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## Speaking Freely about Reducing Violence against Women: A Harm Reduction Strategy from the Law and Social Science of Pornography

Michelle Chernikoff Anderson

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SPEAKING FREELY ABOUT REDUCING VIOLENCE  
AGAINST WOMEN:  
A HARM REDUCTION STRATEGY FROM THE LAW  
AND SOCIAL SCIENCE OF PORNOGRAPHY

*Michelle Chernikoff Anderson\**

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I. INTRODUCTION

(1) “[P]ornography causes attitudes and behaviors of violence and discrimination which define the treatment and status of half of the population.”<sup>1</sup>

(2) “Strange it is, that men should admit the validity of the arguments for free discussion, but object to their being ‘pushed to an extreme;’ not seeing that unless the reasons are good for an extreme case, they are not good for any case.”<sup>2</sup>

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\* Jurisprudence and Social Policy Program, Boalt Hall, School of Law, University of California, Berkeley.

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1. Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL’Y REV. 321, 323-24 (1984) (footnote omitted).

2. JOHN STUART MILL, ON LIBERTY 26 (1859) in JOHN STUART MILL, ON LIBERTY AND UTILITARIANISM (1993).

(3) “The sum of experience . . . affords an ample basis for legislatures to conclude that a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex. Nothing in the Constitution prohibits a State from reaching such a conclusion and acting on it legislatively simply because there is no conclusive evidence or empirical data.”<sup>3</sup>

(4) “It is rare that a commentator acknowledges that pornography presents a social problem that could justify some kind of collective response, and yet he or she opposes censorship because that particular remedy is more dangerous than the social ill it is supposed to cure.”<sup>4</sup>

These quotes outline the fundamental arguments surrounding the issue of pornography. Quotes one and two represent how the debate is commonly framed: Dworkin-MacKinnonites<sup>5</sup> viewing pornography as harmful to women and thus requiring censorship versus free speech advocates opposing censorship of pornography. Quote three represents current obscenity law. Quote four acknowledges the failure of so many legal scholars, upon recognizing the potential harm posed by such media, to look beyond the issue of censorship.

Legal scholars have dichotomized the issue of pornography as the “Dworkin-MacKinnonites versus the civil libertarians” and suggest how the courts should respond to each of these debate participants.<sup>6</sup> In searching for

3. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63 (1973).

4. GORDON HAWKINS & FRANKLIN E. ZIMRING, *PORNOGRAPHY IN A FREE SOCIETY* 198 (1988).

5. Throughout this article the term “Dworkin-MacKinnonite” is used to describe a supporter of what is sometimes referred to as a branch of feminist legal theory, particularly that set forth by Andrea Dworkin and Catharine MacKinnon. The term “feminist,” however, is not used because feminism and civil liberties are not mutually exclusive. See Nan D. Hunter & Sylvia A. Law, *Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al.*, in *American Booksellers Association v. Hudnut*, 21 U. MICH. J.L. REFORM 69, 69 (1987) (seeking to “mobilize . . . feminist opposition to the enactment of laws expanding state suppression of sexually explicit material”); Nadine Strossen, *The Convergence of Feminist and Civil Liberties Principles in the Pornography Debate*, 62 N.Y.U. L. REV. 201, 234 (1987) (reviewing *WOMEN AGAINST CENSORSHIP* (VARDA BURSTYN ed., 1985)) (surveying feminist arguments repudiating censorship of pornography).

6. Numerous examples of this dichotomy abound in the legal literature on pornography. NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN’S RIGHTS* (1995); Edward A. Carr, Comment, *Feminism, Pornography, and the First Amendment: An Obscenity-Based Analysis of Proposed Antipornography Laws*, 34 UCLA L. REV. 1265 (1987); Martin Karo & Marcia McBrian, Note, *The Lessons of Miller and Hudnut: On Proposing a Pornography Ordinance that Passes Constitutional Muster*, 23 U. MICH. J.L. REFORM 179 (1989); Marilyn J. Maag, Comment, *The Indianapolis Pornography Ordinance: Does the Right to Free Speech Outweigh Pornography’s Harm to Women?*, 54 U. CIN. L.

sound social policy, however, legal scholars would do well to look to social scientists who also are concerned with this issue. While social psychological research indicates there *may* be harmful effects from consumption of pornography, it suggests that these harmful effects are not limited to the pornography that is constitutionally unprotected and even include nonpornographic media.<sup>7</sup> Indeed, the research suggests that harmful effects may stem from a wide range of other media that are either violent, degrading, or both, to girls and women.<sup>8</sup> Even more important is the research, heretofore largely ignored by legal commentators, that suggests a course of action addressing the concerns of *both* the Dworkin-MacKinnonites and civil libertarians. More specifically, research in psychology, sociology, and human sexuality offers promising methods of immunizing potential viewers from harmful effects that might stem from consuming pornography and other media.<sup>9</sup> Research suggests we may be able to inoculate potential consumers of this material through educational approaches. These educational approaches offer a "harm reduction"<sup>10</sup> strategy to address the concerns raised by Dworkin-MacKinnonites without imposing any restrictions on freedom of speech.<sup>11</sup>

This article exposes legal scholars to the research essential to establishing support for an education policy that would inoculate our children against the potentially harmful effects of consuming media that promote violence against girls and women. It argues that Dworkin-MacKinnonites, concerned about pornography, and civil libertarians, concerned about free speech, should waste neither more time nor more ink debating this issue. Rather, it is time to dedicate our efforts to creating and implementing a harm reduction

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REV. 249 (1985); Note, *Anti-Pornography Laws and First Amendment Values*, 98 HARV. L. REV. 460 (1984); Catherine A. MacKinnon, *Pornography Left and Right*, 30 HARV. C.R.-C.L. L. REV. 143 (1995) (reviewing RICHARD A. POSNER, *SEX AND REASON* (1992) and EDWARD DE GRAZIA, *GIRLS LEAN BACK EVERYWHERE: THE LAW OF OBSCENITY AND THE ASSAULT ON GENIUS* (1992)).

7. See PORNOGRAPHY: RESEARCH ADVANCES & POLICY CONSIDERATIONS chs. 4-9, at 95-255 (Dolf Zillmann & Jennings Bryant eds., 1989) [hereinafter PORNOGRAPHY].

8. Dolf Zillmann, *Effects of Prolonged Consumption of Pornography*, in PORNOGRAPHY, *supra* note 7, at 127-57.

9. See PORNOGRAPHY, *supra* note 7, chs. 10-11, at 259-330.

10. For a discussion of public policy's "harm reduction" movement, see *infra* note 110.

11. William A. Fisher & Azy Barak, *Sex Education as a Corrective: Immunizing Against Possible Effects of Pornography*, in PORNOGRAPHY, *supra* note 7, at 289. While the legal community has essentially ignored this research and its implications, many psychologists in this field have been calling for an educational "solution" for years. See *id.*; Daniel Linz et al., *Sexual Violence in the Mass Media: Legal Solutions, Warnings, and Mitigation Through Education*, 48 J. SOC. ISSUES, Number 1, 1992, at 145 [hereinafter Linz et al., *Sexual Violence*]; Daniel Linz et al., *The Findings and Recommendations of the Attorney General's Commission on Pornography: Do the Psychological "Facts" Fit the Political Fury?*, 42 AM. PSYCHOL. 946 (1987) [hereinafter Linz et al., *Commission on Pornography*].

educational approach to protect our children against pornography.

Part II defines the terminology used throughout the article. Part III outlines the failures of current obscenity law. Part IV discusses the shortcomings of the two approaches to the current pornography debate as framed by the Dworkin-MacKinnonites, favoring censorship, and the civil libertarians, supporting free speech. Part V reviews the social psychological research on the issue of harm from pornography and the limits of this research. Part VI reviews the research data, both inside and outside the laboratory, that point towards an educational solution. Lastly, Part VII concludes that we must cease framing the issue of pornography as Dworkin-MacKinnonites versus free speech; instead, we must focus on a harm reduction strategy of educational inoculation.

## II. TERMINOLOGY

To understand the rhetoric of the pornography issue, it is first essential to define the terminology.<sup>12</sup> While there are many uses for the following terms, this article refers to them as follows: "Pornography," while used in lay terms generally to refer to sexually arousing sexually explicit materials,<sup>13</sup> is commonly referred to by Dworkin-MacKinnon scholars and in this article as "the graphic sexually explicit subordination of women, whether in pictures or in words."<sup>14</sup> "Sexually explicit," as the term implies, refers to

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12. Indeed, some of the seemingly "mixed" results regarding harm from "pornography" may simply be due to different studies giving different meanings to the same terms. This should stand as a caveat for anyone reviewing data on "pornography" as the research has shown that the definition of "pornography" that is used can greatly alter the results. For each study discussed, therefore, it must be clear what category of media was used. See *infra* notes 49-98 and accompanying text, regarding evidence of harm.

13. See THE AMERICAN HERITAGE DICTIONARY 965 (2nd College ed. 1982) (defining pornography as: "The presentation of sexually explicit behavior . . . intended to arouse sexual excitement").

14. MacKinnon, *supra* note 1, at 321 n.1. Catharine A. MacKinnon and Andrea Dworkin further define "pornography" by requiring that such sexually explicit subordination also include one or more of the following:

- (i) women are presented dehumanized as sexual objects, things or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures of sexual submission, servility or display; or (vi) women's body parts — including but not limited to vaginas, breasts, and buttocks — are exhibited, such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

*Id.* (quoting their legal definition of the term).

all categories of media in which sexual organs or sexual acts are displayed or described.<sup>15</sup> No distinction is made, for example, as to whether the explicit depictions are degrading to women, violent, or consensual. Because, however, the social psychological research on sexually explicit media has found such distinctions to be relevant,<sup>16</sup> this article clearly distinguishes amongst forms of sexually explicit media in describing the findings of the various studies.

This article also distinguishes between “violent sexually explicit” media, which as the term implies are violent and sexually explicit, and “degrading sexually explicit” media, which are sexually explicit and nonviolent, but nevertheless are degrading to women. Degrading sexually explicit media “‘debase, and dehumanize women . . . even if they do not contain explicit depictions of violent behavior.’ ”<sup>17</sup>

“Sexually violent media,” on the other hand, are not necessarily sexually explicit. Depictions may either juxtapose violence with sexually suggestive or sexually explicit scenes or include sexual violence that may or may not explicitly depict sex organs.<sup>18</sup> Many “R” rated movies meet this definition. For example, movies with a rape scene in which the sexual intercourse is not explicitly depicted are sexually violent, so too are many slasher films. A typical slasher film may depict a scene of a teenage girl disrobing alone in her parents’ large empty home, juxtaposed with a violent scene of an intruder entering her room before she has completely disrobed.<sup>19</sup>

Lastly, this article uses the term “obscenity” as defined by the U.S. Supreme Court: “[Material] taken as a whole, [which] appeals to the prurient interest . . . [and which] depicts or describes, in a patently offensive way, sexual conduct . . . [and] taken as a whole, lacks serious literary, artistic, political, or scientific value.”<sup>20</sup>

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15. See Kathryn Kelley et al., *Three Faces of Sexual Explicitness: The Good, the Bad, and the Useful*, in *PORNOGRAPHY*, *supra* note 7, at 57-91.

