

# PORNOGRAPHY: THE SYMBOLIC POLITICS OF FANTASY

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## I

### INTRODUCTION

This article examines symbolic politics of pornography in America. Public opinion polls and other data indicate that most Americans are as ambivalent about pornography as they are about most issues relating to sex, but an intense minority of 4 to 7 percent of the population sees pornography as a major problem facing the country—a more serious threat than economic problems, the environment, or even nuclear war. After examining the shape of contemporary public opinion, this article employs a very broad definition of pornography that would include most explicit materials intended to produce sexual arousal and discusses the traditional/conservative, libertarian, and various feminist approaches to pornography. Then the referential and condensation symbol aspects of the issue are discussed. Pornography is a very poor referential symbol because it means different things to different people and is probably synonymous with violent sexually explicit material for most Americans. Pornography is a condensation symbol for threats to the morals and lifestyles, and the social status of the morals and lifestyles, of its most concerned opponents. Following the discussion of the symbolic aspects of the issue, the histories of pornography and of conflicts over explicitly sexual material from the Ice Age to the 1980's are reviewed with special emphasis upon how technical and cultural changes affect the nature of pornography, the consumers of pornography, and movements to ban or limit pornography.

This article reviews academic studies on the effects of pornography (although such studies are largely irrelevant to the partisans on both sides of the debate over the regulation of pornography). As might be expected when a highly emotional and complex issue is involved, the results of these studies

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are mixed and can be cited as support for either side. The relationship between violent pornography and antisocial behavior is the clearest, but the results suggest that explicit depictions of violence are more a cause of violent behavior than explicit depictions of sex per se. Three myths about contemporary pornography—that it is more violent than in the past, that “snuff” films exist, and that child pornography is prevalent—are examined both for their veracity and for what they symbolize to antipornography activists.

Approaches to the pornography conflict are discussed in light of the symbolic nature of the conflict and changes in the audience due to technological changes (particularly the videocassette recorder). The advantages and disadvantages of official censorship, public education, and the local option inherent in the contemporary status quo are weighed. Although it will not make those most intensely opposed to pornography very happy, some version of the local option status quo is recommended, accompanied by restrictions on display, advertising, and the age of those allowed to purchase pornography.

## II

### CONTEMPORARY PUBLIC OPINION

Pornography is a contemporary problem for a small, but intense, minority of Americans, somewhat of a problem for a larger minority, something to be enjoyed by a larger, less intense minority, and a matter of ambivalence for most Americans. This pattern should not be surprising because we live in a sexualized, Puritan culture. Sex is used relentlessly and ubiquitously to sell and to entertain, but the discovery of sexual immorality can ruin the careers of presidential candidates and television evangelists. Americans are bombarded with sexual images and sexual information and at the same time warned about the dire moral, spiritual, and health hazards of unapproved sexual behavior.<sup>1</sup>

National public opinion polls from 1965 to 1987 indicate that a small minority of Americans are quite concerned about pornography or moral decline. When asked to name the most serious problems facing America, this minority cited pornography or moral decline while others were naming nuclear war, unemployment, inflation and other economic problems, racial tensions, and crime or violence.<sup>2</sup> The largest percentage to name pornography or moral decline at any time during the 1965 to 1987 interval was 9 percent in a poll taken in the spring of 1970. In that poll, Abelson, Cohen, Heaton, and Suder, interviewed a representative sample of 2,486

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1. For an excellent history of how contemporary sexual attitudes and behavior came to be public, commercialized, and politicized, see J. D'EMILIO & E. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (1988).

2. Much of this section can be found in J. McConahay, *Pornography and Public Opinion: How Many and Who Would Ban What?* 1-11 (1988) (Working Paper, Duke University, Institute of Policy Science and Public Affairs).

adult Americans.<sup>3</sup> After asking five questions about general reading and cinema viewing practices, interviewers asked the respondents to name the two or three most serious problems facing America at that time.<sup>4</sup> The interviewers had been trained to be alert for any responses implying that pornography was one of those problems. "Pornography" was explicitly named by 2 percent with 9 percent citing "moral breakdown." The problems considered most serious were the Vietnam war (54 percent), racial conflict (36 percent), the economy (32 percent), rebellious and disrespectful youth (23 percent), drug abuse (20 percent), and environmental pollution (19 percent). Moral decline ranked tenth and pornography as a separate category ranked thirteenth among the most serious problems of that era.<sup>5</sup> (The percentages add to more than 100 percent because people could specify more than one problem.)

The Abelson study concluded that the availability of pornography was not a major concern of most Americans.<sup>6</sup> If the emphasis in their conclusion is placed upon *most* (meaning a majority) and upon *major* (meaning a problem or concern ranking at or near the very top of all problems and concerns), their conclusion was correct.

National polls taken by the Gallup organization before and after the 1970 Abelson poll generally show even less concern about pornography. Three or more times every year, from 1965 to 1987, Gallup asked people to list the most serious problems facing the country at that time. So few people mentioned pornography that Gallup did not report pornography as a separate response to this open-ended question. However, Gallup did list "moral/religious decline" whenever some version of this problem was named with enough frequency to put it into the top problems mentioned by respondents in a given poll. During the 1965-1987 period, Gallup published the results for fifty-two polls in its *Gallup Opinion Index*. In forty-two of these, moral/religious decline (or decay) was mentioned by enough people to make it into the published report. The average percentage of respondents mentioning moral/religious decline (or decay) over this twenty-two-year period was a meager 2.96 percent.<sup>7</sup> The maximum was only 7 percent.<sup>8</sup> Furthermore, there was not a long term trend either up or down. The average for the first five published polls (1965/1966) was 3.0 percent. The mean for the five polls near the middle of this time series (1975/1976) was 4.4

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3. Abelson, Cohen, Heaton & Suder, *Public Attitudes Towards and Experience with Erotic Materials*, in 6 TECHNICAL REPORTS OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 1, 8 (1971) [hereinafter Abelson].

4. The exact wording of the question was "We are also interested in your opinion on national problems. Would you please tell me what you think are the two or three most serious problems facing the country today." *Id.* at 51, Table 53.

5. *Id.*

6. *Id.*

7. GALLUP OPINION INDEX REPORTS (July 1965 through Dec. 1987) (This is the average response rate for the 52 polls as computed by the author. When the response was not published in a poll it was assigned a 0% response rate.)

8. The maximum response rate did not reach significantly higher than 7%. See, e.g., GALLUP OPINION INDEX REPORT (Apr. 1975); GALLUP OPINION INDEX REPORT (Feb. 1984).

percent and the mean for the last five published polls (1985/1987) was 3.8 percent. If pornography is considered a subcategory of moral decline, or the major cause of it, or the major symptom of it, concern with the problem of pornography did not rank very high with the vast majority of Americans in the national samples from 1965 to 1987. Of course, if pornography is not considered a subcategory, cause, or symptom of moral/religious decline, it ranked even lower in its rating as a serious problem.

The big problems Gallup recorded over this period had to do with war and peace, drug abuse, violent crime, and fluctuations in the economy.<sup>9</sup> This does not mean that there are not more than 3 percent or 4 percent who are concerned about pornography. If respondents had been asked to name the top ten or top twenty problems facing the country, pornography might have shown up with more frequency in both the many Gallup samples and the specific sample of the Abelson study. Nevertheless, pornography is not a primary concern for many people when asked, in an open-ended question, to name the most serious problems facing the country. For a hard core of about 3 or 4 percent of the adults in this country, it has been a major concern consistently over the last twenty-two to twenty-three years.

The intensity of the feeling of the minority perceiving pornography as a serious problem is illustrated by two polls taken in California. In a poll conducted in 1983, 842 respondents were asked to choose one of five types of crimes that posed "the most serious problem today in your area in California."<sup>10</sup> The five crimes were: violent street crime; business crimes such as price fixing; importing and distributing cocaine; illegal gambling; and selling pornography. Only 4.6 percent of the respondents chose pornography while 41.2 percent chose violent street crime. But when those choosing pornography were asked what the punishment should be for persons convicted of selling pornography, a majority recommended the death penalty with some recommending castration or even beheading.<sup>11</sup> A similar question in a poll of over 1200 residents of California in late 1986 and early 1987 found only 1.6 percent choosing pornography as the most serious problem while 60.4 percent chose trafficking in cocaine.<sup>12</sup> Again, a majority of the respondents perceiving pornography as the most serious problem opted for death and even dismemberment as the appropriate punishment. Although the results of these two polls are consistent with the national data just presented, they are reported here to show the intensity of feeling among the minority of those concerned and not to estimate the size of the minority.

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9. J. McConahay, *supra* note 2, at 4.

10. The random sample telephone poll was conducted by Mervin Field and Associates under the supervision of the present author. Details of sampling, methodology, and a complete summary of the results can be found in J. McConahay, *supra* note 2, at 5 n.8, 8 table 3.

11. *Id.* at 5-6.

12. The random sample telephone poll was conducted by Action Surveys, Inc., under the supervision of the present author. Details of sampling, methodology, and a complete summary of the results can be found in J. McConahay, *supra* note 2, at 7 n.9, 8-9.

The other end of the spectrum is illustrated by the results of a 1985 national poll conducted for *Newsweek* by the Gallup organization. It found that 9 percent of the total sample and 40 percent of those who owned a video cassette recorder (VCR) had rented or purchased a pornographic video during the preceding year.<sup>13</sup> In 1987, *Time* magazine estimated that pornographic videos accounted for \$1 billion per year in rentals and sales.<sup>14</sup> Furthermore, *Time* reported that in 1985 when Manhattan Cable, a subsidiary of Time, Incorporated, offered its 228,000 subscribing households an option of a "lock box" so that people could scramble Channel J (the "blue" channel), only nineteen boxes were installed.<sup>15</sup>

Most Americans are ambivalent or divided on the issue of pornography. The Gallup Poll cited above found that 52 percent of those surveyed in 1985 wanted community standards regarding the "sale of sexually explicit materials" to stay the same or become less strict, up from 41 percent in a 1977 Gallup Poll.<sup>16</sup> A sizable minority, 43 percent, wanted stricter standards, slightly down from the 45 percent favoring stricter standards in 1977.<sup>17</sup> A very clear majority of 78 percent did not want a complete ban on magazines showing nudity, a majority of 52 percent did not want a ban on magazines showing adults having sexual relations, and 66 percent would not ban the sale or rental of X-rated video cassettes for home viewing.<sup>18</sup> On the other hand, 73 percent would ban magazines showing sexual violence, and 63 percent would ban sales or rentals of video cassettes showing sexual violence.<sup>19</sup>

The term "pornography" itself is clearly a negative symbol for many people. If the wording of the Gallup questions had used the word "pornography" instead of "X-rated" or "sexually explicit materials," the results probably would have shown far less tolerance for the materials than appears above. A random sample of 100 people in Orange County, North Carolina, was interviewed in May 1988. One half of the randomly assigned participants were asked the Gallup questions using the Gallup terminology, while the other half of the participants were asked the questions using the term "pornography."<sup>20</sup> The result showed a dramatic increase in the percentages of those who would ban the material when it was labeled pornographic over the percentages of those who would ban it when it was labeled X-rated or sexually explicit. Furthermore, the percentages who would ban simple pornographic material resembled those who would ban violent pornographic material. For example, while only 32 percent would ban "X-rated video cassettes for home viewing," 60 percent would ban the product

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13. *The War Against Drugs*, NEWSWEEK, Mar. 18, 1985, at 61 [hereinafter *War Against Drugs*].

14. Carliss, *Turned On? Turn It Off*, TIME, July 6, 1987, at 72.

15. *Id.* at 73.

16. *War Against Drugs*, *supra* note 13, at 60.

17. *Id.*

18. *Id.*

19. *Id.*

20. The random sample telephone poll was conducted by Data Associates, Inc., of Chapel Hill under the supervision of the present author. Details of sampling, methodology, and a complete summary of the results can be found in J. McConahay, *supra* note 2, at 28-35.

when the identical question was worded "pornographic cassettes for home viewing," and 62 percent would ban "video cassettes featuring violent pornography" which does not differ significantly from the 56 percent who would ban "video cassettes featuring sexual violence."<sup>21</sup> Clearly, there are many more people who would ban pornography than would ban sexually explicit materials, probably because pornography symbolizes violence as well as having the other negative associations discussed below.

Since pornography is such a negative symbol and certain social groups (even though a minority) feel very intensely against it, there is the potential for it to become a very divisive issue. This paper will examine pornography as a symbolic political issue, and possible policy options will be examined on the basis of considering pornography as a symbolic issue. First, however, the subject matter itself must be defined.

### III

#### PORNOGRAPHY DEFINED

The term "pornography" is very ambiguous because it carries the burden both of describing the material and evaluating it at the same time. There are probably as many definitions of pornography as there are people who have written about it.

The word "pornography" comes from a Greek word—*pornographos*—which translated literally would be "writing of harlots,"<sup>22</sup> and though erotic talking, drawing, and writing have been around almost as long as prostitution, the specific term "pornography" is of rather recent origin. The first definition of pornography appeared in a medical dictionary in 1857 to describe public health studies of prostitutes.<sup>23</sup> Today, pornography is frequently used interchangeably in everyday discourse with the word "obscenity," which is derived from a Latin root word—*obscenus*—meaning abhorrent to morality, disgusting to the senses or designed to incite lust or depravity.<sup>24</sup> Of course, something could be pornographic without being obscene and not all things obscene are pornographic.

The three-part pornography test of *Miller v. California*,<sup>25</sup> the current legal definition, will not be used because it is too narrow for our purposes in this paper. According to *Miller*, a work is obscene and can be censored, and those associated with it punished, if all three of the following conditions are met:

- (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,

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21. *Id.* at 31.

22. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1767 (1981).

