminalize digital activism which itself is predicated on an appreciation of criticism, liberal values and alternate visions of the world and a preparedness to question

common-sense understandings. If it is the case, as I argue here, that criminal and other laws are being used to repress dissent in contemporary liberal politics by targeting new forms of political activism, this ought to be a point of concern for critical scholars.

I now consider processes of criminalizing certain forms of political activism and its implications for democracy.

Criminalizing youth politics

The idea that states criminalize activities seen to threaten a given conception of the social or political order or the interest of elites is hardly new. Similarly the idea that justice and legal systems work primarily to promote and secure the interests of the powerful is not new (Plato cited Sachs 2007). Social elites rely on sections of the population whose labour and services secure their access to wealth, culture, status and power. Not surprisingly elite groups can feel threatened by the very existence of those on whom they rely for that privilege and exercise their influence to ensure the law protects their interests. As writers such as Muncie argue, understanding crime entails understanding how power is exercised, how it is used to name certain conduct as illegal and how police regulate certain transgressions while ignoring others (2000). Criminalization is seen as one of several regulatory approaches and practices authorized by the state (Roberts 1997), and an approach to crime control that leans heavily on threatening 'criminal penalties, criminal prosecution, and punishment' (Shover 2003, 500). The focus is on criminal law-making in particular and the development of a body of law more generally. As Jenness argued, 'criminalization is a form of social control ...' (2004, 149).

While the process of criminalization in general has received some attention in youth studies, it has received more attention in other social science disciplines. The work that has been done clearly challenges conventional representations of crime and the law as 'neutral' practices or the result of the application of 'objective' normative standards (White 1989). Scholars such as Husack (2008) and Lacey (2004, 2009) have tracked the accentuation in the scope and intensity of criminalization in advanced democracies over the past few decades. Lacey argues that laws are products of political processes (2009). Others documented the increased prominence of criminalization of street crime in the UK and the USA (Husack 2008; Lacey 2004, 2009).

Some scholars have more specifically been interested in processes that lead to young people being criminalized. It is a field of inquiry that engaged generations of critical researchers from symbolic interactionists to the Birmingham School to post-structuralists. Jenness surveyed a body of work addressing processes of criminalization but neglected the criminalization of political dissent (2004). Similarly a survey of criminalization processes in youth studies by Scraton frames criminalization in traditional ways referring to efforts by states to manage 'disruptive behaviours', and political-economic marginalization involving 'combinations of material deprivation, restricted opportunity, access to drugs and alcohol, conflict and violence directed against the self and others ...' (2008, 9). Again the criminalization of political dissent is missing.

The literature addressing the criminalization of political dissent is not large.

According to Matza, criminological positivists succeeded in separating the study of crime from the workings and theory of the state (1969, 143). Hogg notes that criminologists and sociologists tend to be guided by the criminal law in adopting an apolitical

concept of crime. Thus limited attention has been given to the political power to criminalize (2007, 83). Yet Hogg's own inquiry into 'political crime' focuses on security, war and terrorism and overlooks the criminalization of political dissent. Here lies a link, as scholars such as Hocking observe, developments since 2001 of counter-terrorist law and policy in Western democratic states has allowed 'for the pre-emptive control of political conflict and dissent, which may or may not protect individual citizens but which certainly protects the state itself' (Hocking 2001–2002).

The point I make is that the same scholarly attention is not given to the more mundane forms of political dissent. It is that absence which I attempt to address in this article.

In what follows I identify one kind of activism, namely, DDoS and the responses to it by governments to illustrate a broader anti-democratic trend on the part of liberal states in criminalizing new forms of political activity. Of interest is the discrepancy between the clear commitments expressed by those engaging in such political activity to democratic values, *and* the willingness of ostensibly liberal–democratic governments to represent this activism as criminal or terrorist and to use criminal law to repress dissent.

Scholars such as Reyes who have addressed this process argue that criminalizing political dissidence unfolds in stages. I use Reyes along with similar work by others (2002; Cohen 1972; Miraneau 2014) to develop a heuristic frame to interpret and analyse the case study that follows.

