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Against the Male Flood

Censorship, Pornography, and Equality

Andrea Dworkin

To say what one thought—that was my little problem—against the prodigious Current; to find a sentence that could hold its own against the male flood.

(Virginia Woolf)

I want to say right here, that those well-meaning friends on the outside who say that we have suffered these horrors of prison, of hunger strikes and forcible feeding, because we desired to martyrise ourselves for the cause, are absolutely and entirely mistaken. We never went to prison in order to be martyrs. We went there in order that we might obtain the rights of citizenship. We were willing to break laws that we might force men to give us the right to make laws.

(Emmeline Pankhurst)

CENSORSHIP

Censorship is a real thing, not an abstract idea or a word that can be used to mean anything at all.

In ancient Rome, a censor was a magistrate who took the census (a count of the male population and an evaluation of property for the purpose of taxation done every fifth year), assessed taxes, and inspected morals and conduct. His power over conduct came from his power to tax. For instance, in 403 B.C. the censors Camillus and

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Postimius heavily fined elderly bachelors for not marrying. The power to tax, then as now, was the power to destroy. The censor, using the police and judicial powers of the state, regulated social behaviour.

At its origins, then, censorship had nothing to do with striking down ideas as such; it had to do with acts. In my view, real state censorship still does. In South Africa, and the Soviet Union, for instance, writing is treated entirely as an act and writers are viewed as persons who engage in an act (writing) that by its very nature is dangerous to the continued existence of the state. The police do not try to suppress ideas. They are more specific, more concrete, more realistic. They go after books and manuscripts (writing) and destroy them. They go after writers as persons who have done something that they will do again and they persecute, punish, or kill them. They do not worry about what people think—not, at least, as we use the word *think*: a mental event, entirely internal, abstract. They worry about what people do: and writing, speaking, even as evidence that thinking is going on, are seen as things people *do*. There is a quality of immediacy and reality in what writing is taken to be. Where police power is used against writers systematically, writers are seen as people who by writing do something socially real and significant, not contemplative or dithering. Therefore, writing is never peripheral or beside the point. It is serious and easily seditious. I am offering no brief for police states when I say that virtually all great writers, cross-culturally and trans-historically, share this view of what writing is. In countries like the USA, controlled by a bourgeoisie to whom the police are accountable, writing is easier to do and valued less. It has less impact. It is more abundant and cheaper. Less is at stake for reader and writer both. The writer may hold writing to be a life-or-death matter, but the police and society do not. Writing is seen to be a personal choice, not a social, political, or aesthetic necessity fraught with danger and meaning. The general view in these pleasant places* is that writers think up ideas or words and then other people read them and all this happens in the head, a vast cavern somewhere north of the eyes. It is all air, except for the paper and ink, which are simply banal. Nothing happens.

Police in police states and most great writers throughout time see

* 'Well, you know, it amazes me . . .', says dissident South African writer Nadine Gordimer in an interview. I come to America, I go to England, I go to France . . . nobody's at risk. They're afraid of getting cancer, losing a lover, losing their jobs, being insecure . . . It's only in my own country that I find people who voluntarily choose to put everything at risk—in their personal life' Nadine Gordimer, *Writers at Work: The Paris Review Interviews* 261 (G. Plimpton ed., 6th ser., 1984).

writing as act, not air—as act, not idea; concrete, specific, real, not insubstantial blather on a dead page. Censorship goes after the act and the actor: the book and the writer. It needs to destroy both. The cost in human lives is staggering, and it is perhaps essential to say that human lives destroyed must count more in the weighing of horror than books burned. This is my personal view, and I love books more than I love people.

Censorship is deeply misunderstood in the United States, because the fairly spoiled, privileged, frivolous people who are the literate citizens of this country think that censorship is some foggy effort to suppress ideas. For them, censorship is not something in itself—an act of police power with discernible consequences to hunted people; instead, it is about something abstract—the suppressing or controlling of ideas. Censorship, like writing itself, is no longer an act. Because it is no longer the blatant exercise of police power against writers or books because of what they do, what they accomplish in the real world, it becomes vague, hard to find, except perhaps as an attitude. It gets used to mean unpleasant, even angry frowns of disapproval or critiques delivered in harsh tones; it means social disapproval or small retaliations by outraged citizens where the book is still available and the writer is entirely unharmed, even if insulted. It hangs in the air, ominous, like the threat of drizzle. It gets to be, in silly countries like this one, whatever people say it is, separate from any material definition, separate from police power, separate from state repression (jail, banning, exile, death), separate from devastating consequences to real people (jail, banning, exile, death). It is something that people who eat fine food and wear fine clothes worry about frenetically, trying to find it, anticipating it with great anxiety, arguing it down as if it were real—an argument would make it go away; not knowing that it has a clear, simple, unavoidable momentum and meaning in a cruel world of police power that their privilege cannot comprehend.

OBSCENITY

In the nineteenth and twentieth centuries, in most of Western Europe, England, and the United States, more often than not (time-out for Franco, for instance), writing has been most consistently viewed as an act warranting prosecution when the writing is construed to be obscene.

The republics, democracies and constitutional monarchies of the

West, now and then do not smother writers in police violence; they prefer to pick off writers who annoy and irritate selectively with fairly token prosecutions. The list of writers so harassed is elegant, white, male (therefore the pronoun he is used throughout this discussion) and remarkably small. Being among them is more than a ceremonial honour. As Flaubert wrote to his brother in 1857:

My persecution has brought me widespread sympathy. If my book is bad, that will serve to make it seem better. If, on the other hand, it has lasting qualities that will build a foundation for it. There you are!

I am hourly awaiting the official document which will name the day when I am to take my seat (for the crime of having written in French) in the dock in the company of thieves and homosexuals.¹

A few months later that same year, Baudelaire was fined 300 francs for publishing six obscene poems. They also had to be removed from future editions of his book. In harder, earlier days, Jean-Jacques Rousseau spent eight years as a fugitive after his *Émile* was banned and a warrant was issued for his arrest. English censors criminally prosecuted Swinburne's *Poems and Ballads* in 1866. They were particularly piqued at Zola, even in translation, so his English publisher, 70 years old, went to jail for three months. In 1898, a bookseller was arrested for selling Havelock Ellis' work and received a suspended sentence. This list is representative, not exhaustive. While prosecutions of writers under obscenity laws have created great difficulties for writers already plagued with them (as most writers are), criminal prosecutions under obscenity law in Europe and the United States are notable for how narrowly they reach writers, how sanguine writers tend to be about the consequences to themselves, and how little is paid in the writer's life-blood to what D. H. Lawrence (who paid more than most modern Western writers) called the 'censor-moron'.² In South Africa, one would hardly be so flip. In our world, the writer gets harassed, as Lawrence did; the writer may be poor or not—the injury is considerably worse if he is; but the writer is not terrorized or tortured, and writers do not live under a reign of terror as writers, because of what they *do*. The potshot application of criminal law for writing is not good, nice, or right; but it is important to recognize the relatively narrow scope and marginal character of criminal prosecution under obscenity law in particular—especially compared with the scope and character of police-state censorship. Resisting obscenity law does not require hyperbolic renderings of what it is and how it has been used. It can be fought or repudiated on its own terms.

The use of obscenity laws against writers, however haphazard or insistent, is censorship and it does hold writing to be an act. This is a unique perception of what writing is, taking place, as it does, in a liberal context in which writing is held to be ideas. It is the obscene quality of the writing, the obscenity itself, that is seen to turn writing from idea into act. Writing of any kind or quality is idea, except for obscene writing, which is act. Writing is censored, even in our own happy little land of Oz, as act, not idea.

What is obscenity, such that it turns writing, when obscene, into something that actually happens—changes it from internal wind somewhere in the elevated mind into a genuinely offensive and utterly real fart, noticed, rude, occasioning pinched fingers on the nose?

There is the legal answer and the artistic answer. Artists have been consistently pushing on the boundaries of obscenity because great writers see writing as an act, and in liberal culture, only obscene writing has that social standing, that quality of dynamism and heroism. Great writers tend to experience writing as an intense and disruptive act; in the West, it is only recognized as such when the writing itself is experienced as obscene. In liberal culture, the writer has needed obscenity to be perceived as socially real.

What is it that obscenity does? The writer uses what the society deems to be obscene because the society then reacts to the writing the way the writer values the writing: as if it does something. But obscenity itself is socially constructed; the writer does not invent it or in any sense originate it. He finds it, knowing that it is what society hides. He looks under rocks and in dark corners.

There are two possible derivations of the word *obscenity*: the discredited one, *what is concealed*; and the accepted one, *filth*. Animals bury their filth, hide it, cover it, leave it behind, separate it from themselves: so do we, going way way back. Filth is excrement; from down there. We bury it or hide it; also, we hide where it comes from. Under male rule, menstrual blood is also filth, so women are twice dirty. Filth is where the sexual organs are and because women are seen primarily as sex, existing to provide sex, women have to be covered: our naked bodies being obscene.

Obscenity law uses both possible root meanings of *obscene* intertwined: it typically condemns nudity, public display, lewd exhibition, exposed genitals or buttocks or pubic areas, sodomy, masturbation, sexual intercourse, excretion. Obscenity law is applied to pictures and words: the artefact itself exposes what should be hidden; it shows dirt.

The human body and all sex and excretory acts are the domain of obscenity law.

But being in the domain of obscenity law is not enough. One must feel alive there. To be obscene, the representations must arouse prurient interest. *Prurient* means *itching* or *itch*; it is related to the Sanskrit for *he burns*. It means sexual arousal. Judges, law-makers, and juries have been, until very recently, entirely male: empirically, *prurient* means *causes erection*. Theologians have called this same quality of obscenity 'venereal pleasure', holding that

if a work is to be called obscene it must, of its nature, be such as actually to arouse or calculated to arouse in the viewer or reader such venereal pleasure. If the work is *not* of such a kind, it may, indeed, be vulgar, disgusting, crude, unpleasant, what you will—but it will *not* be, in the strict sense which Canon Law obliges us to apply, obscene.³

A secular philosopher of pornography isolated the same quality when he wrote: 'Obscenity is our name for the uneasiness which upsets the physical state associated with self-possession.'⁴

Throughout history, the male has been the standard for obscenity law: erection is his venereal pleasure or the uneasiness which upsets the physical state associated with his self-possession. It is not surprising, then, that in the same period when women became jurors, lawyers, and judges—but especially jurors, women having been summarily excluded from most juries until perhaps a decade ago—obscenity law fell into disuse and disregard. In order for obscenity law to have retained social and legal coherence, it would have had to recognize as part of its standard women's sexual arousal, a more subjective standard than erection. It would also have had to use the standard of penile erection in a social environment that was no longer sex-segregated, an environment in which male sexual arousal would be subjected to female scrutiny. In my view, the presence of women in the public sphere of legal decision-making has done more to undermine the efficacy of obscenity law than any self-conscious movement against it.

The act that obscenity recognizes is erection, and whatever writing produces erection is seen to be obscene—act, not idea—because of what it makes happen. The male sexual response is seen to be involuntary, so there is no experientially explicable division between the material that causes erection and the erection itself. That is the logic of obscenity law used against important writers who have pushed against the borders of the socially defined obscene, because they wanted writing to have that very quality of being a socially recognized act. They

wanted the inevitability of the response—the social response. The erection makes the writing socially real from the society's point of view, not from the writer's. What the writer needs is to be taken seriously, by any means necessary. In liberal societies, only obscenity law comprehends writing as an act. It defines the nature and quality of the act narrowly—not writing itself, but producing erections. Flaubert apparently did produce them; so did Baudelaire, Zola, Rousseau, Lawrence, Joyce, and Nabokov. It's that simple.

What is at stake in obscenity law is always erection: under what conditions, in what circumstances, how, by whom, by what materials men want it produced in themselves. Men have made this public policy. Why they want to regulate their own erections through law is a question of endless interest and importance to feminists. Nevertheless, that they do persist in this regulation is simple fact. There are civil and social conflicts over how best to regulate erection through law, especially when caused by words or pictures. Arguments among men notwithstanding, high culture is phallogocentric. It is also, using the civilized criteria of jurisprudence, not infrequently obscene.

