PORNOGRAPHY:

THE DEFINITION, THE LAW, THE DEBATE

An Honors Thesis

by

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With the advent of the World Wide Web, the issue of pornography has returned to the forefront of public discussion. Pornography is now widely available to viewers of all ages at the click of a button, and many people do not approve. The reactions today are very similar to those prompted by the introduction of *Playboy* and other adult magazines so many years ago. In the 1950's, the American people were disturbed by the increasing availability of pornography. The Internet must be their worst nightmare. Pornography was considered to be offensive then, just as it is now. People then claimed pornography caused all kinds of social problems, just as they do now. The questions raised in the fifties have yet to be answered. In the many years between the advent of the "pornographic" magazine and the arrival of the "pornographic" website, there have been several attempts to define the product. However, no definite conclusion has been reached. The Supreme Court has an evolving definition, but it has problems. The feminists, who constantly force the issue before the public eye, cannot agree on a definition. Yet, it is the definition that is so important. The purpose of this thesis is to discuss the three major components of the pornography issue, which are the definition, the law, and the debate. To investigate existing pornography law, three major court cases are considered. To summarize the debate, the arguments of several feminist authors and a few free-speech advocates are examined. The significance of the definition of pornography is explicit in both the pornography law and in the debate surrounding the issue.

The 1973 New Collegiate Dictionary defines pornography as "the depiction of erotic behavior (as in pictures or writing) intended to cause sexual excitement; material (as books or
a photograph) that depicts erotic behavior and is intended to cause sexual excitement” (Merriam-Webster 896). By 1995, the following definition had been added to the latest edition of the same dictionary: “the depiction of acts in a sensational manner as to arouse a quick intense emotional reaction” (Merriam-Webster 907). The definition continues to change over time. This should cause concern. While there are many existing laws that regulate pornography, no one knows for sure exactly what pornography is. Have we come no further than Justice Oliver Wendell Holmes’ conclusion: “I know it when I see it”? It would seem so.

Feminist author Wendy McElroy wrote: “If people were not trying to pass laws against pornography, a definition might not be so crucial. But when courts become involved, definitions become essential. Whoever controls the definition of pornography will determine which words and images the law will suppress” (McElroy 41). A definition is necessary because of the law. The feminists generally think that the definitions put forth by the justices are not far-reaching enough, so their suggested definitions encompass much more.

The existing definition determines the law, which then goes into effect. Through enforcement of the law, the definition is tested and often altered in some way. Each new legal definition solicits a counter definition from the feminists, and this process continues. These definitions and laws prompt the debate.
I. The Court Cases

The early standard for judging obscene material is from *Regina v. Hicklin*, (1868) L.R. 3 Q.B. 360. It judged material by the effect any excerpt from it had on a particularly susceptible person. This test was adopted by some American courts; however, it has been rejected as an inadequate standard. The Hicklin test judged works by excerpts from them, and that test is now thought to be too restrictive. The new test came out of *Roth v. United States*.

In *Roth v. United States*, 354 U.S. 476 (1957), the Supreme Court determined that obscenity is not within the area of constitutionally protected freedom of speech or press—either under the First Amendment, as to the Federal Government, or under the Due Process Clause of the Fourteenth Amendment, as to the States. Obscene material is material which deals with sex in a manner appealing to prurient interest—i.e., material having a tendency to excite lustful thoughts. This describes pornography under the Roth ruling.

Under the Roth ruling, the standard for judging pornography is whether, to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest. Justice William J. Brennan delivered the opinion of the Court. He wrote: “In Roth, the primary constitutional question is whether the federal obscenity statute violates the provision of the First Amendment that ‘Congress shall make no law abridging the freedom of speech, or of the press’” [354 U.S. 476, 480].

