

Book Reviews

Book Review — Online Misogyny as a Hate Crime: A Challenge for Legal Regulation

Kim Barker and Olga Jurasz

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The prevalence of the internet and the use of online platforms to communicate has created an extremely connected digital society. These platforms enable open and participatory discussion essential to any democratic system. Kim Barker's and Olga Jurasz's *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation* explains how such discussion is being undermined by widespread misogynistic behaviour in online platforms.¹ The aim of this book is two-fold: to bring greater awareness of the dangers of online misogyny and to identify legal avenues for victims to seek justice and deter misogynistic behaviour through substantive public sanctions. Barker and Jurasz argue that the Public Prosecution is neglecting to effectively utilise existing criminal provisions to prosecute instances of online misogyny.² This creates a lacuna in the legislative landscape that the authors conclude would be best filled by reform to the United Kingdom's current hate crime framework.

The book's legal arguments are grounded in the opening chapters by a clear definition of online misogyny as a form of 'gender based cyberhate, directed against women because they are women.'³ This definition clearly establishes that the scope of the book concerns online behaviour such as name-calling, threats of both physical and sexual violence, and harassment directed at women. The authors are also careful to delineate the difference between text-based and image-based abuse. While there has been a response to image-based abuse, the authors argue that text-based abuse is currently insufficiently regulated.⁴ While the issue of misogynistic behaviour is not simply a legal issue, but a structural issue embedded in society, the authors posit that the legal system's failure to condemn instances of online misogyny causes the behaviour to become normalised.

Examination of the case *R v Nimmo & Sorley* highlights the current lacuna within the UK's legal system. This case concerned high-profile women, Caroline Craido-Perez and Stella Creasy, who received threats of death and rape over Twitter from the defendants. The nature of those tweets caused

¹ Kim Barker and Olga Jurasz, *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation* (Routledge, 2018).

² Ibid 75.

³ Ibid 25.

⁴ Ibid 123.

both Craido-Perez and Creasy to adapt their lives to remain safe, including the hiring of personal security. The defendants in the case were prosecuted under s 127 of the *Communications Act 2003* for abusive tweets threatening sexual and physical violence. While the authors commended the decision for highlighting that the judiciary will recognise the harm caused by such behaviour, they criticised the fact that the decision was limited to communication misuse offences. Furthermore, there was no prosecution pursued against the defendants for the threats, harassment and stalking behaviours. It is against this background that the authors argue that there is a need for the legislature to act to condemn online misogyny.

Barker and Jurasz's argument that the Prosecution currently under-utilises existing criminal provisions is elucidated particularly well by their comprehensive analysis of current key criminal and communication provisions available that could regulate online misogyny. One example is s 16 of the *Offences Against Person Act*,⁵ which concerns the issuing of threats to kill with the intention to incite fear in the victim that the threats will be carried out.⁶ In the case of *R v Nimmo & Sorley* the threats sent over Twitter included: 'I will find you and you don't want to know what I will do...' and 'kill yourself before I do...'.⁷ These are sufficient to fall within s 16. However, the Prosecution chose to pursue a less substantive misuse of communication offence. The fact that the prosecution is currently unwilling to use these provisions highlights the central argument that gender should be a protectable characteristic in order to ensure adequate avenues of redress for victims.

Ultimately, the authors propose amending the UK's current hate crime framework to include 'gender' as a protectable characteristic.⁸ They persuasively argue that this change would fill the current gap in the law by providing adequate redress for victims and public sanctions to deter future misogynistic behaviour. The book posits that reforming the law to make gender a protectable characteristic would enable the prosecution to seek the harsher penalties available for hate crimes, thus ensuring adequate redress for victims. This amendment would provide long needed recognition that gender based crime is just as serious and harmful as other hate-based crimes.⁹ Furthermore, response from the legal system will prevent the continuing normalisation of misogyny within society by condemning the behaving through public sanctions. The authors also argue that to have the most effective legal response, the reform of the hate crime framework should be done in conjunction with the creation of provisions that specifically target online abuse. This would have the benefit of not needing

⁵ Ibid 47.

⁶ *Offences Against the Person Act 1861*, 24 and 25 Vict, c 100, s 16.

⁷ Barker and Jurasz (n 1) 47.

⁸ Ibid 81.

⁹ Ibid.

to rely on the courts to expand current criminal provisions to include online abuse.

While the authors have provided comprehensive analysis of current criminal provisions in the context of the behaviour in question, the book fails to consider whether private law could respond just as effectively to these issues. For example, the law has responded to image-based abuse by extending breach of confidence to provide remedies to individuals affected.¹⁰ Arguably there are avenues for the victims to pursue in private law, defamation and breach of confidence being only two examples. However, this would not provide the same public sanction as a legislative response would. Furthermore, the victims would likely only receive compensation, which could be considered inadequate. These reasons may explain why the authors chose to focus only on public responses.

One key issue with regulating online platforms is the potential amendment conflicting with the fundamental right of freedom of expression. Surprisingly, this conflict was not explored in any depth in the book. This is a significant omission given the importance of freedom of expression to democratic society. However, as noted by Barker and Jurasz, this right is not an absolute right and can be curtailed in circumstances where it is appropriate and necessary.¹¹ As such, given that the book focuses on practical solutions for legal resolution, an in-depth discussion on freedom of expression would go beyond the scope of the book.

This book offers a clear and comprehensive analysis of the legal issues surrounding the regulation of online misogyny. The discussion of a socially and legally complex issue is effectively handled by the authors' excellent structure, which provides context to the issues and highlights the importance of a legislative response. Therefore, this book could be recommended to anyone who wishes to have a greater understanding of online misogyny and the need for the legal system to respond. Ultimately, Barker and Jurasz deliver convincing arguments that the legal system must be reformed to enable adequate redress for victims and prevent the further normalisation of online misogyny.

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¹⁰ *Giller v Procopets* (2008) 24 VR 1.

¹¹ Barker and Jurasz (n 1) 45.

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