Most important writers have insisted that their own uses of the obscene as socially defined are not pornography. As D. H. Lawrence wrote: 'But even I would censor genuine pornography rigorously. It would not be very difficult . . . [Y]ou can recognize it by the insult it offers, invariably, to sex, and to the human spirit.'⁵ It was also, he pointed out, produced by the underworld. Nabokov saw in pornography 'mediocrity, commercialism, and certain strict rules of narration . . . [A]ction has to be limited to the copulation of clichés. Style, structure, imagery should never distract the reader from his tepid lust'.⁶ They knew that what they did was different from pornography, but they did not entirely know what the difference was. They missed the heart of an empirical distinction because writing was indeed real to them but women were not.

The insult pornography offers, invariably, to sex is accomplished in the active subordination of women: the creation of a sexual dynamic in which the putting-down of women, the suppression of women, and ultimately the brutalization of women, *is* what sex is taken to be. Obscenity in law, and in what it does socially, is erection. Law recognizes the act in this. Pornography, however, is a broader, more comprehensive act, because it crushes a whole class of people through violence and subjugation: and sex is the vehicle that does the crushing. The penis is not the test, as it is in obscenity. Instead, the status of women is the issue. Erection is implicated in the subordinating, but

who it reaches and how are the pressing legal and social questions. Pornography, unlike obscenity, is a discrete, identifiable system of sexual exploitation that hurts women as a class by creating inequality and abuse. This is a new legal idea, but it is the recognition and naming of an old and cruel injury to a dispossessed and coerced underclass. It is the sound of women's words breaking the longest silence.

PORNOGRAPHY

In the United States, it is an \$8 billion trade in sexual exploitation.

It is women turned into subhumans, beaver, pussy, body parts, genitals exposed, buttocks, breasts, mouths opened and throats penetrated, covered in semen, pissed on, shitted on, hung from light fixtures, tortured, maimed, bleeding, disembowelled, killed.

It is some creature called female, used.

It is scissors poised at the vagina and objects stuck in it, a smile on the woman's face, her tongue hanging out.

It is a woman being fucked by dogs, horses, snakes.

It is every torture in every prison cell in the world, done to women and sold as sexual entertainment.

It is rape and gang rape and anal rape and throat rape: and it is the woman raped, asking for more.

It is the woman in the picture to whom it is really happening and the women against whom the picture is used, to make them do what the woman in the picture is doing.

It is the power men have over women turned into sexual acts men do to women, because pornography is the power and the act.

It is the conditioning of erection and orgasm in men to the powerlessness of women; our inferiority, humiliation, pain, torment; to us as objects, things, or commodities for use in sex as servants.

It sexualizes inequality and in doing so creates discrimination as a sex-based practice.

It permeates the political condition of women in society by being the substance of our inequality however located—in jobs, in education, in marriage, *in life*.

It is women, kept a sexual underclass, kept available for rape and battery and incest and prostitution.

It is what we are under male domination; it is what we are for under male domination.

It is the heretofore hidden (from us) system of subordination that women have been told is just life.

Under male supremacy, it is the synonym for what being a woman is.

It is access to our bodies as a birthright to men: the grant, the gift, the permission, the licence, the proof, the promise, the method, how-to; it is us accessible, no matter what the law pretends to say, no matter what we pretend to say.

It is physical injury and physical humiliation and physical pain: to the women against whom it is used after it is made; to the women used to make it.

As words alone, or words and pictures, moving or still, it creates systematic harm to women in the form of discrimination and physical hurt. It creates harm inevitably by its nature because of what it is and what it does. The harm will occur as long as it is made and used. The name of the next victim is unknown, but everything else is known.

Because of it—because it is the subordination of women perfectly achieved—the abuse done to us by any human standard is perceived as using us for what we are by nature: women are whores; women want to be raped; she provoked it; women like to be hurt; she says no but means yes because she wants to be taken against her will which is not really her will because what she wants underneath is to have anything done to her that violates or humiliates or hurts her; she wants it, because she is a woman, no matter what it is, because she is a woman; that is how women are, what women are, what women are for. This view is institutionally expressed in law. So much for equal protection.

If it were being done to human beings, it would be reckoned an atrocity. It is being done to women. It is reckoned fun, pleasure, entertainment, sex, somebody's (not something's) civil liberty no less.

What do you want to be when you grow up? *Doggie Girl*? *Gestapo Sex Slave*? *Black Bitch in Bondage*? Pet, bunny, beaver? In dreams begin responsibilities,⁷ whether one is the dreamer or the dreamed.

PORNOGRAPHERS

Most of them are small-time pimps or big-time pimps. They sell women: the real flesh-and-blood women in the pictures. They like the excitement of domination; they are greedy for profit; they are sadistic in their exploitation of women; they hate women, and the

pornography they make is the distillation of that hate. The photographs are what they have created live, for themselves, for their own enjoyment. The exchanges of women among them are part of the fun, too: so that the fictional creature 'Linda Lovelace', who was the real woman Linda Marciano, was forced to 'deep-throat' every pornographer her owner-pornographer wanted to impress. Of course, it was the woman, not the fiction, who had to be hypnotized so that the men could penetrate to the bottom of her throat, and who had to be beaten and terrorized to get her compliance at all. The finding of new and terrible things to do to women is part of the challenge of the vocation: so the inventor of 'Linda Lovelace' and 'deep-throating' is a genius in the field, a pioneer. Or, as Al Goldstein, a colleague, referred to him in an interview with him in *Screw* several years ago: a pimp's pimp.

Even with written pornography, there has never been the distinction between making pornography and the sexual abuse of live women that is taken as a truism by those who approach pornography as if it were an intellectual phenomenon. The Marquis de Sade, as the world's foremost literary pornographer, is archetypal. His sexual practice was the persistent sexual abuse of women and girls, with occasional excursions into the abuse of boys. As an aristocrat in a feudal society, he preyed with near impunity on prostitutes and servants. The pornography he wrote was an urgent part of the sexual abuse he practised: not only because he did what he wrote, but also because the intense hatred of women that fuelled the one also fuelled the other: not two separate engines, but one engine running on the same tank. The acts of pornography and the acts of rape were waves on the same sea: that sea, becoming for its victims however it reached them, a tidal wave of destruction. Pornographers who use words know that what they are doing is both aggressive and destructive: sometimes they philosophize about how sex inevitably ends in death, the death of a woman being a thing of sexual beauty as well as excitement. Pornography, even when written, is sex because of the dynamism of the sexual hatred in it; and for pornographers, the sexual abuse of women as commonly understood and pornography are both acts of sexual predation, which is how they live.

One reason that stopping pornographers and pornography is not censorship is that pornographers are more like the police in police states than they are like the writers in police states. They are the instruments of terror, not its victims. What police do to the powerless in police states is what pornographers do to women, except that it is entertainment for the masses, not dignified as political. Writers do not

do what pornographers do. Secret police do. Torturers do. What pornographers do to women is more like what police do to political prisoners than it is like anything else: except for the fact that it is watched with so much pleasure by so many. Intervening in a system of terror where it is vulnerable to public scrutiny to stop it is not censorship; it is the system of terror that stops speech and creates abuse and despair. The pornographers are the secret police of male supremacy: keeping women subordinate through intimidation and assault.

SUBORDINATION

In the amendment to the Human Rights Ordinance of the City of Minneapolis written by Catharine A. MacKinnon and myself, pornography is defined as the graphic, sexually explicit subordination of women whether in pictures or in words that also includes one or more of the following: women are presented dehumanized as sexual objects, things, or commodities; or women are presented as sexual objects who enjoy pain or humiliation; or women are presented as sexual objects who experience sexual pleasure in being raped, or women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or women are presented in postures of sexual submission; or women's body parts are exhibited such that women are reduced to those parts; or women are presented being penetrated by objects or animals; or 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.

This statutory definition is an objectively accurate definition of what pornography is, based on an analysis of the material produced by the \$8 billion-a-year industry, and also on extensive study of the whole range of pornography extant from other eras and other cultures. Given the fact that women's oppression has an ahistorical character—a sameness across time and cultures expressed in rape, battery, incest and prostitution—it is no surprise that pornography, a central phenomenon in that oppression, has precisely that quality of sameness. It does not significantly change in what it is, what it does, what is in it, or how it works, whether it is, for instance, classical or feudal or modern, Western or Asian; whether the method of manufacture is words, photographs or video. What has changed is the public availability of pornography and the numbers of live women used in it because of

new technologies: not its nature. Many people note what seems to them a qualitative change in pornography—that it has become more violent, even grotesquely violent, over the last two decades. The change is only in what is publicly visible: not in the range or preponderance of violent pornography (e.g. the place of rape in pornography stays constant and central, no matter where, when, or how the pornography is produced); not in the character, quality, or content of what the pornographers actually produce; not in the harm caused; not in the valuation of women in it, or the metaphysical definition of what women are; not in the sexual abuse promoted, including rape, battery, and incest; not in the centrality of its role in subordinating women. Until recently, pornography operated in private, where most abuse of women takes place.

The oppression of women occurs through sexual subordination. It is the use of sex as the medium of oppression that makes the subordination of women so distinct from racism or prejudice against a group based on religion or national origin. Social inequality is created in many different ways. In my view, the radical responsibility is to isolate the material means of creating the inequality so that material remedies can be found for it.

This is particularly difficult with respect to women's inequality because that inequality is achieved through sex. Sex as desired by the class that dominates women is held by that class to be elemental, urgent, necessary, even if or even though it appears to require the repudiation of any claim women might have to full human standing. In the subordination of women, inequality itself is sexualized: made into the experience of sexual pleasure, essential to sexual desire. Pornography is the material means of sexualizing inequality; and that is why pornography is a central practice in the subordination of women.

Subordination itself is a broad, deep, systematic dynamic discernible in any persecution based on race or sex. Social subordination has four main parts. First, there is *hierarchy*, a group on top and a group on the bottom. For women, this hierarchy is experienced both socially and sexually, publicly and privately. Women are physically integrated into the society in which we are held to be inferior, and our low status is both put in place and maintained in the sexual usage of us by men; and so women's experience of hierarchy is incredibly intimate and wounding.

Second, subordination is *objectification*. Objectification occurs when a human being, through social means, is made less than human, turned into a thing or commodity, bought and sold. When objectification occurs, a person is depersonalized, so that no individuality or

integrity is available socially or in what is an extremely circumscribed privacy (because those who dominate determine its boundaries). Objectification is an injury right at the heart of discrimination: those who can be used as if they are not fully human are no longer fully human in social terms; their humanity is hurt by being diminished.

Third, subordination is *submission*. A person is at the bottom of a hierarchy because of a condition of birth; a person on the bottom is dehumanized, an object or commodity; inevitably, the situation of that person requires obedience and compliance. That diminished person is expected to be submissive; there is no longer any right to self-determination, because there is no basis in equality for any such right to exist. In a condition of inferiority and objectification, submission is usually essential for survival. Oppressed groups are known for their abilities to anticipate the orders and desires of those who have power over them, to comply with an obsequiousness that is then used by the dominant group to justify its own dominance: the master, not able to imagine a human like himself in such degrading servility, thinks the servility is proof that the hierarchy is natural and that the objectification simply amounts to seeing these lesser creatures for what they are. The submission forced on inferior, objectified groups precisely by hierarchy and objectification is taken to be the proof of inherent inferiority and subhuman capacities.

Fourth, subordination is *violence*. The violence is systematic, endemic enough to be unremarkable and normative, usually taken as an implicit right of the one committing the violence. In my view, hierarchy, objectification, and submission are the preconditions for systematic social violence against any group targeted because of a condition of birth. If violence against a group is both socially pervasive and socially normal, then hierarchy, objectification, and submission are already solidly in place.

The role of violence in subordinating women has one special characteristic congruent with sex as the instrumentality of subordination: the violence is supposed to be sex for the woman too—what women want and like as part of our sexual nature; it is supposed to give women pleasure (as in rape); it is supposed to mean love to a woman from her point of view (as in battery). The violence against women is seen to be done not just in accord with something compliant in women, but in response to something active in and basic to women's nature.