Justice Brennan said that the Supreme Court had always assumed that obscenity is not protected by the First Amendment freedoms of speech and press. He listed the following cases as precedent: *Ex parte Jackson*, 96 U.S. 727, 736-737; *United States v. Chases*, 135
U.S. 255, 261; *Robertson v. Baldwin*, 165 U.S. 275, 281; *Public Clearing House v. Coyne*, 194 U.S. 497, 508; *Hoke v. United States*, 227 U.S. 308, 322; *Near v. Minnesota*, 283 U.S. 697, 716; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72; *Hannegan v. Esquire*, Inc., 327 U.S. 146, 158; *Winters v. New York*, 333 U.S. 507, 510; *Beauharnais v. Illinois*, 343 U.S. 250, 266.9 [354 U.S. 476, 482]. Using these cases as support, Brennan said, “It is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance.” However, “all ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests.”

Brennan went on to cite *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene . . . It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. We hold that obscenity is not within the area of constitutionally protected speech or press [354 U.S. 476].

That statement seems so clear. Yet the problem lies in defining obscenity, which has many gray areas. This absence of exactness or clarity is directly related to the problems faced by the courts that must address pornography. The question is where to draw the line. The most conservative anti-pornography radicals sometimes disapprove of the simple mention of sex. In *Roth*, Justice Brennan offered some insight into the position of the Court: “Sex and obscenity are not synonymous. Obscene material is material which deals with sex in a
manner appealing to prurient interest. The portrayal of sex, e.g., in art, literature, and scientific works, is not itself sufficient reason to deny material constitutional protection of freedom of speech and press” [354 U.S. 476, 489]. The justices recognized that sex was and is both a significant aspect of human life and a matter of public interest. Discussion of sex could lead to greater human development. As Brennan said, “It is ... vital that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest” [354 U.S. 476, 489].

Chief Justice Warren concurred with the Roth judgment but worried about the direction into which the Court was headed. He was cautious of the broad language used in the opinion because he feared it could be used in the future to limit expression in art, literature, or the sciences. In his concurring opinion, Chief Justice Warren wrote, “That there is a social problem presented by obscenity is attested by the expression of the legislatures of the forty-eight states as well as the Congress.” He also added:

The line dividing the salacious or pornographic from literature or science is not straight and unwavering. Present laws depend largely upon the effect that the materials may have upon those who receive them. It is manifest that the same object may have a different impact, varying according to the part of the community it reached. But there is more to these cases. It is not the book that is on trial; it is a person. The conduct of the defendant is the central issue, not the obscenity of a book or picture. The nature of the materials is, of course, relevant as an attribute of the defendant’s conduct, but the materials are thus placed in context from which they draw color and character. A wholly different result might be reached in a different setting [354 U.S. 476, 496].

Justice Harlan concurred in part and dissented in part. Harlan, like Chief Justice Warren, feared the future effects of the Roth decision. He argued that obscene materials would, in the
long run, erode morality. Harlan noted that a state has a right provided in the Constitution to regulate such business. He wrote, “The State has a legitimate interest in protecting the privacy of the home against invasion of unsolicited obscenity” [354 U.S. 476, 503].

In 1973, the U.S. Supreme Court again faced the pornography issue. In *Miller v. California*, 413 U.S. 15, the Supreme Court reaffirmed the 1957 Roth ruling, which determined that obscene material is not protected by the First Amendment. The justices also developed a tripartite test that built on the standards used in Roth. The Miller test for obscenity is (a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest [Roth, 354 U.S. 476, 489], (b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Thus, the Miller opinion added two conditions to the Roth test. First, Miller required that a work also portray sexual conduct in a distasteful manner that was to be determined by state law, rather than federal law, to be declared obscene. Secondly, any work found to have any literary, artistic, political, or scientific value was exempted--i.e., not determined to be obscene. In the Miller decision, the justices also rejected the test requirement that a work must be determined to be “utterly without redeeming social value” to be declared obscene, which came from *Memoirs v. Massachusetts*, 383 U.S. 413 (1966).

Chief Justice Burger delivered the Miller opinion. He wrote, “It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York
City.” He quoted from Chief Justice Warren's dissent in *Jacobellis v. Ohio*, 387 U.S. 184, 200 (1964): “It is my belief that when the Court said in Roth that obscenity is to be defined by reference to 'community standards,' it meant community standards—not a national standard, as is sometimes argued. I believe that there is no provable 'national standard'. . . At all events, this Court has not been able to enunciate one, and it would be unreasonable to expect local courts to divine one.”

