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# Women on top: pornography, feminism, and censorship

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WOMEN ON TOP  
PORNOGRAPHY, FEMINISM, AND CENSORSHIP

A Thesis

Presented to

The Faculty of the Department of Philosophy  
San Jose State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Kristine Michelle Livsey

August, 1995

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## ABSTRACT

### WOMEN ON TOP PORNOGRAPHY, FEMINISM, AND CENSORSHIP

by Kristine Michelle Livsey

This thesis addresses the topic of pornography in the United States. It examines the arguments from both antipornographers and anticensorship advocates. These arguments are considered along with the most recent sociological evidence of the effects of pornography on male aggression towards women. What this information reveals is that while some pornography does increase aggression against women, it is the violent nature of the pornography and not the sexually explicit material that causes the harm.

Catherine MacKinnon, an antipornography advocate, has constructed a sophisticated argument claiming that pornography violates the civil rights of women and should therefore not be protected under the first amendment. However, if the harms to women are not real, then this argument fails. Also, several good reasons for protecting pornography are presented. Finally, a look at the benefits of acknowledging female sexuality and an examination of new technology points feminists in the direction of exploring and developing the positive aspects of pornography.



For my parents, Marian and David Livsey and Doug and Suzanne Harwood, even though not one of them is in a place where they can fully appreciate this particular reflection of my gratitude for all they have taught me.

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## PREFACE

Pornography is an interdisciplinary subject, covering ground in philosophy, theology, politics, feminism, psychology, history and sociology. The purpose of this thesis is to explore this issue in detail with the aim of defending pornography. The chief contention is that pornography serves a valuable purpose in society and any attempts to censor it will cause more harm, particularly to feminist goals, than allowing it to exist. There is no attempt to argue that there are not some drawbacks to pornography, and the last chapter looks at possible solutions to some of the proven problems.

The first chapter is an introduction to the major issues and the major players surrounding the debate on pornography. This thesis focuses on the arguments of feminist lawyer Catharine MacKinnon and feminist author Andrea Dworkin. They are the leading crusaders against pornography and have lobbied in the United States and Canada for judicial reform and legislation censoring pornography, as well as for civil actions allowing women to sue producers, exhibitors, distributors, and sellers of pornography. Nadine Strossen, the current president of the American Civil Liberties Union, is the most outspoken defender of pornography. The manner in which pornography is defined is examined in detail with specific references to the various drafts of the Model Antipornography Civil-Rights Ordinance, one version of which antipornographers<sup>1</sup> succeeded in passing in Indianapolis and Marion County, Indiana. Problems with definitions from the Indianapolis Ordinance, which was immediately stopped by order of the court, are discussed in this chapter as well as the next. Anticensorship advocates employ a liberal interpretation of pornography that essentially defines it as anything that

is sexually arousing. Since this thesis attempts to defend rather than censor pornography, a strict definition which renders precise each area of concern is not necessary. However, general expressions such as 'pornography' and 'sexual explicitness' are explained in order to discuss them accurately.

In chapter two, the sociological evidence is examined to provide a background for determining if there truly is a problem with pornography and where that problem might lie. Antipornographers are fond of employing emotionally moving case studies to support their general theories of censorship rather than relying on comprehensive statistical studies about the relationship between pornography and attitudes about women. However, studies by the leading experts in the field of sociology reveal a very different interpretation of the correlation between violence and pornography than the antipornographers present. The result of these studies is a definite correlation between representations of violence and increased aggression toward women and a lack of any correlation indicating that increased aggression toward women is motivated by sexually explicit material. A look at one film which is not sexually explicit enhances the lack of distinction between many films which are pornographic and other films which contain the negative elements antipornographers object to but lack the sexual explicitness which renders them pornographic. The outcome of this is the realization that the problem lies not in pornography *per se*, but in portrayals of violence and negative portrayals of women. This means that censoring pornography will fail to have the desired result because it does not address the appropriate problem.

The third chapter considers the constitutional issues involved in censoring pornography. It begins with a look at the case history of pornography in the Supreme Court, recognizing Justice Holmes' admonition to fight speech with more speech. Catharine MacKinnon has attempted to attack pornography on civil rights issues. She claims that the pornography constitutes a civil rights violation of women and on these

grounds, supersedes any first amendment claims to freedom of speech. However, a close examination of her arguments shows deep flaws, and a look at the positive aspects of pornography and the negative effects of censoring it for any reason shows that this appeal to civil rights is unfounded. There are numerous problems with the definition produced by antipornographers, including the most obvious problem of MacKinnon and Dworkin claiming epistemological superiority over the rest of the female population in the United States. Their assertions about sexual relations relegate women into a position of submission as demeaning and destructive as the position in which they argue women are currently trapped.

The final chapter counters Dworkin's and MacKinnon's assertions with specific examples and general observations about the attitudes toward female sexuality in the United States. Contrary to the assertion that all women are being violated in every instance of intercourse because of a power imbalance, there are many women who speak up to defend their sexuality. Furthermore, pornography can be both an educational tool and a political tool. Women have the power to enter the market and take control of the means of production, effecting a revolution in the pornography industry that would be of great benefit to the feminist movement. Technology is rapidly advancing into virtual reality and the Internet is expanding. Issues of pornography are taking on new dimensions and it may be possible to use this medium, along with many others, to change the way women are viewed and the way women view themselves.

While the issue of pornography is a complex topic, there are very propitious motives for open discussion. Instead of endeavoring to legislate against a sometimes morally suspect component of our society, it may better serve women and men to ascertain the benefits and determine ways in which to turn a sometimes negative medium into a positive, educational, informative, and enjoyable medium. Sexuality has long been clandestine for many reasons. There are just as many valid reasons for widening the

available forum for discussions of women's sexuality, health, safety, sexual gratification and reproductive rights. Realizing that there is a positive side to pornography for both men and women is a step in the direction of disclosure.

## CHAPTER ONE

### INTRODUCTION

"If you want to make a mirage go away, walk toward it. If you turn and run, the lake gets bigger and the palm trees more inviting every time you look back."  
from Sally Tisdale in *Talk Dirty to Me*

Pornography is rapidly becoming a mainstream issue in the United States. As political values shift among parties, politicians and citizens are searching for solid footing. Radical feminists are fighting against the production and distribution of material that they consider to be unequivocally damaging to the rights and condition of women in America. Right-wing Christian fundamentalists are crusading against material that they consider damaging to the moral fiber of citizens. In contrast to both, feminist civil libertarians are asserting the essential and fundamental right to produce and distribute pornographic material, while also suggesting benefits heretofore unrecognized.

The fight against pornography is led most noticeably in the United States by two women--Catharine MacKinnon and Andrea Dworkin. MacKinnon and Dworkin began working together in Minnesota several years ago to censor pornography through court rulings and to develop legislation in Canada and the United States that would censor pornography under civil law. This is an alternative approach to traditional criminal prosecution and will be discussed later in this thesis. Catharine MacKinnon pushed for the Supreme Court ruling in Canada in 1992 in *Butler v. The Queen*<sup>2</sup> which censors pornography in a manner quite similar to American antipornographer's proposals. Most centrally, the feminist antipornography movement represents itself as the only possible

centrally, the feminist antipornography movement represents itself as the only possible feminist stance. MacKinnon wrote in a Yale law journal that "Pornography, in the feminist view, is a form of forced sex, . . . an institution of gender inequality . . . [P]ornography, with the rape and prostitution in which it participates, institutionalizes the sexuality of male supremacy."<sup>3</sup> This is a popular notion and it commonly appears in popular feminist forums such as *Ms.* magazine. Anyone, male or female, who supports, participates in, accepts, enjoys, or simply views pornography, is instantly identified as part of the problem.

The movement to protect pornography is far less organized. There are not one or two key players, but a myriad of women and men who have contributed in their own way. For example, Sally Tisdale has written a book relating her experiences with sex work.<sup>4</sup> Katie Roiphe has written about the new feminism on the college campus,<sup>5</sup> and Nadine Strossen has put down in words the civil libertarian's defense of pornography.<sup>6</sup> Many more women and men have contributed information that is essential in understanding the fundamental issues and dichotomies surrounding the pornography issue. They do not all agree with each other, but whether or not they believe pornography to be a problem, they generally all believe that the censorship of pornography is inappropriate.

Nadine Strossen, the current president of the American Civil Liberties Union, recently published a book titled, *Defending Pornography*. Ironically, in an interview on "Good Morning America," Nancy Schneiderman commenced her interview with this perception: "After reading your book I am more confused than ever, because it would seem to me a paradox that a feminist would find herself defending pornography where women appear to be subjugated, yet you describe yourself as a feminist, you defend pornography."<sup>7</sup> The interviewer has embraced the premise that feminists cannot be in favor of pornography. It appears that the antipornography propaganda war has been



successful. Nearly everyone believes that it is a contradiction to be a feminist and at the same time to support the freedom of expression that allows pornography to exist in this country.

The purpose of a defense of pornography is to dispel this myth and to discuss openly the reasons for opposing the censorship of pornography. It is also to do away with the theory behind the charming, often postulated adage: "What turns me on is erotica, but what turns you on is pornography." The argument consists of three steps. One, recognize that pornography is an indispensable element of our culture and that it is not limited to the images antipornographers would assert constitute the whole of pornography. Two, understand that employing a fourteenth amendment attack, or any attack, on free speech will result in greater damage to the progress of the women's movement than the assumed or real threat of pornography. Three, realize that female sexuality is a natural and fundamental part of our lives and that there is no shame in it and that exploring its potential is desirable. Human beings are, by nature, sexual creatures. Sexuality is as essential to the nature of women as it is to men.

One final point demands stating, although it ought to be self-evident. There is no excuse for violence against women and the genuine purpose of this thesis is to explore ways to deter and decrease the amount of violence against women. At the same time, the goal of feminists is to expand the overall rights of women, and, as is the case with many movements, there are often some incidental casualties. The issues surrounding pornography must be balanced on each side and then pushed in the direction that will achieve the greatest benefit for all women. While actual and potential violence raises an important challenge to the anticensorship case, both short term and long term effects of action must be considered before arriving at any conclusion, with the realization that there is no viable solution free of some problems.

## THE ANTIPORNOGRAPHY ADVOCATES

W.H. Auden wrote that "there's only one good test of pornography. Get twelve normal men to read the book, and then ask them, 'Did you get an erection?' If the answer is 'Yes' from a majority of the twelve, then the book is pornographic."<sup>8</sup> Perhaps the most difficult task is that of defining what is meant by 'pornography.' There are, of course, hundreds of different uses of the term 'pornography.' The term is used to describe sexually explicit material, but it is also commonly used to refer to any type of exploitative material, as evidenced by Ursula K. LeGuin when she writes that "the pornography of violence of course far exceeds, in volume and general acceptance, sexual pornography, in this Puritan land of ours. Exploiting the apocalypse, selling the holocaust, is a pornography."<sup>9</sup> Pornography can refer to sexually explicit material, or it can refer to sexually arousing material that may or may not be explicit. In order to discuss the issues surrounding pornography, the meaning of the expression must be made clear. Until this point in the debate, the definition of 'pornography' has been anything but clear.

In all of the discussions about pornography by various crusaders against and defenders of pornography, the definition varies widely, making it very difficult to discuss the issue with any sort of consistency. For the antipornographers, the definition seemingly revolves around degradation and dehumanization in pornography. For the anticensors, the issue focuses more on sexual arousal and desire associated with pornography. As is clear from the various colloquial uses of 'pornography,' it has become more common to associate pornography with exploitation and harm. This relationship is itself exploited by those who would censor what they define as pornographic.

Opponents of pornography, such as MacKinnon, characterize pornography as anything which is sexually explicit and degrading to women. In their early attempts to

cancel pornography, Dworkin and MacKinnon banded together to draft the Model Antipornography Civil-Rights Ordinance (Model Ordinance) that defines pornography and outlines the harm it causes women in the form of discrimination.<sup>10</sup> Specifically, they drafted various versions of the Model Ordinance for Minneapolis, Indianapolis and Marion County, and Cambridge. The first form of the ordinance was passed twice by Minneapolis and vetoed twice by the mayor. It was revised and then introduced in Indianapolis, where the mayor passed it, but the court stopped it short. Although the versions differ to some degree, they have the same intent. The Model Ordinance has also served as a model for Canadian legislation censoring pornography, which goes much further than the United States. The following definition of 'pornography' is from the proposed Ordinance of Indianapolis and Marion County Indiana:

(q) *Pornography* shall mean the graphic sexually explicit subordination of women, whether in pictures or in words that also includes one or more of the following: (1) Women are presented as sexual objects who enjoy pain or humiliation: or (2) Women are presented as sexual objects who experience sexual pleasure in being raped: or (3) Women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or as dismembered or truncated or fragmented or severed into body parts: or (4) Women are presented being penetrated by objects or animals: or (5) Women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual; [or] (6) Women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.

The use of men, children, or transsexuals in the place of women in paragraphs (1) through (6) above shall also constitute pornography under this section.<sup>11</sup>

In the legislation they proposed, Dworkin and MacKinnon tried to identify a clear cut and obviously objectionable harm. Such words as 'degrading,' 'demeaning,' and 'humiliation,' play upon the "politically correct" sensitivities of women and men everywhere who do not

wish to be caught in the position of defending anything viewed as injurious to the full and productive participation of women as members of society.

The definition is also packed with catch-phrases that make it difficult to disagree with these women who claim to be protecting all women from harmful pictures and images. For instance, it seems plausible, even desirable, to argue that any material, written or visual, which degrades women, demeans women, dehumanizes women, objectifies women, or in general depicts them in anything less than a fully human, dignified and positive manner should be eliminated. To the lay person this may seem like a good idea. But a closer look reveals that exactly what material falls into these categories turns out to be as elusive and difficult to deal with as the current obscenity statutes. Rather than Supreme Court Justice Potter Stewart's assertion that he knows pornography when he sees it, we now have MacKinnon asserting that she knows pornography when she sees it and that she will let us know.

However, the legal system requires stronger guidelines than current obscenity law allows and these markers are what antipornographers have attempted to provide. Rulings such as the *Butler* case in Canada, a ruling which does not go as far as MacKinnon would like, are not any clearer than current United States obscenity rulings. The Indianapolis Ordinance is not any clearer either. Its definition of 'pornography' contains many undefined expressions, including, but not limited to, 'presented as sexual objects,' 'scenarios of degradation' and 'postures or positions of servility.' These terms are extraordinarily difficult to apply to actual case material. What is a posture of servility? The simple response might be that a posture of servility occurs when a woman is kneeling or tied up. What if she is lying down? Is the missionary position servile? What does it mean to be presented as a sexual object? How is the description of degradation placed upon an image? The judgment of what is pornographic will still be as unreliable as judgments under current law and can easily be turned around on the antipornographer's

own work. The definition allows for the possibility of diametrically opposed rulings on the pornographic content of the material in question, which leaves citizens wondering how to figure out what the law really is and how to obey it.

For Dworkin and MacKinnon, the category of the pornographic is neither undecided nor uncertain. A brief glimpse at their philosophical views on intimacy, heterosexuality, homosexuality, and lesbian relations immediately reveals that they view all forms of intercourse as degrading in some manner. Dworkin's 1987 book, *Intercourse*, not only paints the title as a phallic symbol splashed across the cover ripping through streaks of bright red and dark green, but the text from cover to cover illuminates her own special brand of male bashing<sup>12</sup> with such observations as, "any violation of a woman's body can become sex for men; this is the essential truth of pornography," or "with women not dirty, with sex not dirty, could men fuck?" and "the normal fuck by a normal man is taken to be an act of invasion and ownership undertaken in a mode of predation: colonializing, forceful (manly) or nearly violent; the sexual act that by its nature makes her his."<sup>13</sup> Similarly, MacKinnon's latest book, *Only Words*, is filled with similar ideas. She opens her book with the following paragraph:

Imagine that for hundreds of years your more formative traumas, your daily suffering and pain, the abuse you live through, the terror you live with, are unspeakable- not the basis of literature. You grow up with your father holding you down and covering your mouth so another man can make a horrible searing pain between your legs. When you are older, your husband ties you to the bed and drips hot wax on your nipples and brings in other men to watch and makes you smile through it. Your doctor will not give you drugs he has addicted you to unless you suck his penis.<sup>14</sup>

Both women support the image that women are always victims of male sexual aggression.

