

CHAPTER 11



Pornography and Censorship

Pornography is nothing new. It graced (or disgraced) the walls of buildings in ancient Pompeii, adorning the houses of rich Romans and illustrating the sexual pleasures of local brothels. And even in those days, it was already ancient. Pornographic pictures predated Roman times by thousands of years. Now in the twenty-first century, after countless attempts by the powerful or concerned to eradicate pornography from the world for good, it is still with us—and spreading far and fast via technology and free enterprise.

Along with many other news organizations, the CBS News show *60 Minutes* has reported on how incredibly pervasive pornography of all kinds has become:

One of the biggest cultural changes in the United States over the past 25 years has been the widespread acceptance of sexually explicit material—pornography.

In the space of a generation, a product that once was available in the back alleys of big cities has gone corporate, delivered now directly into homes and hotel rooms by some of the biggest companies in the United States.

It is estimated that Americans now spend somewhere around \$10 billion a year on adult entertainment, which is as much as they spend attending professional sporting events, buying music or going out to the movies.

Consumer demand is so strong that it has seduced some of America's biggest brand names, and companies like General Motors, Marriott and

Time Warner are now making millions selling erotica to America.¹

Not surprisingly, the moral questions that pornography raises have proliferated too. In the interests of clarity, we can separate them into two groups: (1) those concerning the morality of using, creating, or disseminating pornographic materials and (2) those relating to the legal prohibition or censorship of such materials. Some believe that answers to the former may help them decide what to do about the latter; others, that the two need not have anything much to do with one another. In any case, it is important to see that the morality of pornography and the moral permissibility of censoring it are logically distinct.

In this chapter we focus on the censorship question, which we can state as follows: *When, if ever, is it morally permissible for the government to limit or prohibit the exposure of consenting adults to pornographic materials?* Such limitations raise moral concerns because they involve the rights of persons, goods and evils, and social benefits and harms. The censorship question is, of course, extremely controversial—but only as it applies to consenting adults. There is little disagreement about laws prohibiting the display of pornography to minors and to adults who do not want to see it.

¹"Porn in the U.S.A.," *60 Minutes*, 5 September 2004, www.cbsnews.com/stories/2003/11/21/60minutes/main585049.shtml (16 February 2006).

ISSUE FILE: BACKGROUND

Though almost any proposed definition of pornography will be controversial, we can begin by positing one that is least troublesome and most useful in helping us understand the key issues. Therefore: **Pornography** is sexually explicit images or text meant to cause sexual excitement or arousal.

Defined this way, pornography includes an extensive array of materials that cater to many different tastes. It can be created in the media of photographs, drawings, paintings, sculpture, animation, videotape, film, fiction or nonfiction text, and live performances, and its modern modes of publication include books, magazines, DVDs, television, and the Internet. In all these modes, pornographic materials appeal to both heterosexuals and homosexuals and depict a remarkable variety of sexual behavior—intercourse, oral sex, anal sex, sexual bondage, fetishism, sadism, voyeurism, bestiality, and much more. In a large percentage of these depictions, the sexual activity is nonviolent, consented to by the adult participants, and regarded by many as neither degrading nor humiliating. In some pornography, however, people are shown being violently abused or degraded against their will. Sometimes women are depicted being raped or tortured, and sometimes both women and men are shown being beaten or forced to perform demeaning acts. Some pornographic materials display not consenting adults but actual children (though some materials may use computer-generated “children” or young adult actors who portray children).²

A concept entangled with the term *pornography* is obscenity. **Obscenity** is a characteristic or property believed to render sexually frank mate-

rial morally or legally unacceptable. For some people, obscenity is the defining trait of pornography: any sexually explicit material that is obscene is pornography. They may judge such material obscene if, for example, it portrays what they consider immoral sexual behavior or if it is believed to corrupt the morals of individuals or society. Obscenity is also a legal term used to describe sexually graphic words or images that are not protected by the First Amendment’s guarantee of free speech. Obscene materials can be legally banned. The criteria for judging whether a work is legally obscene were laid out in 1973 by the Supreme Court in *Miller v. California*. According to *Miller*, the criteria are

(a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest [unwholesome sexual desire]; . . . (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.³

A work is obscene if it meets all three requirements. Using the “**Miller test**,” the courts have rarely found pornographic materials to be obscene. Child pornography—visual images of real children under age eighteen engaged in sexually explicit conduct—is the notable exception. In many countries, including the United States, Canada, and the United Kingdom, the production, distribution, or possession of child pornography is a crime.

Another term often found alongside pornography is *erotica*. Some feminists define pornography as sexually explicit representations that degrade, demean, or subordinate women. For many of them, **erotica** is a contrasting term referring to sexually explicit material that does *not* portray women in

²See Caroline West, “Pornography and Censorship,” *The Stanford Encyclopedia of Philosophy* (Fall 2005, ed.), ed. Edward N. Zalta, <http://plato.stanford.edu/entries/pornography-censorship> (15 February 2006).

³*Miller v. California*, 413 U.S. 15, 24 (1973).

this negative way but instead emphasizes mutually satisfying sexual relationships between equals.

The censorship question essentially centers on a conflict between personal freedom and the common good. Adding weight to the freedom side of the scales are such fundamental principles as personal autonomy, equality, self-determination, and individual rights—all blessed by the First Amendment and liberal democracy. Those who defend personal freedom against censorship usually understand the specific liberties involved to include freedom of speech or expression and the right to privacy. On the other side of the scales are claims to the effect that pornography is bad for individuals or society. Personal and institutional immorality, the lowering of moral standards, decay of religious values and traditions, the undermining of personal virtue, the debasement and subordination of women, increase in crime and social disorder, psychological damage—these and other ills are said to be the possible results of producing or using pornography.

Those who argue against censorship, then, usually do so in the name of individual liberty. On the anticensorship view, the government has no right to restrict an individual's freedom of expression, conscience, or personal choice without very powerful reasons. The most influential statement of this outlook comes from the utilitarian philosopher John Stuart Mill:

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest. . . . This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which con-

cerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.⁴

According to Mill and his modern-day philosophical heirs, the only legitimate reason for limiting liberty is the prevention of harm to others. We are free to think, believe, say, desire, and choose as we see fit—as long as we do not harm our fellow citizens. (The meaning of *harm* is itself controversial, but the term usually refers to bodily injury or serious damage to important rights or interests.) The mere fact that most other people think our preferences distasteful, false, or immoral is not a good enough reason for the government to suppress or punish us. With some exceptions, the federal courts have generally taken this same stand—and so have most people opposed to the censorship of pornography.

⁴John Stuart Mill, from *On Liberty* (1859; reprint, Chicago: Henry Regnery, 1955), 17–18.

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Where the possible harm of pornography has seemed substantial and obvious, the enemies of censorship (along with the courts) have recognized legitimate exceptions to the anticensorship principles. They have, for example, usually supported the banning of child pornography and have favored various restrictions on the public display of pornography to minors or nonconsenting adults.

On the procensorship side we find several arguments coming from both the political right and left. Many conservative and religious people argue that pornography should be prohibited for the best of reasons: it is immoral. Pornographic materials themselves are obscene and therefore morally abhorrent; they encourage immoral behavior such as promiscuity, premarital and extramarital intercourse, and deviant or unnatural sexuality; they weaken the moral underpinning of religious and family life; and they are offensive to people with strong moral values. According to this perspective, the important moral beliefs of the community should have the force of law, so the creation or use of pornography should be illegal.

The idea that a community's important moral beliefs should have the force of law is known as **legal moralism**. It is, of course, a far cry from Mill's doctrine. For him, legal moralism is nothing more than the many forcing their notion of morality on the few—"a tyranny of the majority." In contrast, many who advocate some form of legal moralism believe it justified because it is a way to prevent harm to society—*moral* harm.

Another procensorship approach is based on the idea that sometimes the government may legitimately restrict citizens' freedom for their own good, an outlook known as **legal paternalism** (which would sit no better than legal moralism with Mill). Some cite seat belt laws as prime examples of this doctrine: the state, like a kindly father, requires people to buckle up for their own safety—not because being unbuckled might harm others. Thus advocates of censorship argue that pornog-

raphy should be banned because it harms individuals who consume it. Looking at pornography, they contend, can cause psychological problems in viewers, engendering obsessive or deviant behavior and warped attitudes toward themselves, women, and sex. The state therefore should protect people from these self-inflicted harms.

Many argue for the censorship of pornography on grounds other than legal moralism or legal paternalism. They contend that men's consumption of pornography directly causes unmistakable harm to others: specifically, it provokes sexual violence against women and children. Presumably this is one procensorship argument that Mill would have to accept, assuming that pornography does indeed cause sexual violence.

The empirical evidence for this latter claim is conflicting and disputed, however. For example, in 1970 the U.S. government Commission on Obscenity and Pornography concluded that no scientific evidence shows that the consumption of pornographic materials causes sex crimes. But in 1986, the Attorney General's Commission on Pornography reported that there is an increased likelihood of some men committing sex crimes when they are exposed to materials that are either sexually violent or nonviolent and degrading. (No such link was found between sexual violence and erotica.) In contrast, long-term population studies of Denmark, Sweden, West Germany, and Japan showed that as the amount of available pornography increased, the incidence of rape or other sex crimes decreased.⁵ Other studies have found links between exposure to violent or degrading pornography and aggressive or callous attitudes toward

⁵Milton Diamond and Ayako Uchiyama, "Pornography, Rape and Sex Crimes in Japan," *International Journal of Law and Psychiatry* 22, no. 1 (1999): 1–22; B. Kutchinsky, "Pornography and Rape: Theory and Practice? Evidence from Crime Data in Four Countries Where Pornography Is Easily Available," *International Journal of Law and Psychiatry* 14, nos. 1–2 (1991): 47–64.

women, but they fall short of demonstrating that pornography causes sexual violence.

