

Vulnerability and its potential perils – on the criminalization of online luring in Canada and court cases tried in Ontario (2002-2014)¹

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Abstract: *The mass diffusion of the Internet since the 1990s and the development and expansion of easy access to information and communication technologies placed online sexual violence as a focus of attention for those concerned with child and adolescent protection. In the wake of the usual discussions on child pornography, an increasing concern has emerged about situations of online grooming or luring. This article reflects on Canada's movement to criminalize online luring/grooming, and makes some remarks based on Court Reports from the province of Ontario in the years 2002 to 2014. From 2002 on, Section 172.1 of the Criminal Code of Canada prohibits communications between adults and children via information and communication technologies that could result in a sexual offence. The study is not focused on luring in itself, but on the beliefs, values and ideologies identified in its agenda. It discusses the representations of children, adult offenders and online environment that stand as the foundations of the process of criminalizing online luring, and are also found in the reports of the studied cases and decisions in connection with the crime.*

Keywords: *Sexual violence; Children and adolescents; Luring; Representation; Norbert Elias.*

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The mass diffusion of the Internet since the 1990s and the development and expansion of easy access to new information and communication technologies, such as mobile phone connections, smartphones and tablets, in addition to 3G and 4G networks, placed sexual violence in online environments as a focus of attention for those concerned with child and adolescent protection. Such concern is primarily aimed at the production, exchange and commerce of child pornography on the Internet, later using other information and communication technologies for the same purposes. In the wake of such practices, attention was also drawn to the relations between online and offline environments, and to sexual offences over the Internet (or mediated by information and communication technologies) vis-à-vis offences outside its environment. It was only at that point in time that the discussions on grooming, or luring, gained strength.

This article reflects on the criminalization of online luring by approaching the recent experience of Canada – one of the first countries of the world, and perhaps the very first one, to enact legislation on the topic. Its starting point is the movement to criminalize online luring, or grooming, in the discussions held by the Canadian Parliament before its 2002 enactment of Section 172.1 of the country's Criminal Code. This research is supplemented by the study of court reports of cases tried for online luring in the province of Ontario between the years 2002 and 2014.

The focus of this article is not luring itself, but the beliefs, values and ideologies of the agenda that surrounds it, which stand as pillars of its criminalization-process. To attain this aim, it tackles the notion of representation. According to Porto (2010: 76) there is a distinction between the reality of violence and its representations. Violence has an objective component, evinced by its figures and statistics, whereas its representations include a subjective component of what individuals and the society take for – what they represent as – violence. The process of criminalizing an act is a unique opportunity to reflect on the issues that surround this process and provide its foundations. In Durkheimian terminology, a sociology of morals takes place when values and morality itself become objects of study. Such is the line of reasoning followed by the present reflection.

What is luring / grooming?

The concept of luring or grooming with the purpose of facilitating the sexual abuse of a child is not new. But before being established as an offence in the Criminal Code of Canada – and also in many other countries –, it was a conceptual tool from the field of psychology. Without using the terms 'luring' or 'grooming',

David Finkelhor – one of the pioneering and most widely recognized scholars to theorize about child sexual abuse – dealt with the topic in a 1984 book by presenting a model of four enabling preconditions for sexual abuse. According to him, a potential offender: 1) needs some motivation to sexually abuse a child; 2) has to overcome internal inhibitions against acting on that motivation; 3) has to overcome external impediments to committing sexual abuse; and 4) has to undermine or overcome a child's possible resistance to the sexual abuse (Finkelhor, 1984: 54). This fourth condition can be seen as the process of child or adolescent luring or grooming that precedes and enables sexual abuse.

For Davidson (2011: 10), grooming “involves a process of socialisation through which an offender seeks to interact with a child (...), possibly sharing their hobbies and interests in an attempt to gain trust in order to prepare them for sexual abuse”. On her turn, McAlinden (2012: 11) has a longer definition of luring or grooming: “1) The use of a variety of manipulative and controlling techniques 2) with a vulnerable subject 3) in a range of interpersonal and social settings 4) in order to establish trust or normalize sexually harmful behavior 5) with the overall aim of facilitating exploitation and/or prohibiting exposure”. A luring / grooming situation can occur in various family or extrafamily settings via approaches such as face-to-face contact, Internet or online activities, street grooming or peer-to-peer grooming (McAlinden, 2012: 28).

The diffusion of modern information and communication tools gave a new impetus to this discussion. The emergence of the Internet as an important and widely disseminated means of communication led to the concern that it could be used to facilitate contacts between adults and potential victims of sexual abuse, such as children and adolescents. Back in 1997, when the massive expansion of the Internet was in its initial days, Durkin pointed out four ways in which it was being improperly used by pedophiles:³ to exchange child pornography, to locate children to molest, to engage in inappropriate sexual communication with children, and to correspond with each other. Other authors drew a causal link between child pornography and grooming / luring. For instance, the typology of child pornography⁴ developed by Krone (2004) includes a distinction of

3 Pedophilia is defined by the International Classification of Diseases (ICD 10) as a disorder of sexual preference in which an individual has “a sexual preference for children, boys or girls or both, usually of prepubertal or early pubertal age”. Despite the fact that Durkin did use the word pedophile, it can be pointed out that even though there are pedophiles that use information and communication technologies to contact children, the problem of online luring is not limited to their group.