16. See *infra* notes 49-98 and accompanying text.

17. Fisher & Barak, *supra* note 11, at 290 (quoting JAMES V.P. CHECK, CANADIAN DEP’T OF SUPPLY & SERV., *THE EFFECTS OF VIOLENT AND NONVIOLENT PORNOGRAPHY* (Rep. No. 005v.19200-0899, 1985)) (alteration in the original).

18. Linz et al., *Sexual Violence*, *supra* note 11, at 148; Linz et al., *Mitigating the Negative Effects of Sexually Violent Mass Communications Through Preexposure Briefings*, 17 *COMM. RES.* 641, 641-42 (1990); see also Dan Brown & Jennings Bryant, *The Manifest Content of Pornography*, in *PORNOGRAPHY*, *supra* note 7, at 15-19.

19. See Linz et al., *Sexual Violence*, *supra* note 11, at 147-48 (discussing effects of slasher films); Daniel Linz & Edward Donnerstein, *The Effects of Counter-Information on the Acceptance of Rape Myths*, in *PORNOGRAPHY*, *supra* note 7, at 259, 263 (also discussing effects of slasher films).

20. *Miller v. California*, 413 U.S. 15, 24 (1973) (citation omitted).

### III. PROBLEMS WITH CURRENT OBSCENITY LAW

The Supreme Court has held that obscenity is not constitutionally protected speech under the First Amendment.<sup>21</sup> While Justice Stewart's oft-cited obscenity standard, "I know it when I see it,"<sup>22</sup> speaks to the difficulty of defining obscenity, in 1973, the Court set out in *Miller v. California* a test for determining whether a given material is obscene.<sup>23</sup> The trier of fact must determine the following:

- (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (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.<sup>24</sup>

*Miller* has been criticized from all sides. Civil libertarians see it as allowing unconstitutional restrictions on free speech, and Dworkin-MacKinnonites see it as a misguided test, which possibly encompasses only a fraction of the material they view as harmful and thus ripe for censorship.<sup>25</sup>

Many legal commentators see restrictions on obscenity as unconstitutional. Justice Black, for example, thirteen years prior to *Miller*, stated the following regarding the Court censoring obscene speech:

While it is "obscenity and indecency" before us today, the experience of mankind — both ancient and modern — shows that this type of

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21. *Roth v. United States*, 354 U.S. 476, 485 (1957). When referring to state laws, obscenity is constitutionally unprotected speech under the due process clause of the fourteenth amendment. See *Miller*, 413 U.S. at 25.

22. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

23. See *Miller*, 413 U.S. at 24.

24. *Id.* (citation omitted).

25. See sources cited *infra* notes 26-28 (civil libertarians), 29 (Dworkin-MacKinnonites). One study has shown that the current obscenity standards also fail to match the concerns of the community they presumably represent. Daniel Linz et al., *Discrepancies Between the Legal Code and Community Standards for Sex and Violence: An Empirical Challenge to Traditional Assumptions in Obscenity Law*, 29 L. & SOC'Y REV. 127, 155-57 (1995). Thus, the authors suggest that obscenity law's claim to legitimacy on the basis of conventional morality may be challenged. *Id.* at 156-57. A study of Western Tennessee residents found that residents were accepting of sexually explicit films and yet found no evidence that a majority of members of the community accepted violent "slasher" films. *Id.* at 137, 155-56. Residents, however, believed (wrongfully) that the majority of others in the community tolerated the violent films. *Id.* at 156. Moreover, this same study found that the presumption that jurors understand how to apply the standard of community approval may also be flawed. *Id.* at 163.

elastic phrase can, and most likely will, be synonymous with the political and maybe with the religious unorthodoxy of tomorrow.

Censorship is the deadly enemy of freedom . . . . The plain language of the Constitution forbids it. I protest against the Judiciary giving it a foothold here.<sup>26</sup>

More recently, many commentators have argued that the *Miller* test is unconstitutionally vague.<sup>27</sup> Furthermore, several legal scholars suggest that all of the problems and inadequacies of the obscenity doctrine now are “illuminated” by the application of the obscenity doctrine to cyberspeech.<sup>28</sup>

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26. *Smith v. California*, 361 U.S. 147, 160 (1959) (Black, J., concurring); see also LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 12-16, at 909 (2d ed. 1988) (stating that it is unlikely that obscenity law “has reached a state of rest [with *Miller* and obscenity law will not be settled] . . . until the Court recognizes that obscene speech is speech nonetheless, although it is subject — as is all speech — to regulation”); Donovan W. Gaede, Comment, *Constitutional Law — Policing the Obscene: Modern Obscenity Doctrine Re-Evaluated*, 18 S. ILL. U. L.J. 439, 447-51 (1994) (stating that the present approach of the Supreme Court to obscenity law, set forth in *Roth*, *Miller* and their progeny, is improper and arguing that the Court has never articulated rationally defensible reasons why obscenity should be regulated at all, with the exception of harm to minors).

27. Emily Campbell, *Obscenity, Music and the First Amendment: Was the Crew 2 Lively?*, 15 NOVA L. REV. 159, 237-38, 240 (1991) (suggesting that the Court reconsider *Miller* because a vague standard gives “no justifiable basis upon which to distinguish the ‘bad stuff’ — obscenity — from the ‘tolerable stuff’ — pornography” and that the Court hold that all speech on sexuality should be protected); Heather C. Beatty, Casenote, *Skywalker Records, Inc. v. Navarro: “Enough Already” to the Obscene Results of Miller v. California*, 11 LOY. ENT. L.J. 623, 653-55 (1991) (arguing that *Miller* test is unconstitutionally vague, leading to faulty applications like *Skywalker Records*); P. Heath Brockwell, Comment, *Grappling with Miller v. California — The Search for an Alternative Approach to Regulating Obscenity*, 24 CUMB. L. REV. 131, 136-37 (1994) (discussing vagueness of *Miller* test, particularly with respect to its application to music and determining artistic value).

The Supreme Court has stated that the Constitution “requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). When a statute fails to do this, it is unconstitutionally vague. *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (holding that the ordinance in question was unconstitutionally vague because “‘men of common intelligence must necessarily guess at its meaning’” (quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926))).

28. Debra D. Burke, *Cybersmut and the First Amendment: A Call for a New Obscenity Standard*, 9 HARV. J.L. TECH. 87, 89 (1996); Richard N. Coglianese, Comment, *Sex, Bytes, and Community Entrapment: The Need for a New Obscenity Standard for the Twenty-First Century*, 24 CAP. U. L. REV. 385, 414 (1995) (arguing that local community standard required by *Miller* test is unworkable for internet); Robert F. Goldman, Note, *Put Another Log on the Fire, There’s a Chill on the Internet: The Effect of Applying Current Anti-Obscenity Laws to Online Communications*, 29 GA. L. REV. 1075, 1117 (1995) (discussing how the framework of current obscenity law fails when applied to cyberspace communications); Jason Kay, Note, *Sexuality, Live Without a Net: Regulating Obscenity and Indecency on the Global Network*, 4 S. CAL. INTERDISC. L.J. 355, 355 (1995) (discussing problems of applying the *Miller* test to “an electronic realm where the overlying ethos is an abhorrence of . . . restrictions on access to information” and arguing that restrictions probably would curtail the growth of the

Dworkin-MacKinnonites, on the other hand, view *Miller* as failing to target the real harm:<sup>29</sup> “Their obscenity is not our pornography.”<sup>30</sup> The Dworkin-MacKinnonite argument states that any graphic, sexually explicit subordination of women, through pictures or words, that includes one of nine subordinating qualifiers,<sup>31</sup> should be banned because “pornography institutionalizes the sexuality of male supremacy, which fuses the erotization of dominance and submission with the social construction of male and female.”<sup>32</sup> Dworkin-MacKinnonites argue that obscenity law prohibits that which the male-dominated society sees as threatening to its power but which Dworkin-MacKinnonites see as comparatively harmless.<sup>33</sup> What obscenity law fails to ban, to which Dworkin-MacKinnonites most strongly object, is the erotization of dominance and submission.<sup>34</sup> More specifically, the Dworkin-MacKinnonites criticize the *Miller* test as follows:

Feminism doubts whether the average person, gender neutral, exists; has more questions about the content and process of definition of community standards than deviations from them; wonders why prurience counts but powerlessness doesn't; why sensibilities are better protected from offense than women are from exploitation; defines sexuality, hence its violation and expropriation, more broadly than does any state law and wonders why a body of law which can't in practice tell rape from intercourse should be entrusted with telling pornography from anything less.<sup>35</sup>

Accordingly, Dworkin-MacKinnonites support laws banning all pornography.<sup>36</sup>

#### IV. PROBLEMS WITH THE CURRENT DEBATE

The arguments of both the Civil Libertarians and the Dworkin-MacKinnonites suffer from serious flaws. The free speech approach fails to address the issue of harm to girls and women from pornography, while the Dworkin-MacKinnonite approach is unconstitutional. The flaws found in each viewpoint serve as targets of criticism by each side towards the other. Consequently, the debate continues, seemingly with no foreseeable end.

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internet).

29. MacKinnon, *supra* note 1, at 326.

30. *Id.* at 329.

31. *Id.* at 321 n.1; *see supra* note 14 and accompanying text (listing nine qualifiers).

32. MacKinnon, *supra* note 1, at 326.

33. *Id.* at 323.

34. *Id.* at 326.

35. *Id.* at 332.

36. *Id.* at 321 n.1.

The free speech approach does not address research that suggests many forms of sexual media, particularly those containing violence against women, implying women enjoy violence, and degrading women, may harm girls and women.<sup>37</sup> Where a remedy to a harm may itself be harmful, such as a restriction on free speech, sound socio-legal policy might reasonably demand conclusive evidence of the initial harm. The Supreme Court itself, however, historically has not even required this rigorous of a prerequisite to balance the concerns of various harms against free speech.<sup>38</sup> *A fortiori*, where a remedy causes little or no known harm, such as in the case of an educational approach,<sup>39</sup> conclusive evidence of the initial harm should not be a prerequisite to action.

The mere possibility that pornography may encourage the subordination of girls and women, in particular anti-female violence, is sufficient motivation to seek remedies, particularly remedies that do not infringe upon free expression and other rights, including those of females.<sup>40</sup> Often, the

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37. See *infra* notes 49-98 and accompanying text, regarding evidence of harm.

38. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63 (1993). Conclusive empirical evidence of harm has not been required to justify restrictions on free speech. *Id.* For example, regarding the "commercial exploitation of sex," the Court stated in *Paris Adult Theatre I* that "[n]othing in the Constitution prohibits a State from . . . acting . . . legislatively simply because there is no conclusive evidence or empirical data." *Id.*

Indeed, conclusive empirical research has never been required to censor materials thought to bring "harm to morals." For example, in *Roth v. United States*, the Court concluded that obscenity had *historically* been excepted from First Amendment protection and supported such an exception by citing a 1712 Massachusetts law that criminally proscribed "any filthy, obscene, or profane song, pamphlet, libel or mock sermon." *Roth v. United States*, 354 U.S. 476, 483 (1957) (quoting Acts and Laws of the Province of Mass. Bay, c. CV § 8 (1712), Mass. Bay Colony); Linz et. al, *supra* note 25, at 162. Linz et al., however, suggest that if this 1712 Massachusetts law alone can justify a First Amendment exception for obscenity, so too could it justify a lack of protection for the "filthy" or "profane," however the Court might define these terms. *Id.*

Moreover, it is not uncommon for the Court to cloth its decisions involving sexual matters in the rhetoric of morality thereby accepting a legislature's failure to offer any empirical evidence of actual harm. See *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986). The *Bowers* Court, in upholding the Georgia sodomy law, which was enforced only against homosexuals, stated the following: "The law . . . is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed." *Id.*; see also Brockwell, *supra* note 27, at 131, 138 (arguing that traditional regulation of obscenity has been centered on morality). Compare *Butler v. The Queen*, [1992] 1 S.C.R. 452, 492-93 (Can.) (discussing the Canadian Supreme Court's holding that imposing a particular standard morality, "solely because it reflects the conventions of a given community, is inimical to the exercise and enjoyment of individual freedoms, . . . [and t]he prevention of 'dirt for dirt's sake' is not a legitimate objective which would justify the violation of one of the most fundamental freedoms").