More recently, another kind of argument for censorship has come from a number of feminists. These writers do not necessarily object to the sexually explicitness of sex-oriented material. Rather, they oppose sexually explicit material that portrays women as debased and dehumanized while commending this distorted perspective to the audience. The philosopher Helen E. Longino declares that

What makes a work a work of pornography, then, is not simply its representation of degrading and abusive sexual encounters, but its implicit, if not explicit, approval and recommendation of sexual behavior that is immoral, i.e., that physically or psychologically violates the personhood of one of its participants. Pornography, then, is verbal or pictorial material which represents or describes sexual behavior that is degrad-

ing or abusive to one or more of the participants *in such a way as to endorse the degradation.*⁶

Many feminists argue that such material causes serious harm to women that goes beyond merely provoking sexual violence against them. Pornography, they maintain, legitimizes discriminatory and hostile attitudes toward women, leading to such social and political injuries as defamation of character, general oppression and exploitation, violations of women's rights to equal treatment and consideration, and the devaluing of women's dignity and personhood.

But other feminists disagree. They are skeptical of the alleged causal link between consump-

⁶Helen E. Longino, "Pornography, Oppression, and Freedom," in *Take Back the Night: Women on Pornography*, ed. Laura Lederer (New York: William Morrow, 1980), 276.

CRITICAL THOUGHT: The Limits of Free Speech

The Supreme Court case of *Brandenburg v. Ohio* (1969) articulated a test for determining when *inflamatory* free speech can be lawfully punished or banned. It reaffirmed the notion that the right of free speech is not absolute but has limits. In the words of a famous phrase, we would not allow some types of free speech, such as someone "shouting 'fire!' in a crowded theater." But the Court also asserted that not just any kind of speech can be forbidden. Even inflammatory, offensive, or seditious speech cannot be banned unless it passes the "Brandenburg test." As the justices said,

the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.*

To be prohibited, inflammatory speech must be intended to provoke "imminent lawless action" that is likely to occur. Suppose, as many people contend, that some kinds of pornography are inflammatory. Do you think that under the "Brandenburg test" some pornography would then be deemed eligible for prohibition? Can certain types of pornography provoke imminent lawless action? If pornography can be legitimately banned because it is inflammatory speech likely to provoke imminent lawless action, what other kinds of speech could be banned on the same basis? What about members of the KKK standing on a street corner shouting racial insults at blacks and Jews? What about a controversial speaker at a college advocating the killing of Muslims or gays?

* *Brandenburg v. Ohio*, 395 U.S. 444, 442 (1969).

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tion of pornography and unfair treatment of women. They doubt that the relationship between the two is as clear and as toxic as antipornography feminists claim. Moreover, even if a great deal of pornography is unwholesome or misogynistic, they argue, the civil benefits of freedom of expression outweigh any possible goods produced by censorship. As the anticensorship feminist Wendy McElroy says:

Pornography is free speech applied to the sexual realm. Freedom of speech is the ally of those who seek change: it is the enemy of those who seek to maintain control. Pornography, along with all other forms of sexual heresy, such as homosexuality, should have the same legal protection as political heresy. This protection is especially important to women, whose sexuality has been controlled by censorship through the centuries.⁷

MORAL THEORIES

As you can see, many (if not most) of the disputes over the censorship of pornography are about the consequences of allowing (or disallowing) access to pornographic materials. So, naturally, underpinning many arguments on both sides of the issue are appeals to consequentialist moral theories.

Proponents of censorship, for example, can argue on utilitarian grounds that happiness can be maximized for society only by prohibiting the creation and consumption of pornography. The backbone of such arguments would consist of claims that pornography causes more harm than any kind of censorship would. The harms would include some or all of those mentioned earlier—increases in sexual violence against women and minors, the degradation of moral and social life, a higher incidence of mental and emotional prob-

lems, and more exploitation and unfair treatment of women. To be credible, these assertions would need to be backed by empirical evidence showing that, on balance, censorship does indeed lead to greater happiness than alternative proposals. The utilitarian case for censorship, however, would face a steep challenge because, as we have seen, much of the relevant empirical evidence is in doubt. And, of course, a consistent (and honest) utilitarian would have to switch to the anticensorship camp if the evidence suggested that censorship would do more harm than good.

In turn, anticensorship utilitarians would argue that permitting the production and use of pornography (except for some obviously pernicious types such as child pornography) would generate the greatest amount of overall happiness. They could contend both that censoring pornography can cause great harm and that consuming it can be beneficial. Many are opposed to censorship because they believe it injurious and dangerous to society. They argue that the free expression of divergent ideas about such important facets of life as art, politics, morality, and religion is vital to the welfare of a society. The freedom to express one's beliefs and desires is essential to social progress, the acquisition of knowledge, the examination of values and interests, and the pursuit of personal fulfillment.

On the positive side, some contend that reading or viewing pornography can provide important sexual information and be a useful form of emotional therapy:

- [Pornography] gives a panoramic view of the world's sexual possibilities. This is true even of basic sexual information such as masturbation. It is not uncommon for women to reach adulthood without knowing how to give themselves pleasure.
- It allows women to "safely" experience sexual alternatives and satisfy a healthy sexual curiosity. . . .

⁷Wendy McElroy, "A Feminist Defense of Pornography," *Free Inquiry* (Fall 1997): 17.



QUICK REVIEW

pornography—Sexually explicit images or text meant to cause sexual excitement or arousal.

obscenity—A characteristic or property believed to render sexually frank material morally or legally unacceptable; also, a legal term used to describe sexually graphic words or images that are not protected by the First Amendment's guarantee of free speech.

Miller test—Criteria for judging whether a work is legally obscene, as articulated in *Miller v. California* (1973).

erotica—Sexually explicit material that does not degrade or subordinate women; also, sexually explicit material that emphasizes mutually satisfying sexual relationships between equals.

legal moralism—The view that a community's important moral beliefs should have the force of law.

legal paternalism—The view that the government may legitimately restrict citizens' freedom for their own good.

- It offers the emotional information that comes only from experiencing something either directly or vicariously. It provides us with a sense [of] how it would "feel" to do something. . . .

Pornography can be good therapy. Pornography provides a sexual outlet for those who—for whatever reason—have no sexual partner. . . . Couples also use pornography to enhance their relationship.⁸

As we have seen, both those opposed to and in favor of censoring pornography may argue their cases by appealing to nonconsequentialist theories. People who want to ban pornography solely

because they deem its creation and consumption immoral are taking a nonconsequentialist view: these actions are wrong in themselves, wrong because of their very nature, and their consequences are beside the point. Similarly, some people maintain that pornography devalues the personhood of women and encourages men to treat them as mere objects of pleasure—as mere means to an end rather than as an end in themselves. This tack is Kantian, condemning pornography as a violation of a fundamental moral principle.

Critics of censorship also frequently found their arguments on nonconsequentialist moral principles, the most common being respect for autonomy. Respecting people's autonomy means allowing them to freely make their own choices and to live their lives as they see fit (as long as others are not harmed). Recall Mill's declaration that personal freedom requires "liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow."

MORAL ARGUMENTS

Let us examine an artificial but instructive variation on a procensorship argument that has been extremely controversial, especially among feminists and others concerned about the treatment of women. The gist is that pornography, by its unsavory portrayal of women, degrades and dehumanizes them; this portrayal amounts to unlawful discrimination against women; therefore, pornography should be banned. Here is the argument laid out more precisely:

1. Pornography shows women being degraded, dehumanized, or subordinated and implies approval and encouragement of such ill-treatment.
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⁸McElroy, "A Feminist Defense of Pornography," 16–17.

3. This way of portraying women *causes* sexual violence and discrimination against them.
4. This way of portraying women *is* a form of discrimination against them.
5. Censorship of pornography is necessary to prevent these harms.
6. Therefore, the censorship of pornography is justified.

Premise 1 seems to be true, although critics would want to qualify it: *some* pornography is clearly degrading and demeaning to women, and *some* of it does appear to recommend or endorse the degrading and demeaning treatment portrayed.

Most informed people involved in this debate (both pro- and anticensorship) would probably accept Premise 2. They would agree that much of pornography—especially the kind depicting and encouraging violence against women—is indeed morally repugnant. But notice that this premise, even if true, does not support the conclusion. The issue is whether pornography should be censored, not whether it is immoral. Someone can believe that producing and using pornography is morally wrong and that its view of women is demonstrably false and still consistently oppose censorship.

Premise 3 is problematic. As discussed earlier, the claim that pornography causes rape and other sexual violence is widely disputed. And the idea that pornography causes discrimination against women has even less support. To be acceptable, the premise needs to be substantiated by solid empirical evidence—meaning scientific studies, not merely anecdotes. The problem is that it is not at all obvious that this alleged causal connection is actual. As one critic puts it,

Most studies are limited to violent pornography. And even though some of these studies do suggest a *temporary* impact on *attitudes* (e.g., those who view violent pornography may be more likely to express the view that women seek and “enjoy” violence), this does not show that viewing violent pornography

causes violent *behavior*. Moreover, there is some evidence suggesting that the effect on attitudes is only temporary and that it can be effectively counteracted by additional information.⁹

We should note, however, that for the argument to work, Premise 3 does not need to be true. As long as *either* Premise 3 or Premise 4 is true (as well as Premises 1 and 5), we will have a good argument. For the argument to work, we need a premise establishing that pornography causes harm—and either Premise 3 or Premise 4 will do. But since the former is disputed, a proponent of this argument must rely on the latter.