4 Krone's typology identifies nine levels, each of them reflecting a higher degree of seriousness than the previous one: browser, private fantasy; trawler; non-secure collector; secure collector; groomer; physical abuser; producer; and distributor.

level between a ‘groomer’ and a ‘physical abuser’. A ‘groomer’, according to this distinction, is someone who develops “an online relationship with one or more children”, while a “physical abuser” is someone who abuses “a child who may have been introduced to the offender online”. In both cases, “pornography may be used to facilitate abuse”.

The early 2000s were marked by the beginning of a criminalization-process of online luring/ grooming. As such situations occurred in the online environment, communicating with a child or adolescent with the objective of committing sexual abuse ceased to be understood as a stage or precondition for sexual abuse, and started to be seen as an independent behavior that not only must be harshly disapproved, but also criminalized. Since then, only a few countries have already enacted specific laws against luring / grooming, including Australia, Canada, the Netherlands, Norway, Sweden, the United Kingdom and Ireland, and the USA.⁵

The Canadian Parliament enacted Section 172.1 of the country’s Criminal Code in 2002 with the following text:

172.1 (1) Every person commits an offence who, by a means of telecommunication, communicates with

- (a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person under subsection 153(1) [sexual exploitation of person with disability], section 155 [incest], 163.1 [child pornography], 170 [parent or guardian procuring sexual activity], 171 [Householder permitting prohibited sexual activity] or 279.011 [trafficking of a person under the age of eighteen years] or subsection 279.02(2) [material benefit — trafficking of person under 18 years], 279.03(2) [withholding or destroying documents — trafficking of person under 18 years], 286.1(2) [obtaining sexual services for consideration from person under 18 years], 286.2(2) [material benefit from sexual services provided by person under 18 years] or 286.3(2) [procuring — person under 18 years];
- (b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under

5 In the Brazilian legislation, the criminalization of luring was established in 2008 based on the changes introduced to the legislation on child pornography (article 241 of the Statute of the Child and Adolescent – ECA in the Brazilian acronym). One of these changes was the inclusion of article 241-D in the Statute, with its provisions on the issue: “Article 241-D: To groom, harass, instigate or constrain a child by any means of communication with the aim of practicing a libidinous act with him or her” (added to Law 11,829 of 2008).

- section 151 [Sexual interference] or 152 [Invitation to sexual touching], subsection 160(3) [Bestiality in presence of or by child] or 173(2) [Exposure] or section 271 [sexual assault], 272 [Sexual assault with a weapon, threats to a third party or causing bodily harm], 273 [aggravated sexual assault] or 280 [Abduction of person under sixteen] with respect to that person; or
- (c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 [Abduction of person under fourteen] with respect to that person.

Therefore, the Canadian legislation prohibits communications between an adult and a child by different information and communication technologies, when they may possibly result in a sexual offence. Such possibility covered by the legislation does not need to be effective, as long as a child or adolescent *believes* in its possibility. Thus, it is a crime for an adult to have an online conversation with a 15-year old adolescent if the adult's goal is: 1) to invite him or her to a sexual encounter;⁶ or 2) if the adult convinces the child or adolescent that the invitation is real, even in the absence of an effective intention to meet him or her. If the adult's intention is to produce child pornography, the prohibition extends to the age of 18 years old. As Suzanne Ost (2009, 90) affirms, by focusing on luring/grooming, the legislation does not criminalize only harmful behaviors, but also behaviors that could *possibly result in harm*: "the harm of grooming was constructed as potential, anticipated harm".

The current Brazilian Criminal Code dates back to the year 1940, when it was enacted in substitution of the previous 1890 code. The 1940 code establishes the crime of *seduction*. Its article 217 prohibits the seduction of maidens between 14 and 18 years old with the purpose of having sexual relations with them and taking advantage of their inexperience or trustfulness. The values substantiating the crime of seduction, which is now considered to be outdated, were: virginity as a value to be upheld until marriage; and maidens as naïve and vulnerable persons, who could be easily deceived by men.

6 The age of consent established by the Canadian legislation was 14 years old until 2007 and rose to 16 years old (see this discussion in the following section of this article). Therefore, sexual relations with persons of less than 16 years old (from kissing and caressing to sexual intercourse) are prohibited. Some exceptions are: 1) 14- or 15-year-old individuals may consent to have a sexual activity if the age difference of one's partner is less than five years and there is no relation of trust, authority, dependency or any other form of exploitation; 2) 12- or 13-year-old individuals may consent to have a sexual activity if the age difference of one's partner is less than two years and there is no relation of trust, authority, dependency or any other form of exploitation. These provisions are part of the text of Article 150.1 of the Canadian Criminal Code.

In their discussions on the crime of seduction, Abreu (2000) and Bessa (1994) approach the role of justice in arranging sexual behaviors and gender roles. Bessa even argues that the justice system played a role of constructing sexualized subjectivities. Despite the distinctions in terms of the values that justify their criminalization, both crimes – seduction and luring/online grooming – point to the process that *precedes* and *enables* a sexual or sexualized relation. Both are justified by the understanding that the victims – maidens in the first case, and children and adolescents in the second – are vulnerable and need to be protected.

The values that substantiate the crime of online luring/grooming will be discussed in the following section.

The need for a new law: representations of online luring/grooming in the Canadian Parliamentary debates and in the media

The Canadian Bill to tackle luring emerged in reaction to a Supreme Court decision on child pornography, the Robin Sharpe case. Sharpe was prosecuted on charge of child pornography after the seizure of a text in his possession, entitled *Sam Paloc's Boyabuse – flogging, fun and fortitude: a collection of Kiddiekind classics*, in addition to a collection of books, manuscripts, stories and photographs allegedly containing child pornography (Akdeniz, 2008: 143). During his criminal proceedings (first trial, appeal and second trial), the Canadian legislation was challenged, and in his first trial, the prohibition of possessing child pornography was deemed unconstitutional. The burning point of his long criminal process was a controversy between the principles of freedom of expression, on the one hand, and child protection, on the other.