Pornography uses each component of social subordination. Its particular medium is sex. Hierarchy, objectification, submission, and violence all become alive with sexual energy and sexual meaning. A

hierarchy, for instance, can have a static quality; but pornography, by sexualizing it, makes it dynamic, almost carnivorous, so that men key imposing it for the sake of their own sexual pleasure—for the sexual pleasure it gives them to impose it. In pornography, each element of subordination is conveyed through the sexually explicit usage of women: pornography in fact is what women are and what women are for and how women are used in a society premised on the inferiority of women. It is a metaphysics of women's subjugation: our existence delineated in a definition of our nature; our status in society predetermined by the uses to which we are put. The woman's body is what is materially subordinated. Sex is the material means through which the subordination is accomplished. Pornography is the institution of male dominance that sexualizes hierarchy, objectification, submission, and violence. As such, pornography creates inequality, not as artefact but as a system of social reality; it creates the necessity for and the actual behaviours that constitute sex inequality.

SPEECH

Subordination can be so deep that those who are hurt by it are utterly silent. Subordination can create a silence quieter than death. The women flattened out on the page are deathly still, except for *hurt me*. *Hurt me* is not women's speech. It is the speech imposed on women by pimps to cover the awful, condemning silence. The Three Marias of Portugal went to jail for writing this: 'Let no one tell me that silence gives consent, because whoever is silent dissents.'⁸ The women say the pimps' words: the language is another element of the rape; the language is part of the humiliation; the language is part of the forced sex. Real silence might signify dissent, for those reared to understand its sad discourse. The pimps cannot tolerate literal silence—it is too eloquent as testimony—so they force the words out of the woman's mouth. The women say pimps' words: which is worse than silence. The silence of the women not in the picture, outside the pages, hurt but silent, used but silent, is staggering in how deep and wide it goes. It is a silence over centuries: an exile into speechlessness. One is shut up by the inferiority and the abuse. One is shut up by the threat and the injury. In her memoir of the Stalin period, *Hope Against Hope* Nadezhda Mandelstam wrote that screaming

is a man's way of leaving a trace, of telling people how he lived and died. In

his screams he asserts his right to live, sends a message to the outside world demanding help and calling for resistance. If nothing else is left, one must scream. Silence is the real crime against humanity.⁹

Screaming is a man's way of leaving a trace. The scream of a man is never misunderstood as a scream of pleasure by passers-by or politicians or historians, nor by the tormentor. A man's scream is a call for resistance. A man's scream asserts his right to live, sends a message; he leaves a trace. A woman's scream is the sound of her female will and her female pleasure in doing what the pornographers say she is for. Her scream is a sound of celebration to those who overhear. Women's way of leaving a trace is the silence, centuries' worth: the entirely inhuman silence that surely one day will be noticed, someone will say that something is wrong, some sound is missing, some voice is lost; the entirely inhuman silence that will be a clue to human hope denied, a shard of evidence that a crime has occurred, the crime that created the silence; the entirely inhuman silence that is a cold, cold condemnation of hurt sustained in speechlessness, a cold, cold condemnation of what those who speak have done to those who do not.

But there is more than the *hurt me* forced out of us, and the silence in which it lies. The pornographers actually use our bodies as their language. Our bodies are the building blocks of their sentences. What they do to us, called speech, is not unlike what Kafka's Harrow machine "The needles are set in like the teeth of a harrow and the whole thing works something like a harrow, although its action is limited to one place and contrived with much more artistic skill"¹⁰—did to the condemned in 'In the Penal Colony':

Our sentence does not sound severe. Whatever commandment the prisoner has disobeyed is written upon his body by the Harrow. This prisoner, for instance—the officer indicated the man—'will have written on his body: HONOUR THY SUPERIORS!'¹¹

... The Harrow is beginning to write; when it finishes the first draft of the inscription on the man's back, the layer of cotton wool begins to roll and slowly turns the body over, to give the Harrow fresh space for writing... So it keeps on writing deeper and deeper.¹²

Asked if the prisoner knows his sentence, the officer replies 'There would be no point in telling him. He'll learn it on his body.'¹³

This is the so-called speech of the pornographers, protected now by law.

Protecting what they 'say' means protecting what they do to us, how

they do it. It means protecting their sadism on our bodies, because that is how they write: not like a writer at all; like a torturer. Protecting what they 'say' means protecting sexual exploitation, because they cannot 'say' anything without diminishing, hurting, or destroying us. Their rights of speech express their rights over us. Their rights of speech require our inferiority: and that we be powerless in relation to them. Their rights of speech mean that *hurt me* is accepted as the real speech of women, not speech forced on us as part of the sex forced on us but originating with us because we are what the pornographers say we are.

If what we want to say is not *hurt me*, we have the real social power only to use silence as eloquent dissent. Silence is what women have instead of speech. Silence is our dissent during rape unless the rapist, like the pornographer, prefers *hurt me*, in which case we have no dissent. Silence is our moving persuasive dissent during battery unless the batterer, like the pornographer, prefers *hurt me*. Silence is a first dissent during incest and for all the long years after.

Silence is not speech. We have silence, not speech. We fight rape, battery, incest, and prostitution with it. We lose. But someday someone will notice: that people called women were buried in a long silence that meant dissent and that the pornographers—with needles set in like the teeth of a harrow—chattered on.

EQUALITY

To get that word, male, out of the Constitution cost the women of this country 52 years of pauseless campaign; 56 state referendum campaigns; 480 legislative campaigns to get state suffrage amendments submitted; 47 state constitutional convention campaigns; 277 state party convention campaigns; 30 national party convention campaigns to get suffrage planks in the party platforms; 19 campaigns with 19 successive Congresses to get the federal amendment submitted, and the final ratification campaign.

Millions of dollars were raised, mostly in small sums, and spent with economic care. Hundreds of women gave the accumulated possibilities of an entire lifetime, thousands gave years of their lives, hundreds of thousands gave constant interest and such aid as they could. It was a continuous and seemingly endless chain of activity. Young suffragists who helped forge the last links

of that chain were not born when it began. Old suffragists who helped forge the first links were dead when it ended.

(Carrie Chapman Catt)

feminists have wanted equality. Radicals and reformists have different ideas of what equality would be, but it has been the wisdom of feminism to value equality as a political goal with social integrity and complex meaning. The Jacobins also wanted equality, and the French Revolution was fought to accomplish it. Conservatism as a modern political movement actually developed to resist social and political movements for equality, beginning with the egalitarian imperatives of the French Revolution.

Women have had to prove human status, before having any claim to equality. But equality has been impossible to achieve, perhaps because, really, women have not been able to prove human status. The burden of proof is on the victim.

Not one inch of change has been easy or cheap. We have fought so hard and so long for so little. The vote did not change the status of women. The changes in women's lives that we can see on the surface do not change the status of women. By the year 2000, women are expected to be 100 per cent of this nation's poor. We are raped, battered, and prostituted: these acts against us are in the fabric of social life. As children, we are raped, physically abused, and prostituted. The country enjoys the injuries done to us, and spends \$8 billion a year on the pleasure of watching us being hurt (exploitation as well as torture constituting substantive harm). The subordination gets deeper: we keep getting pushed down further. Rape is an entertainment. The contempt for us in that fact is immeasurable; yet we live under the weight of it. Discrimination is a euphemism for what happens to us.

It has plagued us to try to understand why the status of women does not change. Those who hate the politics of equality say they know: we are biologically destined for rape; God made us to be submissive unto our husbands. We change, but our status does not change. Laws change, but our status stays fixed. We move into the marketplace, only to face there classic sexual exploitation, now called sexual harassment. Rape, battery, prostitution, and incest stay the same in that they keep happening to us as part of what life is: even though we name the crimes against us as such and try to keep the victims from being destroyed by what we cannot stop from happening to them. And the silence stays in place too, however much we try to dislodge it with our truths. We say what has happened to us, but newspapers, governments,

the culture that excludes us as fully human participants, wipe us out or wipe out our speech: by refusing to hear it. We are the tree falling in the desert. Should it matter: they are the desert.

The cost of trying to shatter the silence is astonishing to those who do it: the women, raped, battered, prostituted, who have something to say and say it. They stand there, even as they are erased. Governments turn from them; courts ignore them; this country disavows and dispossesses them. Men ridicule, threaten, or hurt them. Women jeopardized by them—silence being safer than speech—betray them. It is ugly to watch the complacent destroy the brave. It is horrible to watch power win.

Still, equality is what we want, and we are going to get it. What we understand about it now is that it cannot be proclaimed; it must be created. It has to take the place of subordination in human experience, physically replace it. Equality does not co-exist with subordination, as if it were a little pocket located somewhere within it. Equality has to win. Subordination has to lose. The subordination of women has not even been knocked loose, and equality has not materially advanced, at least in part because the pornography has been creating sexualized inequality in hiding, in private, where the abuses occur on a massive scale.

Equality for women requires material remedies for pornography, whether pornography is central to the inequality of women or only one cause of it. Pornography's antagonism to civil equality, integrity, and self-determination for women is absolute; and it is effective in making that antagonism socially real and socially determining.

The law that Catharine A. MacKinnon and I wrote making pornography a violation of women's civil rights recognizes the injury that pornography does: how it hurts women's rights of citizenship through sexual exploitation and sexual torture both.

The civil rights law empowers women by allowing women to civilly sue those who hurt us through pornography by trafficking in it, coercing people into it, forcing it on people, and assaulting people directly because of a specific piece of it.

The civil rights law does not force the pornography back underground. There is no prior restraint or police power to make arrests, which would then result in a revived black market. This respects the reach of the first amendment, but it also keeps the pornography from getting sexier—hidden, forbidden, dirty, happily back in the land of the obscene, sexy slime oozing on great books. Wanting to cover the pornography up, hide it, is the first response of those who need

pornography to the civil rights law. If pornography is hidden, it is still accessible to men as a male right of access to women; its injuries to the status of women are safe and secure in those hidden rooms, behind those opaque covers; the abuses of women are sustained as a private right supported by public policy. The civil rights law puts a flood of light on the pornography, what it is, how it is used, what it does, those who are hurt by it.

The civil rights law changes the power relationship between pornographers and women: it stops the pornographers from producing discrimination with the total impunity they now enjoy, and gives women a legal standing resembling equality from which to repudiate the subordination itself. The secret-police power of the pornographers suddenly has to confront a modest amount of due process.

The civil rights law undermines the subordination of women in society by confronting the pornography, which is the systematic sexualization of that subordination. Pornography is inequality. The civil rights law would allow women to advance equality by removing this concrete discrimination and hurting economically those who make, sell, distribute, or exhibit it. The pornography, being power, has a right to exist that we are not allowed to challenge under this system of law. After it hurts us by being what it is and doing what it does, the civil rights law would allow us to hurt it back. Women, not being power, do not have a right to exist equal to the right the pornography has. If we did, the pornographers would be precluded from exercising their rights at the expense of ours, and since they cannot exercise them any other way, they would be precluded period. We come to the legal system beggars: though in the public dialogue around the passage of this civil rights law we have the satisfaction of being regarded as thieves.

The civil rights law is women's speech. It defines an injury to us from our point of view. It is premised on a repudiation of sexual subordination which is born of our experience of it. It breaks the silence. It is a sentence that can hold its own against the male flood. It is a sentence on which we can build a paragraph, then a page.

It is my view, learned largely from Catharine MacKinnon, that women have a right to be effective. The pornographers, of course, do not think so, nor do other male supremacists; and it is hard for women to think so. We have been told to educate people on the evils of pornography: before the development of this civil rights law, we were told just to keep quiet about pornography altogether; but now that we have a law we want to use, we are encouraged to educate and stop

there. Law educates. This law educates. It also allows women to do something. In hurting the pornography back, we gain ground in making equality more likely, more possible—some day it will be real. We have a means to fight the pornographers' trade in women. We have a means to get at the torture and the terror. We have a means with which to challenge the pornography's efficacy in making exploitation and inferiority the bedrock of women's social status. The civil rights law introduces into the public consciousness an analysis: of what pornography is, what sexual subordination is, what equality might be. The civil rights law introduces a new legal standard: these things are not done to citizens of this country. The civil rights law introduces a new political standard: these things are not done to human beings. The civil rights law provides a new mode of action for women through which we can pursue equality and because of which *our* speech will have social meaning. The civil rights law gives us back what the pornographers have taken from us: hope rooted in real possibility.