Premise 4 says that pornography does not cause discrimination against women—it *is* discrimination against women. The feminist theorist Catharine MacKinnon has famously made this very point:

We define pornography as a practice of sex discrimination, a violation of women’s civil rights, the opposite of sexual equality. . . . Pornography is a practice of discrimination on the basis of sex, on one level because of its role in creating and maintaining sex as a basis for discrimination. It harms many women one at a time and helps keep all women in an inferior status by defining our subordination as our sexuality and equating that with our gender. It is also sex discrimination because its victims, including men, are selected for victimization on the basis of their gender. But for their sex, they would not be so treated.¹⁰

MacKinnon asserts that pornography is not merely speech or expression (which is protected by the First Amendment) but a form of conduct. If pornography is a kind of harmful conduct (dis-

⁹Mark R. Wicclair, “Feminism, Pornography, and Censorship,” in *Social Ethics: Morality and Social Policy*, ed. Thomas A. Mappes and Jane S. Zembaty, 6th ed. (Dubuque, IA: McGraw-Hill, 2002), 235.

¹⁰Catharine MacKinnon, “Pornography, Civil Rights, and Speech,” *Harvard Civil Rights/Civil Liberties Law Review* 20 (1985): 22, 27.

crimination against women), then there is a good reason for outlawing it. After all, discrimination on the basis of race, creed, religion, or sex is illegal and widely recognized as immoral. But if pornography is a form of expression—even offensive and degrading expression—then we cannot automatically conclude that it should be censored. Free expression is considered a fundamental right that can be violated only for very strong reasons and in rare circumstances. In general, harm can be used as a justification for restricting expression only if the harm is in the form of an injury or an “immediate breach of the peace.” Thus, the classic example of speech that can be lawfully curtailed is the word “fire!” shouted in a packed theater.

Many observers have rejected the equating of pornography with conduct. The courts, too, have made it clear that they regard pornography of whatever kind as a form of expression, not conduct.

If Premises 3 and 4 are in doubt, then the truth of Premise 5 does not matter. In any case, some would reject Premise 5, arguing that censorship is itself harmful and that there are better ways to counteract the harms of pornography than curtailing free expression. One suggested approach is to educate people about the dangers of sexism and sexual violence.

SUMMARY

In this chapter, *pornography* has been defined as sexually frank images or text meant to cause sexual excitement or arousal. *Obscenity* is used as a legal term defined by the courts: obscene materials are those that the “average person, applying contemporary community standards” would judge to be appealing to prurient interests, that are “patently offensive,”

and that lack “serious literary, artistic, political, or scientific value.”

The censorship question (pertaining to state censorship of pornography) rests essentially on how to resolve a conflict between personal freedom and the common good. Those who argue against censorship usually appeal to individual liberty, affirming with John Stuart Mill that the only legitimate reason for limiting liberty is the prevention of harm to others. Those arguing for censorship often contend that pornography should be censored because it is immoral in itself and encourages immoral behavior. Also, many taking a procensorship stance maintain that the consumption of pornography provokes sexual violence against women and children. The existence of empirical evidence to support this claim is disputed. Some feminists argue that pornography causes serious harm to women by legitimizing discriminatory and hostile attitudes toward women—attitudes that lead to women’s oppression and exploitation, violations of women’s right to equal treatment, and the devaluing of women’s dignity and personhood. Other feminists reject this view because they are skeptical of the alleged causal link between pornography and harm to women and because they think the benefits of freedom of expression outweigh any possible gains from censorship.

Consequentialist theories can be used to argue both for and against the censorship of pornography. Depending on the import of the empirical evidence, you could argue that the greatest benefits to society would result from censoring—or not censoring—pornography. Nonconsequentialist theories can also be used to support either position. You can argue, for example, that pornography should be censored because it treats women merely as a means to an end (a Kantian approach) or that it should not be censored because censorship is a violation of people’s autonomy (another Kantian concern).

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ture of a certain variety, or to engage in what appears to be a non-degrading sexual act. It may be that coercion caused the picture to exist. And it may very well be that the existing disparity in the economic status of men and women is such that any sexually explicit depiction of a woman is at least suspect on account of the possibility that the economic disparity is what caused the woman to pose for a picture that most people in this society would find embarrassing.

We do not deny any of these possibilities, and we do not deny the importance of considering as pervasively as possible the status of women in contemporary America, including the effects of their current status and what might be done to change some of the detrimental consequences of that status. But without engaging in an inquiry of that breadth, we must generally, absent more specific evidence to the contrary, assume that a picture represents what it depicts.

From Pornography, Civil Rights, and Speech

CATHARINE A. MACKINNON

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There is a belief that this is a society in which women and men are basically equals. Room for marginal corrections is conceded, flaws are known to exist, attempts are made to correct what are conceived as occasional lapses from the basic condition of sex equality. Sex discrimination law has centered most of its focus on these occasional lapses. It is difficult to overestimate the extent to which this belief in equality is an article of faith to most people, including most women, who wish to live in self-respect in an internal universe, even (perhaps especially) if not in the world. It is also partly an expression of natural law thinking: If we are inalienably equal, we can't "really" be degraded.

This is a world in which it is worth trying. In this world of presumptive equality, people make money based on their training or abilities or diligence or qualifications. They are employed and advanced on the basis of merit. In this world of just deserts, if someone is abused, it is thought to violate the basic rules of the community. If it doesn't, that person is seen to have done something she could have chosen to do differently, by exercise of will or better judgment. Maybe such people have placed themselves in a situation of vulnerability to physical abuse. Maybe

they have done something provocative. Or maybe they were just unusually unlucky. In such a world, if such a person has an experience, there are words for it. When they speak and say it, they are listened to. If they write about it, they will be published. If there are certain experiences that are never spoken, or certain people or issues seldom heard from, it is supposed that silence has been chosen. The law, including much of the law of sex discrimination and the first amendment, operates largely within the realm of these beliefs.

Feminism is the discovery that women do not live in this world, that the person occupying this realm is a man, so much more a man if he is white and wealthy. This world of potential credibility, authority, security, and just rewards, recognition of one's identity and capacity, is a world that some people do inhabit as a condition of birth, with variations *among them*. It is not a basic condition accorded humanity in this society, but a prerogative of status, a privilege, among other things, of gender.

I call this a discovery because it has not been an assumption. Feminism is the first theory, the first practice, the first movement, to take seriously the situation of all women from the point of view of all women, both on our situation and on social life as a whole. The discovery has therefore been made that the implicit social content of humanism, as well as the standpoint from which legal method has been designed and injuries have been defined, has not

Catharine MacKinnon, "Pornography, Civil Rights, and Speech," *Harvard Civil Rights/Civil Liberties Law Review* 20, no. 1 (1985): 10-68 (edited). Copyright © 1985 by the President and Fellows of Harvard College. Reprinted with permission.

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been women's standpoint. Defining feminism in a way that connects epistemology with power as the politics of women's point of view, this discovery can be summed up by saying that women live in an other world: specifically, a world of *not* equality, a world of inequality.

Looking at the world from this point of view, a whole shadow world of previously invisible silent abuse has been discerned. Rape, battery, sexual harassment, forced prostitution, and the sexual abuse of children emerge as common and systematic. We find rape happens to women in all contexts, from the family, including rape of girls and babies, to students and women in the workplace, on the streets, at home, in their own bedrooms by men that they do not know, and by men that they do know, by men they are married to, men they have had a social conversation with, or, least often, men they have never seen before. Overwhelmingly, rape is something that men do or attempt to do to women (forty-four percent according to a recent study) at some point in our lives. Sexual harassment of women by men is common in workplaces and educational institutions. Up to eighty-five percent of women in one study report it, many in physical forms. Between a quarter and a third of women are battered in their homes by men. Thirty-eight percent of little girls are sexually molested inside or outside the family. Until women listened to women, this world of sexual abuse was *not* spoken of. It was the unspeakable. What I am saying is, if you *are* the tree falling in the epistemological forest, your demise doesn't make a sound if no one is listening. Women did not "report" these events, and overwhelmingly do not today, because no one is listening, because no one believes us. This silence does not mean nothing happened, and it does not mean consent. It is the silence of women of which Adrienne Rich has written, "Do not confuse it with any kind of absence."¹

Believing women who say we are sexually violated has been a radical departure, both methodologically and legally. The extent and nature of rape, marital rape, and sexual harassment itself, were discovered in this way. Domestic battery as a syndrome, almost a habit, was discovered through

refusing to believe that when a woman is assaulted by a man to whom she is connected, that is not an assault. The sexual abuse of children was uncovered, Freud notwithstanding, by believing that children were not making up all this sexual abuse. Now what is striking is that when each discovery is made, and somehow made real in the world, the response has been: It happens to men too. If women are hurt, men are hurt. If women are raped, men are raped. If women are sexually harassed, men are sexually harassed. If women are battered, men are battered. Symmetry must be reasserted. Neutrality must be reclaimed. Equality must be reestablished.

The only places where the available evidence supports this, where anything like what happens to women also happens to men, are with children—little boys are sexually abused—and in prison. The liberty of prisoners is restricted, their freedom restrained, their humanity systematically diminished, their bodies and emotions confined, defined, and regulated. If paid at all, they are paid starvation wages. They can be tortured at will, and it is passed off as discipline or as means to an end. They become compliant. They can be raped at will, at any moment, and nothing will be done about it. When they scream, nobody hears. To be a prisoner means to be defined as a member of a group for whom the rules of what can be done to you, of what is seen as abuse of you, are reduced as part of the definition of your status. To be a woman is also that kind of definition and has that kind of meaning.