Mona Harrington, author of *Women Lawyers*, summarizes MacKinnon's views as follows:

MacKinnon's own social theory rests on one clear principle: The *sexual* exploitation of women by men is the ruling relation of the sexes in patriarchal society. The difference between men and women under patriarchy is that men are the sexual dominators and women are the objects of sexual domination. They are unequal by the definition of the relationship, and cannot be equal until the basic relationship changes.<sup>15</sup>

This basic relationship is the immutable identity of heterosexuality for MacKinnon. She describes sexual terrors in such a manner that the reader or listener supposes she is the only woman to whom these things have never happened and even wonders why she never knew that it was all around her. "Finally, somehow, you find other women. Their fathers, husbands, and doctors saw the pictures, liked them, and did the same things to them. . . . The same acts that were forced on you are forced on them."<sup>16</sup> MacKinnon describes intercourse in such a manner that every woman marvels why she did not realize that she was being raped, why she believed that she was doing something pleasurable when it was really ugly and dirty. "Compare victims' reports of rape with women's reports of sex. They look a lot alike . . . [T]he major distinction between intercourse (normal) and rape (abnormal) is that the normal happens so often that one cannot get anyone to see anything wrong with it."<sup>17</sup>

One consequential problem of the Indianapolis Ordinance definition is the failure to define what is meant by a sexual object. With regard to women, MacKinnon and Dworkin never distinguish between being sexual and being a sexual object. Their philosophy suggests that they make no such distinction, precisely because they do not see any difference. In the joint effort of Dworkin and MacKinnon to defend their bill, they cover exactly this aspect of their definition by writing:

Women in *Playboy* are dehumanized by being used as sexual objects and commodities, their bodies fetishized and sold. . . . Underlying all of *Playboy's* pictorals is the basic theme of all pornography: that all women are whores by nature, born wanting to be sexually accessible to men at all times. . . . *Playboy*, in both text and pictures, promotes rape. *Playboy*,

especially in its cartoons, promotes both rape and child sexual abuse.<sup>18</sup>  
[emphasis mine]

According to Dworkin and MacKinnon, all women in *Playboy* are being used as sexual objects. Any woman whose body is viewed as a potential sex object is being dehumanized. The question becomes when exactly is a woman not a sexual object? MacKinnon and Dworkin never provide the means for distinguishing between those instances in which women are viewed non-sexually and those in which women are viewed as sexual objects. In order to employ a catchall phrase such as "dehumanized as sexual objects," clearer definitions of each term must be developed or the authors must admit that the purposeful evasiveness is an underhanded tactic to appear neutral. Again, it is difficult for a person to disagree with the statement that it is wrong to present dehumanized women as sexual objects, things, or commodities. However, each person has a different interpretation of what constitutes this violation, which would be acceptable if this non-specific definition were not intended for use in legislation.

In light of all the remarks noted above, it would seem that all sexually explicit material would fall under Dworkin's and MacKinnon's characterization of pornography. There is no question that antipornographers perceive the role of a woman as a sexual object as dehumanizing, but it remains unclear as to what it means to be a sexual object. Hence, judges who agree with antipornographer's rationale need only read section (5) of the definition in order to find all sexually explicit material pornographic, and so, subject to civil suit. All women posing in the nude or a state of semi-dress are exploiting their bodies and so being degraded, according to antipornographers. Section (6) is equally broad, since women are always presented in pornographic material as sexual objects for use. Therefore, according to Dworkin and MacKinnon, all women appearing this way have the legal right to file a civil suit.

Turning to some other defects in this definition should prove that it is vacuous. Although section (3) is a reasonably clear qualification, since almost anyone can view a picture or read a passage and determine if the listed elements are present, the remaining qualifications are as elusive as the current obscenity standard and are open to the interpretation of the presiding judge. For instance, whether an action is degrading, and whether someone is presented as experiencing pain, are not always easy, straightforward judgments. In one case, a child wanders in while his parents are enjoying sex and wants to know why Daddy is hurting Mommy. Because she is making strange sounds and moaning, is she being hurt? Is she enjoying it? In another case, a woman is handcuffed to a board, her arms above her and her legs tied down. She is making the same moaning sound while a dominatrix brandishes her with a whip. Is she being hurt? Is she enjoying it?

Another question arises when considering what constitutes a position of sexual submission. Throughout her book *Intercourse*, Dworkin impresses upon the reader the submissive nature of the missionary position, where the man is on top and the woman on the bottom.<sup>19</sup> Not once in the entire text does Dworkin recognize, or even mention, the fact that women are also sometimes on top or what this fact might mean. Although feminist defenders have argued that Dworkin is misrepresented by the interpretation that all sex is negative, a careful reading of her text makes it very clear that she views intercourse, or any form of sexual relations, as pure, unadulterated submission on the part of the woman (or the man acting the part of the woman).<sup>20</sup> Those feminists who do acknowledge that women are sometimes on top dismiss it as a desire of the man, not the woman, and therefore, compliant.

It is clear that Dworkin and MacKinnon have a very broad definition of what constitutes the material they would censor through their definition. As noted above, they consider *Playboy*, which does not ever show female genitalia or penetration of any kind,



to be dehumanizing. According to the definition in the Indianapolis Ordinance there does not seem to be any sexually explicit scene which is not pornographic and violatory. Since the definition specifically identifies such concepts as domination, submission, servility, and violation, it is imperative to ascertain what constitutes such action. If even one of the most traditional forms of sexual relations, the missionary position, is considered submissive, then there does not seem to be any sexually explicit material which would fall outside the bounds of the definition. It is as if the detailed description of activities in the Indianapolis Ordinance definition were a farce, since the essential core is elementary: representations of any form of sex are pornographic.

These views lead to the conclusion that Dworkin and MacKinnon would ban anything with overt sexually explicit connotations. If MacKinnon were to announce that not only did she want to disallow those appalling, in the closet, lurid, hard-core, body-mutilation, snuff flicks, but she also wanted to restrict elements like the opening scene from *Basic Instinct* or even feminist texts and medical guides such as the now celebrated *Our Bodies, Ourselves*, she would be hard-pressed to come up with the support she has so far been able to garner. By masking the extent of her opposition to any sexuality under the cover of powerful rhetoric, she has effectively managed to mislead her followers, as well as the media and the courts.

It might also surprise many of MacKinnon's supporters to discover that the examples of pornography that run throughout the pages of her texts are not common to typical pornography shops, theaters and magazines. The truth is that one would be hard pressed to enter an adult video store or a mall magazine rack and find a piece of material that contains anything close to the material MacKinnon selects for her assault on pornography. Strossen uses Tisdale's analysis, complementing it with her own, when she writes:

In fact, many who categorically castigate sexually explicit magazines, perhaps assuming that the overtly violent, sexist samples that are selectively presented in displays and slide shows mounted by feminist antipornography groups are typical. But the opposite is true, as writer Sallie Tisdale has concluded from her extensive viewing of commercial erotica: "Women who have seen little pornography seem to assume that the images in most films are primarily, obsessively, ones of rape. I find the opposite theme in American films: that of an adolescent rut, both male and female. Its obsession is virility, endurance, lust." Consistent with Tisdale's account, surveys indicate that depictions of violent sexual encounters--rape or sadomasochism--account for only 3 to 8 percent of commercially available erotica.<sup>21</sup>

So, it appears that not only anecdotally, but statistically the evidence indicates that violent, misogynist pornography is not as widespread as antipornographers contend. Most of the material of MacKinnon and Dworkin, even from their favorite targets such as *Hustler*, falls more into the category of a *Saturday Night Live* for sex, with some tasteless jokes, sometimes disturbing illustrations, objectification of women and of men, and pictures of women and of men. For instance, in an issue of *The Best of Hustler*, there is a parody of a Ben & Jerry's ice cream advertisement with flavors such as Gerbil Whip, complemented by a picture of Richard Gere; a flavor called Yeastie Feastie, with a picture of Madonna; and the flavor Tutti Fruit Pooti, featuring the face of Richard Simmons. There is a section titled, "A Hustler Edition in Hell," which includes such items as, "Ron Jeremy's Your Father, Tipper Gore's Your Mother . . . Savannah Won't Return Your Phone Calls, Madonna Will, O.J. Simpson Is On Every TV Channel, The Radio Only Plays Rush Limbaugh."<sup>22</sup> None of this denies that the material targeted by antipornographers is in existence. What it shows is that magazines such as *Hustler* do not exist for the sole purpose of degrading and conquering women, as antipornographers contend. Some of the material is humorous, albeit juvenile, and harmless political satire. Just as *Saturday Night Live* does not appeal to everyone, neither does *Hustler*. However, the fact that *Hustler* does not appeal to everyone does not, by itself, support the claim that all the

contents of any X-rated magazine are violent and misogynistic. As Strossen pointed out in the quote above, the percentage of violent sexually explicit material on the commercial market is very small. The rest of the available pornographic material is a far cry from the illustrations of constant degradation that grace the pages of MacKinnon's and Dworkin's writings. They would have the public believe that every page of *Playboy* is graced with whips, chains, blood, and death. It is ironic that one can apparently find more brutality and dehumanization in the one-hundred-and-ten brief pages of MacKinnon's *Only Words* than in a year's worth of *Hustler*.

#### THE ANTICENSORSHIP ADVOCATES

Anticensorship advocates, such as the current president of the American Civil Liberties Union, Nadine Strossen, head in the opposite direction from Dworkin and MacKinnon when defining 'pornography,' turning to a dictionary definition, which reads, "a depiction (as in writing or painting) . . . of erotic behavior designed to cause sexual excitement."<sup>23</sup> Ostensibly, this could be extended to pictures, photographs and videos that need not be sexually explicit. It is immediately evident that this definition differs vastly from the antipornographer's view of pornography. Strossen employs such a broad definition that it could include television and magazine commercials, which contain much in the way of behavior designed to cause sexual excitement.

However, this is only one dictionary definition, and another one, written five years later, and found quite recently in Microsoft Bookshelf '94, a source that represents the new CD-ROM technology, has a very different interpretation of pornography. It reads: "pornography *noun* 1. Pictures, writing, or other material that is sexually explicit and sometimes equates sex with power and violence. 2. The presentation or

production of this material."<sup>24</sup> This source also notes the etymology from late Greek, which translates from 'pornographos' as writing about prostitutes. This definition suggests that there is something inherently sexist about pornography. It also extends the definition to the presentation or production of sexually explicit material. It does distinguish between the sexual nature of the work and the association with violence. Later in this thesis, the relationship between violence and pornography will be examined from sociological, philosophical and legal points of view to determine exactly what the problem is, if there is one.

Since it is the case that Dworkin and MacKinnon would remove virtually all material that is sexually explicit, it makes more sense to work with the anticensorship definition, which openly admits that a wide range of material is encompassed. In attempting to discuss pornography it is important to realize that the issue at hand is perpetually intertwined with sex. This is surely the case with Dworkin and MacKinnon and it is clear that this affects their theories and definitions. Contrary to their assertions that pornography consists solely of extremely damaging and degrading material, anticensorship advocates recognize that it is a much broader issue.

One important aspect of the anticensorship position lies in the fact that it is not necessary to precisely define the term 'pornography' in order to deal with the issue. Since the goal is to protect speech, 'pornography' can be defined rather broadly, as Strossen has done in her book. The strict definition requirement falls on the antipornography feminists and the Supreme Court, who are required to make a distinction in order to censor pornography.

Throughout this thesis, it will become clear, if it is not already, that no one has succeeded in providing an adequate definition for the expressions related to the regulation of pornography. The concepts of obscenity, pornography and erotica have all been, at one

time or another, meshed together or pulled apart. Trying to delineate some fine distinction among the three merely results in confusion, since the same picture or video can be interpreted by two viewers with vastly different results. Particularly notable is Gloria Steinem's distinction between pornography and erotica, which draws lines based on the treatment of women in the material. She argues that pornography is degrading and dehumanizing to women, while "erotica is mutually pleasurable, sexual expression between people who have enough power to be there by positive choice."<sup>25</sup> This distinction, while a valiant attempt, is still unclear and essentially allows the individual judge to assert her personal perspective. In the same way that the Indianapolis Ordinance is open to broad interpretation, this separation of erotica and pornography leaves expressions such as 'mutually pleasurable,' 'sexual expression,' and 'positive choice,' undefined. Without a clear understanding of what these expressions mean, a clear determination of which material is pornographic and which is erotic is not possible.

However, this distinction between pornography and erotica is not one that Dworkin or MacKinnon make in their writings. Dworkin comments that "intellectuals, especially, call what they themselves produce or like 'erotica,' which means simply that a very bright person made or likes whatever it is."<sup>26</sup> More than this, Dworkin seemingly wants to categorize all forms of heterosexual intercourse, or any other gender combination which imitates heterosexual role playing,<sup>27</sup> as dehumanizing. She writes that "what men need done to women so that men can have intercourse with women is done to women so that men will have intercourse, no matter what the human cost; and it is a gross indignity to suggest that when her collaboration is complete--unselfconscious because there is no self and no consciousness left--she is free to have freedom in intercourse. . . . whatever intercourse is, it is not freedom. . . ." <sup>28</sup> Dworkin contends that women are never free in their sexuality, but are always the instruments and objects of men. As such, women can not be truly and equally human beings.

For purposes of simplicity and straightforwardness, the term 'pornography' in this thesis will represent all aspects of sexual expression, from sexually explicit materials to merely arousing often non-explicit themes and ideas. This becomes important in the last chapter when the discussion turns to positive solutions and uses for pornographic material. The expression 'sexually explicit' refers to any material which involves nudity and graphic depictions of intercourse. This expression 'sexually explicit' will be used frequently throughout this thesis and it refers to material in which depictions of intercourse, or alternative forms of sexual relations, occur. It also includes graphic displays of male and female genitalia such as occurs in *Hustler* centerfolds. This is to be distinguished from material which suggests or intimates nudity, intercourse and sexual relations, i.e., under the sheets, or a view from an angle that does not display or emphasize sexual organs, other than breasts or buttocks, and which is pornographic but not sexually explicit.

CHAPTER TWO  
THE PROBLEM OF PORNOGRAPHY

**"Society's wariness toward sex is highlighted by contrasting it with the greater societal tolerance toward violence."**

from Nadine Strossen in *Defending Pornography*

There is one issue fundamental to both sides in the debate concerning the status of pornography. This is causality. The notion of causality is complex and needs to be examined in order to understand exactly what the antipornographer's goal is in censoring pornography. In *Toward A Feminist Theory of The State*, MacKinnon briefly discusses her theoretical notion of causality and contrasts it with the traditional notion of causality in a legal context. Speaking of the latter, she writes that:

. . . the trouble with this individuated, atomistic, linear, exclusive, isolated, narrowly tortlike--in a word, positivistic--conception of injury is that the way pornography targets and defines women for abuse and discrimination does not work like this. It does hurt individuals, just not as individuals in a one-at-a-time sense, but as members of the group of women. Individual harm is caused one woman and not another essentially as one number rather than another is caused in roulette; but on a group basis, the harm is absolutely selective and systematic. Its causality is essentially collective and totalistic and contextual. To reassert atomistic linear causality as a sine qua non of injury--you cannot be harmed unless you are harmed through this etiology--is to refuse to respond to the true nature of this specific kind of harm.<sup>29</sup>

Essentially, MacKinnon is attempting to draw a distinction between the harm caused to individual women and the harm caused to women as a class. This distinction becomes

important when she argues that pornography causes a civil rights violation of women as a class. This distinction is used to refute anticensorship advocates who argue that there is no empirical causal link between pornography and harm. The MacKinnon advocates argue that the harm she is addressing is more complex than a linear harm relating pornography to physical violence.

However, this distinction becomes seriously blurred when she attempts to use the notion of causality in drafting legislation with Dworkin. There the notion of causality takes on the more traditional meaning. The Minneapolis version of the Ordinance states that "it is sex discrimination to assault, physically attack, or injure any person in a way that is directly caused by a specific piece of pornography--the pornographers share responsibility for the assault."<sup>30</sup> First, this directly implies a causal harm of the traditional type, one that is extremely individuated and totally linear. Instead of MacKinnon's contention that the harm is collective and totalistic, thereby removing the threat of being disproved by sociological studies, the harm in the legislation seems to be just the opposite. Second, this legislation would be introduced into this individuated, atomistic, exclusive, isolated legal system, which currently views harm in the sense MacKinnon wishes to refute. Without the theoretical framework MacKinnon provides, how will the legal system be equipped to deal with the issues she is concerned with, namely the sexual discrimination against women as a class? The answer is that the legal system will deal with causality in this legislation the same way it does in every other case. If there is a direct, provable, link, then there will be an acknowledged harm. In the absence of this link there can not be any action.