Notes

1. Gustave Flaubert, *Letters*, trans. J. M. Cohen (London: George Weidenfeld & Nicolson, 1950), p.94.
2. D. H. Lawrence, *Sex, Literature and Censorship* (New York: Twayne Publishers, 1953), p.9.
3. Harold Gardiner (SJ), *Catholic Viewpoint on Censorship* (Garden City: Hanover House, 1958), p. 65.
4. Georges Bataille, *Death and Sensuality* (New York: Ballantine Books, Inc. 1969), p.12.
5. Lawrence, op. cit., p. 74.
6. Vladimir Nabokov, 'Afterward', *Lolita* (New York: Berkeley Publishing Corporation, 1977), p. 284.
7. The actual line is 'In dreams begins responsibility', quoted by Yeats as an epigram to his collection, *Responsibilities*.
8. Maria Isabel Barreno, Maria Teresa Horta, and Maria Velho da Costa, *The Three Marias: New Portuguese Letters*, trans. Helen R. Lane (New York: Bantam Books, 1976), p. 291.
9. Nadezhda Mandelstam, *Hope Against Hope*, trans. Max Hayward (New York: Atheneum, 1978), pp. 42-3.
10. Franz Kafka, 'In the Penal Colony', *The Penal Colony*, trans. Willa and Edwin Muir (New York: Schocken Books, 1965), p. 194.
11. *Ibid.*, p. 197.
12. *Ibid.*, p. 203.
13. *Ibid.*, p. 197.

2

Pornography and Grief

Andrea Dworkin

'Pornography and Grief' was written as a speech for a Take Back the Night March that was part of the first feminist conference on pornography in the United States in San Francisco, November 1978. Organized by the now defunct Women Against Violence in Pornography and Media (WAVPM), over 5,000 women from thirty states participated and we shut down San Francisco's pornography district for one night. The ground was taken but not held.

I searched for something to say here today quite different from what I am going to say. I wanted to come here militant and proud and angry as hell. But more and more, I find that anger is a pale shadow next to the grief I feel. If a woman has any sense of her own intrinsic worth, seeing pornography in small bits and pieces can bring her to a useful rage. Studying pornography in quantity and depth, as I have been doing for more months than I care to remember, will turn that same woman into a mourner.

The pornography itself is vile. To characterize it any other way would be to lie. No plague of male intellectualisms and sophistries can change or hide that simple fact. Georges Bataille, a philosopher of pornography (which he calls 'eroticism'), puts it clearly: 'In essence, the domain of eroticism is the domain of violence, of violation.'¹ Mr Bataille, unlike so many of his peers, is good enough to make explicit that the whole idea is to violate the female. Using the language of grand euphemism so popular with male intellectuals who write on the subject of pornography, Bataille informs us that '[t]he passive, female side is essentially the one that is dissolved as a separate entity.'² To

Andrea Dworkin, 'Pornography and Grief', in *Letters from a War Zone* (Martin Secker and Warburg, 1987). Reprinted by permission of Elaine Markson Literary Agency Inc.

5

Only Words

Catharine A. MacKinnon

Imagine that for hundreds of years your most 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.¹

You cannot tell anyone. When you try to speak of these things, you are told it did not happen, you imagined it, you wanted it, you enjoyed it. Books say this. No books say what happened to you. Law says this. No law imagines what happened to you, the way it happened. You live your whole life surrounded by this cultural echo of nothing where your screams and your words should be.

In this thousand years of silence, the camera is invented and pictures are made of you while these things are being done. You hear the camera clicking or whirring as you are being hurt, keeping time to the rhythm of your pain. You always know that the pictures are out there somewhere, sold or traded or shown around or just kept in a drawer. In them, what was done to you is immortal. He has them; someone, anyone, has seen you there, that way. This is unbearable. What he felt as he watched you as he used you is always being done again and lived again and felt again through the pictures—your violation his arousal, your torture his pleasure. Watching you was how he got off doing it, with the pictures he can watch you and get off any time.²

Catharine A. MacKinnon, 'Only Words', from *Only Words*, Catharine MacKinnon (Harvard University Press, 1993), 3–41, copyright © 1993 by Catharine A. MacKinnon, reprinted by permission of J. A. Christian Ltd. and the author.

Slowly, then suddenly, it dawns on you: maybe now I will be believed. You find a guarded way of bringing it up. Maybe the pictures are even evidence of rape.³ You find that the pictures, far from making what happened undeniable, are sex, proof of your desire and your consent.⁴ Those who use you through the pictures feel their own pleasure. They do not feel your pain as pain any more than those who watched as they hurt you to make the pictures felt it. The pictures, surrounded by a special halo of false secrecy and false taboo—false because they really are public and are not really against the rules—have become the authority on what happened to you, the literature of your experience, a sign for sex, sex itself. In a very real way, they have made sex *be* what it is to the people who use you and the pictures of you interchangeably. In this, the pictures are not so different from the words and drawings that came before, but your use for the camera gives the pictures a special credibility, a deep verisimilitude, an even stronger claim to truth, to being incontrovertibly about you, because they happened and there you are. And because you are needed for the pictures, the provider has yet another reason to use you over and over and over again.

Finally, somehow, you find other women. Their fathers, husbands, and doctors saw the pictures, liked them, and did the same things to them, things they had never done or said they wanted before. 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. There is, you find, a whole industry in buying and selling captive smiling women to make such pictures, acting as if they like it.

When any one of them tries to tell what happened, she is told it did not happen, she imagined it, she wanted it. Her no meant yes. The pictures prove it. See, she smiles. Besides, why fixate on the pictures, the little artifact, at most a symptom? Even if something wrong was *done* to you, how metaphysically obtuse can you be? The pictures *themselves* do nothing. They are an expression of ideas, a discussion, a debate, a discourse. How repressed and repressive can you be? They are constitutionally protected speech.

Putting to one side what this progression from life to law does to one's sense of reality, personal security, and place in the community, not to mention faith in the legal system, consider what it does to one's relation to expression: to language, speech, the world of thought and

communication. You learn that language does not belong to you, that you cannot use it to say what you know, that knowledge is not what you learn from your life, that information is not made out of your experience. You learn that thinking about what happened to you does not count as 'thinking', but doing it apparently does. You learn that your reality subsists somewhere beneath the socially real—totally exposed but invisible, screaming yet inaudible, thought about incessantly yet unthinkable, 'expression' yet inexpressible, beyond words. You learn that speech is not what you say but what your abusers do to you.

Your relation to speech is like shouting at a movie. Somebody stops that man, you scream. The audience acts as though nothing has been said, keeps watching fixedly or turns slightly, embarrassed for you. The action on-screen continues as if nothing has been said. As the echo of your voice dies in your ears, you begin to doubt that you said anything. Soon your own experience is not real to you anymore, like a movie you watch but cannot stop. This is women's version of life imitating art: your life as the pornographer's text. To survive, you learn shame and how to cover it with sexual bravado, inefficacy and how to make it seductive, secrecy and the habit of not telling what you know until you forget it. You learn how to leave your body and create someone else who takes over when you cannot stand it any more. You develop a self who is ingratiating and obsequious and imitative and aggressively passive and silent—you learn, in a word, femininity.

I am asking you to imagine that women's reality is real—something of a leap of faith in a society saturated with pornography, not to mention an academy saturated with deconstruction.⁵ In the early 1980s women spoke of this reality, in Virginia Woolf's words of many years before, 'against the male flood':⁶ they spoke of being sexually abused. Thirty-eight per cent of women are sexually molested as girls; 24 per cent of us are raped in our marriages. Nearly half are victims of rape or attempted rape at least once in our lives, many more than once, especially women of color, many involving multiple attackers, mostly men we know. Eighty-five per cent of women who work outside the home are sexually harassed at some point by employers.⁷ We do not yet know how many women are sexually harassed by their doctors or how many are bought and sold as sex—the one thing men will seemingly always pay for, even in a depressed economy.

A long time before the women's movement made this information available, in the absence of the words of sexually abused women, in the vacuum of this knowledge, in the silence of this speech, the question

of pornography was framed and debated—its trenches dug, its moves choreographed, its voices rehearsed. Before the invention of the camera, which requires the direct use of real women; before the rise of a mammoth profitmaking industry of pictures and words acting as pimp; before women spoke out about sexual abuse and were heard, the question of the legal regulation of pornography was framed as a question of the freedom of expression of the pornographers and their consumers. The government's interest in censoring the expression of ideas about sex was opposed to publishers' right to express them and readers' right to read and think about them.

Frozen in the classic form of prior debates over censorship of political and artistic speech, the pornography debate thus became one of governmental authority threatening to suppress genius and dissent. There was some basis in reality for this division of sides. Under the law of obscenity, governments did try to suppress art and literature because it was sexual in content. This was before the camera required live fodder and usually resulted in the books' becoming bestsellers.

Once abused women are heard and—this is the real hitch—become real, women's silence can no longer be the context in which pornography and speech are analyzed. Into the symbiotic dance between left and right, between the men who love to hate each other, enters the captive woman, the terms of access to whom they have been fighting over.⁸ Instead of the forces of darkness seeking to suppress what the forces of light are struggling to free, her captivity itself is made central and put in issue for the first time. This changes everything, or should. Before, each woman who said she was abused looked incredible or exceptional; now, the abuse appears deadeningly commonplace. Before, what was done to her was sex; now, it is sexual abuse. Before, she was sex; now, she is a human being gendered female—if anyone can figure out what that is.

In this new context, the expressive issues raised by pornography also change—or should. Protecting pornography means protecting sexual abuse as speech, at the same time that both pornography and its protection have deprived women of speech, especially speech against sexual abuse. There is a connection between the silence enforced on women, in which we are seen to love and choose our chains because they have been sexualized, and the noise of pornography that surrounds us, passing for discourse (ours, even) and parading under constitutional protection. The operative definition of censorship accordingly shifts from government silencing what powerless people

say, to powerful people violating powerless people into silence and hiding behind state power to do it.

In the United States, pornography is protected by the state.⁹ Conceptually, this protection relies centrally on putting it back into the context of the silence of violated women: from real abuse back to an 'idea' or 'viewpoint' on women and sex. In this de-realization of the subordination of women, this erasure of sexual abuse through which technologically sophisticated traffic in women becomes a consumer choice of expressive content, abused women become a pornographer's 'thought' or 'emotion'. This posture unites pornography's apologists from libertarian economist and judge Frank Easterbrook¹⁰ to liberal philosopher-king Ronald Dworkin,¹¹ from conservative scholar and judge Richard Posner¹² to pornographers' lawyer Edward DeGrazia.

In their approach, taken together, pornography falls presumptively into the legal category 'speech' at the outset through being rendered in terms of 'content', 'message', 'emotion', what it 'says', its 'viewpoint', its 'ideas'. Once the women abused in it and through it are elided this way, its artifact status as pictures and words gets it legal protection through a seemingly indelible categorical formalism that then must be negated for anything to be done.

In this approach, the approach of current law, pornography is essentially treated as defamation rather than as discrimination.¹⁴ 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. Because the purveyor is protected in sending, and the consumer in receiving, the thought or feeling, the fact that an unintended bystander might have offended thoughts or unpleasant feelings is a mere externality, a cost we must pay for freedom. That the First Amendment protects this process of interchange—thought to thought, feeling to feeling—there is no doubt.

Within the confines of this approach, to say that pornography is an act against women is seen as metaphorical or 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.

A theory of protected speech begins here: words express, hence are

presumed 'speech' in the protected sense. Pictures partake of the same level of expressive protection. But social life is full of words that are legally treated as the acts they constitute without so much as a whimper from the First Amendment. What becomes interesting is when the First Amendment frame is invoked and when it is not. *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 per cent, I'll raise mine the next morning' is not protected speech; it is attempted joint monopolization, a 'highly verbal crime'. In this case, conviction nicely disproved the defendant's view, expressed in the same conversation, that 'we can talk about any goddamn thing we want to talk about'.¹⁵

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. No one confuses discussing them with doing them, for instance discussing a verdict of 'guilty' with a jury's passing a verdict of 'guilty'. Nobody takes an appeal of a guilty verdict as censorship of the jury. Such words are not considered 'speech' at all.