Men are damaged by sexism. (By men, I am referring to the status of masculinity which is accorded to males on the basis of their biology, but is not itself biological.) But whatever the damage of sexism is to men, the condition of being a man is not defined as subordinate to women by force. Looking at the facts of the abuses of women all at once, you see that a woman is socially defined as a person who, whether or not she is or has been, *can at any time* be treated in these ways by men, and little, if anything, will be done about it. This is what it means when feminists say that maleness is a form of power and femaleness is a form of powerlessness.

In this context, what all of this “men too” stuff is about, is that people don’t really seem to believe that the things I have just said are true, though there really is little question about their empirical accuracy. The data are extremely simple, like women’s fifty-nine cent on the dollar pay figure. People don’t really seem to believe that either. Yet there is no question of its empirical validity. This is the workplace story: What women do is seen as not worth much or what is not worth much is seen as something for women to do. *Women* are not seen as worth much, is the thing. Now why are these basic realities of the subordination of women to men, such that for example only 7.8 percent of women have never been sexually assaulted,² not effectively believed, not perceived as real in the face of all this evidence? Why don’t *women* believe our own experiences? In the face of all this evidence, especially of systematic sexual abuse—subjection to violence with impunity is one extreme expression, although not the only expression, of a degraded status—the view that basically the sexes are equal in this society remains unchallenged and unchanged. The day I got this was the day I understood its real message, its real coherence: *This is equality for us.*

I could describe this but I couldn’t explain it until I started studying a lot of pornography. In pornography, there it is, in one place, all of the abuses that women had to struggle so long even to begin to articulate, all the *unspeakable* abuse: the rape, the battery, the sexual harassment, the prostitution, and the sexual abuse of children. Only in the pornography it is called something else: sex, sex, sex, sex, and sex, respectively. Pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them. More generally, it criticizes the dominance and submission that is the dynamic common to them all. It makes hierarchy sexy and calls that “the truth about sex” or just a mirror of reality. Through this process, pornography constructs what a woman is as what men want from sex. This is what the pornography means. (I will talk about the way it works behaviorally, with the evidence on it, when I talk about the ordinance itself.)

Pornography constructs what a woman is in terms of its view of what men want sexually, such that acts of rape, battery, sexual harassment, prostitution, and sexual abuse of children become acts of sexual equality. Pornography’s world of equality is a harmonious and balanced place. Men and women are perfectly complementary and perfectly bipolar. Women’s desire to be fucked by men is equal to men’s desire to fuck women. All the ways men love to take and violate women, women love to be taken and violated. The women who most love this are most men’s equals, the most liberated; the most participatory child is the most grown-up, the most equal to an adult. Their consent merely expresses or ratifies these preexisting facts.

The content of pornography is one thing. There, women substantively desire dispossession and cruelty. We desperately want to be bound, battered, tortured, humiliated, and killed. Or, to be fair to the soft core, merely taken and used. This is erotic to the male point of view. Subjection itself with self-determination ecstatically relinquished is the content of women’s sexual desire and desirability. Women are there to be violated and possessed, men to violate and possess us either on screen or by camera or pen on behalf of the consumer. On a simple descriptive level, the inequality of hierarchy, of which gender is the primary one, seems necessary for the sexual arousal to work. Other added inequalities identify various pornographic genres or sub-themes, although they are always added through gender: age, disability, homosexuality, animals, objects, race (including anti-semitism), and so on. Gender is never irrelevant.

What pornography *does* goes beyond its content: It eroticizes hierarchy, it sexualizes inequality. It makes dominance and submission sex. Inequality is its central dynamic; the illusion of freedom coming together with the reality of force is central to its working. Perhaps because this is a bourgeois culture, the victim must look free, appear to be freely acting. Choice is how she got there. Willing is what she is when she is being equal. It seems equally important that then and there she actually be forced and that forcing be communicated on some level, even if only through still photos of her in postures of receptivity

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and access, available for penetration. Pornography in this view is a form of forced sex, a practice of sexual politics, an institution of gender inequality.

From this perspective, pornography is neither harmless fantasy nor a corrupt and confused misrepresentation of an otherwise natural and healthy sexual situation. It institutionalizes the sexuality of male supremacy, fusing the erotization of dominance and submission with the social construction of male and female. To the extent that gender is sexual, pornography is part of constituting the meaning of that sexuality. Men treat women as who they see women as being. Pornography constructs who that is. Men's power over women means that the way men see women defines who women can be. Pornography is that way. Pornography is not imagery in some relation to a reality elsewhere constructed. It is not a distortion, reflection, projection, expression, fantasy, representation, or symbol either. It is a sexual reality.

In Andrea Dworkin's definitive work on pornography, sexuality itself is a social construct gendered to the ground. Male dominance here is not an artificial overlay upon an underlying inalterable substratum of uncorrupted essential sexual being. Dworkin's *Pornography: Men Possessing Women* presents a sexual theory of gender inequality of which pornography is a constitutive practice. The way in which pornography produces its meaning constructs and defines men and women as such. Gender has no basis in anything other than the social reality its hegemony constructs. Gender is what gender means. The process that gives sexuality its male supremacist meaning is the same process through which gender inequality becomes socially real.

In this approach, the experience of the (overwhelmingly) male audiences who consume pornography is therefore not fantasy or simulation or catharsis but sexual reality, the level of reality on which sex itself largely operates. Understanding this dimension of the problem does not require noticing that pornography models are real women to whom, in most cases, something real is being done; nor does it even require inquiring into the systematic infliction of pornography and its sexuality upon women, although it helps. The way in which the pornogra-

phy itself provides what those who consume it want matters. Pornography *participates* in its audience's eroticism through creating an accessible sexual object, the possession and consumption of which is male sexuality, as socially constructed; to be consumed and possessed as which, is female sexuality, as socially constructed; and pornography is a process that constructs it that way.

The object world is constructed according to how it looks with respect to its possible uses. Pornography defines women by how we look according to how we can be sexually used. Pornography codes how to look at women, so you know what you can do with one when you see one. Gender is an assignment made visually, both originally and in everyday life. A sex object is defined on the basis of its looks, in terms of its usability for sexual pleasure, such that both the looking—the quality of the gaze, including its point of view—and the definition according to use become eroticized as part of the sex itself. This is what the feminist concept “sex object” means. In this sense, sex in life is no less mediated than it is in art. One could say men have sex with *their image* of a woman. It is not that life and art imitate each other; in this sexuality, they *are* each other.

To give a set of rough epistemological translations, to defend pornography as consistent with the equality of the sexes is to defend the subordination of women to men as sexual equality. What in the pornographic view is love and romance looks a great deal like hatred and torture to the feminist. Pleasure and eroticism become violation. Desire appears as lust for dominance and submission. The vulnerability of women's projected sexual availability, that acting we are allowed (i.e. asking to be acted upon), is victimization. Play conforms to scripted roles. Fantasy expresses ideology, is not exempt from it. Admiration of natural physical beauty becomes objectification. Harmlessness becomes harm. Pornography is a harm of male supremacy made difficult to see because of its pervasiveness, potency, and, principally, because of its success in making the world a pornographic place. Specifically, its harm cannot be discerned, and will not be addressed, if viewed and approached neutrally, because it is so much of “what is.” In other

words, to the extent pornography succeeds in constructing social reality, it becomes invisible as harm. If we live in a world that pornography creates through the power of men in a male dominated situation the issue is not what the harm of pornography is, but how that harm is to become visible.

Obscenity law provides a very different analysis and conception of the problem. In 1973, the legal definition of obscenity became that which

the average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest; that which depicts and describes in a patently offensive way [You feel like you're a cop reading someone's *Miranda* rights] sexual conduct as defined by the applicable state law; and that which, taken as a whole, lacks serious literary, artistic, political or scientific value.³

Feminism doubts whether the average gender-neutral person exists; has more questions about the content and process of defining what community standards are than it does about deviations from them; wonders why prurience counts but powerlessness does not, and why sensibilities are better protected from offense than women are from exploitation; defines sexuality, and thus its violation and expropriation, more broadly than does state law; and questions why a body of law which has not in practice been able to tell rape from intercourse should, without further guidance, be entrusted with telling pornography from anything less. Taking the work "as a whole" ignores that which the victims of pornography have long known: Legitimate settings diminish the injury perceived to be done to those whose trivialization and objectification it contextualizes. Besides, and this is a heavy one, if a woman is subjected, why should it matter that the work has other value? Maybe what redeems the work's value is what enhances its injury to women, not to mention that existing standards of literature, art, science, and politics, examined in a feminist light, are remarkably consonant with pornography's mode, meaning, and message. And finally—first and foremost, actually—although the subject of these materials is overwhelmingly women, their contents almost entirely comprised of women's

bodies, our invisibility has been such, our equation as a sex *with* sex has been such, that the law of obscenity has never even considered pornography a woman's issue.

Obscenity, in this light, is a moral idea; an idea about judgments of good and bad. Pornography, by contrast, is a political practice, a practice of power and powerlessness. Obscenity is ideational and abstract; pornography is concrete and substantive. The two concepts represent two entirely different things. Nudity, excess of candor, arousal or excitement, prurient appeal, illegality of the acts depicted, and unnaturalness or perversion are all qualities that bother obscenity law when sex is depicted or portrayed. Sex forced on real women so that it can be sold at a profit to be forced on other real women; women's bodies trussed and maimed and raped and made into things to be hurt and obtained and accessed and this presented as the nature of women in a way that is acted on and acted out over and over; the coercion that is visible and the coercion that has become invisible—this and more bothers feminists about pornography. Obscenity as such probably does little harm. Pornography is integral to attitudes and behaviors of violence and discrimination which define the treatment and status of half the population.