Justice Douglas wrote a compelling dissent to the Miller opinion in which he argued, “The Court has worked hard to define obscenity and concededly has failed.” In *Jacobellis v. Ohio*, 387 U.S. 184 (1964), Justice Douglas' brother Steward said that the Court was “faced with the task of trying to define what may be indefinable.” Justice Douglas felt that obscenity had no business in the courts. It was just too much of a gray area. The continuing debate on obscenity produced inexact results with very unfair implications. Douglas said:

Under the present regime—whether the old standards or the new ones are used—the criminal law becomes a trap. A brand new test would put a publisher behind bars under a new law improvised by the courts after the publication. That was done in Ginzburg and has all the evils of an *ex post facto* law. My contention is that until a civil proceeding has placed a tract beyond the pale, no criminal prosecution should be sustained . . . Obscenity—which even we cannot define with precision—is a hodge-podge. To send men to jail for violating standards they cannot understand, construe, and apply is a monstrous thing to do in a Nation dedicated to fair trials and due process [413 U.S. 15].

Moreover, Justice Douglas voiced an opinion held by many who are against restricting pornography when he said: “There is no ‘captive audience’ problem in these obscenity cases. No one is being compelled to look or listen.” This argument is adopted by Barry Lynn, who is discussed below, in his work.
Abstract

This discussion of pornography is an attempt to briefly present the law and the debate surrounding pornography, with an emphasis on its effects on women. It begins with an explanation of the major court cases that involve pornography law, and ends with an examination of both sides of the feminist debate on pornography.
Douglas thought that restricting pornography, objectionable as it might be, is simply un-American. He valued the First Amendment precisely because it protected a variety of ideas and opinions. He stated: “To give the power to the censor, as we do today, is to make a sharp and radical break with the traditions of a free society. The First Amendment was not fashioned as a vehicle for dispensing tranquilizers to the people. Its prime function was to keep debate open to ‘offensive’ as well as to ‘staid’ people.”

Another case which is particularly significant to the pornography debate is *American Booksellers v. Hudnut*, 771 F. 2d. 323 (7th circ., 1985). The City of Indianapolis, in Indiana, enacted an ordinance that defined pornography as a practice that discriminates against women. The ordinance was found to regulate conduct, not speech. The defendants even admitted that the pornography affected by the ordinance included more than just those works considered obscene and would now allow regulation of what had traditionally been protected materials. In the court opinion, Judge Frank Easterbrook said, “This Court finds no legal authority or public policy argument which justifies so broad an incursion into First Amendment freedoms as to allow that which defendants attempt to advance here” [771 F. 2d. 323 (7th circ., 1985)].

The opinion angered many feminists because it stated that adult women did not need constitutional protection from pornography, and it left them entirely responsible for their involvement in the industry or for any effects that could possibly result from exposure to pornography. The opinion reads, “Adult women generally have the capacity to protect themselves from participating in and being personally victimized by pornography . . .”[771 F. 2d. 323 (7th circ., 1985)].
The Indianapolis ordinance, primarily written by Catharine MacKinnon and Andrea Dworkin, failed because of its extremity. Some thought that it took the moral crusade too far. The court opinion reflects Judge Easterbrook’s wariness of such restrictions. It reads: “The Ordinance prohibits completely the sale, distribution, or exhibition of material depicting women in a sexually subordinate role, at all times, in all places and in every manner” [771 F. 2d. 323 (7th circ., 1985)].

Therein lies the dilemma of the definition of pornography. Each case raises new questions that the operating Miller standard fails to answer. Even the justices who developed the Miller test were uncomfortable with it. It did not produce consistent results because it was written in broad terms. The test leaves many questions unanswered. Who is the “average person”? What comprises “community standards”? Where does one draw the line between normal sexual interest and “prurient” sexual interest? What makes something “patently offensive”? What constitutes “serious” literary, artistic, political or scientific value-as opposed to unserious value? The guidelines are ambiguous. The judge or jury in each obscenity case was left to provide the answers, but certainly each respective judge or jury would come to a slightly different conclusion. There can be no expected outcome. The results are unpredictable.