Criminalization processes begin with state agents, spokes-people for the legal communities and media representatives characterizing political dissent as 'criminal' and 'terrorism' (Reyes 2002). Miraneau, for example, documented how environmental activists were described as terrorist and criminalized:

in this process the 'terrorist' label functions as the important alarm that justifies a range of heavy repressive measures against environmental activists. (2014, 88)

The same processes are evident in the demonization and criminalization of pro-democracy and free-speech advocates.

A second step in criminalization processes is to ignore the important role of dissent in democratic culture. Thirdly, certain official representatives attempt to de-politicize the activities of dissident groups by negating the importance of the issues in question. It can include ignoring the immediate and long-term benefits of the action to the community (e.g. whistle-blowing can reveal wrong-doing and harm caused by the state or others about which the citizenry would otherwise be ignorant). This 'stage' can also involve criticizing the political motivations or goals of the critics.

The fourth stage involves invoking fear to justify legal interventions. This can involve highlighting the dangers said to threaten the public interest if mechanisms of repression are not used, or if criminal sanctions are not enacted. Finally, we see the implementation of legal sanctions.

I use this 'heuristic' in the following case study to analyse processes of criminalization. I begin by outlining activities that fall under the rubric of the DDoS action.

Criminalizing new politics: applying the heuristic

Criminalization processes begin with state agents, spokes-people for legal communities and media representing the activism as 'criminal' or 'terrorism'. Such characterizations

have become prevalent since the 9/11 as many Western governments worked to manufacture a climate of fear and enhance popular anxiety by representing the world as a profoundly unsafe place. This has seen Western governments introduce tranches of 'anti-terror' legislation. National and cyber-security have become central to international defence strategies, while 'cyber-war' has come to characterize relations between countries such as China, North Korea, Russia, the UK, Australia and the USA.

Unprecedented numbers of new 'anti-terror' offences created in this context are telling. Steps taken in Britain under the Labor government (1997–2008), for example, are illustrative of a general trend. According to Skrimshire, labour created over 3000 new offences, an unprecedented number compared with earlier Conservative governments – 1979–1997 (2009). In the UK, the *Anti Terrorism Act 2000* was used to detain legitimate protestors since the G8 Summit in Scotland. The *Anti Terrorism Act 2000* was invoked against anti-war protestors at the Fairford RAF base. Protestors were repeatedly stopped and searched in police action later deemed unlawful by the High Court (Skrimshire 2009, 53). It was a practice repeated in the USA, Australia and many European countries.

We have a political environment that encourages rhetorical techniques designed to justify the abrogation of civil liberties and targeting of particular groups.

When citizens rely on DDoS for political reasons, it is represented as criminal and/or terrorist activity that threatens social order. The seriousness with which DDoS action is regarded by governments is evident in the US government's reaction to the Anonymous 'Operation payback' campaign involving DDoS attacks on Mastercard, Visa and PayPal after those companies blocked donations to WikiLeaks. In response to the DDoS action, the US government served 42 warrants and charged 14 protesters. As Leiderman observed:

While protest charges have typically been seen as tantamount to nuisance crimes, like trespassing or loitering, these were different. The fourteen PayPal defendants, some of whom were teenagers when the protest occurred, find themselves looking at 15 years in federal prison - for exercising their free speech rights; for redressing their grievances to PayPal, a major corporation; for standing up for what they believed was right. (2013)

Those participating in DDoS were represented as criminals, 'enemies' or 'militant Islamic jihadist' (Coleman 2014). Conflating DDoS with war and 'cyber-terrorism' frames the problem as one of national security and a direct threat to national security. Conflating DDoS protests with hacking for the purpose of theft for personal gain similarly works to frighten people fearful of having their bank accounts raided.