At the request of the city of Minneapolis, Andrea Dworkin and I conceived and designed a local human rights ordinance in accordance with our approach to the pornography issue. We define pornography as a practice of sex discrimination, a violation of women's civil rights, the opposite of sexual equality. Its point is to hold accountable, to those who are injured, those who profit from and benefit from that injury. It means that women's injury—our damage, our pain, our enforced inferiority—should outweigh their pleasure and their profits, or sex equality is meaningless.

We define pornography as the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities, enjoying pain or humiliation or rape, being tied up, cut up, mutilated, bruised, or physically hurt, in postures of sexual sub-

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mission or servility or display, reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual. Erotica, defined by distinction as not this, might be sexually explicit materials premised on equality. We also provide that the use of men, children or transsexuals in the place of women is pornography. The definition is substantive in that it is sex-specific, but it covers everyone in a sex-specific way, so is gender neutral in overall design.

* * *

This law aspires to guarantee women's rights consistent with the first amendment by making visible a conflict of rights between the equality guaranteed to all women and what, in some legal sense, is now the freedom of the pornographers to make and sell, and their consumers to have access to, the materials this ordinance defines. Judicial resolution of this conflict, if they do for women what they have done for others, is likely to entail a balancing of the rights of women arguing that our lives and opportunities, including our freedom of speech and action, are constrained by—and in many cases flatly precluded by, in, and through—pornography, against those who argue that the pornography is harmless, or harmful only in part but not in the whole of the definition; or that it is more important to preserve the pornography than it is to prevent or remedy whatever harm it does.

In predicting how a court would balance these interests, it is important to understand that this ordinance cannot now be said to be either conclusively legal or illegal under existing law or precedent, although I think the weight of authority is on our side. This ordinance enunciates a new form of the previously recognized governmental interest in sex equality. Many laws make sex equality a governmental interest. Our law is designed to further the equality of the sexes, to help make sex equality real. Pornography is a practice of discrimination on the basis of sex, on one level because of its role in creating and maintaining sex as a basis for discrimination. It harms many women one at a time and helps keep

all women in an inferior status by defining our subordination as our sexuality and equating that with our gender. It is also sex discrimination because its victims, including men, are selected for victimization on the basis of their gender. But for their sex, they would not be so treated.

The harm of pornography, broadly speaking, is the harm of the civil inequality of the sexes made invisible as harm because it has become accepted as the sex difference. Consider this analogy with race: If you see Black people as different, there is no harm to segregation; it is merely a recognition of that difference. To neutral principles, separate but equal was equal. The injury of racial separation to Blacks arises "solely because [they] choose to put that construction upon it."⁴ Epistemologically translated: How you see it is not the way it is. Similarly, if you see women as just different, even or especially if you don't know that you do, subordination will not look like subordination at all, much less like harm. It will merely look like an appropriate recognition of the sex difference.

Pornography does not treat the sexes differently, so the case for sex differentiation can be made here. Men as a group do not tend to be (although some individuals may be) treated like women are treated in pornography. But as a social group, men are not hurt by pornography the way women as a social group are. Their social status is not defined as *less* by it. So the major argument does not turn on mistaken differentiation, particularly since women's treatment according to pornography's dictates makes it all too often accurate. The salient quality of a distinction between the top and the bottom in a hierarchy is not difference, although top is certainly different from bottom; it is power. So the major argument is: Subordinate but equal is not equal.

Particularly since this is a new legal theory, a new law, and "new" facts, perhaps the situation of women it newly exposes deserves to be considered on its own terms. Not to mention, why the problems of fifty-three percent of the population have to look like somebody else's problems before they can be recognized as existing, but then can't be addressed if they do look like other people's problems, about which

something might have to be done if something is done about these, is a construction of things that truly deserves inquiry. Limiting the justification for this law to the situation of women would serve to limit the precedential value of a favorable ruling. Its particularity to one side, the *approach* to the injury is supported by a whole array of prior decisions that have justified exceptions to first amendment guarantees, when something that matters is seen to be directly at stake. What unites many cases where speech interests are raised and implicated but not, on balance, protected, is harm, harm that counts. In some existing exceptions, the definitions are much more open-ended than ours. In some, the sanctions are more severe, or potentially more so. For instance, ours is a civil law; most others are criminal, although not all. Almost none show as many people directly affected. Evidence of harm in other cases tends to be vastly less concrete and more conjectural, which is not to say that there is necessarily less of it. None of the previous cases addresses a problem of this scope or magnitude—for instance, an \$8 billion a year industry. Nor do other cases address an abuse, the practice of which has such widespread legitimacy. Courts have seen harm in other cases. The question is, will they see it here, especially given that the pornographers got there first. I will confine myself here to arguing from cases on harm to people, on the supposition that, the pornographers notwithstanding, women are not flags.

* * *

To reach the magnitude of this problem on the scale it exists, our law makes trafficking in pornography—production, sale, exhibition, or distribution—actionable. Under the obscenity rubric, much legal and psychological scholarship has centered on a search for the elusive link between pornography defined as obscenity and harm. They have looked high and low—in the mind of the male consumer, in society or in its “moral fabric,” in correlations between variations in levels of anti-social acts and liberalization of obscenity laws. The only harm they have found has been one they have attributed to “the social interest in order and morality.”⁵ Until recently, no one looked very persistently for harm to women, partic-

ularly harm to women through men. The rather obvious fact that the sexes *relate* has been overlooked in the inquiry into the male consumer and his mind. The pornography doesn’t just drop out of the sky, go into his head and stop there. Specifically, men rape, batter, prostitute, molest, and sexually harass women. Under conditions of inequality, they also hire, fire, promote, and grade women, decide how much or whether or not we are worth paying and for what, define and approve and disapprove of women in ways that count, that determine our lives.

If women are not just born to be sexually used, the fact that we are seen and treated as though that is what we are born for becomes something in need of explanation. If we see that men relate to women in a pattern of who they see women as being, and that forms a pattern of inequality, it becomes important to ask where that view came from or, minimally, how it is perpetuated or escalated. Asking this requires asking different questions about pornography than the ones obscenity law made salient.

Now I’m going to talk about causality in its narrowest sense. Recent experimental research on pornography shows that the materials covered by our definition cause measurable harm to women through increasing men’s attitudes and behaviors of discrimination in both violent and nonviolent forms. Exposure to some of the pornography in our definition increases normal men’s immediately subsequent willingness to aggress against women under laboratory conditions. It makes normal men more closely resemble convicted rapists attitudinally, although as a group they don’t look all that different from them to start with. It also significantly increases attitudinal measures known to correlate with rape and self-reports of aggressive acts, measures such as hostility toward women, propensity to rape, condoning rape, and predicting that one would rape or force sex on a woman if one knew one would not get caught. This latter measure, by the way, begins with rape at about a third of all men and moves to half with “forced sex.”⁶

As to that pornography covered by our definition in which normal research subjects seldom perceive violence, long-term exposures still makes them see

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women as more worthless, trivial, non-human, and object-like, i.e., the way those who are discriminated against are seen by those who discriminate against them. Crucially, all pornography by our definition acts dynamically over time to diminish one's ability to distinguish sex from violence. The materials work behaviorally to diminish the capacity of both men and women to perceive that an account of a rape is an account of a rape. X-only materials, in which subjects perceive no force, also increase perceptions that a rape victim is worthless and decrease the perception she was harmed. The overall direction of current research suggests that the more expressly violent materials accomplish on less exposure what the less overtly violent—that is, the so-called “sex only materials”—accomplish over the longer term. Women are rendered fit for use and targeted for abuse. The only thing that the research cannot document is which individual women will be next on the list. (This cannot be documented experimentally because of ethics constraints on the researchers—constraints which do not operate in life.) Although the targeting is systematic on the basis of sex, it targets individuals at random. They are selected on the basis of roulette. Pornography can no longer be said to be just a mirror. It does not just reflect the world or some people's perceptions. It *moves* them. It increases attitudes that are lived out, circumscribing the status of half the population.

What the experimental data predict would happen, actually does happen in women's real lives. You know, it's fairly frustrating that women have known that these things do happen for some time. As Ed Donnerstein, an experimental researcher in this area, often puts it, “we just quantify the obvious.” It is women, primarily, to whom the research results have been the obvious, because we live them. But not until a laboratory study predicts that these things *would* happen, do people begin to believe you when you say they *did* happen to you. There is no—not any—inconsistency between the patterns the laboratory studies predict and the data on what actually happens to real women. Show me an abuse of women in society, I'll show it to you made sex in the pornography. If you want to know who is being hurt in this

society, go see what is being done and to whom in pornography and then go look for them other places in the world. You will find them being hurt in just that way. We did in our hearings.