23. W. KENDRICK, *THE SECRET MUSEUM* I, 19-23 (1987).

24. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1557 (1981).

25. 413 U.S. 15, *reh'g denied*, 414 U.S. 881 (1973).

(c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>26</sup>

This may be the current legal definition in the United States, but there are so many vague terms in the definition ("contemporary community standards," "prurient," "serious," and so forth) that I suspect that most people, including most jurors and most judges, use Justice Potter Stewart's test: "I know it when I see it . . ."<sup>27</sup>

Pornography may be viewed from Weston LaBarre's cultural relativist approach: "[N]othing is obscene that has not been previously defined culturally as such."<sup>28</sup> The Kronhausens attempted a more psychological approach: Pornography is writing that is unrealistic and infantile. They admit, however, it is difficult to distinguish unrealistic and surrealistic writing and sexual fantasy.<sup>29</sup> Some feminists have attempted to distinguish between "erotica," which depicts, joyful, equal status sexual encounters between lovers, and "thanatica" or "pornography," which depicts loveless, often violent sexual acts between unequal participants.<sup>30</sup> Other feminists have defined pornography as explicit representations of sexual behavior that degrade, demean, and subordinate women.<sup>31</sup>

This is just a sample of the many definitions of pornography that could be used. However, not one of these definitions is of much help for purposes of this article. The literal or dictionary definition is too narrow. The legal, the psychological, and the feminist definitions are all too narrow and too vague. The operational, egocentric, and cultural relativist definitions are also too vague. Furthermore, the legal definition is under attack from all sides: from the traditionalists and some feminists who regard it as too narrow, and from the civil libertarians, artists, and publishers who regard the legal definition as too broad and vague. These positions will be defined and discussed below.

For now, pornography will be defined as *any sexually explicit verbal (written/oral) or visual material (including films, plays, and other performances) created with the intention of producing sexual arousal.*<sup>32</sup> This is a very broad definition of pornography making it virtually synonymous with the less value laden term "erotica." It would include all "hard-core" and "soft-core" pornography, which will not be defined, many "romance novels," possibly most television soap operas, and much prime time television depending upon how the term

26. *Id.* at 24 (citation omitted) (quoting in part *Kois v. Wisconsin*, 408 U.S. 299, 230 (1972) (in turn quoting *Roth v. United States*, 354 U.S. 476, 489 (1957))).

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

28. La Barre, *Obscenity: An Anthropological Appraisal*, 20 *LAW & CONTEMP. PROBS.* 533, 533 (1955).

29. P. KRONHAUSEN & E. KRONHAUSEN, *EROTIC FANTASY* at XV (1969).

30. See G. STEINEM, *OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS* 222, 227 (1983); Tong, *Women, Pornography, and the Law*, *ACADEME*, Sept.-Oct. 1987, at 14, 14.

31. Longino, *Pornography, Oppression, and Freedom: A Closer Look*, in *TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY* 40-45 (L. Lederer ed. 1980); MacKinnon, *Not a Moral Issue*, 2 *YALE L. & POL'Y REV.* 320, 321 n.1 (1984).

32. Though sorely tempted, the author has rejected two cynical definitions of pornography. One would be an operational definition: Something is pornographic or obscene if the U.S. Supreme Court says it is. The other would be the egocentric definition: Erotic art is sexually explicit material I like and pornography is that sort of material I do not like.

“explicit” is interpreted. It also has the problem of including an element of “intent”. In this regard, it does not differ from the legal and moral distinctions among first degree murder, second degree murder, and manslaughter. This definition was chosen because it is the implicit definition used by many who are opposed to pornography (explicit erotica) in American society. For example, when the staff of the Meese Commission sent letters to a number of major corporations including CBS, Incorporated, Southland Corporation (owner of the 7-Eleven chain), and People’s Drugs, accusing them of selling pornography, it was not “hard-core” pornography that became the central issue, but *Playboy* and *Penthouse* magazines.<sup>33</sup> While these magazines have pictures of vaginas and (unerect) penises in close-up detail, they also have articles, fiction, and non-erotic art that would potentially allow them to pass the serious literary, artistic, political, or scientific value test for the magazine as a whole required by *Miller*.<sup>34</sup>

With the subject matter defined, the next section presents a brief summary of the basic philosophical positions with regard to pornography’s nature, effect, and what should be done about it.

#### IV

#### PHILOSOPHICAL POSITIONS

Traditionally there have been basically two philosophical positions with regard to pornography: the traditional or conservative position and the civil libertarian stance. In recent years, a number of new approaches to pornography have been developed as a result of the feminist movement. These approaches will be discussed at the end of this section. These philosophical approaches are the positions adhered to or advocated by people who have studied the issue and arrived at a conclusion on the basis of a principled, coherent argument concerning the public interest as well as perhaps the interest of an important personal reference group: religion/the establishment, authors/publishers, or women as a class, to name just a few of the many possible reference groups. Usually only scholars and other elites have the leisure and intellectual training to do this and there are not very many of them (us) in American society.<sup>35</sup> In the general public, symbolism,

33. See Baron, *Immoral, Inviolable or Inconclusive*, SOCIETY, July/Aug. 1987, at 6, 11; P. NOBILE & E. NADLER, UNITED STATES OF AMERICA VS. SEX: HOW THE MEESE COMMISSION LIED ABOUT PORNOGRAPHY 201-07 (1986); Vance, *Porn in the U.S.A.: The Meese Commission on the Road*, THE NATION 65, 77 (Aug. 2/9, 1986).

34. The motion picture industry has been similarly attacked. Antipornography feminist groups have protested such “legitimate” movies as *Looking for Mr. Goodbar*, *Bloodline*, and *Dressed to Kill*. Penrod & Linz, *Using Psychological Research on Violent Pornography to Inform Legal Change*, in PORNOGRAPHY AND SEXUAL AGGRESSION 247, 271-72 (N. Malamuth & E. Donnerstein eds. 1984). In the early 1970’s, the U.S. Supreme Court had to intervene on behalf of the popular film *Carnal Knowledge*. The Court held that the movie was protected under the first and fourteenth amendments, declaring that “nudity alone is not enough to make material legally obscene under the *Miller* standards.” *Jenkins v. Georgia*, 418 U.S. 153, 161 (1974).

35. Converse, *The Nature of Belief Systems in Mass Publics*, in IDEOLOGY AND DISCONTENT 206, 246 (D. Apter ed. 1964); see also C. ELDER & R. COBB, THE POLITICAL USES OF SYMBOLS 62 (1983).



self-interest, or class interests are more likely to determine issue positions than logical, principled reasoning, whether the issue be pornography or another political issue such as busing for school desegregation.<sup>36</sup>

#### A. The Traditional/Conservative Position

The traditional/conservative view defines sex as a sacred, beautiful act that must take place only within the context of a deep commitment and (heterosexual) marriage.<sup>37</sup> The Roman Catholic version requires further that the act be only for procreation.<sup>38</sup> Under the conservative view, pornography is immoral in and of itself *and* because it leads to acts that violate the sacredness of sex: fornication, masturbation, and perversion, to name only a few.<sup>39</sup> Furthermore, pornography unleashes all those shameful, libidinal desires that any civilized society must repress in order to exist.<sup>40</sup> It also destroys the nuclear family which is the bedrock of Western civilization.<sup>41</sup> Pornography causes men to rape women, molest children,<sup>42</sup> and to treat women as mere sex objects who have been dehumanized.<sup>43</sup>

It therefore follows that the law must be used both as "morality's handmaiden,"<sup>44</sup> to protect those innocents who would be led astray and as the preserver of order, to protect women, children, the family, and society by prohibiting and censoring sexually explicit books, plays, films, magazines, and other materials.<sup>45</sup> Constitutional objections to censorship are countered either by the assertion that pornographic materials cannot be considered speech (being more akin to sexual aids than cognitive communications) or, even if pornography is speech, that the first amendment was never intended to protect *all* forms of speech.<sup>46</sup> Robert Bork suggests that the regulation of obscenity should require no greater barriers than protecting the environment, arguing that "constitutionally, art and pornography are on a par with industry and smoke pollution."<sup>47</sup> Bork's interpretation is consistent with the *Miller* decision, which explicitly recognizes that obscenity is not protected by the

36. See generally McConahay, *Self-Interest Versus Racial Attitudes as Correlates of Anti-busing Attitudes in Louisville: Is it the Buses or the Blacks?*, 44 J. POL. 692, 715-16 (1982); C. ELDER & R. COBB, *supra* note 35, at 60-63.

37. See, e.g., Berns, *Pornography v. Democracy: The Case for Censorship*, THE PUBLIC INTEREST 3-24 (1971).

38. A HANDBOOK OF THE CATHOLIC FAITH 325-42 (Rev. J. Greenwood ed. 1956).

39. Kristol, *Pornography, Obscenity, and the Case for Censorship*, N.Y. Times, March 28, 1971, § 6 (Magazine) at 24, 112.

40. van den Haag, *Is Pornography a Crime?*, ENCOUNTER 29, 53 (1967).

41. Burstyn, *Political Precedents and Moral Crusades: Women, Sex and the State*, in WOMEN AGAINST CENSORSHIP 4, 17 (V. Burstyn ed. 1985).

42. E. DONNERSTEIN, D. LINZ & S. PENROD, THE QUESTION OF PORNOGRAPHY 1 (1987) (citing Kilpatrick, *Decriminalization: Pot, Yes; but Pornography? No!*, Lincoln (Nebraska) Evening J., Jan. 3, 1975).

43. Kristol, *supra* note 39, at 24.

44. Tong, *supra* note 30.

45. See generally Berns, *supra* note 37; Kristol, *supra* note 28, at 114; van den Haag, *supra* note 40, at 29, 53; Kilpatrick, *supra* note 42.

46. See Bork, *Neutral Principles and Some First Amendment Problems*, 4 IND. L.J. 1, 21 (1971) ("Constitutional protection should be accorded only to speech that is explicitly political.").

47. *Id.* at 29.

first amendment,<sup>48</sup> and further expands that definition to include all forms of nonpolitical speech.<sup>49</sup> The result of this analysis is that pornography may be properly censored without defining it in terms other than its lack of political significance. Such an approach may have the positive effect of eliminating much of the uncertainty posed by *Miller*, but the price seems to be permissive censorship with little restraint.

### B. The Civil Libertarian Position

Many who adopt the civil libertarian position (perhaps a large majority) accept the sacredness of sex assumption, but reject the other assertions of the traditionalists about the effects of pornography. Others reject even this assumption.<sup>50</sup> Those who reject the sacredness assumption argue: "first, that good sex is a matter of aesthetics not ethics, of taste not virtue; second, that sexually explicit material invites us to try out a variety of sexual experiences and to overcome any number of our unhealthy Puritanical and Victorian sexual inhibitions . . . ."<sup>51</sup> These radical libertarians see pornography as political speech aimed at throwing off the social controls imposed upon essentially private behavior by the conservative establishment in order to control America's political and economic behavior.

Regardless of their differences on the sacredness of sex assumption, the civil libertarians are united in rejecting or minimizing the empirical claims of harm to individuals and society made by the traditionalists.<sup>52</sup> They invoke John Stuart Mill's "Harm Principle"<sup>53</sup> to argue that the dangers of censorship outweigh any threats to morality or offense to the sensibilities of the prudish (and now some feminists).<sup>54</sup>

### C. The Feminist Positions

The traditionalists/conservatives debate with the civil libertarians is of long standing, extending back to at least the time in the early nineteenth century when the first anti-obscenity bills were passed in England and then in the United States. All of the arguments were thoroughly presented in the debates between H.L.A. Hart and Lord Patrick Devlin in the early 1960's.<sup>55</sup> Then, in the middle to late 1970's, a third force entered the debate from the

48. See *Miller v. California*, 413 U.S. 15, 23 (1973).

49. *Id.* at 27-29.

50. See Berger, *Pornography, Sex, and Censorship*, in *PORNOGRAPHY & CENSORSHIP* 83 (D. Copp & S. Wendell eds. 1983).

51. Tong, *supra* note 30.

52. Berger, *supra* note 50, at 104 n.45.

53. "[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." J. MILL, *ON LIBERTY* 68 (G. Himmelfarb ed. 1984) (1st ed. 1859).

54. Berger, *supra* note 50, at 99; Tong, *supra* note 30, at 21; G. GORDON, *EROTIC COMMUNICATIONS: STUDIES IN SEX, SIN, AND CENSORSHIP* 304 (1980); W. KENDRICK, *supra* note 23, at 169-70.

55. H. HART, *LAW, LIBERTY AND MORALITY* (1963); P. DEVLIN, *THE ENFORCEMENT OF MORALS* (1965).

women's movement. As Rosemary Tong described it: "This [new, female] voice sang neither the conservative praises of public morality nor the libertarian praises of individual freedom; rather it pleaded for equality for women."<sup>56</sup> But, to continue the metaphor, it was not a unified chorus of voices.

The issues are complex. Emotional and intellectual intensity is high and pornography may be the most divisive issue facing the feminist movement today. (It appears so to this outside observer.) Two organizing dimensions will be used to present briefly the various positions on this issue: (1) the nature of pornography and its effects upon women, and (2) what should be done about it.<sup>57</sup>

There are feminists who think that pornography is bad and that it should be censored or otherwise eliminated. Pornography, sometimes distinguished from erotica and sometimes not, is sexually explicit pictures or words that degrade and demean women, portraying them in the role and status of sexual objects to be exploited and manipulated by men.<sup>58</sup> To Susan Brownmiller, "[p]ornography is the undiluted essence of anti-female propaganda."<sup>59</sup> Pornography, especially violent pornography, causes men to rape and commit other crimes of violence against women.<sup>60</sup> It libels women as a group and supports sexism which reinforces the oppression and exploitation of women.<sup>61</sup> Therefore, it should be censored or otherwise eliminated.<sup>62</sup>

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56. Tong, *supra* note 30.