The Canadian Parliament reacted to the Sharpe case in 2001 by introducing Bill C-15A as an amendment to the Criminal Code and other criminal laws. Bill C-15A sought to improve the provisions on child pornography, including the criminalization of *access* to child pornography, and of luring. It was enacted by the Parliament in June 2002 (Akdeniz, 2008: 150).

Introducing the debate on the initial draft of Bill C-15A, Senator Landon Pearson (2001: 1609) recalled the Parliament that its provisions were a response to the commitment of the Canadian Government after the elections, to “safeguard children from criminals on the Internet by ensuring that they are protected from those who would prey on their vulnerability”, and to a call from the Minister of Justice to establish the crime of online luring. Despite mentioning some positive aspects of the Internet, Senator Pearson affirmed that:

Most people in Canada would like to prevent the use of the Internet by persons who, from the safety and secrecy of their homes, use the anonymity of it to lure children into situations where they can be sexually exploited (Pearson, 2001: 1609).

According to him, the criminal offence of luring sought to address a problem reported by the police and the media as a *growing phenomenon* (Pearson, 2001: 1609). Parliament Members and experts summoned to testify during the debates agreed that luring was an increasing phenomenon (Grecco, 2015: 140-141).⁷ Statements such as “*with the rapid rise of Internet use, an awful lot of children have been inadvertently getting sucked into a trap by pedophiles*” (Stoffer, 2001: 5353 quoted by Greco, 2015: 136) were heard during the debates.⁸

The concern that the bill could have limited reach and, therefore, more had to be done on behalf of child protection, was expressed in the process of enacting the new law on luring, indicating the need to raise the Canadian age of consent, which was 14 years old (Owen, 2001: 6312; Pearson, 2001: 1609; Toews, 2001: 6314).

Speaking about the need to raise the age of consent, Blaikie (2001: 6316) considered that its justification was not linked to prohibiting sexual relations among the young, but to their possible relations with older persons:

We have this glaring loophole in the law that would permit 40 year olds to exploit people who are 14 or over on the Internet because we do not have a law which is adequate to the circumstances that can now be created on the Internet. We have to do it sensitively because we do not want to criminalize certain behaviours between people, particularly teenagers who are chose in age. There must be a way to look at this issue with sensitivity in mind, but nevertheless laws must be created that would prevent or at least punish that kind of activity.

7 In his PhD thesis, Christopher Grecco (2015) discussed and elaborated on the concept of moral panic using the parliamentary discussions on online luring as a case study. The quotations extracted from his thesis in this article restrict themselves to his substantial descriptions of the parliamentary debates in connection with the enactment of Section 172.1 of the Canadian Criminal Code.

8 The terms ‘pedophilia’ and ‘pedophile’ are frequently used without reference to their medical definitions (see footnote 2 above) thus acquiring a pejorative or compelling meaning. The pedophile-figure is often identified as a ‘bogeyman’ (Silverman; Wilson, 2002) or a contemporary ‘monster’ (Lowenkron, 2013). As this section shows, in Canada, the words ‘pedophile’ and ‘pedophilia’ were used in the legislative discourses. In comparison to Brazil – and this should be seen as a problematization –, such connotations do not seem to be as widely disseminated. In Brazil, the existence of an “anti-pedophilia crusade” to criminalize child luring is acknowledged (Lowenkron, 2015; Rodrigues, 2017). There is no space in this article for this discussion, but I point out to the relevance, in the wake of the studies of Lowenkron and Rodrigues, of deepening the reflection on the legal significance of the attempt to criminalize pedophilia in Brazil.

In 2007, the enactment of Bill C-22: “An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act” raised the Canadian age of consent from 14 to 16 years old. Its hearings favored anecdotal examples in detriment of aggregated empirical evidences. When speaking about the perils involved in relations between adolescents and adults, hearing participants gave examples of 35-, 40- or 55-year-old adults, but they neither discussed data on the effective prevalence of males from this age group in interactions with adolescents, nor presented reports that could allow an assessment of the age of sexual partners (Dauda, 2010: 173).

The enactment of an increase in the age of consent from 14 to 16 years old expanded the scope of the legislation about online luring. In addition to it, the minimum and maximum terms of imprisonment for cases of online luring were also increased.⁹ In this regard, the study of the implicit values embedded in the criminalization of luring becomes even more relevant: for if the attention is being directed to the representation of online luring, and, therefore, to what a society considers to be a violence, the enactment of these Bills – in their ability to intensify the punishment or the scope of Article 172.1 – indicates a strong social rejection of the idea that the Internet can be used for seducing children and adolescents. Considered as representations of luring, of possible victims (children) and possible offenders, the statements and concerns expressed during the Canadian parliamentary debates evinced the anxieties and social values at stake, which stood behind as justifications of the need for a new law.

Similar claims – and similar representations – were expressed in the Canadian media. According to Greco and Corriveau (2014), between 1998 and 2008, online luring was depicted in three of the most widely read newspapers of Toronto as a constant threat, similar to a catastrophe that should be faced by society. The idea that pedophiles can use the Internet to breach into the sacred space of one’s household was repeatedly mentioned in the newspapers. Three features of information and communication technologies were pointed as a rationale for the perceptible increase of this new threat, which could serve either to enable or to aggravate the problem of child sexual abuse: 1) the fact that the Internet can be used as a means of contact by an incalculable number of people, and as a platform for accessing different types of contents and materials; 2) the absence of geographic boundaries, leading to law enforcement difficulties and enabling increased accessibility; and 3) the Internet could favor

9 Such increase in the terms of punishment is a result of Bill C-277, “An Act to amend the Criminal Code (luring a child)”, which received parliamentary assent in 2007.

an anonymity-atmosphere among its users and facilitate the commission of offences in its virtual environment.

