

Cyber-Sexual Harassment

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Danielle Citron, [*Hate Crimes in Cyberspace*](#), Harvard University Press (2014).

[Danielle Citron](#)'s *Hate Crimes in Cyberspace* is a breakthrough book. It has been compared, and with good reason, to Catherine MacKinnon's [Sexual Harassment of Working Women](#). The book makes three major contributions. All are central to furthering the equality of women and men both in cyberspace and elsewhere.

First, Citron convincingly catalogues the range of harms, and their profundity, done to many women and some men by the sexual threats, the defamation, the revenge pornography, the stalking, and the sexual harassment and abuse, all of which is facilitated by the internet. Women who blog on virtually any topic, certainly on feminist or sexuality sites but also on technical software or engineering sites, or who simply have a presence in cyberspace in any of the various forms the medium permits, can be and frequently are targeted for extreme forms of vitriolic and sexualized assaults, not just from a few isolated and psychopathological bad apples, but by large groups of linked commentators, who quite intentionally and explicitly spread the cyber-hate through organized, networked technologies, and to virtually all corners of the cyberspace. The assaults threaten the victim and sometimes her family members—particularly younger sisters—with sexual injury, rape, dismemberment and murder, and are sometimes accompanied by personal information such as place of employment and addresses. The defamation comes in the form of claims that the victim is incompetent at her work or in her career, hyper-sexualized (e.g., that she enjoys sex with strangers, with home addresses included), or dishonest or fraudulent, which are spread widely, and are intended to professionally injure and humiliate the victim in her workplace or school, and prevent her advancement or hiring in her field. “Revenge pornography” refers to the publication for public consumption and without the victim’s permission of nude photos or videos which may have been made with the victim’s knowledge, but are then widely distributed for the express purpose of exacting revenge, usually because of a break-up. Stalking is in the form of constant harassment and surveillance on line, with the threat of it spilling over into offline stalking as well. The harassment and abuse take all of these forms as well as others: chat rooms created and dedicated to the destruction of the victim’s reputation, or to the expression of hate and sexual insults, or to the mounting of threats intended to intimidate or terrorize.

The harms occasioned by this online conduct are sadly predictable. First, and most concretely, or demonstrably, are the harms to reputation, vastly magnified by the reach of the internet into personal and professional life. A young woman who has been targeted in this way will find it difficult to procure a job or a promotion, or simply to garner respect: the sexual claims, pictures, and videos will be the first page of hits, when her name is Googled by potential employers, colleagues or school administrators. Doing some sort of Google search, or at least assessing a potential employee’s or student’s impact and stature in social and professional online media, are increasingly common practices by HR departments and hiring committees, as well as admissions departments in graduate or professional schools. High-performing students or applicants do not get the jobs, fellowships, or internships for which they would otherwise qualify, causing significant damage to the launching or furtherance of their careers. More pervasive, and in some ways more damaging, however, victims of cyber-harassment are simply terrorized. Women who have been attacked online with threats of assault, rape and murder, particularly when identifying locating information is attached, are not safe in their homes, neighborhoods and