57. There is space in this paper to devote only a few paragraphs to the feminist movement and to cite only a few of the feminists who have taken sides in the pornography debate. Anyone cited here as being a feminist, has labeled herself a feminist regardless of how other parties to the debate may feel. I have found no men who refer to themselves as feminists and have written on the topic of pornography although there remains the possibility that some exist.

58. Longino, *supra* note 31.

59. S. BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 394 (1975).

60. *Id.* at 394-96.

61. Longino, *supra* note 31; Clark, *Liberalism and Pornography*, in *PORNOGRAPHY & CENSORSHIP*, *supra* note 50, at 45, 53.

62. Longino, *supra* note 29, at 53; Clark, *supra* note 54, at 57; A. DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 224 (1981); C. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 206-13 (1987).

One of the means proposed for controlling pornography is the "civil rights legislation" approach of Dworkin and MacKinnon who argue that pornography is a form of sex discrimination and its regulation therefore should not be viewed from the traditional focus on censorship and the first amendment. A. DWORKIN & C. MACKINNON, *THE REASONS WHY: ESSAYS ON THE NEW CIVIL RIGHTS LAW RECOGNIZING PORNOGRAPHY AS SEX DISCRIMINATION* 2-4, 68 (1985). Others do see the net effect as censorship. Tong, *supra* note 30, at 21; Grossman, *The First Amendment and the New Anti-Pornography Statutes*, *NEWS FOR TEACHERS OF POLITICAL SCIENCE*, Spring 1985, at 16-21; Duggan, Hunter & Vance, *False Promises: Feminist Anti-Pornography Legislation*, in *WOMEN AGAINST CENSORSHIP*, *supra* note 41, at 130, 130-51. A law based on the civil rights approach of Dworkin and MacKinnon was passed twice in Minneapolis with strong local feminist support and vetoed twice. Grossman, *supra*, at 16. In Indianapolis, it was passed with a great deal of fundamentalist and other right-wing support, but without any local feminist support. Duggan, Hunter & Vance, *supra*, at 132-33. The Indianapolis law was taken immediately to court by the American Booksellers Association and others and declared unconstitutional by Sara Evans Barker, a Reagan-appointed federal judge, in *American Booksellers Ass'n v. Hudnut*, 598 F. Supp. 1316 (S.D. Ind. 1984). Her decision was upheld by the Court of Appeals, *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), and the decision was allowed to stand by the U.S. Supreme Court in February 1986, *American Booksellers Ass'n v. Hudnut*, 475 U.S. 1132 (1985).

Another approach is advocated by Robin Morgan in her article "Theory and Practice: Pornography and Rape."<sup>63</sup> Although Morgan accepts the reality of the threats to women outlined above, she "abhors censorship" (though she confesses to having once endorsed it) and warns that a "phallogocentric culture" is likely to ban books by lesbians and feminists before it bans male oriented violent pornography.<sup>64</sup> She recommends direct action such as picketing and putting pressure on stores that sell pornography.<sup>65</sup>

A third feminist view regards pornography and violence against women as the product and not the cause of a sexist culture.<sup>66</sup> These feminists point out that the women's movement has been sidetracked before into single issue crusades intended to end discrimination against women—the Temperance Movement<sup>67</sup> and the Social Purity Movement<sup>68</sup>—both of which occurred at the end of the nineteenth century and the beginning of the twentieth century. In both instances, women's movements were co-opted by conservative (white) males.<sup>69</sup> These feminists, who recommend attacking economic and other forms of inequality, believe that pornography will then take care of itself.<sup>70</sup> The material now termed pornography may even become cosexual erotica for the mutual pleasure of couples.<sup>71</sup>

The last position to be summarized regards pornography as another form of male entertainment that is not particularly harmful. Women have their soaps and romance novels that arouse them sexually.<sup>72</sup> Men and women have biological differences in what arouses them, modified somewhat by cultural pressures.<sup>73</sup> So if men want (need) explicit sexual images (as do some women), then "live and let live" in this realm while concentrating on the structural and economic factors supporting inequality.<sup>74</sup>

## V

### SYMBOLIC POLITICAL ISSUES

Now that we have introduced the controversy and examined the opposing positions, we will turn to the analysis of pornography as a symbolic political

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63. Morgan, *Theory and Practice: Pornography and Rape*, in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY, *supra* note 31, at 137.

64. *Id.* at 137.

65. Morgan, *How to Run the Pornographers Out of Town (And Preserve the First Amendment)*, Ms., Nov. 1978, at 8, 55, 79-80.

66. Burstyn, *supra* note 41, at 24; Diamond, *Pornography: Image and Reality*, in WOMEN AGAINST CENSORSHIP, *supra* note 41, at 40, 49.

67. J. RUSS, *MAGIC MOMMAS, TREMBLING SISTERS, PURITANS, AND PERVERTS* (1985). For a book-length analysis of the Temperance Movement and the role of women in it, see J. GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* (2d ed. 1986).

68. Burstyn, *supra* note 41, at 12.

69. *Id.*

70. *Id.* at 24-30.

71. Gary, *Pornography and Respect for Women*, in PORNOGRAPHY AND CENSORSHIP, *supra* note 50, at 61, 76.

72. H. HAZEN, *ENDLESS RAPTURE: RAPE, ROMANCE, AND THE FEMALE IMAGINATION* 1-14 (1983).

73. B. FAUST, *WOMEN, SEX, AND PORNOGRAPHY* 103 (1980).

74. H. HAZEN, *supra* note 72, at 124.

conflict or symbolic issue. A symbolic issue is one on which people take sides not on the basis of their self or economic class interest, but on the basis of what the issue symbolizes to them.<sup>75</sup> This does not rule out the possibility that people with leisure and intellectual tools to analyze the issue may arrive at a conclusion based upon logical analysis, but (as indicated above) most people do not have this luxury and make their decisions (or nondecisions) on the basis of symbols or class interests.

No single political issue is purely a matter of self or economic class interest or of symbolism. A given issue may be more loaded with one factor or another. The debate over animal rights must come as close to being purely symbolic as any. There are no nonhuman animals on the governing boards of the various animal rights organizations. The creatures most directly affected by the outcome of the conflict are not involved in the debate. Nevertheless, some leaders of the animals rights movement draw salaries from movement organizations and thus have an economic self-interest in advancing the cause. Also, those who do research with animals have a self-interest in opposing the excesses of the animals rights movement. These people would constitute a tiny fraction of those who take sides on the issue, however. Debates about tax policies are very heavily loaded with class interest and self-interest factors, but many times people with high incomes will support "progressive" income tax plans because of what they symbolize about the justness of the tax structure.

The pornography issue and most moral or lifestyle issues are heavily symbolic. For those who want to prohibit a certain vice, it is not enough that they themselves do not gamble or drink or rent X-rated videos. They want the vice prohibited because of what it symbolizes about them or the society in which they live. Supporters of a particular vice may include those with a self-interest because they want to gamble, drink, rent pornography, or make money providing the vice for others. However, others with no personal interest in the vice will oppose its prohibition on the basis of what prohibition symbolizes to them about tolerance and freedom in our society. Symbolic politics theory has not reached the level of theoretical rigor where we can quantify how much of an issue is symbolic and how much is self or economic class interest. The pornography issue is much more symbolic than are issues of taxation, but less symbolic than are animal rights, although closer to the latter.

### A. Symbolic Politics Theory

There is not one body of theory which can be called symbolic politics theory. It is a collection of hypotheses drawn from sociology, political science, and social psychology that are not mutually exclusive, but are applied in varying degrees in the analyses of different political issues. The following

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75. M. EDELMAN, *THE SYMBOLIC USES OF POLITICS* 37-38 (1964); Sears, Law, Tyler & Allen, *Self-Interest vs. Symbolic Politics in Policy Attitudes & Presidential Voting*, 74 *AM. POL. SCI. REV.* 670, 671 (1980); McConahay, *supra* note 36; *see also* J. GUSFIELD, *supra* note 67.

section of this article will summarize briefly the hypotheses that are most relevant to the pornography issue.

Words can serve as symbols. In symbolic politics, there are two types of symbols: referential symbols and condensation symbols.<sup>76</sup> "Referential symbols are economical ways of referring to objective elements in objects or situations: the elements identified in the same way by different people."<sup>77</sup> "Liquor" refers to a beverage with some minimum amount of ethyl alcohol content. Condensation symbols evoke emotions. They can condense into one sign: fear, pride in one's group or lifestyle, patriotism, status or prestige or the lack thereof, remembrances of past glories or humiliations, all the things that go bump in the night, and all the things that make us happy. Some words serve as both referential and condensation symbols. "Liquor" can serve for some people as a condensation symbol for sin, social decay, and an improvident lifestyle as well as refer to a beverage. The same word or sign may serve as a different condensation symbol for other people. "Liquor" may evoke fun, sophistication, and relaxation with friends. "Pornography" makes a very poor referential symbol because of the difficulty of defining the objective entity to which it refers, as seen above. For this very reason, it makes an excellent condensation symbol.

The actions taken by government can also have symbolic importance. They can symbolize that something is being done to protect us from our existential anxieties and to deal with specific problems or threats we perceive.<sup>78</sup> Passing laws, however ineffective, and appointing commissions, however irrelevant or incompetently they are staffed, serve this function admirably. When the public is worried about riots, a riot commission is appointed.<sup>79</sup> When the concern is pornography, a pornography commission is appointed. Government actions may solve or ameliorate the problem, but that is not their symbolic importance.

The actions of government confer economic benefits upon certain individuals and classes, but government actions also can confer prestige and status on certain people, groups, or lifestyles.<sup>80</sup> When laws are passed that legitimize one lifestyle and delegitimize another, for example laws prohibiting the use of alcohol, those whose lifestyle is legitimated (the "drys") feel that they have enhanced status, and those whose lifestyle is delegitimated (the "wets") feel their status has been reduced. Class politics involve people engaging in political actions to gain economic benefits. Status politics involve people seeking to gain prestige.<sup>81</sup> Status politics are always symbolic politics, because that is what status is all about: symbols.

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76. M. EDELMAN, *supra* note 75, at 6.

77. *Id.*

78. *Id.* at 9.

79. D. SEARS & J. MCCONAHAY, *THE POLITICS OF VIOLENCE: THE NEW URBAN BLACKS AND THE WATTS RIOT 19-33* (1973).

80. J. GUSFIELD, *supra* note 67, at 168, 175-76.

81. *Id.* at 17.

Myths and rituals have symbolic importance. Myths provide “culturally defined truths in the forms of stories, parables and aphorisms that simplify, highlight or dramatize” basic shared beliefs in a culture or subculture.<sup>82</sup> Rituals are behavioral versions of myths in which beliefs are acted out. Myths and rituals give symbolic life to the values and beliefs from which public opinion emerges.<sup>83</sup> They provide group solidarity.<sup>84</sup> Myths, especially, can be used to quiet dissidents, to protect the status quo,<sup>85</sup> or to enrage, inspire, or mobilize to action.<sup>86</sup> Three myths about modern pornography and the ritualistic importance of pornography commissions will be discussed below.

Group identification, values, beliefs, myths, and attitudes toward symbols are acquired during childhood socialization.<sup>87</sup> By the process of both classical and operant conditioning, people acquire general affective attachments or aversions to certain groups, values, behavior, or other social stimuli at a very early age.<sup>88</sup> When in adulthood, they are required to make political decisions, or take other actions, they do so on the basis of stimulus generalization and cognitive consistency pressure.<sup>89</sup> This is not to say that people never change values, political allegiances, or attitudes as adults. There are numerous examples of individual conversions (Ronald Reagan for example) and mass political resocialization,<sup>90</sup> but these are rare, and that is what makes them so interesting. For most people, basic political attitudes and symbol attachments are established by late adolescence and stay with them for the rest of their lives.<sup>91</sup> For the symbolic analysis of pornography, the most important products of early socialization are attitudes toward sex, gender, and religion.

A word about social science reductionism is in order here. To analyze the pornography issue as a symbolic issue is not to deny that people feel moral outrage on occasions when they are confronted with the open sexism found in much pornography in the same way that Jewish Holocaust survivors in Skokie, Illinois, were hurt by the sight of Nazis marching and displaying placards.<sup>92</sup> The point is that other factors such as fear, status anxiety, and affective responses based on early socialization are also present. Furthermore, to analyze the politics of pornography as a symbolic issue is not intended to trivialize it, but rather to enrich our understanding of it. Symbolic issues involving morals or lifestyles are usually very intense and difficult to solve by

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82. C. ELDER & R. COBB, *supra* note 35, at 54.

83. W. BENNETT, PUBLIC OPINION IN AMERICAN POLITICS 380 (1980).

84. See M. EDELMAN, *supra* note 75, at 16-18.

85. *Id.* at 18; see also B. MALINOWSKI, MAGIC, SCIENCE AND RELIGION AND OTHER ESSAYS 76-79 (1948).

86. See M. EDELMAN, POLITICS AS SYMBOLIC ACTION: MASS AROUSAL AND QUIESCENCE 1 (1971).

87. D. SEARS & J. MCCONAHAY, *supra* note 79, at 40-48, 191.

88. N. MILLER & J. DOLLARD, SOCIAL LEARNING AND IMITATION (1941); J. DOLLARD & N. MILLER, PERSONALITY AND PSYCHOTHERAPY: AN ANALYSIS IN TERMS OF LEARNING, THINKING AND CULTURE (1950) (detailed, book-length theoretical analyses of how basic personality structures, attitudes, and values are acquired through social learning).

89. See Sears, Law, Tyler & Allen, *supra* note 75.

90. See D. SEARS & J. MCCONAHAY, *supra* note 79, at 44, 46-48, 80-81, 186, 200.

91. *Id.* at 40-46.