The moral panic theory emerged in the late 1960s and early 1970s, and its two leading authors were Stanley Cohen ([1972] 2011) and Jock Young (1971). In brief and simple terms, moral panic is an exaggerated reaction to an either sporadic or systematic event, which takes up the focus traditionally aimed at the deviant-figure and his or her traits, and redirects its analysis to the resulting reaction. The media plays a central role in this process.

Following the discussions on moral panic, Roger N. Lancaster (2011) addressed sexual panic. The notion of sexual panic is linked to the Punitive State – the notion that criminality can be solved by more or harsher punishments, in detriment of alternative courses of action.¹⁰ Greco and Corriveau (2014) raised a hypothesis that the luring representations expressed by Canadian newspapers contributed to a state of moral panic leading to legislative interventions – in other words, a “legislative panic”. Here, the obvious difficulty is the inability to derive an effective correlation between the news on the newspapers and the actual legislative interventions. For this reason, this discussion cannot go beyond the hypothetical level.

Moving from the discussion that seeks either to prove or examine the effective relations between luring representations in the media and the enactment of laws in connection with it, let us now return to the explicit and implicit values that give meaning to the discussions on luring and, therefore, on morality. For Young (2011: 247), moral panic is “a moral conflict between authority and subculture”. On his turn, Garland (2008: 11) remembers two essential elements of Cohen’s definition of moral panic that deserve to be mentioned: the moral dimension of social reactions and the notion that a deviant behavior at stake is somehow symptomatic

Gayle Rubin (1984) identifies moral panic situations as “political moments” of sex that enable redesigning the acceptable limits, policies and laws that effectively rule a particular practice. And the speed with which fits of moral panic succeed each other in the contemporary society, as Miskolci (2007, 114-115) points out, is a consequence of the constant need to re-discuss and renegotiate the moral limits of a collectivity, which can no longer be reduced to a set of simple rules laid down by religious or political leaders.

¹⁰ An excellent case study of the consequences of moral panic is Critcher, 2002, which analyzes not only the bill dubbed ‘Sarah’s Law’, but also the reemergence of vigilant movements after the murder of 9-year-old Sarah Payne in England in July 2000.

For Garland (2008), moral panic can be linked both to specific cases¹¹ and wider series of cases¹² in response to social problems that can be either serious, trivial or even the fruit of imagination. Citing the example of child abuse, Garland affirms that moral panic can serve to attract attention and take an issue to the political agenda. However, the very seriousness of the problem would suffice to justify subsequent social reactions: “as Ian Hacking has observed, [it] is a social problem that has been highlighted, conceptualized and addressed in recent decades. The cumulative social and governmental reactions to perceived child abuse have created, in our societies, a whole new regime of suspicion, supervision and control” (Garland, 2008: 16).

In this text, Garland’s discussion about online luring does not restrict itself to a specific case and approaches a broad and serious social problem. Following his reasoning, I understand that a particular level of moral panic has contributed to take the theme to the political agenda and to the enactment of the new law. Yet, an underlying issue must be brought to attention: the enactment of legal provisions in response to online luring, applicable to minors, in addition to an increase in the age of consent, strongly indicate that the criminalization of online luring was based on a reassessment of moral limits in the sexuality of children and adolescents. I will return to this point in the final part of this text. The next lines will discuss the representations of luring found in Canadian court proceedings.

Children are innocent and must be protected – Representations in criminal court reports¹³

In 2014, I carried out a research on court decisions related to luring in the Canadian province of Ontario. The legal databases LexisNexis and Westlaw¹⁴ provided me access to 69 judged cases between 2002 (the year when luring was

11 In Brazil, the best known case of moral panic related to sex abuse was the Escola Base case in 1994. This is one of the illustrative cases of moral panic analyzed by Rodrigues (2017). But Rodrigues’ text goes beyond to discuss the fabrication of contemporary subjectivities in the light of Michel Foucault’s work and pedophilia narratives. Another well-known case is that of McMartin Preschool in Manhattan Beach, Los Angeles, linked to the alleged ritual abuse of children. At least three books were written about this case, with quite distinct interpretations and analyses: Nathan and Snedeker (1995); Cheit (2014); and Beck (2015).

12 For a discussion on possible broad situations of moral panic, see Jenkins (2001 and 2009). In these interesting texts, Jenkins reconsiders his initial position about the occurrence of moral panic in relation to child pornography on the Internet, to the point of affirming that this is one of the themes that “failed” to ignite moral panic.

13 This article only covers representations of the victims, of their offenders and of the crime of luring. It doesn’t covers the ‘histories’ of what occurred in the cases. A contribution with this focus is still to be written. Some remarks in this regard can be found in Landini & Zeytounlian (2018).

14 The LexisNexis and Westlaw databases contain the largest collections of Canadian criminal court cases and are, therefore, key instruments for obtaining access to information on the Canadian legal system.

included in the Criminal Code) and 2014 (the year when the data was collected), which were then gathered into a database on the NVivo platform.

