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## CENSORING WOMEN

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The second annual Anti-Slavery Convention of American Women was scheduled to take place in Pennsylvania Hall in May 1838. The women who organized the event were known for their outspoken activism calling for the abolition of slavery and in favor of women's equal rights. As history scholar Sally G. McMillen relates,

The week before the upcoming interracial forum, hecklers were in the street denouncing it. Notices posted around the city urged people who cared about their jobs and the Constitution to attend and protest this convention of 'amalgamators.' . . . As the convention opened . . . some three thousand protestors filled the aisles and galleries of the hall and began to smash windows. The women found it almost impossible to conduct their meeting . . . , hissing and shouting drowned them out . . . . Protestors threatened speakers with bricks and rocks . . . . The mayor refused [to provide police protection] claiming that the female abolitionists had brought this chaos on themselves . . . . [M]obs broke into the hall, opened the gas jets, and set the auditorium on fire.<sup>1</sup>

It was neither the first nor the last time that women's attempt to exercise their right to free expression would be met with violence and intimidation, or that women would be blamed for bringing the abuse upon themselves. Throughout history, there have been countless eruptions of fear and rage against women who dared to speak, work, dress, travel, or be educated in ways that men found unacceptable. Women have been threatened, stalked, harassed, beaten, sexually assaulted, and even killed for entering spaces traditionally considered the exclusive provinces of men, from voting booths to marathons to the military. The multiple forms of unjustified aggression directed at women in public spaces, workplaces, and schools send a powerful message: shut up or get out.

To anyone who truly cares about the value of free speech, this history of silencing and exclusion should be an outrage. To defend the First Amendment is to defend equal access to its principles and its protections. To truly believe in the "marketplace of ideas" means to reject speech monopolies and speech cartels, to challenge the hoarding of expressive rights by the most privileged members of society. A society that allows the relentless smothering of the

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<sup>1</sup> SALLY G. McMILLEN, *SENECA FALLS AND THE ORIGINS OF THE WOMEN'S RIGHTS MOVEMENT* 67-68 (2008).

viewpoints of certain groups, based not on the content of the expression but on the identity of the speakers, is not “free”—it is tyrannical.

In the early days of the Internet, many people believed that the creation of “cyberspace” would usher in a heretofore-unimagined era of freedom of expression. This utopian vision was effusively described by John Perry Barlow in his 1996 Declaration of the Independence of Cyberspace: “We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.”<sup>2</sup> It is perhaps telling that Barlow, who was one of the co-founders of the influential Electronic Frontier Foundation, did not name gender as one of the categories of privilege or prejudice to be discarded in cyberspace. What may have been a mere rhetorical oversight has been rendered particularly poignant by the Internet’s development with regard to women’s expression.

The Internet did not bring the long history of silencing women to an end.<sup>3</sup> The Internet multiplied the possibilities of expression, to be sure, but it also multiplied the possibilities of repression.<sup>4</sup> We have not in fact yet approached a world that allows a woman to “express . . . her beliefs, no matter how singular, without fear of being coerced into silence or conformity.” Women who publicly

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<sup>2</sup> JOHN PERRY BARLOW, DECLARATION OF THE INDEPENDENCE OF CYBERSPACE, <http://homes.eff.org/~barlow/Declaration-Final.html>.

<sup>3</sup> Women are of course not the only group to be targeted for harassment online or off. Racial minorities, sexual minorities, religious minorities, and the poor of both genders are all frequent targets for abuse and discrimination, and these effects are multiplied for individuals who exist at the intersection of several of these identities. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). This post focuses on the particular impact that such harassment has on women.