'Confusing' or conflating DDoS with 'hactivism' functions to obfuscate public discussion by representing the two activities as the same thing. They are quite different: hacking involves computer break-ins or 'trespassing', while DDoS slows down or blocks servers by sending too many requests. Conflating the two activities works to confuse and reinforce the message that DDoS is like hacking and analogous to a 'dangerous' 'weapon' that can wreak havoc and take-down domestic infrastructure such as national power grids, water, banking systems, nuclear, chemical and security systems (Amoroso 2013).

Confusing DDoS with hacking also underscores the criminal label. As the FBI's Deputy Assistant Director, Chabinsky, argued even if 'hackers can be believed to have social causes', their actions are unlawful and unacceptable (cited in Gjelten 2011). It is worth

noting the reference to political motivation by the FBI which distinguishes DDoS users from criminals and terrorist, but nonetheless does not exempt them from prosecution. This is an important distinction because as criminals or enemies-terrorists the state is justified in prosecuting because they are said to have broken the law or breached the social contract. Participants in DDoS, however, are exercising their citizen rights to protest for a cause (Coleman 2011). In spite of the distinction, those arrested were charged and punished.

The word 'chaos' is often used to characterize DDoS action thereby denoting the prospect of disorder and lawlessness. FBI's Deputy Assistant Director extended the disorder theme evoking images of outlaws and the wild west, metaphors that have powerful resonances in the USA:

The Internet has become so important to so many people that we have to ensure that the World Wide Web does not become the Wild Wild West. (cited in Gjeltén 2011)

Similar characterizations can be found in official statements such as those made by UK government's legal representative who argued for the prosecution of those who participated in the Anonymous 'Operation Payback' when PayPal refused to process payments to WikiLeaks. According to the prosecution, those involved were 'cyber-criminal who waged a sophisticated and orchestrated campaign of online attacks on the computer systems of several major companies' (cited in Fortado 2012).

In the same way the DDoS actions of 20-year-old American Timothy French reportedly connected with a hackivist group 'NullCrew' were represented by US Attorney for the Northern District of Illinois as 'criminal activity': 'Cyber crime sometimes involves new-age technology but age-old criminal activity ...' (Fardon 2014).

NullCrew is a hackivist collective operating since 2012 that targets organizations they consider corrupt and engaged in harmful and anti-social activities. In 2012 they accessed the World Health Organization (WHO) in protest against poor health care systems releasing sensitive material. According to NullCrew, the reasons

... for this hack are because of the pathetic health-care. It's been decades and our Heath Care system has never been what it should be. Thousands of people are dying just because of this. Either waiting in waiting rooms for too long, or not being able to pay the extreme amounts to be cared for. We deserve better. Now NullCrew has taken one step forward to fight for our proper rights. (Bat-Blue Networks 2012)

Other organizations Nullcrew have protested against included a leading South African ISP online directory (ispdirectory.co.z). The reason given for that action was in protest against the corruption, the molesting of children and the use of child labour in sweatshops (Softpedia nd). NullCrew also protested against the Cambodian government after it arrested a founder of Pirate Bay. For similar reasons they targeted educational institutions such as Yale and Cambridge Universities, Netcom and Memotext electronics.

They joined 'stop on line piracy' debates, and have demonstrated against the use of new technologies designed to detect copyright infringements as part of an 'anti-pirate crackdown' that involves corporations sending warnings to people downloading copyright material before prosecuting them (Fuchs 2013). As part of this campaign NullCrew accessed Time Warner Company that was using the 'alter system', they defaced its website for a few hours and added the image of a gorilla. According to NullCrew, their

action was in support of open and free access and in protest against the detection and punishment subscribers who use copyright content. NullCrew explained on twitter:

We hacked Time Warner Cable, due to them attempting to participate in the six strikes. (Null-Crew 2013)

In parallel with representing digital activists as ‘criminals’ or ‘terrorists’, governments routinely attempt to ‘de-politicize’ dissident activities by negating the importance of the issues in question or by criticizing their political motivations or by ignoring the ethical motivations that prompt DDoS action.