workplaces. Some re-locate, pulling their own children out of schools or, if they are themselves still children, their parents are forced to make the move to another state, thus interrupting their own lives and jobs, in order to try to calm the fear instilled by the online assaults. Emotional and psychic harms are pervasive and penetrating: a woman or girl is robbed of her self-possession, her security in her own body, her self-esteem, her peace of mind, and essentially her comfort in her world; she is alienated from her own sexuality, which becomes a source of anxiety and threat; she feels her future slipping away and out of her control; she loses her sense of oneness with other human beings, either in community, neighborhood, workplace, as the “other” becomes a source of threat and harm rather than nurturance and support. She is cast apart, and then she casts herself apart, from a mutually helpful community of reciprocity when she becomes a target and a victim. Her identity in a place she values—cyberspace, and the communities of which she is a part in that world—shifts from whatever she was—student, lawyer, software engineer, technician, teacher, wife, lover, blogger, friend—to what she is repeatedly called: cunt, slut, whore, bitch, liar, fraud, incompetent, stupid. The economic and professional or vocation harms are equally profound. She may lose clients and customers and ultimately curtail her career, if her business has been ruined by the online defamation and harassment. She can’t find a job, or seek a promotion, if she can’t risk her current or potential employers doing a Google search. She lives in fear of discovery. And lastly, her civic participation—including her freedom of speech—is drastically curtailed. She shuts down her blog. She closes her social network accounts. She quits commenting or guest-appearing on blogs of others. She stops making public appearances. She cannot risk the danger, or take the harassment. So she tries to close down her public and cyber persona. She retreats: out of cyberspace completely, and out of the public sphere likewise, all in the hope, usually frustrated, that such a retreat will end the abuse, threats, and harassment. She tries to regain her private life, in other words, by making it smaller: by sacrificing her participation in whatever public and cyber worlds in which she had once found a welcoming home. All of this, Citron successfully shows, both through case studies and a very careful parsing of the available statistical data.

The second contribution, and the bulk of the book—the middle third to half—is a legal analysis of these harms. Citron begins by comparing the current status quo regarding our understanding of gendered harms in cyberspace with the legal environment surrounding domestic violence and sexual harassment thirty or twenty years ago. Then, as now, sexual harms up to and including physical violence suffered by women were both widely denied, and, where denial couldn’t be effective, simply trivialized, and where they couldn’t be trivialized, simply outweighed by constitutional concerns of greater magnitude on the side of non-regulation. Sexual harassment on the job was regarded as part of the rough and tumble that women would have to endure in exchange for their hubris in assuming a role in the public world of work, or alternatively as a part of our much valued free speech against our employers or academic institutions. Domestic violence was regarded as, alternatively, a man’s prerogative, a woman’s shame, the woman’s fault, the way of the world, or the necessary price all parties pay for a much to be desired privacy, and marital rape was simply an oxymoron—consent to sex within marriage having been rendered at the altar, a religious duty or simply part of the marriage compact. All of these modes of dismissing gendered harms is echoed in today’s legal climate surrounding cyber sexual harassment. Cyber-harassment is, first, relentlessly cast as the victim’s fault by the perpetrators themselves: fully deserved punishment for some perceived slight, whether the “slight” is breaking off a relationship, not being available for sex, or simply speaking one’s mind. The abuse itself is then routinely dismissed by what passes for legal analysis by libertarian commentators as the relatively trivial cost of the much-to-be-desired wild-westiness of the unregulated internet, or alternatively the perhaps regrettable but nevertheless unavoidable price of the free speech rights we all enjoy. Meanwhile the victims are dismissed as whiners, or thin-skinned, or overly sensitive, as incapable of manning up to the slings and errors that go with the territory on the internet, as too dull or humorless to take a joke, as too prone to hysterics to recognize harmless or pathetic barbs when they see them, and as incapable of understanding the importance of First Amendment values. As Citron says, we have been here before.