92. See D. DOWNS, NAZIS IN SKOKIE: FREEDOM, COMMUNITY AND THE FIRST AMENDMENT (1985).

compromise. It is difficult to find trade-offs for those who think that people are sinning or that "the family" is being destroyed. It is similarly difficult to find trade-offs for those who think that their rights to read, watch, or write what they wish are being infringed.

## B. The History of Pornography and Pornography Conflicts

We turn now to a brief history of pornography, and attempts at its suppression, in order to see where we have come from before analyzing the pornography issues of today.

Every development in art, science, technology, demography, and culture that had the potential to be used for sexual arousal and enjoyment has been used for that purpose. This is true of pottery, painting, perfume, articles of clothing and other means of body adornment, printing, photography, cinema, the VCR, the telephone, the computer, and the credit card. The hologram will probably be used for this purpose as well, if it has not been already.

In recent Anglo-American history, whenever technological or cultural changes produced either a potentially more vivid or arousing pornography or made it available to people who previously were not exposed to it, there has been some sort of attempt to limit its availability.<sup>93</sup> As with the other vices discussed in this issue of *Law and Contemporary Problems*,<sup>94</sup> those seeking to limit pornography's availability were not concerned with its effects upon them, but its effects upon people who could not protect themselves: the young, women, and the lower classes.<sup>95</sup>

1. *Brief History of Erotica.* Explicitly sexual drawings and artifacts, possibly including the first dildo, dating from the Ice Age have been found in Europe.<sup>96</sup> Detailed clay drawings of sexual intercourse were found during excavation of the Babylonian city of Ur.<sup>97</sup> The early cultures of India produced the *Kama Sutra*, and Japanese mothers handed down the "pillow books" from generation to generation to aid their daughters in understanding the various sexual positions and pleasures. One of the oldest novels from China is *Chin P'ing Mei* [*The Golden Lotus*].<sup>98</sup> Its four volumes contain an intricate plot and many explicitly sexual passages. The ancient Greeks and Romans depicted sexual practices including homosexual and group acts on their ceramic works.<sup>99</sup> Of course, the explicitly sexual drawings on the walls

93. Wilson, *Pornography: The Emergence of a Social Issue and the Beginning of a Psychological Study*, 29 J. SOC. ISSUES, No. 3, 1973, at 7, 17; Alschuler, *Origins of the Law of Obscenity*, in 2 TECHNICAL REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 65, 65-81 (1971).

94. See, e.g., Skolnick, *The Social Transformation of Vice*, LAW & CONTEMP. PROBS., Winter 1988, at 9.

95. For an excellent analysis of the attempts to protect the innocent or what he calls "the young person," see W. KENDRICK, *supra* note 23, at 67-94.

96. See G. GORDON, *supra* note 54, at 83-88; see also W. KENDRICK, *supra* note 23, for a book-length treatment of the topic.

97. Gebhard, *Sexual Motifs in Prehistoric Peruvian Ceramics*, in STUDIES IN EROTIC ART 109-69 (T. Bowie & C. Christenson eds. 1970).

98. CHIN P'ING MEI has been translated by C. Egerton and is called THE GOLDEN LOTUS.

99. Brendel, *The Scope and Temprament of Erotic Art in the Greco-Roman World*, in STUDIES IN EROTIC ART, *supra* note 97, at 70-107.



of buildings in Pompeii have become a major tourist attraction today.<sup>100</sup> The pre-Incan society of Peru, dating roughly from 200 B.C. until 600 A.D., produced pornographic pottery.<sup>101</sup>

The criticisms leveled at Michelangelo's "Pietas" illustrates how symbols emerge when visual erotics or pornography are vigorously suppressed. Medieval artists were not permitted to show anything that was overtly sexual, so they resorted to symbols. The popular symbol for coitus was the leg of one figure slung over another. Those opposed to pornography quickly caught on and Michelangelo was castigated for the sensualness of his figures. The famed Pietas were condemned by the defenders of traditional morality for their sexuality. The young Virgin and the physically exhausted Christ with his leg slung across Mary was thought to be far too suggestive.<sup>102</sup>

Though visual pornography was suppressed, a technological breakthrough, the invention of printing with movable type in the mid-fifteenth century, made it possible to give wider circulation than ever before to written pornography among elites. Handwritten pornography had existed for centuries, but was not very widely circulated. The fifteenth through eighteenth centuries were fertile years for printed erotica. In 1440 the Apostolic Secretary to the Pope, Poggio Bracciolini, published a work titled *A Frenetic Woman* dealing with insanity in women and prescribing sexual intercourse as the best cure.<sup>103</sup> In 1524, Pietro Aretino added a set of erotic sonnets to engravings depicting various positions for sexual intercourse.<sup>104</sup> Though he was not responsible for either the original pictures or the engravings, Aretino's words were so arousing that the book became known infamously as *Aretino's Postures*.<sup>105</sup>

The serious student of written pornography is forever indebted to the work of Henry Spencer Ashbee. Writing under the *nom de plume* of Pisanus Fraxi, a pseudonym derived from the Latin *fraxinus*, or ashtree, and a scatological pun, Ashbee compiled the first and most comprehensive bibliography of pornographic writings.<sup>106</sup> From 1877 to 1885, Ashbee published this three volume set in which the "plot" and notable passages were preserved from literally thousands of works of erotica. At Ashbee's death in 1900, he bequeathed the three bibliographies and his collected library of

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100. G. GORDON, *supra* note 54, at 87; W. KENDRICK, *supra* note 23, at 2-17 (discussing and illustrating sexually explicit drawings from Pompeii); M. GRANT, *EROS IN POMPEII: THE SECRET ROOMS OF THE NATIONAL MUSEUM OF NAPLES* (1975).

101. Gebhard, *supra* note 97, at 115-31.

102. Steinberg, *The Metaphors of Love and Birth in Michelangelo's Pietas*, in *STUDIES IN EROTIC ART*, *supra* note 97, at 234-77.

103. The background and partial translations of the early works of written pornography may be found in P. KRONHAUSEN & E. KRONHAUSEN, *supra* note 29, at 3-46.

104. W. KENDRICK, *supra* note 23, at 58.

105. *Id.* at 58-59.

106. H. ASHBEЕ, *INDEX LIBRORUM PROHIBITORUM: BEING NOTES BIO-BIBLIO-ICONO-GRAPHICAL AND CRITICAL, ON CURIOUS AND UNCOMMON BOOKS 45* (1877).

15,299 volumes of pornography to the British Museum where they are preserved today.<sup>107</sup>

In the United States today, most of the controversy over pornography involves visual presentations of sexually explicit activities in magazines, films, and videos. It was these materials that the recent Attorney General's Commission on Pornography found objectionable enough to provide consumers with a list of 2,325 magazine titles<sup>108</sup> and 2,370 film/video titles.<sup>109</sup> The Meese Commission even recommended that little effort be devoted to prosecuting written material without pictures.<sup>110</sup> Because the concern with picture magazines, films, and videos is the cutting edge of the controversy today, it is worth examining the effects of technology, culture, and audience composition in more detail than was the case with books, pottery, and other materials.<sup>111</sup>

In 1832, Louis Daguerre invented the photographic process and it was immediately put into service as a means of sexual arousal<sup>112</sup>—the French postcard. British photographers attempted to counteract this trade imbalance. Ashbee reported that in 1874, the studio of an Englishman named Henry Hayler was raided, and 130,248 sexually explicit pictures and 5,000 pornographic slides were seized and destroyed by the London police.<sup>113</sup>

The first known pornographic motion picture depicted Little Egypt doing her belly dance at the Columbian Exposition of 1893.<sup>114</sup> The two earliest films in the Kinsey collection, dating from about 1915 to 1920, are *A Free Ride*<sup>115</sup> and *The Casting Couch*.<sup>116</sup> Both show sexual intercourse in detail and were made using state of the art equipment and graphics. The acting and visual effects are on a par with the "legitimate" movies of that era. Since the equipment to make these films was very expensive and limited in supply, they had to have been made by professionals from the fledgling American film industry.<sup>117</sup>

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107. S. MARCUS, *THE OTHER VICTORIANS: A STUDY OF SEXUALITY AND PORNOGRAPHY IN MID-NINETEENTH CENTURY ENGLAND* 34-37 (1966).

108. FINAL REPORT OF THE ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY 1504-1612 (1986) [hereinafter ATTORNEY GENERAL'S REPORT].

109. *Id.* at 1573-1612. The Attorney General's report also provided 725 book titles, *id.* at 1548-72, and vividly detailed descriptions of five films/videos, *id.* at 1668-1744.

110. *Id.* at 383-84.

111. For students of visual erotica, the Institute for Sexual Research at Indiana University (commonly referred to as the Kinsey Institute) is indispensable. The Kinsey Institute is to visual erotica as Ashbee was to written. Its extensive collection of early "stag" movies and "skin-flicks" is perhaps the most complete in the world. Much of what is reported in this section is based upon trips to the Kinsey Institute to view these materials and interviews with its former curator of films, George Huntington, who came to that post after retiring as the chief of the Bloomington, Indiana, Police Department.

112. S. MARCUS, *supra* note 107, at 66.

113. *Id.* at 67 n.8.

114. G. GORDON, *supra* note 54, at 109.

115. *Id.* at 109.

116. *Id.* at 111, 116, 185.

117. The description in this paper of the changes that have taken place in the pornographic movie industry in this century are based upon notes made by the author during several visits to the Kinsey Institute, starting in the 1970's, and upon observing developments in the industry since that

With each change in technology, culture, and audience composition, the medium changed to exploit the potential for sexual arousal. *The Casting Couch* devoted only five minutes of the film's twenty minutes total length to depicting sexual intercourse. However, the rapid creation of film censorship boards across the nation<sup>118</sup> and the invention of the expensive, though much less costly to purchase, sixteen-millimeter equipment in the 1920's drove the pornographic film industry underground. Quickly the professionals left the business (except for movies made privately for their own amusement), and the new "producers" were amateurs working out of basements and garages. The new producers quickly discovered that the new audience wanted to see action, not plot or character development. According to the Kinsey Institute film curator, George Huntington,<sup>119</sup> this was because the new audience was almost exclusively male. It was still quite expensive for the average person to own either the cameras or the projectors for sixteen-millimeter movies. Hence, only Legion Halls, fraternities, and similar groups could afford to have the equipment. The movies were usually shown only at the stag gatherings of all male groups, and this is what gave the movies of that era their generic name: stag films.<sup>120</sup>

In the 1930's, 1940's, and 1950's stag films were characterized by little or no plot, middle-aged and not very attractive stars of either sex, and very "straight" sexual practices which rarely featured fellatio and virtually never depicted cunnilingus. According to George Huntington,<sup>121</sup> the middle-aged, middle and working class males who viewed the films were not interested in "kinky" sex and did not want to see attractive younger women who might remind them of their daughters. They did not care what the male performers looked like since they rarely looked at them.

Changes in demographics, culture, and technology radically altered the pornographic movie medium in the 1960's and 1970's. The cultural phenomenon known as the sexual revolution, or at least a reduction in what Beatrice Faust calls the "Hypocrisy Gap"<sup>122</sup> made viewing pornography more socially acceptable. At the same time, the development of the eight-millimeter camera and projector made it possible for these films to be made and shown inexpensively in private. The *Roth* decision<sup>123</sup> made it possible to show pornography in public again. In small, private groups and to a lesser extent in public movie theatres, erotic movies were viewed by audiences that now included females as well as large numbers of males. The generic term for

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time. A more extensive, although dated, history of erotic cinema can be found in G. GORDON, *supra* note 54, at 105-127. Of course, the serious student will want to see the film *A History of the Blue Movie* (1971) which is not yet available on video cassette.

118. G. GORDON, *supra* note 54, at 164-65.

119. Interview with George Huntington, curator of films at Kinsey Institute, in Bloomington, Indiana, June, 1970.

120. *Id.*

121. *Id.*

122. B. FAUST, *WOMEN, SEX, AND PORNOGRAPHY* 163 (1980).

123. W. KENDRICK, *supra* note 23, at 197; *Roth v. U.S.*, 354 U.S. 476 (1957) (This opinion also decided the case of *Alberts v. California*.)

cinematic pornography changed. The films became known as "skin-flicks" sometime in the mid-1960's.

In the 1970's, the new cultural and legal freedom, the introduction of the G, PG, R, and X movie rating system, the recommendations made in the *Report of the Commission on Obscenity and Pornography*,<sup>124</sup> and the new technology permitted a wide range of experimentation. Some material became more violent, some more sexist, coarse and tasteless, and some became more artistic and erotic.

2. *Contemporary Pornography.* The year 1980 has been somewhat arbitrarily chosen as the beginning of the modern era. The machines for playing videocassettes were available in the late 1960's, and people began acquiring them for home use in the middle to late 1970's, but it was not until the 1980's that this new technology seriously impacted upon the pornographic film industry. Furthermore, that year started an era when the antipornography feminists took to the streets in large numbers and began lobbying for passage of "Civil Rights" legislation to combat pornography.<sup>125</sup>

a. *Magazines.* Though there were male oriented magazines with some sexual content and pin-up pictures that preceded it, in 1953 *Playboy* became the first magazine to make sex its central focus.<sup>126</sup> Today it has been surpassed in sexual explicitness by legions of other magazines. In addition, there are the countless single or limited issue magazines showing oral, anal, and vaginal sex, as well as enemas, bondage, discipline, female wrestling, and people (males and females) dressed in high heels and rubber wet suits. The *Meese Commission Report* released in July, 1986, reported finding 2,325 separate magazine titles.<sup>127</sup> Most of these magazines are shoddy, poorly photographed, crude, bizarre, tasteless, and would not arouse the average person, male or female. Furthermore, they are of limited circulation and usually purchased by a small number of dedicated addicts to the particular fetish or practice illustrated in the magazine.<sup>128</sup> Nevertheless, some of the magazines, especially those in wide circulation, use the very latest in photographic technique and technology to produce high resolution, vivid color, photographic art.<sup>129</sup> Whatever their serious artistic merit might be, they are state of the art high tech photography.

124. THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 51-64 (1970) [hereinafter PORNOGRAPHY COMMISSION].

125. See sources cited *supra* note 62.

126. G. TALESE, *THY NEIGHBOR'S WIFE* 99 (1980).

127. ATTORNEY GENERAL'S REPORT, *supra* note 108, at 1504.

128. See J. WEATHERFORD, *PORN ROW* 198-99 (1986).

129. The high circulation, high technical quality magazines would include at least PLAYBOY, PENTHOUSE, HIGH SOCIETY, LIVE, CHERI, GENESIS, HUSTLER, LEG SHOW, INTERNATIONAL, KNAVE, MAYFAIR, and CAVALIER. In addition, there is an almost infinite number of one or two issue specialized magazines published mainly for sale at adult bookstores. Many, many examples could be cited here, but a few of the best from a technical standpoint are: BUF: THE NUMBER ONE MAGAZINE DEVOTED SOLELY TO PLUMP AND HEAVY WOMEN (1986); ENEMA DIARY (1986); LOVELY LEGS (1986); PASSION PETS (1986); STRIP TEASE (1986); TEEN BOOBS & BOXES (1986); TEEN PLAY MATES [sic]

b. *Films and videos.* The most dramatic changes have occurred in pornographic motion pictures and television. The development of cable television and the decrease in the price of VCR equipment made video pornography accessible to almost everyone and changed the nature of the consumers of movie pornography much more dramatically than even the invention of the eight-millimeter movie equipment.

The new technology and the new culture has created a market for a new genre of videos known as "couples movies."<sup>130</sup> That is, pornographic/erotic films made for the purpose of arousing heterosexual couples. These range from "porno avant garde,"<sup>131</sup> to movies in a "romance novel" format.<sup>132</sup> But the most radical departure from classic male oriented pornography are the "cosexual" movies created by Candida Royalle, a former star in pornographic movies who invested her hard-earned money into her own company, Femme Productions. She has written, produced, and directed four movies so far: *Femme*,<sup>133</sup> *Urban Heat*,<sup>134</sup> *Christine's Secret*,<sup>135</sup> and *Three Daughters*.<sup>136</sup> She has even had her films reviewed in *Time* magazine.<sup>137</sup>

3. *Attempts to Surpress Pornography/Erotica.*<sup>138</sup> The urge to censor expressions and ideas we do not like is deep within us all and has been practiced by governments and societies at least as far back as classical Greece.<sup>139</sup> However, censorship in Greece and later in Rome was always aimed at political and religious writings.<sup>140</sup> The first book put on the Roman Catholic Church's Index<sup>141</sup> for its sexual content was *Aretino's Postures* which was published just as Gutenberg's invention of printing with movable type made it possible to distribute the erotic work to a much wider range of people. Though only those who could read were exposed to the sonnets composed by

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(1986); FOXES (1983); MILKY WAY (1983); TOUCH ME (1983); ERECT NIPPLES (1985); LITTLE LOVING DOLLS (1982); KNOCKERS & NIPPLES (1979).

130. Leo, *Romantic Porn in the Boudoir*, TIME, Mar. 30, 1987, at 63.

131. Bright, *The Erotic Screen: The Cream of Adult Videos*, FORUM 16-18 (1987).

Consider, for example, *Cafe Flesh*, VCA Pictures 1983 (set in the future after nuclear war has left a large number of sex-negatives who are sickened by the touch of other people and a tiny number of sex-positives who perform for the amusement of the sex-negatives).

132. See for example, *Thy Neighbors Wife* written, directed and produced by Danielle Rogers (1986).

133. Femme Productions (1984).

134. *Id.*

135. Femme Productions (1985).

136. Femme Productions (1987).

137. Leo, *supra* note 130, at 63-64.

138. No attempt will be made here to give a complete history of antipornography crusades or the legal history of censorship law. Short treatments of the evolution of the law of obscenity in the Anglo-American legal tradition by legal scholars can be found in L. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 12-16 (1978), and Alschuler, *supra* note 93. Book-length treatments by social historians and experts in communications can be found in G. GORDON, *supra* note 54, and W. KENDRICK, *supra* note 23.

139. Alschuler, *supra* note 93, at 65; see W. KENDRICK, *supra* note 23, at 95.

140. *Id.*; Alschuler, *supra* note 93, at 65; see W. KENDRICK, *supra* note 22.

141. The "Vatican Index" or "The Index" is "a list of books the reading of which is prohibited or restricted for Roman Catholics by the Church authorities." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 615 (1981).

Aretino for the occasion, everyone could see the engravings.<sup>142</sup> Aretino recognized the market value of being censored and exploited it for further sales and profits.<sup>143</sup> This unintended consequence of censoring a work of erotica has continued into the present. When something is advertised as having been "banned in Boston," it is the author, publisher, or producer and not the censors who are bragging rather than complaining.

As was the case with Aretino, concern with pornography was usually accompanied by technological or cultural changes that made the work more vivid or more accessible. In the early eighteenth century, the British upper classes became concerned with pornography at a time in which the spread of literacy among the lower classes had created a market for popularly written books including those with sexual content.<sup>144</sup> Thus, an attempt was made to use the common law courts to prosecute a man named Read in 1708 for publishing a book entitled *The Fifteen Plagues of a Maidenhead*.<sup>145</sup> Read was acquitted with the suggestion that this was more a matter for the ecclesiastical courts than for the civil courts.<sup>146</sup>

In pre-revolutionary America, there was little concern with pornography because there was little leisure time to produce or enjoy it, and the shared ideological consensus (community standards) on morals did not require the use of the government to suppress it.<sup>147</sup> There were laws passed in Puritan Massachusetts prohibiting the possession or reading of Quaker literature or literature containing Quaker opinions.<sup>148</sup>

The first obscenity case in the United States was tried in Philadelphia in 1815.<sup>149</sup> The case involved the showing of a pornographic painting to anyone who had the price of admission. There was no law against pornography in Pennsylvania, but the defendant, Mr. Sharpless, was convicted nonetheless of indecency and corrupting the morals of society.<sup>150</sup> In this same era, in 1821, the first anti-obscenity law was passed in Vermont.<sup>151</sup> This round of concern with pornography occurred at a time when the United States had just been tremendously increased in size and cultural diversity by the Louisiana Purchase. As a result, "control over morality might therefore have been thought less safely entrusted to common religious and cultural backgrounds than before."<sup>152</sup> This also coincided with the opening of the first public high school in the United States and the beginning of the push for free universal

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142. See W. KENDRICK, *supra* note 23, at 58-67.

143. See *id.* at 96-97.

144. Alschuler, *supra* note 93, at 67.

145. *Id.* at 67-68.

146. *Id.* at 68.

147. *Id.* at 75; W. KENDRICK, *supra* note 23, at 127.

148. Colonial Laws of Massachusetts, 1672-1686, cited in Alschuler, *supra* note 93, at 74 n.24.

149. Commonwealth v. Sharpless, 2 Serg. & Rawle 91 (Pa. 1815).

150. W. KENDRICK, *supra* note 23, at 128.

151. Alschuler, *supra* note 93, at 76.

152. *Id.*

education which would give more people the ability to read and understand obscene books.<sup>153</sup>

The first federal anti-obscenity statute was passed in 1842 as part of a customs act.<sup>154</sup> It was aimed at the importation of French postcards which were more vivid than paintings or drawings and available to anyone who could see. Written pornography was not prohibited by this statute. The law was not very vigorously enforced, though, until the great waves of immigration that followed the Civil War.<sup>155</sup> This was a time when there was great concern with another vice of the new arrivals: drinking liquor.<sup>156</sup>

The next great concern with pornography came in the late nineteenth and twentieth centuries. It was fueled in part by the zealotry of Anthony Comstock and his Committee for the Suppression of Vice,<sup>157</sup> but it also coincided both with a period in which the success of free public education had made native, white Americans almost universally literate<sup>158</sup> and with another wave of foreign immigration. Again, these cultural changes made pornography available to a wider audience that needed to be protected from immorality and their libidinous instincts.<sup>159</sup>

In the twentieth century, the invention and popularity of the motion picture was followed immediately by the establishment of censorship boards in almost every state.<sup>160</sup> In the 1960's, the coming of age of the "baby-boomers" who needed to be tamed and protected, and the development of high resolution, four-color photography and printing made pornography more vivid to the consumer. These cultural and technological changes contributed to a demand that something be done about pornography. The government responded by establishing the Commission on Obscenity and Pornography.<sup>161</sup>

Today we have a new technology—the VCR—making pornography more vivid and easily available to almost everyone in America. These changes have altered the nature of the consumers of pornography to include more women and a much wider range of social classes. We also have a small number of people intensely concerned about pornography and a large number of people who are concerned about pornography and violent, sexually explicit material, but willing to tolerate nonviolent sexually explicit material.<sup>162</sup> The government responded to this concern about pornography with the Meese Commission.

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153. *Id.*

154. Act of Aug. 30, 1842, ch. 270, § 28, 5 Stat. 548, 566 (1842).

155. Alschuler, *supra* note 93, at 77.

156. J. GUSFIELD, *supra* note 67, at 50-57.

157. W. KENDRICK, *supra* note 23, at 130-50.

158. Wilson, *supra* note 93, at 8-9; Alschuler, *supra* note 93, at 79-80.

159. See Alschuler, *supra* note 93, at 79-80.

160. G. GORDON, *supra* note 54, at 164-66.

161. THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY, *supra* note 124, at 458 (1970) (Hill and Link made separate dissenting statements which are included in the REPORT.).

162. See *supra* text accompanying notes 1-21.

## VI

## THE SYMBOLIC POLITICS OF PORNOGRAPHY TODAY

The analysis of pornography as a symbolic issue must begin by examining its effects upon individuals, upon attitudes, and upon the family. The review will be selective and brief because of space limitations and because, as is the case with most vice issues,<sup>163</sup> empirical data usually have little effect upon policy decisions.<sup>164</sup>

## A. The Effects of Pornography

1. *Pornography and Sexual Arousal.* To state the obvious, exposure to sexually explicit materials can produce sexual arousal in males.<sup>165</sup> Furthermore, some women are aroused by pornography produced with the intent to arouse women.<sup>166</sup> Even depictions of forcible rape can be arousing to women.<sup>167</sup> Massive exposure to pornography can also lead to steadily decreasing interest in the depictions.<sup>168</sup> The people who participated in these or similar studies reported either no change in their sexual behavior,<sup>169</sup> an increase in sexual behavior with established sexual partners (especially on the night of the viewing of the material),<sup>170</sup> or an increase in masturbation and dreams for those without established partners.<sup>171</sup> The increase in sexual activity for married and other couples has been used for therapeutic purposes by marriage counselors and other professionals.<sup>172</sup>

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163. Skolnick, *supra* note 94.

164. The irrelevance of social science research to the debate was expressed by Father Hill and Winfrey Link in their dissent from the 1970 Pornography Commission report: "We believe that pornography has an eroding effect on society, on public morality, on respect for human worth, on attitudes toward family love, on culture. We believe it is impossible, and totally unnecessary, to attempt to prove or disprove a cause-effect relationship between pornography and criminal behavior." THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY, *supra* note 124, at 458.

The U.S. Supreme Court echoed this sentiment regarding empirical data in *Paris Adult Theatre I. v. Slaton*, 413 U.S. 49 (1973), when it said that even without conclusive proof that obscene material causes anti-social behavior, the Georgia legislature could enact laws on that assumption. For a thoughtful, book-length treatment of the social science findings, see E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42.

165. Howard, Liptzin & Reifler, *Is Pornography a Problem?*, 29 J. SOC. ISSUES 133-45 (1973); Schmidt & Sigusch, *Sex Differences in Responses to Psychosexual Stimulation by Films and Slides*, 6 J. SEX RESEARCH 268 (1970); Sigusch, Schmidt, Reinfeld & Wiedemann-Sutor, *Psychosexual Stimulation: Sex Differences*, 6 J. SEX RESEARCH 10 (1970); Zillman & Bryant, *Effects of Massive Exposure to Pornography*, in PORNOGRAPHY AND SEXUAL AGGRESSION, *supra* note 34, at 115.

166. Schmidt & Sigusch, *supra* note 165; J. Russ, *supra* note 67, at 79-99.

167. W. Stock, *Women's Affective Responses and Subjective Reactions to Exposure to Violent Pornography* (1984) (unpublished manuscript, Texas A&M University, Dept. of Psychology); see also P. NOBILE & E. NADLER, *supra* note 33, at 72-74 (discussing Dr. Stock's findings).

168. Howard, Liptzin & Reifler, *supra* note 165, at 144.

169. Byrne & Lamberth, *The Effect of Erotic Stimuli on Sex Arousal, Evaluative Responses, and Subsequent Behavior*, in 8 TECHNICAL REPORTS OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 41, 65 (1971) [hereinafter 8 TECHNICAL REPORTS].

170. Davis & Braucht, *Reactions to Viewing Films of Erotically Realistic Heterosexual Behavior*, in 8 TECHNICAL REPORTS, *supra* note 169, at 68, 84-86; Mann, Sidmann & Starr, *Evaluating Social Consequences of Erotic Films: An Experimental Approach*, 29 J. SOC. ISSUES, No. 3, 1973, at 113.