<sup>4</sup> According to one study, men are “harassed” online more often than women, but the harassment they face tends to be relatively impersonal and trivial compared to the targeted, aggressive, and sexualized abuse that women encounter. “Although men are more likely than women to experience low-level abuse online (a.k.a. name-calling), women—specifically young women—are more likely to experience severe sexual harassment, online stalking and sustained abuse.” Emma Gray, ‘Scandal’ Exposed The Terrifying Abuse Women Face Online, HUFFINGTON POST (Oct. 16, 2015), [http://www.huffingtonpost.com/entry/scandal-olivia-pope-rape-threats-online\\_5620eac3e4b069b4e1fba408](http://www.huffingtonpost.com/entry/scandal-olivia-pope-rape-threats-online_5620eac3e4b069b4e1fba408).

express opinions on any subject, from sports<sup>5</sup> to video games<sup>6</sup> to politics,<sup>7</sup> are routinely subjected to a barrage of sexualized and violent threats.<sup>8</sup> Sexual harassment of women in schools and workplaces has migrated from in-person communication to social media, where it can be both more pernicious and harder to regulate.<sup>9</sup> Victims of stalking and domestic violence now face a new array of sophisticated and invasive surveillance technologies that place them and their loved ones in increased danger.<sup>10</sup> So-called “revenge porn” destroys women’s careers, family relationships, educational opportunities, and psychological health.<sup>11</sup> The ubiquitous presence of undetectable recording devices (and the ability to transmit footage to the world at large within seconds) has produced a cottage industry of sexual humiliation, from “upskirt” photos to video footage

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<sup>5</sup> See Soraya Nadia McDonald, *Ashley Judd Says She’s Pressing Charges Against Twitter Trolls Who Threatened Rape*, WASH. POST, Mar. 18, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/03/18/ashley-judd-says-shes-pressing-charges-against-twitter-trolls-who-threatened-rape/>.

<sup>6</sup> See Kyle Wagner, *The Future of the Culture Wars is Here, and It’s GamerGate*, DEADSPIN (Oct. 14, 2014), <http://deadspin.com/the-future-of-the-culture-wars-is-here-and-its-gamerga-1646145844>.

<sup>7</sup> See Michelle Goldberg, *Feminist Writers Are So Besieged by Online Abuse that Some Have Begun to Retire*, WASH. POST, Feb. 20, 2015, [https://www.washingtonpost.com/opinions/online-feminists-increasingly-ask-are-the-psychic-costs-too-much-to-bear/2015/02/19/3dc4ca6c-b7dd-11e4-a200-c008a01a6692\\_story.html](https://www.washingtonpost.com/opinions/online-feminists-increasingly-ask-are-the-psychic-costs-too-much-to-bear/2015/02/19/3dc4ca6c-b7dd-11e4-a200-c008a01a6692_story.html).

<sup>8</sup> The controversy that erupted in October 2015 after the cancellation of two scheduled panels for the popular technology conference South by Southwest (SXSW) Interactive is a case in point. One of these panels, *SavePoint: A Discussion on the Gaming Community*, was strongly affiliated with “GamerGate,” a loose collective of individuals aggrieved by gender-based critiques of games and the gaming community. GamerGate supporters have waged a sustained campaign of rape, death threats, and other abuse of prominent female gamers and critics (see note 6). The other panel, *Level Up: Overcoming Harassment in Games*, featured several women who had been the subjects of online harassment by GamerGaters and others. Given the past tactics of GamerGate supporters, many of the Level Up panelists voiced security concerns about their panel, but were ignored by conference administrators. After SXSW itself received “threats of on-site violence,” however, the director of SXSW Interactive, Hugh Forrest, announced that the panels would be canceled. See T.C. Sottek, *Vox Media and the Verge Will Not Attend SXSW Unless It Takes Harassment Seriously*, VERGE (Oct. 27, 2015), <http://www.theverge.com/2015/10/27/9621414/sxsw-2065-anti-harassment-panel-cancellation-vox-media-statement>. As one of the Level Up panelists, Katherine Cross, stated, “SXSW is effectively telling online harassers that their threats are a winning strategy . . . . A success for harassers will only encourage more of the same.” Sara Ashley O’Brien, *Gamer: SXSW Isn’t Taking Online Harassment Seriously*, CNN (Oct 28, 2015), <http://money.cnn.com/2015/10/28/technology/sxsw-gamergate-brianna-wu/>.

<sup>9</sup> See Mary Anne Franks, *Sexual Harassment 2.0*, 71 MD. L. REV. 655 (2012).