39. See *infra* notes 106-70 and accompanying text regarding educational approaches to mitigating any harmful effects of sexual media.

40. See Fisher & Barak, *supra* note 11, at 296, 303 (stating that "because violent and degrading pornography are philosophically abhorrent, and not yet because of definitive demonstrations of negative effects, . . . it is important to consider policy options for dealing

free speech framing of the debate fails to even address the issue of harm to girls and women by focusing on the harm of speech restrictions or by abruptly denying harm caused by sexually violent and degrading media.

The Dworkin-MacKinnon approach also is flawed. It was adopted as an ordinance in Indianapolis, but was later held to be unconstitutional.<sup>41</sup> Reiterating that “viewpoint discrimination” is strictly forbidden by the Constitution, the Seventh Circuit Court of Appeals held the ordinance unconstitutional because it discriminated based on the content of speech.<sup>42</sup> The Court stated: “Under the ordinance graphic sexually explicit speech is ‘pornography’ or not depending on the perspective the author adopts. . . . This is thought control.”<sup>43</sup> In addition, legal commentators have argued that the Dworkin-MacKinnon model statute is unconstitutionally vague and overbroad.<sup>44</sup> Lastly, it also is argued that the example set by the Canadian adoption of the Dworkin-MacKinnon approach is evidence that such a statute leaves room for government authorities to exercise bias.<sup>45</sup>

Both civil libertarians and Dworkin-MacKinnonites address valuable concerns, which as this article demonstrates, need not be mutually exclusive. To truly secure freedom of expression, the First Amendment has always served to protect objectionable and often very harmful speech. Indeed, speech that is not highly offensive and distasteful rarely, if ever, needs the protection of the First Amendment.<sup>46</sup> The Dworkin-MacKinnonites, on the

with ideology of pornography and its *possible* effects on human behavior”).

41. *American Booksellers Ass’n v. Hudnut*, 771 F.2d 323, 332-34 (7th Cir. 1985), *aff’d* 475 U.S. 1001 (1986).

42. *Id.* at 327-32.

43. *Id.* at 328.

44. Deana Pollard, *Regulating Violent Pornography*, 43 VAND. L. REV. 125, 126 (1990) (arguing that although the Seventh Circuit held the Indianapolis ordinance to be unconstitutional because it was viewpoint discriminatory, the ordinance was also unconstitutionally overbroad and vague); Karo & McBrien, *supra* note 6, at 189-90, 210-11 (discussing constitutional violations of the Indianapolis ordinance and discussing vagueness of pornography statutes in general).

Legal commentators have also offered their own ordinances aimed at prohibiting a narrower range of materials they refer to as “the most harmful.” Pollard, *supra*, at 154-56. These proposals, however, also suffer from the same overbreadth and vagueness as the Dworkin-MacKinnon proposed statute. For a discussion of the assertion that any restriction on obscenity or pornography is unconstitutional, see *supra* text accompanying notes 26-28. See Jessalyn Hershinger, *State Restrictions on Violent Expression: The Impropriety of Extending an Obscenity Analysis*, 46 VAND. L. REV. 473, 474 (arguing that “even though states may have a[n even] stronger constitutional basis for regulating violent material than . . . for restricting [obscenity], current violence statutes [also] violate the First and Fourteenth Amendments”).

45. Jack Glascock, *Regina v. Butler: The Harms Approach and Freedom of Expression*, 1 COMM. L. & POL’Y 117, 117 (1996) (arguing that court “has just disguised it[s moral approach] by adopting the rhetoric of harmfulness”).

46. Certainly the arguments supporting freedom of expression have been stated eloquently, over and over, throughout the years, from the arguments of the founders of our nation to the

other hand, offer a voice to the vital concern of protecting girls and women from violence.<sup>47</sup> This concern does not have the history of support enjoyed by the civil libertarian viewpoint. It is, however, continuously gaining validity. Social psychological empirical data lend support to the Dworkin-MacKinnonite premise that pornography may result in harm to females.<sup>48</sup>

## V. THE RESEARCH ON HARM AND ITS LIMITATIONS

Several laboratory studies, mostly using male college students, have found harmful effects from viewing sexual violence.<sup>49</sup> Experimentally observed harmful effects are changes that either directly measure violence against women or are recognized as indicators of future violence against women. These effects range from increased aggression toward females and decreased sensitivity towards rape victims to increased acceptance of rape myths.<sup>50</sup> Rape myths assume that women enjoy being dominated or coerced and "in some way benefit from rape, torture, or other forms of sexual

writings of John Stuart Mill to other supporters too numerous to mention. Moreover, the courts have continually upheld the rights of those seeking to express objectionable speech, including highly offensive and arguably extremely harmful messages. *Brandenburg v. Ohio*, 395 U.S. 444, 445 (1969) (supporting the right of a member of the Klu Klux Klan to propagate the Klan's beliefs); *Collin v. Smith*, 578 F.2d 1197, 1210 (7th Cir.) (upholding the right of Nazis to march through a Jewish neighborhood), *cert. denied*, 439 U.S. 916 (1978).

In fact, the Seventh Circuit, in holding the Dworkin-MacKinnon Indianapolis Ordinance unconstitutional, stated: "[W]e accept the premises of [the ordinance]. Depictions of subordination tend to perpetuate subordination . . . [and that] in turn leads to . . . lower pay at work, insult and injury at home, [and] battery and rape on the streets." *American Booksellers Ass'n*, 771 F.2d at 329. Thus, the court accepted that such materials are harmful, yet found them necessarily protected. *Id.* at 329-30.

47. See MacKinnon, *supra* note 1, at 321.

48. Dolf Zillmann & Jennings Bryant, *Effects of Massive Exposure to Pornography*, in *PORNOGRAPHY AND SEXUAL AGGRESSION* 115 (Neil M. Malamuth & Edward Donnerstein eds., 1984); Edward Donnerstein & Leonard Berkowitz, *Victim Reactions in Aggressive Erotic Films as a Factor in Violence Against Women*, 41 J. PERSONALITY & SOC. PSYCHOL. 710, 710 (1981).

49. See Zillmann & Bryant, *supra* note 48, at 115; Donnerstein & Berkowitz, *supra* note 48, at 710.

50. "Rape myths" are dependent variables, such as "only bad girls are raped" or "women ask for it," and are commonly measured by the Rape Myth Acceptance Scale, which is designed to ascertain the participant's mistaken beliefs regarding rape. Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. PERSONALITY SOC. PSYCHOL. 217, 217 (1980). In studies, responses to the Rape Myth Acceptance Scale are measured before and after the "treatment," such as the viewing of a sexually violent movie or a lecture aimed at reducing rape myths. Linz & Donnerstein, *supra* note 19, at 261-67; see, e.g., Christopher Dallager & Lee A. Rosén, *Effects of a Human Sexuality Course on Attitudes Toward Rape and Violence*, 19 J. SEX EDUC. & THERAPY 193, 197 (1993) (using Rape Myth Acceptance at the beginning and the end of a semester); Genie O. Lenihan et al., *Gender Differences in Rape Supportive Attitudes Before and After a Date Rape Education Intervention*, 33 J.C. STUDENT DEV. 331, 332-33 (1992) (using Rape Myth Acceptance Scale in pretesting and post-testing of date rape education program).

violence.”<sup>51</sup> The assumption underlying studies measuring rape myth acceptance is that attitudes regarding rape are associated with rape behavior.<sup>52</sup> Feminist social theory makes this assumption and

views rape as simply an extension of normative male behavior [which] is the result of over conformity to the values and prerogatives which define the traditional male sex role. Traditional socialization encourages males to associate power, dominance, strength, virility, and superiority with masculinity, and submissiveness, passivity, weakness, and inferiority with femininity. Males are socialized to expect female sexual accessibility. This functions to justify forcing sexual access.<sup>53</sup>

While for obvious ethical reasons many of these assumptions cannot be directly tested, research of rapists suggests that these attitudes play a significant role in “allowing” the rapist to victimize.<sup>54</sup> Commonly, convicted rapists hold attitudes that confuse a woman’s terror with sexual arousal in much the same manner as is depicted in violent sexually explicit media.<sup>55</sup> In violent sexually explicit media, often a terrified woman becomes sexually aroused to the point of cooperating with her victimizer.<sup>56</sup>

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51. Linz & Donnerstein, *supra* note 19, at 259.

52. Margaret Jean Intons-Peterson et al., *Will Educational Materials Reduce Negative Effects of Exposure to Sexual Violence?*, 8 J. SOC. & CLINICAL PSYCHOL. 256, 260 (1989) (summarizing research findings that show rape myth acceptance and attitudes towards women strongly correlated with aggression towards women and proclivity towards rape); Ann M. Schaeffer & Eileen S. Nelson, *Rape-Supportive Attitudes: Effects of On-Campus Residence and Education*, 34 J.C. STUDENT DEV. 175, 175 (1993) (discussing research findings that “self-reported likelihood of raping or using force was related to attitudes about violence against women and belief in rape myths”).

53. Linz & Donnerstein, *supra* note 19, at 261 (citing Diana Scully & Joseph Marolla, *Riding the Bull at Gilley’s: Convicted Rapists Describe the Rewards of Rape*, 32 SOCIAL PROB. 251-63 (1985)); *see also* Dallager & Rosén, *supra* note 50, at 193 (discussing the feminist theory of rape as holding that rape myths create a social foundation for rape-supportive environments). Empirical support for this feminist theory also exists; studies show that more traditional attitudes towards women are correlated with the acceptance of the use of force for sexual intercourse. Mary Margaret Fonow et al., *Feminist Rape Education: Does It Work?*, 6 GENDER & SOC’Y 108, 110 (1992) (discussing research supporting a link between traditional gender-role socialization and acceptance of rape myths); Gloria J. Fischer, *College Student Attitudes Toward Forcible Date Rape: Changes After Taking a Human Sexuality Course*, 12 J. SEX EDUC. & THERAPY 42, 42 (1986) (discussing research showing that more traditional attitudes towards women predictive of positive attitudes towards forcible date rape); Lenihan et al., *supra* note 50, at 331-32 (summarizing research finding that men with “conservative, stereotypic beliefs” about women are more likely to use sexual force and are more inclined to justify rape).

54. Diana Scully & Joseph Marolla, *Convicted Rapists’ Vocabulary of Motive: Excuses and Justifications*, 31 SOC. PROBLEMS 530, 533-37 (1984).

55. *See* Linz & Donnerstein, *supra* note 19, at 261-62.

56. *Id.* at 261.