In her book *Only Words*, MacKinnon again uses causality in the sense that a particular piece of pornography is causing a particular act of violence. She clearly indicates that pornography, which was produced through the violation of women, is used as an example of how to violate other, real women. "As these other women were held



down, or tied up, or examined on the table, pictures like the pictures of you were talked about or pointed to: do what she did, enjoy it the way she enjoyed it. The same acts that were forced on you are forced on them; the same smile you were forced to smile, they must smile."<sup>31</sup> More specifically, MacKinnon argues that rapists literally carry pornography with them in order to show their victims what they are going to do to them. "Some [men] gang rape women in fraternities and at rest stops on highways, holding up the pornography and reading it aloud and mimicking it."<sup>32</sup> MacKinnon describes a real life "copycat" murder based on pornography:

Not long after this issue of *Penthouse* appeared, a little Asian girl was found strung up and sexually molested in North Carolina, dead. The murderer said he spent much of the day of the murder in an adult bookstore. Suppose he consumed the *Penthouse* and then went and killed the little girl. Such linear causality, an obsession of pornography's defenders, is not all that rare or difficult to prove.<sup>33</sup> (emphasis mine)

This is not the esoteric notion of non-individuated causality that discriminates against women as a class. It is a very direct individual notion of causation which affects an individual woman, and it is this notion that is incorporated into MacKinnon's legal philosophy. It would be the individual woman, or her family, who would sue the individual producer for the murderer's act. Since this is the case, causality shall be considered in the traditional sense, assuming that pornography must very directly cause harm to women in the form of physical assault, rape, and battery. This is the sense in which anticensors have viewed the issue and this is because it is this type of legal link which antipornographers have relied on to censor pornography.

It is clear that MacKinnon has a larger theoretical framework in mind when she solicits the censoring of pornography. However, this framework of a larger social harm is predicated on a causal link which remains in the realm of what she terms atomistic linear causality. Whether or not this larger harm exists and can be solved by censoring

pornography is a different issue that will not be addressed in this thesis. Based on her own legislation and her own argumentation, this linear link of pornography and violence is essential to the prosecution of the producers of pornography. Without it, she loses her link to the pornographers, except through already illegal actions like forcing a woman to perform or pose for pornographic materials.

Traditionally, antipornographers have relied on emotionally traumatic and extremely personal accounts of abuse, assault, rape, murder and brutality, like the example of the Asian girl, to accentuate their case against pornography. They have asserted the existence of a causal link between what they characterize as pornography and a social harm, providing personal accounts of women whose abusive husbands or lovers consume pornography. In fact, antipornography advocates almost always insist that the censorship of pornography is necessary to alleviate the problem. Antipornography advocates have not relied on intensive studies, laboratory work, or even correlational data to support, effectively and accurately, their case against pornography. Rather, they have more often attempted to appeal to the average American's sense of justice and fairness, the average male's desire to protect the women around him, and the average woman's desire not to be violated or hurt. It is this notion of a causal link between pornography and violence that has been used to provide fuel for the Victim's Compensation Act of 1991. This act was designed to allow women, or victims of abuse, to sue producers of pornography if a link could be shown between the aggressor, his consumption of a particular film, and his actions against the victim.

On the other hand, anticensorship advocates have categorically denied any provable, causal link between men experiencing pornography and their committing criminal acts of rape or other violence against women. Unlike opponents of pornography, civil libertarians and other defenders of pornography have appealed to case studies, correlational evidence, and scientific studies, but have still managed to extract only what

supports their case while ignoring the remaining information. They have used the studies to argue that there is absolutely no relationship between pornography and violence. However, a review of the 1970 Commission on Pornography, the 1986 Commission on Pornography, and the evidence of the correlational studies and studies conducted under controlled conditions by Donnerstein, Linz, and Penrod,<sup>34</sup> reveals a much clearer picture concerning the effect of pornography on people, at least in the United States. These studies show that it is violent pornography, along with other violent material which causes the problem of increased aggression toward women. Only when the conclusions and unsolved questions are considered as a whole can an appropriate stance on the issue of pornography be taken. Whatever else may be the case, those who appeal to evidence in support of the case against pornography will, in general, be disappointed.

The initial response to anyone who claims that pornography leads to violence against women is that such violence existed before pornography was widely distributed. Long before printed pictures and movies there were men who were predisposed to violate women and there was patriarchy.<sup>35</sup> Camile Paglia discusses this point in an essay from her book, *Vamps and Tramps*:

Pornography does not cause rape or violence, which predate pornography by thousands of years. Rape and violence occur not because of patriarchal conditioning but because of the opposite, a breakdown of social controls. MacKinnon and Dworkin, like most feminists today, lack a general knowledge of criminology or psychopathology and hence have no perspective on or insight into the bloody, lurid human record, with its disasters and triumphs.<sup>36</sup>

This fact is repeated again and again by women such as Barbara Ehrenreich, an author and columnist, who points out that "those Romans who perpetrated the rape of the Sabines, for example, did not work themselves up for the deed by screening *Debbie Does Dallas*,

and the monkish types who burned a million or so witches in the Middle Ages had almost certainly not come across *Boobs and Buns* or related periodicals."<sup>37</sup> No matter how many times this is pointed out, the antipornographers refuse to consider it as a relevant fact. Instead, they insist that there is a harm now and there is pornography, so there must be a causal relationship.

Granted, the simple and indisputable fact that violence and rape of women existed before the invention of the printing press and widespread distribution of pornography is not sufficient to eliminate pornography as a viable causal suspect today. It merely means that pornography was not the cause of violence against women in the past. However, what becomes clear from an examination of the issues surrounding censorship is that the violence purportedly done to women as a result of pornography is immaterial to the consideration of a solution to the problem of violence done to women. This is a striking, novel and controversial statement. However, it will be shown in the next chapter that the harms evoked by the censorship of pornography far outweigh any current harms caused by pornography. It is difficult to make this assertion in the face of the tragic and moving examples that MacKinnon relies on to convince her readers, but the statistical evidence is well documented and it does not support her case.<sup>38</sup> For now, a look at the statistics evaluating pornography will shed some light on the important issues.

This sociological evidence is reviewed in *The Question of Pornography: Research Findings and Policy Implications* by Edward Donnerstein, Daniel Linz, and Steven Penrod. Donnerstein is one of the leading scientists in the study of pornography and male aggression, and he has published several articles and books on this topic.<sup>39</sup> His is probably the most comprehensive and unbiased look at the issue of pornography as the study of pornography has evolved over the last twenty years.

Donnerstein, Linz and Penrod break pornography down into several categories. These are 1. nonviolent, low-degradation sexually explicit stimuli, 2. nonviolent, high-

degradation sexually explicit stimuli, 3. violent pornography, 4. nonexplicit sexual aggression against women, and 5. sexualized explicit violence against women.<sup>40</sup> These categories were used to rate material in studies which noted the affect of these materials on the levels of male aggression toward women before and after viewing the films. They make several disclaimers in their introduction which indicate the limited nature of any sociological studies, since they are only able to measure immediate response and not long term effects. This means both that an immediate tendency toward aggression may diminish over time and that an increased tendency toward aggression may not show up within the time limits of the study. However, this is the best measure available to determine precisely what the connection is between pornography and aggression.

In a number of differently constructed studies, men in various groupings, selected at random, were tested, shown films in the specified categories, and tested again. The most common form of testing allowed the male subject to administer what he thought were various levels of real electric shocks to the female interviewer in response to a number of questions. The results indicated that when films with violent content were viewed, there was an increased level of aggression in the men who viewed them. When nonviolent material was exhibited, the overall levels of aggression remained the same or actually decreased. Donnerstein, Linz, and Penrod examine a number of studies which indicate that a previously aggravated subject will actually calm down when shown sexually explicit pictures.<sup>41</sup>

The conclusion that came from a review of the research by the authors was not that sexually violent pornography, in and of itself, was definitely linked to an increase in aggressive behavior, but that any type of violent material was linked to an increase in aggressive behavior toward women. Moreover, the researchers, Donnerstein, Linz, and Penrod, also discovered that the consumption of purely sexually explicit films may, when devoid of violence, reduce aggressive tendencies in men. In the most reliable studies, it

was not women who were degraded in a sexually explicit scene that changed attitudes of men, but women who were degraded in any scene. Furthermore, sexually explicit films employing women who were not degraded by the reviewers' standards did not cause an increased aggressive tendency in the men who viewed the films. Donnerstein, Linz and Penrod summarize this by asserting that:

. . . for the most part . . . sexually explicit images, per se, do not in the short run facilitate aggressive behavior against women, change attitudes about rape, or influence other forms of antisocial behavior. Instead, the research indicates that it is the violent images fused with sexual images in some forms of pornography, or even the violent images alone, that account for many of the antisocial effects reported by social science researchers.<sup>42</sup>

Donnerstein, Linz and Penrod presented their research conclusions in the preface of their book, writing that "we contend that the violence against women in some types of R-rated films shown in neighborhood theaters and on cable TV far exceeds that portrayed in even the most graphic pornography."<sup>43</sup> Since the purpose of this thesis is not to prove that there is a causal link between pornography and violence, but merely to recognize what studies have revealed, there will not be a review of the particular studies, methods and outcomes, all of which are detailed in many of the writings of Donnerstein, Linz and Penrod. It is sufficient to note their conclusions and to look at some material that would not be censored by Dworkin and MacKinnon, according to their Indianapolis Ordinance definition, even though they contain many of the damaging elements that characterize violent, misogynistic pornography. This becomes significant because it shows that MacKinnon and Dworkin have developed a set of criteria for censoring pornography which will do nothing to improve the condition of women; something that will be discussed in more detail in the next chapter.

One example of a non-sexually-explicit film that falls directly into the category of material that degrades and humiliates women is the R-rated movie *Boxing Helena*. This movie can be found at most video rental stores, yet it's message is identical to some of the themes antipornographers decry, and the same themes the Donnerstein studies directly link with violence.

In *Boxing Helena*, the attractive male lead, Nick, is a respected doctor at a hospital. He rescues the equally attractive Helena after an injury to her legs near his mansion. Having once slept with her, he is attracted to her, but his attraction soon grows into an obsession, and he ceases his work at the hospital to tend to her twenty-four hours a day, refusing to take her to a hospital for proper medical treatment. As she begins to recover, he becomes afraid of losing her and decides to amputate her legs so that she cannot escape. She is horrified by his actions and longs for nothing but escape. He builds a wheelchair for her, in which she moves around his home, but he cuts the phone lines and hides her in a room, with a gag on her mouth, when someone unexpectedly comes to the door. So far, this film does not contain the sexually explicit images that Dworkin and MacKinnon require for qualification under the Indianapolis Ordinance, yet it does contain material which is violent and dehumanizing.

All is progressing according to his obsession when she nearly manages to alert someone to her presence in the house. He then decides to amputate her arms, a vision modeled on the Venus de Milo statue that graces his marble hallway. During the day, she is placed in a velvet lined box, where she sits, looking beautiful, reminding one of a living version of Browning's Duchess, a possession. There is sex. First, she watches him make love to a nurse from the hospital, and then Helena accepts his attention. They would have continued, had they not been interrupted by Helena's former boyfriend, who threatens to shoot Nick. Helena screams and begs from her perch, pleading for the life of

the man who mutilated her. In the end, the whole plot turns out to be a dream. Nick wakes up in the hospital where Helena is being operated on after the accident.

Not once during this whole film is there any scene that would qualify this material for censorship under the Dworkin and MacKinnon characterization of pornography. There is nothing sexually explicit about the work. There is brief, selective nudity of both leads, but this does not qualify the film for censoring, because the nudity does not involve male or female genitalia. The question arises: What makes this film different from the degrading, demeaning, dehumanizing pornography that antipornographers seek to censor? Why will this film, simply because the actors remain clothed, have a different effect on the psychological stability of the male consumer's view of women? The answer, according to sociological studies, is that it won't. In fact, the issue of clothing is relevant only to the movie industry in its private rating system.

There is no significant difference between this scenario and many of those depicted by Dworkin and MacKinnon in their books. It contains all the essential elements that render the film abhorrent, sans nudity. The fact that it turns out to be a dream sequence makes no difference, just as the fact that sexually explicit films are fiction makes no difference. If the line between pornography and the mainstream media is so fine, and the only important distinction is the presence or absence of clothing, then a closer look needs to be taken when deciding how to deal with material that promotes negative images of women but is not sexually explicit. Most of all, what it means is that pornography cannot be cordoned off into a small, separate, independent, self-sufficient category that supposedly has no counterpart in the rest of the entertainment industry.

So, what is the difference between this film and those Dworkin and MacKinnon seek to censor? It seems that the presence of clothing is what puts this movie out of the realm of the Indianapolis Ordinance. The primary premise expressly states that only material with graphic, sexually explicit pictures or words will be considered, and that



these must have an additional offensive characteristic, such as elements of pain, mutilation or degradation. Since *Boxing Helena* does not contain any sexually explicit scenes, it could not be considered as pornographic under the Indianapolis Ordinance definition. The film contains elements of pain, mutilation and degradation, but this is irrelevant since the first criterion is not satisfied. Hence, even if the antipornographers win their case, material which incites negative attitudes toward women will still exist uncensored, will still infect the minds of viewers, will still have an impact on society.

What does the sociological evidence mean for censorship and pornography? It means there is a viable problem in the form of violence. Pornography, just like many other materials, has the possibility of increasing aggression against women, but **only** when it is combined with violence. It means that, contrary to what anticensorship advocates claim, there is harm in some types of pornography that cannot be ignored. It means that contrary to antipornographer's claims, it is not the sex in films that causes the violence on the street, that nothing even remotely related to sex need be evident in material for the detrimental effects to occur, and that the combination of sex and violence is no more lethal than violence alone. Donnerstein, Linz and Penrod write in their analysis of several studies that:

These studies strongly suggest that violence against a woman need not occur in a pornographic or sexually explicit context to have a negative effect on viewer attitudes and behavior. If this is true, then to focus research efforts primarily on pornographic images of violence against women is somewhat misguided. By doing so, we ignore the substantial quantity of violence against women contained in R-rated movies. What is particularly troubling about these depictions is their tremendous availability. It is safe to assume that many more people have been exposed to violence against women in this form than have been exposed to pornography. Because sexually nonexplicit forms of violence are more available to greater numbers of viewers, we need to ask: What are the effects of continued exposure to this material on our perceptions of violence and views about victims? Will viewers become calloused toward violence, not only in the R-rated depictions themselves but also in more realistic circumstances?<sup>44</sup>

If this is truly the case, then more study is needed and antipornographers are expending effort in the wrong direction. While this does indicate that violent pornography needs to be examined, it points to a much larger problem that cannot be fixed through censorship of pornography.

There is a plethora of violent material that is not sexually explicit. Donnerstein, Linz and Penrod bring up several examples, the most notable of which is the content of detective magazines. They cite another study which suggests that sadistic rapists are attracted to detective stories, not because of the sexual content, but because of the violent nature of the descriptions. They quote the conclusion of a study which indicated that "detective magazines may contribute to the development of sexual sadism, facilitate sadistic fantasies, and serve as training manuals and equipment catalogs for criminals. We recommend that detective magazines be considered during policy debates about media violence and pornography."<sup>45</sup> This type of material cannot be ignored in favor of censoring pornography, since studies show that it has a greater impact on the negative aggressive tendencies of men toward women.

The effects of the combination of violence and pornography, or what is referred to as the eroticization of violence, is sometimes considered to be a problem by antipornographers. However, what Donnerstein, Linz and Penrod show is that when violent films are viewed sans nudity, and when violent pornographic films are viewed, there was not a difference in the level of male aggression toward women. This indicates that the combination of explicit sex and violence does not have a greater impact than the violence without explicit sex.<sup>46</sup>

Pornography is the forum where a negative action, violence, is sometimes mated with a forbidden action, sex. Since the primary focus of sex is something secret, those who wish to attack pornography merely need to reach into the negative elements to render

the entire package undesirable. It is like refusing to recognize that the reason the bread did not rise is that the yeast was inert. Rather than recognizing that the inert yeast will ruin any product baked with it, and is in fact the sole cause of the bread's failure to rise, the baker throws out the bread and the recipe with it. It is the same with violence, which acts as the rising agent in pornography. There is nothing wrong with sexually explicit material *per se*. There is, however, something wrong with graphic representations of violence. To employ a tired, but accurate cliché, do not throw the baby out with the bath water.