In our hearings, women spoke, to my knowledge for the first time in history in public, about the damage pornography does to them. We learned that pornography is used to break women, to train women to sexual submission, to season women, to terrorize women, and to silence their dissent. It is this that has previously been termed “having no effect.” Men inflict on women the sex that they experience through the pornography in a way that gives women no choice about seeing the pornography or doing the sex. Asked if anyone ever tried to inflict sex acts on them they did not want that they knew came from pornography, ten percent of women in a recent random study said yes. Twenty-four percent of married women said yes. That is a lot of women. A lot more don't know. Some of those who do testified in Minneapolis. One wife said of her ex-husband: “He would read from the pornography like a text book, like a journal. In fact when he asked me to be bound, when he finally convinced me to do it, he read in the magazine how to tie the knots. . . .” Another woman said of her boyfriend: “[H]e went to this party, saw pornography, got an erection, got me . . . to inflict his erection on. . . . There is a direct causal relationship there.” One woman who said her husband had rape and bondage magazines all over the house, discovered two suitcases full of Barbie dolls with rope tied on their arms and legs and with tape across their mouths. Now think about the silence of women. She said, “He used to tie me up and he tried those things on me.” A therapist in private practice reported:

Presently or recently I have worked with clients who have been sodomized by broom handles, forced to have sex with over 20 dogs in the backseat of their car, tied up and then electrocuted on their genitals. These are children, [all] in the ages of 14 to 18, all of whom [have been directly affected by pornography,] [e]ither where the perpetrator has read the manuals and manuscripts at night and used these as recipe books by day or had the pornography present at the time of the sexual violence.

One woman, testifying that all the women in a group of ex-prostitutes were brought into prostitution as children through pornography, characterized their collective experience: "[I]n my experience there was not one situation where a client was not using pornography while he was using me or that he had not just watched pornography or that it was verbally referred to and directed me to pornography." "Men," she continued, "witness the abuse of women in pornography constantly and if they can't engage in that behavior with their wives, girl friends or children, they force a whore to do it."

Men also testified about how pornography hurts them. One young gay man who had seen *Playboy* and *Penthouse* as a child said of heterosexual pornography:

It was one of the places I learned about sex and it showed me that sex was violence. What I saw there was a specific relationship between men and women. . . . [T]he woman was to be used, objectified, humiliated and hurt; the man was in a superior position, a position to be violent. In pornography I learned that what it meant to be sexual with a man or to be loved by a man was to accept his violence.

For this reason, when he was battered by his first lover, which he described as "one of the most profoundly destructive experiences of my life," he accepted it.

Pornography also hurts men's capacity to relate to women. One young man spoke about this in a way that connects pornography—not the prohibition on pornography—with fascism. He spoke of his struggle to repudiate the thrill of dominance, of his difficulty finding connection with a woman to whom he is close. He said:

My point is that if women in a society filled by pornography must be wary for their physical selves, a man, even a man of good intentions, must be wary for his mind. . . . I do not want to be a mechanical, goose stepping follower of the Playboy bunny, because that is what I think it is. . . . [T]hese are the experiments a master race perpetuates on those slated for extinction.

The woman he lives with is Jewish. There was a very brutal rape near their house. She was afraid; she tried to joke. It didn't work. "She was still afraid. And just

as a well-meaning German was afraid in 1933, I am also very much afraid."

Pornography stimulates and reinforces, it does not cathect or mirror, the connection between one-sided freely available sexual access to women and masculine sexual excitement and sexual satisfaction. The catharsis hypothesis is fantasy. The fantasy theory is fantasy. Reality is: Pornography conditions male orgasm to female subordination. It tells men what sex means, what a real woman is, and codes them together in a way that is behaviorally reinforcing. This is a real five-dollar sentence but I'm going to say it anyway: Pornography is a set of hermeneutical equivalences that work on the epistemological level. Substantively, pornography defines the meaning of what a woman is by connecting access to her sexuality with masculinity through orgasm. The behavioral data show that what pornography means is what it does.

So far, opposition to our ordinance centers on the trafficking provision. This means not only that it is difficult to comprehend a group injury in a liberal culture—that what it *means* to be a woman is defined by this and that it is an injury for all women, even if not for all women equally. It is not only that the pornography has got to be accessible, which is the bottom line of virtually every objection to this law. It is also that power, as I said, is when you say something, it is taken for reality. If you talk about rape, it will be agreed that rape is awful. But rape is a conclusion. If a victim describes the facts of a rape, maybe she was asking for it, or enjoyed it, or at least consented to it, or the man might have thought she did, or maybe she had had sex before. It is now agreed that there is something wrong with sexual harassment. But describe what happened to you, and it may be trivial or personal or paranoid, or maybe you should have worn a bra that day. People are against discrimination. But describe the situation of a real woman, and they are not so sure she wasn't just unqualified. In law, all these disjunctions between women's perspective on our injuries and the standards we have to meet go under dignified legal rubrics like burdens of proof, credibility, defenses, elements of the crime, and so on. These standards all contain

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a definition of what a woman is in terms of what sex is and the low value placed on us through it. They reduce injuries done to us to authentic expressions of who we are. Our silence is written all over them. So is the pornography.

By contrast, we have as yet encountered comparatively little objection to the coercion, force, or assault provisions of our ordinance. I think that's partly because the people who make and approve laws may not yet see what they do as that. They *know* they use the pornography as we have described it in this law, and our law defines that, the reality of pornography, as a harm to women. If they suspect that they might on occasion engage in or benefit from coercion or force or assault, they may think that the victims won't be able to prove it—and they're right. Women who charge men with sexual abuse are not believed. The pornographic view of them is: They want it; they all want it. When women bring charges of sexual assault, motives such as venality or sexual repression must be invented, because we cannot really have been hurt. Under the trafficking provision, women's lack of credibility cannot be relied upon to negate the harm. There's no woman's story to destroy, no credibility-based decision on what happened. The hearings establish the harm. The definition sets the standard. The grounds of reality definition are authoritatively shifted. Pornography is bigotry, *period*. We are now—in the world pornography has decisively defined—having to meet the burden of proving, once and for all, for all of the rape and torture and battery, all of the sexual harassment, all of the child sexual abuse, all of the forced prostitution, *all* of it that the pornography is part of and that is part of the pornography, that the harm *does happen* and that when it happens it looks like this. Which may be why all this evidence never seems to be enough.

It is worth considering what evidence has been enough when other harms involving other purported speech interests have been allowed to be legislated against. By comparison to our trafficking section, analytically similar restrictions have been allowed under the first amendment, with a legislative basis

far less massive, detailed, concrete, and conclusive. Our statutory language is more ordinary, objective, and precise, and covers a harm far narrower than its legislative record substantiates. Under *Miller*, obscenity was allowed to be made criminal in the name of the "danger of offending the sensibilities of unwilling recipients, or exposure to juveniles."⁷ Under our law, we have direct evidence of harm, not just a conjectural danger, that unwilling women in considerable numbers are not simply offended in their sensibilities, but are violated in their persons and restricted in their options. Obscenity law also suggests that the applicable standard for legal adequacy in measuring such connections may not be statistical certainty. The Supreme Court has said that it is not their job to resolve empirical uncertainties that underlie state obscenity legislation. Rather, it is for them to determine whether a legislature could reasonably have determined that a connection might exist between the prohibited material and harm of a kind in which the state has legitimate interest. Equality should be such an area. The Supreme Court recently recognized that prevention of sexual exploitation and abuse of children is, in their words, "a governmental objective of surpassing importance."⁸ This might also be the case for sexual exploitation and abuse of women, although I think a civil remedy is initially more appropriate to the goal of empowering adult women than a criminal prohibition would be.

Other rubrics provide further support for the argument that this law is narrowly tailored to further a legitimate governmental interest consistent with the interests underlying the first amendment. Exceptions to the first amendment—you may have gathered from this—exist. The reason they exist is that the harm done by some speech outweighs its expressive value, if any. In our law, a legislature recognizes that pornography, as defined and made actionable, undermines sex equality. One can say—and I have—that pornography is a causal factor in violations of women; one can also say that women will be violated so long as pornography exists; but one can also say simply that pornography violates women. Perhaps this is what the woman had in mind who testified at

our hearings that whether or not pornography causes violent acts to be perpetrated against some women is not her only issue. "Porn is already a violent act against women. It is our mothers, our daughters, our sisters, and our wives that are for sale for pocket change at the newsstands in this country." *Chaplin-sky v. New Hampshire* recognizes the ability to restrict as "fighting words" speech which, "by [its] very utterance inflicts injury. . . ." Perhaps the only reason that pornography has not been "fighting words"—in the sense of words which by their utterance tend to incite immediate breach of the peace—is that women have seldom fought back, yet.

Some concerns close to those of this ordinance underlie group libel laws, although the differences are equally important. In group libel law, as Justice Frankfurter's opinion in *Beauharnais* illustrates, it has been understood that individuals' treatment and alternatives in life may depend as much on the reputation of the group to which such a person belongs as on their own merit. Not even a partial analogy can be made to group libel doctrine without examining the point made by Justice Brandeis, and recently underlined by Larry Tribe: Would more speech, rather than less, remedy the harm? In the end, the answer may be yes, but not under the abstract system of free speech, which only enhances the power of the pornographers while doing nothing substantively to guarantee the free speech of women, for which we need civil equality. The situation in which women presently find ourselves with respect to the pornography is one in which more *pornography* is inconsistent with rectifying or even counterbalancing its damage through speech, because so long as the pornography exists in the way it does there *will not be more speech by women*. Pornography strips and devastates women of credibility, from our accounts of sexual assault to our everyday reality of sexual subordination. We are deauthorized and reduced and devaluated and silenced. Silenced here means that the purposes of the first amendment, premised upon conditions presumed and promoted by protecting free speech, do not pertain to women because they are not our conditions. Consider them: individual self-fulfillment—how does pornography promote our

individual self-fulfillment? How does sexual inequality even permit it? Even if she can form words, who listens to a woman with a penis in her mouth? Facilitating consensus—to the extent pornography does so, it does so one-sidedly by silencing protest over the injustice of sexual subordination. Participation in civic life . . . how does pornography enhance women's participation in civic life? Anyone who cannot walk down the street or even lie down in her own bed without keeping her eyes cast down and her body clenched against assault is unlikely to have much to say about the issues of the day, still less will she become Tolstoy. Facilitating change—*this law* facilitates the change the existing first amendment theory has been used to throttle. Any system of freedom of expression that does not address a problem where the free speech of men silences the free speech of women, a real conflict between speech interests as well as between people, is not serious about securing freedom of expression in this country.

