Should virtual cybercrime be brought under the scope of criminal law?

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Abstract

This paper will be about a highly-debated issue in the realm of cyberlaw and cyberethics: virtual cybercrime. Virtual cybercrime is a putative crime that involves the use of a specific aspect of computers or computer networks, namely computer simulation. It is not commonly prohibited yet. Virtual cybercrime consists of (1) a computer-simulated criminal human act or (2) a criminal human act that is defined over a computer-simulated object or person. The first is a crime that is committed through an avatar within the computer-simulated world of, for instance, a computer game, such as the virtual rape that Julian Dibbel described in his much-debated 1993 paper. The production, distribution or possession of virtual child pornography, which consists of computer-simulated images instead of photographs or film material of real children, is an example of the second. This paper aims to answer the question whether or not virtual cybercrime should be brought under the scope of criminal law. In order to answer this question I will, first of all, make use of social ontology as developed by the American philosopher Searle. Drawing from Searle I will establish whether or not virtual cybercrime can be considered part of reality. Relying on the principle of the criminal law as last resort I will then examine whether it is justified to apply the criminal law. Finally, the conclusion whether or not it is justified to apply the criminal law to virtual cybercrime will be based on moral grounds, such as J.S. Mill's harm principle.

References

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