Social inequality is substantially created and enforced—that is, *done*—through words and images. Social hierarchy cannot and does not exist without being embodied in meanings and expressed in communications. A sign *saying* 'White Only'¹⁶ is only words, but is not legally seen as expressing the viewpoint 'we do not want Black people in this store', or as dissenting from the policy view that both Blacks and whites must be served, or even as hate speech, the restriction of which would need to be debated in First Amendment terms. It is seen as the act of segregation that it is, like 'Juden nicht erwünscht!'¹⁷ Segregation cannot happen without someone *saying* 'get out' or 'you don't belong here' at some point. Elevation and denigration are all accomplished through meaningful symbols and communicative acts in which saying it is doing it.

Words unproblematically treated as acts in the inequality context include 'you're fired', 'help wanted—male', 'sleep with me and I'll give you an A', 'fuck me or you're fired', 'walk more femininely, talk more femininely, dress more femininely, wear makeup, have your hair styled,

and wear jewelry', and 'it was essential that the understudy to the Administrative Assistant be a man'.¹⁸ These statements are discriminatory acts and are legally seen as such. Statements like them can also evidence discrimination or show that patterns of inequality are motivated by discriminatory animus. They can constitute actionable discriminatory acts in themselves or legally transform otherwise non-suspect acts into bias-motivated ones. Whatever damage is done through such words is done not only through their context but through their content, in the sense that if they did not contain what they contain and convey the meanings and feelings and thoughts they convey, they would not evidence or actualize the discrimination that they do.

Pornography, by contrast, has been legally framed as a vehicle for the expression of ideas. The Supreme Court of Minnesota recently observed of some pornography before it that 'even the most liberal construction would be strained to find an "idea" in it', limited as it was to 'who wants what, where, when, how, how much, and how often'. Even this criticism dignifies the pornography. The *idea* of who wants what, where, and when sexually can be expressed without violating anyone and without getting anyone raped. There are many ways to say what pornography says, in the sense of its content. But nothing else does what pornography does. 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 so they can be filmed. They are not 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. This is not because they are persuaded by its ideas or even inflamed by its emotions, or because it is so conceptually or emotionally compelling, but because they are sexually habituated to its kick, a process that is largely unconscious and works as primitive conditioning, with pictures and words as sexual stimuli. Pornography consumers are not consuming an idea any more than eating a loaf of bread is consuming the ideas on its wrapper or the ideas in its recipe.

This is not to object to primitiveness or sensuality or subtlety or habituation in communication. Speech conveys more than its literal meaning, and its undertones and nuances must be protected. It is to question the extent to which the First Amendment protects unconscious mental intrusion and physical manipulation, even by pictures and words, particularly when the results are further acted out through aggression and other discrimination.²⁰ It is also to observe that pornography does not engage the conscious mind in the chosen way the model of 'content', in terms of which it is largely defended, envisions and requires. In the words of Judge Easterbrook, describing this dynamic, pornography 'does not persuade people so much as change them'.²¹

Pornography is masturbation material.²² It is used as sex. It therefore is sex. Men know this. In the centuries before pornography was made into an 'idea' worthy of First Amendment protection, men amused themselves and excused their sexual practices by observing that the penis is not an organ of thought. Aristotle said, 'it is impossible to think about anything while absorbed [in the pleasures of sex].'²³ The Yiddish equivalent translates roughly as 'a stiff prick turns the mind to shit'.²⁴ The common point is that having sex is antithetical to thinking. It would not have occurred to them that having sex is thinking.

With pornography, men masturbate to women being exposed, humiliated, violated, degraded, mutilated, dismembered, bound, gagged, tortured, and killed. In the visual materials, they experience *this being done* by watching it *being done*. What is real here is not that the materials are pictures, but that they are part of a sex act. The women are in two dimensions, but the men have sex with them in their own three-dimensional bodies, not in their minds alone. Men

come doing this. This, too, is a behavior, not a thought or an argument. It is not ideas they are ejaculating over. Try arguing with an orgasm sometime. You will find you are no match for the sexual access and power the materials provide.

The fact that this experience is sexual does not erupt *sui generis* from pornography all by itself, any more than the experience of access and power in rape or child abuse or sexual harassment or sexual murder is sexual in isolation. There is no such thing as pornography or any social occurrence, all by itself. But, of these, it is only pornography of which it is said that the experience is not one of access and power but one of thought; only of pornography that it is said that unless you can show what it and it alone does, you cannot do anything about it; and only pornography that is protected as a constitutional right. The fact that pornography, like rape, has deep and broad social roots and cultural groundings makes it more rather than less active galvanizing and damaging.

One consumer of rape pornography and snuff films recently made this point as only an honest perpetrator can: 'I can remember when I get horny from looking at girly books and watching girly shows that I would want to go rape somebody. Every time I would jack off before I come I would be thinking of rape and the women I had raped and remembering how exciting it was. The pain on their faces. The thrill the excitement.'²⁵ This, presumably, is what the court that recently protected pornography as speech meant when it said that its effects depend upon 'mental intermediation'.²⁶ See, he was watching, wanting, thinking, remembering, feeling. He was also receiving the death penalty for murdering a young woman named Laura after raping her, having vaginal and anal intercourse with her corpse, and chewing on several parts of her body.

Sooner or later, in one way or another, the consumers want to live out the pornography further in three dimensions. Sooner or later, in one way or another, they do. *It* makes them want to; when they believe they can, when they feel they can get away with it *they* do. Depending upon their chosen sphere of operation, they may use whatever power they have to keep the world a pornographic place so they can continue to get hard from everyday life. As pornography consumers, teachers may become epistemically incapable of seeing their women students as their potential equals and unconsciously teach about rape from the viewpoint of the accused. Doctors may molest anesthetized women, enjoy watching and inflicting pain during childbirth, and use pornography to teach sex education in medical school. Some consumers

write on bathroom walls. Some undoubtedly write judicial opinions.²⁷

Some pornography consumers presumably serve on juries, sit on the Senate Judiciary Committee, answer police calls reporting domestic violence, edit media accounts of child sexual abuse, and produce mainstream films. Some make wives and daughters and clients and students and prostitutes look at it and do what is in it. Some sexually harass their employees and clients, molest their daughters, batter their wives, and use prostitutes—with pornography present and integral to the acts. Some gang rape women in fraternities and at rest stops on highways, holding up the pornography and reading it aloud and mimicking it. Some become serial rapists and sex murderers—using and making pornography is inextricable to these acts—either freelancing or in sex packs known variously as sex rings, organized crime, religious cults, or white supremacist organizations. Some make pornography for their own use and as a sex act in itself, or in order to make money and support the group's habit.²⁸

This does not presume that all pornography is made through abuse or rely on the fact that some pornography is made through coercion as a legal basis for restricting all of it.²⁹ 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. The industry's profits exploit, and are an incentive to maintain, these conditions. 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.

I have come to think that there is a connection between these conditions of production and the force that is so often needed to make other women perform the sex that consumers come to want as a result of viewing it. In other words, if it took these forms of force to make a woman do what was needed to make the materials, might it not take the same or other forms of force to get other women to do what is in it? Isn't there, then, an obvious link between the apparent need to coerce some women to perform for pornography and the coercion of other women as a result of its consumption? If a woman had to be coerced to make *Deep Throat*, doesn't that suggest that *Deep Throat* is dangerous to all women anywhere near a man who wants to do what he saw in it?³⁰

Pornography contains ideas, like any other social practice. But the way it works is not as a thought or through its ideas as such, at least not in the way thoughts and ideas are protected as speech. Its place in

abuse requires understanding it more in active than in passive terms, as constructing and performative³¹ rather than as merely referential or connotative.

The message of these materials, and there is one, as there is to all conscious activity, is 'get her', pointing at all women, to the perpetrators' benefit of ten billion dollars a year and counting. This message is addressed directly to the penis, delivered through an erection, and taken out on women in the real world. The content of this message is not unique to pornography. It is the function of pornography in effectuating it that is unique. 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? Shall we now balance away women's lesser entitlements—not to be raped, dehumanized, molested, invaded, and sold? Do the consequences for many women of doing this to some women, for mass marketing, weigh in this calculus? How many women's bodies have to stack up here even to register against male profit and pleasure presented as First Amendment principle?

On the basis of its reality, Andrea Dworkin and I have proposed a law against pornography that defines it as graphic sexually explicit materials that subordinate women through pictures or words.³² This definition describes what is there, that is, what must be there for the materials to work as sex and to promote sexual abuse across a broad spectrum of consumers. This definition includes the harm of what pornography says—its function as defamation or hate speech—but defines it and it alone in terms of what it does—its role as subordination, as sex discrimination, including what it does through what it says. This definition is coterminous with the industry, from *Playboy*, in which women are objectified and presented dehumanized as sexual objects or things for use; through the torture of women and the sexualization of racism and the fetishization of women's body parts; to snuff films, in which actual murder is the ultimate sexual act, the reduction to the thing form of a human being and the silence of women literal and complete. Such material combines the graphic sexually explicit—graphically showing explicit sex—with activities like hurting, degrading, violating, and humiliating, that is, actively subordinating, treating unequally, as less than human, on the basis of sex. Pornography is not restricted here because of what it says. It is

restricted through what it does. Neither is it protected because it says something, given what it does.

Now, in First Amendment terms, what is 'content'—the 'what it says' element—here?³³ We are told by the Supreme Court that we cannot restrict speech *because* of what it says, but all restricted expression says something. Most recently, we have been told that obscenity and child pornography are content that can be regulated although what distinguishes child pornography is not its 'particular literary theme'.³⁴ In other words, it has a message, but it does not do its harm through that message. So what, exactly, are the children who are hurt through the use of the materials hurt by?³⁵

Suppose that the sexually explicit has a content element: it contains a penis ramming into a vagina. Does that mean that a picture of this conveys the idea of a penis ramming into a vagina, or does the viewer see and experience a penis ramming into a vagina? If a man watches a penis ram into a vagina live, in the flesh, do we say he is watching the idea of a penis ramming into a vagina? How is the visual pornography different? When he then goes and rams his penis into a woman's vagina, is that because he has an idea, or because he has an erection? I am not saying his head is not attached to his body; I am saying his body is attached to his head.

The ideas pornography conveys, construed as 'ideas' in the First Amendment sense, are the same as those in mainstream misogyny: male authority in a naturalized gender hierarchy, male possession of an objectified other. In this form, they do not make men hard. The erections and ejaculations come from providing a physical reality for sexual use, which is what pornography does. Pornography is often more sexually compelling than the realities it presents, more sexually real than reality. When the pimp does his job right, he has the woman exactly where the consumers want her. In the ultimate male bond, that between pimp and john, the trick is given the sense of absolute control, total access, power to take combined with the illusion that it is a fantasy, when the one who actually has that power is the pimp. For the consumer, the mediation provides the element of remove requisite for deniability. Pornography thus offers both types of generic sex: for those who want to wallow in filth without getting their hands dirty and for those who want to violate the pure and get only their hands wet.

None of this starts or stops as a thought or feeling. Pornography does not simply express or interpret experience; it substitutes for it. Beyond bringing a message from reality, it stands in for reality; it is

existentially being there. This does not mean that there is no spin to the experience—far from it. To make visual pornography, and to be up to its imperatives, the world, namely women, must do what the pornographers want to 'say'. Pornography brings its conditions of production to the consumer: sexual dominance. As Creel Froman puts it, subordination is 'doing someone else's language'.³⁶ Pornography makes the world a pornographic place through its making and by establishing what women are said to exist as, are seen as, are treated as, constructing the social reality of what a woman is and can be in terms of what can be done to her, and what a man is in terms of doing to her.

As society becomes saturated with pornography, what makes for sexual arousal, and the nature of sex itself in terms of the place of speech in it, change. What was words and pictures becomes, through masturbation, sex itself. As the industry expands, this becomes more and more the generic experience of sex, the woman in pornography becoming more and more the lived archetype for women's sexuality and men's, hence women's, experience. In other words, as the human becomes thing and the mutual becomes one-sided and the given becomes stolen and sold, objectification comes to define femininity and one-sidedness comes to define mutuality, and force comes to define consent as pictures and words become the forms of possession and use through which women are actually possessed and used. In pornography, pictures and words are sex. At the same time, in the world pornography creates, sex is pictures and words. As sex becomes speech, speech becomes sex.