For those of you who still think pornography is only an idea, consider the possibility that obscenity law got one thing right. Pornography is more act-like than thought-like. The fact that pornography, in a feminist view, furthers the idea of the sexual inferiority of women, which is a political idea, doesn't make the pornography itself into a political idea. One can express the idea a practice embodies. That does not make that practice into an idea. Segregation expresses the idea of the inferiority of one group to another on the basis of race. That does not make segregation an idea. A sign that says "Whites Only" is only words. Is it therefore protected by the first amendment? Is it not an act, a practice, of segregation because of the inseparability of what it means from what it does? *Law* is only words.

The issue here is whether the fact that the central link in the cycle of abuse that I have connected is words and pictures will immunize that entire cycle, about which we cannot do anything without doing something about the pornography. As Justice Stewart said in *Ginsburg*, "When expression occurs in a setting where the capacity to make a choice is absent, government regulation of that expression may coexist with and *even implement* First Amendment guar-

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antees."⁹ I would even go so far as to say that the pattern of evidence we have closely approaches Justice Douglas' requirement that "freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it."¹⁰ Those of you who have been trying to separate the acts from the speech—that's an act, that's an act, there's a law against that act, regulate that act, don't touch the speech—*notice here* that the fact that the acts involved are illegal doesn't mean that the speech that is "brigaded with" it, *cannot* be regulated. It is when it *can* be.

I take one of two penultimate points from Andrea Dworkin, who has often said that pornography is not speech for women, it is the silence of women. Remember the mouth taped, the woman gagged, "Smile I can get a lot of money for that." The smile is not her expression. It is her silence, and it is not her expression not because it didn't happen, but because it *did* happen. The screams of the women in pornography are silence, like Kitty Genovese's screams, whose plight was misinterpreted by some onlookers as a lovers' quarrel. The flat expressionless voice of the woman in the New Bedford gang rape, testifying, is the silence of women. She was raped as men cheered and watched like they do in and with the pornography. When women resist and men say, "Like this you stupid bitch, here is how to do it" and shove their faces into the pornography, this "truth of sex" is the silence of women. When they say, "If you love me, you'll try," the enjoyment we fake, the enjoyment we learn, is silence. Women who submit because there is more dignity in it than in losing the fight over and over live in silence. Having to sleep with your publisher or director to get access to what men call speech is silence. Being humiliated on the basis of your appearance, whether by approval or disapproval, because you have to look a certain way for a certain job, whether you get the job or not, is silence. The absence of a woman's voice, everywhere that it cannot be heard, is silence. And anyone who thinks that what women say in pornography is women's speech—the "Fuck me, do it to me, harder," all of that—has never heard the sound of a woman's voice.

The most basic assumption underlying first amendment adjudication is that, socially, speech is free. The first amendment says Congress shall not abridge the freedom of speech. Free speech, get it, *exists*. Those who wrote the first amendment *had* speech—they wrote the Constitution. *Their* problem was to keep it free from the only power that realistically threatened it: the federal government. They designed the first amendment to prevent government from constraining that which if unconstrained by government was free, meaning *accessible to them*. At the same time, we can't tell much about the intent of the Framers with regard to the question of women's speech, because I don't think we crossed their minds. It is consistent with this analysis that their posture to freedom of speech tends to presuppose that whole segments of the population are not systematically silenced, socially, prior to government action. If everyone's power were equal to theirs, if this were a non-hierarchical society, that might make sense. But the place of pornography in the inequality of the sexes makes the assumption of equal power untrue.

This is a hard question. It involves risks. Classically, opposition to censorship has involved keeping government off the backs of people. Our law is about getting some people off the backs of other people. The risks that it will be misused have to be measured against the risks of the status quo. Women will never have that dignity, security, compensation that is the promise of equality so long as the pornography exists as it does now. The situation of women suggests that the urgent issue of our freedom of speech is not primarily the avoidance of state intervention as such, but getting affirmative access to speech for those to whom it has been denied.

* * *

NOTES

1. A. Rich, "Cartographies of Silence," in *The Dream of a Common Language* [(New York: Norton, 1978), 16, 17].
2. This figure was calculated at my request by D. Russell on the random sample data base discussed in D. Russell, *Rape in Marriage* (1982). The figure includes all the forms of rape

A Feminist Defense of Pornography

WENDY MCELROY

"Pornography benefits women, both personally and politically." This sentence opens my book *XXX: A Woman's Right to Pornography*, and it constitutes a more extreme defense of pornography than most feminists are comfortable with. I arrived at this position after years of interviewing hundreds of sex workers.

FEMINIST POSITIONS

Feminist positions on pornography currently break down into three rough categories. The most common one—at least, in academia—is that pornography is an expression of male culture through which women are commodified and exploited. A second view, the liberal position, combines a respect for free speech with the principle "a woman's body, a woman's right" and thus produces a defense of pornography along the lines of, "I don't approve of it, but everyone has the right to consume or produce words and images." A third view—a true defense of pornography—arises from feminists who have been labeled "pro-sex" and who argue that porn has benefits for women.

Little dialogue occurs between the three positions. Anti-pornography feminists treat women who disagree as either brainwashed dupes of patriarchy or as apologists for pornographers. In the anthology *Sexual Liberals and the Attack on Feminism* (1990), editor Dorchon Leidholdt claims that feminists who believe women make their own choices about pornography are spreading "a felicitous lie" (p. 131). In the same work, Sheila Jeffreys argues that "pro-sex" feminists are "eroticizing dominance and subordination." Wendy Stock accuses free speech feminists of identifying with their oppressors "much like . . . concentration camp prisoners with their jailors" (p. 150). Andrea Dworkin accuses them of running a "sex pro-

tection racket" (p. 136) and maintains that no one who defends pornography can be a feminist.

The liberal feminists who are personally uncomfortable with pornography tend to be intimidated into silence. Those who continue to speak out, like American Civil Liberties Union President Nadine Strossen (*Defending Pornography*) are ignored. For example, Catharine MacKinnon has repeatedly refused to share a stage with Strossen or any woman who defends porn. "Pro-sex" feminists—many of whom are current or former sex-workers—often respond with anger, rather than arguments.

Peeling back the emotions, what are the substantive questions raised by each feminist perspective?

Anti-porn Feminism

Page Mellish of *Feminists Fighting Pornography* has declared, "There's no feminist issue that isn't rooted in the porn problem." In her book *Only Words*, MacKinnon denies that pornography consists of words and images, both of which would be protected by the First Amendment. She considers pornography—in and of itself—to be an act of sexual violence. Why is pornography viewed as both the core issue of modern feminism and an inherent act of violence? The answer lies in radical feminist ideology, which Christina Hoff Sommers calls "gender feminism."

Gender feminism looks at history and sees an uninterrupted oppression of women by men that spans cultural barriers. To them, the only feasible explanation is that men and women are separate and antagonistic classes whose interests necessarily conflict. Male interests are expressed through and maintained by a capitalistic structure known as "patriarchy."

The root of the antagonism is so deep that it lies in male biology itself. For example, in the watershed book *Against Our Will*, Susan Brownmiller traces the inevitability of rape back to Neanderthal times when men began to use their penises as weapons. Brownmiller writes: "From prehistoric times to the present,

Wendy McElroy, "Sexual Freedom: A Feminist Defense of Pornography," *Free Inquiry* (Fall 1997): 14–17. Reprinted by permission of Wendy McElroy.

I believe, rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear." How Brownmiller acquired this knowledge of prehistoric sex is not known.

Another tenet of gender oppression is that sex is a social construct. Radical feminists reject what they call "sexual essentialism"—the notion that sex is a natural force based on biology that inclines women toward natural tendencies, such as motherhood. Even deeply felt sexual preferences, such as heterosexuality, are not biological. They spring from ideology.

Men construct women's sexuality through the words and images of society, which the French philosopher Foucault called the "texts" of society. After such construction, men commercialize women's sexuality and market it back in the form of pornography. In other words, through porn man defines woman sexually—a definition that determines every aspect of her role in society. To end the oppression, patriarchy and its texts must be destroyed.

Liberal Feminism

Liberal feminism is a continuation of 1960s feminism that called for equality with men, who were not inherent oppressors so much as recalcitrant partners to be enlightened. Equality did not mean destroying the current system, but reforming it through such measures as affirmative action. The liberal principle "a woman's body, a woman's right" underlay arguments ranging from abortion rights to lifestyle freedoms like lesbianism. The stress was upon the act of choosing, rather than upon the content of any choice.

Liberal feminists share the general liberal bias toward free speech, but they are in flux on pornography. Some liberal organizations like Feminists for Free Expression (FFE) have consistently opposed censorship in any form. Some liberal feminists like Sallie Tisdale (*Talk Dirty to Me*) have staunchly defended sexual freedom. But many liberal feminists commonly reason as follows: "As a woman I am appalled by *Playboy* . . . but as a writer I understand the need for free expression."

Such arguments are not pro-pornography. They are anti-censorship ones based on several grounds, including: great works of art and literature would be banned; the First Amendment would be breached; political expression would be suppressed; and a creative culture requires freedom of speech.

