

LAW'S EXPRESSIVE VALUE IN COMBATING CYBER GENDER HARASSMENT

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The online harassment of women exemplifies twenty-first century behavior that profoundly harms women yet too often remains overlooked and even trivialized. This harassment includes rape threats, doctored photographs portraying women being strangled, postings of women's home addresses alongside suggestions that they are interested in anonymous sex, and technological attacks that shut down blogs and websites. It impedes women's full participation in online life, often driving them offline, and undermines their autonomy, identity, dignity, and well-being. But the public and law enforcement routinely marginalize women's experiences, deeming the harassment harmless teasing that women should expect, and tolerate, given the internet's Wild West norms of behavior.

The trivialization of phenomena that profoundly affect women's basic freedoms is nothing new. No term even existed to describe sexual harassment of women in the workplace until the 1970s. The refusal to recognize harms uniquely influencing women has an important social meaning—it conveys the message that abusive behavior toward women is acceptable and should be tolerated.

*Grappling with the trivialization of cyber gender harassment is a crucial step to understanding and combating the harm that it inflicts. My previous work *Cyber Civil Rights* explored law's role in deterring and punishing online abuse. This Essay emphasizes what may be law's more important role: its ability to condemn cyber*

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gender harassment and change the norms of acceptable online behavior. Recognizing cyber harassment for what it is—gender discrimination—is crucial to educate the public about its gendered harms, to ensure that women’s complaints are heard, to convince perpetrators to stop their online attacks, and ultimately to change online subcultures of misogyny to those of equality.

TABLE OF CONTENTS

INTRODUCTION	374
I. CYBER HARASSMENT THROUGH A FEMINIST LENS	378
A. <i>Understanding Cyber Gender Harassment</i>	378
B. <i>Cyber Harassment’s Gender-Specific Harms</i>	384
1. <i>Distinct Impact on Targeted Women</i>	384
2. <i>The Broader Consequences of Cyber Gender Harassment</i>	390
II. THE PROBLEM WITH TRIVIALIZING CYBER GENDER HARASSMENT.....	392
A. <i>Recurring Patterns</i>	392
B. <i>Critiquing the Trivialization of Cyber Gender Harassment</i>	395
C. <i>A Troubling Consequence of Trivialization: The Underenforcement of Criminal Law</i>	402
III. THE IMPORTANCE OF LAW’S EXPRESSIVE MESSAGE.....	404
A. <i>A Cyber Civil Rights Agenda</i>	404
B. <i>The Expressive Role of a Cyber Civil Rights Agenda</i>	407
CONCLUSION.....	415

INTRODUCTION

The harassment of women online is a pernicious and widespread problem.¹ It can be severe, involving threats of sexual violence, doctored photographs of women being suffocated, postings of women’s home addresses alongside the suggestion that they should be raped, and technological attacks that shut down feminist blogs and websites.² Cyber

1. Although its scope is difficult to estimate, one study suggests that approximately 40 percent of female internet users have experienced cyber harassment. Azy Barak, *Sexual Harassment on the Internet*, 23 SOC. SCI. COMPUTER REV. 77, 81 (2005); see also Francesca Philips & Gabrielle Morrissey, *Cyberstalking and Cyberpredators: A Threat to Safe Sexuality on the Internet*, 10 CONVERGENCE: INT’L J. RES. INTO NEW MEDIA TECHS. 66, 72 (2004) (estimating that one-third of female internet users have been harassed online). Any existing statistical evidence surrounding cyber gender harassment is likely to underestimate the phenomenon as women tend to underreport it due to feelings of shame and embarrassment. See ATT’Y GEN. TO VICE PRESIDENT, *CYBERSTALKING: A NEW CHALLENGE FOR LAW ENFORCEMENT AND INDUSTRY* (1999), <http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm> [hereinafter REP. ON CYBERSTALKING]. This is unsurprising given women’s underreporting of workplace sexual harassment. Louise Fitzgerald et al., *Why Didn’t She Just Report Him?*, 51 J. SOC. ISSUES 117, 119–21 (1995).

2. Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 69–75 (2009).

harassment is a uniquely gendered phenomenon—the majority of targeted individuals are women,³ and the abuse of female victims invokes gender in threatening and demeaning terms.⁴

Such harassment has a profound effect on targeted women. It discourages them from writing and earning a living online.⁵ It interferes with their professional lives. It raises their vulnerability to offline sexual violence. It brands them as incompetent workers and inferior sexual objects. The harassment causes considerable emotional distress.⁶ Some women have committed suicide.⁷

To avoid future abuse, women assume gender-neutral pseudonyms or go offline, even if it costs them work opportunities.⁸ Others curtail their online activities.⁹ For the “digital native”¹⁰ generation, forsaking aspects of the internet means missing innumerable social connections. Although online harassment inflicts the most direct costs on targeted individuals, it harms society as well by entrenching male hierarchy online.

But no matter how serious the harm that cyber gender harassment inflicts, the public tends to trivialize it. Commentators dismiss it as harmless locker-room talk, characterizing perpetrators as juvenile pranksters and targeted individuals as overly sensitive complainers.¹¹ Others consider cyber gender harassment as an inconvenience that victims can ignore or defeat with counterspeech.¹² Some argue that women who benefit from the internet

3. L.P. Sheridan & T. Grant, *Is Cyberstalking Different?*, 13 PSYCHOL., CRIME & L. 627, 637 (2007) (citing various studies suggesting that the majority of cyber stalking victims were female and their online stalkers were less likely to be ex-partners of the victims).

4. See Barak, *supra* note 1, at 78–79.

5. Posting of Louisa Garib to On the Identity Trail, *Blogging White Female, Online Equality and the Law*, http://www.anonequity.org/weblog/archives/2007/08/blogging_while_female_online_i.php (Aug. 21, 2007, 23:59 EST).

6. See Ellen Nakashima, *Sexual Threats Stifle Some Female Bloggers*, WASH. POST, Apr. 30, 2007, at A1.

7. See B.J. Lee, *When Words Kill: Suicide spurs bid to regulate the net in South Korea*, NEWSWEEK.COM, Oct. 15, 2008, <http://www.newsweek.com/id/164013>.

8. Nakashima, *supra* note 6; see also, e.g., Posting of womenspace to Women’s Space, *Blogging White Female. Hacking as Sexual Terrorism*, <http://www.womensspace.org/phpBB2/2007/08/06/blogging-while-female-men-win-hacking-as-sexual-terrorism/> (Aug. 6, 2007) (explaining that she shut down her women’s issues website due to cyber harassment that included threats of violence, technological attacks, and publication of her home address).

9. See Posting of Louisa Garib to On the Identity Trail, *supra* note 5.

10. A digital native is “a person for whom digital technologies already existed when they were born,” and who has “grown up with digital technology such as computers, the Internet, mobile phones and MP3s.” Wikipedia, Digital Native, http://en.wikipedia.org/wiki/Digital_native (last visited Aug. 29, 2009).

11. Posting of Rev. Billy Bob Gisher to Less People Less Idiots, *Silence of the hams*, <http://lessidiots.blogspot.com/2007/04/silence-of-hams.html> (Apr. 3, 2007, 16:19 EST) (on file with author).

12. Posting of Markos Moulitsas to Daily Kos, *Death threats and blogging*, <http://www.dailykos.com/story/2007/4/12/22533/9224> (Apr. 11, 2007, 23:45 PDT).

have assumed the risks of its Wild West norms.¹³ Although the arguments differ, their message is the same—women need to tolerate these cyber “pranks” or opt out of life online. This message has the unfortunate consequence of discouraging women from reporting cyber gender harassment and preventing law enforcement from pursuing cyber-harassment complaints.¹⁴

The trivialization of harms suffered by women is nothing new.¹⁵ Society ignored or downplayed domestic violence’s brutality for over 200 years.¹⁶ No term even existed to describe sexual harassment in the workplace until the 1970s, despite the pervasiveness of the practice.¹⁷ In light of this history, the current refusal to take seriously the cyber harassment of women is as unsurprising as it is disappointing.

Due to the internet’s relative youth, this is an auspicious time to combat the trivialization of cyber gender harassment before it becomes too entrenched. If it continues unabated, cyber harassment could very well be the central front of struggles against sexual harassment in the coming decades given our increasing dependence on the net. More people make friends, apply for jobs, and discuss policy online than ever before, shifting their social and professional interactions to the net and with it the risk of sexual harassment.¹⁸ As the market leans toward more realistic sensory experiences in virtual worlds and as these sites become more popular, cyber gender harassment may more closely approximate conventional notions of sexual violence. For instance, Second Life users’ avatars have reportedly been forced to perform sexually explicit acts after being given malicious code.¹⁹ These developments, and others like them, would further threaten gender equality in our digital age.

13. Posting of Susannah Breslin to The XX Factor, *Is Blogging While Female Really So “Perilous”?*, SLATE, <http://www.slate.com/blogs/blogs/xxfactor/archive/2009/03/13/is-blogging-while-female-really-so-perilous.aspx> (Mar. 13, 2009, 17:03 EST) (arguing that the web is an equal-opportunity attack forum and thus urging women to “get over yourselves”); Comment of Fistantantulus to Posting of Rev. Billy Bob Gisher to Less People Less Idiots, *Silence of the hams*, <http://lessidiots.blogspot.com/2007/04/silence-of-hams.html> (on file with author).

14. See, e.g., PAUL BOCH, CYBERSTALKING: HARASSMENT IN THE INTERNET AGE AND HOW TO PROTECT YOUR FAMILY 17 (2004).

15. ROBIN WEST, CARING FOR JUSTICE 96 (1997).

16. *Id.*

17. CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION xi (1979).

18. See, e.g., Posting of Danielle Citron to Concurring Opinions, *Zuckerberg’s Law on Data Sharing, Not Puffery*, <http://www.concurringopinions.com/archives/2009/07/zuckerbergs-law-on-data-sharing-not-puffery.html> (July 16, 2009, 12:32 EST) (explaining that as of July 2009, Facebook had 250 million members, up from 150 million in January 2009).

19. Michael Tennesen, *Avatar Acts: When the Matrix Has You, What Laws Apply to Settle Conflicts?*, SCI. AM., July 2009, at 27; see also Regina Lynn, *Virtual Rape Is Traumatic, but Is It A Crime?*, WIRED.COM COMMENT.—SEX DRIVE, May 4, 2007, http://www.wired.com/culture/lifestyle/commentary/sexdrive/2007/05/sexdrive_0504; Posting on Tech FAQ, *Second Life virtual rape*, <http://www.tech-faq.com/blog/second-life-virtual-rape.html> (last visited Aug. 29, 2009) (explaining that a Belgian user of Second Life was forced to perform sexually explicit acts after being given a “voodoo doll,” a piece of code that takes the form of a regular object such as a cup or pen but in fact takes control of your avatar).

Wrestling with the marginalization of cyber sexual harassment is a crucial step in combating its gender-specific harms. Law has a crucial role to play in this effort. Law serves different functions here. It can deter online harassment's harms by raising the costs of noncompliance beyond its expected benefits. Law can also remedy such harm with monetary damages, injunctions, and criminal convictions. My article *Cyber Civil Rights* explored antidiscrimination, criminal, and tort law's role in preventing, punishing, and redressing cyber harassment.²⁰ In this piece, I explore law's other crucial role: educating the public about women's unique suffering in the wake of cyber harassment and potentially changing societal responses to it. Because law is expressive, it constructs our understanding of harms that are not trivial. The application of a cyber civil rights legal agenda would reveal online harassment for what it truly is—harmful gender discrimination. It would recognize the distinct suffering of women, suffering that men ordinarily do not experience or appreciate as harmful.

Once cyber harassment is understood as gender discrimination and not as a triviality to be ignored, women are more likely to complain about it rather than suffer in silence. Law enforcement could pursue cyber harassment complaints rather than just counseling women to get off their computers and seek help only if their harassers confront them offline. As a result, some perpetrators might curtail their bigoted assaults. Viewing cyber harassment as gender discrimination could become part of our cultural understandings and practices. As with workplace sexual harassment and domestic violence, changing the norms of acceptable conduct may be the most potent force in regulating behavior in cyberspace. An antidiscrimination message is crucial to harness law's moral and coercive power.²¹

This piece has three Parts. Part I explores the gendered nature of online harassment.²² It first defines the phenomenon of cyber gender harassment. It then explores the distinct harms that such online abuse inflicts on targeted women and society.

Part II documents and refutes the view that law should ignore cyber gender harassment due to its triviality. It places this response in its broader context—society has historically marginalized harms that uniquely affect women. As with sexual harassment and domestic abuse in the past, a crucial first step in defeating cyber gender harassment is convincing the public of its seriousness. This Part undertakes that work, exploring the false assumptions that underlie the trivialization critique.

Part III demonstrates the expressive role that law can play in detriivializing cyber harassment and in shaping online behavior. It highlights how law

20. Citron, *supra* note 2.

21. Cf. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1335 (1988) (describing the importance of an antidiscrimination message to combat racial subordination).

22. Brian Leiter aptly calls social networking sites that house and encourage such gender harassment "cyber-cesspools." Brian Leiter, *Cleaning Cyber-Cesspools: Google and Free Speech 1* (Nov. 21, 2008) (unpublished manuscript, on file with author).

can change the way targeted women, the broader public, law enforcement, and even perpetrators understand cyber gender harassment, drawing on analogies to law's expressive role in changing social norms and behavior concerning domestic violence and workplace sexual harassment. It concludes by explaining why obstacles to law's expressive role are not insurmountable.

I. CYBER HARASSMENT THROUGH A FEMINIST LENS

Online harassment is a problem that has a profound impact on women's lives but is little understood. Just as society ignored sexual harassment until scholars and courts recognized it as sex discrimination, a definition of cyber gender harassment is crucial to understanding and tackling its distinct harms to women. No working definition has been constructed, perhaps because cyber gender harassment has been relegated to the shadows of our thinking. This Part fills that void and provides an account of the gendered nature of online harassment, highlighting its distinct effect on targeted women and society.

A. Understanding Cyber Gender Harassment

Although cyber gender harassment encompasses various behaviors, it has a set of core features: (1) its victims are female, (2) the harassment is aimed at particular women, and (3) the abuse invokes the targeted individual's gender in sexually threatening and degrading ways.²³

While cyber attackers target men, more often their victims are female.²⁴ The nonprofit organization *Working to Halt Online Abuse* has compiled statistics about individuals harassed online. In 2007, 61% of the individuals reporting online abuse identified themselves as women while 21% identified

23. Online harassment is also targeted at gay men—the harassment similarly invokes targeted individuals' gender in a sexually threatening manner. For instance, anonymous posters on the high school gossip site Peoples Dirt noted that named male students were gay and threatened them with violence. A posting under a male student's name asserted "we know your [sic] g@y . . . just come out of the closet . . . and you should choke on a dick and die." Posting of Danielle Citron to Concurring Opinions, *Peoples Dirt, Now Terrorizing High Schoolers Everywhere*, <http://www.concurringopinions.com/archives/2009/05/peoples-dirt-now-terrorizing-high-schoolers-everywhere.html> (May 18, 2009, 15:05 EST) (alteration in original). Anonymous posters on the Encyclopedia Dramatica site direct sexually threatening taunts to named gay men. Posters accused a man of having an incestuous relationship with his brother and a bestial relationship with his dog. Encyclopedia Dramatica, Chris Cocker, http://www.encycopediadramatica.com/Chris_Crocker (last visited Aug. 29, 2009).