<sup>10</sup> See Cindy Southworth & Sarah Tucker, *Technology, Stalking, and Domestic Violence Victims*, 76 MISS. L.J. 667 (2007)

<sup>11</sup> See Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345 (2014).

of sexual assaults.<sup>12</sup> Women are told that the only way to be protected from these violations and indignities is to restrict their self-expression: Don't express your opinions publicly. Don't compete with male colleagues. Don't anger your abusive spouse. Don't take naked pictures. Don't wear skirts. Don't get raped.<sup>13</sup>

The cumulative effect of all this is to silence women. It teaches women to be docile, submissive, sexless, conventional, and devoid of opinions, or else face devastating injury to their privacy, their careers, their safety, their families. Even as the Internet has provided new avenues of expression and communication, it has given tremendous power and voice to an astonishingly regressive and censorious attitude toward women. As John Stuart Mill recognized in 1859, society's power to strip individuals of their freedom and autonomy can be far more devastating than the state's:

Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.<sup>14</sup>

Yet when women call for legal and social and educational reform to address this censorship, they are called censors. When they attempt to challenge these deprivations of their right to freedom of expression guaranteed by the First Amendment, they are accused of trampling on the First Amendment. Harassment, threats, nonconsensual pornography, and stalking are all defended as "speech," while women's resistance is condemned as "censorship."<sup>15</sup>

To argue this can only mean that freedom of expression means freedom of expression for elites, that women are not considered equals in their claim for the rights so valued by our society. It can only mean that we live in a society where the right to shout "murderer!" at a woman as she walks into a Planned Parenthood clinic outweighs that woman's right to seek legal medical treatment in peace; that the right to "joke" about raping or killing a woman who criticizes sexism in gaming culture outweighs that woman's right to express her opinion; that the right to distribute private, sexually explicit photos of a woman for entertainment purposes outweighs that woman's right to privacy and sexual expression. It can only mean that we as a society are willing to tolerate a state

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<sup>12</sup> See Kira Cochrane, *Creepshots and Revenge Porn: How Paparazzi Culture Affects Women*, GUARDIAN, Sept. 21, 2012, <http://www.theguardian.com/culture/2012/sep/22/creepshots-revenge-porn-paparazzi-women>.

<sup>13</sup> See Mary Anne Franks, *Adventures in Victim-Blaming: Revenge Porn Edition*, CONCURRING OPINIONS (Feb. 1, 2013), <http://concurringopinions.com/archives/2013/02/adventures-in-victim-blaming-revenge-porn-edition.html>.

<sup>14</sup> JOHN STUART MILL, ON LIBERTY (1859), Ch. 1.

<sup>15</sup> See, e.g., Mary Anne Franks, *Free Speech Elitism*, HUFF. POST (Jan. 23, 2014), [http://www.huffingtonpost.com/mary-anne-franks/harassment-free-speech-women\\_b\\_4640459.html](http://www.huffingtonpost.com/mary-anne-franks/harassment-free-speech-women_b_4640459.html).

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of affairs in which women are routinely forced to go into hiding merely for expressing opinions that some find controversial.<sup>16</sup> It can only mean, in short, that free speech has never been, and is not now, for women.

The important work of Professor Citron invites us to challenge this state of affairs. She invites us not to be taken in by those who would characterize this conflict as a choice between glorious “free speech” and much-derided “social justice”—indeed invites us to recognize that the true conflict is very often between free speech (of harassers) and free speech (of their targets). She invites us to confront the undeniably gendered dimensions of cyber harassment and recall the history of discrimination that is inextricable from the history of free speech.

When we do so, those of us who are genuinely committed to the principle of free speech for all—not just the privileged classes—recognize that law and society must change. We will be better equipped to diagnose the forces that have always driven the censorship of women, namely, the fear and rage of men facing the loss of unearned privilege and illegitimate domination. What is and has always been at stake is nothing less than women’s equal right to free speech.

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<sup>16</sup> *Woman Who Created #ShoutYourAbortion in Hiding Due to Death Threats*, WEEK, Oct. 1, 2015.