Court Reports are summarized proceedings that enable access to legal data from court cases. The overall quality of the information of these reports is not homogeneous, but they give essential data such as the descriptions of accused persons, complainant(s)¹⁵ and luring lawsuits, as well as information about the circumstances of offences. Court Reports also give access to the judicial decisions and the rationale of their justifications.

It is unquestionable that court reports must be assessed in a careful way, on account of their nature and their limits. Court reports – and even criminal case transcripts – cannot be taken as unbiased narratives about the empirical reality. Defense lawyers and prosecutors, in addition to case complainant(s), accused persons and witnesses, express distinct interpretations of one and the same fact, which lead to contradictory views in relation to guilt, effective actions by the involved persons, different justifications for particular deeds, and so on.

While paying attention to some quantitative figures, my analysis of these materials was primarily qualitative, with a consistent reading of the available documents and a focus on the judges' views about online luring and their victims and offenders in each case. Following the discussions described in the previous sections, these reports served as sources for identifying distinct representations of luring. In other words, they served as sources of insight and access to the values embedded in the way each case was understood.

Before I proceed to these representations, the following lines present an overview of the studied cases and some quantitative data to contextualize their empirical scene.¹⁶

Of the 69 studied cases,¹⁷ 36 cases were linked to sting operations, while the other 33 cases had a child or adolescent complainant. In sting operations, a police officer assumes the role of a child or adolescent in order to identify and

15 The studied judicial reports use the word *complainant* in reference to the child or adolescent of a case. I use the words *complainant* and *plaintiff* in reference to a child or adolescent allegedly victimized by luring, thus avoiding the expression 'victim'. This terminological preference is due to two reasons: first, because accused persons are sometimes acquitted of their charges and the word 'victim' would not be appropriate in their cases; and second, because some plaintiffs or complainants refuse to accept the status of 'victims' of luring. This second element will be introduced to the discussion in the final section of this article.

16 Despite the fact that LexisNexis and Westlaw are the two largest databases for criminal case research, they do not provide access to all case reports. Therefore, it is not my intention to present this scenario as representative of the total number of online crimes of luring, and not even as representative of the totality of court decisions related to luring in Canada or in Ontario.

17 A "case", in this sense, includes all court decisions in connection with one and the same possible crime. Thus, crimes with decisions in more than one instance are counted as individual cases.

attract possible criminals.¹⁸ As to gender, 33 sting operation officers assumed a female identity, and only three assumed a male identity. In 24 of the 36 sting operation cases, officers pretended to be younger than 14 years old; and in 12 cases, they pretended to be either 14 or 15 years old.

All individuals reported in the course of these police operations were males. Regarding their age, four of them were 19-30 years old; ten were 31-40 years old; nine were 41-50 years old; four were 51-60 years old; and one was 61-70 years old. The information on age was not available in eight cases.

In most of the 33 cases in which a child or adolescent was an effective complainant,¹⁹ such child or adolescent was a female (28 of the 33 cases). In the other four, male complainant cases, the accused individuals were also males. The age of complainants ranged from 12 to 17 years old, and most of them were 12-13 years old (14 of the 33 cases).

Almost all accused persons were males (32 of the 33 cases); the only exception was a 17-year old girl charged for constraining other girls to perform sex work. The accused persons' ages ranged from 17 to 70 years old, and the age group from 19 to 25 years old was the most frequent (eight of the 33 cases).

Another relevant datum regards the relation between online and offline contacts. Of the 33 cases with a complainant child or adolescent, eight referred to relations limited to the online environment, while 13 referred to relations in which accused and complainant first met online and continued their relationship offline (internet-initiated sexual offences), and 12 reported cases in which accused and complainant already knew each other personally and used the online medium to continue or intensify their communications.

Three key discussions have repeatedly emerged from the bibliographical review about online luring: a) information and communication technologies (ICTs) facilitate the encounters among persons who probably would not otherwise meet each other; b) ICTs also open the door to the possibility of creating fictitious characters during one's interactions; and c) ICTs lead to the possibility of feeling free from social constraints and acting in different ways from what people would otherwise do in their interplay (Alexy; Burgess; Baker, 2005; Briggs; Simon; Simonsen, 2011; Lamb, 1998; Malesky Jr., 2007; Martellozzo, 2011; Shannon, 2008; Taylor, 2011; Quayle; Taylor, 2001; Davidson; Gottschalk, 2011).

18 These numbers alone are relevant indicators of a *concern* of the police with possible situations of online luring involving children and adolescents. Sting operations are discussed in the following articles, among others: Briggs, Simon & Simonsen (2011); Chin (2006); Anglin (2002); Fulda (2002); Mitchell, Wolak & Finkelhor (2005).

19 Age and gender were the only individual characteristics that could be tabulated. Characteristics such as race and social class are not mentioned by the judicial reports.

However, it is important to point out that of the 33 court reports of lawsuits filed by children or adolescent complainants, only three accused persons had created a fictitious character, and only one adult introduced himself as someone younger than 18 years old. Four adults lied about their age, but they still introduced themselves as individuals of legal age. Another adult lied about his age, but revealed it to the complainant during the period of their relationship. Nine of the 33 persons accused of luring lied about their age during their contact or relationship with a child or adolescent. A significant number of complainants also lied about their age. Eight complainants either hid that they had not yet reached the age of consent, or introduced themselves as being older than they were.