24. Sheridan & Grant, *supra* note 3, at 67. A 2003 study of 169 individuals who reportedly experienced cyber harassment found that 62.5 percent of the respondents were female. Paul Bocij, *Victims of Cyberstalking: An Exploratory Study of Harassment Perpetrated via the Internet*, FIRST MONDAY, Oct. 6, 2003, <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1086/1006>. The harassment consisted of threatening or abusive email messages, threats or abusive comments via IM messages, threats or abusive comments in chat rooms, the posting of false rumors in chat rooms, impersonation of individuals in e-mail messages to friends, and encouragement of others to harass or threaten the respondent. *Id.*

themselves as men.²⁵ In 2006, 70% of online harassment complainants identified themselves as women.²⁶ Overall, from 2000 to 2008, 72.5% of the 2,519 individuals reporting cyber harassment were female and 22% were male.²⁷ Forty-four percent of the victims were between the ages of 18 and 40,²⁸ and 49% reportedly had no relationship with their attackers.²⁹ Similarly, the Stalking Resource Center, a branch of the National Center for Victims of Crimes, reports that approximately 60% of online harassment cases involve male attackers and female targets.³⁰

Academic research supports this statistical evidence. The University of Maryland's Electrical Engineering and Computer Department recently studied the threat of attacks associated with the chat medium Internet Relay Chat.³¹ Researchers found that users with female names received on average 100 "malicious private messages," which the study defined as "sexually explicit or threatening language," whereas users with male names received only 3.7.³² According to the study, the "experiment show[ed] that the user gender has a significant impact on one component of the attack thread (i.e., the number of malicious private messages received for which the female bots received more than 25 times more private messages than the male bots . . .)" and "no significant impact on the other components on the attack threat[.]" such as attempts to send files to users and links sent to users.³³ The study explained that attacks came from human chat users who selected their targets, not automated scripts programmed to send attacks to everyone on

25. WORKING TO HALT ONLINE ABUSE, 2007 CYBERSTALKING STATISTICS 1, <http://www.haltabuse.org/resources/stats/2007Statistics.pdf>. Eighteen percent of those reporting cyber harassment did not report their gender. *Id.*

26. WORKING TO HALT ONLINE ABUSE, 2006 CYBERSTALKING STATISTICS 1, <http://www.haltabuse.org/resources/stats/2006Statistics.pdf>.

27. WORKING TO HALT ONLINE ABUSE, CYBERSTALKING COMPARISON STATISTICS 2000–2008 1, <http://www.haltabuse.org/resources/stats/Cumulative2000-2008.pdf>. Five and one-half percent of the reporting individuals refused to provide their gender to the organization. *Id.*

28. *Id.*

29. *Id.* at 2.

30. Christine Petrozzo & Sarah Stapp, *To catch a predator: How some cyber-agencies help victims fight back against online aggression*, DAILY ORANGE (Syracuse, N.Y.), Jan. 24, 2008, http://media.www.dailyorange.com/media/storage/paper522/news/2008/01/24/News/To.Catch.A.Predator-3165676.shtml#cp_article_tools.

31. See Robert Meyer & Michael Cukier, *Assessing the Attack Threat due to IRC Channels*, in PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON DEPENDABLE SYSTEMS AND NETWORKS 467 (2006), available at <http://www.enre.umd.edu/content/rmeyer-assessing.pdf>. Chat rooms using IRC protocol permit live conversations via the internet, containing as many as several thousand people, whereas other chat programs such as MSN messenger and Yahoo focus on two-person conversations. *Id.* Users can join existing discussions or create new ones. BOCI, *supra* note 14, at 126. "Estimates of the number of publicly accessible channels available [on IRC] range from 100,000 to more than 580,000." *Id.* (citation omitted).

32. Meyer & Cukier, *supra* note 31, at 469. The researchers used simulated users with female names Cathy, Elyse, Irene, Melissa, and Stephanie, and simulated users with male names Andy, Brad, Dan, Gregg, and Kevin. *Id.* at 469–70.

33. *Id.* at 470.

the channel, and that “male human users specifically targeted female users.”³⁴

Examples of cyber gender harassment show that it routinely involves threats of rape and other forms of sexual violence.³⁵ It often reduces targeted women to sexual objects³⁶ and includes humiliating comments that reinforce gender-constructed stereotypes,³⁷ such as “[w]ho let this woman out of the kitchen?” and “why don’t you make yourself useful and go have a baby.”³⁸ The online abuse can be “more vicious” if targeted women are “lesbian[] and/or . . . not-white.”³⁹

For instance, Kathy Sierra, a well-known programmer and game developer, maintained a popular blog on software development called “Creating Passionate Users.”⁴⁰ In 2007, anonymous individuals attacked Ms. Sierra on her blog and two other websites.⁴¹ Posters suggested she deserved to have her throat slit, be suffocated, sexually violated, and hanged.⁴² They posted her home address and Social Security number.⁴³ They posted doctored pho-

34. *Id.* at 471.

35. *See, e.g.*, Jessica Valenti, *How the web became a sexist’s paradise*, GUARDIAN, Apr. 6, 2007, at 16, available at <http://www.guardian.co.uk/world/2007/apr/06/gender.blogg> (describing anonymous posters’ attack of women bloggers with comments such as “I would fuck them both in the ass,” and “hate-fuck[]” them) (internal quotation marks omitted); Posting of Lisa Stone to BlogHer, *Hating Hate Speech: Safety for Kathy Sierra and all women online*, <http://www.blogher.com/node/17319> (Mar. 27, 2007, 01:47 EST) (explaining that countless women have been threatened with rape, dismemberment, and violent images in online forums such as message boards and blog comments).

36. Technologist Robert Scoble explains that “whenever [he] post[s] a video of a female technologist [on his blog] there invariably are snide remarks about body parts and other things that simply wouldn’t happen if the interviewee were a man.” Lynn Harris, *Death threats dog female blogger*, SALON, Mar. 28, 2007, http://www.salon.com/mwt/broadsheet/2007/03/28/kathy_sierra/print.html.

37. Barak, *supra* note 1, at 79; *see also, e.g.*, Comment of idiolect to Posting of Vanessa to Feministing, *Listen Up: Bloggers Discuss Online Harassment*, <http://www.feministing.com/archives/013176.html> (Jan. 18, 2009, 14:52 EST) (explaining that during online discussion, commentator called her a “bitch/whore/cunt” and posted a giant picture of young anime girl’s face beaten, black-eyed, and bloody with the following text: “Who told you could leave the kitchen? . . . Either make me a sandwich or [shut the fuck up].”) (emphasis omitted).

38. Posting of Alyssa Roysse to BlogHer, *Rape and Death and Batman, OH MY!*, <http://www.blogher.com/rape-and-death-and-batman-oh-my> (Aug. 3, 2008, 11:42 EST). As a writer for the Austin Chronicle reports, “[t]here are endless examples of female bloggers coming under the knife for being bitches or media whores, while male bloggers’ gender is either ignored or heralded.” Sofia Resnick, *Gloves Off: The perils of being a female blogger*, AUSTIN CHRON., Mar. 6, 2009, <http://www.austinchronicle.com/gyrobase/Issue/print?oid=751511>.

39. Stone, *supra* note 35.

40. Greg Sandoval, *Blogger cancels conference appearance after death threats*, CNET NEWS BLOG, Mar. 26, 2007, http://www.news.com/8301-10784_3-6170683-7.html.

41. *See* Dahlia Lithwick, *Fear of Blogging: Why women shouldn’t apologize for being afraid of threats on the Web*, SLATE, May 4, 2007, <http://slate.com/toolbar.aspx?action=print&id=2165654>; Dan G., <http://dan100.blogspot.com/2007/03/paynter-and-locke-never.html> (March 27, 2007, 14:10 EST).

42. Sandoval, *supra* note 40.

43. Valenti, *supra* note 35. Ms. Sierra explained that “[p]eople are posting all my private data online everywhere—social-security number, and home address—a retaliation for speaking out.” *Id.* (internal quotation marks omitted).

tographs of Ms. Sierra: one picture featured her with a noose beside her neck; another depicted her screaming while being suffocated by lingerie.⁴⁴ After the attacks, Ms. Sierra canceled speaking engagements and feared leaving her home.⁴⁵ As she explained, “my blog was in the Technorati Top 100 [at the time of the attack]. I have not blogged there—or anywhere—since.”⁴⁶

Harassers do not reserve their assaults for high-profile women like Ms. Sierra. For instance, anonymous posters targeted NYU law student Jill Filipovic on the social networking site AutoAdmit.⁴⁷ Under a thread entitled “can someone post a pic of Jill H. [sic] from NYU?,” posters uploaded Ms. Filipovic’s Facebook profile and picture.⁴⁸ Posters made clear that they attended school with Ms. Filipovic by noting “I sat next to Jill F for an hour.”⁴⁹ After a message thread asked: “Any Jill F sightings yet,” posters responded that they had seen her around school.⁵⁰ Anonymous posters threatened Ms. Filipovic with rape: “I want to brutally rape that Jill slut”⁵¹ and “she’s a normal sized girl that [I]’d bang violently[,]”⁵² “maybe you’d have to kill her afterward.”⁵³ They created menacing message threads, such as “Official Jill Filipovic RAPE thread”⁵⁴ and “I have it on good authority that Jill F has rape fantasies.”⁵⁵ Posters discussed photo-shopping a picture of Ms.

44. *Id.*

45. *See Blog death threats spark debate*, BBC NEWS, Mar. 27, 2007, <http://news.bbc.co.uk/1/hi/technology/6499095.stm>.

46. Comment of Kathy Sierra to Posting of Kaimipono D. Wenger to Concurring Opinions, *CCR Symposium: A Behavioral Argument for Stronger Protections*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_a_1.html#comments (Apr. 18, 2009, 14:25 EST).

47. In just over eighty message threads, posters discuss Ms. Filipovic—her whereabouts and looks—often with threatening, sexually explicit language. *See* E-mail from Jill Filipovic to Danielle Citron, Professor of Law, University of Maryland (March 6, 2009, 11:57 EST).

48. *See* Posting of honk if you are nigger to AutoAdmit, http://www.xoxoth.com/thread.php?thread_id=331077 (Jan. 2, 2006, 19:17 EST).

49. *See* E-mail from Jill Filipovic to Danielle Citron, Professor of Law, University of Maryland (March 6, 2009, 11:43 EST).

50. Posting of Jill to Feministe, *A Follow-Up*, <http://www.feministe.us/blog/archives/2006/01/04/a-follow-up/> (Jan. 4, 2006, 01:05 EST).

51. Posting of Shotgun Ned to Auto Admit, http://www.xoxoth.com/thread.php?thread_id=612665&mc=96&forum_id=2 (Apr. 13, 2007, 15:14 EST); *see also* Posting of Jill to Feministe, *Greatest Hits: The Public Woman*, <http://www.feministe.us/blog/archives/2007/08/08/greatest-hits-the-public-woman/> (Aug. 8, 2007, 15:38 EST).

52. Posting of AK47 to AutoAdmit, http://www.xoxoth.com/thread.php?thread_id=613845&mc=32&forum_id=2 (Apr. 15, 2007, 19:09 EST).

53. Posting of AK47 to AutoAdmit, http://www.xoxoth.com/thread.php?thread_id=613845&mc=32&forum_id=2 (Apr. 15, 2007, 19:12 EST).

54. AutoAdmit Message Thread, Official Jill Filipovic RAPE thread, http://www.xoxoth.com/thread.php?thread_id=621704&mc=10&forum_id=2 (last visited Aug. 30, 2009).

55. AutoAdmit Message Thread, I have it on good authority that Jill F has rape fantasies, http://www.autoadmit.com/thread.php?thread_id=613270&mc=1&forum_id=2 (last visited Aug. 30, 2009).

Filipovic's head onto a porn star's body⁵⁶ and claimed that she had a number of abortions.⁵⁷

The harassment negatively affected Ms. Filipovic's law school studies. After seeing the threatening threads, Ms. Filipovic skipped class, fearing that students in her community would write about her whereabouts.⁵⁸ When she attended class, she avoided participating in discussions as she did not want to say something stupid and have it appear online.⁵⁹ Because she could not determine who might be the anonymous AutoAdmit posters, she avoided making friends in law school.⁶⁰ Although Ms. Filipovic had been very involved in student groups as an undergraduate, she did not feel comfortable joining similar law school groups after the AutoAdmit incident.⁶¹ In the wake of the attacks, she felt depressed and helpless.⁶² Ms. Filipovic has explained that although she blogs at a feminist website, she worries that her writing will attract online harassment much like she experienced during her time in law school.⁶³ She notes that she has toned down her positions to avoid future attacks.⁶⁴

Another cyber-harassment incident involved blogger Alyssa Royse, who writes about film. In August 2008, Ms. Royse commented on the business acumen of the studio that made the film "The Dark Knight."⁶⁵ Shortly thereafter, anonymous individuals attacked Ms. Royse with rape threats and demeaning comments on her blog. One threatened: "Get a life you two dollar whore blogger, The Dark Knight doesn't suck, you suck! Don't ever post another blog or [sic] unless you want to get ganged up."⁶⁶ Another poster urged, "[I] hope someone shoots then rapes you."⁶⁷ A poster stated: "if you were my wife [I] would beat you."⁶⁸ Others disparaged her intellect: "[t]his is why women are TOO STUPID to think critically and intelligently about film; AND business for that matter" and "why don't you make yourself use-

56. See AutoAdmit Message Thread, Legal Liability from posting pic showing Jill fucking?, http://www.xoxohth.com/thread.php?thread_id=613867&mc=31&forum_id=2 (last visited Aug. 30, 2009).

57. See E-mail from Jill Filipovic to Danielle Citron, Professor of Law, University of Maryland (March 6, 2009, 11:57 EST).

58. Telephone Interview with Jill Filipovic (Mar. 6, 2009) (notes on file with author).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Posting of Alyssa Royse to Start Her Up: For Women Entrepreneurs on SEATTLEPI.COM, *Business Lessons from Batman and The Dark Knight*, <http://blog.seattlepi.com/startherup/archives/145063.asp> (Aug. 2, 2008, 08:50 EST).

66. Alyssa Royse, *supra* note 38.

67. *Id.*

68. *Id.*

ful and go have a baby.”⁶⁹ Ms. Roysse explained that of the nearly 200 comments, only 3 failed to mention her gender in a disparaging or threatening manner.⁷⁰ To stop the harassment, she closed the comments and deleted 50 of the most violent and threatening ones.⁷¹

A similar incident involved Christina Lobello. An anonymous individual attacked Ms. Lobello after she joined a chat room to keep in touch with friends.⁷² The attacker stole a picture of Ms. Lobello’s twelve-year-old daughter from her chat-room profile and created a fake web page saying that her daughter wanted to be raped by a stranger.⁷³ The attacker posted her home address and personal information on the site and sent her messages that he wanted to “come to [her] house, to tie [her] up, rape them and have [her] watch them as he kills them one by one and then take [her] life.”⁷⁴ He also threatened to rape another chat room participant’s daughter.⁷⁵

Another incident involved a twenty-seven-year-old female nurse who faced sexual threats after she entered a chat room as a fifteen-year-old girl.⁷⁶ A man asked her to go into a private room with him.⁷⁷ After she did so, seven or eight men entered the room and began sending her pictures of women who had been beaten or raped.⁷⁸ The men said they “wanted to rape me, spank me until I bled.”⁷⁹

A group called Anonymous has devoted its efforts to coordinating attacks on specific women working and writing on the Web. The group gathers on message boards and wikis where it maintains a list of women’s websites that it has successfully shut down with distributed denial-of-service attacks, “image reaping” campaigns, and online harassment.⁸⁰ The group reportedly takes credit for closing over 100 feminist sites and blogs.⁸¹ For

69. *Id.*

70. *Id.*

71. Comment of Alyssa Roysse to Posting of Alyssa Roysse to BlogHer, *Rape and Death and Batman, OH MY!*, <http://www.blogher.com/rape-and-death-and-batman-oh-my> (Aug. 4, 2008, 17:38 EST).