Citron rehearses the parallel history of the treatment of domestic violence and sexual harassment, however, to make a constructive and re-constructive point, not just a descriptive one: the national conversation was profoundly altered by legal campaigns to construe domestic violence, marital rape, and sexual harassment as harms, as crimes, and as violations of women's civil rights. Those campaigns of course are ongoing and the work is incomplete, but it is undeniable that the conversation has shifted. Domestic violence may be under-policed and under-punished by the NFL as well as by prosecutors, but it is no joke, as it was for decades; marital rape is under-prosecuted, but it is nevertheless a crime, whereas before 1970 or thereabouts it was not, and sexual harassment law may be riddled with problems but it exists, and there's less sexual harassment because of it. The same, Citron argues, could be and should be happening here. We need to massively shift the conversation, and law will need to play an outsized role—perhaps the major role—in doing so. With concentrated advocacy in courts, and legal and political movements in state legislatures and Congress, the legal construction of this conduct can change: cyber hate is not funny, trivial, or harmless, and it is not protected speech under the First Amendment. Much of the behavior she describes, of course, is already criminal and most of it is at least tortious. Assaults and threats in cyberspace that are intended to put a victim in fear and which in fact do so are already crimes, no less than if those threats were simply published in a newspaper; cyber-stalking is already criminalized in most states; the intentional dissemination of false statements that interfere with someone's career advancement is defamatory and even libelous per se, as are claims of hyper-sexuality, and almost all of the behavior Citron catalogues constitute examples of the torts of assault, intentional infliction of emotional distress and invasions of privacy. Some of it, furthermore, although not all or even most of it, Citron shows, are also already violations of various civil rights laws, at both the state and federal level: this behavior interferes with the ability of women, and some gay and straight men, to access their rights to contract, to work, to own property, to free speech, and to an education, and does so largely because of gender or sexual orientation (or perceived sexual orientation). It is thus an affront to the value of equality that is the goal of our civil rights laws, including Sections 1981, 1983 and 1985 actions at the federal level and their state law counterparts. Citron does a thorough and admirable service of clearly delineating the avenues for legal relief that already exist, thus belying the widely held belief that this behavior is totally unregulated and therefore beyond the law's reach. Cyberspace is not a completely unregulated wild west, and perpetrators of hate crimes as well as their victims need to know that. Citron calls for greater enforcement of all of these laws that already target hate crimes in cyberspace, as well as of ordinary crimes such as stalking, or torts such as defamation, and intentional infliction of emotional distress, as well as expanded possible legal avenues for relief against those service providers that facilitate it (with a particular focus on those providers that encourage the publication of harmful and hurtful speech, and then charge a fee to the victim to have the offending material removed). That greater enforcement would require not just greater technical and legal savvy on the part of victims and their advocates, but perhaps most importantly, focused educational campaigns directed at police forces and prosecutors' offices.

Much of the behavior catalogued, however, is not touched by law, and Citron devotes much of this part of the book to a discussion of possible reforms—and objections that might be raised to them—that would strengthen the victim's hand. Tort law is prohibitively expensive even where the cause of action is theoretically available, criminal law is undercut by prosecutorial indifference or ignorance, existing laws that do specifically target some of this behavior, such as cyber-stalking laws, are under-enforced, and civil rights laws, both at the state and federal level are under-inclusive: they often don't cover gender motivated hate crimes, for example. Furthermore, much of this conduct, even though clearly criminal or tortious, is outside the reach of the law simply because the perpetrators cannot be identified. And, some of the conduct is simply not criminal or tortious at all: state harassment and stalking laws often target only communications sent directly to the victim, rather than communications about the victim sent to the world, and revenge pornography is not specifically targeted by any particular body of law. (Citron and Mary Anne Franks from Miami have proposed model legislation that does criminalize revenge pornography, and the book details both [that campaign](#), and the experience of states that have

adopted it.) Citron suggests reforms to existing state laws that target harassment and stalking that would update them, to bring cyber hate crimes within their scope, and would make clear their grounding in civil rights ideals: cyber-harassment and stalking interfere with the rights we all should enjoy to access an education, to pursue employment, and to enjoy participatory rights in the public sphere. Civil rights laws at the federal level need to be strengthened, and the logic of the causes of action that might be brought under them both against private parties and against state officials clearly delineated. Citron does all of this in the book, along with proposed legislative reforms that would make those laws better vehicles for remedying violations. She adds a similar discussion, by necessity more technical, regarding the possible liability of service providers and site operators, comparable to the liability of employers for sexual harassment on the job, again both with respect to laws already on the books, and possible reforms.

The third contribution, and last third of the book, is her discussion of possible objections, and then her turn to extra-legal reforms, with a particularly helpful focus on the roles of educators, parents, and the providers themselves (“Silicon Valley” for short). The bulk of the section on objections is devoted to responding to First Amendment challenges. The chapter on schools, parents and Silicon Valley sensibly discusses the actions these private actors and parties can take, and singles out for praise those providers and Silicon Valley companies, such as Facebook, that police against hate speech on the sites and platforms they sponsor. These discussions are immensely valuable. The discussion of First Amendment objections is thorough, and I believe completely convincing; indeed, the only objection I have to it is that she gives it too much weight. The discussion of the role of private parties in changing the culture is wise and in a way reassuring: there is something all of us can do, as educators, parents, and providers, and Citron clearly and carefully outlines suggestions that would go some way toward changing this world, whether or not with the law as a partner.