The problem with obscenity, and thus pornography, then, is that it is a matter of opinion upon which there is little agreement. Without an exact standard, the general opinion of a given locale can make quite a difference. The “average person” living in the heart of Las Vegas is not likely to be much like the “average person” living in the rural farm community in southern Indiana. What is legal in one place is very different from what is legal in another.
The Miller test recognizes this and ensures fifty separate determinations of obscenity with its "specifically defined by the applicable state law" clause. However, this was an intentional part of the design. Granted, it is part of the problem, but it was included to ensure that the "contemporary community standards" of one community did not determine the fate of a work in every community across the nation.

The justices purposely used such elusive terms to leave leeway within the area of obscenity. There are many loopholes in the Miller test, and those loopholes indirectly fuel the pornography debate. There is so much wiggle room within the Miller test that radically different conclusions have stemmed from it. However, it is wrong to criticize the Supreme Court justices for producing such an indeterminate standard, for they had little information to consult when coming to their decision. In 1957, Justice Harlan referred to obscenity as an area where "knowledge is small, data are insufficient, and experts are divided," and that had not changed by 1973, when the Supreme Court examined Miller v. California. The 1973 Court had no evidence to support broad-sweeping censorship of questionable works on the basis of protecting the general welfare of the people. The feminist claims of pornography's harms were gaining recognition, but the claims could not convincingly be supported by clear, unbiased empirical evidence. Yet, nine justices were expected to compose an exact definition applicable to every citizen. The conclusion they did reach was prudent, although it left much unanswered.
II. The Debate

With loopholes come interpretations. Differing groups have examined the Miller decision and either criticized it or praised it for one reason or another. The civil libertarians praise the opinion for its openness. Miller left to the people the power of censorship. Liberal feminists were largely undisturbed by the opinion, although they had hoped for a more precise definition. Radical feminists criticize the opinion for maintaining the status quo and for failing to recognize women's interests. There is much discourse on pornography because, under current standards, it is nearly undefinable. Also, its effects are still largely unknown. The debate, itself, seems to be concentrated in three areas. One area is the role of government--its political stance on the issue, its duty to its citizens, and its role as censor. The second area is the violence involved in pornography. Both the violence committed while making pornography and the violence that results because of pornography is considered. The third area is the objectification of women and the resulting sexual inequality that stems from pornography.

A. The Role of Government

The United States government has conducted two separate reports on pornography, one in 1970 and one in 1986. In 1968, President Johnson appointed an advisory Commission on Obscenity and Pornography, which produced the 1970 report. It found no evidence to support the hypothesis that exposure to sexually explicit material caused either social or individual harm. The report called for the repeal of all legislation prohibiting the sale, exhibition, or distribution of sexually explicit material to consenting adults (White 338).
President Nixon found the report to be grossly inadequate. Many members of Congress agreed with him, so no action was taken as a result of the 1970 report.

Several years later, the Attorney General Edwin Meese III appointed an eleven-member Commission on Pornography, which produced the 1986 report. This report did find a causal relationship between pornography and personal and social harms. The 1986 report claimed that violent and degrading pornography produced undesirable changes in attitudes, whereas nonviolent and non-degrading pornography did not (White 338).

In a sixteen-year period, the government had gone from one extreme to the other in the pornography debate. This transition provides no worthwhile conclusion on pornography, yet it clearly demonstrates that partisan politics factor into the discussion. The Democratic President Johnson appointed the Commission, whose analysis was found to be useless to the Republican Nixon administration. The Meese report, which was produced during the Republican Reagan administration, concluded that pornography could be harmful. This conclusion was well received by The Moral Majority and other religious and conservative Reagan supporters.

Although partisan politics can never be completely separated from the actions of the American government, at least as we know it today, many groups that participate in the pornography debate put partisan politics aside and ask: Should the government interfere? That normative debate is ongoing, but the fact is that the government already has interfered and continues to do so. Much regulation of obscenity and pornography currently exists, ranging from the content of material on television and radio to the use of the U.S. postal
service to promote and sell sexually explicit material. However, many feminists claim that our government is not doing enough. Does it have a responsibility to do more?