The denial that pornography is a real force comes in the guise of many mediating constructions. At most, it is said, pornography reflects or depicts or describes or represents subordination that happens elsewhere. The most common denial is that pornography is 'fantasy'. Meaning it is unreal, or only an internal reality. For whom? The women in it may dissociate to survive, but it *is* happening to their bodies. The pornographer regularly uses the women personally and does not stop his business at fantasizing. The consumer masturbates to it, replays it in his head and onto the bodies of women he encounters or has sex with, lives it out on the women and children around him. Are the victims of snuff films fantasized to death?

Another common evasion is that pornography is 'simulated'. What can this mean? It always reminds me of calling rape with a bottle 'artificial rape'.³⁷ In pornography, the penis is shown ramming up into the woman over and over; this is because it actually was rammed up into the woman over and over. In mainstream media, violence is done

through special effects; in pornography, women shown being beaten and tortured report being beaten and tortured. Sometimes 'simulated' seems to mean that the rapes are not really rapes but are part of the performance, so the woman's refusal and resistance are acting. If it is acting, why does it matter what the actress is really feeling? We are told unendingly that the women in pornography are *really* enjoying themselves (but it's simulated?). Is the man's erection on screen 'simulated' too? Is he 'acting' too?

No pornography is 'real' sex in the sense of shared intimacy; this may make it a lie, but it does not make it 'simulated'. Nor is it real in the sense that it happened as it appears. To look real to an observing camera, the sex acts have to be twisted open, stopped and restarted, repositioned and repositioned, the come shot often executed by another actor entirely. The women regularly take drugs to get through it. This is not to say that none of this happens in sex that is not for pornography; rather that, as a defense of pornography, this sounds more like an indictment of sex.

One wonders why it is not said that the pleasure is simulated and the rape is real, rather than the other way around. The answer is that the consumer's pleasure requires that the scenario conform to the male rape fantasy, which requires that the woman appear to like it. Paying the woman to appear to resist and then surrender does not make the sex consensual; it makes pornography an arm of prostitution. The sex is not chosen for the sex. Money is the medium of force and provides the cover of consent.

The most elite denial of the harm is the one that holds that pornography is 'representation', when a representation is a nonreality. Actual rape arranges reality; ritual torture frames and presents it. Does that make them 'representations', and so not rape and torture? Is a rape a representation of a rape if someone is watching it? When is the rapist *not* watching it? Taking photographs is part of the ritual of some abusive sex, an act of taking, the possession involved. So is watching while doing it and watching the pictures later. The photos are trophies; looking at the photos is fetishism. Is nude dancing a 'representation' of eroticism or is it eroticism, meaning a sex act? How is a live sex show different? In terms of what the men are doing sexually, an audience watching a gang rape in a movie is no different from an audience watching a gang rape that is reenacting a gang rape from a movie, or an audience watching any gang rape.

To say that pornography is categorically or functionally representation rather than sex simply creates a distanced world we can say is not

the real world, a world that mixes reality with unreality, art and literature with everything else, as if life does not do the same thing. The effect is to license whatever is done there, creating a special aura of privilege and demarcating a sphere of protected freedom, no matter who is hurt. In this approach, there is no way to prohibit rape or pornography is protected. If, by contrast, representation *is* reality, as other theorists argue, then pornography is no less an act than the rape and torture it represents.³⁸

At stake in constructing pornography as 'speech' is gaining constitutional protection for doing what pornography *does*: subordinating women through sex. This is not content as such, nor is it wholly other than content. Segregation is not the content of 'help wanted—male' employment advertisements, nor is the harm of the segregation done without regard to the content of the ad. It is its function. Law's proper concern here is not with what speech says, but with what it does.³⁹ The meaning of pornography in the sense of interpretation may be an interesting problem, but it is not this one. This problem is its meaning for women: what it does in and to our lives.

I am not saying that pornography is conduct and therefore not speech, or that it does things and therefore says nothing and is without meaning, or that all its harms are noncontent harms. In society, nothing is without meaning. Nothing has no content. Society is made of words, whose meanings the powerful control, or try to. At a certain point, when those who are hurt by them become real, some words are recognized as the acts that they are. Converging with this point from the action side, nothing that happens in society lacks ideas or something, including rape and torture and sexual murder. This presumably does not make rape and murder protected expression, but, other than by simplistic categorization, speech theory never says why not. Similarly, every act of discrimination is done because of group membership, such as on the basis of sex or race or both, meaning done either with that conscious thought, perception, knowledge, or consequence. Indeed, discriminatory intent, a mental state, is required to prove discrimination under the Fourteenth Amendment.⁴⁰ Does this 'thought' make all that discrimination 'speech'?

It is not new to observe that while the doctrinal distinction between speech and action is on one level obvious, on another level it makes little sense. In social inequality, it makes almost none. Discrimination does not divide into acts on one side and speech on the other. Speech acts. It makes no sense from the action side either. Acts speak. In the context of social inequality, so-called speech can be an exercise of

power which constructs the social reality in which people live, from objectification to genocide. The words and images are either direct incidents of such acts, such as making pornography or requiring Jews to wear yellow stars, or are connected to them, whether immediately, linearly, and directly, or in more complicated and extended ways.

Together with all its material supports, authoritatively *saying* someone is inferior is largely how structures of status and differential treatment are demarcated and actualized. Words and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized.⁴¹ Social supremacy is made, inside and between people, through making meanings. To unmake it, these meanings and their technologies have to be unmade.

A recent Supreme Court decision on nude dancing provides an example of the inextricability of expression with action in an unrecognized sex inequality setting. Chief Justice Rehnquist wrote, for the Court, that nude dancing can be regulated without violating the First Amendment because one can *say* the same thing by dancing in pasties and a G-string.⁴² No issues of women's inequality to men were raised in all the pondering of the First Amendment, although the dancers who were the parties to the case could not have been clearer that *they* were not expressing anything.⁴³ In previous cases like this, no one has ever said what shoving dollar bills up women's vaginas expresses.⁴⁴ As a result, the fact that the accessibility and exploitation of women through their use as sex is at once being said *and done* through presenting women dancing nude is not confronted. That women's inequality is simultaneously being expressed and exploited is never mentioned. Given the role of access to women's genitals in gender inequality, dancing in a G-string raises similar 'themes' and does similar harms, but neither says nor does exactly the same thing.

Justice Souter, in a separate concurrence, got closer to reality when he said that nude dancing could be regulated because it is accompanied by rape and prostitution.⁴⁵ These harms are exactly what is made worse by the difference between dancing in a G-string and pasties, and dancing in the nude. Yet he did not see that these harms are inextricable from, and occur exactly through, what nude dancing expresses. Unlike the majority, Justice Souter said that dancing in a G-string does not express the same 'erotic message'⁴⁶ as nude dancing. In other words, men are measurably more turned on by seeing women expose their sexual parts entirely to public view than almost entirely.

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Nobody said that expressing eroticism is speech—think for engaging a public sex. Justice Souter did say that the feeling nude dancer expresses 'is eroticism'.⁴⁷ To express eroticism is to engage in eroticism meaning to perform a sex act. To say it is to do it, and to do it is to do it. It is also to do the harm of it and to exacerbate harms surrounding it. In this context, unrecognized by law, it is to practice sex inequality as well as to express it.

The legal treatment of crossburning in another recent Supreme Court opinion provides yet another example of the incoherence of distinguishing speech from conduct in the inequality context. Crossburning is nothing but an act, yet it is pure expression, doing the harm it does solely through the message it conveys. Nobody weeps for the charred wood. By symbolically invoking the entire violent history of the Ku Klux Klan, it says, 'Blacks get out', thus engaging in terrorism and effectuating segregation. It carries the message of historic white indifference both to this message and to the imminent death for which it stands. Segregating transportation expressed (at a minimum) the view that African-Americans should ride separately from whites; it was not seen to raise thorny issues of symbolic expression. Ads for segregated housing are only words, yet they are widely prohibited outright as acts of segregation.⁴⁸

Like pornography, crossburning is seen by the Supreme Court to raise crucial expressive issues. Its function as an enforcer of segregation, instigator of lynch mobs, instiller of terror, and emblem of official impunity is transmuted into a discussion of specific 'disfavored subjects'.⁴⁹ The burning cross is the discussion. The 'subject' is race-discriminating on the basis of it, that is. The bland indifference to reality is underlined by the lack of a single mention of the Ku Klux Klan. Recognizing the content communicated, Justice Stevens nonetheless characterized the crossburning as 'nothing more than a crude form of physical intimidation'.⁵⁰

In this country, nothing has at once expressed racial hatred and effectuated racial subordination more effectively than the murder and hanging of a mutilated body, usually of a Black man. I guess this makes Black male bodies the subject of the discussion. Lynching expresses a clear point of view.⁵¹ Photographs were sometimes taken of the body and sold, to extend its message and the pleasure of viewing it.⁵² More discussion. Are these acts inexpressive and contentless? Are the pictures protected expression? Is a Black man's death made unreal by being photographed the way women's subordination is?⁵³ Suppose lynchings were done to make pictures of lynchings. Should their race

content protect them as political speech, since they do their harm through conveying a political ideology? Is *bigoted* incitement to murder closer to protected speech than plain old incitement to murder?⁵⁴ Does the lynching itself raise speech issues, since it is animated by a racist ideology? If the lynching includes rape, is it, too, potentially speech? A categorical no will not do here. Why, consistent with existing speech theory, are these activities not expressive? If expressive, why not protected?

Consider snuff pornography, in which women or children are killed to make a sex film. This is a film of a sexual murder in the process of being committed. Doing the murder is sex for those who do it. The climax is the moment of death. The intended consumer has a sexual experience watching it. Those who kill as and for sex are having sex through the murder; those who watch the film are having sex through watching the murder. A snuff film is not a discussion of the idea of sexual murder any more than the acts being filmed are. The film is not about sexual murder; it sexualizes murder. Is your first concern what a snuff film says about women and sex or what it does? Now, why is rape different?

Child pornography is exclusively a medium of pictures and words. The Supreme Court has referred to it as 'pure speech'.⁵⁵ Civil libertarians and publishers argued to protect it as such.⁵⁶ Child pornography conveys very effectively the idea that children enjoy having sex with adults, the feeling that this is liberating for the child. Yet child pornography is prohibited as child abuse, based on the use of children to make it.⁵⁷ A recent Supreme Court case in passing extended this recognition of harm to other children downstream who are made to see and imitate the pictures.⁵⁸ Possessing and distributing such pictures is punishable by imprisonment consistent with the First Amendment, despite the fact that private reading is thereby restricted. Harm like this may be what the Supreme Court left itself open to recognizing when it said, in guaranteeing the right to possess obscenity in private, that 'compelling reasons may exist for overriding the right of the individual to possess' the prohibited materials.⁵⁹

The point here is that sex pictures are legally considered sex acts, based on what, in my terms, is abuse due to the fact of inequality between children and adults. For seeing the pictures as tantamount to acts, how, other than that sexuality socially defines women, is inequality among adults different?

Now compare the lynching photograph and the snuff film with a *Penthouse* spread of December 1984 in which Asian women are

trussed and hung.⁶⁰ One bound between her legs with a thick rope appears to be a child. All three express ideology. All had to be done to be made. All presumably convey something as well as provide entertainment. If used at work, this spread would create a hostile unequal working environment actionable under federal sex discrimination law.⁶¹ But there is no law against a hostile unequal living environment so everywhere else it is protected speech.

Not long after this issue of *Penthouse* appeared, a little Asian girl was found strung up and sexually molested in North Carolina, dead.⁶² 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. It is only an effect of pornography, but when one *has* that effect, is restricting those pictures 'thought control',⁶³ the judicial epithet used to invalidate a law against pornography? Would the girl's death be what *Penthouse* 'said'? If she was killed because of its 'content should it be protected'?

Should it matter: the evidence of the harm of such materials—from testimony of victims (called evidence, not anecdote, in court) to laboratory studies in which variables and predisposed men are controlled for, to social studies in which social reality is captured in all its messiness—shows that these materials change attitudes and imperil behaviors in ways that are unique in their extent and devastating in their consequences. In human society, where no one does not live through a physical response to pornography is nearly a universal condition. Male reaction, whether they like or agree with what the materials say or not. There is a lot wider variation in men's conscious attitudes toward pornography than there is in their sexual responses to it.