The book thus serves as a blueprint for what Citron insightfully calls a new civil rights movement. It gives legal representatives and victims a roadmap for charting out legal actions that can be taken to halt the abuse being currently suffered, and to compensate for past harms. It gives state and federal legislators a menu of options for strengthening the law in this area, so that cyberspace can be as safe as well as robust domain for the expression of views on all subjects. It responds to First Amendment worries about the possibility that her proposed reforms might chill valuable speech, and it suggests paths for interested private parties who want to affect the trajectory here outside the law. It’s a *tour de force* and I believe it will succeed. It will change the law, change the conversation, and change attitudes toward and regarding this extraordinarily abusive and harmful behavior. It will strengthen women’s civil rights, and thus strengthen women’s equality and at core, it will be a significant step toward ensuring women’s safety in the public space of employment and education, as well as in cyberspace and the home. This is a book to celebrate, to study, to argue over, and, mostly, to use.

Unanswered Questions

The book also, though, raises a host of questions it doesn’t come close to answering (as did MacKinnon’s *Sexual Harassment of Working Women*). It describes horrific harms, and, like a video of a woman being knocked out cold in an elevator by her football-playing fiancé, it leaves the reader horrified. But there are three things it doesn’t do, which in turn delineate areas where I think future scholarship could contribute. The first is descriptive or explanatory: why? Why is there so much hate speech online? This book provides no answer. The second is prescriptive: what could we do about this, *short of* better employing the criminal justice system, feeding still more defendants into an overcrowded penal system? The book seemingly assumes a well-functioning criminal justice system, capable of meting out sensible sentences to yet another class of lawbreakers. The third is theoretical: why has the law been so slow to recognize, much less provide recourse for, these harms occasioned by some citizens on others? The book doesn’t provide an explanation. I’ll comment very briefly on each.

First, on the cause of the hate crimes themselves. Citron shows, and argues, that the internet magnifies the consequences of hateful conduct. Perpetrators are shielded to some degree by anonymity, and victims are not confronted in real space and time, thus giving perpetrators some sense of detachment both from the nature of their actions and their consequences. But this doesn't explain its origin. Citron is a lawyer and legal academic, and not a sociologist, so perhaps it is simply beyond the scope of the project. But it is a question that the book implicitly poses from start to finish. Where in god's name is all of this hate coming from? Why are these people so bent on destroying the reputations, the careers, the sense of safety, the pleasures, and the speech of women who are total strangers to them? Is some of this rage prompted by the targeted women's relative privilege and success? Does the successful female law student bound for a high visibility career in public service or a well-paid successful career track in the private sector trigger *rage* in men, some of whom may feel she has displaced them, and so much rage that they are prompted to sexual assaults? Or, do women, particularly those on feminist sites, or those who post on sexuality issues, provoke fury by sometimes implicitly removing themselves, and perhaps their readers, from the sexual marketplaces of availability? Does that alone provoke rage, by seemingly shrinking the opportunities perceived by their perpetrators and tormenters for sexual opportunities or release? More simply, is this a backlash against strong women speaking their minds—women who but for the availability of the internet, might be servicing men's needs, both sexual and domestic, rather than expressing opinions on the world's woes? And why is the fury so sexualized? After decades now of voluminous scholarship on pornography, rape, and sexualized violence, we are woefully short of answers to these questions. Citron's book though raises the question anew, and if anything with a greater sense of urgency. What she shows is that the sexual assaults, and the fury and rage behind them, are not deniable, they are not jokes, they are not harmless, women are not complicitous in their creation, and they clearly are obstacles to women's equal participation in public spheres. Surely we would be better off all around if we could not only criminalize some of this behavior, but if we could understand it as well.