72. Christina Chatalian, *Cyber stalker terrorizing family: Former Syracuse woman becomes a target of cyber harassment*, CNYCENTRAL.COM, Feb. 15, 2008, http://www.cnycentral.com/news/news_story.aspx?id=96646.

73. *Id.*

74. *Id.*

75. Comment of Mary Sisson to Christina Chatalian, *Cyber stalker terrorizing family: Former Syracuse woman becomes a target of cyber harassment*, CNYCENTRAL.COM, http://www.cnycentral.com/news/news_story.aspx?id=96646 (Feb. 18, 2008, 18:01 EST).

76. See Debra Michals, *Cyber-Rape: How Virtual Is It?*, Ms., Mar./Apr. 1997, at 68, 69–70.

77. *Id.* at 69.

78. *Id.*

79. *Id.* at 70.

80. See, e.g., Encyclopedia Dramatica, Cheryl Lindsey Seelhoff, http://www.encyclopedia-dramatica.com/Cheryl_Lindsey_Seelhoff (last visited Aug. 13, 2009).

81. Posting of Jill to Feministe, *What do we do about online harassment?*, <http://www.feministe.us/blog/archives/2007/08/09/what-do-we-do-about-online-harassment/> (Aug.

instance, Anonymous attacked a woman who maintained a video blog about Japanese language and video games.⁸² Group members hacked her online accounts.⁸³ They spammed her Myspace and YouTube accounts. They published her passwords and private medical history on various sites.⁸⁴ Members of the group posted doctored photographs of the woman, including one picture that featured the woman's head atop naked bodies.⁸⁵ Next to her picture appeared the promise that group members would rape her "at full force in her vagina, mouth, and ass."⁸⁶ Group members also saturated her video blog with sexually violent pictures and took down her videos.⁸⁷ When her video blog would reappear, the group would urge its members to "rape" and "nuke[] [her sites] from orbit."⁸⁸

Whether attackers reduce women to their sexual body parts, threaten rape, or invoke demeaning, gendered stereotypes, they make clear that women are targeted due to their gender and have a profound impact on gender equality.

B. Cyber Harassment's Gender-Specific Harms

This Section captures how these attacks inflict unique harms on women and society, in much the same way that sexual harassment in the workplace and domestic violence produce gender-specific harms.

1. Distinct Impact on Targeted Women

Cyber gender harassment invokes women's sexuality and gender in ways that interfere with their agency, livelihood, identity, dignity, and well-being. The subsequent injuries are unique to women because men do not typically experience sexual threats and demeaning comments suggesting their inferiority due to their gender.⁸⁹

First, cyber gender harassment undermines women's agency over their own lives. Online threats of sexual violence "literally, albeit not physically,

9, 2007, 22:36 EST); Cheryl Lindsey Seelhoff, http://www.encyclopediadramatica.com/index.php?title=Cheryl_Lindsey_Seelhoff (last visited March 3, 2008).

82. See Encyclopedia Dramatica, Applemilk1988, <http://www.encyclopediadramatica.com/Applemilk1988> (last visited Aug. 13, 2009) [hereinafter Applemilk1988 Entry].

83. *Id.*

84. Pat Miller, *Another Rape in Cyberspace*, CERISE, Nov. 2007, <http://cerise.theirinsnetwork.org/archives/188>.

85. *Id.*

86. *Id.* (internal quotation marks omitted).

87. Applemilk1988 Entry, *supra* note 82.

88. See Miller, *supra* note 84.

89. This statement is particularly true for heterosexual men who are less likely to face sexual intimidation by women or homosexual men, but less true for gay men who confront sexual taunts when others perceive them as effeminate. See Jerry Finn, *A Survey of Online Harassment at a University Campus*, 19 J. INTERPERSONAL VIOLENCE 468 (2004).

penetrate[.]” women’s bodies.⁹⁰ They expose women’s sexuality, conveying the message that attackers control targeted women’s physical safety.⁹¹ The rape threats are particularly frightening to women as one in every six women has experienced an attempted or completed rape as a child or adult.⁹² Such threats discourage women from pursuing their interests in cyberspace. For instance, women shut down their blogs and websites.⁹³ They retreat from chat rooms. A 2005 Pew Internet and American Life Project study attributed an 11 percent decline in women’s use of chat rooms to menacing comments.⁹⁴ Women limit their websites’ connectivity to a wider, and potentially threatening, audience by password protecting their sites.⁹⁵ They close comments on blog posts, foreclosing positive conversations along with abusive ones.⁹⁶ The harassment scares women away from online discourse “by making an example of those females who [do] participate” with “very real threats of rape.”⁹⁷

Cyber harassment also affects women’s agency in their offline lives. For instance, a woman stopped going to the gym because her anonymous harassers encouraged her law school classmates to take cell phone pictures of her and post them online.⁹⁸ After posters warned a female blogger that she needed to watch her back because they knew where she lived, the woman “g[ot] an alarm” and “started [carrying a] bat to and from the car when [she] went to work at night.”⁹⁹ Kathy Sierra’s cyber harassment experience left her fearful to attend speaking engagements and even to leave her yard: “I will never feel the same. I will never *be* the same.”¹⁰⁰ Another woman explained: cyber threats had a “major impact on me both online and offline—I removed my name from my Website and my Internet registration. I rented a mailbox

90. WEST, *supra* note 15, at 102–03 (discussing real space rape) (emphasis omitted).

91. See Martha Nussbaum, *Objectification and Ressentiment* 18–20 (Nov. 21–22, 2008) (unpublished manuscript, on file with author).

92. LENORA M. LAPIDUS ET AL., *THE RIGHTS OF WOMEN: THE AUTHORITATIVE ACLU GUIDE TO WOMEN’S RIGHTS* 180 (4th ed. 2009) (describing incidence of rape in United States). To the extent that we see men experience threats of sexual violence online, the victims are gay men. See Posting of Danielle Citron to Concurring Opinions, *supra* note 23.

93. Sheridan & Grant, *supra* note 3, at 637.

94. See *Female Bloggers Face Harassment*, WOMEN IN HIGHER EDUC., June 2007, at 5.

95. Nakashima, *supra* note 6 (explaining that women attacked online by anonymous posters suspend their blogging, turn to private forums, or use gender-neutral pseudonyms).

96. See Comment of Alyssa Royse to Posting of Alyssa Royse to BlogHer, *supra* note 71.

97. Comment of C.L. to Posting of Danielle Citron to Concurring Opinions, *Cyber Harassment: Yes, It is a Woman’s Thing*, http://www.concurringopinions.com/archives/2009/03/cyber_harassmen.html (March 12, 2009, 22:37 EST).

98. See Ellen Nakashima, *Harsh Words Die Hard on the Web; Law Students Feel Lasting Effects of Anonymous Attacks*, WASH. POST, Mar. 7, 2007, at A1.

99. Tracy L.M. Kennedy, *An Exploratory Study of Feminist Experiences In Cyberspace*, 3 CYBERPSYCHOL. & BEHAV. 707, 716 (2000).

100. Dahlia Lithwick, *Fear of Blogging: Why women shouldn’t apologize for being afraid of threats on the Web*, SLATE, May 4, 2007, <http://www.slate.com/id/2165654> (internal quotation marks omitted).

to handle all snail mail related to the Website, and I changed my business and home phone numbers”¹⁰¹ As Ms. Sierra noted, “[h]ow many rape/fantasy threats does it take to make women want to lay low? Not many”¹⁰²

Online harassment replicates in cyberspace the autonomy erosion that female employees have long experienced in real space. Workplace sexual harassment exposes and exploits a female employees’ sexuality. Verbal sexual abuse and displays of pornography make female employees “feel physically vulnerable” to attack.¹⁰³ Female employees leave their jobs or seek transfers to escape hostile work environments in much the same way that women shut down income-generating sites or limit access to their blogs to avoid cyber abuse.

Second, cyber gender harassment undermines women’s ability to achieve their professional goals. It may impair women’s work directly, such as technological attacks designed to shutter feminist websites or postings designed to discourage employees from hiring women.¹⁰⁴ It may take a more indirect form of professional sabotage by discrediting women’s competence in their careers.¹⁰⁵ Assertions that “[t]his is why women are TOO STUPID to think critically and intelligently about film; AND business for that matter” and “why don’t you make yourself useful and go have a baby”¹⁰⁶ appear designed to generate feelings of inferiority and to discourage women from engaging in professional activities online. Rape threats and sexually menacing comments have a similar effect. This sort of intimidation is unique to women—men are not routinely told that they belong in the kitchen or bedroom instead of earning a living online.

The abuse harms targeted individuals’ careers because employers routinely rely on search engines to collect intelligence on job applicants and may discover negative postings about them. Employers may decline to interview or hire targeted women not because they believe the malicious postings but because it is simply easier to hire individuals who don’t come with such baggage. Moreover, candidates with impressive online reputations are more attractive to employers than those who lack them. Indeed, an online presence is crucial to obtaining work in certain fields. Noted technology blogger Robert Scoble explains that women who don’t blog are “never going to be included in the [technology] industry.”¹⁰⁷ This parallels workplace sexual harassment’s interference with women’s economic

101. Kennedy, *supra* note 99, at 716.

102. Valenti, *supra* note 35 (internal quotation marks omitted).

103. Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1206 (1989) [hereinafter Abrams, *Transformation*].

104. See *supra* notes 80–81 and accompanying text (describing activities of Anonymous).

105. See, e.g., Posting of Alyssa Royse to BlogHer, *supra* note 38.

106. *Id.*

107. Nakashima, *supra* note 6 (internal quotation marks omitted).

opportunities.¹⁰⁸ Demeaning verbal abuse can be so severe that women leave their jobs,¹⁰⁹ just as online intimidation has pushed women out of the blogosphere.¹¹⁰ It impairs women's work opportunities by making clear to them that they will be viewed and judged by traditional and subordinate female roles,¹¹¹ in much the way that cyber gender harassment does.

Third, women sustain harm to their identities *as women*. Women may feel impelled to compromise their female identity by "passing" as men to prevent discrimination.¹¹² Female bloggers and commentators assume gender-disguising names to prevent cyber harassment.¹¹³ Even individuals who present themselves as women may nonetheless feel forced to "cover," i.e., engage in stereotypically male conduct, to avoid online abuse.¹¹⁴ Women play down stereotypically female attributes, such as compassion, and highlight stereotypically male ones, such as aggressiveness, to deflect cyber assaults.¹¹⁵ They "try[] to write as [they think] a male would write" to avoid

108. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1763–65 (1998) (conceptualizing hostile-work-environment harassment as a means for men to preserve dominance in favored types of work by undermining women's effectiveness on the job through demeaning comments, deliberate sabotage, and refusals to provide women support they need on the job).

109. Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1207 (1998) [hereinafter Abrams, *New Jurisprudence*].

110. Posting of John Hawkins to Right Wing News, *Blogging While Female Part 2: Five Women Bloggers Talk About Gender Issues And The Blogosphere*, http://www.rightwingnews.com/mt331/2008/03/blogging_while_female_part_2_5_1.php (Mar. 18, 2008 11:30 EST) (interviewing blogger Ann Althouse).

111. Abrams, *New Jurisprudence*, *supra* note 109, at 1208.

112. See KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 22, 144 (2006) [hereinafter YOSHINO, *COVERING*]. Discrimination has long forced women to pass as men to gain access to professions or relationships that would otherwise have remained unavailable to them. See also, e.g., MARJORIE GARBER, *VESTED INTERESTS: CROSS-DRESSING & CULTURAL ANXIETY* 67–70 (1992). Kenji Yoshino identifies films such as *Yentl* and *Boys Don't Cry* as examples of female passing. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 926 & n.880 (2002) [hereinafter Yoshino, *Covering*].

113. Debra Winter & Chuck Huff, *Adapting the Internet: Comments from a Women-Only Electronic Forum*, AM. SOCIOLOGIST, Spring 1996, at 30, 45; see also Kennedy, *supra* note 99 (explaining that female bloggers have changed their gender presentation online to protect themselves from attack after hearing about others' cyber harassment experiences); Elaine Vigneault: *Read My Mind, To Ignore Violence Is to Condone It*, <http://www.elainevigneault.com/to-ignore-violence-is-to-condone-it.html> (Apr. 13, 2007, 14:02 EST) (explaining that she assumes male pseudonyms to comment on male-dominated blogs). This is akin to racial passing on the internet, where African Americans transform themselves into whites by assuming certain names to reduce the chance that they will be identified as black. See Jerry Kang, *Cyber-Race*, 113 HARV. L. REV. 1130, 1179–80 (2000).

114. See Yoshino, *Covering*, *supra* note 112, at 780 (discussing the phenomenon of covering). Women also face reverse-covering demands, i.e., to be more like stereotypical women than stereotypical men. In that sense, women oftentimes find themselves in a predicament at work because they are pressured to be "masculine" enough to obtain their coworkers' respect and "feminine" enough to be respected as women. *Id.*

115. See Winter & Huff, *supra* note 113, at 50 (noting that women often feel they either have to adopt an aggressive, "masculine" communication style or forgo posting on the internet altogether).

sexually explicit messages.¹¹⁶ They might harass other women online, perhaps as a way to deflect attention from them.¹¹⁷

Passing as a man or covering stereotypically female characteristics exacts a significant price. Hiding one's identity produces feelings of alienation as the person must pretend to be something she is not.¹¹⁸ It generates feelings of shame.¹¹⁹ At its most extreme, the impulse to pass or cover can negate a person's identity so completely that she experiences a slow death of "the psyche, the soul, and the persona."¹²⁰ Learning and performing an unfamiliar identity also takes significant effort and time.¹²¹ A cyber-harassment victim explains that changing her identity was bothersome because she had to "avoid talking about the same issues in the same ways (otherwise people discover you, find out you are female, and then the cycle [of sexually explicit messages] repeats [itself])."¹²²

This resembles the performative harms that women experience offline in the face of sex discrimination. Female lawyers once disguised their gender when signing legal briefs to avoid prejudice by the bench and bar.¹²³ Female authors write under male pseudonyms for similar reasons.¹²⁴ Women mute their female characteristics (e.g., refusing to talk about a pregnancy or parenting) and highlight typically male characteristics (e.g., assertiveness) to avoid differential treatment in the workplace because of their sex.¹²⁵

Fourth, cyber harassment harms women's dignity and sense of equal worth.¹²⁶ Online assaults objectify women, reducing them to their body

116. E-mail from Christa Laser to Danielle Citron, Professor of Law, University of Maryland (Mar. 13, 2009, 10:12 EST) (on file with author).

117. See, e.g., Melissa Dribben, *Penn Shoutouts Is Due*, PHILA. INQUIRER, Apr. 19, 2009, at B1 (describing the University of Pennsylvania student newspaper's semesterly publication of "shoutouts," which the editors describe as "reader-submitted expressions of love/vitriol/both . . . and the meaner, the better[,] that often include sexualized comments about women by women) (alteration in original) (internal quotation marks omitted). College-aged women have seemingly embraced misogyny. In the long term, this development is sure to have corrosive effects as women glorify their own sexual objectification and degradation.

118. Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell"*, 108 YALE L.J. 485, 527 (1998).

119. MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 293 (2004).

120. Deirdre Davis, *The Harm That Has No Name: Street Harassment, Embodiment, and African American Women*, 4 UCLA WOMEN'S L.J. 133, 176 (1994) (internal quotation marks omitted).

121. Yoshino, *supra* note 118, at 528.

122. E-mail from Christa Laser to Danielle Citron, Professor of Law, University of Maryland, *supra* note 116.

123. See, e.g., FRED STREBEIGH, *EQUAL: WOMEN RESHAPE AMERICAN LAW* 160 (2009) (describing a female attorney who was forced to sign briefs with only her first initial and prohibited from appearing in court).