Altogether, Ontario's criminal court decisions related to online luring reveal a diversity of elements and distinctions linked to: the age of the child or adolescent, and age differences between the involved children/adolescents and adults; the act of lying or not by both sides; the 'setting' – online or online/offline – in which the relationship occurred; and the circumstances – online or in person – in which the two sides first met. Beyond these distinctions, a consensual understanding is expressed – and here I return to the discussion on social representations – that luring is an extremely serious crime affecting not only the complainant children or adolescents who file a lawsuit, but all children and the society as a whole. The following excerpts from some court reports attest to this understanding:²⁰

The offence of internet luring is an offence of the modern age – born of the modern reality of the internet, where an accused can counsel and entice children to engage in the prohibited activity within the sanctity of his or her own home (R. v. Dobson, para 3).

The charge of luring is an offence that harms not just the child victim, but society at large. In an age when sexual predators roam the internet for vulnerable victims, parents have to be extra vigilant in monitoring their children's computer use and teaching them internet safety and to be cautious. This sense of fear and the reasons to be fearful are unhealthy, though necessary in society to instill in children the recognition of the need for appropriate personal safeguards on the internet. Every parent dreads that what Mr. X was doing and attempted to do to 12-year-old "Y" will happen to their child (R. v. Bergeron, para 27).

20 The quoted excerpts are from both types of cases, that is, cases involving sting operations and cases in which the lawsuit was filed by a claimant child or adolescent.

Section 718 of the Canadian Criminal Code establishes that:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

The most frequently cited of these objectives in the studied reports are denunciation and deterrence. Denunciation as the starting point of a judgement is already a way of expressing the social disapproval of a committed crime. It “is less about placing blame on the particular offender and more about defining the values and moral code that we expect people in society to adhere to” (Gardner; James, 2018: 2A). On its turn, an underlying assumption of deterrence is that “the threat or example of punishment will discourage people from committing crime” (Gardner; James, 2018: 2B). Deterrence can be seen to take place in two levels: a general level and a specific level, in the sense that the recourse to severe sentences is intended to discourage society in general (possible offenders) from committing a particular offence, while preventing an offender from repeating a crime (Gardner; James, 2018: 2B).

These principles clearly appear in most of the studied cases, revealing the attempt of Canadian judges to emphasize their disapproval of online luring:

A message must be sent to others who might consider actions similar to what has been undertaken by this accused (R. v. Blanchard, para 40).

Those adults who seek to exploit impressionable and immature young women to satisfy their sexual urges need to be sent a message that the courts will treat this conduct harshly (R. v. Johnston, 2009, para 83).

(...) child luring over the Internet is a very serious matter. It demands strong denunciation. The community must be assured that the administration of justice will act strongly to protect children and deal harshly with those who do not respect the norm. Those who would use the Internet to reach children for purposes of the targeted offences must know that they will be dealt with harshly. (R. v. Brown, para 116).

The principles of denunciation and deterrence are important for the purposes of this study, as they show the weight ascribed by criminal justice to the protection of children and adolescents. In other words, they reveal the moral value of the protection of children and adolescents from any sexual offence. This value is largely expressed in the studied criminal cases, and judges do not hesitate to make it clear as they pass or justify their sentences:

A sacred value of virtually every society on earth is the need to protect the innocence of our children. This reflects a worldwide recognition that children are exceptionally vulnerable to transgressions by others who are older and who live their lives without scruple (R. v. Bedford, 2008, para 2).

The victims were vulnerable because they were children. Children are to be protected and nurtured. Interfering with a child or her family is a serious matter (R. v. Brown, 2006, para 97).

An important aspect to be highlighted is that in some cases, the right or need to protect a child or adolescent is recognized in spite of the interpretation of a particular judge as to whether he or she actively participated in a sexual or sexualized relation. In these cases, one may refer to a *statutory victim* (Wolak; Finkelhor; Mitchell, 2004), defined as a child or adolescent who actively participated in a relation without having reached the legal age of consent.

MN was not a total innocent. In fact he was far from it. He was however still a young man who was entitled to the protection of the law and of the court. I note that his refusal to participate in the prosecution of Mr. Bridgeman included a refusal to provide a Victim Impact Statement. I accept that in the short term he has suffered as much from being “outed” with regard to his involvement in sexual fetishes with an older man as from being a victim of exploitation by Mr. W. That does not however take away from the fact that he was a victim of such exploitation (R. v. Bridgeman, 2011, para 105-106).²¹

21 This is the case of a 52-year-old man previously convicted for sexual crimes who first met a 14-year-old boy in an Internet chat room. They subsequently met each other in person a few times and had sexual relations. According to the court reports, the accused believed the boy was 17 years old. The text of Section 172.1 of the Canadian Criminal Code establishes that it is prohibited to communicate with “a person who is, or who the accused believes is”, under the ages of 18, 16 or 14 years old for sexual purposes. In other words, one cannot be declared guilty if he or she *believed* that the person with whom he or she communicated for sexual purposes was 17 years old, since the age of consent is 16 years old. The adult of this case was acquitted from the charge of luring with sexual abuse purposes. However, since their sexual relation was filmed, and child pornography is prohibited under the age of 18, he was convicted for the crime of luring with child pornography purposes.

“H. and A. were both willing participants in the sexual activity. However, since both were under sixteen years of age at the relevant time, they could not consent to sexual activity (R. v. Saliba, para 18).²²

In short: despite the individual circumstances of each of the 69 studied criminal reports, the overall messages they convey are: luring is a very serious crime; children and adolescents are innocent and vulnerable, and, for this reason, they must be protected in their online interactions with adults. These messages are in line with the rationale of the bill proposed by the Parliament and its discussions, as well as with the news published by the printed newspapers. To state that an adolescent is a victim of luring even if he or she actively participates in the process only reinforces the understanding that children and adolescents are inherently vulnerable and must be protected, despite their own actions or desires.

