

Policing the new Frontier of Workplace Discrimination

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Danielle Citron, [*Law's Expressive Value In Combating Cyber Gender Harassment*](#), 108 **Mich. L. Rev.** 373 (2009).

Professor Danielle Citron has authored an important piece that calls for the condemnation of cyber gender harassment. Often downplayed or minimized, this problem, according to Citron, is merely the most recent iteration of abuse perpetrated against women, but inadequately documented, discouraged, and combated. Like domestic violence and sexual harassment before it, cyber gender harassment is in danger of being underestimated until too much harm has already been conferred upon the personal and professional dignity, access, and safety of women everywhere. Decrying the law's failure to identify the harms that uniquely target and affect women, Citron laments the transmission of a signal by the law that the oppression of women through this kind of abuse is somehow tolerable. Citron is one of the foremost and earliest scholars to call for a cyber civil rights agenda that would explicitly identify cyber harassment as gender discrimination. Her emphasis on the uniqueness of the harm that flows to women from a practice that while abhorrent, might typically be regarded as gender neutral, is of particular note, and her admonition that the law ought to educate society about this harm to effect societal reform is powerful.

This piece builds on a previous work of Citron's, *Cyber Civil Rights*, 89 BULR 61 (2009), which examined the ways in which the law acts to deter and penalize online abuse. Citron now calls upon the law to recognize the unique harms that cyber harassment confers on women as individuals and as a protected class, as well as to root out and to eradicate this phenomenon. As examples of online harassment directed against women, Citron discusses, among others, cyber threats, depictions of violence against women, the publication of victims' personal information, and attacks launched against feminist blogs and websites. She recalls the disproportionate number of female victims of this harassment and the very frequent implication of female victims' genders by their explicit mention in the taunts and threats of harassers. As to what should be done about this problem, Citron suggests that extant civil rights legislation can be employed to fill in some of the compensatory and other gaps left open by traditional criminal and tort remedies for cyber harassment. Indeed, invoking caselaw from the 1960s, she boldly posits that Title VII of the Civil Rights Act of 1964 can be invoked when attackers and harassers prevent women from making a living on the basis of their sex.

Citron points to and sets about combating the trivialization of cyber harassment, noting how pernicious apathy and silence on the part of both society and the law can be. She notes women's tendency to suffer the infliction of shame, fear, and isolation wordlessly and resignedly when it comes through cyberspace in particular, and to the sacrifice of victims' so-called "online lives." Lamenting the entrenchment of "gender hierarchy in cyberspace" (P. 413), Citron recounts compelling stories about women who have been targeted, harassed, demeaned, and threatened online. These stories effectively illustrate the many ways in which gendered cyber harassment strikes at women's "agency, livelihood, identity, dignity, and well-being." (P. 384.) Moreover, Citron imbues her call to action with additional meaning by analogizing cyber harassment and its ability to foreclose professional opportunities to actionable sexual harassment; despite the fact that the former occurs in cyberspace, both forms of abuse confer palpable harm in the physical workplace.

By linking those acts and movements into which society now has more insight with the newer, more skepticism-inducing act of cyber harassment, Citron makes a powerful case against dismissing cyber harassment as too common or insignificant to foment any real damage to individuals or to women as a class. Citron compares that which women harassed online are forced to forgo or resort to as they alter their views, names, or personas and otherwise shrink back from attention, and those things women have been historically forced to do in the face of recognized oppression, like adopting male pseudonyms, or refusing to talk about a pregnancy at work. In other words, we've seen society shrink back from the recognition of gender discrimination before, and we've seen it do so at its peril. By trivializing online harassment, society is repeating its pattern of refusing to recognize and to stem harm that flows to women until too much irreparable damage has already been done. The refusal, she posits, often comes from men's inability to relate to the harm conferred by certain acts and society's subsequent inability to understand why they warrant deterrence and retribution or why women would be incapable of mitigating their own harm from them. Citron cites marital rape, sexual harassment, and spousal abuse as examples of these phenomena. Only through the vigilance Citron urges will the next great means by which women are devalued and driven out of public and professional life be discerned and combated.

Citron ably anticipates and answers what she identifies as the three arguments most commonly posited in response to cries for vigilance on this issue: 1) it is mere harmless teasing; 2) victims can combat it and mitigate their harm by themselves; and 3) it is in comportment with social norms that belong to the realm of the internet. As Citron demonstrates, harassment is often pernicious to the point of being terror-inducing. The scope of the problem becomes intractable and nearly impossible to combat by an individual victim, who knows that the internet's capabilities permit her tormentors to resurface continually and to morph into someone else via anonymous, ever-changing online identities. Citron effectively dispels the myth that the internet is a discrete realm whose barbs and harms are not palpable in the physical world. She also answers those who would critique her proposed cyber civil rights agenda by raising First Amendment concerns; she points to the fact that the right to free speech is not an unfettered right and to the existence of categories of speech amounting to, among other things, defamation and the intentional infliction of emotional distress, that are considered to be outside of the ambit of absolute protection. Moreover, the right to free speech does not foreclose discrimination or harassment suits in which words spoken in the physical workplace engender liability. Citron opines that when a victim's "self-determination and ability to participate in political and social discourse" (P. 406), are compromised or destroyed, a harasser's right to express himself must be subordinated to society's right and ability to redress the harm. As she succinctly but eloquently states, "[s]elf-expression should receive little protection if its sole purpose is to extinguish the self-expression of another." (*Id.*).

The article has the potential to be a great mobilizing force, and its significance to the sphere of employment discrimination law should not be underestimated. The workplace is implicated by this problem in many ways. Examples of these ways range from women who make or at least advance their professional living on the internet being forced offline, to the self-selection of female students out of educational and promotional opportunities after feeling stalked and hunted by cyber harassment that reports on their actions and whereabouts, to the intersection of the workplace and cyberspace with respect to how co-workers recruit, perceive, and communicate with one another. Those who seek to keep pace with the state of employment discrimination should both read and heed this call for a cyber civil rights agenda; it is timely, insightful, and much-needed.

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