124. Wikipedia, *Pen name*, http://en.wikipedia.org/wiki/Pen_name (last visited Sept. 9, 2009).

125. YOSHINO, *COVERING*, *supra* note 112, at 154–62.

126. As Leslie Meltzer elegantly develops in her article *Spheres of Dignity: Conceptions and Functions in Constitutional Law* (on file with author), the term dignity implicates a variety of val-

parts.¹²⁷ For instance, posters on the message board AutoAdmit described one targeted female student as a “dumbass bitch . . . [who] I wish to rape . . . in the ass”¹²⁸ and stated that another has “huge fake titties.”¹²⁹ Harassers further humiliate women by reducing them to *diseased* body parts. For example, a poster says of one woman, “just don’t FUCK her, she has herpes.”¹³⁰ They make clear that women have worth only as sex objects.

Such objectification injures women by signaling that they are nothing but things to be used by men, not persons with feelings.¹³¹ Online rape threats say to women “[y]ou claim to be a full human being, but you are much less than that. You are a mere thing . . . [whose] autonomy can be snatched away, your feelings ignored or violated.”¹³² Women feel rejected and less worthy.¹³³ A victim explained: “someone who writes ‘You’re just a cunt!’ is not trying to convince me of anything but my own worthlessness.”¹³⁴ Martha Nussbaum considers the online objectification of women an attempt to “restor[e] the patriarchal world before the advent of sex equality, the world in which women were just tools of male purposes . . . [and] had no right to be more than tits and cunt.”¹³⁵

Sexual harassment in the workplace similarly treats women as moral subordinates and undermines their self-respect.¹³⁶ Employers and co-workers who refer to female workers as “nice pieces of ass” or “stupid pair of boobs” cause women to see themselves as less equal and able than men.¹³⁷ As Kathryn Abrams develops in her work, sexual inquiries, jokes, and innuendos in the workplace have the effect of reminding women that they are viewed as objects of sexual derision, not colleagues worthy of respect and equal treatment.¹³⁸

Last, cyber harassment inflicts unique harms to women’s physical and emotional well-being. Posts providing women’s home addresses alongside

ues, including dignity as equality. I aim to use the term dignity here to refer to the value harmed by conduct that demeans, devalues, and denigrates women due to their gender.

127. Nussbaum, *supra* note 91, at 5–6; *see also* WEST, *supra* note 15, at 146 (explaining that sexual harassment objectifies women, inflicting a dignitary injury).

128. First Amended Complaint at ¶ 25, *Doe v. Ciolli*, No. 307CV00909 CFD (D. Conn. Nov. 8, 2007) (internal quotation marks omitted).

129. *Id.* at ¶ 18 (internal quotation marks omitted).

130. *Id.* at ¶ 21 (internal quotation marks omitted).

131. Nussbaum, *supra* note 91, at 3–4.

132. *Id.* at 8 (internal quotation marks omitted).

133. Kennedy, *supra* note 99, at 717.

134. *Id.* at 715 (internal quotation marks omitted).

135. Nussbaum, *supra* note 91, at 19.

136. Abrams, *Transformation*, *supra* note 103, at 1208. *See generally* DEBORAH HELLMAN, *WHEN IS DISCRIMINATION WRONG?* (2008) (exploring when and why discrimination is morally wrong).

137. Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479, 2529–30 (1994).

138. *E.g.*, Abrams, *New Jurisprudence*, *supra* note 109, at 1207–08.

the suggestion that they have rape fantasies or should be raped have led to offline stalking and rape.¹³⁹ Women also fear that online threats of sexual violence will be realized.¹⁴⁰ Women's anxiety may be particularly acute as the posters' anonymity eliminates cues—such as the identity or location of the person who made the threat or a joking tone of voice—that might diminish concerns about the threat.¹⁴¹ Women's emotional distress often produces physical symptoms, such as anorexia nervosa,¹⁴² depression,¹⁴³ and suicide.¹⁴⁴ Women experience similar symptoms in the face of workplace sexual harassment.¹⁴⁵

This destructive phenomenon not only has profound consequences for individual women, but for society as well, as the next Section demonstrates.

2. The Broader Consequences of Cyber Gender Harassment

Cyber gender harassment damages women as a group and society as a whole by entrenching gender hierarchy in cyberspace. Demeaning, sexualized comments and rape threats suggest men's power and superiority over women. They reinforce gendered stereotypes, casting men as dominant in the bedroom and the workplace and women as subservient sexual objects who are not fit to work online.¹⁴⁶ These messages instill the notion that online spaces constitute male turf.

This phenomenon resembles the subordinating impulse of workplace sexual harassment where male workers engage in sexualized talk and circulate sexually explicit images to “mark the workplace as an area in which

139. E.g., BOCIJ, *supra* note 14, at 17; Catherine Holahan, *The Dark Side of Web Anonymity*, BUS. WK., May 12, 2008, at 64, available at http://www.businessweek.com/magazine/content/08_19/b4083064456431.htm (detailing how strange men showed up at young woman's home in response to sexual comments made about her online); Comment of L to Posting of Trench Reynolds to MyCrimeSpace, *Syracuse stalker at large*, <http://www.mycrimespace.com/2008/02/19/syracuse-stalker-at-large/> (Feb. 20, 2008, 22:50 EST) (recounting how she received threatening calls after an ex-boyfriend impersonated her in chat rooms saying that she wanted to be raped and provided her address and phone number).

140. See Barak, *supra* note 1, at 82; Jodi K. Biber et al., *Sexual Harassment in Online Communications: Effects of Gender and Discourse Medium*, 5 CYBERPSYCHOL. & BEHAV. 33, 38 (2002).

141. THE SOCIAL NET: UNDERSTANDING HUMAN BEHAVIOR IN CYBERSPACE 248 (Yair Amichai-Hamburger ed., 2005); cf. Biber et al., *supra* note 140, at 36–38 (explaining that women often experience online sexually explicit pictures, jokes, and requests for company as harassment, while men are less likely to have this response).

142. Ágnes Gáti et al., *Anorexia Nervosa Following Sexual Harassment on the Internet: A Case Report*, 31 INT'L J. EATING DISORDERS 474 (2002).

143. Barak, *supra* note 1, at 84–85.

144. Lee, *supra* note 7.

145. Sandy Welsh, *Gender and Sexual Harassment*, 25 ANN. REV. SOC. 169, 183 (1999).

146. The work of Katherine Franke and Vicki Schultz highlight the gender-based messages that hostile-work-environment harassment sends. See Katharine M. Franke, *What's Wrong With Sexual Harassment?*, 49 STAN. L. REV. 691, 693, 762 (1997) (highlighting how male workers use sexuality as a “technology of sexism” to reinforce gender stereotypes, such as the male sexual conquerors and the female sexually conquered); Schultz, *supra* note 108, at 1766–67, 1766 n.441 (explaining how hostile-work-environment harassment uses sexuality to demonstrate women's lack of competence and men's sexuality to illustrate required work competence).

masculinity is . . . constitutive.”¹⁴⁷ Sexually threatening comments tell women that they are neither welcome nor worthy.¹⁴⁸ Cyber harassment stakes out the internet as a male space in the same way that sexual harassment does in the workplace.

Online abuse solidifies male dominance of online spaces by eliminating and muting *women's* voices from the internet. Cultural feminist theory contends that women contribute to social discourse in ways that differ from men.¹⁴⁹ In this view, online discourse would become more masculine when women curtail their participation in chat rooms, blogs, and other Web 2.0 platforms due to cyber gender harassment. For instance, when Kathy Sierra shut down her blog, society lost a *woman's* commentary on technical issues. This is a particularly troubling development given the real-space “brain drain” of women working in technology due to sexual harassment and other manifestations of women's inequality in the workplace.¹⁵⁰ According to a recent study in the *Harvard Business Review*, hostility to women in the workplace played a significant role in driving the majority of women in technology, science, and engineering careers from their jobs by their late thirties.¹⁵¹ Cyber gender harassment has a similar effect: it effectively excludes women from professional activities online, bolstering male hierarchy.¹⁵²

Despite the destructive nature of these cyber assaults, the public often refuses to take them seriously. The next part details, and rejects, the widespread marginalization of cyber gender harassment.

147. Abrams, *New Jurisprudence*, *supra* note 109, at 1211. As Kathryn Abrams explains, sexual harassment “helps perpetuate the workplace as a site of male control, where gender hierarchy is the order of the day and masculine norms structure the working environment.” *Id.* at 1219.

148. *See id.* at 1206.

149. *See* MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 57–58 (2d ed. 2003). As Robin West explains, women often value intimacy, fearing the injury produced by separation, whereas men tend to emphasize individuals' autonomy from others. *See* Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 65 (1988). This notion that women have a different voice than men has its critics. *Id.* at 60. For instance, Catharine MacKinnon understands the different-voice theory as highlighting the voice of victims who have never had the freedom to develop their own perspectives while living under conditions of gender subordination. Ellen C. DuBois et al., *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFF. L. REV. 11, 27 (1985) (remarks of Catharine A. MacKinnon). This Essay does not aim to resolve this disagreement but instead seeks to highlight the various ways in which the retreat of women from online discourse affects society.

150. Posting of Danielle Citron to Concurring Opinions, *Science and Technology Workplace, A Predominantly Male Face*, http://www.concurringopinions.com/archives/2008/12/science_and_tec_1.html (Dec. 16, 2008, 18:07 EST).

151. Sylvia Ann Hewlett et al., *Stopping the Exodus of Women in Science*, HARV. BUS. REV., June 2008, at 1; Steven Swinford, *Sexist culture drives women out of science*, SUNDAY TIMES (LONDON), May 11, 2008, at 6, available at <http://www.timesonline.co.uk/tol/news/uk/science/article3908362.ece>.

152. *See* Posting of Danielle Citron to Concurring Opinions, *supra* note 150 (analogizing “the culture of misogyny that pervades many social networking sites, blogs, and other Web 2.0 platforms” with sexual harassment encountered by women working in science and technology) (internal quotation marks omitted).

II. THE PROBLEM WITH TRIVIALIZING CYBER GENDER HARASSMENT

Although cyber harassment substantially harms women, many view it as a benign part of online life that should be tolerated. This is perhaps to be expected—we often overlook harms to women. This Part documents this trend and rejects it as undermining women's right to participate as equals online. Just as society dismissed sexual harassment in the workplace and domestic violence as trivialities until advocates, courts, and policymakers signaled their harmfulness to women, this Part makes the case for taking cyber gender harassment seriously.

A. *Recurring Patterns*

Society often discounts harms that disproportionately affect women.¹⁵³ As Robin West explains, criminal law historically targeted gender-specific harms only to the extent that they resembled harms suffered by men.¹⁵⁴ Rape law was clearest and its prosecution most vigorous when the rape most resembled nonsexual physical attacks that men suffer and fear, i.e., attacks committed by strangers and accompanied by actual or threatened violence.¹⁵⁵ However, “[r]apes committed by husbands upon wives, or by boyfriends upon girlfriends, or by johns on prostitutes,” were “underregulated.”¹⁵⁶ In other words, the most gender-specific sexual assaults—those involving an “invasion of the integrity of a woman’s body and the invasion of the safety and integrity of her intimate life”—were the most untouched by law.¹⁵⁷

Moreover, nineteenth-century law imposed significant barriers to the prosecution of crimes targeting women principally, such as rape, but not to crimes affecting men and women equally, such as property intrusions.¹⁵⁸ Rape laws required witness corroboration and evidence of “utmost” physical resistance by the woman.¹⁵⁹ These requirements made it difficult to convict men of rape.¹⁶⁰ By contrast, property crimes had no such requirements.¹⁶¹ If someone removed a person’s wallet without express permission, he commit-

153. See WEST, *supra* note 15, at 96.

154. See *id.* at 138.

155. *Id.* at 140.

156. *Id.* Although states historically did not protect married women against rape by their husbands, all states now include sexual assault within marriage under the definition of rape, even though different laws and penalties sometimes apply to marital rape. LAPIDUS ET AL., *supra* note 92, at 180–81. However, some states define rape within marriage at a lower level of criminality than nonmarital rapes or criminalize only certain kinds of marital rape, such as when the parties have formally separated. *Id.* at 181.

157. WEST, *supra* note 15, at 140 (emphasis omitted).

158. MARTHA C. NUSSBAUM, SEX & SOCIAL JUSTICE 138 (1999).

159. LAPIDUS ET AL., *supra* note 92, at 182. States have largely abandoned the “utmost resistance” requirement due to the injustice of refusing to acknowledge a rape unless a woman risked her life trying to resist. *Id.* at 180–81.

160. *Id.* at 180.

161. NUSSBAUM, *supra* note 158, at 139.

ted a crime.¹⁶² The defendant could not defend himself by arguing that the victim failed to put up a fight.¹⁶³

Similarly, nineteenth-century tort law often ignored women's suffering, refusing to recognize claims mainly pursued by women, such as those for emotional distress.¹⁶⁴ The tortious consequences of adultery reflect law's gender differentiation of harm as well.¹⁶⁵ English common law found no harm to a woman in cases involving an adulterous husband because the wife suffered "noncompensable . . . hurt feelings" and because the wife failed to mitigate her own injuries, whereas the law understood the husband's hurt feelings as an objective harm, deeming a wife's adultery a loss of property.¹⁶⁶ The trivialization impulse carried forward into the twentieth century with society's persistent refusal to recognize harms associated with sexual harassment and domestic violence.¹⁶⁷

In the past, as in the present, the trivialization of women's suffering fell along several lines. First, some dismissed women's harmful experiences as innocuous aspects of daily living. In the early 1970s, society understood sexual harassment in the workplace as harmless flirting.¹⁶⁸ When Catharine MacKinnon first described workplace harassment as a form of sex discrimination, judges, employers, husbands, and victims dismissed it as universal "natural" behavior.¹⁶⁹ As one court put it, "[t]he attraction of males to females and females to males is a natural sex phenomenon and it is probable that this attraction plays at least a subtle part in most personnel decisions."¹⁷⁰

Second, society refused to recognize harms where women could have ostensibly mitigated the injury. In the domestic-violence context, many suggested that victims bore responsibility for the abuse because they failed to leave their abusers.¹⁷¹ The media's standard story line with regard to spousal battering was that "if it was that bad, [the women] would leave."¹⁷² Judge

162. *Id.*

163. *Id.*

164. Martha Chamallas & Linda K. Kerber, *Women, Mothers, and the Law of Fright: A History*, 88 MICH. L. REV. 814, 816 (1990).

165. *Id.* at 818.

166. *Id.*

167. To be sure, modern society has minimized or ignored other gendered harms, such as street harassment. WEST, *supra* note 15, at 145. This Essay focuses on domestic violence and sexual harassment in the workplace as prominent examples of the historic nonrecognition or trivialization of harms suffered by women.

168. MARTHA J. LANGELAN, *BACK OFF!: HOW TO CONFRONT AND STOP SEXUAL HARASSMENT AND HARASSERS* 39 (1993); Deborah L. Rhode, *Sexual Harassment*, 65 S. CAL. L. REV. 1459, 1461 (1992).

169. MACKINNON, *supra* note 17, at 2.

170. *Id.* at 90 (internal quotation marks omitted).

171. See Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENG. L. REV. 319, 336–38 (1997); cf. Martha R. Mahoney, *EXIT: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283 (1992) (discussing how the same trivializing argument was applied to sexual harassment in the workplace).