Final remarks

Katie.com is an autobiographical account written by Katherine Tarbox (published in 2000). In 1995, when Katherine was only 13 years old, she met a man in an Internet chat room and fell in love with him. At first, he told her he was 23 years old; later on, he said he was 31 years old. In reality, he was 41 years old. They communicated over the Internet for six months, until she agreed to meet him in person. She lived with her family in the state of Connecticut and he lived in California. A trip to Texas for a swimming competition – she was seen as a gifted swimmer – became their opportunity to meet. He took a flight to Dallas and booked a room at the same hotel where her swimming team was staying. At night, she went to his bedroom.

This story occurred in 1995, when the Internet was still in its first years and online chat rooms were starting to be used for youth socialization. The man who communicated with Katie became the first person to be prosecuted for pedophilia on the Internet. In addition to writing her autobiographical book, Katie Tarbox became a children's rights activist and a guest speaker at schools to talk to children about the perils and risks of the Internet.

²² This is the case of a 38-year-old man accused of communicating with two girls online and meeting them in person to have sexual relations. The man was found to possess child pornography items described as particularly sordid and involving the victimization of many small children. The two cases have similar stories. In this case, the adult first met each of the two girls on the Internet and proposed a personal meeting. He soon became involved in a relationship with each of them. His relationship with one of the girls lasted nine months. After their break up, he began a relationship with the other girl that lasted two months. The two girls told him they were 18, but their real ages were 14 and 15 years old. The case judge affirmed that both girls were active participants in the relationship, although they could not freely consent to have sexual relations, since they were less than 16 years old.

In her book, she describes how difficult it was for her to construct and accept the status of victim – a victim of online luring and seduction by a man who intended to abuse her. She initially thought she knew what she was doing and saw herself as an active participant in their relationship, as a girl who fell in love and wanted to build an amorous relation with someone. Katherine states how painful was the process of accepting and understanding that, contrary to her expectations, she had been lured into abuse.

In line with her own process and adding to it, other people belonging to her social group also changed their viewpoints about what occurred to – or against – her. At first, relatives, friends and members of the community censured her for the events and did not see her as a victim. Even though she was 13 years old, she was blamed for having socialized with her offender through the Internet, and for going to his hotel room at night. But after being initially seen as a *slut*, she started being seen as *the girl who got molested*.

The year when these events took place, 1995, is significant. With the mass diffusion of the Internet, online sex crimes started being more frequently debated and reported by the mass media, raising new information and diverse perspectives. As the previous sections showed, in spite of its positive achievements, the Internet was and is still seen as a ‘black hole’ or a lawless environment without borders, where children and adolescents could easily become victims of unscrupulous adults and pedophiles willing to take advantage of anonymity to seduce them and have them participate in pornographic photos and footages – or even worse, to have physical encounters with them. This is the third level of a significant social process in which Internet communications are criminalized as online luring and a ‘child’ legally becomes a victim.

Eliacheff and Larivière (2012: 27) point out that the *victim* is a contemporary figure and not much was said about it before the 1980s (see also Sarti, 2011). Any person might at some point of his or her life become a victim and is free to gather around an identity and claim the victim *status*. However, some people are said to be victims as a result of their intrinsic conditions. Children and adolescents are one of such groups. Considering their recognition as human beings with rights and a voice, it is a paradox that they are seen today as “vulnerable as they never were before, and potential victims of all types of dangers, due to the simple fact that they are children” (Eliacheff; Larivière, 2012: 91).

For Norbert Elias (2000), long-term social development is a largely unplanned process. This means it would be incorrect to attempt to explain long-term social processes on account of intentional actions and plans, even though intentional actions and plans do play a role in blind social processes. For Elias

(1997: 360), social structures and processes are the results of a complex fabric of actions and plans pursued by several individuals, but this process does not derive from any particular action or plan. Yet, in the course of history, some individuals and groups intentionally try to transform the behavior of others, usually towards “more civilized” models. When this effort involves a more or less concerted campaign, one may speak about a civilization offensive (Spiereburg, 2001: 98).

As a process, the criminalization of online luring can be seen as a civilization offensive, that is, as a campaign with the aim of controlling online relations – specifically, relations among adults and children – at a more acceptable level. Without a doubt, this has not been an isolated effort, as there are other civilization offensives acting in the same direction that promote gender equality, while others promote protection to children and adolescents. In previous centuries, the human sensitiveness to sexual violence increased immensely (Vigarello, 1998; Landini, 2005). As Vigarello clearly states at the end of his book, sexual violence against children became the peculiar violence of our time. Not because it increased in quantitative terms, but because the human eyes are turned towards it. All forms of sexual violence against children and adolescents have become unacceptable and intolerable to us in the 21st century.

The criminalization of some actions and behaviors is part of this process. The extensive use of the Internet and other information and communication technologies brought to the public attention two social problems that were already known in the past, but until recently did not raise much concern. Child pornography was the first of these problems to be globally discussed and nationally criminalized, as most countries approved laws relating to it in the late 1980s and early 1990s (Landini, 2004a-b). The criminalization of online luring, in turn, emerged soon after – in the late 1990s and early 2000s –, even though laws in this regard have not (yet) been enacted by a large number of countries. In any case, the fact that luring has been dealt with by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse²³ (2007), and by recommendations of the *United Nations Special Rappor-*

23 Article 23 – Solicitation of children for sexual purposes – “Each Party shall take the necessary legislative or other measures to criminalize the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting”. <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1d8>>, Accessed in April 2017.

teur on the sale of children, child prostitution and child pornography, urging UN Member States to adopt laws against the crime of Internet luring or grooming, is indicative of this motivation.