There is no evidence that pornography does no harm; not even courts equivocate over its carnage anymore.⁶⁵ The new insult is that the potency of pornography *as idea* is said to be proven by the harm it does, so it must be protected as speech.⁶⁶ Having made real harm into the idea of harm, discrimination into defamation, courts tell us in essence that to the extent materials are defamatory, meaning they contain defamatory ideas, they are protected, even as they discriminate against women from objectification to murder.

'Every idea is an incitement', said Justice Holmes in a famous dissent in an early case on freedom of speech.⁶⁷ Whether or not this is true to the same degree for every idea, it has come to mean that every incitement to action that has an idea behind it—especially a big idea and misogyny is a very big idea—is to that degree First Amendment

protected territory. This doctrine was originally created to protect against suppression the speech of communists, thought by some to threaten the security of the US government. This experience is the origin of the 'speech' doctrine, its formative trauma, the evil of suppression of dissent that First Amendment law, through coming to terms with this debacle, has been designed to avoid. This is where we get the idea that we must protect ideas regardless of the mischief they do in the world, where the First Amendment got its operative idea of what an 'idea' is.

Applying this paradigm for political speech to pornography requires placing, by analogy, sexually abused women relative to their abusers, in a position of power comparable to that of the US government relative to those who advocated its overthrow. This is bizarre, given that risk of harm is the issue. Women are far more likely to be harmed through pornography than the US government is to be overthrown by communists. Putting the pornographers in the posture of the excluded underdog, like communists, plays on the deep free speech tradition against laws that restrict criticizing the government. Need it be said, women are not the government? Pornography has to be done to women to be made; no government has to be overthrown to make communist speech. It is also interesting that whether or not forced sex is a good idea—pornography's so-called viewpoint on the subordination of women—is not supposed to be debatable to the same degree as is the organization of the economy. In theory, we have criminal laws against sexual abuse. We even have laws mandating sex equality.

Yet the First Amendment orthodoxy that came out of the communist cases is reflexively applied to pornography: if it is words and pictures, it expresses ideas. It *does* nothing. The only power to be feared as real is that of the government in restricting it. The speech is impotent. The analogy to communism has the realities reversed. Not only is pornography more than mere words, while the words of communism are only words. The power of pornography is more like the power of the state.⁶⁸ It is backed by power at least as great, at least as unchecked, and at least as legitimated. At this point, indeed, its power is the power of the state. State power protects it, silencing those who are hurt by it and making sure they can do nothing about it.

Law is only words. It has content, yet we do not analyze law as the mere expression of ideas. When we object to a law—say, one that restricts speech—we do not say we are offended by it. We are scared or threatened or endangered by it. We look to the consequences of the law's enforcement as an accomplished fact and to the utterance of legal

words as tantamount to imposing their reality. This becomes obvious to mention not only because the First Amendment does not protect government speech but because law is backed by power, and words are seen as acts. But so is pornography: the power of men over women,⁶⁹ expressed through unequal sex, sanctioned both through and prior to state power. It makes no more sense to treat pornography as mere abstraction and representation than it does to treat law as simulation or fantasy. No one has suggested that our legal definition of pornography does what the pornography it describes in words does nor that, if enacted in law, our ordinance would be only words.

As Andrea Dworkin has said, 'pornography is the law for women'. Like law, pornography does what it says. That pornography is reality, what silenced women have not been permitted to say for hundreds of years. Failing to face this in its simplicity leaves one defending abstraction at the cost of principle, obscuring this emergency because it is not like other emergencies, defending an idea of an 'idea' while a practice of sexual abuse becomes a constitutional right. Until we face this, we will be left where Andrea Dworkin recognizes we are left at the end of *Intercourse*:⁷¹ with a violated child alone on the bed—this one wondering if she is lucky to be alive.

Notes

1. Some of these facts are taken from years of confidential consultations with women who have been used in pornography; some are adapted from *People v. Burnham*, 222 Cal. Rptr. 630 (Ct. App. 1986), rev. denied, 22 May 1986, and media reports on it; and *Norberg v. Wynrib* [1992] 2 S.C.R. 224 (Can.).
2. Women used in pornography have provided the basis for the statements in these paragraphs over many years of work by me and my colleagues, including especially Andrea Dworkin, Therese Stanton, Evelina Giobbe, Susan Hunter, Margaret Baldwin, and Annie McCombs. Treatments of some of this damage are provided by Linda 'Lovelace' and Michael McGrady, *Ordeal* (1980) (her experience of being coerced to make *Deep Throat*), and, in fiction, by Kathryn Harrison, *Exposures* (1993) (experience of child model for sex pictures by her father). See also Collette Marie, 'The Coercion of Nudist Children', *The ICONoclast* 1-6 (Spring 1991).
3. In the prosecution by Trish Crawford of South Carolina against her husband for marital rape, a thirty-minute videotape he took of the assault was shown. In it, Mr Crawford has intercourse with her and penetrates her with objects while her hands and legs are tied with rope and her mouth is gagged and eyes blinded with duct tape. He was acquitted on a consent defense. 'Acquittal of Husband Spurs Anger; Wife Accused of Raping Her', *Houston Chronicle*, 18 April 1992, sec. A, p. 3. The defendant testified he did not think his wife was serious when she said 'no'. Carolyn Pesce, 'Marital Rape Case Acquittal Fails

Protest', *USA Today*, 21 April 1992, p. 3A. See also *State v. Jean*, 311 S.E.2d 266, 272-273 (N.C. 1984) (cross-examination of defendant on viewing pornographic movie five days after crime of rape charged, when movie showed the same kinds of sex acts charged, if error, was harmless).

4. As the defense lawyer in *Crawford* put it to the jury, as the tape described in note 3 above was played, 'Was that a cry of pain and torture? Or was that a cry of pleasure?' 'Marital Rape Acquittal Enrages Women's Groups', *Chicago Tribune*, 18 April 1992, p. 9C. This woman was clear she was being tortured. For the viewer who takes pleasure in her pain, however, the distinction between pain and pleasure does not exist. Her pain is his pleasure. This sexual sadism provides an incentive, even an epistemic basis, to impute pleasure to the victim as well. I believe this dynamic makes queries such as those by the defense lawyer successful in exonerating rapists.
5. In this setting, the only work regarded as part of the deconstruction school that I have encountered that makes me hesitate even slightly in this characterization is Jean-François Lyotard, 'The Differend, the Referent, and the Proper Name', 4 *diacritics* (Fall 1984). I read this work as an attack on the supposed difficulty of establishing that the Holocaust's gas chambers existed. It is, however, peculiar—and consistent with my critique here—that Lyotard does not mention that there are *Germans* who saw the gas chambers and survived to speak of their existence. His anatomy of silencing as a reality-disappearing device in its interconnection with the legal system is most useful, however. I am also unsure that this piece fits properly within deconstruction as a theoretical approach.
6. Andrea Dworkin's brilliant article on pornography infused new meaning into Woolf's phrase. Andrea Dworkin, 'Against the Male Flood: Censorship, Pornography, and Equality', 8 *Harvard Women's Law Journal* 1 (1985).
7. Diana E. H. Russell, *The Secret Trauma* (1986) and *Rape in Marriage* (1990); United States Merit Protection Board, *Sexual Harassment of Federal Workers: Is It A Problem?* (1981); *Sexual Harassment of Federal Workers: An Update* (1988); Majority Staff of US Senate Judiciary Committee, *Violence against Women: A Week in the Life of America* (1992).
8. For further discussion, see Andrea Dworkin, 'Woman-Hating Right and Left', in J. Raymond and D. Leidholdt (eds.), *The Sexual Liberals and the Attack on Feminism* (1990).
9. As to the state's position on pornography, *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), aff'd, 475 U.S. 1001 (1986), makes explicit the protection of pornography that years of posturing and neglect under obscenity law left to interpretation.
10. See his opinion in *Hudnut*, 771 F.2d at 323.
11. Ronald Dworkin, 'Pornography, Feminism, and Liberty', *New York Review of Books*, 15 August 1991.
12. Richard A. Posner, *Sex and Reason* (1992); *Miller v. City of South Bend*, 904 F.2d 1081, 1089-1104 (7th Cir. 1990) (Posner, J., concurring).
13. Edward DeGrazia, *Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius* (1991).
14. I write about these issues in more detail in 'Pornography as Defamation and Discrimination', 71 *Boston University Law Review* 793 (1991).
15. *United States v. American Airlines, Inc.*, 743 F.2d 1114 (5th Cir. 1984), cert.

- dismissed, 474 U.S. 1001 (1985) ('highly verbal crime', 1121; 'Raise your goddamn . . .' and 'We can talk about any . . .' are both on 1116).
16. *Palmer v. Thompson*, 403 U.S. 217 (1971) (holding that closure by city of Jackson, Mississippi, of public swimming pools formerly available to 'whites only' did not violate equal protection clause of the Fourteenth Amendment because both Blacks and whites were denied access); *Jones v. Alfred H. Moore Co.*, 392 U.S. 409 (1968) (prohibiting discriminatory sale or rental of property to 'whites only'); *Blow v. North Carolina*, 379 U.S. 684 (1965) (holding that restaurant serving 'whites only' violated Civil Rights Act of 1964); *Watson v. City of Memphis*, 373 U.S. 526 (1963) (holding that city's operation of large percentage of publicly owned recreational facilities for 'whites only' due to delays in implementing desegregation violated the Fourteenth Amendment; see also *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 304-305 n.1 (1977) (stating that, in employment discrimination claim against school district, plaintiffs alleged that district's newspaper advertisement for teacher applicants specified 'white only'); *Pierson v. Ray*, 386 U.S. 547, 558 (1967) (holding that Black and white clergymen did not consent to their arrest by peacefully entering the 'White Only' designated waiting area of bus terminal).
 17. *The Yellow Spot: The Outlawing of Half a Million Human Beings* 176-177 (1936) (photos of 'Jews not wanted' signs).
 18. *Pittsburgh Press Co v Pittsburgh Comm'n on Human Relations*, 413 U.S. 379 (1973) ('help wanted—male'); *Alexander v. Yale Univ.*, 459 F. Supp. 1, 3-4 (D. Conn. 1977), aff'd, 631 F.2d 178 (2d Cir. 1984) (offer of 'A' grade for sexual compliance); *Stockett v Tolin*, 791 F. Supp. 1536, 1543 (S.D. Fla. 1991) ('F—me or you're fired'); *Hopkins v. Price Waterhouse*, 825 F.2d 458, 461 (D.C. Cir. 1987) ('walk more femininely . . .'); *Davis v. Passman*, 442 U.S. 228, 230 (1979) ('. . . be a man').
 19. *State v. Davidson*, 481 N.W.2d 51, 59 (Minn. 1992).
 20. The law actually appears to permit the regulation of some forms of expression that manipulate the mind without its conscious awareness. Subliminal communications are flatly prohibited as 'deceptive' in the advertising of distilled spirits. 27 C.F.R. §5.65(h) (1992). The National Association of Broadcasters favors regulation of subliminal communication; its voluntary guidelines were invalidated on antitrust grounds, *United States v. National Ass'n of Broadcasters*, 536 F. Supp. 149 (D.D.C. 1982).

The most evocative and advanced treatment of the issue occurs in *Vance v. Judas Priest*, 1990 WL 130920 (Nev. Dist. Ct. 24 Aug 1990). Two boys attempted suicide, one successfully, as a result, it was alleged, of messages embedded in a heavy metal recording. The court found the subliminals not to be protected by the First Amendment based on a right to be free of intrusive speech, because subliminal communications do not advance the purposes of free speech, and because of the listeners' right to privacy. The court also found no proximate cause existed between the lyrics and the suicides. NBC, CBS and ABC all have policies prohibiting subliminal messages in ads, but I could find none regarding program content. See generally T. Bliss, 'Subliminal Projection: History and Analysis', 5 *Comment* 419, 422 (1983); Wilson Key, *Subliminal Seduction* (1972); Scot Silvergate, Comment, 'Subliminal Perception and the First Amendment: Yelling Fire in a Crowded Mind', 44 *University of Miami Law Review* 1243 (1990).