171. Davis & Braucht, *supra* note 170, at 84-86.

172. See Wilson, *Can Pornography Contribute to the Prevention of Sexual Problems?*, in THE PREVENTION OF SEXUAL DISORDERS: ISSUES AND APPROACHES (C. Qualls, J. Wincz & D. Barlow eds. 1978).



2. *Pornography and Violence: Laboratory Experiments.* The role of pornography in causing aggression against women and men is the most thoroughly studied aspect of the effects of pornography. Nonviolent, mildly arousing pornography (*Playboy* nudes), although possibly degrading to women, has been found to reduce aggressive tendencies in previously angered males.<sup>173</sup> Highly arousing, nonviolent, sexually explicit material has been found to increase aggression at about the same level as nonsexual but arousing material (explicit films of an eye operation).<sup>174</sup> Thus, the increase in aggression is not due to the sexual content per se. Anything that is arousing, including humor, can lead to an increase in aggression against men and women.<sup>175</sup>

Laboratory studies using violent, sexually explicit material have demonstrated increased tendencies in men exposed to the material to aggress against women.<sup>176</sup> These are perhaps the clearest and most reliable findings in the literature. However, the stimulus materials used in these studies have not been X-rated films from adult bookstores. The studies used films and videos that were R-rated "slasher" films<sup>177</sup> in which women with bare bosoms were tortured, raped, and mutilated, but male and female genitals were not shown. Furthermore, the studies concluded that the violence without sex in other types of R- or PG-rated films can contribute to aggressive behavior and desensitization toward violence as well.<sup>178</sup>

3. *Pornography and Violence: Aggregate Studies.* Researchers studying aggregate crime statistics across or within countries have had mixed results. Court reported that as "porno-violence's" availability increased across his sample of countries, there was a corresponding increase in sex crimes.<sup>179</sup> Kutchinsky studied sex crime statistics for Denmark before and after virtually all legal controls were removed from pornography in 1969.<sup>180</sup> He found that *while rape rates did not decrease*, child molestation of females and "peeping Tom" rates did decrease.<sup>181</sup> Baron and Straus examined the relationship between total sales of soft-core sex magazines (*Playboy*, *Penthouse*, *Hustler*, *Gallery*, and

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173. Donnerstein, Donnerstein & Evans, *Erotic Stimuli and Aggression: Facilitation or Inhibition?*, 32 J. PERSONALITY & SOC. PSY. 237 (1975).

174. Zillman, Bryant, Comisky & Medoff, *Excitation and Hedonic Valence in the Effect of Erotica on Motivated Intermale Aggression*, 11 EUROPEAN J. SOC. PSY. 233 (1981).

175. E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 72.

176. *See id.* at 86-107.

177. Donnerstein & Linz, *The Question of Pornography*, PSYCHOLOGY TODAY, Dec. 1986, at 56.

178. E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 125-29, 133-36; *see also* Donnerstein & Linz, *supra* note 177, at 59.

179. Court, *Sex and Violence: A Ripple Effect*, in PORNOGRAPHY AND SEXUAL AGGRESSION, *supra* note 34, at 143. Court defines porno-violence as explicit sexual themes presented within a context of aggression.

180. Kutchinsky, *The Effect of Easy Availability of Pornography on the Incidence of Sex Crimes: The Danish Experience*, 29 J. SOC. ISSUES, No. 3, 1973, at 163. *See also* Kutchinsky, *Pornography and Its Effects in Denmark and the United States: A Rejoinder and Beyond*, 8 COMP. SOC. RESEARCH 301 (1985) (a critique of court).

181. *See sources cited, supra* note 180.

others) and rape rates across the fifty states of the United States.<sup>182</sup> They found a positive correlation between circulation rates and rape rates as well as positive correlations between rape rates and gender inequality, social disorganization, urbanization, economic inequality, and the unemployment rate.<sup>183</sup> Scott found no relationship across the fifty states between rape rates and the number of adult theatres and adult bookstores.<sup>184</sup> He did find a correlation between rape rates and circulation of "outdoor" magazines, for example, *Field and Stream*, *American Rifleman*.<sup>185</sup> It should be noted that Baron and Straus also found a positive correlation (+0.68) between rape rates and total circulation of *Playgirl*.<sup>186</sup>

4. *Pornography and Violence: Studies of Sex Offenders.* Men incarcerated for sex offenses may not be representative of the entire population of rapists and child molesters, but they are at least available for study and, unlike those in the laboratory studies, they have actually engaged in violent acts against women. The most comprehensive research into the nature and character of men imprisoned for sex offenses found few differences in exposure to erotic materials between sex offenders, prisoners convicted of non-sex-related offenses (murder, robbery, and so on), and a control sample of "normal" male volunteers.<sup>187</sup> The researchers did not find that pornography was a factor in motivating rape or other sexual crimes.<sup>188</sup> Another study found that the sex offenders had less exposure to all types of pornography and a higher degree of sex guilt than a control group of "normals".<sup>189</sup> This study even went so far as to conclude that greater and earlier exposure to erotica might have lessened the tendency to antisocial and deviant behavior in the sex offenders.<sup>190</sup> After an exhaustive review of the literature on rapists, Groth concluded that pornography does not cause rape, although on cultural grounds he recommended that pornography should be restricted.<sup>191</sup>

## B. Pornography and Attitudes

Studies commissioned by the 1970 Commission on Pornography found that short term exposure to nonviolent sexually explicit material, though possibly showing degrading images of women, neither significantly affected

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182. Baron & Straus, *Four Theories of Rape: A Macrosociological Analysis*, 34 SOC. PROBS. 467 (1987).

183. *Id.* at 467, 478.

184. J. Scott, *Violence and Erotic Material: The Relationship Between Adult Entertainment and Rape* (May 1985) (paper presented at the annual meeting for the American Association for the Advancement of Science, Los Angeles, California), cited in E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 67-69.

185. *Id.*

186. Baron & Straus, *supra* note 182, at 482.

187. P. GEBHARD, J. GAGNON, W. POMEROY & C. CHRISTENSON, *SEX OFFENDERS: AN ANALYSIS OF TYPES* 670 (1965).

188. *Id.* at 404.

189. M. GOLDSTEIN & H. KANT, *PORNOGRAPHY AND SEXUAL DEVIANCE* 139-53 (1973).

190. *Id.* at 161.

191. A. GROTH, *MEN WHO RAPE: THE PSYCHOLOGY OF THE OFFENDER* 9 (1979).

attitudes toward sex<sup>192</sup> nor produced calloused sexual attitudes toward women.<sup>193</sup> Later studies, using "massive" exposure to nonviolent pornography consisting of unrelated excerpts from commercially available X-rated films, resulted in male and female subjects showing less punitiveness toward convicted rapists, less support for the women's liberation movement, and more sexually callous attitudes by men toward women.<sup>194</sup> Long term exposure to entire X-rated movies (having non-sexual scenes and plot development interspersed between the sex scenes, including movies from which some of the previous excerpts were taken) found no changes in attitudes toward the rape of women<sup>195</sup> and no increase in the tendency to report being tempted to rape.<sup>196</sup> Furthermore, reading pornographic passages, as opposed to viewing films, resulted in increased caring and affection for one's mate on the Rubin Love Scale.<sup>197</sup> It appears, then, that context and medium are as important as exposure and duration in the possible effects of nonviolent pornography on attitudes toward women and rape. This would make it important to study the effects of non-sexually-explicit, but degrading, material such as advertising, soap operas, G-rated, PG-rated, and R-rated movies on such attitudes. Such a study has not yet been undertaken.

Sexually explicit material with violent images in both written and movie form have been found to produce changes in attitudes including greater acceptance of the rape myth, that women invite and enjoy rape despite what they might say, and less sympathy for rape victims. These, mostly laboratory, studies are reviewed in-depth in a book by Donnerstein, Linz and Penrod.<sup>198</sup> These authors also found, based largely on their own research, that R-rated "slasher" films produced similar results and desensitized men and women to violence against women, making them more tolerant of rape and other abuses.<sup>199</sup> Nonsexual, but explicitly violent presentations have also been shown to have a desensitizing effect.<sup>200</sup> While this summary oversimplifies the

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192. Kutschinsky, *The Effect of Pornography: A Pilot Experiment on Perception, Behavior and Attitudes* in 8 TECHNICAL REPORTS, *supra* note 169, at 133, 139.

193. See Mosher, *Psychological Reactions to Pornographic Films*, in 8 TECHNICAL REPORTS, *supra* note 169, at 255, 274.

194. Zillman & Bryant, *supra* note 165, at 122-35; J. Check, *The Hostility Toward Women Scale* (1984) (unpublished dissertation, University of Manitoba).

195. See D. Linz, *Sexual Violence in the Media: Effects on Male Viewers and Implications for Society* (1985) (unpublished dissertation, University of Wisconsin, Madison, WS), *cited in* E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 79; *see also* C. Kraffka, *Sexually Explicit, Sexually Violent, and Violent Media: Effects of Multiple Naturalistic Exposures and Debriefing on Female Viewers* (1985) (unpublished dissertation, University of Wisconsin, Madison, WS), *cited in* E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 79-80 (discussing effects on females).

196. See Malamuth & Ceniti, *Repeated Exposure to Violent and Nonviolent Pornography: Likelihood of Raping Ratings and Laboratory Aggression Against Women*, 12 AGGRESSIVE BEHAVIOR 129 (1986).

197. Rubin, *Measurement of Romantic Love*, 16 J. PERSONALITY & SOC. PSY. 265 (1970); Dermer & Pyszczynski, *Effects of Erotica Upon Men's Loving and Liking Responses for Women They Love*, 36 J. PERSONALITY & SOC. PSY. 1302 (1978) (including a description of the Rubin Love Scale).

198. E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 86-136.

199. *Id.* at 123-35.

200. *Id.* at 133-35.

findings, the studies are more consistent than in other areas of pornography research and will not be reviewed further.

### C. Effects on the Family and Society

The effects of pornography on the family and society alleged by those in sympathy with the traditionalist, civil libertarian, and some feminist positions outlined above are almost impossible to study. According to the theory of symbolic politics, that is the essence of a symbolic political conflict. To the traditionalists, the open availability of pornography is a symbol of how the family has been destroyed and society has deteriorated morally and spiritually. The existence of antipornography laws and censorship boards is a symbol to the civil libertarians of how repressive and uptight our society is. To antipornography feminists, readily available pornography shows the low regard in which women are held and the ways in which men abuse them. Untangling what is symbol, what is cause, and what is effect is almost impossible to do in any rigorous or scientific way. Nevertheless, the research findings will be reviewed with regard to one important issue: pornography's effect upon the nuclear family.

The idealized family in American culture is one man and one woman legally married with the man supporting his wife and dependent children. Because the union of husband and wife, or original choice of mates, is based upon romantic love (rather than being arranged as it is in many cultures) and sexual attraction is a major component of romantic love, anything that threatens the nature of the sexual relationship is a threat to the union, and thus a threat to the family. Anything that improves or enlivens the sexual relationship should strengthen the union, thus strengthening the family. Furthermore, "family" is itself an important positive symbol in our culture.<sup>201</sup> Things that strengthen the family are good, and things that threaten the family are bad. Pornography has the potential either to strengthen the family (a desired effect) or to threaten the family (a negative effect).

As shown above, there is a market for pornographic videos that are viewed by couples, most of whom are married, and who use them as a means of sexual arousal before making love.<sup>202</sup> It was also reported above that marriage counselors use erotica (pornography by this article's definition) to help individuals and couples improve their sex lives.<sup>203</sup> Finally, Dermer and Pyszczynski<sup>204</sup> found that males reported increased love for their intimate partners after reading pornographic passages from magazines. Thus, pornography can strengthen the family.<sup>205</sup>

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201. See C. ELDER & R. COBB, *supra* note 35, at 115-16.

202. Leo, *supra* note 130, at 63.

203. See Wilson, *supra* note 172, at 175.

204. Dermer & Pyszczynski, *supra* note 197, at 1308.

205. Since a primary function of pornography is to provide stimulus for masturbation, see G. GORDON, *supra* note 54, at 58, the family could be further strengthened by husband's staying home and masturbating rather than having extramarital affairs.

Research by Zillman and Bryant found that after watching one hour of nonviolent pornography a week for six weeks, married couples were less satisfied with their mate's physical appearance and sexual performance than a control group of married couples who had watched an equal amount of romantic comedies.<sup>206</sup> Another study found that college males who either had watched the television show *Charlie's Angels* or been shown a magazine advertisement featuring Farrah Fawcett reported less desire to date an average looking coed whose picture they were shown than did males who had not seen the television show or that advertisement.<sup>207</sup> Female college students shown pictures of attractive women in nonpornographic magazines felt less attractive than they had before seeing the pictures.<sup>208</sup> This lowered self-esteem might make the women less desirable as marriage partners. Finally, some women have reported that men sometimes force them to do the things described or depicted in pornographic material.<sup>209</sup> All of these things could threaten the family.

Thus, pornography could strengthen or threaten the family. Both effects are quite possible. However, considering all of the other social and economic forces impinging upon the idealized family, pornography's contribution to impeding or hastening social change must be minor.

#### D. Summary of Effects

This review concludes as most of the academic reviews of the effects of pornography do: The results are not clear-cut.<sup>210</sup> Pornography, especially nonviolent pornography, has few clear effects upon behavior except sexual arousal. Violent pornography may increase the likelihood of aggression towards women, but it is not clear whether the effect is due to the depiction of the sex or the violence. The R-rated "slasher" films, many of which include female (rarely male) nudity, can desensitize people to violence and increase both negative attitudes toward women and the acceptance of the rape myth. Nonsexual, but violent, PG- and R-rated films can also desensitize people toward violence. This lack of empirical certainty allows, even forces, most people to take sides based on what "pornography" symbolizes for them.