Speaking about changes in the relationship between parents and children, Elias (2012) affirms that the 'discovery of the child'²⁴ and the 'International Year of the Child'²⁵ are *signs* of a change in the balance between parents and children towards a more equitable distribution of power than in previous epochs. Similarly, the criminalization of an act now established by the Criminal Code as online luring evinces an increase in the social sensitiveness to sexual violence and, particularly, sexual violence against children and adolescents.²⁶ Such increase is, in Elias' terms, one of the drives of the current social development process (or civilizing process).

I resort to the concept of representation as a way of identifying the moral values that substantiate this process of increased sensitiveness to sexual violence against children and adolescents – a longer process with a wider scope than the criminalization of luring, and one which includes it. An effective effort has been made in order to criminalize luring, and it is for this precise reason that I refer to this process as a civilization offensive.

But it is important to recognize that such process or offensive has not been disconnected from other, broader processes. It is founded on values expressed in some key representations of the media and in statements of politicians and members of the Judiciary, in which children and adolescents are depicted as innocent and vulnerable persons in acute need of protection; adults and, particularly, pedophiles, are seen as potentially dangerous; and the Internet is seen as a space of precarious surveillance, which allows the manipulation of innocent and vulnerable children and adolescents by unscrupulous adults.

Some evidences point towards a re-discussion of moral aspects linked to the sexuality of children and adolescents: the increase in the age of consent just a few years after the enactment of the law on online luring; the percentage of sting operations vis-à-vis the number of lawsuits for crimes with a real offender and a real victim; and the fact that the discussion on legislation is a way of denouncing and deterring crimes against the inherent innocence and vulnerability of children and adolescents.

Now returning to the clarification from the beginning of this text: luring is understood as a crime in which harm is construed as a potential harm. The

24 As discussed by Ariès (1981).

25 Proclaimed and celebrated by the United Nations in 1979.

26 I refer at this point to the discussion of Vigarello (1998), which was already mentioned above.

criminalization of online luring set out to prevent the possibility of an effective violence – and maybe one could say it had the aim of preventing crimes such as sexual abuse and child pornography. Issuing the verdict of one of the first cases of luring to reach the Supreme Court, in 2009, Canadian Justice Morris J. Fish emphasized this issue. According to him, Section 172.1 of the Canadian Criminal Code:

(...) creates an incipient or “inchoate” offence, that is, a preparatory crime that captures otherwise legal conduct meant to culminate in the commission of a completed crime. It criminalizes conduct that *precedes* the commission of the sexual offences to which it refers, and even an attempt to commit them. Nor, indeed, must the offender meet or intend to meet the victim with a view to committing any of the specified secondary offences. This is in keeping with Parliament’s objective to close the cyberspace door before the predator gets in to prey (R. v. Legare, 2009, at para 25, italics added).

In addition to their attempt to translate the aim of the legislation on luring, the words “close the cyberspace door before the predator gets in to prey”, expressed by a Supreme Court Justice, are also compelling. Beyond the fact that luring can indeed harm a child or adolescent – causing real harm, and not only potential –, Justice Fish’ statement is so stereotyped that it becomes frightening. And his solution – a radical and turgid solution – of criminalizing communications to prevent sexual violence and image abuses is also frightening. The fact that over half of the cases tried in Ontario over a period of 12 years resulted from sting operations, in which an officer pretended to be a child or adolescent in the online environment to ‘be seduced’ by a predator strengthens my reasoning: the focus of these operations is to identify potential sex abusers and take them out of circulation before they “get into prey”, i.e., before the commission of a crime.

In two other occasions (Landini, 2004a-b), I discussed some complexities linked to the circulation of child pornography on the Internet. I now return to this discussion with a focus on online luring. The problem of child pornography on the Internet encompasses an issue that is much more complex than pedophilia. And its complexity is precisely a result of the fact that it involves a cultural value: the rise of adolescent sexuality. Both at the social and cultural levels, people often ignore the fact that while, on the one hand, the rights of children and adolescents are advancing and society is becoming more aware of the need to protect them, on the other, adolescent sexuality is being increasingly appreciated. In other words, while the themes of pedophilia and sexual violence are more and more understood as serious social problems, the public image of

childhood and adolescence is also being sexualized. The young body is at once increasingly appreciated and increasingly prohibited (Landini, 2004a).

There is an additional issue related to online luring that makes it an even more complex equation. In this regard, I call attention to the importance of expanding the discussion about the online dynamics and the interactions among its participants – a largely ignored issue during the process that criminalized luring. The Internet is an environment frequently used by children and adolescents for social purposes, including relationships that are sexual or ‘sexualized’ by nature, with known and unknown individuals, and sometimes even with adults. Even without reaching an actual experience of sexual intercourse, such relationships are linked to a myriad of related issues (such as the exchange of photos, masturbation in front of a webcam, or an online sex relation) that convert sociability into a form of violence in the eyes of the law. To ignore this scene and insist in constructing and reconstructing the image of children and adolescents as vulnerable individuals in need of protection, and of the adult individual as a potential offender, is a senseless simplification.

The problem of luring does exist and is extremely serious in many cases. But recourse to stereotypes as the foundations that substantiate the law is a step with a quite limited reach and effectiveness. As such, it clearly shows that the legislation not only regards the prevention and punishment of violence, but is also a way to re-discussing the moral limits involving the sexuality of children and adolescents.

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