Despite her initial resistance, she is depicted as physically aroused and gratified.<sup>57</sup> Rapists' confusion is evidenced by frequent attempts of convicted rapists to justify their rapes by arguing that their victims enjoyed themselves, despite the fact that the rapists had inflicted serious injury or even death.<sup>58</sup>

In brief, the harm research shows that violent sexually explicit media illustrate the utility and normativeness of sexual violence against women. Sexual violence against women can be seen as logically flowing from the assumption that women are "hysterically euphoric in response to just about any sexual or pseudosexual stimulation."<sup>59</sup> Degrading sexually explicit media, which portray women as socially nondiscriminating and eager to accommodate in response to sexual or pseudosexual stimulation, have also been found to be harmful.<sup>60</sup> Negative effects, however, are not limited to exposure to violent and/or degrading sexually explicit media such as X-rated movies.<sup>61</sup> Rather, exposure to media that depict violence against women that is either juxtaposed with mildly erotic scenes, such as in slasher films, or which is nonsexually explicit, such as R-rated movies with rape scenes, may be harmful.<sup>62</sup> Conversely, studies often fail to find harmful effects from sexually explicit media depicting consensual sex in which a man and a woman are portrayed as being equals.<sup>63</sup>

In the research on sexually explicit media, one study showed that exposure to sexually explicit material that portrays and endorses sexual violence leads to increases in men's tendency to fantasize about rape.<sup>64</sup> Other studies have found that males viewing portrayals of the rape myth in which a female victim becomes involuntarily sexually aroused by a rape demonstrate levels of sexual arousal as great and sometimes greater than males viewing portrayals of mutually consenting sex.<sup>65</sup> When watching more realistic rape scenes that depict the woman as abhorring the experience,

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57. Don D. Smith, *The Social Content of Pornography*, 26 J. COMM., Winter 1976, at 16, 22, 23.

58. Scully & Marolla, *supra* note 54, at 533-37.

59. Zillmann & Bryant, *supra* note 48, at 134; *see also infra* notes 64-79 and accompanying text.

60. Zillmann & Bryant, *supra* note 48, at 134; *see also infra* notes 80-81 and accompanying text.

61. *See infra* notes 85-92 and accompanying text.

62. *See infra* notes 86-92 and accompanying text.

63. James V.P. Check & Ted H. Guloien, *Reported Proclivity for Coercive Sex Following Repeated Exposure to Sexually Violent Pornography, Nonviolent Dehumanizing Pornography, and Erotica*, in PORNOGRAPHY, *supra* note 7, at 178; *see also infra* notes 82-84 and accompanying text.

64. Neil M. Malamuth, *Rape Fantasies as a Function of Exposure to Violent Sexual Stimuli*, 10 ARCHIVES SEXUAL BEHAV. 33, 33 (1981).

65. Linz & Donnerstein, *supra* note 19, at 262.

however, males show significantly less sexual arousal than when they view portrayals of consensual sex.<sup>66</sup>

Still more studies have found that exposure to violent sexually explicit media leads to an increase in men's acceptance of interpersonal violence against women.<sup>67</sup> Furthermore, studies have found that men who are exposed to violent sexually explicit media are more likely to engage in antifemale aggression in laboratory settings.<sup>68</sup> In one frequently cited study, men were either angered or treated equitably by a confederate prior to beginning what the subjects believed to be the experiment.<sup>69</sup> Both groups of men then viewed films that depicted either consensual sexually explicit scenes or violent sexually explicit scenes in which a woman was raped and was shown to either enjoy her victimization, the rape myth version, or abhor it, the realistic version.<sup>70</sup> The control group subjects viewed a neutral film.<sup>71</sup> Next, the angered male subjects were told to send electric shock to the confederate.<sup>72</sup> The subjects were free to vary the intensity of the shock delivered.<sup>73</sup> The subjects believed they were assisting in a learning behavior experiment by shocking (punishing) the confederates when they erred in performing the experimental tasks.<sup>74</sup>

None of the films increased aggression towards male confederates.<sup>75</sup> Exposure to either the realistic or the unrealistic (rape myth) version of the violent sexually explicit film, however, increased aggression towards the female confederate in previously angered subjects.<sup>76</sup> In contrast, unangered subjects only displayed increased aggression towards the female confederate when they had viewed the unrealistic (rape myth) version of the violent sexually explicit film.<sup>77</sup>

Are violent sexually explicit portrayals just enough to push some men over the edge? Males having a greater inclination towards aggression may be particularly likely to act out their tendencies when circumstances appear

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66. *Id.* at 259.

67. EDWARD DONNERSTEIN ET AL., THE QUESTION OF PORNOGRAPHY: RESEARCH FINDINGS AND POLICY IMPLICATIONS 86-107 (1987); Neil M. Malamuth & James V.P. Check, *The Effects of Mass Media Exposure on Acceptance of Violence Against Women: A Field Experiment*, 15 J. RES. IN PERSONALITY 436, 436 (1981).

68. Edward Donnerstein, *Pornography: Its Effect on Violence Against Women*, in PORNOGRAPHY AND SEXUAL AGGRESSION, *supra* note 48, at 57-84 (reviewing this literature).

69. Donnerstein & Berkowitz, *supra* note 48, at 710.

70. *Id.* at 713-14.

71. *Id.* at 713.

72. *Id.* at 714. No shocks were actually delivered, but each confederate was wired to the viewer's control box and was trained to wince on signal. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 716.

76. *Id.* at 720.

77. *Id.*

to support this behavior.<sup>78</sup> Media portrayals that endorse violence against women, particularly where the woman is portrayed as ultimately enjoying or desiring her victimization, may provide just that support.<sup>79</sup>

Although less research has been done on *degrading* sexually explicit media, the research has lent strong support to the assumption that consumers will be persuaded that rape is not a serious crime where women are portrayed as being generally compliant or desiring in response to most any sexual act.<sup>80</sup> For example, in one study, men exposed to nonviolent sexually explicit media that degraded women as “anonymous, panting playthings . . . [who are] eager to accommodate any and every imaginable sexual urge of any man in the vicinity,” recommended lesser prison sentences for convicted rapists.<sup>81</sup>

Conversely, nonviolent and nondegrading sexually explicit materials appear unrelated to violence against women and indeed may promote consensual sexual activity.<sup>82</sup> For example, in the study discussed above,<sup>83</sup> where male subjects were angered by a confederate at the beginning of the experiment and were later asked to administer shocks to the confederate, those who had been exposed to a consensual sexually explicit film did not show any more aggression against the female confederate than did the control group of males who had viewed a neutral film.<sup>84</sup>

Evidence of an increase in violent attitudes and behavior towards women, however, is not limited to exposure to violent or degrading sexually explicit media.<sup>85</sup> Harm also is found from depictions of sexual violence in non-sexually explicit media, such as many R-rated movies, or when sexual stimuli are juxtaposed with violent scenes, such as in R-rated slasher films.<sup>86</sup> In one study, students were told they were participating in a movie rating study.<sup>87</sup> One group watched *The Getaway* and *Swept Away*, both of which depict women as victims of aggression within erotic contexts, while the control group watched neutral, feature length movies.<sup>88</sup> The subjects then

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78. Neil M. Malamuth, *Aggression Against Women: Cultural and Individual Causes*, in PORNOGRAPHY AND SEXUAL AGGRESSION, *supra* note 48, at 19, 20-39; Donnerstein & Berkowitz, *supra* note 48, at 722.

79. Donnerstein & Berkowitz, *supra* note 48, at 722.

80. Dolf Zillmann & Jennings Bryant, *Pornography, Sexual Callousness, and the Trivializations of Rape*, 32 J. COMM., Autumn 1982, at 10, 11.

81. *Id.* at 16-17.

82. Fisher & Barak, *supra* note 11, at 295 (reviewing research that supports this conclusion).

83. Donnerstein & Berkowitz, *supra* note 48, at 710.

84. *Id.* at 710.

85. See Malamuth & Check, *supra* note 67, at 436.

86. See *id.*

87. *Id.* at 438.

88. *Id.* at 438-39.

completed a survey, embedded in which were questions reflecting rape myth acceptance, the acceptance of interpersonal violence against women, and beliefs about adversarial sexual relations.<sup>89</sup> Males, and not females, who viewed the nonsexually explicit yet sexually aggressive films showed significantly higher levels of rape myth acceptance and acceptance of interpersonal violence against women.<sup>90</sup>

In other studies, men who were exposed to large doses of R-rated slasher films depicting violence against women judged victims of violent assault and rape to be significantly less injured than did control group members.<sup>91</sup> In a similar study, members of the group that viewed sexually violent films sympathized less with the rape victim of a simulated trial and empathized less with rape victims in general.<sup>92</sup>

According to some scholars, three factors may contribute to the observed harmful results.<sup>93</sup> First, exposure to media juxtaposing sexual and violent scenes may lead to an association of sexuality and aggressiveness through basic conditioning.<sup>94</sup> Second, depictions in violent sexually explicit media of a victim “secretly desiring” and ultimately enjoying rape may validate the attitudes of consumers predisposed to rape myths.<sup>95</sup> And third, these two factors may be strengthened by society’s apparent endorsement of aggressive sexuality demonstrated by its prevalence throughout the media.<sup>96</sup>

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89. *Id.* at 439-40.

90. *Id.* at 436.

91. Linz & Donnerstein, *supra* note 19, at 262-63 (citing and discussing study by Daniel Linz et al., *The Effects of Multiple Exposures to Filmed Violence Against Women*, 34 J. COMM., Summer 1984, at 130 (1984)).

92. *Id.* at 263 (discussing the harmful effects of violent nonsexually explicit media); see DONNERSTEIN ET AL., *supra* note 67, at 108-36; Daniel Linz et al., *Sexual Violence in the Mass Media: Social Psychological Implications*, 7 REV. PERSONALITY & SOC. PSYCHOL. 95, 135 (1987).

93. Margaret Jean Intons-Peterson & Beverly Roskos-Ewoldsen, *Mitigating the Effects of Violent Pornography*, in FOR ADULT USERS ONLY: THE DILEMMA OF VIOLENT PORNOGRAPHY 218, 226-27 (Susan Gubar & Jean Hoff eds., 1989).

94. *Id.* at 226.

95. *Id.* at 227.

96. *Id.* at 226-27; see Dano Demaré et al., *Sexually Violent Pornography, Anti-Women Attitudes, and Sexual Aggression: A Structural Equation Model*, 27 J. RES. IN PERSONALITY 285, 295-98 (1993) (discussing the *mechanisms* by which sexually violent pornography may cause harm and testing structural equation models to assess the interrelationship of pornography use, antiwomen attitudes, and propensity for sexual violence, suggesting that sexual aggression is the product of both existing antiwoman attitudes and sexually violent pornography, but cautioning that the model was based solely on correlational data, and that there was no clear cause-and-effect relationship); Intons-Peterson et al., *supra* note 52, at 258 (discussing mechanisms by which violence and aggressive sexuality are associated).

Understanding the processes supporting these negative attitudes and beliefs allows for development of the mechanism by which these negative beliefs and attitudes can be mitigated. *Id.* For a discussion of the *mechanism* by which sex education may mitigate the effects of consuming violent sexually explicit media, see Fisher & Barak, *supra* note 11, at 289, 305-16.