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206. D. Zillman & J. Bryant, *Pornography's Impact on Sexual Satisfaction* (1986) (unpublished manuscript, Indiana University, Bloomington, IN).

207. Kenrick & Gutierrez, *Contrast Effects and Judgments of Physical Attractiveness: When Beauty Becomes a Social Problem*, 38 J. PERSONALITY & SOC. PSY. 131 (1980).

208. Cash, Cash & Butters, "Mirror, Mirror on the Wall . . . ?": *Contrast Effects and Self-evaluation of Physical Attractiveness*, 9 PERSONALITY & SOC. PSY. BULL. 351 (1983).

209. Russell, *Pornography and Rape: A Causal Modal*, 9 POLITICAL PSYCHOLOGY 41, 53 (1988). It should be added that not all women are angered by the suggestion to try out new things.

210. McCormack, *Making Sense of the Research on Pornography*, in *WOMEN AGAINST CENSORSHIP*, *supra* note 41, at 183 app. I.

### E. Pornography as a Condensation Symbol

Previous studies of pornography as a symbolic issue have concluded that it served as a symbol of decline in the authority of traditional morality<sup>211</sup> and respect for traditional institutions<sup>212</sup> for those who opposed it. The first study was based upon a natural history of antipornography organizations in a town in Texas, and one in Indiana, in 1969.<sup>213</sup> The second study was based upon Gallup poll data for 1973.<sup>214</sup> More recently, Larry Baron has suggested that for the American right-wing, pornography is a symbol of moral decay including the "erosion of traditional values, premarital sex, abortion, homosexuality, adultery, and marital dissolution."<sup>215</sup> For antipornography feminists, he suggests, it is a symbol of "male domination, female victimization, and the flagrant violation of women's civil rights."<sup>216</sup> As suggested above, it is also a symbolic issue for those inclined to side with the civil libertarians.<sup>217</sup> Because they do not feel as strongly about the issue as those opposed to pornography, pornography legislation—or its opposite, antipornography legislation—is not as clear a condensation symbol.<sup>218</sup> This section will present additional data concerning what pornography symbolizes to those who are opposed to it.

A random sample telephone poll of 592 people over the age of eighteen residing in the city and county of Durham, North Carolina, in the spring of 1985 provides the data.<sup>219</sup> The principal purpose of the poll was to examine the role of religion (affiliation, beliefs, and practices) in politics. While national poll data would be preferable, it does not exist in the detail needed. As part of the poll, the respondents were asked to indicate whether they "strongly favor, somewhat favor, somewhat oppose or strongly oppose" each of ten proposed amendments to the U.S. Constitution. The amendments were for voluntary school prayers, the Equal Rights Amendment (ERA) for women, a balanced federal budget, a ban on pornography, a ban on abortions, an ERA for homosexuals, the declaration of English as the official language of the United States, the legalization of marijuana, the declaration that the United States is a Christian nation, and the direct election of Presidents. The order in which the amendments were read to the respondents was varied to eliminate any contamination that might result from the ordering of questions.<sup>220</sup>

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211. L. ZURCHER & R. KIRKPATRICK, *CITIZENS FOR DECENCY: ANTIPORNOGRAPHY CRUSADES AS STATUS DEFENSE* 306-34 (1976).

212. Peek & Brown, *Pornography as a Political Symbol: Attitudes Toward Commercial Nudity and Attitudes Toward Political Organizations*, 58 *SOC. SCI. Q.* 717 (1978).

213. L. ZURCHER & R. KIRKPATRICK, *supra* note 187.

214. Peek & Brown, *supra* note 212.

215. Baron, *supra* note 33, at 6.

216. *Id.*

217. *See supra* text accompanying notes 50-54.

218. *See supra* text accompanying notes 50-54.

219. The details of sampling and interviewing can be found in J. McConahay, *supra* note 2, at 37 and B1-B11.

220. *Id.* at 38.

The amendment preferences were subjected to a standard statistical procedure known as factor analysis. This procedure determines the extent to which various sets of opinion poll questions (items) form common dimensions or factors based upon correlations among the items fed into the analysis.<sup>221</sup> Two factors were found in the data: a cultural/religious traditionalism factor and an ERA factor. The amendments comprising the traditionalism factor were anti-abortion, favoring school prayer, favoring English as the official language, favoring a declaration that America is a Christian nation, and antipornography. The ERA for women and ERA for gays formed the second factor. Marijuana, a balanced budget, and direct presidential elections did not form a part of either factor. This analysis was repeated for the following: males only, females only, whites only, and blacks only. The results were the same.<sup>222</sup>

These results are consistent with the findings and hypotheses reported above that pornography is a condensation symbol for immoral abortions, the decline of religion as a force in American life, and the threat to traditional American life posed by foreign elements. The failure of the ERA's to be a part of this factor suggests that pornography is not associated with these movements in the perceptions of the survey respondents. Indeed, favoring a ban on pornography had zero correlation with favoring the ERA for women.<sup>223</sup> Although pornography is an issue among the intellectual and other leaders of the feminist movement, pornography has not yet become related to women's liberation in the minds of the general public (at least in Durham, North Carolina).

#### F. Who Opposes Pornography?

The data from the 1985 poll were analyzed using multiple regression in order to determine the people most likely to want a ban on pornography.<sup>224</sup> If pornography is a symbolic issue, then measures of lifestyle and status would be expected to be more closely related to opposition to pornography than measures of social class. The feminist critique as well as common sense would lead us to expect that women would also be more opposed than men. Finally, Professor Skolnick's observation (in this issue of *Law and Contemporary Problems*) that vice is not a particularly partisan issue<sup>225</sup> would predict that party identification would not be related to opposition to pornography. All of these expectations were borne out by the analysis.

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221. The extraction was by the method of principal components and the rotation was varimax. See J. KIM & C. MUELLER, *INTRODUCTION TO FACTOR ANALYSIS: WHAT IT IS AND HOW TO DO IT* (1978); see also J. KIM & C. MUELLER, *FACTOR ANALYSIS: STATISTICAL METHODS AND PRACTICAL ISSUES* (1978).

222. J. McConahay, *supra* note 2, at 40-42. The technically sophisticated reader is advised that these dimensions or factors were determined by the pattern of factor loadings on the rotated factors.

223. *Id.*

224. For a discussion of multiple regression, see F. KERLINGER & E. PEDHAZUR, *MULTIPLE REGRESSION IN BEHAVIORAL RESEARCH* (1973).

225. Skolnick, *supra* note 94, at 11.

Republicans were not more likely than Democrats to want to ban pornography.<sup>226</sup> Lifestyle and status were measured by education and religiousness. Those who had attended college (higher status) were less opposed to banning pornography than those who had not (lower status), and the religious, whether measured by having been "born again" or by a scale of frequency of religious-related activities,<sup>227</sup> were significantly more likely to want a ban than the less or nonreligious.<sup>228</sup> Those calling themselves atheists or saying they had no religion and had never engaged in religious activities were the least likely to want to ban pornography.<sup>229</sup> Another measure of traditional lifestyle and attitudes, age, was also positively related to support for the banning of pornography. Those over fifty-five were particularly opposed to pornography.<sup>230</sup> Income, a measure of economic or social class, was not related to support for the antipornography amendment.<sup>231</sup>

Women were generally more antipornography than men, but the relationship was not a simple one. There was no difference between the sexes in their overwhelming opposition to pornography among those who were very religious. As religious involvement declined, opposition to pornography declined for both sexes. But the rate of decline was much lower for women than men so that the biggest difference between the sexes was for those with no religious inclination. Those most *opposed* to a ban on pornography in the sample were nonreligious men with post-college education (as many readers of this article might have guessed).<sup>232</sup>

### G. Three Myths About Contemporary Pornography

As indicated above, myths play an important role in symbolic political conflicts. These myths may have some basis in fact. The stories of a man who spent his family's money on liquor and left his wife and children to starve chronicled so often in the *Temperance Tales*<sup>233</sup> did have some real life counterparts, though not with the prevalence implied in the myths of the prohibitionists.<sup>234</sup> Those opposed to pornography have generated three widely held beliefs about today's pornography: (1) it is more violent today

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226. J. McConahay, *supra* note 2, at 56-68.

227. The details of scale construction and the psychometric properties of the Religious Activities scale are given in *id.* at 59 and B10-B14. The scale is composed of questions about how often the respondent engages in religious-related activities (never to every day) such as praying, reading the Bible, talking about religion, attending services, and so forth.

228. *Id.* at 60-68.

229. *Id.*

230. *Id.*

231. *Id.*

232. A detailed treatment of the 1970 Pornography Commission and the Meese Commission as exercises in symbolic politics in which those concerned are given reassurance that something is being done about the problem and that status is conferred by the rituals of the hearings, and of the conclusions in the final reports cannot be included because of space limitations. Those interested in the symbolic politics of pornography commissions should consult Baron, *supra* note 33; P. NOBILE & E. NADLER, *supra* note 33; Vance, *supra* note 33.

233. L. SARGENT, *TEMPERANCE TALES* (1836)

234. J. GUSFIELD, *supra* note 67, at 34.



than it was in the late 1960's when the 1970 pornography commission examined the issue; (2) the "snuff" film exists; and (3) child pornography is prevalent and readily available. There is little truth to any of these beliefs, but they do serve the important symbolic function described above.<sup>235</sup>

1. *Pornography Is More Violent Today.* Both certain feminists<sup>236</sup> and those who represent the conservative, traditionalist view on pornography have claimed that there is more violence in the content of pornography today than there was when the 1970 commission did its study.<sup>237</sup> Therefore, the 1970 pornography commission was wrong.<sup>238</sup> Empirical studies by social scientists do not support this claim. Though two studies found an increase in violent imagery in pornographic books<sup>239</sup> and in *Playboy* and *Penthouse* pictorials in the early to mid-1970's,<sup>240</sup> Scott and Cuvelier did a content analysis of *Playboy* over the 1954-1984 period and found that violence increased to the year 1977 and decreased considerably thereafter.<sup>241</sup> Scott also found that the XXX-rated movies had less violence than G-rated films and four times less violent imagery than R-rated films.<sup>242</sup> Furthermore, according to Palys, the major difference between the low budget R-rated movies and the XXX movies is that violence has increased and become more graphic since 1977 in the R-rated movies while it has decreased dramatically in the XXX movies.<sup>243</sup> This research suggests a decrease in the level of violence in XXX films.

2. *The "Snuff" Film.* The belief in the existence of the "snuff" film is almost universal among antipornography feminists.<sup>244</sup> This is a movie in which an actual woman is really tortured and killed (not simulated as in R-rated "slasher" movies) and her suffering and sexual defilement are recorded for distribution to other viewers who enjoy the thrill of watching this outrage. Snuff films are the Loch Ness Monsters of contemporary pornography. There is little, if any, evidence that such films exist. When pressed, those who claim

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235. A fourth myth propagated by the Meese Commission, that organized crime is behind the production and distribution of pornography, ATTORNEY GENERAL'S REPORT, *supra* note 108, at 1037-38, will not be dealt with here.

236. Morgan, *supra* note 63, at 55, 78-80.

237. ATTORNEY GENERAL'S REPORT, *supra* note 108, at 323, 325ff. The Meese Commission staff's research did not support this. Its content analysis of April 1986 of the best selling pornographic magazines found very little violent imagery, only 0.6% (3 of 512) pictures showing force, violence, or weapons. These data, included in early drafts of the report, did not appear in the final report. Vance, *supra* note 33, at 81.

238. Grossman, *supra* note 62, at 16.

239. Smith, *The Social Content of Pornography*, 26 J. COMMUNICATION 16 (1976).

240. Malamuth & Spinner, *A Longitudinal Content Analysis of Sexual Violence in the Best-Selling Erotic Magazines*, 16 J. SEX RESEARCH 226 (1980).

241. Scott and Cuvelier, *Sexual Violence in Playboy Magazine: A Longitudinal Content Analysis*, 23 J. SEX RESEARCH 534 (1987) (authors noted that overall number and ratio of violent cartoons and pictorials in *Playboy* from 1954 through 1983 was extremely small).

242. J. Scott, *Violence and Erotic Material: The Relationship Between Adult Entertainment and Rape* (1985) (unpublished paper presented at the annual meeting of the American Association for the Advancement of Science, Los Angeles, CA).

243. Palys, *Testing the Common Wisdom: The Social Content of Video Pornography*, 27 CANADIAN PSY. 22 (1986) (discussing Canadian movies using Canadian X- and XXX-rating system).

244. See P. NOBILE & E. NADLER, *supra* note 33, at 149.

that snuff films exist will admit that they have never seen one, but that they know someone who has. For example, in her testimony before the Meese Commission, Andrea Dworkin testified that she had never seen a snuff film, but she had heard that they were currently available in Las Vegas for \$2,500 to \$3,000 per print. "Prostitutes all over the country" had told her of being forced to watch snuff films before being forced to engage in sadomasochistic acts.<sup>245</sup> When pressed by the friendly commissioners to be more specific, she told of her troubles convincing law enforcement officials of these films' existence and concluded, "[w]e have a great deal of evidence that would not hold up in the sphere of social policy as evidence. And I suppose until we can bring you a film, you will not believe that one exists."<sup>246</sup> She is right.

