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## HOW CITRON CHANGES THE CONVERSATION

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Rules of law, both statutory and common law, develop in response to mischiefs in the world. Law professors tend to focus on those rules, to criticize the rules in place and test them for internal incoherences and tensions, and ultimately to offer prescriptions as to how the courts can do their jobs better.

Danielle Citron's book, *Hate Crimes in Cyberspace*,<sup>1</sup> offers plenty of prescriptions. Fundamentally, however, it is an account of a mischief. It reveals a toxic new world within cyberspace, in which some people—mostly women—are targeted for massive harassment by anonymous mobs. The anonymity of the internet creates opportunities and perhaps even incentives for extraordinarily bad behavior. Citron describes the dynamics of that behavior with care and even some sympathy for the perpetrators, who sometimes are horrified to wake up to what they have been doing.

The book's prescriptions are not all persuasive, and they are not adequate to address the problem that she describes. This book matters primarily because of its description, not its prescriptions.

The internet has been a great gift to humanity, but it has pathologies. Perhaps the best-known instance of the cyberharassment that Citron describes is what has been called "revenge pornography"—the online posting of sexually explicit photographs without the subject's consent, usually by rejected ex-boyfriends. The photos are often accompanied by the victim's name, address, phone number, Facebook page, and other personal information. They are sometimes shared with other websites, viewed by thousands of people, and become the first several pages of hits that a search engine produces for the victim's name. The photos are emailed to the victim's family, friends, employers, fellow students, or coworkers. They are seen on the internet by prospective employers and customers. Victims have been subjected to harassment, stalking, and threats of sexual assault. Some have been fired from their jobs. Others have been forced to change schools. The pictures sometimes follow them to new jobs and schools. The pictures' availability can make it difficult to find new employment. Most victims are female.<sup>2</sup>

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<sup>1</sup> DANIELLE KEATS CITRON, *HATE CRIMES IN CYBERSPACE* (2014).

<sup>2</sup> See *id.* at 17, 145-53; Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 350-54 (2014).

Citron's book offers a variety of solutions, drawing on tort law, criminal law, and the internal norms that ought to be enforced by internet service providers and communities. They are admirable and I have no objection to most of them.

Her proposed revenge pornography law is attractive, but it raises constitutional difficulties that she does not fully resolve. The central harm that such a prohibition aims to prevent is the acceptance, by the audience of the speech, of the message that this person is degraded and appropriately humiliated because she once displayed her naked body to a camera. The harm, in other words, consists in the acceptance of a viewpoint. Viewpoint-based restrictions on speech are absolutely forbidden. The Supreme Court has not given us tools adequate to address this problem.<sup>3</sup>

The deepest problem with her prescriptions is that they do not suffice to solve the problem, and it is not clear what could. It is very hard for the law to reach the behavior of large numbers of anonymous malefactors. A revenge porn law can reach the person who first posts the photo, but not later downstream users. The cybermobs are anonymous, and they are the source of most of the abuse.

In her discussion of "cybercesspools," Citron describes a subculture of self-styled "trolls" that revels in the knowledge that they are hurting someone, somewhere. Trolls spread lies on the internet, inundate victims with hateful emails, order unpaid pizzas to be delivered to their homes. One group embedded flashing computer animations into the message board of an epilepsy support group in an effort to trigger migraine headaches and seizures.<sup>4</sup> Nobody knows how to stop this kind of vandalism.

The only hopeful thing one can say is that this conversation has barely begun. We are stuck. It is too soon to know whether we will stay stuck. Here as elsewhere, the radical uncertainty of the future means that you are not entitled to despair.

Given the anonymity of this speech, the best we can hope for may be that the world be more aware of it. Citron tells stories of friends, neighbors, and employers who don't take these harms seriously or even blame the victims for allowing it to happen. If Citron's story were better understood, the victim-blaming would stop, and many of the perpetrators could be made to understand

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<sup>3</sup> See Andrew Koppelman, *Revenge Pornography and First Amendment Exceptions*, EMORY L.J. (forthcoming 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2659648](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2659648). Since writing the book, Citron has further developed her views on the constitutional issues. See Danielle Citron, *More Thoughts on How to Write a Constitutional Revenge Porn Law*, FORBES (May 23, 2015), <http://www.forbes.com/sites/daniellecitron/2015/05/23/more-thoughts-on-how-to-write-a-constitutional-revenge-porn-law/>. Here she suggests a law targeted to "apply only to publication of nude images in circumstances where the perpetrator and the victim had an implicit or explicit understanding that the image would be kept confidential." This is responsive to the severe limits of present free speech law, and will do some good, but many of those who share these pictures do not even personally know the victims.

<sup>4</sup> CITRON, *supra* note 1, at 53-54.

that these are actions you should be ashamed of. Constraints of that sort sometimes do alter human conduct.

This book is an important political intervention. Politics is not just about who wins political fights. It is also about what issues make it onto the agenda in the first place, or even get thought of as worth having an argument about.<sup>5</sup>

This book changes the agenda. Reading it makes me upset about things I wasn't even aware of before. You should be upset too.

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<sup>5</sup> See JOHN GAVENTA, POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY 13-25 (1980).