Regardless of the specific cognitive mechanism by which these type of media negatively affect attitudes and behaviors, the harm research supports the theory that it is the juxtaposition of sex and violence, both sexually explicit and not, as opposed to the depiction of explicit consensual sex, that may be harmful. One study seeking to distinguish between the violent and sexual components in sexually explicit media found that “the aggressive component of violent [sexually explicit media] raises the level of aggression against women more than the sexual component, although the combination of the two yields somewhat greater evidence of aggression.”<sup>97</sup> Thus, the harm research data discussed above support the assertion that it is the message, either violent or degrading, as opposed to the level of sexual explicitness, that may reinforce sexually aggressive attitudes and behaviors.<sup>98</sup>

There are, of course, limits to the harm research. For obvious ethical reasons, controlled studies to assess whether viewing sexually explicit media increases the incidence of violence against girls and women are impossible.<sup>99</sup> In addition, correlational research on the consumption of sexually explicit media, carried out in the “real world,” is subject to the same criticism as all correlational research: it cannot make definitive showings of cause and effect due to the lack of random assignment and control over the numerous confounding variables, which may affect the behavior of a consumer of sexually explicit media.<sup>100</sup>

Another critical constraint to the harm research is the limited ecological or external validity of the studies.<sup>101</sup> For example, many of the laboratory studies evaluate attitudinal measures, not behavioral measures, which are not

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97. Intons-Peterson & Roskos-Ewoldsen, *supra* note 93, at 225.

98. *Id.* (citing Donnerstein & Berkowitz, *supra* note 48, at 210).

99. Dolf Zillmann, *Pornography Research and Public Policy*, in *PORNOGRAPHY*, *supra* note 7, at 387, 397-398.

100. *But see id.* at 397. Zillmann argues that excessive criticism of correlational research of sexually explicit media is unwarranted:

The devastating remark that it is “only correlational” is liberally applied to regression studies that seek to determine which aspects of pornography exposure might influence particular behaviors. Similar studies on other, less controversial policy issues are often treated with considerable compassion. The statistical relationship between drunk driving and car accidents is a case in point. It does not provide causal proof. But nobody seems to want to argue that drivers who drink are reckless people; and that reckless people cause accidents, whether or not they are intoxicated. In contrast, the fact that rapists tend to be heavy consumers of pornography and often use it as a turn-on prior to committing rape is deemed immaterial because it can be argued that exposure to pornography is incidental and rapists, being reckless people, would commit rape independent of exposure.

*Id.* (citation omitted).

101. Fisher & Barak, *supra* note 11, at 297-99.

necessarily predictive of behavior.<sup>102</sup> Moreover, how representative are male college students of all consumers of sexually explicit media?<sup>103</sup> In addition, there is the concern that subjects are responding to “demand effects,” that is, responding according to what the subjects believe the experimenter wants, and “social desirability effects,” that is, responding according to what is socially acceptable.<sup>104</sup> Another criticism of laboratory research argues that ordering unrepresentative subjects, who have been exposed to laboratory-style sexually explicit media, which may not be representative of most sexually explicit media consumed, to administer a shock in a punishment- and guilt-free environment, severely limits the degree to which the results demonstrate the effects of sexually explicit media in natural settings.<sup>105</sup> These criticisms, however, are insufficient reason to fail

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102. *But see* sources cited *supra* note 52 and accompanying text for support of correlation between rape attitudes and rape behavior. For research on the complex association between attitudes and behavior, see Icek Ajzen & Martin Fishbein, *Attitude-Behavior Relations: A Theoretical Analysis and Review of Empirical Research*, 84 PSYCHOL. BULL. 888 (1977) (concluding that a “strong” positive relationship exists between one’s attitudes and actions).

103. Fisher & Barak, *supra* note 11, at 298-88; see Donn Byrne & Kathryn Kelley, *Basing Legislative Action on Research Data: Prejudice, Prudence, and Empirical Limitations*, in PORNOGRAPHY, *supra* note 7, at 363, 374-75 (discussing problems of sampling bias in research).

104. Linz et al., *supra* note 18, at 666. For a discussion of these effects and how some researchers have responded to these concerns, see *id.* at 666-69.

While all laboratory studies and many studies conducted outside the laboratory are subject to these criticisms, it should be noted that many experimenters in social psychology have gone to great lengths to “fool” subjects so as to overcome many of these effects. See *id.* For example, in one study the initial survey questions regarding rape attitudes were embedded in a mass media consumption questionnaire administered to students in an introductory communication course. *Id.* at 652. When the subjects were later contacted for participation in this particular study, no mention was made of the previous in-class survey. *Id.* at 653. Moreover, when subjects were later asked to prepare and read to the camera anti-sexual violence essays, “they were told [their products] would be used in area high schools to inform male adolescents ‘who have been fooled by mass media depictions into thinking that women desire sexual violence.’” *Id.* at 654.

105. Fisher & Barak, *supra* note 11, at 297-99 (citing David Copp, *Pornography and Censorship: An Introductory Essay*, in PORNOGRAPHY AND CENSORSHIP 15, 34-36 (David Copp & Susan Wendell eds., 1983); William A. Fisher, *The Emperor Has No Clothes: On the Fraser and Badgley Committees’ Rejection of Social Science Research on Pornography*, in REGULATING SEX: AN ANTHOLOGY OF COMMENTARIES ON THE FINDINGS AND RECOMMENDATIONS OF THE BADGLEY AND FRASER REPORTS 159-76 (J. Lowman et al. eds., 1986)).

Efforts to replicate laboratory findings in more natural settings have had mixed results. See Fisher & Barak, *supra* note 11, at 299-302. Mixed data may be the result of assigning different meanings to what such studies call “pornography.” Brown & Bryant, *supra* note 18, at 21; see Fisher & Barak, *supra* note 11, at 291-302. Mixed findings may suggest that if there are harmful effects, they are not as far reaching as is commonly assumed or that the effects, if any, are weak. See Fisher & Barak, *supra* note 11, at 291-302. Alternatively, the effects of consuming sexually explicit media may be very strong, but for a more refined situation or scenario than has been tapped by these “real world” experiments. See *id.* at 300-02. Often cited to show “no harm” are the cases of countries with much pornography and yet a low reported rape rate. *Id.* at 300. What is meant by “pornography” in each of these

to search for remedies in the face of such strong evidence of the potential for harm.

## VI. AN EDUCATIONAL APPROACH

Several rationales support looking beyond the Dworkin-MacKinnon versus free speech paradigm. First, although there is no conclusive evidence that sexually violent media *cause* violence against women in the real world, such clear evidence is not needed before taking action that is in compliance with the First Amendment. If we were only to act upon conclusive evidence, we would surely almost never act, and inaction can be just as dangerous as improper action in the face of such persuasive evidence. In fact, we rarely demand conclusive empirical evidence for our legislatures to act and certainly, do not require conclusive evidence for the courts to uphold those very laws and policies.<sup>106</sup> To be sure, no such level of proof has ever been required to prove harm to morals.<sup>107</sup> Rather, the mere existence of media that so degrade girls and women, let alone the persuasive evidence suggesting harmful effects, is reason enough to ask what policy a free society should adopt to mitigate any harmful effects.

Second, the fact that the harm research suggests that negative effects may result not only from obscenity, but also from a wide range of media<sup>108</sup> that

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countries, however, is unclear. *See, e.g., id.* at 300-01 (summarizing correlational studies of pornography and sexual violence in foreign countries, but not clearly distinguishing amongst different countries' definitions of pornography and prevalence and incidence of violent and/or degrading sexually explicit media in each of those countries). Such studies may confound sexually explicit consensual sex with sexual violence. *See* HAWKINS & ZIMRING, *supra* note 4, at 94-97.

Perhaps there are too many confounding variables to adequately compare the situation in the United States with the situations in the former West Germany, Japan, and Denmark. Fisher & Barak, *supra* note 11, at 300-01. For example, in Japan, perhaps sex role stereotypes essentially prohibit women from reporting rape, particularly if it is by her boyfriend or husband. Alternatively, perhaps the confounding variables are analogous to the mitigating factors provided by educational approaches as discussed in the research reviewed in this article, *infra* notes 124-70 and accompanying text. Rather than assuming that these countries demonstrate that there are no harmful effects from viewing sexually explicit media, perhaps these countries demonstrate ways in which the harmful effects are successfully mitigated. Such comparisons go beyond the scope of this article, but they suggest that further research is needed to assess whether factors exist in the cultures or policies of these countries that are analogous to the mitigating factors found in experiments.

106. Indeed, the courts often do not even require empirical evidence to meet their own tests. *Paris Adult Theatre I*, 413 U.S. at 63; *see* Linz et al., *supra* note 25, at 130. Regarding empirical evidence to support the prongs of the *Miller* test, Linz et al. state that "[t]here is no obscenity decision in which a court has positively required any empirical evidence of community standards, by for instance, results of opinion polls." *Id.*

107. *See supra* note 38 and accompanying text regarding the Court's lack of any requirement of empirical evidence to demonstrate harm to morals.

108. *See supra* notes 85-92 and accompanying text discussing harmfulness of nonsexually explicit media depicting violence against women, such as R-rated films. In addition, content

are widely accessible to our children,<sup>109</sup> calls for a means of inoculating potential consumers of these media. Moreover, even if we were to suppress free speech by banning pornography as the Dworkin-MacKinnonites suggest, it is unlikely such a policy would ever prevent all consumption. Instead, pornography would be pushed underground, becoming more marginalized, and the violence depicted in pornography might even increase. Accordingly, the need for inoculating all potential consumers would only increase.

Balancing the concerns of a free society, that is, a society allowing free speech as well as allowing women to live free from oppression, suggests a harm reduction strategy.<sup>110</sup> We must ask if there is a way to reduce the harmful effects that may result from consumption of these media. The more potential consumers we reach, and the more effectively we immunize them, the more harm will be reduced.<sup>111</sup> One area of psychology which offers a promising harm reduction approach stems from research on attitudes and persuasion: inoculation theory.<sup>112</sup> Just as a person can become resistant to certain diseases by consuming a mild form of the germ to spur the development of antibodies, people can be made more resistant to messages in conflict with their initial attitudes by inoculating their initial attitudes.<sup>113</sup> The inoculation treatment entails exposing subjects to some "counterattitudinal propaganda" and showing them how to refute this information prior

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analyses of X-rated and R-rated videotapes have found as much or more sexual violence in R-rated materials as in X-rated materials. Ni Yang & Daniel Linz, *Movie Ratings and the Content of Adult Videos: The Sex Violence Ratio*, 40 J. COMM. 28, 28 (1990) (finding on a percentage basis more sexual violence in R-rated videos than in X-rated videos); Linz et al., *Sexual Violence*, *supra* note 11, at 153 (summarizing research finding a higher percentage of aggressive scenes and more graphic forms of violence, including sexual violence, in R-rated movies than in X-rated movies).

109. Polls in the late 1980s reported that 84% of 13- to 15-year-olds surveyed had seen an R-rated movie and one in seven had seen an X-rated movie. Linz & Donnerstein, *supra* note 19, at 284; *see also* Linz et al., *Sexual Violence*, *supra* note 11, at 147 (citing a survey showing that up to 77% of 14- and 15-year-olds said that they had watched several R-rated films). Moreover, with the increased availability of these materials through the internet, cable television and videocassette players, it is likely that these figures will increase.