CHAPTER THREE  
LEGAL ISSUES  
CENSORSHIP AND CIVIL RIGHTS

**"The 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."**  
from John Stuart Mill in *On Liberty*

This chapter is a survey of the legal attitudes and complications surrounding the issue of pornography. A review of the Supreme Court's various reactions to pornography over the last twenty-five years reveals radical shifts in public perception and judicial review. Since antipornographers are convinced that the current obscenity standards are lacking, they have attempted to find alternate constitutional routes to censorship. MacKinnon has developed a lengthy, detailed fourteenth amendment attack which claims that pornography is a civil rights violation of women. There are a number of flaws in this approach that are enumerated and explained below. This is followed by an analysis of the deleterious side effects of attempting to censor pornography, the most significant of which is the potentially exculpatory effect of arguing that pornography is responsible for the actions of rapists and abusers, rather than the men themselves. In conclusion, the legal implications for censoring pornography are too serious to be ignored. Not only would censorship set a menacing precedent, it would occasion more of the problems feminists are striving to remedy.

## A JUDICIAL TRADITION

There is a long-standing judicial tradition in this country of fighting words with words. This judicial tradition begins with Supreme Court Justice Oliver Wendell Holmes and from the time of early court decisions on obscenity and pornography has been the specific approach taken by the courts on obscenity and pornography.<sup>47</sup> However, the Court has wavered between restriction and freedom for some time now, and a look at some of their decisions will show how court rulings are used to restrict and protect speech. The issue of freedom of speech extends to political dissent in much the same manner as it does to pornography.

In the early 1900's, Justice Holmes wrote an opinion expressing the essential elements of first amendment protection. Although his was the dissenting opinion in *Abrams v. U.S.*, his explanation is deeply entrenched in the belief of the right to free speech at all costs. He wrote that "I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. . . **Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.'**"<sup>48</sup> (emphasis mine). This is the fundamental criterion for censorship, namely that the danger be imminent.

The current standard for defining 'obscenity,' which is the term used by the Supreme Court, was established in the cases of *Miller v. California*<sup>49</sup> and *Paris Adult Theatre I v. Slaton*.<sup>50</sup> Before these cases, the current government standard was based on the 1970 President's Commission on Pornography, which concluded that pornography

was not a significant problem in the United States and that there was no direct correlation between pornography and violence. Hence, a general community standard was employed whereby individual communities determined the quality of material that was acceptable for their own neighborhood. In *Miller*, the Supreme Court determined that "the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest" and that "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law" and finally that "the work, taken as a whole, lacks serious literary, artistic, political or scientific value."<sup>51</sup> This has remained the standard for evaluating cases of pornography or obscenity and it is this standard that antipornographers wish to change.

## THE CIVIL RIGHTS ARGUMENT

Antipornographers cannot come out and say that they are really against pornography because it is immoral, because sex outside marriage is wrong, because sex over all, and in any form, is dirty and degrading. They cannot shout the mantra, "Sex is dirty," "Sex is dirty," "Sex is dirty," from the roof tops because no one would listen to them. Sex is a part of American society and neither the idea nor the practice of sex is going to disappear. In addition, many branches of feminism specifically endorse the idea of positive female sexuality and many women have embraced this philosophy. So, instead, antipornographers cloak their fear, contempt, and distrust of pornography behind civil rights and feminism. However, their disguise fails to hide anything. In order to understand the flaws in the antipornographers arguments, it is necessary to look closely at the legal reasoning employed.

MacKinnon has painted the issue of pornography in constitutional colors. Her latest book, *Only Words*, clearly draws a line between what she perceives to be the universal violation of women's civil rights and the less important first amendment issue of freedom of speech. She opens the third essay of *Only Words* by asserting that "the law of equality and the law of freedom of speech are on a collision course in this country. Until this moment, the constitutional doctrine of free speech has developed without taking equality seriously--either the problem of the social inequality or the mandate of substantive legal equality."<sup>52</sup> She argues that until now, the first amendment has been given precedent over the fourteenth, and that the central question in legal decisions has been whether censoring pornography infringes on freedom of speech, not whether it promotes or denies equality. She claims that the first and fourteenth amendment have never met on equal territory in the court system, in what she calls the "equality-speech interface."

However, what she means is that this presumed conflict between constitutional rights has not yet been decided by the Supreme Court. It has arisen in a lower court as MacKinnon explains in *Pornography and Civil Rights: A New Day for Women's Equality*. This constitutional conflict was decided in 1985 by the Seventh Circuit Court in *American Booksellers Association, Inc. v. Hudnut*, the case involving the Indianapolis Ordinance. There, the Indianapolis Ordinance itself was found to be a form of discrimination and ruled unconstitutional. The decision was appealed and the Supreme Court granted the judgment summary affirmance, which means the Court agrees with the ruling, but makes no comment on the legal reasoning.<sup>53</sup> MacKinnon believes that if a case were to appear before the Supreme Court, then there would be a true test. But she provides no reason for supposing that the highest court would hear such a case, let alone rule in accordance with her views. It is clear from the Court's 1985 ruling on this case that the courts have no question about the constitutionality of the Indianapolis Ordinance.

MacKinnon should realize how unlikely it will ever be to censor pornography under the fourteenth amendment in the United States in the manner she desires. Although the courts in Canada ruled in favor of censoring pornography, courts on this side of the border have been perfectly clear about their reaction to any such legislation.

In order to approach censorship from a different angle, MacKinnon has now asserted that pornography is everywhere a civil rights violation of women. It is a civil rights violation because it constitutes discrimination against women. In legal terms, pornography is actionable as sex inequality. This means that pornography is discrimination.<sup>54</sup> This is a complicated notion because it becomes entangled in terms of what pornography is, does, and causes. MacKinnon says that pornography is what pornography does.<sup>55</sup> MacKinnon argues that pornography defines women in a way that promotes inequality.<sup>56</sup> She asserts that there is a connection between viewing pornography and actions aimed at harming women in the form of sexual discrimination and physical assault. Hence, she argues that pornography is inextricably merged with discrimination and violence and where pornography exists, discrimination and violence exist. The discrimination and violence exist because the pornography exists. Except that MacKinnon also argues that the discrimination and inequality existed before the pornography too.<sup>57</sup>

Based upon this harm, she advocates that women be allowed to sue in civil courts for removal of offensive material, restitution and compensatory damages payable by the producers and distributors of pornography. She specifically allows for this in the Indianapolis Ordinance which states that "Any woman, man, child, or transsexual who is assaulted, physically attacked, or injured in a way that is directly caused by specific pornography has a claim for damages against the perpetrator, the maker(s), distributor(s), seller(s), and/or exhibitor(s) and for an injunction against the specific pornography's further exhibition, distribution or sale."<sup>58</sup> The one qualification she



makes is that material made, distributed, sold or exhibited before the enactment of this ordinance is not subject to civil suit.

MacKinnon begins her argument by attempting to explain how pornography constitutes more than pictures on a page or frames in a film. She characterizes the trend in current obscenity laws in which the judgment turns on offense. "That is, it is conceived in terms of what it says, which is imagined more or less effective or harmful as someone then acts on it, rather than in terms of what it does. Fundamentally, in this view, a form of communication cannot, as such, *do* anything bad except offend. Offense is all in the head."<sup>59</sup> She argues correctly that this approach has been ineffective in stopping the production of pornography. This is why she has developed an alternative theory. This theory asserts that pornography is not protected speech because it is not merely speech. Traditionally, constitutional law has refused to protect speech which constitutes an action. There are several cases of unprotected and illegal speech, of which the most well-known is the example of yelling "fire" in a crowded theater. This is illegal speech because it, in effect constitutes more than simply speech, it directly and almost invariably causes an action. MacKinnon argues that pornography has a similar effect on men.

It is significant to note here for future reference that the most fundamental difference between the Indianapolis Ordinance and the *Miller* ruling is that in the Supreme Court ruling, the material must be judged offensive **and without literary or artistic merit**. The fact that this qualification is missing from the Indianapolis Ordinance means that any book, picture, magazine, or film that contains any material deemed to be pornographic is subject to censure. MacKinnon argues that "if a woman is subjected, why should it matter that the work has other value?"<sup>60</sup> One other notable difference is that the *Miller* ruling allows pornography to be censored based on the offense it might cause to viewers. The Model Ordinance bases its justification on two

kinds of harm. The first is harm to women as a general class in the form of discrimination. The second is harm in the form of physical assault.

MacKinnon compares pornographic "speech," meaning words, pictures, movies, magazines, articles, and computer images, to other unprotected speech which does more than ordinary speech. She writes of these examples:

*Saying 'kill' to a trained attack dog is only words. Yet it is not seen as expressing the viewpoint "I want you dead"--which it usually does, in fact, express. It is seen as performing an act tantamount to someone's destruction, like saying, "ready, aim, fire" to a firing squad. Under bribery statutes, saying the word 'aye' in a legislative vote triggers a crime that can consist entirely of what people say. So does price-fixing under the antitrust laws. 'Raise your goddamn fares twenty percent, I'll raise mine the next morning' is not protected speech; it is attempted joint monopolization, a 'highly verbal crime.' . . . Along with other mere words like 'not guilty' and 'I do,' such words are uniformly treated as the institutions and practices they constitute, rather than as expressions of the ideas they embody or further. They are not seen as saying anything (although they do) but as doing something. . . .Such words are not considered 'speech' at all.<sup>61</sup>*

MacKinnon claims that putting a piece of pornography in the hand of a man tells him to rape in the same way that giving an attack dog a command to attack tells the dog to kill. Apart from the obvious insult that men are no better than dogs, the fact is that while there may be cases of men who consume pornography and then commit rape, there is a much larger percentage of men who view the same pornography and do little more than ejaculate or do nothing at all. There is also a distinct difference between these cases of unprotected speech and the speech of pornography. In the cases of the dog, the bribery statute, and the price fixing, such speech is not protected **because** of the actions or intentions that accompany these words. There is a direct cause and effect relationship in each of these cases that is lacking in the case of pornography. Giving a command to an attack dog will, if the dog is properly trained, result in the intended action. Saying "aye"

is the accepted substitute for marking a ballot, and as such is more than merely a word; it has a legal consequence. So do the words "I do" and "not guilty," in their proper context.

However, putting a piece of pornography in front of a man will not always cause a man to rape, abuse or discriminate against women. Showing a man a pornographic film will not have this effect even a majority of the time. Pornography lacks this linear cause and effect relationship. A magazine picture of a naked woman is not a three dimensional naked woman. Unlike the examples MacKinnon provides, pornography does not have a universally predictable outcome. There may be some cases in which a man views a pornographic film and imitates what he has seen. But this fact does not justify the judgment that pornography is more than speech.

Yet, MacKinnon would have the court and the citizens of the United States believe that the picture on the magazine page is no different from the three dimensional woman who posed for the photographs. She writes that "The women are in two dimensions, but the men have sex **with them** in their own three-dimensional bodies, not in their minds alone. This, too, is behavior, not a thought or an argument. It is not ideas they are ejaculating over."<sup>62</sup> (emphasis mine) While it is true that men engage in this behavior when they view pornography (and women as well), it is not true that the men are having literal sex, or even figurative sex, with the women in the pictures. This is an absurd statement. The men are the only ones in three dimensions and the masturbatory habits of men viewing pornography are a result of viewing the pornography, not part of the pornography itself.

Dworkin and MacKinnon write that "the viewers have a sexual stake in believing that the women in pornography are not models or actors but truly feel and want what the script calls for."<sup>63</sup> It seems more accurate to say that it is not the viewers of pornographic films, but Dworkin and MacKinnon that have a large stake in concluding that films and reality coincide. In fact, much of their argument rests on the fact that

women in these films are not acting. Many consumers of media have some stake in believing for the moment, if not longer, that what is viewed is real. If Dworkin and MacKinnon are right, then men who use blow-up dolls have a sexual stake in believing that these plastic imitations are real women. This does not make it so. Only in movies does the mannequin come to life. Once again, antipornographers have made the incredible leap from something potentially in the fantasy of men's minds to something in concrete reality.

MacKinnon extends her speech argument to other areas as well. For example, she compares pornography to racism and sexism, arguing that just as a sign saying "White Only" is racial segregation and the sentence "fuck me or you're fired" is sexual harassment, pornography is discrimination against women. It must be noted here that not every sign saying "White Only" is a first amendment violation. For instance, such a sign in a museum or in someone's home does not constitute a violation. Similarly, two coworkers mutually joking about sexual harassment and using the phrase "fuck me or you're fired" are not using speech illegally. All these examples must be placed in context and evaluated accordingly. There must be intent to act on the intent of the speech, as well as proof that the speech was uttered. MacKinnon fails to exhibit this correlation between consumption of pornography and violent reactions. Where is the direct harm in the pornographic photographs? She tries to answer this in the following argument:

The question becomes, do the pornographers - saying they are only saying what it says- have a speech right to do what only it does?

What pornography does, it does in the real world, not only in the mind. As an initial matter, it should be observed that it is the pornography industry, not the ideas in the materials, that forces, threatens, blackmails, pressures, tricks, and cajoles women into sex for pictures. In pornography, women are gang raped by the idea of a gang rape. It is for pornography, and not by the ideas in it, that women are hurt and penetrated, tied and gagged, undressed and genitally spread and sprayed with lacquer and water so sex pictures can be made. Only for pornography are women killed to make a sex movie, and it is not the idea of a sex killing that kills them. It is unnecessary to do any of these things

to express, as ideas, the ideas pornography expresses. It *is* essential to do them to make pornography. Similarly, on the consumption end, it is not the ideas in pornography that assault women: men do, men who are made, changed, and impelled by it. Pornography does not leap off the shelf and assault women. Women could, in theory, walk safely past whole warehouses full of it, quietly resting in its jackets. It is what it takes to make it and what happens through its use that are the problem.

Empirically, of all two-dimensional forms of sex, it is only pornography, not its ideas as such, that gives men erections that support aggression against women in particular. Put another way, an erection is neither a thought nor a feeling, but a behavior. It is only pornography that rapists use to select whom they rape and to get up for their rapes. . . . Pornography is masturbation material. It is used as sex. It therefore is sex. Men know this.<sup>64</sup>

In this manner, MacKinnon argues that pornographic speech is action and that the speech of pornography is the act of sex. She fails to clearly explicate her intentions regarding the classification of pornography as more than speech. She just insists that pornography somehow "does more" than other forms of speech. The only analysis is through other forms of unprotected speech and these forms have been shown to be in a different category because when they are spoken, they also invariably entail or constitute a certain action. In the *Hudnut* decision, Circuit Judge Easterbrook noted that "if pornography is what pornography does, so is other speech."<sup>65</sup> That other speech, including the right to publish works on how to make a bomb, how to be a communist, or how to be a Nazi, is all protected by this country's commitment to freedom of expression. These are all forms of expression that have heretofore been protected by the first amendment.

MacKinnon's writing about pornography constituting more than speech is emotionally forceful, but rationally lacking. Pornography does not constitute an action any more than any other form of speech that may or may not result in an action. MacKinnon herself acknowledged in the above quote that it is the pornography **industry** and not the ideas in the pornographic materials which cause the problem. If women are violated in the production of pornography, it is an entirely separate legal and theoretical issue. In the passage above, MacKinnon asserts that it is only pornography that causes

rapists to rape, but as the study cited by Donnerstein, Penrod and Linz indicated, nonpornographic materials, like detective stories, are used by violent rapists. How can this be explained except by the fact that it is not only pornography, perhaps not pornography at all, which motivates violence against women?

Strossen clarifies the distinction between fiction and reality by noting that "it is vitally important to enforce criminal and societal sanctions against *real* rape . . . it is also vitally important *not* to enforce sanctions against *unreal* rape - words or images *describing or depicting* nonconsensual sex."<sup>66</sup> It does not require any great stretch of the imagination to realize that there is an enormous difference between fictionalized rape and real rape. It does take an extraordinary leap of imagination to pretend that there is no difference between fictionalized abuse and real abuse. Ask any woman who has been raped or abused, and she will tell you the difference. A popular slogan regarding guns is applicable here. The saying is that guns don't kill people, people kill people. In the same vein, pornography does not rape women, men rape women. It is essential to separate the act of rape from the photographic or cinematographic depiction of rape. It is essential to separate the pornography industry from the pornography itself. The claim that the pornography industry is abusive and violent must be examined independently from the claim that pornography itself constitutes an action.