Governments de-politicize DDoS and similar actions by ignoring the value of dissent or the political the actual issue being objected to. Reliance on an overly Hobbesian conception of the state that insists it must do whatever is needed to secure social and political order means the values of dissent routinely ignored.

In the post 9/11 context conflating DDoS activism with the broader category of hacking and the ‘enemy’ and ‘war’ has been an effective tactic. In America, the FBI exemplified the way such language could be used to invoke fear and so justify legal action. The FBI invoked the falling dominoes metaphor arguing that DDoS can evolve into dangerous cyber activity if organized crime and terrorists were ever to emulate groups such as Anonymous and Lulzsec:

There has not been a large-scale trend toward using hacking to actually destroy websites, [but] that could be appealing to both criminals or terrorists ... That’s where the ‘hacktivism,’ even if currently viewed by some as a nuisance, shows the potential to be destabilizing. (Chabinsky cited in Gjelten 2011)

These discursive techniques are routinely used to ‘reform’ existing legislation or to introduce new legislation that criminalizes protests like DDoS.

A DDoS action is a criminal offence in most countries. However, specifying how the criminalization process is used is not an easy task. While a jurisdiction may have a list of laws that may be applied, determining what a person is to be charged with depends on the particular case, the nature of the actions, whether intent can be demonstrated, the nature of the evidence, who is involved and to degree to which they participated. As Slobbe and Verberkt explain:

As the digital world is much larger than country borders prescribe, it is difficult to cope with cases where the national legislation of two countries differ. At the same time, worldwide legislation is not easily made – not even to mention enforcement. (2012, 5)

The fact that DDoS is used for a variety of political and non-political reasons adds to the complexity and to the ways different legal sanctions are applied. Having said that, the fact remains, DDoS is regarded as ‘high tech offences’ in most jurisdictions.

The legislation

If a person is found guilty of DDoS action in the UK they can be charged in accordance with the Computer Misuse Act. In the USA a variety of ‘cybercrimes’ can be prosecuted under the Computer Fraud and Abuse Act 18 U.S.C. §1030 (Doyle 2014). The Act was passed in 1986 but substantially amended after passage of the USA Patriot Act 2002. 18 U.S.C. §1030

draws a long bow in defending 'protected computers' from 'attack'. Among the key provisions outlawing 'cyber crime' is action that damages a government or bank computer, or a computer used to affect interstate or foreign commerce (e.g. a worm, computer virus, Trojan horse, time bomb, a denial of service attack) 18 U.S.C. 1030(a)(5).

As Mirkovic et al. (2005) argued, breaking into a computer or network to install DDoS handlers and agents may violate 18 U.S.C. §1030(a)(3). Penalties range from imprisonment for not more than a year for cyberspace trespassing, to a maximum of life imprisonment when death results from intentional computer damage. There can also be civil cause for action if it is demonstrated that the action caused financial loss of at least \$5000 of impairment or injury.

The USA has seen a number of high-profile cases involving 18 U.S.C. §1030 and digital activists. One involved PayPal in 2011 when a group of young people staged DDoS action against PayPal as part of an Anonymous campaign (Operation Payback) after PayPal blocked payments in the wake of WikiLeaks' released information about US government's foreign activities.

My own review of developments reveals that many young people have been arrested, charged and imprisoned in a number of countries for their involvement in DDoS activities. As mentioned, Christopher Weatherhead was 20 years old when he participated in DDoS action. He was convicted of conspiracy to impair the operations of a computer, a charge with a maximum penalty of 10 years jail: he was sentenced to 18 months imprisonment. Ashley Rhodes was 27 at the time of his DDoS 'offence' and was charged with conspiring to impair the operations of computers, and imprisoned for seven months. Peter Gibson was 22 at the time of the action and was given a six-month suspended sentence. Jake Birchall was 16 at the time of the DDoS action and was informed he would have been imprisoned had he not been so young at the time of the offence.