110. A relatively new movement in public policy, harm reduction seeks to reduce the amount of harm rather than ban a particular behavior or product for reasons such as morality. For example, harm reduction advocates in the illicit drugs debate support needle exchanges to reduce the amount of harm stemming from intravenous drug use. For a summary of the theory, research, and policy of harm reduction, *see* Robert J. MacCoun, *The Psychology of Harm Reduction: Alternative Strategies for Modifying High-Risk Behavior*, in WELLNESS LECTURES 1 (1996) (Oakland, CA: California Wellness Foundation and University of California) (on file with the author).

111. Harm can be reduced either by increasing the number of persons inoculated from harm, or by reducing the level of harm stemming from each consumer, or both.

112. For a concise summary of inoculation research, *see* RICHARD E. PETTY & JOHN T. CACIOPPO, ATTITUDES AND PERSUASION: CLASSIC AND CONTEMPORARY APPROACHES 228-32 (1996).

113. *Id.* at 230.

to exposure to the potentially harmful messages.<sup>114</sup> Presenting relatively weak refuted counterarguments motivates people to develop bolstering arguments for their now weakened attitudes and helps them counterargue the harmful message.<sup>115</sup> Studies have found that, by generating supportive cognitive responses and refuting attacks, inoculated subjects are better able to resist subsequent propaganda more effectively than noninoculated subjects.<sup>116</sup>

While much of inoculation research has been done on resistance to attacks of cultural truisms — beliefs so widely accepted that people are not versed in defending them, such as “mental illness is not contagious,”<sup>117</sup> — there is little reason to think that a similar approach cannot be taken regarding beliefs about violence against women. Where subjects initially support the concept that violence against women is wrong, subjects may need practice defending this viewpoint against media that foster the view that in certain circumstances women desire or are deserving of violence. Conversely, where subjects’ initial views are supportive of violence against women, the subjects may not have had to defend their views and thus will be more susceptible to the influence of information from an educational program that debunks these views.<sup>118</sup> Thus, while inoculation theory was not developed specifically with the problem of violence against girls and women in mind, it provides a framework that allows for conceptualizing strategies aimed at mitigating the effects of persuasive messages of any sort.

Though the legal literature has failed to address solutions outside the free

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114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. See Linz et al., *supra* note 18, at 644-47. Supporting this approach is research on producing attitude change as a response to inconsistencies with behavior or inconsistencies with cognition about the self. *Id.* at 644-46. One strategy involves informing subjects that it is believed they already possess the qualities that the experimenter wants them to adopt, perhaps thereby reducing the tendency to defend against any messages subjects see as intended to persuade. *Id.* at 644. For example, in one study researchers first credited the subjects, who were children, with the antiviolence attitudes that the researchers wanted the subjects to adopt: “of course you know better than to believe what you see on TV and you know that imitating what you see may be bad, but other children do not know this.” L. Rowell Huesmann et al., *Mitigating the Imitation of Aggressive Behavior by Changing Children’s Attitudes About Media Violence*, 44 J. PERSONALITY & SOC. PSYCHOL. 899, 905 (1983). Then they asked the children to make a videotape for other children who had been “fooled” by violent television messages. *Id.* To do this the subjects first wrote persuasive essays about how television is unrealistic and why it is bad for other children, and then read their essays on videotape. *Id.* Finally, the children viewed the videotape to see themselves advocating an antiviolence position in public. *Id.* The experiment was successful at positively changing children’s attitudes about television violence and in reducing aggressive behavior. *Id.* at 905-09. The researchers theorize these changes occurred because the children were motivated to achieve consistency between their attitudes (as publicly announced) and their behaviors. *Id.* at 900-01.

speech — Dworkin-MacKinnon dichotomy, social psychologists have done much research to address the issue of harm from sexually violent media and sexually degrading media. Much of the sexual violence harm reduction research performed by social psychologists stems from their work on the effects of viewing sexually explicit media. Originally some of the research was performed, at least in part, as an ethically necessary portion of harm research. In order to prevent subjects from enduring harm from viewing sexually explicit media in laboratory experiments, the subjects were debriefed.<sup>119</sup> Psychologists have since improved upon the content of briefings and have tested the effects of both pre-exposure briefings and post-exposure briefings.<sup>120</sup> Based upon this laboratory briefing research, some psychologists have proposed educational strategies aimed at mitigating the effects of viewing potentially harmful media.<sup>121</sup>

In addition, research performed outside the laboratory using a broader educational approach demonstrates the potential of an educational strategy.<sup>122</sup> Though these studies were not aimed solely at immunizing against harm from viewing sexually explicit media, their findings suggest ways we may use education to reduce attitudes and behaviors supportive of violence against girls and women in our society.<sup>123</sup>

#### A. *Laboratory Research*

In what are referred to as debriefing experiments, subjects are given information that counters the inaccurate depictions portrayed in the violent sexually explicit media to which they have just been exposed.<sup>124</sup> The debriefings typically include information emphasizing that rape is in fact a horrendous crime even though it was not portrayed as such, as well as examples of rape myths portrayed in the media, such as the view that women desire or enjoy forced sex, and counter information stressing the fallacies of rape myths.<sup>125</sup>

For example, in one study subjects read sexually explicit scenarios

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119. See *infra* notes 124-34 and accompanying text for a discussion of debriefing.

120. See *infra* notes 124-44 and accompanying text for a discussion of preexposure and post-exposure briefings.

121. Linz et al., *Sexual Violence*, *supra* note 11, at 155-67; Fisher & Barak, *supra* note 11, at 308-16.

122. *Infra* notes 154-70 and accompanying text.

123. *Infra* notes 153-70 and accompanying text.

124. Linz & Donnerstein, *supra* note 19, at 263.

125. See Linz et al., *Sexual Violence*, *supra* note 11, at 155-67; Linz & Donnerstein, *supra* note 19, at 263-69; see also Neil M. Malamuth & James V.P. Check, *Debriefing Effectiveness Following Exposure to Pornographic Rape Depictions*, 20 J. SEX RES. 1 (1984) (concluding that debriefings reduce rape myth acceptance).

depicting either rape or consensual sex.<sup>126</sup> Those who read about the rape were then debriefed with statements that the rape in the scenario was not real and that real rape is a horrible crime, and they were given examples of rape myths along with information dispelling these myths.<sup>127</sup> The subjects who read about the rape and then were debriefed were less likely to blame women for rape than subjects who viewed the consensual sex scenario and were not debriefed.<sup>128</sup>

In another study, subjects viewed either a violent sexually explicit film, a nonviolent sexually explicit film, or a neutral film.<sup>129</sup> All subjects viewing the violent sexually explicit film and a portion of those viewing the nonviolent sexually explicit film were debriefed.<sup>130</sup> Follow-up testing performed two weeks to four months later found that the debriefed subjects showed less acceptance of rape myths than the nondebriefed subjects who had viewed either the nonviolent sexually explicit film or the neutral film.<sup>131</sup>

Debriefing has also been tested for use after exposure to nonsexually explicit movies that nevertheless portray violence against women, such as R-rated slasher films.<sup>132</sup> Results obtained as late as six to seven months later showed that debriefed subjects experienced a decrease in rape myth acceptance relative to their rape myth acceptance levels prior to the studies.<sup>133</sup> By reducing rape myth acceptance, debriefing may inoculate subjects against future "attacks" from the powerful messages of the media.<sup>134</sup>

Another approach has been to expose subjects to educational messages prior to exposure to potentially harmful media through prebriefings.<sup>135</sup> In one study, subjects in the experimental condition viewed a prefilm message suggesting negative psychological effects which might result from viewing sexually violent media.<sup>136</sup> For example, using clips from slasher films, the message stated that viewers might become desensitized to violence and that the violent scenes might be perceived more positively when juxtaposed with

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126. Malamuth & Check, *supra* note 125, at 4.

127. *Id.* at 5.

128. *Id.* at 9-10.

129. Donnerstein & Berkowitz, *supra* note 48, at 713.

130. *Id.* at 714.

131. *Id.* at 718, 723.

132. See Linz & Donnerstein, *supra* note 19, at 265-66 (summarizing debriefing studies).

133. *Id.* at 266.

134. See *id.* at 267.

135. Daniel Linz et al., *Mitigating the Influence of Violence on Television and Sexual Violence in the Media*, in *ADVANCES IN THE STUDY OF AGGRESSION* 165, 183-89 (Robert J. Blanchard & D. Caroline Blanchard eds., 1986).

136. *Id.* at 184.

pleasant sexual scenes as in many slasher films.<sup>137</sup> Both prebriefed and non-prebriefed subjects viewed five slasher films over a two-week period.<sup>138</sup> Prebriefed subjects reported seeing more violent scenes directed at women, found the films more degrading to women, and perceived the violence as less realistic than nonprebriefed subjects.<sup>139</sup>

In a follow-up study, subjects first viewed either a film about the importance of concern for one's sexual partner, a film about the impact of rape on its victims, or no film.<sup>140</sup> Next, one-third of each group viewed a commercial film that depicted sexual violence (an R-rated film juxtaposing sexual scenes with violent scenes), nonviolent sexuality (an X-rated film depicting sexual intercourse between consenting adults), or nonviolent, nonsexual material (a G-rated film showing pastoral scenes of nature in North America).<sup>141</sup> The subjects then viewed a videotape depicting the trial of a male college student charged with raping a female acquaintance at a fraternity party.<sup>142</sup> Two weeks later the prebriefed groups showed a significant decline in rape myth acceptance compared to the non-prebriefed group.<sup>143</sup> Moreover, the prebriefed groups showed greater empathy towards the rape victim depicted in the videotape, a greater tendency to find the accused assailant guilty, greater sensitivity to violence against women depicted in films, and greater physiological-emotional repulsion to filmed violence.<sup>144</sup>

Another laboratory study tested the effects of a different educational approach.<sup>145</sup> Subjects were asked to write essays advocating an antisexual violence stance, to read their essays aloud while being videotaped and to view the taping of all the essays that had been read aloud.<sup>146</sup> This ap-

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137. *Id.* at 185-86.

138. *Id.* at 184-85.

139. *Id.* at 186. These differences, however, diminished over the viewing period, and the prebriefing also had "no effect" on subjects' judgments of a rape victim depicted in a rape trial video. *Id.* at 186-87. Other researchers speculate that the lack of effect was due to the prebriefing message being very brief and not dealing with the consequences of rape, but rather focusing on warning viewers about desensitization to sexual violence and to the plight of the victims. Linz et al., *Sexual Violence*, *supra* note 11, at 157 (summarizing the findings of no effect and the research that suggests why). This research suggested that while prebriefing may have a positive effect, more research was needed to identify what kind of briefing was more effective. *Id.* at 157-58. For an example of one such follow-up study, see *infra* notes 140-44 and accompanying text.

140. Intons-Peterson et al., *supra* note 52, at 256.

141. *Id.* at 262-63.

142. *Id.* at 264.

143. *Id.* at 266.

144. *Id.* at 269; see also Linz & Donnerstein, *supra* note 19, at 269-78 (summarizing prebriefing research).