Furthermore, in the selection above, MacKinnon conveniently collapses the actions engaged in to make the film with the film itself. These are entirely different issues. When discussing the offense-based censorship currently in effect, MacKinnon criticizes it by writing that:

. . . within the confines of this approach, to say that pornography is an act against women is seen as metaphorical, magical, rhetorical or unreal, a literary hyperbole or propaganda device. On the assumption that words have only a referential relation to reality, pornography is defended as only words- even when it is pictures women had to be directly used to make, even when the means of writing are women's bodies, even when a

woman is destroyed in order to say it or show it or because it was said or shown.<sup>67</sup>

This passage takes a number of independent elements and combines them for a dramatic effect. First, there are the women in the production of pornography. Second, there is the pornography itself, the pictures or movies. Third, there are the women "destroyed" as a result of the release of the material. While the first two elements are part of the sex industry at large, the third is not, and neither the first nor the third are part of the pictures themselves. MacKinnon is implying that pornography is constitutive of the elements she has described: unwilling female models or actresses, the actual murder of such actresses, and the victims of physical assault by men who viewed the pornography. The previous chapter addressed the correlation between pornography and violence and found it to be unsubstantiated. The next section in this chapter will discuss women in the sex industry who willingly choose to do the work which makes these pictures. Given this information, the only thing left in MacKinnon's analysis of pornography is the pornography itself, and she does not show how pornography in and of itself constitutes more than speech. In order to make the claims she does, MacKinnon needs to provide more than anecdotal support. More importantly, she needs to separate those issues of pornography and the pornography industry that she conveniently collapses.

Another passage from her text will illustrate why MacKinnon's arguments are unacceptable.

Put another way, if there is anything that only pornography can say, that is exactly the measure of the harm that only pornography can do. **Suppose** the consumer could not get in any other way the feeling he gets from watching a woman actually be murdered. What is more protected, his sensation or her life? Should it matter if the murder is artistically presented? . . . How many women's bodies have to stack up here even to register against male profit and pleasure presented as First Amendment principle?<sup>68</sup> (emphasis mine)

MacKinnon does not provide any reason why it should be supposed that men can only be sexually excited by viewing the murder of a woman. This supposition is rather outlandish. The rest of her facts are equally perplexing. Who is the woman referred to here? The woman in the film? Where is the murder? Was she **actually** murdered or only theatrically murdered? If the last question is straightforward, then is it a preposterous one based on unsubstantiated claims regarding "snuff films." The suggestion that women are routinely murdered for pornographic entertainment is inflammatory and irresponsible.

MacKinnon poses the question differently later on in her essay, reflecting that "lynching expresses a clear point of view. Photographs were sometimes taken of the body and sold, to extend its message and the pleasure of viewing it. . . . Suppose lynchings were done to make pictures of lynchings. Should their racist content protect them as political speech, since they do their harm through conveying a political ideology?"<sup>69</sup> Obviously, the answer is no. However, the tactic here is to compare "snuff films," which may or may not exist, with pictures of lynching black men in the South, which was never done for the purpose of making pictures. Most people have seen pictures of lynchings and knows of the historical veracity of the accounts; snuff films are probably apochrophal. Once again, MacKinnon has used an anecdotal example as a representative of the whole sex industry. Once again, she presents no proof. Once again, the first amendment does not, never has and never will protect such actions. It is essential to separate the pornography industry from the pornography itself. The claim that the pornography industry is abusive and violent must be examined independently from the claim that pornography constitutes an action.

It is interesting to note that, in connection with their slavery analogy, Dworkin and MacKinnon also collaborated on the book, *Pornography and Civil Rights*, at the end of



the eighties, in which they outline their arguments in favor of the Model Ordinance they propose. This book begins with a history of black slavery, comparing it to the equally pernicious slavery women have been subject to for much of history. They describe civil rights leaders in the following manner:

Their bravery indisputably expressed the eloquence of their humanity to a nation that had denied the very existence of humanity. Each assertion of rights enhanced the persuasive power of those who demanded equality. The moral authority of the protesters eventually exceeded the moral authority of the state that sought to crush them.<sup>70</sup>

While not explicitly stated, Dworkin and MacKinnon seem to want to compare themselves to these leaders whom they characterize in radiant terms. They sincerely believe that what they are doing is tantamount to what civil rights activists did for black freedom. They believe that eradicating pornography is "a necessary and sufficient condition" for achieving this civil liberty for women everywhere.

MacKinnon's legal argument rests on two independent assumptions. The first assumption is that pornographic speech constitutes something more than speech and hence is not protected under the first amendment. The second assumption is that pornography constitutes a civil rights violation because of the harm it perpetrates on women in the form of discrimination, physical assault and destructive images and attitudes. Although MacKinnon believes that she has proven both these assumptions, there are reasons to believe that she is mistaken. First, as has been argued above, pornography is no different than any other kind of protected speech. Second, whether or not this first contention is rejected, the evidence in chapter two shows that there is no proven harm, and hence there is no justification for censorship, or removal of first amendment protection. Even if none of the previous arguments in this thesis have convinced the reader that the classification of pornography as ordinary speech is appropriate, the fact

that pornography does not cause the harm to women that is claimed serves as a dismissal of any civil rights violation claims. However, at this point there is enough evidence to indicate that transferring pornography out of the realm of first amendment protection on the grounds that it is more than speech is unfounded.

One of the more interesting features of *Pornography and Civil Rights: A New Day for Women's Equality* is that in one of the few instances where they do cite sources for their evidence, one of them is Edward Donnerstein. Donnerstein is the same man who published a book with his colleagues that asserts that pornography, defined as sexually explicit material, simply is not the problem. Dworkin and MacKinnon state that "equally clouded by specious media reports and outright lies has been the direct evidence of a causal relationship between the consumption of pornography and increases in social levels of violence, hostility, and discrimination."<sup>71</sup> They fail to mention that these studies indicate that the link is between violence and aggression, not sexual explicitness and aggression.

Now, the qualification that is missing from the MacKinnon equation is the solution angle. Not only is it necessary to show a causal link between pornography and the problems of violence and discrimination for women, it is also necessary to demonstrate that removing protection from this specific form of expression will solve the indicated problem. In order to justify removal of first amendment protection, it is necessary to demonstrate a reasonable likelihood that censoring pornography is apt to remedy the problem of discrimination and violence. If censoring pornography would not accomplish this, then there is no justification for legal action. As the president of the American Civil Liberties Union argues, "advocates of MacDworkinite laws cannot even show that these laws would effectively promote women's safety and equality, let alone that they are the necessary and least speech-restrictive means for doing so."<sup>72</sup> This is never addressed by antipornographers.

The sociological studies from chapter two show that pornographic material will still be available to consumers that has the very same effect, ostensibly to a much greater degree because it reaches a wider audience. *Boxing Helena* is only one among many examples. This issue of the availability of violent, non-sexually explicit material is never addressed and there is good reason to suppose that the truth is that an ordinance or other legal measure would cause more harm than good. This is evident from Canada's experience and from other problems with censorship which will be discussed at the end of this chapter. Furthermore, the Indianapolis Ordinance does not remove any materials that are currently on the market. Even if no new pornographic films were produced, there are enough on the market to last a long time. There is absolutely no reason to think that a violation of the first amendment is warranted for the speech of pornography or that a civil rights violation is actually occurring.

The writings of Dworkin and MacKinnon are an emotionally charged appeal that lacks sociological, statistical, or legal support. MacKinnon in particular continually collapses the distinction between fantasy and reality with her argument that pornography is more than words, that it is in fact action. The fantasy female on the magazine page somehow takes on three dimensions and is treated as a separate entity in reality, rather than in the imagination. As previous quotes have illustrated, this conflation of semantics and reality appears throughout in her work. She attempts to somehow combine the fact that men get erections from viewing pornography with the fact that these pictures and words do more, somehow, than other pictures and words. This argument completely ignores the wide spectrum of emotions aroused from viewing pictures or reading many types of literature, from anger to tears to despair to boredom. There is very little printed material that does not arouse an emotion, although it is true that we would more properly speak of boredom as a lack of arousal, and that is more often the response to the plethora of material we encounter daily. It just happens that pornography arouses sexual

feelings (although it has been frequently known to arouse laughter, envy, anger, pity and other emotions as well). A physiological response to a picture, a chapter in a book, or a segment of film is hardly unusual. Besides, as Bertrand Russell wrote in his text, *Marriage and Morals*, "Nine-tenths of the appeal of pornography is due to the indecent feelings concerning sex which moralists inculcate in the young, the other tenth is physiological, and will occur in one way or another whatever the state of the law may be."<sup>73</sup>

Why, then, does MacKinnon try so hard to make her case against pornography on civil rights? Perhaps she does this because it is more emotionally appealing, and maybe more legally palatable if pornography can be placed outside the familiar protection of speech. The most obvious way to do this is to classify it as something that extends beyond the boundary of speech, to classify it as action in the form of discrimination. Yet, in all of her rhetoric, MacKinnon fails to provide a convincing argument that accomplishes this feat. Pornography remains a form of speech, just as sex remains an action.

## COERCION AND WOMEN IN THE SEX INDUSTRY

It seems appropriate at this juncture to reflect on the issue of consent and women in the sex industry. MacKinnon and Dworkin write about the terrifying ordeals of some women in the sex industry as if they are constitutive of every woman in the sex industry.<sup>74</sup> MacKinnon has constructed a theory of society in which it is true that no woman voluntarily participates in sex work. She argues that consent is not predicated upon a signed contract, a verbal agreement or many other commonly accepted forms of consent in the business world. Instead, there is no avenue available for women to consent to sexual actions of the personal or public kind. Although both MacKinnon and Dworkin

question whether or not it might be possible to eventually possess a sexuality in which both sexes have equality, both assert that it is not possible now, and not ever with the current structure of government, family life, and religious orientation.<sup>75</sup>

MacKinnon has constructed a very sophisticated theory about the lack of ability to consent for women in the United States. Essentially, her argument is summed up in a discussion of pornography during which she says:

. . . empirically, all pornography is made under conditions of inequality based on sex, overwhelmingly by poor, desperate, homeless, pimped women who were sexually abused as children. . . . These conditions constrain choice rather than offering freedom. They are *what it takes* to make women do what is in even the pornography that shows no overt violence.<sup>76</sup>

In other words, the social construction of capitalistic America is such that women are not able to act as autonomous individuals. There are two assertions here. The first is that women are not equal to men and therefore cannot consent to perform in a pornographic film. The second assertion is that most of the sex industry is composed of women who have suffered psychologically and economically. In this manner MacKinnon presumes to have answered critics who charge that there are women who choose to be in the sex industry and are happy to be working as actresses or models in pornographic films and pictures. Unlike legal notions of coercion which require physical or psychological<sup>77</sup> coercion, MacKinnon has constructed a notion in which all women are coerced by a structure devised by men for the sexual pleasure of men.<sup>78</sup>

MacKinnon says that there can be no consent in a society whose social systems are based on patriarchal foundations. When men control the way women view themselves and sexuality, then women are not free to choose, even if the illusion of choice is present. Instead of choice, MacKinnon argues that women are forced in sexual relations. She writes that "the appearance of choice or consent, with their attribution to inherent

nature, are crucial in concealing the reality of force. Love of violation, variously termed female masochism and consent, comes to define female sexuality, legitimizing this political system by concealing the force on which it is based."<sup>79</sup> If women are not truly able to consent in their own personal, sexual relations with men, then women certainly are not able to consent to perform in pornographic pictures, which pictures serve as a means for propagating the patriarchal structure of male-based power.

However, this argument is predicated upon a shaky foundation. It is essential that MacKinnon combine the images of inequality with poverty and sexual abuse. This makes it much harder to refute. Women who are economically disadvantaged do not have the same access to education or the same power to be heard as women who are economically independent. But, this truth does not validate MacKinnon's assertion that all pornography is made under conditions of inequality. Even so, MacKinnon still believes that all women are living under conditions of inequality, although she never explains how she is exempt from this inequality or how she has managed to make her voice heard.

The notion of male power and female powerlessness is inviting and appealing. The traditional view of women is that they are weaker, less able to control their destiny. Thus, it is easy to transfer this view onto MacKinnon's theory which also depicts women as weaker, powerless. But reality in this decade does not substantiate this view. Characterizing women in this manner relies heavily on the private versus public spheres of life. Traditionally, and in MacKinnon's arguments, women are in the private realm and men are in the public realm.<sup>80</sup> Without access to economic and political control, women lacked the means to change their status.<sup>81</sup> MacKinnon writes about sexual relations as if this public/private dichotomy still expressed the whole of interpersonal relations in the United States. This is not the case. Women have been increasingly infiltrating the public sector in every field. Would MacKinnon really assert that Nancy Sinatra does not have

the ability to consent to pose for *Playboy*? How is her life unequal to the lives of the men around her?

This seems to be where MacKinnon's argument loses steam. She would like to have everyone believe that women are still in this powerless state of submission. But, women are no longer completely subject to the desires of men, nor economically dependent on men. In an ABC special hosted by Peter Jennings, MacKinnon was a guest along with Naomi Wolf, Susan Faludi, F. Lee Bailey and many other experts on sexuality and feminism. When MacKinnon expressed her views about the powerlessness of women in this society, Warren Farrell, a sex therapist and author stated that both men and women in today's society feel powerless.<sup>82</sup> This seems much closer to the truth than MacKinnon's assertions that only women are powerless. Women run companies, women are politicians, women are no longer exclusively economically dependent on men, women can guide their own destinies, and women are educated. The fact that MacKinnon is a law professor and published author proves that women have access to power and that women have a voice. The fact that there is a debate among feminists over the ideas of Dworkin and MacKinnon proves that women have many different voices that are not regulated and defined by patriarchy.

Nevertheless, the fact that some women have power does not mean that all women do. The fact that there are women who are economically disadvantaged or lack education or suffer from childhood abuse needs to be addressed. However, claiming epistemological superiority over them and dictating their role and function in society is not the appropriate method. Classifying all women as sexual victims is not the appropriate method. Rather than removing the right to choose and consent from the women who do possess it in order to protect the women who may not, a better option would be to direct energy into giving those women the power to choose. Of course, this is difficult for Dworkin and MacKinnon who believe it is not currently possible to achieve this equality.

It may be true that this is a male-constructed society and that women need to learn to redefine themselves in order to figure out what female sexuality consists of and what the role of women is meant to be. However, this is a process which has already begun, and the existence of the writings of Dworkin and MacKinnon prove this as surely as do the writings of Strossen and Tisdale.

Having addressed this issue, it is now appropriate to settle on a definition of coercion in order to discuss the Indianapolis Ordinance and the right of women in issues of free speech. Coercion can sometimes be indirect or psychological, and it can sometimes be direct or physical. The type of coercion Dworkin and MacKinnon assert may exist on some level, but it surely does not exist in the paranoid dimensions they envision. So, this makes it difficult to deal with their notion of coercion in terms of a legal maneuver. The argument necessarily turns on whether or not MacKinnon's notion of coercion should be accepted, and it is clear that it should not be because it does not represent the best interests of women in the United States. Hence, the notion of coercion must be thought of in a more direct manner and limited to the traditionally accepted notions of psychological and physical coercion.

In accordance with this notion, it is important to show women who are capable of consenting to perform in pornographic material. Contrary to the assertions of MacKinnon, there are middle class women who choose to enter the sex industry for a number of different reasons. Two books in particular reflect contemporary ideas about women in the sex industry. Sallie Tisdale published *Talk Dirty to Me: An Intimate Philosophy of Sex*<sup>83</sup> that contains her own personal thoughts on pornography and the sex industry. Frederique Delacoste and Priscilla Alexander compiled a book titled *Sex Work: Writings By Women in the Sex Industry*<sup>84</sup> that contains short essays and stories written by women who work in the sex industry as prostitutes and actresses in pornographic films. One of the reasons these women published the books they did was to combat the



notion that all women are forced into sex work. Instead, they provide accounts of women who like sex, who made a deliberate choice to participate in the sex industry, who think there are some drawbacks, but compare them to the drawbacks in any type of job, often concluding that there are fewer risks in the work they choose to do.

Two women in particular stand out among the accounts provided in Delacoste and Alexander. The first is an account by a woman who calls herself Jane Smith. Jane recounts her experiences, acknowledging the positive and negative aspects of her career as an actress in pornographic films. She was prompted by an advertisement for this book and drafted a short article. She begins by suggesting that "with my education and upper middle class Jewish background, I couldn't possibly be typical of women in the sex industry" and then reasoned that "no one's typical. . . . Women come to the sex business from all kinds of backgrounds, and for all kinds of reasons. . . we're as diverse as women in society at large."<sup>85</sup> She claims that her experience was a non-violent one, writing that "no one forced, tricked, or addicted me into the business. No one owned me, took my profits, or beat me when I tried to leave. I was not hurt or raped by the film-makers."<sup>86</sup> She admits that her motivation was partly financial, partly curiosity, and that there was some peer pressure to participate in pornographic films. She confides that she felt embarrassed to admit that she enjoyed the session. In conclusion, Jane writes, "I'm not glad I contributed to the pornography industry, although I admit I'm proud that I once did something so inconsistent with my present respectable persona."<sup>87</sup> While the experience may not have been something Jane would repeat, given the chance, it was something she engaged in willingly and deliberately.