**Radical Feminists:**

Catharine MacKinnon, a professor of law at the University of Michigan and an author of many feminist books and articles, defines pornography as “the graphic sexually explicit subordination of women.” She believes that the U.S. government should further restrict pornography precisely because it harms women. According to MacKinnon, pornography ensures women’s inferior status and violates their civil rights because it is sex discrimination. She writes in her *Feminism Unmodified: Discourse on Life and Law* that in pornography, “Women are there to be violated and possessed, men to violate and posses us, either on screen or by camera or pen on behalf of the consumer” (MacKinnon 1987: 347).

MacKinnon wants the government to enact laws to protect its citizens, especially its female citizens, from the many ill effects of pornography. She believes that government, which is disproportionately male, is only concerned with maintaining the status quo, which, of course, benefits men. MacKinnon explains: “Pornography . . . is a form of forced sex, a practice of sexual politics, an institution of gender inequality. From this perspective, pornography is neither harmless fantasy nor a corrupt and confused misrepresentation of an otherwise natural and healthy sexual situation. It institutionalizes the sexuality of male supremacy” (MacKinnon 1987: 348). She stresses that the harm involved is very real and should not continue to be ignored. As MacKinnon says, “Pornography models are real women to whom, in most cases, something real is being done” (MacKinnon 1987:348).
MacKinnon uses a very broad definition of pornography that focuses on the sexual subordination of women. She attempts to connect pornography with civil rights by casting pornography as sex discrimination. To create such a link requires a twisting of the idea of gender discrimination and the policies that have been constructed to prevent it. MacKinnon claims that the harm involved warrants increased governmental censorship because of the duty of the government to protect its citizens. It is very easy to imagine some of the possible harms of pornography, but the government cannot be expected to act on unsubstantiated allegations. Yet MacKinnon offers little proof of real violence. She names no specific victims, preferring to cast all women as victims of pornography. If she could legitimately show that a majority of the female U.S. citizens had been harmed because of pornography, certainly government action would be expected. However, MacKinnon does not have numbers on her side. It seems that only isolated cases are presented. There is no obvious community of pornography victims. Women today look very much unlike an oppressed class. MacKinnon fails to show that women need governmental protection against pornography.

Free-speech Advocates:

Of course, there are some who argue that despite its harms, pornography should not be censored. The government should not endorse one view over another—in this case, the government should not support the radical feminists' views just because it may be the more socially desirable or morally acceptable view. In American Booksellers v. Hudnut [771 F. 2d, 328 (7th circ., 1985)], Judge Frank Easterbrook said: “This is thought control. It establishes an ‘approved’ view of women, of how they may react to sexual encounters, of
how the sexes may relate to each other. Those who espouse the approved view may use
sexual images; those who do not, may not” (Collins and Skover 1387). Barry Lynn, former
counsel to the American Civil Liberties Union in Washington, D.C., would agree with Judge
Easterbrook. Lynn says that efforts to censor pornography are nothing but efforts at
governmental censorship (Lynn 360). He does not want the courts telling us what is wrong
because that leads to them prescribing what is right. Lynn refers to Justice William
Brennan’s dissent in Paris Adult Theatres v. Slaton, 413 U.S. 110 (1973), in which he stated:
“If a state may, in an effort to maintain or create a moral tone, prescribe what its citizens
cannot read or cannot see, then it would seem to follow that in pursuit of that same objective
a state could decree that its citizens must read certain books or must view certain films.”

Lynn is a free-speech advocate. His priority lies not with protecting women but with
protecting First Amendment freedoms. He elucidates a very popular concern among many
involved in the pornography debate. The government often tells us what is wrong. By doing
so, they also tell us what is not wrong. This implies what is right. Laws tell us what we can
and cannot do. Censorship tells us what we can or cannot read, view, or print. This is where
restricting pornography, which promotes certain ideas about sexual relationships, borders on,
if not illustrates, an infringement upon the First Amendment freedom of speech. Lynn wants
this intrusion stopped before the courts are making such decisions for us. According to Lynn,
the harm to women is not significant enough to justify such a trade off. We are entitled to
make the decision to use or to ignore pornography on our own.
Liberal Feminists