145. Linz et al., *supra* note 18, at 641.

146. *Id.* at 647.

proach was based on cognitive consistency models of attitude change, which state that people are motivated to achieve some degree of consistency between their attitudes and behaviors.<sup>147</sup> Thus, when people find themselves advocating a viewpoint that is either unfamiliar or even counter to an original belief, such as through experimental manipulations, they are motivated to shift their attitudes to match what they have been advocating.<sup>148</sup>

In this multistep experiment, all subjects (male college students) were first prebriefed about the negative effects of viewing slasher films and the importance of not subscribing to myths about violence against women and were trained in recognizing stereotypes about women and reducing identification with the perpetrators of violence.<sup>149</sup> The subjects then either wrote essays about myths of sexual violence, were videotaped reading the essays in front of the group of subjects, and then watched videotapes of all the subjects reading their essays; or wrote essays about myths of sexual violence, read them to a video camera in front of the group of subjects, shared the essays with each other, and discussed the essays, the prefilm and the use of their essays — they did not view themselves advocating their position on the videotaped playback — ; or wrote a “neutral” essay about media use, read it aloud in front of the group of subjects, and viewed the videotape of all the subjects reading the essays aloud.<sup>150</sup> Next, the subjects viewed parts of slasher films, viewed a videotaped reenactment of an acquaintance-rape trial, and then evaluated each.<sup>151</sup>

Both sets of subjects who wrote and shared their essays on the myths of sexual violence showed higher levels of depression in response to slasher films, assigned less responsibility to the victim portrayed in the rape trial and more responsibility to the defendant, and scored marginally lower on rape myth acceptance than the control subjects who wrote neutral essays.<sup>152</sup> These positive effects found in laboratory research suggest the benefit of looking for a broader educational approach that holds the potential to reach a wider range of future consumers, and to affect those consumers over a

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147. *Id.* at 644-45, 647.

148. *See id.* at 664-65.

149. *Id.* at 649-53.

150. *Id.* at 653-55.

151. *Id.* at 655-56.

152. *Id.* at 658. One reason the Rape Myth Acceptance Scale results were only marginally lower may be because all subjects were prebriefed. *See id.* at 653. That is, this experiment only tested the effects of the essay writing advocacy. Perhaps the rape myth acceptance levels of *all* the subjects were significantly reduced due to the prebriefing, to which the essay advocacy only marginally decreased rape myth acceptance levels. This, however, was not tested. This experiment compared different essay and advocacy approaches with each other. Further research is needed to assess the relative effectiveness of different educational approaches such as prebriefing methods versus essay advocacy versus a combination of both.

longer time span than that for which laboratory studies usually test.

### B. *Natural Setting Research*

Several educational programs aimed at reducing attitudes correlated with violence against women provide useful examples of educational approaches studied outside the laboratory.<sup>153</sup> They suggest ways we can educate our youth (the inoculation) to provide information (the antibodies) to mitigate potential harm from the sexually violent or degrading messages they so frequently receive. A survey of the literature follows.

In one study, college students were tested before and after a semester-long class on their attitudes of date rape.<sup>154</sup> Some students took an Introductory Psychology course while others took a Human Sexuality course in which a lecture was given discussing rape laws in detail.<sup>155</sup> The logic was that some students would be unlikely to view date rape as clearly being rape and would be unaware of the strength of the rape laws covering date rape.<sup>156</sup> Moreover, the study assumed that when rape laws are clearly stated, students rarely challenge them.<sup>157</sup> Forcible Date Rape Scale<sup>158</sup> scores were comparable for students at the beginning of both classes. At the end of the semester, however, male rape behavior was seen as significantly less acceptable to the students of the Human Sexuality class than to the

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153. This article distinguishes between "prebriefing and debriefing" studies (generally controlled laboratory studies) and broader educational studies (generally uncontrolled studies of educational programs taking place in the "real world") on methodological grounds. Nevertheless, all strategies may serve as inoculation against future media exposure.

154. Fischer, *supra* note 53, at 42-43.

155. *Id.* While such studies involve more realistic settings for programs, they highlight the costs of not performing a controlled experiment. The students here were not randomly assigned to take either the introductory psychology course or the human sexuality course. Thus, the results may be in part, if not totally, due to the self-selection process. That is, something about the kind of students who would choose to take a human sexuality course or an introductory psychology course, rather than the course itself, could explain the noted effects. Any good text on research design will discuss the importance of random assignment and control in experiments. See, e.g., GEOFFREY KEPPEL & SHELDON ZEDECK, DATA ANALYSIS FOR RESEARCH DESIGNS 16-17, 20 (1989). Nevertheless, such studies are useful because they have more of a real world application than those often performed in the laboratories. While no one methodology is without its flaws, by looking at the results of multiple studies which have applied several different methodologies, we can be more sure of the general findings and suggested applications.

156. Fischer, *supra* note 53, at 45-46.

157. *Id.* at 45.

158. *Id.* at 43 (citing R. Giarusso et al., *Adolescent Cues and Signals: Sex and Assault*, Presented at the meeting of the Western Psychological Ass'n (San Diego, 1979)). The Forcible Date Rape Scale rates subjects by their responses to questions revealing when subjects find forcible date rape, as described in a vignette, acceptable, for example, "if he has spent a lot of money on her," "if she had gotten him sexually excited," "if she had let him touch her breasts," "if they had dated each other for a long time," and "if she was drunk or stoned." *Id.*

students of the Introductory Psychology class.<sup>159</sup> Moreover, students in the Human Sexuality class were more certain that a depiction of forcible sex was rape than were students of the Introductory Psychology course.<sup>160</sup> This study suggests that simply teaching exactly what rape is under the law sensitizes students to more accurately identify rape and to find that behavior less acceptable.<sup>161</sup>

Another study tested the effect of a forty-five-minute "Date Rape Prevention" presentation on sexual coercion attitudes among high school students.<sup>162</sup> The lecture was designed to help teenagers explore basic values and norms, and how these shape personal views on sexuality and sexual aggression.<sup>163</sup> The lecture underscored the view that date rape is a logical extension of current sex-role socialization practices and looked at some of the causes of date rape such as a lack of respect for females, peer pressure among males to be sexually active, and peer pressure among females to appear more cautious about engaging in sex.<sup>164</sup> Results six weeks after the forty-five-minute program showed that male support for sexually coercive behavior had dropped from preprogram levels.<sup>165</sup>

A later study tested the effect of a twenty-five-minute rape education workshop containing a description of a fictitious rape scenario and then a critique by male and female students of various rape myths embedded in the story.<sup>166</sup> The story included, inter alia, the following myths: that women bring rape upon themselves through their clothes, demeanor, being alone, drinking, and being out at night; that only Caucasian, young, sexually promiscuous women get raped; and that rape primarily occurs at night, outdoors, by an African-American stranger using a lethal weapon.<sup>167</sup> Next, statistics on the prevalence of rape on college campuses and within the home were presented.<sup>168</sup> Male and female students were tested on their views

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159. *Id.* at 43-44.

160. *Id.* at 44.

161. Although this study lacked random assignment, the fact that the Forcible Date Rape Scale scores were comparable for students in both courses at the beginning of the semester tells us that those students who selected the Human Sexuality course were not already more rejecting of date rape attitudes. We still cannot know, however, whether those students who chose to take Human Sexuality chose to do so because they were the kind of students ripe for change regarding sex stereotypes and views on rape, or some other factor. Without a controlled experiment, this can never be known for certain.

162. Kathryn M. Feltey et al., *Sexual Coercion Attitudes Among High School Students: The Influence of Gender and Rape Education*, 23 *YOUTH & SOC'Y* 229 (1991).

163. *Id.* at 233-34.

164. *Id.*

165. *Id.* at 242-45.

166. Fonow et al., *supra* note 53, at 112.

167. *Id.*

168. *Id.*

about rape before the workshop and again three weeks later.<sup>169</sup> Rape myths were significantly reduced by the single twenty-five-minute workshop, resulting in a new understanding of rape: that (1) rapes are more likely to take place in a familiar setting (2) by a known person, and (3) are a form of social control over women.<sup>170</sup>

### C. *Research Implications*

The positive effects noted in this research suggest the potential success of an educational approach that inoculates potential consumers of media that might otherwise promote sexual violence. Several of the studies discussed above, as well as studies with relatively weak results, point to important issues on *how* an educational program should be approached.<sup>171</sup> One issue is whether and how males and females respond differently to different educational approaches. For example, some studies suggest that a confrontational approach to changing male attitudes about sexual violence may result in a boomerang effect.<sup>172</sup> That is, a confrontational approach may cause male subjects, in defense, to strengthen their original beliefs.<sup>173</sup> Thus, misconceptions about women desiring or deserving sexual violence may be enhanced when arguments against sexual violence are stated in a confrontational manner.<sup>174</sup>

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169. *Id.* at 113.

170. *Id.* at 117.

171. Also important to forming a successful educational approach is not just how an education program should be approached, but *why* any program works, that is, the mechanism by which any successful program may work. Much of the *why* regarding the educational approaches discussed above can be summarized by Malamuth's model of the impact of anti-sexual violence sex education on attitudes. See Fisher & Barak, *supra* note 11, at 308-09. Malamuth suggests six mediating perceptual and emotional processes: (1) Euphemistic Labeling, such as labeling aggression as violent rather than sexual; (2) Normative Perceptions, such as decreasing perceptions that aggression is normative; (3) Consequences, such as maximizing the understanding of the seriousness to the victim; (4) Responsibility Attribution, such as decreasing victim blame and increasing aggressor blame; (5) Valuation, such as decreasing positive reactions to aggression; and (6) Emotionality, such as increasing negative emotions to aggression. *Id.* at 309 (citing Neil M. Malamuth, *Do Sexually Violent Media Indirectly Contribute to Antisocial Behavior?*, in REPORT ON THE SURGEON GENERAL'S WORKSHOP ON PORNOGRAPHY AND PUBLIC HEALTH (E.P. Mulvey & J.L. Haugaard eds., 1986)).

172. The boomerang effect is where a subject's own antagonistic cognitive responses, known as counterarguments or unfavorable thoughts, are more persuasive to the subject than the arguments in the supposedly persuasive message; this causes the subject to adopt a position opposite to that being advocated in the message. PETTY & CACIOPPO, *supra* note 112, at 225 (summarizing the boomerang effect).

173. Fischer, *supra* note 53, at 45-46.

174. See *id.* at 44-46 (finding students exposed to a human sexuality class to be more rejecting of date rape, more sure that forcible date rape depiction is indeed rape, and slightly more liberal in attitudes toward women relative to students exposed to an introductory psychology class, however, finding the direct confrontational educational approach to be less

Another study suggests that while there is the potential to have a beneficial effect on a large number of people through social issue television programming, the potential for reinforcing rape myths and other negative stereotypes may exist in a subgroup of viewers.<sup>175</sup> Researchers randomly assigned participants to view or not view the NBC Sunday Night Movie *She Said No*.<sup>176</sup> For most viewers, viewing the movie increased awareness of date rape as a social problem and older females were less likely to attribute blame to date rape victims after viewing the movie.<sup>177</sup> Older men who viewed the movie, however, were somewhat more likely to blame women in date rape situations than older men who did not view the movie, although this difference fell just short of statistical significance.<sup>178</sup> Nevertheless, this trend for older men suggests that their selective perception may have allowed them to view the movie in a stereotypical fashion.<sup>179</sup> Accordingly, while such programming offers a tremendous potential for reaching a large audience, this potentially negative effect on a subgroup of men should be examined further.<sup>180</sup>

Moreover, many studies find at pretesting that men and women enter these educational programs from different attitudinal starting points. Perhaps not surprisingly, several studies have found at pretesting that, in general, men already endorse significantly more rape myths and rape-supportive attitudes than women.<sup>181</sup> While educational approaches may reduce attitudes supporting sexual violence in both men and women, post-test results show that men are still significantly more accepting of rape myths than women.<sup>182</sup> Accordingly, it may be necessary to approach men and women differently.<sup>183</sup>

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successful in males).