172. CATHARINE A. MACKINNON, *WOMEN'S LIVES, MEN'S LAWS* 291 (2005).

Richard D. Huttner, the administrative judge of the New York City Family Court, recalled his colleague's reaction to domestic violence victims: "Why don't they just get up and leave? They have been taking these beatings all these years and now they want me to intercede. All they have to do is get out of the house. What do they want from me?"¹⁷³ Similarly, commentators told women to change their supervisors, fields, or jobs if the sexual treatment at work became too uncomfortable to bear.¹⁷⁴

Third, many refused to recognize conduct as harmful due to an environment's unique norms. Commentators suggested that workplace harassment involved a private arena with different expectations.¹⁷⁵ In this view, sexual harassment was a perk for men to enjoy.¹⁷⁶ Society similarly shielded domestic violence from state intervention because "[e]very household has and must have, a government of its own, modelled to suit the temper, disposition and condition of its inmates."¹⁷⁷ As Reva Siegel explains, wife beaters were immunized from public and private prosecution because courts refused to look into the "home closet."¹⁷⁸ For over 200 years, a male's battering of his wife was protected as part of the "private sphere of family life."¹⁷⁹ It was a "private problem, neither serious nor criminal."¹⁸⁰

The marginalization of domestic violence began to subside only after activists pressed policymakers and courts to take these injuries seriously.¹⁸¹ The very concept of domestic violence as harmful arose in the late 1960s and early 1970s when the women's rights movement brought the issue to national attention.¹⁸² Feminist activists and lawyers gave a name to domestic violence and made it a problem, whereas before it had been buried by societal indifference.¹⁸³ Similarly, judicial recognition of sexual harassment as a form of sex discrimination in the late 1970s paved the way for the de-

173. STREBEIGH, *supra* note 123, at 386.

174. NUSSBAUM, *supra* note 158, at 144.

175. MACKINNON, *supra* note 172.

176. *Id.* at 185.

177. *State v. Rhodes*, 61 N.C. 453, 457 (1868); *see also* CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989).

178. Reva B. Siegel, "The Rule of Love": *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117, 2166 (1996) (quoting *Drake v. Drake*, 177 N.W. 624, 625 (Minn. 1920)).

179. Elizabeth M. Schneider, *Battered Women, Feminist Lawmaking, Privacy, and Equality*, in *WOMEN AND THE UNITED STATES CONSTITUTION: HISTORY, INTERPRETATION, AND PRACTICE* 197, 201 (Sibyl A. Schwarzenbach & Patricia Smith eds., 2003).

180. Elizabeth M. Schneider, *The Violence of Privacy*, 23 *CONN. L. REV.* 973, 982 (1991) (internal quotation marks omitted).

181. NUSSBAUM, *supra* note 158, at 142. As Judge Huttner's comment above makes clear, legal change in the 1970s did not change society's (and judges') views about domestic violence right away. STREBEIGH, *supra* note 123, at 386.

182. Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking*, 23 *WOMEN'S RTS. L. REP.* 243, 243 (2002).

183. Schneider, *supra* note 179, at 199.

trivialization of such abuse.¹⁸⁴ Favorable court rulings emboldened women to bring lawsuits and lobby for legislative change that led to the amendment of Title VII.¹⁸⁵

Advances against cyber harassment may follow a similar path. In the last quarter of the twentieth century, women achieved gains in the workplace harassment and domestic violence arenas after convincing courts, legislators, and commentators of the seriousness of the harms women suffered. Here, too, a legal response will gain greater traction if the trivialization critique of cyber harassment has been rejected. The next Section begins this effort.

B. Critiquing the Trivialization of Cyber Gender Harassment

Although some people have been outraged by cyber harassment, many others dismiss it as inconsequential.¹⁸⁶ Commentators trivialize the harassment of women online by arguing that: (1) it constitutes innocuous teasing, (2) women can address the harassment on their own, and (3) cyber harassment coheres with the internet's unique norms. This Section tackles, and discredits, these arguments.

First, some equate online assaults with harmless juvenile antics. For instance, a Wired blogger has described Anonymous, the group credited with shutting down over a hundred women's issues websites, as juvenile "griefers . . . looking for some outlet for their boredom."¹⁸⁷ Former *New York Times* reporter and writer for Condé Nast's *Portfolio*, David Margolick, characterized the anonymous AutoAdmit posters who attacked female law students with rape threats and damaging statements as "juvenile," "immature," and

184. Catharine A. MacKinnon, *The Logic of Experience: Reflections on the Development of Sexual Harassment Law*, 90 GEO. L.J. 813, 826 (2002).

185. *Id.* at 823.

186. Extensive empirical work on the trivialization of cyber gender harassment does not yet exist. However, a recent study addresses college students' reaction to cyber-harassment incidents. It suggests that college students do not take hypothetical or real-life cases of cyber harassment seriously. Eileen M. Alexy et al., *Perceptions of Cyberstalking Among College Students*, 5 BRIEF TREATMENT & CRISIS INTERVENTION 279 (2005). Anecdotal evidence also proves instructive here. In the aftermath of the attacks on Kathy Sierra (which received national attention after the *Washington Post* covered the story), online commentary overwhelmingly suggested that Ms. Sierra overreacted to the rape threats, privacy invasions, and doctored photographs. This pattern has seemingly recurred in numerous incidents as commentators learn about online attacks against women. To be sure, not everyone responds in this way—the groups supporting Ms. Sierra and women like her demonstrate the point. Nonetheless, the trivialization of cyber gender harassment is an important part of the discourse after attacks on women online are publicized. As Section II.C shows, the trivialization of women's harm in the face of cyber gender harassment is not reserved for commentators. Significantly, law-enforcement officers often fail to pursue complaints of cyber gender harassment because they fail to take it seriously. I thank Neil Richards for urging me to address this important point.

187. Posting of Ryan Singel to Threat Level on WIRED.COM, 'Anonymous' Member Unmasked, Charged With Web Attack on Scientology, <http://blog.wired.com/27bstroke6/2008/10/anonymous-membe.html> (Oct. 17, 2008, 16:17 EST).

“obnoxious,” “but that’s all that they are: . . . frivolous frat boy rants.”¹⁸⁸ He explained that because attackers get bored and move on, “these problems can be exaggerated.”¹⁸⁹ The attorney representing the former educational director for AutoAdmit remarked that “they aren’t true threats. . . . [This] online stuff . . . it’s not for us grownups. . . . These are digital natives and some of this stuff is just shtick.”¹⁹⁰ A site operator involved in the Kathy Sierra incident said the posters acted in “bad taste.”¹⁹¹ Another commentator dismissed the doctored photographs of Ms. Sierra as “purely amateur hour, playground silliness.”¹⁹²

Commentators further trivialize the harassment by describing targeted women as overreacting “drama queen[s].”¹⁹³ For instance, founder of the progressive blog *Daily Kos*, Markos Moulitsas, suggested that Ms. Sierra imagined the threats: “Most of the time, said ‘death threats’ don’t even exist—evidenced by the fact that the crying bloggers and journalists always fail to produce said ‘death threats.’”¹⁹⁴ Others disparaged Ms. Sierra for dismantling her blog, calling her response “out of proportion to the events that elicited it.”¹⁹⁵ Similarly, blogger Ann Althouse condemned the female law students attacked on AutoAdmit: “Too beautiful to appear in public? Too hot to be hired? Come on! What rational employer would deny you a job because idiots chatted about you on line [sic] in a way that made it obvious that the only thing you did was look good?”¹⁹⁶ This response asserts that targeted women have forgotten the childhood saying that “[s]ticks and stones can break my bones, but wor[d]s will never hurt me.”¹⁹⁷ It has much in common with the suggestion that workplace sexual harassment constituted harmless flirting and playful teasing.

Characterizing cyber gender harassment as harmless teasing of the overly sensitive belies reality. The online abuse inflicts significant economic,

188. *On Point with Tom Ashbrook: Cyber Harassment and the Law*, (NPR radio broadcast Mar. 3, 2009), available at <http://www.onpointradio.org/shows/2009/03/cyber-harassment/> (comments of David Margolick).

189. *Id.* (comments of Marc Randazza).

190. *Id.*

191. Posting of RageBoy to EGR Weblog, *re Kathy Sierra’s allegations*, <http://www.rageboy.com/2007/03/re-kathy-sierras-allegations.html> (Mar. 27, 2007, 03:16 EST).

192. Posting of Rev. Billy Bob Gisher to Less People Less Idiots, *supra* note 11.

193. Jennifer, Letter to the Editor, *Blah blah blah*, SALON, Mar. 28, 2007, http://letters.salon.com/mwt/broadsheet/2007/03/28/kathy_sierra/permalink/290f1050a4be8aa781a4c67b8b675052.html.

194. Posting of Markos Moulitsas to Daily Kos, *supra* note 12.

195. Comment of BC to Mike Cassidy’s Loose Ends, *Kathy Sierra Blog Battle Provides a Chance for Change*, <http://blogs.mercurynews.com/cassidy/2007/04/02/kathy-sierra-blog-battle-provides-a-chance-for-change/#comment-3831> (Apr. 3, 2007, 15:26 EST).

196. Althouse, “*For many people the Internet has become a scarlet letter, an albatross*”, <http://althouse.blogspot.com/2007/03/for-many-people-internet-has-become.html> (Mar. 7, 2007, 09:37 EST).

197. Michael Sullivan, Letter to the Editor, *I call bullshit*, SALON, Mar. 30, 2007, <http://letters.salon.com/opinion/feature/2007/03/31/sierra/permalink/1a7c43d50408afdb68662df76f7a088b.html>.

emotional, and physical harm on women in much the same way that workplace sexual harassment does. Statements about a woman's sexuality may suggest that she attracts unwanted controversy, causing employers who use Google results in assessing candidates to interview or hire someone else.¹⁹⁸ In the face of rape threats, women refrain from online activities that generate income or advance their professional reputations. Publishing a woman's physical whereabouts alongside the suggestion that she should be raped increases the possibility of stalking and physical violence at the hands of others whom the poster has encouraged.¹⁹⁹ Disclosing a woman's Social Security number raises her risk of identity theft.²⁰⁰ Because cyber gender harassment inflicts grave harm and does not constitute childish antics, targeted individuals rightfully feel aggrieved.

Second, many downplay cyber harassment on the grounds that targeted individuals have various means to protect themselves. One approach maintains that women can mitigate the harm by ignoring the abuse or going offline. For instance, a commentator remarked that Kathy Sierra should have just chosen "to skip the entire section" and moved on.²⁰¹ The *Daily Kos* founder urged Ms. Sierra to get off the computer if she could not "handle the heat" in her inbox.²⁰² Another person noted "[a]nyone who's going to let the trolls intimidate them should either not blog, or not have open comments. It really is just that simple."²⁰³ A commentator similarly suggested that the "right way" for "girls" to address cyber harassment is to "let the threads drop to the bottom and everyone [will] forget."²⁰⁴ Indeed, law-enforcement officers have refused to pursue cyber harassment complaints on the grounds that women can "just turn off their computers."²⁰⁵ This recalls the argument that women faced with sexual harassment and domestic violence should leave their jobs and homes instead of complaining about the abuse.

These suggestions have little merit. Even if women go offline (or never availed themselves of online activities in the first place), online rape threats,

198. See Frank Pasquale, *Rankings, Reductionism, and Responsibility*, 54 CLEV. ST. L. REV. 115, 122 (2006) (questioning whether individuals should have recourse when a Google search of their name ranks highly a certain type of website, for example a site that "permits disgruntled ex-wives and ex-girlfriends to post in great detail the shortcomings of their former husbands or boy-friends").

199. E.g., Doug Simpson, *Feds find dangerous cyberstalking hard to prevent*, CNN.com, <http://archives.cnn.com/2000/TECH/computing/06/12/cyberstalkers.idg/index.html> (last visited Sept. 9, 2009).

200. Danielle Keats Citron, *Reservoirs of Danger: The Evolution of Public and Private Law at the Dawn of the Information Age*, 80 S. CAL. L. REV. 241, 252 (2007).

201. Sullivan, *supra* note 197.

202. Posting of Markos Moulitsas to Daily Kos, *supra* note 12.

203. Comment of FIAR to Posting of Tim O'Reilly to O'Reilly Radar, *Code of Conduct: Lessons Learned So Far*, <http://radar.oreilly.com/archives/2007/04/code-of-conduct.html#comment-2032297> (Apr. 11, 2007, 15:13 EST).

204. *On Point with Tom Ashbrook*, *supra* note 188 (comments of Marc Randazza).

205. REP. ON CYBERSTALKING, *supra* note 1 (internal quotation marks omitted).

sexually demeaning comments, and damaging statements remain online, accessible to anyone searching targeted women's names, unless website operators agree to take down the destructive postings.²⁰⁶ Cyber gender harassment's harms are unavoidable, both practically and psychologically, whether targeted women turn off their computers or not. In that sense, women cannot retreat to safety by going offline. Although attackers may forget about the harassment and move on to other victims, targeted women have no choice but to remember, and wrestle with, cyber harassment's harms.

Furthermore, women who maintain an online presence should not be required to forgo it to escape harassment, just as women should not have to quit their jobs or leave their homes to insulate themselves from sexual harassment or domestic violence. Although targeted women close their blogs, disengage from online communities, and assume pseudonyms, they incur serious costs in doing so. Women miss opportunities to advance their professional reputations through blogging. They cannot network effectively online if they assume pseudonyms to deflect cyber abuse.²⁰⁷ They may lose advertising income upon closing their websites or blogs. Unless women are willing to forgo the internet's economic, social, and political opportunities, they cannot walk away from our networked environment without paying a high price. This is particularly true for younger individuals whose lives are inextricably tied to the net.

Jack Balkin's "captive audience" theory can help us appreciate the difficulty that women face as they develop their careers in a networked environment.²⁰⁸ Balkin invokes the metaphor of captivity to describe sexual harassment in the workplace: a female employee must listen to an employer's unjust and intolerable harassment because "she is practically unable

206. Patricia Sanchez Abril explains that online social-networking sites generally refuse to take down material that is purportedly defamatory or embarrassing. Patricia Sanchez Abril, *A (My)Space of One's Own: On Privacy and Online Social Networks*, 6 NW. J. TECH. & INTELL. PROP. 73, 82 (2007). On the main, it is difficult to gauge how often website operators remove harassing postings. Anecdotal evidence provides some insight into its occurrence. The AutoAdmit website operators never removed the postings concerning Ms. Filipovic despite repeated requests to do so. The harassing postings of the group Anonymous remain online even though the targeted women complained about them. Website operator Chris Locke initially refused to remove the doctored photographs of Ms. Sierra but eventually took them down. Even if the website operators agree to take down the harassing postings, the postings may have spread to other sites whose operators refuse to take them down. See re *Kathy Sierra's allegations*, <http://www.rageboy.com/2007/03/re-kathy-sierra-allgations.html> (last visited Feb. 20, 2008).

207. Penelope Trunk's Brazen Careerist, *Blog under your real name, and ignore the harassment*, <http://blog.penelopetrunk.com/2007/07/19/blog-under-your-real-name-and-ignore-the-harassment/> (July 19, 2007) (explaining that women who write under pseudonyms miss opportunities associated with blogging under their real names, such as networking opportunities and expertise associated with the author's name).

208. I invoke Balkin's "captive audience" theory as a way of thinking about cyber gender harassment, not as a direct analogy and fit.

to leave.”²⁰⁹ Under Balkin’s theory, employees should not be forced to leave their jobs to escape otherwise unavoidable harassment and coercion.²¹⁰

Although women targeted online are not physically confronted by their harassers like employees subject to sexually harassing comments at the water cooler, women working online arguably comprise a captive audience. Women have no means to avoid cyber attacks on *their* blogs and sites unless they shut them down or use passwords that exclude the uninvited.²¹¹ Women also cannot escape harassment on third-party sites because employers and social contacts will likely see them and ask them about the harassment.²¹² In that sense, cyber attacks are unavoidable. Women should not be forced to forgo online opportunities to avoid cyber harassment.

In much the same way that society today would not trivialize a supervisor’s decision to display a doctored naked photograph of a female subordinate, it should not ignore rape threats that terrorize victims and force them to close their income-generating blogs. Society suffers a great loss when it loses women from the online marketplace and discourse.