This is a context in which 'dissident' organisations themselves have all become the target of reprisal DDoS attacks perpetrated by state security agencies. It is ironic that leading liberal intellectuals such as Sunstein recommended that the USA engages the services of undercover agents to infiltrate activist groups and selected online groups and websites in 2008 (Sunstein and Vermeule 2008).

According to the National Broadcasting News (NBC), British secret intelligence service presented a conference paper in 2012 revealing how it engaged in DDoS action as part of its Rolling Thunder operation against Anonymous hacktivists.² It was an initiative said to have been carried out in 'the guise of the Joint Threat Research Intelligence Group (JTRIG)', an intelligence unit unconstrained by domestic or international laws (NBC News nd).

According to the documents, a division of Government Communications Headquarters (GCHQ), the British counterpart of the NSA, shut down communications among Anonymous hacktivists by launching a 'denial of service' (DDOS) attack – the same technique hackers use to take down bank, retail and government websites – making the British government the first Western government known to have conducted such an attack. (Schone et.al nd)

DDoS 'attacks' have also been used by governments against 'terrorist' or dissident websites (Arthur 2011). WikiLeaks has been subject to DDoS attacks, action sometimes attributed to extra-legal 'public-private partnerships' (Blenker, 2011, 311–397).³ Presumably these reprisals are not subject to criminal sanction.

DDoS is but one example of political action that is being suppressed through the process of criminalization. It is a response on the part of the state that illustrates a broader anti-democratic trend, and one relevant to scholars interested in young people's political participation and the state of liberal democratic societies.

Conclusion

This article addressed an issue central to contemporary political studies and youth studies, namely, how best to understand new online political activity such as DDoS activism.

As political action, DDoS can disrupt websites and the operation of organization, and when targeted at state and corporate sites it creates a 'counter-artefact' that highlights and contests what is typically a one-way flow of communication. As Sauter argues:

Direct action is an ideological mode of activism that encourages activists to disrupt harmful processes and systems at the same time as they attempt to provoke a dramatic, illustrative reaction from their target. (2014, 34)

The focus in this article was less on the political motivations of those engaged in this direct action and more on the ways states have criminalized DDoS activity and what this suggests about those states and the nature of 'the political'.

The article explored the significance of moves by ostensibly liberal states to use their legal and extra-legal powers to clamp-down on new forms of political dissent. What was questioned is how contemporary political communities understand the political. How those working in the social sciences and youth studies conceptualize the political, the politics of young people and the reactions of political elites to their participation?

The reactions of liberal states to digital political action of the kind discussed above may be understood in a few ways. One is to recall how historically young people, as a political constituency, have largely been excluded and marginalized from the 'public sphere' and from electoral processes, yet now many have the capacity not only to enter the political domain, but also to be very effective as political agents courtesy new digital technologies. This clearly has the potential to be quite disruptive of the age-related status quo of power relations. Another way of understanding the reactions of liberal states to digital political activism of the kind discussed here is to recognize how those states, whatever they may say publicly about their commitment to promoting debate or the value of dissent and free expression, frequently find reasons justified by appeals to the old Roman adage that 'the security and safety of the people is the first law'. Thus, when political action is described as 'threatening security', the 'obvious' response is to constrain politics in ways that entail suspending the officially declared regard for such political rights. Moreover, it is reasoning typically enacted by military and state security. Such recourse to the practices of sovereign exceptionality raises questions about the legitimacy of our claims to be democratic as well as the genuineness of recent political and policy claims to 'give voice' to young people.

Notes

1. While we cannot live well in states of constant disagreement and there needs to be appropriate limits to pluralism (e.g. exclusion of fascism), what exists now is too far along the continuum of securing consensus and compliance at the expense of an open society (Unger 2014).

2. Some hackers are said to be co-opted state security agencies to coordinate DDoS attacks against foreign governments (Fisher and Keller 2011). Many governments use DDoS as part of their 'front-line cyber weaponry'. They are also used by some corporations to gain advantage over competitors (Fisher and Keller 2011, Coleman 2014, 96–99).

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