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Introduction

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Not long ago, pornography was a hot topic. Indeed, the country seemed to have embarked upon a great national debate about this mysterious phenomenon. In 1983, in Minneapolis, and in 1984, in Indianapolis, local lawmakers were persuaded by coalitions of neighborhood groups and radical feminists to think about pornography in a wholly unfamiliar way—not as an embodiment of sexual freedom but as an instrument for the repression and degradation of women. Lawmakers in both cities passed ordinances with the regulatory premise that pornography is a discriminatory act, itself a violation of the civil rights of its victims. This view represented, at the very least, an ironic twist on the traditional liberal view that the only civil rights at stake belonged to the pornographers and their customers. On the national level, the Attorney General appointed a Commission on Pornography in 1985 and instructed its members to "determine the nature, extent, and impact on society of pornography in the United States."[1]

The invigorated debate about pornography that the civil rights ordinances and the Pornography Commission heralded, however, has lost much of its ability to capture the nation's attention. In Minneapolis, the mayor vetoed the ordinance. In Indianapolis, the mayor signed the law, but it fell in court to a resounding affirmation of first amendment values by Judge Frank Easterbrook.[2]

Understandably, the legal defeat took considerable momentum out of the local political movement to treat pornography as a civil rights violation. Much less predictable was what happened when the Pornography Commission issued its report in July 1986. The Attorney General took the Report under submission, spent three months reading it, claimed to endorse its rec-

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1. ATTORNEY GENERAL'S COMM'N ON PORNOGRAPHY, U.S. DEP'T OF JUST., FINAL REPORT app. A, at 1957 (1986).

2. American Booksellers Ass'n v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *summarily aff'd*, 475 U.S. 1001 (1986).

ommendations, and proceeded quietly to drop the issue from his agenda.

The Articles in this Symposium vividly demonstrate that the reason that the pornography debate is no longer at the forefront of national consciousness is surely not that the phenomenon itself has disappeared. Nor is it that we have achieved anything approaching consensus, for we cannot seem to agree even about what pornography *is*, much less about its harms or benefits. Nor is it even that we have suddenly discovered and begun to deploy, from tools long available in our legal arsenal, enforcement strategies promising cures less harmful than the disease. Quite the contrary. As the editors of this journal have discerned, the dilemma posed by pornography to a free society persists, and it continues to raise a kaleidoscope of legal issues. The editors have solicited articles from authors with an astonishing array of viewpoints; each perspective generates useful insights into this most perplexing topic. I shall take the remainder of this Introduction to provide the reader with a brief road map to what follows, with the hope of facilitating a sense of where the pieces fit within the ongoing struggle to define the issues.

Park Dietz and Alan Sears begin the task where it ought logically to begin—but seldom seems to—with an effort to describe the actual content of pornographic material. It is surprising, indeed, how little most of us know about the images routinely purveyed in "adult bookstores." Dietz and Sears felt the burden of that widespread ignorance during their work with the Pornography Commission, of which Dietz was a member and Sears the Executive Director. The Study published in this volume represents their effort to substitute facts for ignorance. The implicit goal seems laudable beyond debate: to put future policy-making on a more firmly established empirical footing. There are limitations in the authors' study, as they are candid in acknowledging, and as Daniel Linz and Edward Donnerstein discuss in their Article on the methodology of pornography content analysis. Dietz and Sears's findings nevertheless are interesting and significant. Moreover, the reduction of otherwise highly suggestive and often repulsive images to tabulation by clinical-sounding categories is itself an intrinsically interesting exercise in translating "pornography" into "data," thus making it a more seemly subject for debate. Anyone looking to Dietz and Sears to identify the policy implications of their data, however, will be disappointed. The only clear policy message is that we must decide for ourselves what, if anything, we ought to do about this phenomenon—now that we have a better idea of what it is.