Another approach asserts that women can combat cyber harassment with counterspeech. In this view, women should retaliate against their attackers rather than playing the “victim.”²¹³ It is, however, specious to insist on cyber harassment’s triviality because women can later respond to it. Women’s subsequent response cannot return them to the position that they were in before they suffered economic and emotional harm. Counterspeech may be unable to dissipate an employer’s belief that the targeted women attract negative attention.²¹⁴ And it cannot erase rape threats and false suggestions that women harbor rape fantasies from the minds of targeted women and third parties inspired by the postings.

209. J.M. Balkin, *Free Speech and Hostile Environments*, 99 COLUM. L. REV. 2295, 2312 (1999).

210. *Id.*

211. It is worth noting that women in the workplace usually know the identity of their harassers and thus might be able to escape the harassment by physically avoiding their attackers. Women, however, cannot do the same on their own blogs and sites without using passwords and thus limiting the commercial reach and value of their sites.

212. See Rich McHugh & Noel Hartman, *Model Liskula Cohen Wins Court Battle with Google to Learn Blogger’s Identity*, Aug. 19, 2009, available at <http://abcnews.go.com/GMA/Story?id=8359356&page=1> (last visited Sept. 29, 2009).

213. Cf. Comment of Marc J. Randazza to Posting of Michael Froomkin to Concurring Opinions, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_l.html (Apr. 16, 2009, 15:45 EST) (“[W]hen you don’t like someone’s level of civility [in an online forum], of course you should exercise your own First Amendment rights to call them on it.”).

214. As Kaimi Wegner notes, behavioral economics teaches us that “people tend to base their assessment of questions on anchors—that is, suggestions that the answer might be X or Y.” Posting of Kaimipono D. Wegner, *CCR Symposium: A Behavioral Argument for Stronger Protections*, Concurring Opinions Blog, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_a_1.html (Apr. 14, 2009, 18:04 EST). This is so even if people know that the anchors—such as lies about a woman’s sexual diseases and the like—are lies. *Id.*

Even though women could fight back, they may be unlikely to do so.²¹⁵ Individuals targeted with rape threats may feel too intimidated to engage in counterspeech and think retaliation would not be effective in deterring on-line harassers.²¹⁶ The anonymity of their attackers renders true engagement difficult, if not impossible. Because most attackers write under pseudonyms, retaliation would have little lasting effect. Attackers can simply reappear under other names.²¹⁷

Retaliation also may be counterproductive. Because the purpose of many online assaults is to force women off the net, harassers may respond with serious venom against a victim who stays online and tries to fight back. This recalls women's struggle with hostile work environments and domestic violence. Women often felt too intimidated to confront their abusers and risked serious retaliation if they fought back.

David Fagundes suggests that counterspeech exposing and criticizing harassers would have salutary effects.²¹⁸ He argues that counterspeech would empower harassed individuals to "feel capable of taking matters into their own hands."²¹⁹ Fagundes is indeed correct—women would feel a sense of empowerment when denouncing their attackers' harmful behavior. Nonetheless, it seems likely that targeted women would refrain from such counterspeech given the likelihood that it would incur the wrath of their attackers. Women may be particularly reluctant to respond if they lack a strong online community supporting their efforts. Jill Filipovic noted that she eventually blogged about her cyber harassment experience because she knew that she had a strong community of feminist bloggers behind her.²²⁰ Many others, however, do not find themselves in that situation and may conclude that counterspeech's psychic benefits come at too high a price.

Third, some defend misogynistic conduct online as an outgrowth of the internet's unique Wild West norms. Commentators note that blogs prominently maintain their sexist image: traffic rates soar when blog threads or forums attack women.²²¹ As Robert Scoble explains, "there's just a culture of acceptance of making sexually crude[,] degrading jokes online."²²² Some

215. J.M. Balkin, *Some Realism About Pluralism: Legal Realist Approaches to the First Amendment*, 1990 DUKE L.J. 375, 420–21.

216. *See id.*

217. Of course, shaming by other members of an online community would play an important role in setting a site's social norms, but that is a different question than whether a targeted individual's efforts would be worth the potential cost.

218. Posting of David Fagundes to Concurring Opinions, *CCR Symposium: In Defense of Self-Defense*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_i.html (Apr. 16, 2009, 01:16 EST).

219. *Id.*

220. Telephone Interview with Jill Filipovic, *supra* note 58.

221. Valenti, *supra* note 35; *see also* Posting of Chris Bowers to MyDD Direct Democracy, *Women and Blogging*, <http://www.mydd.com/story/2005/3/18/125346/895> (Mar. 18, 2005, 12:53 EST).

222. Comment of Robert Scoble to Scobleizer, *Taking the Week Off*, <http://scobleizer.com/2007/03/26/taking-the-week-off/#comment-9674392> (Mar. 26, 2007, 15:50 EST); Comment of

suggest that given the net's misogynistic culture, women have assumed the risk of being harassed online. Abusive commentary is "part of the territory—if you want to write a blog like this, you're going to deal with unpalatable people."²²³ In response to the Kathy Sierra attack, another commentator noted "this is the INTERNET folks . . . there are no laws here, at least not clearly defined ones."²²⁴ A poster asked why Kathy Sierra was surprised by the attack: "Hello? It's the Blogosphere, Stupid."²²⁵

These arguments have little persuasive force. The analogy to the Wild West fails on its own terms. The West is no longer wild: society long ago subjected it to the rule of law. As Brian Leiter astutely notes, the "Internet should not be consigned to a fate that we would not tolerate for the West."²²⁶

Moreover, the notion that the net has its own norms is founded on a set of false assumptions that supported an earlier age's arguments concerning domestic violence and workplace sexual harassment. It presumes that online destruction remains suspended in cyberspace with no effect on women's real-space lives just as many argued in the past that spousal beating was a private matter that had no significance beyond the home's four walls and that sexual harassment was a private perk for men to enjoy.

This assumption is as faulty now as it was then. Online abuse does not stay contained in cyberspace, just as spousal beating and sexual harassment did not remain behind closed doors of the home or workplace. Quite the contrary, employers, clients, and social contacts see the rape threats, lies, and privacy invasions in Google searches of targeted women's names. Women may lose job opportunities, social connections, and advertising income. This was certainly true of women's experience with domestic violence and sexual harassment: women suffered significant economic and emotional harm that extended far beyond the home and workplace. Just as society ultimately rejected the argument that law should ignore domestic violence and sexual harassment because families and workplaces had their own norms, federal and state law make clear that offline institutions can be brought to bear in cyberspace.²²⁷

Robert Scoble to Scobleizer, *Taking the Week Off*, (Mar. 26, 2007, 16:34 EST) ("It's a culture that allows and, even, sort of encourages sexual attacks on women. Look at Justin.tv's chat room. The comments there are rife with sexual overtones. If it's not attacks on women it's that someone is 'gay.'"). In this regard, online harassment of women and gays and lesbians has much in common.

223. Mary Brandel, *Online Harassment: Five Tips to Defeat Blog Trolls and Cyberstalkers*, CIO.COM, Apr. 27, 2007, http://www.cio.com/article/106500/Online_Harassment_Five_Tips_to_Defeat_Blog_Trolls_and_Cyberstalkers (internal quotation marks omitted).

224. Comment of Fistantantulus to Posting of Rev. Billy Bob Gisher to Less People, Less Idiots, *supra* note 13.

225. John Hampshire, Letter to the Editor, *Hello? It's the blogosphere stupid*, SALON, Mar. 30, 2007, <http://letters.salon.com/opinion/feature/2007/03/31/sierra/permalink/0843e0885780eda9090ebe1f6656c80e.html>.

226. E-mail from Brian Leiter to Danielle Citron, Professor of Law, University of Maryland (Apr. 7, 2009) (on file with author).

227. See Citron, *supra* note 2, at 86–95.

C. A Troubling Consequence of Trivialization:
The Underenforcement of Criminal Law

The trivialization of cyber gender harassment has an unfortunate consequence: the underenforcement of criminal law. Targeted individuals often refrain from reporting cyber harassment to authorities, fearing it will not be taken seriously.²²⁸ Law-enforcement agencies refuse to pursue cyber harassment complaints on the grounds that the conduct is legally insignificant,²²⁹ in much the same way that prosecutors once refused to file charges in cases involving gender-specific sexual assaults such as domestic violence and rape. Law's underenforcement may be due to the absence of training about cyber harassment.²³⁰ The Department of Justice's *1999 Report on Cyberstalking* found that the majority of law-enforcement agencies failed to pursue online-harassment cases, in part, because personnel lacked training that would allow them "to recognize the serious nature of cyber harassment and to investigate such offenses."²³¹ Recent reports suggest that law enforcement in rural communities "know very little about cyberstalking law and rarely have any training regarding this cyber crime."²³² Thus, officers do not know how to handle cyber-harassment cases.²³³

Officers are often either incapable of properly investigating harassment or unwilling to do so until it has traveled offline.²³⁴ Officers often advise

228. REP. ON CYBERSTALKING, *supra* note 1 (explaining that victims often refuse to report cyber harassment due to their sense that the conduct had not reached a criminal offense or that law enforcement would not take it seriously).

229. *See, e.g.*, BOCIJ, *supra* note 14.

230. Christa Miller, *Cyber Stalking & Bullying—What Law Enforcement Needs to Know* 1–2, OFFICER.COM, Apr. 2006, <http://www.ncdsv.org/images/CyberStalkingBullying--WhatLENeedstoKnow.pdf> ("[M]any police departments remain unable to investigate and solve [cyber stalking and bullying] cases. However, the good news is equipment and technology aren't always the answer. Training, education and a willingness to collaborate are."); *see also* Eric Kurhi, *Police lack standards for cyber criminals*, CONTRA COSTA TIMES (Walnut Creek, Cal.), Feb. 19, 2007, at F4, *available at* 2007 WL 3258758 (explaining that some jurisdictions have trouble telling that an internet-based crime occurred, such as when police in Danville, California told the family of a teenage girl who had her information posted online with a sexual solicitation that it was a civil matter, when in fact charges could have been filed for cyber harassment).

231. REP. ON CYBERSTALKING, *supra* note 1. The report did, however, suggest two notable exceptions—the New York Police Department's Computer Investigation and Technology Unit and the Los Angeles District Attorney's Stalking and Threat Assessment Team; these agencies pursued a significant number of cyber-harassment cases. *Id.*

232. Devennie Wauneka, *The Dangers of Cyberstalking: Educating Law Enforcement & Communities*, OFF. FOR VICTIMS OF CRIME TRAINING & TECHNICAL ASSISTANCE NEWSL., Mar.–Apr. 2009, at 9, 9, *available at* http://www.unified-solutions.org/uploads/marchapril_2009.pdf.

233. *Id.*

234. *See* Miller, *supra* note 230; *see also* Erin Alberty, *Blogger sues, says he's been cyberstalked—and cops won't help*, SALT LAKE TRIB., June 6, 2008, *available at* LexisNexis (prosecutor's office refused to investigate case involving anonymous online threats on blog where police noted that typically threats on the internet are "idle threats" whereas "[i]t's a lot easier" to tell if it is a "terroristic threat when it's face-to-face, or even a threat from somebody nearby"); Janese Heavin, *Web Poses a Cyber-Bully Threat*, COLUMBIA DAILY TRIB. (Mo.), Oct. 22, 2006, *available at* <http://archive.columbiatribune.com/2006/oct/20061022news005.asp> (explaining that police told seventeen-year-old woman that messages on MySpace page that she "would 'get what was coming'" to her did not warrant a legal response); Brooke A. Masters, *When E-mail Is a Weapon*,

victims to ignore the cyber harassment until that time.²³⁵ For instance, Cynthia Armistead and her daughter were subjected to a sustained campaign of cyber harassment that included threatening email messages and doctored nude photographs of Ms. Armistead posted alongside her name, e-mail address, and her interest in sex.²³⁶ The police took action on her case only after her attacker confronted her in real space.²³⁷ In another case, local police declined to assist a woman after a chat-room user threatened to rape her daughter, urging her to “go home [and] turn off the computer” instead.²³⁸ This certainly can be reversed with sufficient recognition and training.²³⁹ Women should not have to wait until cyber harassment fulminates into physical violence for law enforcement to address it.

Even when cyber harassers face criminal charges, they are often treated leniently because their crimes are not seen as serious.²⁴⁰ Studies note that cyber stalkers have received light punishments.²⁴¹ A defendant harassed a family by posting messages that suggested the nine-year-old daughter wanted to have sex with strangers and provided the family’s telephone number.²⁴² Although the local police department showed little concern for the family’s distress and provided limited assistance, a neighboring police precinct’s Computer Crime unit pursued the case.²⁴³ The defendant only paid a \$750 fine for the misdemeanor of transmitting obscene material.²⁴⁴ If the defendant faced charges under a cyber stalking statute, he might have faced

Victims Struggle for Protection, WASH. POST, Nov. 11, 1998, at B1 (noting that victims of online harassment have a hard time getting help from law enforcement “unless you can show them off-line harassment”) (internal quotation marks omitted).

235. See Wauneka, *supra* note 232, at 9.

236. BOCIJ, *supra* note 14, at 16–17.

237. *Id.* at 17.

238. Comment of Mary Sisson to Chatalian, *supra* note 75.

239. Miller, *supra* note 230, at 1, 5–6.

240. BOCIJ, *supra* note 14, at 175. Paul Bocij explains that courts often treat offline stalking leniently as well. See *id.* A 2003 study found that stalking cases typically resulted in dismissal, and to the extent that they are prosecuted, many charges were reduced to lesser offenses, most often in the misdemeanor level of stalking or another threat-related crime. *Id.* The study found that the charges filed resulted in convictions in 28.5 percent of cases. *Id.*

241. See *id.* The phenomenon of stalkers and cyberstalkers receiving light sentences is not confined to the United States. *Id.* at 176. Paul Bocij reports that courts in the United Kingdom, Canada, and Australia give light sentences to convicted stalkers, usually in the form of probation. *Id.*

242. *Id.* at 89.

243. *Id.* at 90.

244. *Id.* The Violence Against Women Act punishes, individuals who anonymously use the internet with the intent to “annoy, abuse, threaten, or harass” with up to two years in jail. 47 U.S.C. § 223(a)(1)(C) (2006). The first prosecution under this provision involved a man who sent threatening e-mails to his ex-girlfriend and sent pornography to her colleagues under her name. See Samantha Nelson, *Annoying Online Posts Could Be Illegal*, ABC News, Jan. 13, 2006, <http://abcnews.go.com/Technology/PCWorld/story?id=1503454>. After pleading guilty to two counts of harassment, the defendant received 500 hours of community service and five years of probation. *Id.* The absence of incarceration in the defendant’s sentence could be seen as an example of trivialization.

jail time.²⁴⁵ The trivialization of cyber harassment thus may blunt the efficacy of existing criminal law.

The next Section demonstrates the importance of detriivializing cyber harassment: to recognize the grave harm that women and society at large suffer in its wake. It explores law's expressive role in changing our understanding of the harm that cyber harassment inflicts and in altering online social norms.

III. THE IMPORTANCE OF LAW'S EXPRESSIVE MESSAGE

Law has an important role to play in detriivializing cyber gender harassment and serving as a force of moral suasion. This Part argues that a cyber civil rights agenda can educate the public about the serious gendered and systemic harms that cyber harassment inflicts and transform online subcultures of misogyny to those of equality.