The second account is by Nina Hartley, who is more convinced of the positive nature of her choice to work as an actress in pornographic films. In her article "Confessions of a Feminist Porno Star" Hartley relates her experiences in the pornography industry. She begins with the assertion that "one of the most basic tenets of

feminism, a tenet with which I was inculcated by the age of ten, was the *right* to sexual free expression."<sup>88</sup> She asserts that:

I find performing in sexually explicit material satisfying on a number of levels. First, it provides a physically and psychically safe environment for me to live out my exhibitionist fantasies. Secondly, it provides a surprisingly flexible and supportive arena for me to grow in as a performer, both sexually and non-sexually. Thirdly, it provides me with erotic material that I like to watch for my own pleasure. Finally, the medium allows me to explore the theme of celebrating a positive female sexuality--a sexuality that has heretofore been denied us.<sup>89</sup>

She concludes her article with this thought:

Each of us has some idea or action that we hate but that is still protected by the First Amendment. I consider myself a reformer, and as a reformer I need a broad interpretation of the First Amendment to make my point. As a feminist I have principles that won't allow me to take license with that precious right to free speech. There have always been, and to some degree will always be, extremists who see the First Amendment as their license to do or say whatever, and not as a right which has implied responsibilities. Of course the sexual entertainment medium is no exception to this. I say censure them, but do not censor me.<sup>90</sup>

Nina has used her own voice to express her willingness to participate in the pornography industry. It is not only something she does willingly, but something that she enjoys and sees as contributing to society in a beneficial manner.

If these accounts are accurate, then it may be that the idea that all participants in the sex industry are unwilling and coerced is incorrect. Women may make the choice to be there for different reasons, including the reason that they find it more acceptable than their other alternatives. Of course, these examples do not deny any of the accounts of women who are abused in the sex industry. What they do provide is an alternative account of the sex industry, proving that women are quite capable of making a conscious, positive choice to enter this field of work. Of course, it must be recognized that MacKinnon would argue that these women are only acting according to a patriarchally

constructed hierarchy which places them in the positions they are in without their consent because they do not have enough personal power to consent. The only response to this is one of disagreement. These two women are educated, economically independent and socially adjusted. Neither one was sexually abused as a child. They can both rationally explain why they made the choice to do work in the sex industry.

## THE PROBLEMS WITH CENSORSHIP

The work of Dworkin and MacKinnon is dangerous in a way that extends beyond their questionable logic and weak arguments. There are real and substantive harms that women will face as a result of any such ruling, whose purpose is to eradicate pornography. These harms stem from the removal of the right to speak for ourselves.

In order to comprehensively define a cause of action for women, Dworkin and MacKinnon felt it necessary to examine what is meant by coercion in a legal context. While this sounds like a reasonable goal, it again leads to Dworkin and MacKinnon claiming epistemological privilege over the rest of women in society.

None of the following facts shall, without more, negate a finding of coercion: (i) the person is a woman; or (ii) the person is or has been a prostitute; or (iii) the person has attained the age of majority; or (iv) the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or (v) the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or (vi) the person has previously posed for sexually explicit pictures with or for anyone, including anyone involved in or related to the pornography at issue; or (vii) anyone else, including a spouse or other relative, has given or purported to give permission on the person's behalf; or (viii) the person actually consented to a use of the performance that is later changed into pornography; or (ix) the person knew that the purpose of the acts or events in question was to make pornography; or (x) the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the events that produced the pornography; or

(xi) the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or (xii) no physical force, threats, or weapons were used in the making of the pornography; or (xiii) the person was paid or otherwise compensated.<sup>91</sup>

The opening of this definition assumes a positive role for women, asserting that they are not children and that their decisions must be respected. However, in the last five sections this responsibility is abrogated by asserting that even if a woman made the choice, signed a contract, and received financial compensation, she may still claim to be coerced, and cannot be credited with having the responsibility of an adult. Dworkin and MacKinnon claim that there are cases where women were coerced to sign a contract and this is undoubtedly true. They also claim that a pleasant appearance on camera does not mean the same was true off camera. This too is true since there may be no weapon on camera, while a gun is in the curtains off camera.

These arguments stem from the refusal of Dworkin and MacKinnon to allow any woman the right to consent. Again, they argue that this is because the conditions are inherently unequal, and as such, provide an atmosphere in which women are necessarily coerced before they even consider whether or not to perform in pornographic films and pictures. However, the evaluation of the notion of consent in the previous section suggests that this notion of coercion is limited and old-fashioned. Since women do have economic, political and personal power in the United States, they do have the power to guide their own destinies. As such, women are capable of consenting to work in the sex industry. If this is true, then their willingness to sign a contract needs to be accepted as valid. This does not mean that a woman who is psychologically coerced or physically coerced into signing should be held to the contract, but there are already legal avenues open for these problems.

The overtly simplistic answer to the argument of coercion is that a person is presumed innocent until proven guilty, not the other way around. Dworkin and MacKinnon have decided that producers and distributors of pornography are always coercing women into working for them or that the women are coerced into the industry via the patriarchal system of society. Since women who wish to work in the sex industry as actresses cannot sign contracts for themselves, cannot make verbal agreements, and cannot consent to perform, there is virtually no way for her to agree to perform for a pornographic movie or pose for a pornographic picture. One might argue that the definition does not explicitly state that all women are being coerced, but rather that there is no way for her to voluntarily agree of her own free will to participate in pornographic filmings. This interpretation is substantiated by the philosophy of Dworkin and MacKinnon. Where is the potential for consent given the regulations imposed in the previous definition of coercion? How is a producer to know if a woman has consented? What must she do? If a verbal or a written contract is not sufficient, what would be? All the definition states is that "more" must be provided.

Nancy Sinatra recently decided to pose as the centerfold for *Playboy* magazine. She signed a contract with the magazine, agreeing to pose for a certain amount of money. She could ostensibly go to court and accuse Hugh Hefner of coercion, even though she signed a contract and publicly announced her consent to do the photo session. In light of the American legal tradition, it makes no sense to assume that she was coerced and place the burden of proof on the magazine, rather than assume that she was not, and place the burden of proof on the prosecution. Antipornographers have not provided sufficient justification for overriding this legal tradition, and they do women a great disservice by pretending to look after the interests of women, instead severely subverting them by denying women the right to make decisions for ourselves.

Another response to the ideas of Dworkin and MacKinnon falls under current law. What antipornographers seem to disregard is that illicit actions are just that, illicit. Child pornography is punishable by law, and so is the physical and psychological coercion of adult women. Any person who is coerced into performing in a video or posing for pictures already has legal recourse. She does not need a civil rights defense or a new basis for a civil lawsuit. She can prosecute the producer under criminal statutes carrying far more weight than a civil suit, and she can also file a civil suit for compensatory damages under current law.

MacKinnon makes an interesting point in her book that should be addressed here. In response to the idea that current law already protects women in the sex industry, she contends that "the Ordinance cannot be both unconstitutional and legally redundant."<sup>92</sup> In saying this she seems to collapse the distinction between production and consumption. The legally redundant aspect of her litigation is the right for women who are abused in the production of pornography to seek civil and criminal protection. This is a right they already possess in contract and criminal law. It is not redundant to allow civil prosecution of producers by victims of consumers. This is not a right possessed now, and for good reasons. There is a distinction here which antipornographers, MacKinnon in particular, refuse to see.

There is no question that using coercion in the production of pornography is deplorable and illegal. However, there are many women who willingly enter the sex industry, each with her own reasons. MacKinnon, in particular, expects her reader to take, at face value, the assertion that she is accurately representing the condition of every woman in the sex industry. This is simply not the truth. She does not provide citations or sources to backup her claims regarding films in which women are killed. The quintessential "snuff film," the brain child of antipornographers, has not been proven to exist by MacKinnon. While it is possible that a woman may have been killed during the

production of a pornographic film, MacKinnon would have people believe that this is a daily practice.<sup>93</sup>

Once the assumption that women are killed for movies as a routine practice is dispelled, then other assumptions made by Dworkin and MacKinnon begin to dissolve. There is no longer a reason to automatically suppose that every centerfold for *Playboy* is posing against her will, coerced, or a victim. Contrary to MacKinnon's assertion about women that "it is essential to [violate] them to make pornography" it is not essential or even desirable. So, if every woman is not being violated in the production of pornography, then where is the argument against its production? MacKinnon responds that the argument against pornography turns on the fact that women are hurt by men who view pornography. Thelma McCormack, director of the Center for Feminist Research at York University, characterizes MacKinnon arguments in the following passage:

Our distinctively human capacity is to think, select, interpret and reinterpret content, to read texts on different levels and in different ways. The result is a broad spectrum of possible attitudes which loop back to shape how we read future texts. . . .

Thus, when Dworkin-MacKinnon collapse the distinction between dream and deed, fantasy and act, thought and behavior they construct a Skinnerian model of human nature which, in turn, justifies an elaborate system of social control. <sup>94</sup>

Thus, once again highlighting a flaw in the assertion that a single magazine, a single video, a single passage in a single book, can be singly responsible for any single attack on any single woman. Our whole lives continually compound one experience after another, the result of which is a complex person. To assume that one single event could so largely be responsible for one act of violence would be misguided and irresponsible. Yet, Dworkin and MacKinnon want to allow women to sue a single producer of a single magazine or a single video, on the grounds that it was that material which caused her single rape.

Judges have been swayed by the rhetoric of antipornographers. The courts, in some of their rulings, have ignored pertinent evidence, just like the antipornographers, once again illustrating that it is the supposed moral compass of those making decisions that leads the way, and not the factual evidence of harm to women. Strossen cites a case where "the University of Nebraska at Lincoln ordered a graduate teaching assistant to remove from his desktop a photograph of his wife in a bathing suit."<sup>95</sup> This decision was influenced by the *Robinson v Jacksonville Shipyards, Inc.*<sup>96</sup> decision, wherein a female welder had been harassed with sexually explicit photographs by male coworkers. The application of this ruling was the utilization of the court's definition that "included any picture of a woman who is not fully clothed or in clothes that are not suited to . . . routine work in and around the shipyard . . . ." <sup>97</sup> By extension, a bathing suit is not appropriate attire for a campus office, so the picture was removed. This connection completely ignores the context and intent of the photograph which was merely a picture of the assistant's wife, and creates an environment in which fear transcends freedom of expression. This is the same power that Dworkin and MacKinnon want to provide for women in general. The Indianapolis Ordinance allows for the court ordered removal of any material deemed to discriminate against women.

Censoring pornography would harm women who are in the business of sex work economically and legally. While the Indianapolis Ordinance supported by MacKinnon and Dworkin would not make pornography illegal, it would turn the tide against pornography, thereby laying the groundwork for an outright ban on all pornographic material. Although Dworkin and MacKinnon do not advocate criminal sanctions against pornographers, they do allow for civil prosecution against anyone trafficking in pornography. As the Indianapolis Ordinance states, they can be sued for discriminating against women, for punitive damages, and for removal of the offensive material in



question. There are economic and legal disadvantages to both civil and criminal approaches of eliminating pornography.

Allowing women to sue as a class for discrimination opens the door to a flood of civil suits against producers, sellers, distributors and exhibitors of pornography. The economic disadvantage this places anyone who sells books, movies, magazines, or any other materials which may potentially be deemed pornographic, in a difficult position. Since the definition in the Indianapolis Ordinance is so vague, the material which may or may not be deemed subject to civil suit is open to interpretation. This means that anyone who sells materials which are at risk of being judged unacceptable are running a very real risk of going out of business. This includes stores which deal specifically in sexually oriented material, but it also includes bookstores that carry magazines and books which may be judged pornographic, grocery stores which carry the latest romance novels that have a very good chance of being judged pornographic, music stores which carry album covers and songs with lyrics which may be judged pornographic and video rental stores which carry pornographic videos, and non-pornographic videos which may be deemed pornographic. All these stores are at risk for civil suits which will cost them money to defend and may cost them money in damages, as well as the loss of income from the removed materials. Furthermore, anyone producing, marketing, or distributing these materials is also at risk.

Making pornography illegal immediately removes the validity of any contract between producers and performers, since contracts in illegal businesses are not enforceable.<sup>98</sup> If pornography is allowed to exist legally, then the women in the business have legal recourse if they are mistreated and they have legal protection against abuse. They can negotiate their own contracts and take producers to court if they are violated. They can bring criminal charges against producers who engage in illegal conduct without fear of being prosecuted themselves for participating in pornography. If their work was

illegal, they would have absolutely no recourse and hence, be at the mercy of those who employ them, as prostitutes currently are in states which do not allow prostitution. There would be no way to contract for length of employment, salary or wages, job descriptions, or benefits. There would be no way to enforce the minimum wage, the health insurance requirements, the child protection laws, or any of the guidelines set by the government to regulate businesses. Realistically, there would be no way to even attempt to recover damages, since filing such a claim would be an admission of an illegal act itself. Women and men in every aspect of the pornography industry would lose their legal rights and would also be financially compromised, since all contracts would be irrelevant and unenforceable. As history has shown in other employment relations like prostitution, when a business exists unregulated, it is the employee who suffers. So, restricting pornography would be seriously detrimental to the women who perform in it.

Of course, financial and economic harms are not the only class of harms. It may seem that these harms are irrelevant when compared with the harms that Dworkin and MacKinnon cite in their writings, including physical assault, negative attitudes and discrimination in general. However, the correlation between pornography and violence has been examined and been found to be lacking solid support. The negative attitudes and discrimination have been shown to stem from an association with violence and hence, have just as much support from media not deemed pornographic. Therefore, the removal of pornography would not have the desired effect of changing these attitudes. Finally, the last section in this chapter addressed the fact that there are plenty of women in the sex industry who choose to be there and have had positive experiences while working as actresses and models for pornographic material. Those women who are not there by choice already have legal avenues open to them, although they may need some help finding their options. Since all this is true, then allowing pornography has not been shown to

harm women in the way Dworkin and MacKinnon argue, and trying to eliminate it will have the harms described above.

If all the sociological, statistical, testimonial and empirical evidence against the antipornographers has not been convincing, then a real life case should supply the missing evidence. MacKinnon was very pleased with the *Butler* ruling in Canada in 1992 because she had a direct role in influencing the courts opinion. The aftermath was immediate and astounding. Even supporters of the ruling were obliged to confess that the legal avenues opened up were insufficient to deal with the problem of pornography, and, even worse, they were corrupted by the very system the law was supposed to undermine because the ruling left too much room for interpretation.

Strossen has thoroughly catalogued the evidences of misuse and abuse of the court ruling in Canada. Not only is it used to ferret out gay, lesbian and women's bookstores, it has also been used to control political dissent.<sup>99</sup> Strossen writes that "within the first two and a half years after the *Butler* decision, well over half of all Canadian feminist bookstores had had materials confiscated or detained by customs. . . the predominant targets have been gay, lesbian, and women's literature."<sup>100</sup> The police confiscated *Bad Attitude*, a lesbian magazine, and arrested the owner and manager of the store which sold the publication. The most telling fact is that the ruling in Canada, unlike the proposed Model Ordinance, refused to allow censorship on the basis of individual passages or pictures. The work must be considered without merit, as a whole, in order to be censored. If a magazine, book or other form of pornography contains material that has value, then it may not be censored. This is to prevent material, like literature or movies, which may contain some pornography but do not revolve around the pornographic images, from being censored. Yet, even with this restriction, Canadian officials still managed to do considerable damage to the women's movement.

The political implications of censorship are astounding. Marjorie Heins compares it to the communist scare, saying that "people have very different definitions of the term 'pornography,' but it has become a convenient weapon, just as 'communism' was during the McCarthy era, to brand any person or work with whose ideas the censor disagrees."<sup>101</sup> At the turn of the century, women activists like Margaret Sanger and Mary Ware Dennett were also censored. They were arrested on obscenity charges and prosecuted for distributing information about birth control and sex. Dworkin and MacKinnon want to place back in the hands of the state the power to control women in the same way. Strossen tells of an organization, CENSORSTOP, in Canada which is convinced that the *Butler* ruling is being used to control radical dissent. If this ruling was designed to help women, where did it go wrong? Why are lesbian publications which make fun of men being seized and destroyed? It appears that antipornographers have placed in the very hand of the patriarchy a tool more powerful than it could ever find itself. They have provided the means to silence women. In this era of free speech when women's voices are being heard, antipornographers have handed over on a silver platter the means to end free speech.