Other liberal feminists, who have accepted many of the ideological assumptions of the anti-porn position, seem willing to sacrifice free speech for the greater good of protecting women. For example, they also condemn the free market for commercializing women as "body parts," which demeans women. In "A Capital Idea," an easy defending pornography, which sometimes seems to be an attack, Lisa Steel comments:

Sexist representation of women . . . is all part of the same system that, in the service of profits, reduces society to "consumer groups." And marketing is every bit as conservative as the military . . . we pay dearly for the "rights" of a few to make profits from the rest of us.

Such muddled and ambivalent "defenses" often offend the sex workers they are intended to protect.

Pro-sex Feminism

Over the past decade, a growing number of feminists—labeled "pro sex"—have defended a woman's choice to participate in and to consume pornography. Some of these women, such as Nina Hartley, are current or ex-sex-workers who know firsthand that posing for pornography is an uncoerced choice that can be enriching. Pro-sex feminists retain a consistent interpretation of the principle "a woman's body, a woman's right" and insist that every peaceful choice a woman makes with her own body must be accorded full legal protection, if not respect.

Pro-sex arguments sometimes seem to overlap with liberal feminist ones. For example, both express concern over who will act as censor because subjective words, such as "degrading," will be interpreted to mean whatever the censor wishes.

The statute that banned Margaret Sanger because she used the words *syphilis* and *gonorrhea* is no different, in principle, than the one that interprets obscene

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ity today. There will be no protection even for the classics of feminism, such as *Our Bodies, Ourselves*, which provided a generation of women with the first explicit view of their own biology. Inevitably, censorship will be used against the least popular views, against the weakest members of society . . . including feminists and lesbians. When the Canadian Supreme Court decided in 1992 to protect women by restricting the importation of pornography, one of the first victims was the lesbian/gay Glad Day Bookstore, which had been on a police hit list. Among the books seized by Canadian customs were two books by Andrea Dworkin, *Pornography: Men Possessing Women* and *Women Hating*. Such an event should not have surprised Dworkin who declared in *Take Back the Night*, "There is not a feminist alive who could possibly look to the male legal system for real protection from the systematized sadism of men" (p. 257).

On the dangers of censoring pornography, pro-sex and liberal feminists often agree. On the possible benefits of pornography to women, they part company.

DISSECTING ANTI-PORN

Do the specific accusations hurled at pornography stand up under examination?

Pornography Is Degrading to Women

Degrading is a subjective term. I find commercials in which women become orgasmic over soapsuds to be tremendously degrading. The bottom line is that every woman has the right to define what is degrading and liberating for herself.

The assumed degradation is often linked to the "objectification" of women: that is, porn converts them into sexual objects. What does this mean? If taken literally, it means nothing because objects don't have sexuality; only beings do. But to say that porn portrays women as "sexual beings" makes for poor rhetoric. Usually, the term *sex objects* means showing women as body parts, reducing them to physical objects. What is wrong with this? Women are as much their bodies as they are their minds or souls. No one gets upset if you present women as "brains" or as spiritual beings. If I concentrated on a

woman's sense of humor to the exclusion of her other characteristics, is this degrading? Why is it degrading to focus on her sexuality?

Pornography Leads to Violence against Women

A cause-and-effect relationship is drawn between men viewing pornography and men attacking women, especially in the form of rape. But studies and experts disagree as to whether any relationship exists between pornography and violence, between images and behavior. Even the pro-censorship Meese Commission Report admitted that the data connecting pornography to violence was unreliable.

Other studies, such as the one prepared by feminist Thelma McCormick in 1983 for the Metropolitan Toronto Task Force on Violence Against Women, find no pattern to connect porn and sex crimes. Incredibly, the Task Force suppressed the study and reassigned the project to a pro-censorship male, who returned the "correct" results. His study was published.

What of real-world feedback? In Japan, where pornography depicting graphic and brutal violence is widely available, rape is much lower per capita than in the United States, where violence in porn is severely restricted.

Pornography Is Violence Because Women Are Coerced into Pornography

Not one of the dozens of women depicted in pornographic materials with whom I spoke reported being coerced. Not one knew of a woman who had been. Nevertheless, I do not dismiss reports of violence: every industry has its abuses. And anyone who uses force or threats to make a woman perform should be charged with kidnapping, assault, and/or rape. Any such pictures or films should be confiscated and burned because no one has the right to benefit from the proceeds of a crime.

Pornography Is Violence Because Women Who Pose for Porn Are So Traumatized by Patriarchy They Cannot Give Real Consent

Although women in pornography appear to be willing, anti-porn feminists know that no psychologically healthy woman would agree to the degradation

of pornography. Therefore, if agreement seems to be present, it is because the women have "fallen in love with their own oppression" and must be rescued from themselves. A common characteristic of the porn actresses I have interviewed is a love of exhibitionism. Yet if such a woman declares her enjoyment in flaunting her body, anti-porn feminists claim she is not merely a unique human being who reacts from a different background or personality. She is psychologically damaged and no longer responsible for her actions. In essence, this is a denial of a woman's right to choose anything outside the narrow corridor of choices offered by political/sexual correctness. The right to choose hinges on the right to make a "wrong" choice, just as freedom of religion entails the right to be an atheist. After all, no one will prevent a woman from doing what she thinks she should do.

A PRO-SEX DEFENSE

As a "pro-sex" feminist, I contend: Pornography benefits women, both personally and politically. It provides sexual information on at least three levels:

- It gives a panoramic view of the world's sexual possibilities. This is true even of basic sexual information such as masturbation. It is not uncommon for women to reach adulthood without knowing how to give themselves pleasure.
- It allows women to "safely" experience sexual alternatives and satisfy a healthy sexual curiosity. The world is a dangerous place. By contrast, pornography can be a source of solitary enlightenment.
- It offers the emotional information that comes only from experiencing something either directly or vicariously. It provides us with a sense how it would "feel" to do something.

Pornography allows women to enjoy scenes and situations that would be anathema to them in real life. Take, for example, one of the most common fantasies reported by women—the fantasy of "being taken." The first thing to understand is that a rape fantasy does not represent a desire for the real thing. Why would a healthy woman daydream about being raped? Perhaps by losing control, she also sheds all

sense of responsibility for and guilt over sex. Perhaps it is the exact opposite of the polite, gentle sex she has now. Perhaps it is flattering to imagine a particular man being so overwhelmed by her that he must have her. Perhaps she is curious. Perhaps she has some masochistic feelings that are vented through the fantasy. Is it better to bottle them up?

Pornography breaks cultural and political stereotypes, so that each woman can interpret sex for herself. Anti-feminists tell women to be ashamed of their appetites and urges. Pornography tells them to accept and enjoy them.

Pornography can be good therapy. Pornography provides a sexual outlet for those who—for whatever reason—have no sexual partner. Perhaps they are away from home, recently widowed, isolated because of infirmity. Perhaps they simply choose to be alone. Couples also use pornography to enhance their relationship. Sometimes they do so on their own, watching videos and exploring their reactions together. Sometimes, the couples go to a sex therapist who advises them to use pornography as a way of opening up communication on sex. By sharing pornography, the couples are able to experience variety in their sex lives without having to commit adultery.

Pornography benefits women politically in many ways. Historically, pornography and feminism have been fellow travelers and natural allies. Although it is not possible to draw a cause-and-effect relationship between the rise of pornography and that of feminism, they both demand the same social conditions—namely, sexual freedom.

Pornography is free speech applied to the sexual realm. Freedom of speech is the ally of those who seek change: it is the enemy of those who seek to maintain control. Pornography, along with all other forms of sexual heresy, such as homosexuality, should have the same legal protection as political heresy. This protection is especially important to women, whose sexuality has been controlled by censorship through the centuries.

Viewing pornography may well have a cathartic effect on men who have violent urges toward women. If this is true, restricting pornography removes a protective barrier between women and abuse.

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Legitimizing pornography would protect female sex-workers, who are stigmatized by our society. Anti-pornography feminists are actually undermining the safety of sex workers when they treat them as "indoc-trinated women." Dr. Leonore Tiefer, a professor of psy-chology, observed in her essay "On Censorship and Women": "These women have appealed to feminists for support, not rejection. . . . Sex industry workers, like all women, are striving for economic survival and a decent life, and if feminism means anything it means sisterhood and solidarity with these women."

THE PURPOSE OF LAW

The porn debate is underscored by two fundamentally antagonistic views of the purpose of law in society.

The first view, to which pro-sex feminists sub-scribe, is that law should protect choice. "A woman's body, a woman's right" applies to every peaceful activity a woman chooses to engage in. The law should come into play only when a woman initiates force or has force initiated against her. The second view, to which both conservatives and anti-porn fem-inists subscribe, is that law should protect virtue. It should come into play whenever there has been a breach of public morality, or a breach of "women's class interests."

This is old whine in new battles. The issue at stake in the pornography debate is nothing less than the age-old conflict between individual freedom and social control.

Of Liberty

JOHN STUART MILL

The time, it is to be hoped, is gone by, when any defence would be necessary of the 'liberty of the press' as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doc-trines or what arguments they shall be allowed to hear. This aspect of the question, besides, has been so often and so triumphantly enforced by preceding writers, that it needs not be specially insisted on in this place. Though the law of England, on the sub-ject of the press, is as servile to this day as it was in the time of the Tudors, there is little danger of its being actually put in force against political discus-sion, except during some temporary panic, when fear of insurrection drives ministers and judges from their

propriety;¹ and, speaking generally, it is not, in con-stitutional countries, to be apprehended, that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public. Let us suppose, therefore, that the gov-ernment is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their govern-ment. The power itself is illegitimate. The best gov-ernment has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accor-dance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner;

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