A. A Cyber Civil Rights Agenda

My recent work, *Cyber Civil Rights*, offered a combination of tort remedies, criminal prosecutions, and civil rights claims to prevent, remedy, and punish cyber gender harassment.²⁴⁶ Under existing tort remedies, targeted individuals can sue harassers for defamation,²⁴⁷ intentional infliction of emotional distress,²⁴⁸ and privacy intrusions.²⁴⁹ Cyber attackers can be prosecuted for online threats and harassment.²⁵⁰ At the federal level, criminal penalties attach to any use of a telecommunications device without disclosing one's identity and with the intent to "abuse, threaten, or harass any person . . . who receives the communications."²⁵¹ And many states criminalize cyber harass-

245. See, e.g., CAL. PENAL CODE § 653m(b) (West 2009); Tara Bahrapour, *Student, 13, Charged in Washington-Lee Scare*, WASH. POST, May 27, 2005, at B4 (explaining that cyber harassment statute permitted up to two years in jail).

246. Citron, *supra* note 2.

247. See, e.g., *Kiesau v. Bantz*, 686 N.W.2d 164, 169–70, 176 (Iowa 2004) (upholding a finding of libel per se where defendant altered a photograph of female police officer to make it appear that she intentionally exposed her breasts, and sent the picture to plaintiff's colleagues); *Rombom v. Weberman*, No. 1378/00, 2002 WL 1461890, at *2–4 (N.Y. Sup. Ct. June 13, 2002) (upholding defamation award in case where defendant's online postings asserted that plaintiff had been a patient in a mental institution).

248. See RESTATEMENT (SECOND) OF TORTS § 46 (1965).

249. See RESTATEMENT (SECOND) OF TORTS § 652D (1977). See generally DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 104–05 (2008) (proposing a taxonomy of types of privacy intrusions).

250. Federal law prohibits the transmission of communications that contain threats to injure another person "in interstate or foreign commerce." 18 U.S.C. § 875(c) (2006).

251. 47 U.S.C. § 223(a)(1)(C) (2006). The Violence Against Women Act amended § 223 to include internet communications within the covered methods of communication. See Violence Against Women Act § 113(a)(3), 47 U.S.C. § 223(h)(1)(C) (2006).

ment.²⁵² Some states punish posting messages with the intent to urge or incite others to harass a victim.²⁵³

These traditional criminal and tort remedies play an important role in combating cyber gender harassment, but they cannot reach all of the harm experienced by individuals, groups, and society when defendants interfere with individuals' right to equal treatment. For instance, they do not address the stigma and economic injuries that individuals experience when they are targeted because of their gender. Existing civil rights laws, however, can compensate for these shortcomings. Targeted individuals can sue attackers under Title VII of the Civil Rights Act of 1964 for preventing them from making a living because of their sex.²⁵⁴ Just after Congress passed Title VII, courts upheld discrimination claims where masked defendants engaged in intimidation tactics to prevent plaintiffs from pursuing their chosen careers.²⁵⁵ Although recent Title VII decisions focus on employer-employee relationships, courts should look to those early cases in assessing claims against attackers who interfere with individuals' online work because of their gender. Doing so would honor Title VII's goal of eliminating discrimination in women's employment opportunities.

Many will oppose a cyber civil rights agenda on the grounds that it interferes with our commitment to free speech.²⁵⁶ Contrary to this view, a cyber civil rights agenda comports with First Amendment doctrine and free-speech values.²⁵⁷ All speaking is not protected despite the First Amendment's guarantee that "Congress shall make no law . . . abridging freedom of speech."²⁵⁸ Torts such as defamation and intentional infliction of emotional distress fall outside the First Amendment's protection.²⁵⁹ Threats similarly do not enjoy First Amendment immunity.²⁶⁰

252. See, e.g., CAL. PENAL CODE § 653m(b) (West 2009).

253. OHIO REV. CODE ANN. § 2903.211(A)(2) (LexisNexis 2009).

254. 42 U.S.C. § 2000e-6 (2006).

255. See, e.g., *United States v. Original Knights of the Ku Klux Klan*, 250 F. Supp. 330, 349 (E.D. La. 1965).

256. E.g., Posting of Michael Froomkin to Concurring Opinions, *CCR Symposium: The Right to Remain Anonymous Matters*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_1.html (Apr. 14, 2009, 19:48 EST).

257. Citron, *supra* note 2, at 106–14.

258. U.S. CONST. amend. I.

259. E.g., *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18–20 (1990).

260. *Virginia v. Black*, 538 U.S. 343, 359 (2003). Although defendants make threats by speaking, that fact does not provide them with a defense to criminal prosecution or civil suits. Threats of violence made via new technologies are not immunized from penalty on free-speech grounds. To be sure, this issue becomes more complicated with crimes, such as threats, that are interwoven with arguably expressive activity. Is the burning of a cross on the lawn of an African American family best characterized as a threat? Or is it an expression of a view about race that, though noxious, is protected by the First Amendment? In *Virginia v. Black*, the Court answered these questions, finding that a state may ban cross burning if the defendant carried it out with the intent to intimidate. *Id.* at 359. As the Court explained, the First Amendment does not protect "true threats" that communicate a serious intention to commit violence against particular individuals. *Id.* The Court distinguished cross burnings done with the intent to intimidate, which it deemed a proscribable "true threat," from

The First Amendment also does not bar antidiscrimination actions that punish unequal treatment. In *Wisconsin v. Mitchell*, the Supreme Court made clear that federal and state antidiscrimination laws like Title VII do not run afoul of the First Amendment because they proscribe defendants' unequal treatment of individuals, not the defendants' offensive messages.²⁶¹ It explained that Title VII's prohibition of sexual harassment did not punish the harassment's offensive message, which would violate the viewpoint-discrimination ban, but instead is aimed at bias-inspired conduct, which is not protected by the First Amendment.²⁶² The Court noted that Title VII's prohibition of sexual harassment constituted "content-neutral regulation of conduct."²⁶³ Applying civil rights statutes like Title VII to cyber gender harassment would not implicate the First Amendment because they turn on a harasser's discriminatory choice of victim and the harm that such discrimination inflicts, rather than on the opinions that the attackers express. Intimidating Ms. Sierra with rape threats and sexually demeaning comments so that she shuts down her income-generating blog is equally offensive, and equally proscribed, no matter the anonymous perpetrators' specific views. When law punishes online attackers due to the special severity of the social harm produced by targeting individuals because of their gender or race, and not due to the particular opinions that the attackers or victims express, no First Amendment values are implicated.

A cyber civil rights agenda also comports with prominent free-speech theories that emphasize the importance of autonomy and the promotion of truth. Some view free speech as crucial to individual autonomy because it allows people to author their own narratives.²⁶⁴ Defeating cyber gender harassment is essential to defending the expressive autonomy of targeted individuals. Although cyber harassers express themselves through their assaults, their actions directly implicate their targets' self-determination and ability to participate in political and social discourse. Self-expression should receive little protection if its sole purpose is to extinguish the self-expression of another. Some may insist on protecting cyber gender harassment from regulation to promote truth. On this view, any silencing of speech prevents us from better understanding the world in which we live.²⁶⁵ An extreme version of the truth-seeking theory would insist that the marketplace can sort out online deceptions and assaults. Cyber gender harassment,

cross burning for other purposes, which it held constituted a protected expression of viewpoint. *Id.* Online postings thus constitute "true threats" if they convey a serious intention to inflict bodily harm on the targeted individual, even if they combine the threatening language with protected offensive views. The anonymous posters arguably conveyed a serious intention to inflict bodily harm on Kathy Sierra with their rape threats, doctored photographs, and revelation of her home address. These threats, and others like them, are afforded no protection under First Amendment law.

261. 508 U.S. 476, 480 (1993).

262. *Mitchell*, 508 U.S. at 487–88.

263. *Id.* at 487.

264. THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 6–7 (1970).

265. Robert Post, *Reconciling Theory and Doctrine in First Amendment Jurisprudence*, 88 CAL. L. REV. 2353, 2363 (2000).

however, has little to do with an exploration of truths. Rape and death threats tell us nothing about the victims—no truths are contested there. This is equally true of denial-of-service attacks. Even where online harassers make factual assertions, the anonymity of online communications prevents the marketplace of ideas from performing its curative function.

B. *The Expressive Role of a Cyber Civil Rights Agenda*

Law has an important expressive character beyond its coercive one.²⁶⁶ Law creates a public set of meanings and shared understandings between the state and the public.²⁶⁷ It clarifies, and draws attention to, the behavior it prohibits.²⁶⁸ Law's expressed meaning serves mutually reinforcing purposes. Law educates the public about what is socially harmful.²⁶⁹ This legitimates harms, allowing the harmed party to see herself *as harmed*.²⁷⁰ It signals appropriate behavior.²⁷¹ In drawing attention to socially appropriate behavior, law permits individuals to take these social meanings into account when deciding on their actions.²⁷² Because law creates and shapes social mores, it has an important cultural impact that differs from its more direct coercive effects.²⁷³

Law played an important expressive role in detrialing workplace sexual harassment and domestic violence during the last quarter of the twentieth century. As Catharine MacKinnon recounts, court rulings in the late 1970s and early 1980s changed the social meaning of sexual harassment by

266. Deborah Hellman, *The Expressive Dimension of Equal Protection*, 85 MINN. L. REV. 1, 3 n.10 (2000).

267. Elizabeth S. Anderson & Richard M. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503, 1571 (2000).

268. Richard H. McAdams & Janice Nadler, *Coordinating in the Shadow of the Law: Two Contextualized Tests of the Focal Point Theory of Legal Compliance* 42 LAW & SOC'Y REV. 865, 867 (2008).

269. Richard H. Pildes, *Why Rights Are Not Trumps: Social Meanings, Expressive Harms, and Constitutionalism*, 27 J. LEGAL STUD. 725, 755 (1998); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022 (1996). In the expressivist literature, some scholars have focused on the ways that government and individuals can act wrongfully because of what they express, rather than simply for what they do. *See, e.g.*, Hellman, *supra* note 266, at 2 (exploring the expressive dimension of law in equality jurisprudence and articulating an expressivist theory of equal protection, namely that "state action violates Equal Protection if its *meaning* conflicts with the government's obligation to treat each person with equal concern"). Other scholars focus on the ways law creates and sustains norms of behavior. *See, e.g.*, Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995). Although law also has intrinsic importance in allowing the public to evaluate society's commitments, Sunstein, *supra*, this Article focuses on its norm-shaping potential in much the same way that Larry Lessig has done in his important work, *see* Lessig, *supra*, at 1010.

270. WEST, *supra* note 15, at 151.

271. Sunstein, *supra* note 269, at 2032.

272. Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 419 (1999).

273. Lessig, *supra* note 269, at 1010.

recognizing it as a form of gender discrimination.²⁷⁴ Before those decisions, only two small grassroots women's groups working against sexual abuse in the workplace existed, one of which used another name to describe the phenomenon.²⁷⁵ The media's sole coverage of the issue appeared in the women's magazine *Redbook*.²⁷⁶ MacKinnon explains that as part of her work naming and designing a legal claim to address sexual harassment in the workplace, she contacted the women's workers' organization "9-to-5" to see if any of their members would agree to talk with her about their experiences of unwanted sexual attention at work.²⁷⁷ After a long wait, MacKinnon received an apologetic message from the group declining to participate.²⁷⁸ The group explained that its members were "afraid of giving up their only source of power"—their sexuality—in the workplace.²⁷⁹ MacKinnon's "suggestion that [such abuse] was a source of their powerlessness" went nowhere.²⁸⁰

When court rulings declared sexual harassment a manifestation of women's inequality in the workplace, they changed its social meaning. Courts sent the message that sexual abuse in the workplace violated women's equality in a manner that would not be tolerated.²⁸¹ Women began to see workplace discussion of their sexuality as wrongful, rather than as a self-help tool to wield against their abusers. Over time, they viewed themselves as the judges did—individuals who had the right to complain about sexual harassment in the workplace.²⁸²

Media coverage of sexual harassment followed those court decisions. It legitimated the view that sexual harassment constituted harmful behavior and deepened the public's appreciation of the problem, particularly as accusations involved high-profile men who abused their power over subordinate female employees.²⁸³ For instance, Professor Anita Hill's testimony during the Senate hearings regarding Clarence Thomas's appointment to the Supreme Court "shaped sexual harassment thinking."²⁸⁴ Hill's description of

274. MacKinnon, *supra* note 184, at 818. Beginning with *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976), and *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977), and culminating in *Bundy v. Jackson*, 641 F.2d 934 (D.C. Cir. 1981), and *Vinson v. Taylor*, 753 F.2d 141 (D.C. Cir. 1985), the D.C. Circuit was the first to recognize sexual harassment as a compensable harm and shaped the rules of accountability for it. MacKinnon, *supra* note 184, at 813. Professor MacKinnon's account is particularly instructive as she pioneered the very concept of sexual harassment in the workplace and participated in the litigation of the ground-breaking D.C. Circuit cases. See STREBEIGH, *supra* note 123, at 241–305 (discussing MacKinnon's crucial role in defining and shaping courts' view of sexual harassment). See generally MACKINNON, *supra* note 17.

275. MacKinnon, *supra* note 184, at 818.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.* (internal quotation marks omitted).

280. *Id.*

281. *Id.*

282. *Id.*

283. MACKINNON, *supra* note 172, at 199.

284. *Id.*

being sexually harassed while working for Thomas at the Department of Education and the Equal Employment Opportunity Commission (EEOC) produced an “explosion of national and global consciousness on the issue.”²⁸⁵ Her testimony helped dissipate the view that sexual harassment in the workplace constituted harmless flirting.²⁸⁶ It galvanized and inspired women to bring sexual harassment lawsuits, swelling the number of complaints to the EEOC by the thousands.²⁸⁷

Law also had an important impact on society’s attitude toward domestic violence. In the early 1970s, prosecutors refused to acknowledge it as a crime despite law’s clear prohibition of physical beatings.²⁸⁸ Police officers ignored reports of spousal abuse.²⁸⁹ This changed in the late 1970s after battered-women’s advocacy groups brought class actions challenging law enforcement’s systematic failure to arrest physically abusive husbands.²⁹⁰ Those suits produced settlements that required police departments to respond swiftly to domestic-violence complaints and arrest husbands whenever there was reasonable cause to believe a felony had been committed.²⁹¹ Women’s groups also had success at the legislative level, convincing state lawmakers to adopt mandatory arrest policies and no-drop prosecution requirements in domestic violence cases.²⁹² These legal developments helped alter the social meaning of domestic violence from a private family matter to criminal conduct.²⁹³

A cyber civil rights agenda can help transform online subcultures of discrimination into those of equality and dignity before they become too entrenched. The history of domestic violence and sexual harassment sheds light on the potential efficacy of a cyber civil rights agenda. For centuries, women faced pervasive abuse at home and in the workplace with little means of recourse. Since law’s recognition of women’s suffering in the

285. MacKinnon, *supra* note 184, at 830.

286. *See id.* at 825.

287. *Id.* at 831; EEOC, HARRASMENT CHARGES: EEOC & FEPAS COMBINED: FY 1992–1996, <http://www.eeoc.gov/stats/harassment-a.html>, EEOC, HARRASMENT CHARGES: EEOC & FEPAS COMBINED: FY 1997–2008 (2009), <http://www.eeoc.gov/stats/harassment.html>; *see also* Paul Igasaki *Sexual Harassment: A Sea Change in the Workplace*, http://www.imdiversity.com/Villages/Careers/articles/igasaki_sexual_harassment.asp.

288. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 42–44 (2000).

289. *Id.*

290. *Id.*; *see also* KIRSTEN S. RAMBO, “TRIVIAL COMPLAINTS” 115–16 (2009) (noting array of civil suits against police and prosecutors in fourteen states).

291. *See, e.g.*, *Bruno v. Codd*, 393 N.E.2d 976, 980 (N.Y. 1979).