Second, on Citron's prescriptive arguments for reform. Any number of otherwise sympathetic readers will find troubling Citron's reliance, and possible over-reliance, on criminal law as the hoped for legal response to much of this behavior. We already over-incarcerate our co-citizens. We put people in prison for trivial offenses, for way too long, and in inhumane conditions. This book however (and in contrast to MacKinnon's anti-harassment and anti-pornography campaigns that rigorously eschewed reliance on criminal law) seeks yet another expansion of the role the criminal justice in maintaining social order. There will be strongly felt resistance to it for just that reason. Are there alternatives to the criminal law, and to criminal justice, for coming to grips with these behaviors? What might they be? Citron suggests some answers in her last chapter, but those suggestions are a little too fleeting and a little too late—perhaps they could have come earlier and more prominently. Internet service providers could require all contributors to identify themselves. Schools could more actively encourage civil online behavior. Parents should monitor, and where appropriate punish, their children's misogynist or hateful online behavior. And so on. And, while norms are changing, perhaps there is a necessary role for more robust enforcement of the criminal law. But it too carries its own injustices, and the book might have acknowledged as much. More generously, the development and conceptualization of non-penal responses to these harms, I believe, is one of the large and most important areas of inquiry the book opens, but doesn't adequately address.

And finally, on legal theory: the book gestures toward, but doesn't fully develop, why it might be that the law has been so slow to respond to these obvious threats to the safety of half of its subjects. The behavior itself, after all, is not that different from the non-cyber assaults, threats and defamatory utterances on the streets, in homes and workplaces, all of which are fully understood to be crimes, torts, or violations of civil rights. Some of the harms suffered by the same sort of conduct in cyberspace is if anything worse. So, where are the police, the prosecutors, the courts, the judges and the lawyers? Part of the explanation for the absence of robust enforcement of laws against this behavior is legal, as Citron

shows: the law is inadequate and in need of reform. Part of the explanation is technological: the perpetrators are anonymous, which raises obvious difficulties, but also, to understand the consequences of the behavior requires a degree of technological sophistication still beyond the ken of police, prosecutors, bench, and bar. And a part of the explanation is constitutional: there is a widespread if erroneous belief that this conduct is “speech” and therefore “protected speech” under the First Amendment, and therefore beyond the reach of tort, criminal, or civil rights law. But there are other currents at work as well, that run a little deeper than all of these. Let me just name a few, all of which fall under one umbrella: for various reasons, or at least for the following three reasons that I’ll briefly catalog, these harms are likely to be unnoticed, or invisible. Therefore, the attempt to articulate them is likely to be shut down or muted.

Why has the occurrence, and even the prevalence of these harms been so relatively unnoticed? First, like domestic violence, although in very different ways, cyber violence and cyber harms are almost entirely “privatized”—by which I mean that they occupy a space beyond the immediate purview of the state. Criminal law exists primarily to keep the King’s peace—not to rectify injustices between private parties. Criminal cases, after all, are actions brought by the state, not victims, against defendants who have transgressed against the state’s norms. Cyber violence, though like domestic violence, doesn’t really threaten the King’s peace: domestic violence doesn’t threaten the King’s peace because it takes place within a private space ruled over by a different sovereign—the patriarch—and cyberspace doesn’t threaten the King’s peace because it takes place in a free Hobbesian wilderness not ruled over by anyone, or at least we like to think it does. In both realms, though, the home and cyberspace, in our popular imagination, as well as in the ruminations of any number of legal commentators, law has no role to play. The patriarch rules the home, and can punish accordingly, and in cyberspace, as in a Hobbesian world, the naturally strong rule, and as well they should—the strong in cyberspace, after all, have only words at their disposal, not sticks and stones, and can do no real harm to the King or his subjects.