- Hudnut*, 771 F.2d at 328-329.
21. This does not mean that all masturbation material is pornography. Nor is this a definition; it is an empirical observation.
 22. Aristotle, *Nicomachean Ethics*, as cited in Posner, *Sex and Reason* at 1.
 23. 'Wenn der putz stegt, ligt der seykhel in drerd' is the best transliteration I could find, thanks to Alan Keiler.
 24. *Schiro v. Clark*, 963 F.2d 962, 972 (7th Cir. 1992), petition for cert. filed (U.S. 5 Feb. 1993) (No. 92-7549).
 25. *Hudnut*, 771 F.2d at 329.
 26. Documentation of the harm of pornography in real life is contained in Public Hearings on Ordinances to Add Pornography as Discrimination against Women, Minneapolis City Council, Government Operations Committee (12 and 13 Dec. 1983); M. McManus (ed.), *Final Report of the Attorney General's Commission on Pornography* (1986); *Pornography and Prostitution in Canada: Commission on Pornography and Prostitution* (1985). See *Report of the Special Committees on Pornography and Prostitution* (1985). See also Diana E. H. Russell, 'Pornography and Rape: A Causal Model', 9 *Political Psychology* 41 (1988); Gloria Cowan et al., 'Dominance and Inequality in X-Rated Videocassettes', 12 *Psychology of Women Quarterly* 299, 306-307 (1988); Park E. Dietz and Alan E. Sears, 'Pornography and Obscenity Sold in Adult Bookstores: A Survey of 5,132 Books, Magazines, and Films in Four American Cities', 21 *University of Michigan Journal of Law Reform* 7, 38-43 (1987-88) (documenting violence, bondage, sadomasochism, and gender differences in pornography); Neil M. Malamuth and Barry Spinner, 'A Longitudinal Content Analysis of Sexual Violence in the Best-Selling Erotic Magazines', 16 *Journal of Sexual Research* 226-227 (1980) (documenting increases in violent sex in pornography).
 27. In addition to the citations in the preceding note, my own five years of research on the making of pornography in cults and white supremacist organizations, for marketing by organized crime, informs this paragraph.
 28. When women are coerced to perform for pornography, the resulting materials should clearly be actionable in spite of *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 112 S. Ct. 501 (1991), which invalidated a statutory financial restriction on books that were products of criminal activity. Most centrally, the crimes considered by the *Simon & Schuster* court were not committed so that they could be written about. The court also recognized that the state 'has an undisputed compelling interest in ensuring that criminals do not profit from their crimes', 510, which may be pursued by narrowly tailored means.
 29. Under the recent decision holding a magazine publisher liable for a murder that resulted from an ad it ran, the consequential coercion produced by coerced pornography may be at least as 'foreseeable', especially if the coercion is visible in the materials. *Braun v. Soldier of Fortune Magazine, Inc.*, 968 F.2d 1110, 1118 (11th Cir. 1992) (negligence standard that ad 'on its face' would have alerted a reasonably prudent publisher that [it] "contained a clearly identifiable unreasonable risk that the offer . . . is one to commit a serious violent crime" satisfies First Amendment).
 30. J. L. Austin's *How to Do Things with Words* (1962) is the original enunciation of the theory of performative speech, which examines language for which 'the issuing of the utterance is the performing of an action—it is not normally

- thought of as just saying something', at 6–7. While he does not confine himself to inequality, which is crucial to my argument here, neither does he generalize the performative to all speech, as have many speech act theorists who came after him. Austin is less an authority for my particular development of 'doing things with words' and more a foundational exploration of the view in language theory that some speech can be action.
32. For discussion, see Andrea Dworkin and Catharine A. MacKinnon, *Pornography and Civil Rights: A New Day for Women's Equality* (1988). The Model Ordinance, making pornography actionable as a civil rights violation, defines 'pornography' as 'the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following: (a) women are presented dehumanized as sexual objects, things, or commodities; or (b) women are presented as sexual objects who enjoy humiliation or pain; or (c) women are presented as sexual objects experiencing sexual pleasure in rape, incest, or other sexual assault; or (d) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (e) women are presented in postures or positions of sexual submission, servility, or display; or (f) women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or (g) women are presented being penetrated by objects or animals; or (h) women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.' In this definition, the use of 'men, children, or transsexuals in the place of women' is also pornography.
 33. Query whether all elements of speech are necessarily either 'content' or 'noncontent'.
 34. *New York v. Ferber*, 458 U.S. 747, 763 (1982), cited in *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2543 (1992).
 35. *Osborne v. Ohio*, 495 U.S. 103, 111 (1990) (use of child pornography by pedophiles may hurt children other than those in it).
 36. Creel Froman, *Language and Power* 112 (1992).
 37. *Olivia N. v. National Broadcasting Co.*, 141 Cal. Rptr. 511, 512 (1977), cert. denied sub nom. *Niemi v. National Broadcasting Co.*, 458 U.S. 1108 (1982) ('The complaint alleges that the assailants had seen the "artificial rape" scene on television).
 38. This more sophisticated version is illustrated by Susanne Kappeler, *The Pornography of Representation* (1986).
 39. 'What matters for a legal system is what words do, not what they say ... Edward J. Bloustein, 'Holmes: His First Amendment Theory and His Pragmatist Bent', 40 *Rutgers Law Review* 283, 299 (1988).
 40. *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979); *Washington v. Davis*, 426 U.S. 229 (1976).
 41. Postmodernism is premodern in the sense that it cannot grasp, or has forgotten, or is predicated on obscuring, this function of language in social hierarchy.
 42. *Barnes v. Glen Theatre*, 111 S. Ct. 2456, 2466 n. 4 (1991) ('Nudity is not normally engaged in for the purpose of communicating an idea or an emotion'). But see *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 66 (1981) (suggesting that nude dancing has some protection from regulation).
 43. *Barnes v. Glen Theatre* was litigated below as *Miller v. City of South Bend*, 904 F.2d 1081, 1131 (7th Cir. 1990) ('At oral argument Miller's attorney admitted that this dancing communicated no idea or message').
 44. Brief for Appellants at 5–6, *California v. LaRue* 409 U.S. 109 (1972) (No. 71–36) (in nude dancing establishment, oral copulation of women by customers, masturbation by customers, inserting money from customers into vagina, rubbing money on vaginal area, customers with rolled-up currency in mouths placing same in women's vaginas, customers using flashlights rented by licensees to better observe women's genitalia, customers placing dollar bills on bar and women attempting to squat and pick up bills with labia, women urinating in beer glasses and giving them back to customer, women sitting on bars and placing their legs around customers' heads, etc.). See also *Commonwealth v. Kocinski*, 414 N.E.2d 378 (Mass. App. Ct. 1981).
 45. *Barnes*, 111 S. Ct. at 2468–71 (interest in preventing prostitution, sexual assault, and other attendant harms sufficient to support nude dancing provision). See also the extensive discussion of these harms in the dissenting opinion by Judge Coffey in *Miller*, 904 F.2d at 1104–20.
 46. *Barnes*, 111 S. Ct. at 2458 (Rehnquist) and 2471 (Souter).
 47. *Ibid.* at 2468.
 48. These examples are discussed and documented in a brief by Burke Marshall and me, Brief Amicus Curiae of the National Black Women's Health Project, *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992) (No. 90–7675).
 49. *R.A.V.*, 112 S. Ct. at 2547.
 50. *Ibid.* at 2569.
 51. Andrea Dworkin and I discuss this in our *Pornography and Civil Rights: A New Day for Women's Equality* 60–61 (1988).
 52. James R. McGovern, *Anatomy of a Lynching* 84 (1982).
 53. An incident in Los Angeles in which a Black man was photographed being beaten by police who were acquitted in a criminal trial after repeated showings to the jury of a videotape of the assaults makes me think there is more to this than I thought. Two of the officers were later convicted in a civil trial.
 54. A recent legal defense of the White Aryan Resistance, and its leaders Tom and John Metzger, connected with the murder of an African man in part through a leaflet organizing skinheads to kill Blacks in 'Aryan' race-destined territory, suggests this: because the murder was effectuated through a leaflet with a political ideology, it was not plain old advocacy to commit murder, it was *bigoted* advocacy to commit murder *in writing*—hence protected expression. See *Berhanu v. Metzger*, 119 Ore. App. 175, (No. CA A67833), Appellants' Opening Brief (29 Jan 1992). The defendants' conviction for wrongful death, conspiracy, and murder by agency, with damages, has been upheld over First Amendment challenge. *Berhanu v. Metzger*, 119 Ore. App. 175 (14 April 1993).
 55. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 n. 12 (1985), appears to refer to child pornography as an issue of 'pure speech rather than conduct'.
 56. Brief on Behalf of American Booksellers Ass'n et al., *New York v. Ferber*, 458 U.S. 747 (1982) (No. 81–55).
 57. *Ferber*, 458 U.S. at 747.
 58. *Osborne v. Ohio*, 495 U.S. 103, 111 (1990). This harm seems to have been lost sight of in the recent ruling in *United States v. X-Citement Video, Inc.*, 982 F.2d 1285 (9th Cir. 1992), in which the majority allows downstream vendors of

child pornography to use their lack of knowledge of a child's actual age as a defense. The dissent recognizes the harm to those who are 'hurt by the attitudes these materials foster'. *X-Citement Video*, 982 F.2d at 1293-94 n. 1 (Kozinski, J., dissenting).

59. *Stanley v. Georgia*, 394 U.S. 557, 568 n. 11 (1969).
60. 16 *Penthouse* 118 (December 1984).
61. *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991).
62. George Fisher was convicted of the murder and attempted rape of Jean Kar-Har Fewel, an 8-year-old adopted Chinese girl found strangled to death hanging from a tree in 1985. Mr Fisher testified that he went to an adult bookstore on the day of the murder to watch movies. UPI, 20 August 1985.
63. *Hudnut* 771 F.2d at 328.
64. This is, in effect, what is permitted in *Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017 (5th Cir. 1987) (survivors of boy who died of autoerotic asphyxia may not recover against *Hustler*, which caused it).
65. *Hudnut*, 771 F.2d at 328-329.
66. *Ibid.* at 329-331.
67. *Gitlow v. New York*, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting).
68. For a discussion of how 'pornographers are more like the police in police states', see Andrea Dworkin, 'Against the Male Flood', in *Letters from a War Zone* 264 (1988).
69. For an analysis of the place of pornography in male power, see Andrea Dworkin, *Pornography: Men Possessing Women* 13-47 (1979).
70. Andrea Dworkin has said this in many public speeches, including ones I attended in 1983 and 1984. The idea behind it was originally developed in her *Pornography: Men Possessing Women* at 48-100.
71. Andrea Dworkin, *Intercourse* 194 (1987).

6

Pornography An Exchange

Catharine A. MacKinnon/Ronald Dworkin

To the Editors:

This letter is not part of a dialogue over pornography or my book, *Only Words*. *NYR* consistently makes sure that its articles defend pornography and do not take its harm to women and children seriously. Dissent from this point of view is confined to letters which must focus on correcting the factual errors in the articles. This letter is no exception.

Even in this editorial context, Ronald Dworkin's review of my recent book [*NYR*, October 21, 1993] is startlingly incompetent, inconsistent, and ignorant.

It is appalling to read that the equality argument advanced in my book is a 'new argument'. In 1983, Andrea Dworkin and I advanced our equality approach to pornography through our ordinance allowing civil suits for sex discrimination by those who can prove harm through pornography. Since then, every argument we have advanced to support this initiative has been an equality argument. Every harm pornography does is a harm of inequality, and we have said so. Equality was the 'compelling state interest' urged in support of the Indianapolis ordinance. Equality was the central argument in writing of mine that Ronald Dworkin criticized previously. Equality was Andrea Dworkin's argument against Ronald Dworkin's defense of pornography in a debate with him at Davis in the mid-1980s. She even read to him about equality from his work.

Are we to understand that it took him until now to hear it? This is one example of the 'silence' he has such trouble understanding. In it, nothing women say is real. Now, after a decade of respectfully repeating ourselves, it becomes clear that he has had no idea what we have been saying, hence no idea what he was talking about.

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