175. Barbara J. Wilson et al., *The Impact of Social Issue Television Programming on Attitudes Toward Rape*, 19 HUMAN COMM. RES. 179, 205-06 (1992).

176. *Id.* at 183-84.

177. *Id.* at 201.

178. *Id.* at 202-03.

179. *Id.* at 203.

180. Perhaps an educational message with the movie would be instructional enough to prevent a harmful effect. This option should be examined both from the substantive perspective of its effect and from the perspective of whether or not viewers, such as older men, would tune in to such a message if aired before the movie, during a commercial slot, or after the movie.

181. These studies find that women indeed believe many rape myths and hold many of the same rape-supportive attitudes as men, however, often at a significantly lower rate than men. Fonow et al., *supra* note 53, at 114; Lenihan et al., *supra* note 50, at 335; Feltey et al., *supra* note 162, at 237; Wilson et al., *supra* note 175, at 202.

182. See Fonow et al., *supra* note 53, at 117-18.

183. See *id.* at 118-19 (finding that a 25-minute rape education workshop was successful at changing some male and female attitudes about rape, however, "men were still more likely than women to believe that women have [a] secret desire to be raped, that a woman cannot be raped against her will, and that rape is only for sex" — accordingly suggesting that for

Studies on the effects of different influences on the education process suggest other important factors to consider in developing an inoculation strategy. For example, one study looked at the effects of social influence on a subject's sexual arousal and positive affect<sup>184</sup> upon reading a story with sexually explicit material containing violence.<sup>185</sup> The experimenter told the subjects that, because of the sensitive nature of the story they would read, it was necessary to inform them of previous responses by other young adults who had read the identical story.<sup>186</sup> The subjects were then given a bogus research report stating that young adults of the same sex as the subject had become either highly aroused or not very aroused from reading the story.<sup>187</sup> The subjects then read a story containing explicit heterosexual acts with violent behavior, such as tearing off the woman's clothes and forcing her to engage in sex acts.<sup>188</sup> Two different outcome versions of the story were used.<sup>189</sup> In one, the woman, though initially reluctant, eventually "gave in" and "expressed pleasure" (a rape myth).<sup>190</sup> In the other, the woman "remained reluctant and conveyed shock, disbelief and general distress."<sup>191</sup>

The effect of the *normative* information was far stronger than whether the woman expressed pleasure or distress.<sup>192</sup> The subjects who read that others were highly aroused by the story reported being significantly more aroused

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men it may be necessary to start rape education by more thoroughly addressing the theme of rape as sex, whereas women may be able to start with assumption that rape is a form of social control); Lenihan et al., *supra* note 50, at 331 (finding that women, but not men, readily changed rape-supportive attitudes in response to 50-minute class covering ways men and women affected by rape, rape statistics, definitions of date rape and other forms of rape, reasons why victims and offenders do not identify forced sex as rape, cultural reasons for date rape, characteristics and attitudes of offenders, effects of victimization, prevention suggestions and local help); *see also* Feltey et al., *supra* note 162, at 229 (finding males far more likely than females to support coercive sexual behavior against women and endorsing rape education for *both* males and females). Note also that the majority of the laboratory experiments, discussed *supra* notes 124-52 and accompanying text, used college age *men*, not women.

184. Positive affect was measured by the Feelings Scale including these ten affective items: excited, entertained, afraid, anxious, curious, bored, disgusted, nauseated, angry, and depressed. Jeanette Norris, *Social Influence Effects on Responses to Sexual Explicit Material Containing Violence*, 28 J. SEX RES. 67, 67 (1991) (citing D. Byrne et al., *Evaluations of Erotica: Facts or Feelings?*, 29 J. OF PERSONALITY & SOC. PSYCHOL. 111 (1974)).

185. *Id.*

186. *Id.* at 69.

187. *Id.*

188. *Id.* at 69-70.

189. *Id.* at 70.

190. *Id.*

191. *Id.*

192. *Id.* at 71-74. Regarding the pleasure versus distress story outcomes, subjects who read the pleasure ending (the rape myth version) perceived less force, although the man's behavior was identical in both versions. *Id.* at 74. Students who read the pleasure ending also perceived greater acceptability, greater enjoyment by the female character, and more desire for sex by the female character. *Id.*

than those in the low arousal condition who read that others were not very aroused by the story.<sup>193</sup> Moreover, these subjects reported significantly more positive affect than those who received the low arousal message.<sup>194</sup> The results suggest that “norms about consumption of [sexually violent] materials can be changed to limit expectations about their acceptability and potential for enjoyment.”<sup>195</sup> More specifically, this normative information can be given to “relatively inexperienced users [in society to] shape their attitudes and responses.”<sup>196</sup> In other words, a normative educational message can be used to inoculate potential consumers.<sup>197</sup>

While the studies discussed above suggest effective educational approaches, studies with weaker results are also useful in developing an educational inoculation approach. The weaker studies help rule out approaches that may be less effective than the approaches used in studies with heartier findings.<sup>198</sup> Without the critical assessment of all research in this field, however, there is the danger that poorly researched and poorly executed programs will so dilute the positive results of good programs that policymakers will throw the baby out with the bath water.<sup>199</sup> Accordingly,

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193. *Id.* at 72.

194. *Id.* at 73-75.

195. *Id.* at 75.

196. *Id.* at 75-76.

197. See Linz et al., *Sexual Violence*, *supra* note 11, at 159-60 (discussing studies on coviewing factors, showing the effectiveness of fellow audience members in either exacerbating or ameliorating negative effects of exposure to sexual violence).

198. For example, one study tested the effectiveness of the use of interactive improvisational theater. Patricia Frazier et al., *Evaluation of a Coeducational Interactive Rape Prevention Program*, 73 J. COUNSELING & DEV. 153, 154 (1994). Male and female counselors from the campus sexual violence program introduced the first scenario in which actors dramatized an acquaintance rape. *Id.* After this scene, the counselors asked the audience for feedback on how they thought the characters felt and how the actors could have behaved differently to prevent the rape. *Id.* The actors, staying in character, responded to questions and then reenacted the scene without the rape in accordance with the audience's feedback. *Id.* Immediately following the program, students endorsed fewer rape-supportive attitudes than did the control group; however, at the one-month follow-up the two groups no longer differed. *Id.* at 155-56.

This experiment raises some concerns regarding program execution. Without strong leadership, it is not clear that the reenactment of the date rape would not include the endorsement of rape myths. For example, by simply reenacting the scene in accordance with the audience's recommendations, there are no guarantees that the audience will not suggest the female not do certain behaviors which the audience wrongfully believes are associated with rape. Such an occurrence would only serve to strengthen rape myths amongst audience members. Moreover, it is not clear that the positive results did not stem from students parroting responses or responding to the perceived demands of the experimenters rather than actual learning. Lastly, such a theatrical approach is relatively costly. Accordingly, studies such as this suggest other approaches may be preferable for more lasting effects.

199. An example of a diluting study asked students to self report the type and amount of education about rape previously received. Ann M. Schaeffer & Eileen S. Nelson, *Rape-Supportive Attitudes: Effects of On-Campus Residence and Education*, 34 J.C. STUDENT DEV.

more research is needed before an educational program will be strong enough to withstand the anticipated criticism.<sup>200</sup> Thus, at this time, in what is misguidedly referred to as the “pornography debate,” we<sup>201</sup> need to focus spending research dollars and testing pilot programs directed at inoculation.

## VII. CONCLUSION

Media that may lead to violence against girls and women are widely available to children and adults. In addition to the many potentially harmful sexual forms of media that are not classified as obscene and are easily and frequently viewed by children,<sup>202</sup> other degrading images of girls and

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175, 176-77 (1993). It is impossible to accurately evaluate not only whether the subjects in this study actually received any rape education, but more importantly, the content or approach taken in any such rape education. Moreover, “amount” of rape education is deceptively comparative. Yet, even if subjects accurately recalled the number of hours of rape education which they had received, with varying content and media, “amounts” are not comparable. With possibly a vast array of rape education approaches and unreliable subject recall and reporting, it is not surprising that this study found an absence of an effect for education on rape and associated attitudes. *Id.* at 178.

200. Advocates of an educational approach will likely face many political hurdles. Sex education of any sort is highly controversial, let alone education that threatens the status quo of women as deserving and/or desirous of rape and of men as rightfully forceful regarding sexual acts. Any program will require the development of strategies that can be begun at all age levels, as children are often exposed to potentially harmful media at very young ages. *See supra* note 109 regarding children’s access and incidence of consumption of R-rated and X-rated films.

Given the correlation of rape-supportive attitudes and behavior with attitudes endorsing traditional male-female roles, *see supra* note 53, perhaps simply teaching and demonstrating the equality of the sexes would be a useful starting point. Likely far more controversial, however, is that, at some point, rape will have to be discussed as part of sex education, and sex education should play a vital role in giving students “prosocial” alternatives. While this is highly controversial, Linz and Donnerstein suggest that this is of vital importance because research on the effects of prosocial versus antisocial messages has shown that “prosocial TV programs [have] a greater effect on subsequent behavior than antisocial programs.” Linz & Donnerstein, *supra* note 19, at 283. Accordingly, the prosocial alternatives which would be best to present to children are healthy sexual alternatives. *See id.*; *see also* Intons-Peterson et al., *supra* note 52, at 256, 266 (finding a significant decline in belief in rape myths, compared to subjects not prebriefed, from *both* prebriefing rape education videotape and prebriefing sex education videotape discussing desirability of respecting and being considerate of one’s sexual partner).

While more research is needed, it seems likely that the level of explicitness in promoting prosocial attitudes would not need to be any greater than that observed in the potentially harmful media to which children are frequently exposed, such as in a PG-rated movie or many prime time television shows.

201. “We” refers to the legal and public policy community and all other disciplines and professions who contribute to the policy debate. As mentioned *supra* note 121 and accompanying text, some psychologists have called for an educational approach to mitigating the negative effects of viewing sexually violent materials.

202. *Supra* notes 108-09 and accompanying text (regarding harmfulness of materials other than legally obscene and regarding accessibility to children).

women abound. As one social scientist has stated, “[S]uch degrading images of women may actually be more dangerous than violent or degrading [sexually explicit media], because they are infinitely more common in our society and because sexist media - unlike [sexually explicit media - do] not wave a red flag that alerts us to take note of its content.”<sup>203</sup> This vast potential for harm compels us to look beyond the censorship debate for a solution that addresses the risk of harm without infringing on the fundamental right to free speech — a right that has been critical in allowing girls and women to make many of the gains towards equality that they once did not share with boys and men.

Rather than wasting more ink on the Dworkin-MacKinnon versus Civil Liberties debate, we need to focus on immunizing our children: an approach that can meet the concerns of both sides. Our efforts can now turn to researching the most effective means of inoculation and the most effective political strategy for gaining implementation of such programs. While legal scholars have been arguing about censorship, social psychologists have begun research with results too good to ignore. It is time to take advantage of this promising research. It is time to shift the debate to how to inoculate our children from society’s pornography.

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203. Fisher, *supra* note 105, at 159.