292. LAPIDUS ET AL., *supra* note 92, at 158–62.

293. RAMBO, *supra* note 290, at 115–16 (explaining that lawsuits like *Bruno* changed societal attitudes toward domestic violence); Schneider, *supra* note 180, at 982. Elizabeth Schneider explains that the last twenty-five years have witnessed considerable change in the public’s familiarity with domestic violence. *Id.*

1970s, the home and workplace have become safer spaces for women.²⁹⁴ Our cultural practices have evolved, though perhaps not as quickly as one might have hoped. For instance, in 1983, the New Jersey Supreme Court Task Force on Women in the Courts found that “[s]tereotyped myths, beliefs, and biases” continued to affect attorneys’ and courtroom personnel’s decision making in subject areas such as domestic violence.²⁹⁵ As Fred Strebeigh explains, despite clear changes in the law, some judges continued to marginalize domestic victims because victims could just “get up and leave.”²⁹⁶ Social norms might have changed more rapidly had the marginalization of sexual harassment and domestic violence not been so deeply ingrained.

Today, we see the same pattern of women’s subordination and exclusion in cyberspace. Because the trivialization of cyber gender harassment is a relatively new phenomenon, we find ourselves at a particularly opportune moment to educate the public about cyber gender harassment. To that end, parents and educators have an important responsibility to teach the young about cyber harassment’s harms because the longer we trivialize cyber gender harassment, the more difficult it will become to eradicate.²⁹⁷ It is certainly possible that if we act now, future generations might view cyber gender harassment as a disgraceful remnant of the net’s early history.

A civil rights agenda has the potential to change the social meaning of cyber gender harassment from a triviality to be ignored to invidious discrimination to be punished and remedied. This would accomplish several things. First, bringing online abuse of women into a civil rights framework could change the public’s *understanding* of the problem. It would dispel the

294. Compare Deborah J. Bostock & James G. Daley, *Lifetime and Current Sexual Assault and Harassment Victimization Rates of Active-Duty United States Air Force Women*, 13 VIOLENCE AGAINST WOMEN 927, 928–29 (2007) (noting that the overall rate of sexual harassment in the U.S. military declined from 1988 to 2002), with Kaushik Basu, *The Economics and Law of Sexual Harassment in the Workplace*, 17 J. ECON. PERSPECTIVES 141, 143–44 (2003) (noting studies concerning the percentage of female federal employees who reported experiencing workplace sexual harassment were relatively constant—reporting results of just over 40 percent—from 1980 to 1994).

295. STREBEIGH, *supra* note 123, at 384.

296. *Id.* at 386.

297. See Comment of Nollind Whachell to HorsePigCow, *The Unsinkable Kathy Sierra*, <http://www.horsepigcow.com/2007/03/27/the-unsinkable-kathy-sierra/> (Mar. 27, 2007, 11:27 EST). Social-networking sites with established communities demonstrate this concern. For instance, AutoAdmit remains a cesspool of misogynistic comments despite the media’s attention to the attacks on female law students. See, e.g., AutoAdmit Message Thread, Are Cindy McCain’s tits really this big?, http://www.xoxohth.com/thread.php?thread_id=879129&mc=8&forum_id=2 (last visited Sept. 1, 2008); AutoAdmit Message Thread, THE hottest skinny chick with big tits PICTURE EVER!, http://www.autoadmit.com/thread.php?forum_id=2&thread_id=943762&PHPSESSID=ada8e21571d0fce93527016650f7087d (last visited Sept. 1, 2009); see also Posting of James Grimmelman to Concurring Opinions, *CCR Symposium: The Lulz Mob*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_3.html (Apr. 15, 2009, 13:18 EST) (explaining that the website Encyclopedia Dramatica—where Anonymous posts its activities—is devoted to “lulz, the pleasure of watching someone lose their mind at their computer 2,000 miles away . . . [j]ust as the element of surprise transforms the physical act of love into something beautiful,” where “something beautiful” in that passage is a hyperlink to the entry for rape) (internal quotation marks omitted); Encyclopedia Dramatica, Cheryl Lindsey Seelhoff, *supra* note 80 (detailing women’s-issues websites that the group Anonymous has driven offline).

notion that the harassment constitutes frat-boy rants with little real-world impact. It would teach the public that online harassment inflicts nontrivial damage on women, just as legal change in the 1970s conveyed that workplace sexual harassment was not an innocent fact of life.²⁹⁸ It would make clear that women should not have to trade their economic and social well-being for an online presence, in much the same way that court rulings found that women should not have to choose between working in a sexually harassing environment and earning a living. It would discredit the notion that women should address the harm themselves by walking away from their computers or engaging in counterattacks, just as law made clear that women need not handle sexual harassment or domestic violence on their own by leaving hostile work environments or abusive spouses. It would say that women should not have to surmount such cyber abuse, that “this is simply not one of the life struggles that our democracy thinks it valuable for people to be fighting on their own one by one without legal aid.”²⁹⁹ It would demonstrate that the internet is not the lawless Wild West, just as court settlements and state legislation made clear that the home does not insulate abusing husbands from societal intervention.

Second, a cyber civil rights agenda would legitimate the harm in *targeted women's* eyes. It would validate their suffering by acknowledging the damage to their autonomy, livelihood, identity, dignity, and well-being.³⁰⁰ Women could see that they would not be overreacting if they felt afraid and ashamed in the face of online harassment. They could complain rather than minimizing the distress and their own importance, just as women did following court rulings recognizing sexual harassment as discrimination and media coverage of Anita Hill's testimony. Instead of enduring cyber harassment, shutting down blogs, or concealing their female identities, women could seek law's protection. They could file civil rights lawsuits and initiate criminal complaints, just as the late twentieth-century court rulings inspired women to file sexual harassment suits. Women could come together to denounce cyber harassment rather than going offline in isolation, just as court rulings emboldened the women's movement to speak out against sexual harassment in the workplace. In short, victims could see, and claim, the internet as a space that is equally theirs.

Third, a cyber civil rights agenda could change the way law enforcement and courts perceive, and respond to, cyber gender harassment. It would clarify that cyber harassment does indeed involve criminal conduct that should be addressed, just as law intervened to ensure that law enforcement took domestic violence seriously. It could convince jurisdictions to devote more resources to training personnel about cyber harassment investigations and

298. Antidiscrimination laws convey a cultural meaning of equality among citizens. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 355 (1987).

299. NUSSBAUM, *supra* note 158, at 20.

300. See Margaret Jane Radin, *Compensation and Commensurability*, 43 DUKE L.J. 56, 60–61 (1993) (“Redress instead means showing the victim that her rights are taken seriously.”).

prosecutions. Courts could impose significant punishment for cyber harassment, rather than imposing light fines. In turn, targeted individuals would be more likely to come forward since reporting such incidents would not seem fruitless. This would have a salutary psychic effect on women: they would no longer view themselves as defenseless. At the same time, the real possibility of criminal sanctions could convince some individuals that cyber harassment's costs exceed its benefits. Criminal prosecutions and tough sentences would send a powerful detrialing message to potential cyber harassers and victims alike.

Fourth, seeing cyber harassment as implicating civil rights laws would legitimize current efforts to defeat online gender harassment and galvanize others to help them. In much the same way that advocacy groups have formed to combat domestic violence and sexual harassment,³⁰¹ individuals have joined forces to protest cyber attacks on women. Jayne Hitchcock's *Working to Halt Online Abuse* organization provides advice to women targeted for cyber abuse.³⁰² In the wake of recent attacks on female bloggers, feminist bloggers have devoted efforts to raising awareness about the harassment of women online.³⁰³ Bloggers declared a "Stop Cyberbullying Day" after the Kathy Sierra incident.³⁰⁴ Well-known technologists Robert Scoble and Tim O'Reilly publicly supported Kathy Sierra. Mr. Scoble announced his decision to close his blog for a week to convey his support for Ms. Sierra.³⁰⁵ Mr. O'Reilly called for a bloggers' code of conduct that would "change the expectations" for "what is acceptable on line."³⁰⁶ Not surprisingly, those efforts failed to grab the online community's attention—cyber gender harassment's perceived triviality had too strong a hold on the public. A cyber civil rights agenda would provide moral support for those committed to changing destructive harassment online.

In short, the signaling function of a cyber civil rights agenda would be iterative. Communities on blogs and social networking sites would begin to see cyber harassment as unacceptable gender discrimination. They would appreciate the net as embracing the same norms and aspirations as our larger culture. Those inclined to tolerate, and perhaps even those who might partake in, online discrimination might instead internalize the notion that cyber gender harassment is unacceptable and express their disapproval of it, rather

301. See, e.g., Men's Network Against Domestic Violence, <http://www.menagainstdv.org> (last visited Sept. 1, 2009); National Coalition Against Domestic Violence, <http://www.ncadv.org> (last visited Sept. 1, 2009); Sexual Harassment Support, <http://www.sexualharassmentsupport.org/SHworkplace.html> (last visited Sept. 1, 2009).

302. See *Working to Halt Online Abuse*, <http://www.haltabuse.org> (last visited Sept. 1, 2009).

303. E.g., Posting of Lisa Stone to BlogHer, *supra* note 35; Posting of Vanessa to Feministing, *Listen Up: Bloggers Discuss Online Harassment*, <http://www.feministing.com/archives/013176.html> (Jan. 16, 2009 17:09 EST).

304. David Louie, *Cyber Threats Against Well-Known Blogger*, ABC7NEWS.COM, Mar. 29, 2007, <http://abclocal.go.com/kgof/story?section=news/business&id=5165663>.

305. Brad Stone, *A Call for Manners in the World of Nasty Blogs*, N.Y. TIMES, Apr. 9, 2007, at A1.

306. *Id.*

than letting such destructive behavior continue without rebuke. Site operators might take down destructive posts, further sending the message that cyber harassment is nontrivial.³⁰⁷ A civil rights message could change our cultural software—our ‘collectively created tools that constitute us as persons’ that we use to interact with others and express our values.³⁰⁸ Treating women as individuals worthy of respect could become “the moral law within [us].”³⁰⁹

In turn, women could resume blogging and participating in online discussion groups. They would feel comfortable using their own voices and identifying themselves with female names. They could take advantage of the professional and reputational opportunities that our networked environment provides. Because women would be subjected to less threatening and demeaning comments, they would suffer less anxiety and shame. As sexually threatening posts with women’s home addresses disappear, women will be less vulnerable to offline crime inspired by online posts. Women’s online activities would contribute to the erosion of gender hierarchy in cyberspace.

To be sure, law’s expressive value might be dampened if perpetrators cannot be located and sued or prosecuted. This might occur if posters use anonymizing technologies or if the websites hosting attacks fail to track IP addresses. This poses a new challenge for law: women usually had no problem identifying workplace harassers and abusive spouses. Nonetheless, law need not be invoked in every instance of cyber gender harassment for it to wield its expressive power. So long as some posters can be identified and some lawsuits and prosecutions can be pursued, law has the potential to teach the public about cyber gender harassment’s grave harms. In a lawsuit brought by female law students harassed on AutoAdmit, plaintiffs have identified several of the thirty-nine anonymous posters even though the site did not log its posters’ IP addresses.³¹⁰

Moreover, in the short term, discourse about a cyber civil rights agenda’s role in combating cyber gender harassment can help inform the public’s understanding of the problem. In this respect, the media has already played an important role in beginning that discussion.³¹¹ As more journalists write

307. Site operators can, and do, overlook cyber abuse of women as they enjoy immunity for the postings of others. Citron, *supra* note 2, at 114–21.

308. See J.M. BALKIN, *CULTURAL SOFTWARE: A THEORY OF IDEOLOGY* 14 (1998).

309. IMMANUEL KANT, *THE CRITIQUE OF PRACTICAL REASON* 127 (Thomas Kingsmill Abbott trans., Kessinger Publishing 2004) (1788); see also NUSSBAUM, *supra* note 91, at 79–80.

310. Isaac Arnsdorf, *Lawyers to name defendants in AutoAdmit case*, YALE DAILY NEWS, July 31, 2008, available at <http://www.yaledailynews.com/articles/view/24842>.

311. The media has begun to discuss the significance of a cyber civil rights agenda with regard to online harassment. See, e.g., Jean Marbella, *Time to rein in harassment on the Internet*, BALT. SUN, Feb. 22, 2009, available at www.baltimoresun.com/news/local/bal-md.marbella22feb22,0,7486119.column; David Margolick, *Slimed ONLINE*, CONDÉ NAST PORTFOLIO, Feb. 11, 2009, <http://www.portfolio.com/news-markets/national-news/portfolio/2009/02/11/Two-Lawyers-Fight-Cyber-Bullying/>; *Checking Your Internet Image* (FOX Wash., D.C. television broadcast July 17, 2008), available at http://www.myfoxdc.com/dpp/news/Checking_Your_Internet_Image (discussing *Cyber Civil Rights* article); *The Marc Steiner Show: Cyber Sexual Harassment* (WEAA Balt. radio broadcast Jan. 15, 2009), available at <http://www.fox43.com>.

about cyber harassment as gender discrimination, more targeted individuals would file criminal complaints and initiate lawsuits and more law enforcement authorities would provide training to officers on the criminal implications of cyber gender harassment. Thus, the anonymity of online posters is not fatal to law's expressive role in combating cyber gender harassment.

We also must be mindful that a cyber civil rights agenda's expressive value depends on its perceived moral legitimacy.³¹² Society deems legal remedies legitimate if they adhere to cultural intuitions about fairness, i.e., they appear apportioned to what is deserved.³¹³ If society perceives civil rights remedies as weak or ineffective, law's expressive message will ring hollow, thus failing to address the trivialization problem.³¹⁴ If, on the other hand, civil rights remedies are perceived as too harsh, they may engender resentment, causing the expressive message to backfire.

Whether cyber harassment prosecutions and antidiscrimination lawsuits will be perceived as both deserved and fair is unclear. Because these remedies have been underutilized, we have little empirical evidence to suggest that they would be perceived as overly weak or overly harsh. The components of a cyber civil rights agenda, however, have been applied to offline gender harassment for over thirty years. Their application to online harassment thus may not suffer from either malady. Moreover, in rejecting a cyber civil rights agenda, society would concomitantly fail to correct the harm that cyber gender harassment causes and rather send the unacceptable message that society tolerates such abuse. That cannot stand.

As the media publicizes pending lawsuits and prosecutions and as targeted individuals draw attention to the issue, policymakers, courts, and activists will spend more time on this serious social problem. This will permit an assessment of the legitimacy of current remedies and encourage the evolution of new legal theories and legislation to tackle it more precisely. A cyber civil rights agenda is made up of effective, yet imperfect legal solutions. They send the right message but they could be improved on to target cyber gender harassment more effectively. An antidiscrimination message ought to play an indispensable role in eradicating cyber gender harassment, both now and in the future.

www.steinershow.org/radio/the-marc-steiner-show/january-15-2009; *On Point with Tom Ashbrook*, *supra* note 188; *Where We Live: Free Speech and the Internet—How far should First Amendment protections extend into cyberspace?* (WNPR Conn. pub. radio broadcast Apr. 7, 2009), available at <http://www.cpb.org/program/where-we-live/episode/wwl-free-speech-and-internet?mini=calendar/2009/05/all&>.

312. See Sonja B. Starr, *Sentence Reduction as a Remedy for Prosecutorial Misconduct*, 97 GEO. L.J. 1509, 1542–43 (2009).

313. *Id.*

314. I thank Sonja Starr for highlighting these concerns for me.

December 2009]

Combating Cyber Gender Harassment

415

CONCLUSION

The notion that cyber harassment is trivial is both widespread and damaging. Because so many refuse to recognize cyber harassment as harmful, women suffer in silence, often sacrificing their female identities and their online lives. A cyber civil rights agenda would change this by recognizing and naming cyber harassment as gender discrimination. By changing the social meaning of online harassment and recharacterizing it as a civil rights violation, we may be able to transform online behavior in a manner that permits women to claim the internet as equally their own.