3. *Child Pornography.* There is general agreement that child pornography is bad. There is also a perception that child pornography or "kiddie porn" is on the rise. The Meese Commission Report did its best to show that child pornography was rampant.<sup>247</sup> When we add in the recent mounting concern about missing children,<sup>248</sup> it is easy to conclude that there is a rising tide of child molesters who are abducting children and taking pictures, movies, or videotapes of them while they are being sexually abused. At times, the concern with this menace has bordered on the hysterical.<sup>249</sup>

The myth of the prevalence and easy availability of child pornography simply is not true. If anything, there is less child pornography available now in pictures and films than in the 1960's because the videotape cassette industry has generally driven the eight-millimeter movie producers out of business.<sup>250</sup> The eight-millimeter producers were undercapitalized, small businessmen who did not expect much profit and used whomever they could entice for small amounts of money, drugs, or the promise of a kinky thrill to "star" in their movies. Some of these were underage females (and males) because they were available and could be hired cheaply.<sup>251</sup> Today's videocassette porno stars, male and female, have agents and contracts and that has driven investment costs upward.<sup>252</sup> Big investors in any industry are generally risk averse. There is no point in risking a big investment by using a minor in a starring, or supporting, role.<sup>253</sup>

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245. A. DWORGIN, PORNOGRAPHY IS A CIVIL RIGHTS ISSUE FOR WOMEN: THE TESTIMONY OF ANDREA DWORGIN BEFORE THE ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY DURING THE HEARINGS AT THE UNITED STATES COURT OF INTERNATIONAL TRADE IN NEW YORK CITY 18 (1986).

246. *Id.* at 18.

247. ATTORNEY GENERAL'S REPORT, *supra* note 108, at 405-48.

248. Schneider, *Lost Innocents: The Myth of Missing Children*, HARPER'S, Feb. 1987, at 47.

249. *Id.* at 50.

250. Personal interview with Bob M., owner of two "Adult" bookstores in Durham, North Carolina (Apr. 1987).

251. Huntington, *supra* note 119.

252. Some porn superstars make \$80,000 per year and at least one female star is paid \$17,000 per day. ATTORNEY GENERAL'S REPORT, *supra* note 108, at 870 n.1016.

253. The case of Traci Lords (nee Norma Kuzma), who appeared as the Pet of the Month in the September, 1984, "Miss America" issue of *Penthouse* is the exception that proves the rule. From 1984 through early 1986, she was the superstar of superstars in the pornography industry, appearing in nearly 75 films and countless magazine features in the United States, England, and Europe. Then it

As part of the research for this article, an attempt was made to find some "kiddie porn." That term does not mean works of fiction such as *Lolita* in which the author writes about imaginary children in sexual situations.<sup>254</sup> Rather, the search centered on tapes or pictures in which a minor was sexually molested or abused while the event was recorded photographically or electronically for commercial purposes. Visits to all of the "adult bookstores" in the Raleigh, Durham, Chapel Hill area and to bookstores in New York, Los Angeles, and Washington, D.C., and answering every advertisement in a number of sex magazines that appeared to be promising kiddie porn, produced nothing more than advice to see a psychologist from some clerks and no response from the magazine advertisements.<sup>255</sup> No child pornography was found.<sup>256</sup>

This failure to find any kiddie porn does not mean that it is not at all available. If one was connected with the right underground network, one might be able to find it. However, it would probably be much easier to connect with a drug network than a child pornography network. Furthermore, this failure does not mean that it never happens. However, it does not occur at anything like the level implied by the myth.<sup>257</sup> And, it does not mean that people should not be concerned about the sexual abuse of children.

#### H. Symbolic Functions of the Three Myths

The belief in the increase of violence in pornography, the existence of snuff films, and the ready availability of child pornography are myths in the sense that there is little truth to them. They are also myths in the sense that they serve the important symbolic functions described above. For those who

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was discovered that she may have been fifteen years old when she made her first movie and was under eighteen in all of them. Now at least three men who served as her agents are under federal indictment. *The News and Observer* (Raleigh), Mar. 7, 1987, at 5a, col. 1. All of her films, even those in which she played a very minor role, have been withdrawn from the market. Handelman, Henricksson & Hirschberg, *The Hot List*, *ROLLING STONE*, May 21, 1987, at 88. The Dark Brothers recalled their classic film *New Wave Hookers*, VCA Pictures, 1985, edited Lords' scene out, and re-issued it with another porn superstar's picture on the cover of the video storage box. This represents a tremendous financial loss to the investors.

254. V. NABOKOV, *LOLITA* (1955).

255. Personal interviews with adult bookstore clerks and managers (July-Aug. 1987).

256. Jack Weatherford, in his ethnography based upon five months working in an adult bookstore in Washington, D.C., reported that he was told to screen all films and magazines coming into the store from distributors for kiddie porn (and human/animal sex) and refuse to accept them. This was not because the owners feared the police or disapproved, but because the demand was so low and profit margins so narrow, that it was not worth it. J. WEATHERFORD, *PORN ROW* 169 (1986). The recent government child pornography sting operations also reveal how low the demand is for child pornography. Despite all the time, effort, and money spent trying to get people to respond to ads for kiddie porn, only about 300 were arrested and about 100 customers from the entire United States were indicted. *Meese Describes Two Nationwide Sting Operations*, *Durham Morning Herald*, Sept. 15, 1987, at 11A, col. 1; Hey, *Uncle Sam and Private Citizens Go After Child Pornography*, *The Christian Science Monitor*, Sept. 26, 1987, at 5, col. 1.

257. The incidence of child pornography in Canada has also been "greatly overblown." Callwood, *Feminist Debates and Civil Liberties*, in *WOMEN AGAINST CENSORSHIP*, *supra* note 41, at 121, 124.

believe that pornography is evil and/or that it is the literature of male dominance and persecution of women,<sup>258</sup> these myths are examples of the producers of pornography (men) performing the ultimate evils of violence, torture, and killing of women and children. The three myths thus express the deep fear and anger of those who feel strongly about pornography, and they can serve to rally and solidify the faithful.<sup>259</sup> These myths also serve the political and social functions of associating pornography with extremely negative symbols, murdering and torturing of women and children, in order to motivate those uncommitted to join the antipornography cause.<sup>260</sup> This is similar to attempts by Republicans to associate Democrats with taxes and softness on communism, and efforts by Democrats to associate Republicans with greed and hard-heartedness.

## VII

### CONCLUSION

If pornography is a symbolic issue, what does that imply for ways to control it or to defuse the issue? Since it is a symbolic conflict about the status and prestige of varying lifestyles and moralities and threatens values learned by adults long ago in early political socialization, it cannot be solved by compromise the way economic conflicts sometimes can. The moral equivalent of "You can have the social security system you want if I can have a cap on the maximum amount of social security taxes each year or have my occupation excluded" is hard to envision. Appeals to tolerance by those who want to enjoy the vice are usually not accepted by those who regard the vice as sin because that means elevating the value of tolerance over the value of morality. Those who feel that they are degraded and that their status, their human worth, is reduced by the vice do not regard it as a matter of morality, but of real injury.<sup>261</sup> Who wants to tolerate somebody hurting you? Those who feel strongly on either side of the issue will only be satisfied with complete victory. They will not grant legitimacy to the other's position, though they may comply publicly if the other side has sufficient power to dominate them.<sup>262</sup>

However, as the data presented in the introduction to this article indicate, most Americans have mixed feelings about written and visual depictions of sex. They want "pornography" strictly controlled, but they are willing to tolerate or even enjoy sexually explicit materials that are not violent.<sup>263</sup> With this in mind, it is now necessary to look at some of the options.

First, there is probably no intermediate policy that will permit a ban on pornography (sexually explicit material that is bad) and allow the publication

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258. Morgan, *supra* note 63, at 55; A. DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1981).

259. *See supra* p. 45.

260. *See supra* p. 45.

261. MacKinnon, *supra* note 31, at 320.

262. J. GUSFIELD, *supra* note 67, at 62-65.

263. *See pp.* 35-36 of this article.

and consumption of art or literature (sexually explicit material that is good). In *Jenkins*, the educated and sophisticated gentlemen on the U.S. Supreme Court decided that *Carnal Knowledge* was not patently offensive and therefore was protected by the Constitution even though a jury in a small town in Georgia had unanimously decided it was obscene.<sup>264</sup> Either all sexually explicit material (defined as showing or describing any parts of the body associated with sex) will be banned and art will be forgotten or the laws (except for child pornography and age limitations upon who can buy, rent, or view pornography) will be repealed. The latter of these options was preferred by the 1970 Pornography Commission and is my preference as well. However, neither is politically feasible in 1989.

The new, wider audience for X-rated videos means that there are too many pornography consumers, even if they do not think of it as pornography, with too much economic clout to achieve complete suppression, and there is also too much antipornography sentiment to tolerate complete freedom (read license). Thus, we will have to find a way to muddle through.

Setting up screening (read censorship) boards to decide what may be shown or read and where it might be shown or read could satisfy the traditionalists and some antipornography feminists. Even if the boards were not very effective, they would symbolize that something was being done to uphold traditional morality and prevent the degradation of women. It would not satisfy them if the pornography industry or the civil libertarians captured the boards the way some industries have captured the agencies created to regulate them.<sup>265</sup> This is unlikely. For example, the Ontario Board of Censors is firmly in the hands of traditionalists.<sup>266</sup>

Donnerstein, Linz, and Penrod made some interesting suggestions for educational programs that could be mass media oriented and used to educate consumers about the dangers of desensitization to violence, eroticized violence, and the rape myth.<sup>267</sup> They have tested their pilot programs successfully on small samples. This attempt at "assimilative" reform as opposed to the "coercive" reform inherent in censorship laws<sup>268</sup> has great potential and should be encouraged. However, it should be noted that other attempts at education such as the antipornography feminists' film *Not a Love Story* have aroused the ire of traditionalists because of the sex in the film. In order to educate people about the evils of pornography, it showed examples of pornography.<sup>269</sup>

In many ways, some version of the status quo might be the best approach. The antipornography feminists and the traditionalists have had their Meese Commission to which they could go and testify and be told they were good,

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264. *Jenkins v. Georgia*, 418 U.S. 153, 161 (1974).

265. M. EDELMAN, *supra* note 75, at 36-43.

266. Burstyn, *supra* note 66; E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 155.

267. E. DONNERSTEIN, D. LINZ & S. PENROD, *supra* note 42, at 171-96.

268. J. GUSFIELD, *supra* note 67, at 61-110.

269. King, *Censorship and Law Reform: Will Changing the Laws Mean a Change for the Better?*, in *WOMEN AGAINST CENSORSHIP*, *supra* note 41, at 79, 82.

respected (high status) people. Congress and the Federal Communications Commission have recently engaged in some high visibility symbolic attacks upon "Dial-a-Porn,"<sup>270</sup> which is the latest use of technology for sexual arousal. At the same time, pornography in all its forms is available to those who want to spend the time and effort to obtain it.<sup>271</sup>

This does not mean that the visibility of pornography cannot be limited by restricting its open display or advertisement. Those who regard it as harmful and sinful do not need to be symbolically assaulted every time they walk down the street or go into the supermarket. This will minimally reduce some of the offensiveness of the vice to those who feel strongly against pornography, but it will not satisfy them. It does have the potential to reduce significantly the offensiveness for those who are less intense in their feelings. Out of sight is, probably, out of mind. At the same time, those who want sexually explicit materials, though possibly inconvenienced, can have them. Many states in which there is still strong antiliquor sentiment have done this by creating state owned or sanctioned liquor stores with restricted hours of sale and restrictions on advertising.

The local community standards aspect of the status quo is problematic, but is probably essential to muddling through. It is problematic because we live in a country that is increasingly one media market and because of the difficulty of defining the "community." Is the community a state, a county, a city, or a culturally homogeneous neighborhood within a heterogeneous city or county? It is essential to muddling through because it means that in a given locality where one side or the other has sufficient support, its norms can dominate. Though the local conflicts may be intense where the sides are nearly equal in strength or the adherents of one lifestyle or the other are gaining strength (sometimes due to conversion, but more often due to population shifts), it will keep the pornography issue off of the national agenda. We will not need to battle in Congress over whether the standards of New York or the standards of Peoria will be the national standard. This has worked with regard to the alcohol issue.

In the short run, the business cycle may take, or keep, the issue off of the national agenda for a while. Another tenet of symbolic politics theory is that

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270. *TIME*, May 2, 1988, at 35; In December 1987, the U.S. Senate passed, 98-0, Jesse Helms' legislation banning dial-a-porn. The House approved the legislation in April 1988. *The News & Observer* (Raleigh), Apr. 24, 1988, at 31a, col. 1.

271. The April 1988 issue of *ADULT VIDEO NEWS*, a trade magazine for the X-rated film industry, video store owners, managers (both "adult" and general stores), and consumers, listed 102 videos to be released in May 1988, and reviewed 50 videos that were released in February and March 1988. *ADULT VIDEO NEWS*, Apr. 1988, at 58. This same issue has ads placed by at least 50 distributors, wholesalers, and mail order houses. All have 800 telephone numbers and accept major credit cards. The largest mail order outlet, *Excallibur Films*, lists over 500 titles in its March catalogue and claims to have "access to over 9,000 adult movies — IN STOCK". *EXCALLIBUR FILMS CATALOGUE*, Mar. 1988, at 2 (emphasis in the original). The May 1988 issue of *GALLERY* has at least 75 different ads spread throughout the magazine for pictures, magazines, and videos available by mail order. Very few of the companies advertising in *GALLERY* overlap with the distributors advertising in *ADULT VIDEO NEWS*. The *GALLERY* advertisers usually only have post office box numbers and are aimed at a narrow market, for example, foot, shoe and hose fans, lingerie fans, and glamor enthusiasts.

when times are good economically, symbolic politics is the order of the day. When times are bad, class politics emerge as people look out for their economic interests. Prohibition was done in by the great depression according to Gusfield.<sup>272</sup> The debates over liquor did not go away, but the issue did not seem so important anymore in the face of the economic crisis.<sup>273</sup> The pornography issue will never go away, but when the business cycle turns downward (as it may be doing at this writing), vice and the other social issues will not have the salience that they do in times of plenty.

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272. J. GUSFIELD, *supra* note 67, at 127.

273. *Id.*