The next two pieces make painfully clear that agreeing about our next step will be as difficult as bridging a yawning chasm with no help from the people on either side. Andrea Dworkin's piece, *Pornography Is a Civil Rights Issue for Women,* echoes the themes that have made her work so powerful and unsettling a force. Her essential message is that pornography unequivocally harms women by degrading and silencing them. "Pornography is a civil rights issue for women because pornography sexualizes inequality, because it turns women into subhuman creatures."[3] From across the chasm comes the diametrically opposed view of Nan Hunter and Professor Sylvia Law, who wrote and reproduce in this volume the amicus brief in the Seventh Circuit challenging the Indianapolis ordinance in behalf of the Feminist Anti-Censorship Task Force. Far from harming women, claim Hunter and Law, pornography empowers them. Hence an ordinance like the one in Indianapolis, which attempts to suppress pornography in the name of sexual equality, violates more than just first amendment guarantees. More fundamentally, in terms of the differences between their world view and that of Dworkin, the law fails completely in its purpose. Indeed, it achieves the perverse result of itself violating the constitutional guarantee of sex-based equality by reinforcing sexual stereotypes and classifying on the basis of sex.

The next Article, Professor Michael Meyerson's *The Right To Speak, the Right To Hear, and the Right Not To Hear: The Technological Resolution to the Cable/Pornography Debate,* eschews philosophical controversy. Instead, taking the present legal universe as given, the article cogently describes how cable television permits a satisfactory resolution of an old dilemma: how to guarantee privacy for those who wish to avoid encountering certain messages in their own homes while preserving the rights of those who wish to send and receive constitutionally protected, but potentially offensive, programming. The Article contains a thorough review of the framework of judge-made and statutory law, a careful articulation of relevant first amendment policies, and a helpful survey of important technological developments. Meyerson makes a convincing case for his argument that "the new technology of cable television presents the possibility of accommodating [the irreconcilable viewpoints of the

3. Dworkin, *Pornography is a Civil Rights Issue for Women,* 21 U. MICH. J.L. REF. 55, 62 (1988).

privacy and the access proponents], with respect for the valid concerns of all sides."[4]

Professor Mathias Reimann's contribution, *Prurient Interest and Human Dignity: Pornography Regulation in West Germany and the United States,* is a perceptive overview of pornography in West Germany. The Article is noteworthy for more than one reason. As an analysis of how another western democracy has dealt with pornography in ways that differ both legally and conceptually from our own, the Article awakens us to our own provincialism. It demonstrates that, though it must sometimes seem to a reader of the American legal literature that there is nothing new to say about pornography, the problem is capable of different conceptualizations. Such a change in perspective can be both enlightening and provocative. As a description of how a government with unlimited constitutional power to regulate pornography has democratically chosen the path of leniency, the Article must cause us to question our own society's fear of legislative excesses in this area. And as an exploration of the implications of conceptualizing pornography as a problem of human dignity and character formation, instead of prurience or even sexual equality, the Article helps us reconsider the usefulness of our own perspectives.

From Bruce Taylor, General Counsel of Citizens for Decency through Law, comes the final Article in the volume. Entitled *Hard-Core Pornography: A Proposal for a Per Se Rule,* the Article proposes a relatively straightforward statutory definition of hard-core pornography and defends the proposal upon both legal and policy grounds. The author avoids philosophical debate, apparently assuming the existence of a working consensus that something simply must be done about pornography. At the same time, he clearly recognizes that there are perhaps insuperable barriers in the path to solution, and that among the obstacles are intractable political differences as well as substantial constitutional issues. Mr. Taylor's unique contribution to this Symposium is his willingness to formulate a concrete proposal and to expose it to the fires of critical scrutiny that *any* proposal for dealing with pornography must withstand.

Readers who are familiar with the substantive issues that have consistently characterized the pornography debate will recognize in these articles a number of familiar themes. Certain questions,

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4. Meyerson, *The Right to Speak, the Right to Hear, and the Right Not to Hear: The Technological Resolution to the Cable/Pornography Debate,* 21 U. MICH. J.L. REF. 137, 199 (1988).

for all their importance, remain unanswered. What is the definition of pornography? Does pornography harm and silence women or empower them? Should we continue to think of pornography as a problem of prurience? What new legal solutions may be devised? This Symposium combines fresh insights and proposals with clear articulations of previously stated positions. It challenges us to think and rethink about this important social issue.