## PORNOGRAPHY MADE HIM DO IT

One of the pivotal harms to women from anyone who would suggest that pornography is the cause of violence against women is the chance that it can be used as a legal defense. Instead of blaming men for abusing women, men can now point the finger at pornography and argue, as Dworkin and MacKinnon do, that consumption of pornography directly caused their actions. MacKinnon is constantly accusing anticensorship feminists of hindering the women's movement,<sup>102</sup> when it is MacKinnon herself who is doing the greatest disservice to women. If Dan White's argument that he ate too many Twinkies, thereby affecting his rationality, was actually a strategically triumphant legal defense when he assassinated Mayor Moscone and Harvey Milk,<sup>103</sup> imagine what the pornography defense would become, not just in one isolated case, but in a nationwide trend. Courts could no longer sentence wife batterers to jail because pornography made them do it. Men could no longer serve time in jail for rape, since it was the consumption of pornography which caused them to rape. The only people who would suffer would be the producers of the pornographic material, because Dworkin and MacKinnon would hold them legally responsible for violence against women. What the Model Ordinance or merely an attitude of this type suggests is that violent men are not responsible for their actions since they have no control over their sexual urges. The tables have been turned and it is now your fathers, brothers, and lovers who no longer have the capacity to think for themselves, so inept are they at making up their own minds or controlling their bodies. If they rape you, it is not their fault. Blame the producer of *Playboy*, *Hustler*, blame anyone else but the man who actually ripped off your clothes and raped you.

The absurdity of all this is darkly overshadowed by the frightening reality of it. In 1979, Dworkin gave a speech at a *Take Back the Night* rally. In the course of this speech, she alleged that:

Night is magical for men. They look for prostitutes and pick-ups at night. They do their so-called lovemaking at night. They get drunk and roam the streets in packs at night. They fuck their wives at night. They have fraternity parties at night. They dress up in white sheets and burn crosses. The infamous Crystal Night, when German Nazis firebombed and vandalized and broke the windows of Jewish shops and homes throughout Germany . . . is the emblematic night. The values of the day become the obsessions of the night. Any hated group fears the night, because in the night all the despised are treated as women are treated: as prey, targeted to be beaten or murdered or sexually violated. We fear the night because men become more dangerous in the night.<sup>104</sup>

Men, like werewolves, break out of their civilized shells to go on rampages of killing and rape, locating women as substitutes for blacks or Jews. This appalling conception of men as an inclusive class is, at the very least, alien to most women. There is no denying that throughout history, groups of men have conducted themselves in loathsome fashion. What is debatable is the notion that all men can be lumped into a single category. This is as demarcating and sinister as grouping all women into one category. What Dworkin does not acknowledge is that while Hitler and his Nazi soldiers were exterminating the Jews, American and Allied troops were moving in to liberate them. While white supremacists were lynching blacks, white men in the North were passing legislation to free blacks from slavery. And while Ted Bundy was out raping women, other men were at home with their wives, girlfriends and daughters. It is distressing that Dworkin's understanding of men only detects the potential evil and declines to confer any of the credit that is due for all the positive elements men contribute to our society.

Furthermore, once a law is on the books that asserts that producers of pornography are responsible for the harm caused to women by the male consumers of pornography, then the blame is shifted off individual men and they have an exculpatory defense. If society accepts the argument that men are easily manipulated, and unable to

control themselves, then how can they be blamed for their actions? Strossen discusses this potential effect by writing that:

The "porn-made-me-do-it" concept . . . would severely set back the women's movement's efforts to ensure that our criminal justice system vigorously enforces laws criminalizing sexual assaults. The Senate Judiciary Committee members who opposed the Pornography Victims' Compensation Act emphasized that suppressing pornography exonerates actual rapists and others who assault women. Their minority report explained that 'the bill sends the wrong message to sex offenders . . . Criminal defendants could use [this] to assert impaired or diminished capacity, available in many states as a defense to specific intent crimes such as rape.' For this reason, feminist law professor Nan Hunter observed that, to convey its actual impact, the Act should be renamed the 'Rapists' Exculpation Act.' Hunter further warns that to single out pornography as women's archenemy is to repeat the mistake of some of our foremothers, the leaders of the women's temperance movement who sought to ban alcohol. Those women believed that alcohol caused much of men's violence against women, particularly domestic violence. But we have learned from the work of the anti-violence groups that alcohol is not the *cause* of violence against women; it is the excuse for it. The same is true for pornography.<sup>105</sup>

This is hardly the approach that antipornographers have in mind, yet it is a realistic projection of the affect their actions will have on society.

## A JUDICIAL RE-EXAMINATION

Sixteen years after Justice Brennan ruled on *Miller v. California*, he reevaluated the effect that his ruling had and understood that the once acceptable interpretation of obscenity laws placed an undue burden on producers and consumers of pornography, acting as a barrier between citizens and freedom of speech. As Strossen noted, the constant fear of civil prosecution hanging over producers and distributors of pornography serves to silence them as effectively as censorship. Under the Indianapolis

Ordinance, makers, distributors, sellers and exhibitors of pornography are all at risk. Dworkin and MacKinnon have provided the means not only to sue them for damages, but to remove their material from the market altogether.<sup>106</sup> Added on to this fear is the Indianapolis Ordinance concept of coercion, which makes it impossible for a producer or director of pornographic material to hire women for work since there is no way to ensure that their consent is legally given. The producers may not go to jail, but they will go out of business. As far as the consumer is concerned, there is no substantive difference. The product is still not available. Voices have still been silenced.

The legal implications of the antipornography movement extend beyond the consideration of the women who participate in pornography and the men and women who produce and view it. Although the notion of willing participants in pornography is what Dworkin and MacKinnon repudiate, it remains a fact that when considering legal actions, the ramifications for the entire legal community must be carefully considered. The legal fabric of this country is tightly knit, interwoven, and wholly dependent on the rest of the fabric. The issues of civil rights, censorship, and pornography are important threads in this fabric, and alterations must be carefully considered.

The precedent set by a ruling in favor of the Indianapolis Ordinance would require a complete transformation of first amendment jurisprudence, especially since it allows **any** material that fits into the criteria to be judged pornographic, regardless of its artistic or literary merit. This transformation would completely alter the current conception of free speech. As has been mentioned, such a ruling would frighten too many people in too many places. Artists would be frightened to produce art, for fear of it somehow being judged pornographic. They are, in fact, currently frightened of losing their National Endowment for the Arts grants if their work is found to be too offensive. Writers could not freely express their opinions on many subjects, from feminist issues to childbirth, for fear of their work being judged pornographic. Feminists could not



write about many of the issues important to women everywhere, because, as Canada has proved, they would be censored first under their own laws. It is ironic that if Dworkin's writings were to be judged pornographic in the United States under the Indianapolis Ordinance, as they were in Canada under the *Butler* ruling, she could be sued by women for sex discrimination and have her texts removed from the market. It is curious that this is an acceptable risk for antipornographers.

Furthermore, based on the sociological evidence and the legal analysis, an established right to restrict sexually explicit speech would immediately turn into a right to restrict many other kinds of speech. Strossen clearly identifies the problem by asking:

If we should restrict sexually explicit speech because it purveys sexist ideas, as the feminist antipornography faction argues, then why shouldn't we restrict non-sexually explicit speech when it purveys sexist ideas? And if speech conveying sexist ideas can be restricted, then why shouldn't speech be restricted when it conveys racist, heterosexist, and other biased ideas?<sup>107</sup>

The answer to this is clear.

The Supreme Court has repeatedly held that the First Amendment protects not only speech that is *full of hate* on the speaker's part, but also speech that is *hateful* to its audience. As former justice Oliver Wendell Holmes declared, "[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought-- not free thought for those who agree with us but freedom for the thought we hate."<sup>108</sup>

In other words, what is being protected is the pornographer's right to produce pornography and the antipornographer's right to protest. Either both are accepted, or both are rejected. It is not possible to keep one and eliminate the other.

CHAPTER FOUR  
MORE THAN WORDS

**"The past is not as different from the present as the future must be."**

**from Nadine Strossen in *Defending Pornography***

The most overlooked aspect of the debate surrounding pornography is the real truth that many women sincerely and genuinely delight in sex in all its variations, including making and viewing pornography. Although Dworkin and MacKinnon think they are warranted in disregarding these facts, their assumption proves costly. Although women are only newly coming to appreciate their sexuality, those who have are not ready to give it up without a fight.

In *Talk Dirty to Me: An Intimate Philosophy of Sex*, Sally Tisdale very candidly discusses her relationship with sex, fantasy, reality, men and women. She is not the prostitute asserting the benefits of her profession, although she knows many women who are in the field of sex work, and she discusses them in her book. What she relays are her authentic emotions about sex, intimacy, and relationships. She lucidly identifies a paradox behind the feminist movement when she writes that:

Part of the feminist agenda, I believed, was raising my own and other people's consciousness to the point where images of heterosexual oppression and traditional roles simply disappeared. Therefore, my sexual fantasies would be reeducated along with my relationships and language. But even reading feminist theory didn't help that. Parts of my consciousness refused to rise, staying far below the sanitized plain of social politics. I didn't even know the words for some of what happened in my sexual fantasies, but I was sure of one thing. Liberated women,

women who had thrown off the yoke of heterosexism, didn't even *think* about what I wanted to do.<sup>109</sup>

Her theory is that sex is normal and that it is a necessary part of life. The subversive, forbidden, hidden, secretive, dirty nature of sex is an essential element of the attraction. Tisdale describes her experiences of going to adult video stores and says that much of the pleasure is in the forbidden nature of anything sexual. The fact that social mores proscribe a sense of shame in her actions serves to enhance the pleasure. So when Dworkin asks in *Intercourse*, "with women not dirty, with sex not dirty, could men fuck?" Tisdale would undoubtedly respond "no, and neither could women." There is something requisite in the element of sex and its relationship to the dark, private moments. Only when this is understood as a normal component of sex can sex be fully relished.

Dworkin and MacKinnon, in their combined effort, have denied women the right to assert a positive attitude about sex. They have denied every woman the right to decide for herself whether she wants to participate in a work of pornography, because her own signature and her own voice are not sufficient. They have decided, on behalf of more than half the population in the United States, that sex is a bad thing. They will tell you that if you think you like sex, then you are confused. Recall what MacKinnon says about sex: "Compare victims' reports of rape with women's reports of sex. They look a lot alike . . . [T]he major distinction between intercourse (normal) and rape (abnormal) is that the normal happens so often that one cannot get anyone to see anything wrong with it."<sup>110</sup> Women everywhere should be outraged that this one law professor has taken it upon herself to characterize each and every one of our sexual relationships. This assumption of epistemic privilege over the other one hundred million women in the United States is

alarming, more so because this is quite simply not how all women feel about sex, even though a large number of us are not yet willing to speak up on this issue.

Pornography is also an educational tool. There are textbooks that describe how to perform an abortion and other texts that teach women how to undertake breast self-examination. Videos and pictures of people having sex, in all its forms, deviations and versions, are also educational. Both are targets of the Dworkin and MacKinnon agenda. Because sex is such a taboo subject in this country, pornography serves as a teacher that will answer questions people are afraid to ask. For lack of a better understanding of one's body, one's desires and one's capabilities, humans are often relegated to a permanent state of ignorance when it comes to the art of reproduction and sexual pleasure. The basic elements of reproduction are not so much in question, since history proves that the human race has no trouble multiplying itself, but ever since sex moved from a mostly biological act to the combination biological/social act that it is today, it has remained perplexing. Although many scholars view the Marquis de Sade as a sick pervert who injured many women, he was also a revolutionary, testing the boundaries. There is no doubt that he crossed the most fundamental and unforgiving boundary in the use of unconsenting women, but apart from this, his writings and explorations of human sexuality and deviancy hold valuable information about the nature of sexuality in a specific historical period. There are lessons to be learned from all of these outlets, and the censorship of any of them would be a futile attempt to deny the fact that human beings are sexual creatures.

Women have recently begun to enter the production end of pornography, and while some women continue to produce the male oriented fantasy that is economically prudent, other women have undertaken the effort to produce female fantasy guided pornography. The most noted case is in the Bay Area, where Deborah Shames hired two actors, rented a cottage, and recorded an amateur pornographic video titled, *Cabin Fever*. The video opens

with music and scenes that remind one of "Masterpiece Theater." An older, attractive woman is living alone in a cottage, working on her paintings, when a young, handsome man comes to work on the cottage walls. Even in this female fantasy, there is the element of resistance at first. She does not know who he is, and does not trust him, so she requires him to remain outside, while she watches him from inside. Suddenly, there is classical music, which turns out to be from his boombox in the grass. Not only does he like classical music, but he is well versed in literature and horticulture. Slowly, the heroine begins to fantasize about him in some rather graphically portrayed scenes, and eventually they have sex. In scenes that are steamy, they both spend time pleasing each other. The dialogue may be a little lacking; when she is in the bathtub, he comes in and notes aloud that the tile needs caulking, but it lacks the elements of domination, submission and servility which have a negative impact on viewers. It is two consenting adults having sex. It is far less threatening than the *Boxing Helena*, yet antipornographers have targeted *Cabin Fever* for censoring rather than *Boxing Helena*, because of the explicit sex.

Although no one has conducted studies using non-violent, sexually explicit, female oriented material and comparing it to the effects of the male oriented pornography, the market response available suggests that this sort of approach is in demand. One of the major goals of the feminist movement is to replace tired, old, stereotypical, negative and potentially damaging images of women with upbeat, motivated, positive and improving images of women. If this can be done in commercials, in the media, in textbooks, in classrooms, in millions of homes through television, then there is no reason pornography cannot be used in the same manner.

Antipornographers, MacKinnon in particular, insist that what is "sexy" about pornography is the degradation and humiliation of women. There may be no adequate response to this outside of the recognition that Dworkin and MacKinnon believe that all

forms of sexual relations fall into this category. Once the misconception that sex is bad, or that women do not rightly desire it, is set aside, then it becomes evident that what is sexy about pornography is the sex. There is no doubt that people have different tastes and that what is sexual to one person may be horrifying to another. However, it is also true that what is sexual may have nothing to do with traditionally conceived icons of sex. There is, as the cliché says, no accounting for taste. What there is accounting for is the right to express one's individual taste in the appropriate forum.

Naomi Wolf developed a theory of power feminism in her book, *Fire With Fire: The New Female Power And How To Use It*, which asserts that women in the United States have the potential to bring about political change if only we could recognize this potential and use it effectively. In the revised preface to her book, she recognizes what a large role women's sexuality plays in this whole movement and asserts that "while America is compulsive about commercialized sex, it is discomforted to an extreme when confronted with the most commonplace manifestations of real female sexuality."<sup>111</sup> Women must begin to take the means of production that controls the images of women into their own hands and manipulate those images. The development of the image of women as sexual is inherently important in the development of the image of women as powerful. Wolf explains this correlation in more detail.

For we must not only show what "no" looks like; we have to start possessing what "yes" looks like. If we aren't crazy about the way female sexuality is portrayed, let's get out there and seize the means of production: Make diaries, novels, plays, and paintings from our erotic lives; "come out" unabashedly, every one of us, as sexual beings. We have only begun to map the dark continent of female fantasy and desire. If we think the sexual imagery out there tells lies about what we long for, it's up to us to saturate the airwaves with our millions of erotic truths.

When we dare to call for truly free speech that combines scenes of our real erotic desires with a true accounting of real harm, we will live in a safer and sexier world. Metaphor, poetry, testimony, logic, reportage, documentation, persuasion: more room, more speech, more complexity. The master's tools can dismantle that master's house.<sup>112</sup>

Most importantly, women must realize that MacKinnon was right when she said that words have enormous power. Used in the right manner, women's voices can become more than words, they can become motivators, legislators, actors, and reactors. Words are no longer the property of the patriarchy. Women have the power to redefine the world.

Angela Carter wrote that "pornographers are the enemies of women only because our contemporary ideology of pornography does not encompass the possibility of change, as if we were the slaves of history and not its makers . . . . Pornography is a satire on human pretensions."<sup>113</sup> It is time for women to begin affecting this change themselves. The only realistic solution to combating the problems of living in a patriarchal society is to fight back with every available weapon. For all the reasons discussed in this thesis, attempting to eradicate pornography is not an effective, reasonable, or desirable goal. Instead, there are more constructive means for promoting and protecting the rights of women, and one of these means is seizing the production of pornography. Another is securing the rights of women in the sex industry.