The second reason for the relative invisibility of these harms, I believe, is the relative degradation of tort law. Whether or not the kinds of behavior Citron describes constitute crimes or civil rights violations, they are all, clearly, torts: they are intentionally harmful acts by an actor against a victim that cause injury. Tort law, however, as a body of law that seeks to provide redress for private wrongs, has been widely discredited and its efficacy badly compromised by all sorts of forces, and consequently, it simply doesn’t present itself to the minds of victims or their counselors as a credible vehicle for pursuing justice against those who wrong them. Tort is viewed academically as a body of law that reallocates the cost of accidents, not a body of law that provides a path toward justice for victims of intentional wrongs, and it is viewed popularly as a body of law that facilitates ungrounded complaints by people who refuse to take responsibility for their own actions, brought by greedy trial lawyers looking to exploit the suffering of others. As Professors Zipursky and Goldberg have shown in their groundbreaking scholarship on the subject, tort law has largely lost its original meaning: a body of law that provides those whose legal interests, such as an interest in bodily integrity and freedom from fear, have been infringed, with a vehicle for recourse against their wrongdoer. We are all the worse for it, and women active in cyberspace, and who suffer because of that fact, perhaps more than the rest of us.

In the area of gendered harms, though, tort has been even further devalued for an additional reason, of direct relevance here. Feminist legal reformers of the 1970s and 1980s, and most prominently Catherine MacKinnon, quite consciously turned away from tort, and to civil rights, and likewise away from the concept of harm, and to the concept of equality, when they conceptualized the wrongs of sexual harassment. There were good reasons to do so, and there was much to be gained through that turn, but there was also a price to be paid, and Citron’s book perhaps inadvertently shows what that price has turned out to be. Briefly, by turning to equality and civil rights, rather than by seeking to expand upon the utility of tort remedies, feminist reformers forewent the opportunity to focus on the physical and psychic injuries occasioned by harassment and assault in *all* spheres: employment, the

home, the street, and cyberspace all. The civil rights action, unlike a possible tort action, requires a showing of cognizable harm to pocketbook interests, rather than harm to the psyche, reputation, or emotional wellbeing. The very idea of the civil right to be free of sexual harassment is consequently tied to economic equality, and hence to the workplace, where incomes are threatened, rather than to psychic or physical injury, wherever it occurs. The turn to civil rights, then, in the development of this area of law, carried an educational and political opportunity cost: tort actions permit and require the claimant to delineate the exact nature of the injury, whether or not it is tied to lost income. That delineation might have educated an otherwise oblivious public to the harms of sexual harassment that go beyond the monetary, and well beyond the particular and peculiar locale of the workplace.

And lastly, the cyber harms that Citron delineates are invisible in part simply because they are *sexual* assaults. Sex occupies a peculiarly venerated status in our contemporary cultural imagination, included our legal-cultural imagination. Our current zeitgeist is relentlessly “sex-positive:” both in pop cultural and in academic life, sex itself—the activity, that is—can simply do no wrong. “Sexual assault,” in a thoroughly sex positive world, is nearly oxymoronic: regarded not as assaultive and wrongful, but as the result of a sex panic, or of repressed desire coupled by a Freudian displacement of self contempt. Sex sells, but it also legitimates: there is a widely shared interest among sexual actors, sexual predators, and the .01 percent alike in maintaining the perception that with a celebrated right to sex, all is right in the world. Claims of sexual assault upset that venerated status. It is not entirely surprising that they are now met with a wave of skepticism at least as ferocious as that which met their nineteenth and eighteenth century counterparts.

So, for all of these reasons—the Hobbesian natural world of the internet, the decreasing viability of tort as a body of law meant to provide justice for those whose legal interests are harmed by private actors, and the construction of sexual harassment as a civil rights violation limited to the workplace and schools—the harms done to women and men by virtue of sexual assaults on the internet are likely to go unreckoned. That is clearly changing: the scholarship (and advocacy) of both Danielle Citron and Mary Anne Franks has already gone a long way toward making those harms visible. This book makes a powerful case that we must do something about this conduct, and that and we must use law to do it. There simply must be a more robust legal response to harmful, hateful, and misogynistic behavior, in cyberspace, no less than in workplaces and the home. That is a huge contribution, to women’s equality, to the quality of our social and civic life, and to the justice of our law.

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