Not only free-speech advocates denounce censoring pornography. Many liberal feminists do, as well. Wendy McElroy, a liberal feminist author, has concerns about the anti-pornography feminists because they “are trying to turn back the clock and shut women’s sexuality away behind the locked doors of political correctness” (McElroy 53). She wants the anti-pornography feminists to take a step back and examine the outcome of their proposed actions. She says that feminists must come to terms with two of the important lessons that history has taught over and over again:

1. Censorship—or any sexual repression—inevitably rebounds against women, especially against those women who wish to question their traditional roles. Freedom of sexual expression, including pornography, inevitably creates an atmosphere of inquiry and exploration. This promotes women’s sexuality and freedom.

2. Censorship strengthens the position of those in power. This has never been good news for women, who are economically, politically, and socially among the weakest members of society (McElroy 56).

A true First Amendment activist, McElroy is strongly against censorship. She fails to understand why the anti-porn feminists are working against a tool that could help them. McElroy says: “Freedom of speech is the freedom to demand change. It will always benefit those who seek to reform society far more than those who wish to maintain the status quo” (McElroy 56).

Even MacKinnon ought to realize that increased governmental censorship, which she calls for, would be initiated by the over-proportionately male government. Women can achieve equality, the goal of feminism, only if they can express themselves fully, in whatever arena. Despite pornography’s harms (which MacKinnon could not show), restricting
pornography is not the answer. Doing so could even work against women, rather than help them.

B. The Violence Involved

In *Pornography: The Production and Consumption of Inequality* by Robert Jensen, Ann Russo, and Gail Dines, pornography is approached from a novel perspective. Jensen is a former heterosexual male turned homosexual, with a history of pornography use. Russo is a lesbian and describes herself as a victim of sexual violence and stigmatization. Dines is a sociologist and anti-pornography activist. This unique collaboration of writers provides a thoughtful look into pornography from a new and largely unexamined point of view. Despite the sexual orientations of the authors, the book "is a study of contemporary mass-marketed heterosexual pornography" (Dines et al. 7). They do not attempt to address the issues surrounding gay male or lesbian pornography.

Jensen begins the book by saying that pornography is "not a moral issue" (Dines et al. 5). The subject matter itself is not the problem. It is the resulting harm that troubles him. Jensen describes the anti-pornography feminist critique as "an analysis of power and harm that focuses on oppression, not offensiveness" (Dines et al. 5). It is the sexual subordination and oppression of women that is their focus, not the morality of the issue.

Ann Russo defends the anti-pornography campaign, which she refers to as a struggle, by saying, "It has never been a campaign to ban sexually explicit material; its object has been to challenge and to eliminate the pornography industry’s participation in discrimination, bigotry, and violence" (Dines et al. 9). The feminist perspective criticizes the pornography
industry for the “pervasive violence against women” (Dines et al. 11). The problem lies not with the pornographic images themselves (Dines et al. 12).

Russo mentions that Robin Morgan’s essay “Theory and Practice: Pornography and Rape” became a slogan for the anti-pornography feminists. That slogan greatly simplifies their argument and makes their views clear. To them, pornography might as well be an instruction manual. It teaches men to be violent towards women; it teaches men to rape. Russo also says, “Contrary to most critiques of the feminist anti-pornography movement, the strategies have not been directed toward criminal laws to ban pornography or sexually explicit material in general” (Dines et al. 13). She says that their goals have been to encourage critical analysis and to prompt thoughtful discussion. They also seek accountability by the pornography industry for the harms incurred because of its existence (Dines et al. 13).

In the book, Robert Jensen and Gail Dines recounted their review of a number of content analysis studies of porn cartoons and pictorials. They referred to Dan Brown and Jennings Bryant, who summarized three general observations supported by those studies: (1) “Pornography tends to be less violent than other entertainment genres, but the degree of violence in pornography is increasing; (2) when violence is featured, females are usually victimized by males; and (3) the negative consequences of that violence are rarely shown” (Dines et al. 69).