As the nation moves into the twenty-first century, pornography is becoming more technologically advanced and more entrenched. The rapid expansion of the Internet raises complex questions about ethics and the notion of community standards. One of the latest developments in computer technology is *Virtual Valerie*, a computer animated date that allows the player to go to the apartment complex, enter the elevator, knock on the door, enter the apartment, and choose his or her fantasy. Valerie allows the player to take off her clothes, follow her to the bedroom, and choose the sex toys, which are then manipulated by means of a mouse or track-ball. The latest version includes a penis icon, thus simulating actual intercourse, which the reviewer, Margaret Wertheim, notes is "as if, in effect, it were the player's own. Now instead of stimulating Valerie with a toy, the player can appear to have intercourse with her himself."<sup>114</sup> This description is an avid

stretch of the imagination, since the male player would have to actively view himself as a disembodied penis floating around on a computer screen, but it does have some curious implications as technology advances. The reviewer of the program charged that "as virtual reality is married to ever more realistic simulation software, the wall between pornographic fantasy and reality is coming down."<sup>115</sup> This may be the case, but it is not clear whether this development is positive, negative, or mixed. There are ethical questions here, some of which are raised in the review. For instance, how do we view men who might use these avenues to fulfill their fantasies? (Curiously, the female reviewer never considers that this might be a fantastic avenue for women to experience their dream men.) What about interactive sex with children? Wertheim notes that:

Valerie represents a quantum leap in pornography because she is not just a more sophisticated blow-up doll; she is the quintessential realization of woman as sex object. Precisely because she is not a real woman (no matter how much verisimilitude her makers achieve), ultimately anything one does to her is OK. At present, the fantasies available are rather tame, but the new version of the game is certainly more hard-core than its predecessor, with slightly more of an element of dominance. Can it be long before more sinister cyberporn fantasies are available? What is to stop anyone from making games in which virtual women are hurt, tortured or even killed as part of the erotic thrill? After all, they would only be collections of bits and bytes.<sup>116</sup>

Wertheim's comments serve as arguments against restricting such entertainment. Here the distinction is again blurred between fiction and reality, and what is necessary in any such consideration is a firmly rooted comprehension of the difference. There is no doubt that studies should be undertaken to determine the exact correspondence between this type of interactive pornography and increased aggression in the real world, since none of the sociological studies to date can assess this relationship. If there is a correspondence, then it should be dealt with in a such a manner that the harm is mitigated while free speech is retained. What research has shown is that violent pornography, including the



often assumed sexual thrill from murder, is not pervasive. In fact, it represents the smallest sector of the market.

Instead, the positive aspects of this technology should be intensely reviewed. This may be the new safe sex arena of the twenty-first century.

What the industry is now 'crying out for,' I was told by a Reactor spokeswoman, is a crucial piece of technology: an electronic penis sheath, equipped with tactile feedback so that the player would *feel* as if he were actually engaging in sex with the virtual woman. Software would track the position and motion of the sheath and use that information to help guide the actions of the 'woman,' who would be programmed to respond to the player's action.<sup>117</sup>

Although this market is new and the possibilities have only been explored for men, there is just as much potential for women, who could rely on an electronically controlled dildo and clitoral stimulator. Imagine if people could act out their sexual fantasies in virtual reality. In a time conflicted with teenage pregnancies and sexually transmitted diseases, including AIDS, an outlet such as this may be not only timely, but essential. This is not to imply that this technology is without ethical concerns, but to only recognize that it does have enormous potential.

There may never be a time when this society can definitively assert or negate a correlation between pornography and violence against women. It makes no sense to await a resolution of this issue. Instead, there needs to exist a recognition of what is already a known fact, that violence begets violence, that attitudes toward women must change, and that individuals have the power to affect their own lives and those around them. Parents can decide what their children watch, adults can regulate their own viewing, and everyone can supplement or replace negative material with positive. Women can begin mass production of materials in the pornography market, and in the mainstream markets,

which present positive, esteem building images of women, as role models for children and for adults.

As a society, the United States can recognize which actions work, and which don't, which motives are productive and which are futile. As Naomi Wolf argues:

. . . pouring gasoline on the *Playboys* at the 7-Eleven raises more questions than it answers; but programs like the discussion groups at Duke build bridges of communication between the sexes. . . I would feel safer in a world in which *Playboy* spent its PR money on antidate-rape films and on campaigns to show young men what consent looks like, and why it's sexy, and what rape looks like and why it hurts, than I would in a world in which *Playboy* was forcibly taken off the shelves.<sup>118</sup>

Even a cursory investigation into these issues reveals that antipornographers have chosen the wrong forum and the wrong approach. In order to affect a positive change, we must move beyond a limited view of censorship of pornographic materials into a progressive course of action. Without doubt, this course is not in the field of legal games, censorship, or civil rights. It is in the power Naomi Wolf asserts we have as women and men to control the future of this country.

## ENDNOTES

<sup>1</sup>There are two common forms for the terms 'antipornography' and 'anticensorship'. The first uses hyphenation, while the second omits it. I have chosen to employ the latter as it has become increasingly acceptable and seems to be easier to read as it is used a number of times in this thesis.

<sup>2</sup> *Butler v. the Queen.*, 1 S.C.R. 452, 505 (1992, Canada).

<sup>3</sup> Nadine Strossen, *Defending Pornography* (New York: Scribner's, 1995).

<sup>4</sup> Sallie Tisdale, *Talk Dirty to Me: An Intimate Philosophy of Sex.* (New York: Doubleday, 1994).

<sup>5</sup> Katie Roiphe, *The Morning After: Sex, Fear, and Feminism on Campus* (Boston: Little, 1993).

<sup>6</sup> Strossen, *Defending Pornography.*

<sup>7</sup> "Good Morning America" January 16, 1995.

<sup>8</sup> *The Columbia Dictionary of Quotations*, computer software, Microsoft, 1994.

<sup>9</sup> *The Columbia Dictionary of Quotations*

<sup>10</sup> This version and the other three can be found in the Appendix section of *Pornography and Civil Rights: A New Day for Women's Equality* (1988).

<sup>11</sup> Andrea Dworkin and Catharine MacKinnon, *Pornography and Civil Rights: A New Day for Women's Equality* (n.p., 1988) 113-114.

<sup>12</sup> This theme occurs on a regular basis in each chapter with more examples like the following. In the chapter on Possession, she writes that "men possess women when men fuck women because both experience the man being male. This is the stunning logic of male supremacy. In this view, which is the predominant one, maleness is aggressive and violent; and so fucking, in which both the man and the woman experience *maleness*, essentially demands the disappearance of the woman as an individual; thus, in being fucked, she is possessed: ceases to exist as a discrete individual: is taken over." 64

<sup>13</sup> Andrea Dworkin, *Intercourse* (New York: Free, 1987) 138, 173, 63.

<sup>14</sup> Catharine MacKinnon, *Only Words* (Cambridge: Harvard UP, 1993) 3.

<sup>15</sup> Mona Harrington, *Women Lawyers: Rewriting the Rules* (New York: Penguin, 1995) 240.

<sup>16</sup> MacKinnon, *Only Words* 5.

<sup>17</sup> Strossen 108.

<sup>18</sup> Dworkin and MacKinnon 68-69.

<sup>19</sup> Dworkin writes in *Intercourse* that "Intercourse is commonly written about and comprehended as a form of possession or an act of possession in which, during, which, because of which, a man inhabits a woman, physically covering her and overwhelming her and at the same time penetrating her; and this physical relation to her - over her and inside her - is his possession of her." 63. She analyzes gender relations by arguing that "Gender is what the state seeks to control: who is the man here? which is the woman? how to keep the man on top, how to keep the man the man." 148. See also 149-152, 183.

<sup>20</sup> Dworkin and MacKinnon 114.

<sup>21</sup> Strossen 143.

<sup>22</sup> *The Best of Hustler* March 1995: 90, 95.

<sup>23</sup> *Webster's Third New International Dictionary of the English Language*, unabridged, Philip Babcock Bove, ed. (Springfield, Mass: Merriam-Webster, 1986) 1767.

<sup>24</sup> *American Heritage Dictionary of the English Language*, Third Edition 1992 Houghton Mifflin Company

<sup>25</sup> Gloria Steinem, "Erotica and Pornography: A clear and present difference," *Take back the night: Women on pornography* (New York: William Morrow, 1980) 37.

<sup>26</sup> Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Penguin, 1979) 11.

<sup>27</sup> In Dworkin's book titled *Pornography: Men Possessing Women*, she writes that "fucking requires that the male act on one who has less power and this valuation is so deep, so completely implicit in the act, that the one who is fucked is stigmatized as feminine during the act even when not anatomically female." 23.

<sup>28</sup> Dworkin, *Intercourse* 142-3.

<sup>29</sup> Catharine MacKinnon, *Toward A Feminist Theory of the State* (Cambridge: Harvard UP, 1989) 208.

<sup>30</sup> Dworkin, *Intercourse* xxxii.

- 31 MacKinnon, *Only Words* 5.
- 32 MacKinnon, *Only Words* 21.
- 33 MacKinnon, *Only Words* 37.
- 34 Edward Donnerstein, Daniel Linz, and Steven Penrod, *The Question of Pornography: Research Findings and Policy Implications* (New York: Free, 1987).
- 35 The term 'patriarchy' refers to the male-based power structure which antipornographers have accused of entrenching pornography as a means for controlling women.
- 36 Camile Paglia, *Vamps and Tramps: New Essays* (New York: Random, 1994) 111.
- 37 *The Columbia Dictionary of Quotations*.
- 38 Strossen Chapter 11 and 12.
- 39 See Edward Donnerstein, Bradley Shafer, Kenneth C. Land, Arthur C. Graesser and Praticia L. McCall, "Discrepancies between the legal code and community standards for sex and violence: an empirical challenge to traditional assumptions in obscenity law," *Law and Society Review* 29 (1995) 127-168; Daniel Linz and Edward Donnerstein, "Sex and violence in slasher films: a reinterpretation," *Journal of Broadcasting & Electronic Media* 37 (1994) 243-246; Daniel Linz, Barbara J. Wilson and Edward Donnerstein. "Sexual violence in the mass media: legal solutions, warnings, and mitigation through education," *Journal of Social Issues* 48 (1992) 145-173.
- 40 Donnerstein 3-5.
- 41 Donnerstein 44-45.
- 42 Donnerstein 2.
- 43 Donnerstein ix.
- 44 Donnerstein 111-112.
- 45 Donnerstein 71.
- 46 This is not to say that there is absolutely no connection between sex and violence. It seems possible that there is something valid in the argument that eroticizing violence may have an impact on viewers, however, it would be related to making violence sexy, which does not necessarily translate into making violence sexy by making it sexually explicit. For instance, the movie previously discussed, *Swept Away*, could potentially be labeled as a movie that eroticizes violence, but it does not do it in a manner that is
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sexually explicit, and hence is not subject to censorship or litigation under the Indianapolis Ordinance. It translates into a problem that needs to be dealt with in a manner other than censorship.

<sup>47</sup> Strossen 41.

<sup>48</sup> *Abrams et.al v. United States.*, 250 U.S. 616 (Supreme Court of the United States 1919).

<sup>49</sup> *Miller v. California.*, 413 U.S. 15, 93 S.Ct. 2607 (Supreme Court of the United States 1973 ).

<sup>50</sup> *Paris Adult Theatre I v. Slaton.*, 413 U.S. 49, 93 S.Ct. 2628 (Supreme Court of the United States 1973).

<sup>51</sup> *Miller v. California.*

<sup>52</sup> MacKinnon, *Only Words* 71.

<sup>53</sup> Dworkin and MacKinnon 61.

<sup>54</sup> MacKinnon, *Theory of State* 213.

<sup>55</sup> MacKinnon, *Only Words* 13-17.

<sup>56</sup> For more on this argument, see MacKinnon's book *Toward a Feminist Theory of the State*, chapter 11, and Dworkin and MacKinnon's book *Pornography and Civil Rights*, 7-24.

<sup>57</sup> MacKinnon, *Only Words* 20.

<sup>58</sup> Dworkin and MacKinnon 103.

<sup>59</sup> MacKinnon, *Only Words* 11.

<sup>60</sup> MacKinnon, *Theory of State* 202.

<sup>61</sup> MacKinnon, *Only Words* 12-13.

<sup>62</sup> MacKinnon, *Only Words* 17.

<sup>63</sup> Dworkin and MacKinnon 43.

<sup>64</sup> MacKinnon, *Only Words* 14-17.

65 American Booksellers Association, Inc. v. Hudnut., 771F.2d 323 (US Seventh Circuit 1985).

66 Strossen 170.

67 MacKinnon, *Only Words* 12.

68 MacKinnon, *Only Words* 22.

69 MacKinnon, *Only Words* 34.

70 Dworkin and MacKinnon 10.

71 Dworkin and MacKinnon 25.

72 Strossen 49.

73 Bertrand Russell *Marriage and Morals* (New York: Garden City Publishing Co., 1929).

74 While Dworkin and MacKinnon do not ever deny that there are women who choose to work as actresses and models for pornographic materials, they do not ever recognize this fact either. All of their writings imply that the examples they provide are representative of every woman's experience in the sex industry.

75 See MacKinnon, *Theory of State* Chapters 11, 12, and 13; Dworkin, *Intercourse* Part Two and Three.

76 MacKinnon, *Only Words* 20.

77 By psychological coercion, I mean the type that involves threats of physical violence or other means of tampering with the psychological well being of the woman being threatened. This is contrasted with MacKinnon's notion which asserts that all women are coerced by the general state of society and not on an individual basis.

78 See MacKinnon, *Theory of State* 127-131.

79 MacKinnon, *Theory of State* 141.

80 MacKinnon, *Theory of State* 127-154.

81 This is most clearly illustrated in MacKinnon's comment that "male approval translates into nearly all social goods." *Theory of State* 147.

82 "Men, Sex & Rape," *Special ABC News Forum*, May 5, 1992 (Lexus/Nexis).

- 83 Tisdale, *Talk Dirty to Me: An Intimate Philosophy of Sex*.
- 84 Frederique Delacoste and Priscilla Alexander, *Sex Work: Writings By Women in the Sex Industry* (San Francisco: Cleis Press, 1987).
- 85 Jane Smith, "Making Movies". *Sex Work: Writings By Women In The Sex Industry* (San Francisco: Cleis P, 1987) 135.
- 86 Smith 135.
- 87 Smith 140.
- 88 Nina Hartley, "Confessions of a Feminist Porno Star". *Sex Work: Writings By Women In The Sex Industry* (San Francisco: Cleis P, 1987) 142.
- 89 Hartley 142.
- 90 Hartley 144.
- 91 Dworkin and MacKinnon 42.
- 92 Dworkin and MacKinnon 32.
- 93 MacKinnon, *Only Words* 1-43.
- 94 Thelma McCormack "If Pornography Is The Theory, Is Inequality the Practice?" (public forum, *Refusing Censorship: Feminists and Activists Fight Back*, York, Canada 12 November 1992) 22.
- 95 Strossen 126.
- 96 *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fl.1991).
- 97 Strossen 127.
- 98 While it is possible that a court may at some future point set a precedent by ruling in favor of a defendant who seeks to enforce an illegal contract, there is no precedent for this, and current law favors the theory that contracts are not legal or enforceable in illegal businesses. For instance, a gambling debt in California may not be legally recovered in California, where betting is illegal, while it may be recovered in Nevada, where betting is not prohibited. This information was supplied by Robert Livsey, esq., an attorney in San Francisco.
- 99 Strossen Ch 11 and 12.
- 100 Strossen 231.



- 101 Strossen 18.
- 102 MacKinnon, *Feminism Unmodified* (Cambridge: Harvard UP, 1987) 1-17.
- 103 In November of 1978, San Francisco supervisor Dan White shot and killed Mayor Moscone and Supervisor Harvey Milk. He turned himself in to the police, but was acquitted of both murders on the plea that his consumption of Twinkies shortly before the murders affected his state of mind causing temporary insanity.
- 104 Andrea Dworkin, *Letters From A War Zone* (New York: Lawrence Hill Books, 1993) 14-15.
- 105 Strossen 269.
- 106 Dworkin and MacKinnon 103.
- 107 Strossen 39.
- 108 Strossen 39.
- 109 Tisdale 8.
- 110 Strossen 108.
- 111 Naomi Wolf, *Fire With Fire: The New Female Power and How to Use It* (New York: Fawcett Columbine, 1993) xxiv.
- 112 Wolf 105-106.
- 113 *The Columbia Dictionary*, computer software, Microsoft, 1994.
- 114 Margaret Wertheim, "The Electric Orgasm." *Vogue* (2/95) 243.
- 115 Wertheim 242.
- 116 Wertheim 243.
- 117 Wertheim 243.
- 118 Wolf 104.

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