Jensen and Dines found that violence was not used in the films to secure female participation in the sexual activity. Violence was unnecessary because the women were always willing and eager, yet violence was used to heighten “the erotic charge of the scene”
(Dines et al. 82). The women in the films usually asked for the violent treatment. “The most common forms of this kind of treatment included men slapping a woman’s buttocks during intercourse, slapping the woman’s face or vagina with the penis; pulling on hair before or during sex, and deep thrusting in a woman’s throat, even if it provoked a gag reflex” (Dines et al. 82). Jensen and Dines reviewed fourteen “typical” videos, the most popular choices among mainstream pornography. In summary, they had this to say: “While not present in every video, this theme of men taking pleasure in female vulnerability and pain appeared routinely” (Dines et al. 83).

Unlike in the videos, the pornographic novels reviewed by Jensen presented violence as an acceptable means of “ensuring sexual cooperation from women” (Dines et al. 96). Jensen adds, “For men in the novels, the violence also was a source of pleasure once the woman’s participation had been secured” (Dines et al. 96). Of the twenty novels analyzed, sixteen contained one or more rape scenes, some of which were rape fantasies.

The authors praise the work of Diana Russel, who has identified four factors that link pornography to sexual violence. According to Russel, pornography: (1) predisposes some males to desire rape or intensifies this desire; (2) undermines some males’ internal inhibitions against acting out rape desires; (3) undermines some males’ social inhibitions against acting out rape desires; and (4) undermines some potential victims’ abilities to avoid or resist rape.

In another study, a number of adult males, half of whom were convicted sex offenders were interviewed. The sex offenders were convinced of a link between their behavior and their pornography use. The other men--all pornography users but not sex offenders--generally denied that any such connection existed (Dines et al. 121).
Craig, a convicted sex offender, offered his opinion: “Once I saw the material it’s like I got new ideas. It’s like it reinforced my thinking” (Dines et al. 124). Another sex offender, Brad, provided a frightening message. He was asked, “Generally, what are the strongest emotions you feel connected with pornographic material?” and was told to express the “real gut level feelings he had” (Dines et al. 131). Brad had a one word answer: “Hate.” The interviewer then asked, “Hate for?” to which Brad replied, “Women.” The answers provided by the sex offenders would overwhelmingly support the claims made by radical feminists. However, the men had been through counseling treatments that seemed to focus blame on pornography.

In the book’s conclusion, each of the authors shares his or her particular view of pornography. Jensen said, “I believe that if everyone acknowledged the pain it takes to make pornography on the scale it is produced today--if we refuse to turn away from the broken bodies and broken spirits--the pornography industry would collapse” (Dines et al. 155). While this is a nice idea, it simply is not realistic. Jensen’s approach might work on the legitimate porn industry but only for those pornographers who operate as businessmen and businesswomen. There is no way to reach those involved in underground or amateur pornography. Also, there is little hope for dissolving the industry outside of this country. Pornography from other countries would undisputably leak into the U.S., both through the mail and over the Internet. I do not think it can be contained, at least not by any means of which the American public would approve.
Gail Dines, the sociologist, summarized her opinion in a different way. She wrote:

To read many of the scholarly books on pornography, one would think that men who use pornography have this uncanny ability to compartmentalize their lives. It seems that just as they put away their penis after using the stuff, so too they put the images away in that part of their brain that is marked fantasy, never to leak out into actual life. This is a ridiculous assertion that does not hold up in the lived experiences of men and women (Dines et al. 164).

It is quite probable that the use of pornography has effects that seep out of the imaginary and into real life; however, the magnitude of these effects is not known. Whether this leakage of mental images and ideas results in heightened arousal, increased aggression, or violent tendencies has not been proven. Dines believes that pornography use permeates all aspects of the user’s life and that this leads to harm for women.

Unlike the blanket statement made by Jensen, Dines simply shares her insight in a series of logical statements. She makes sense. Jensen is proposing the impossible. Dines is not offering a solution as Jensen haphazardly does, but that makes all the difference. Dines is very persuasive when explaining why pornography use is a concern. She is one of the few feminist authors who manages not to alienate her audience. It seems that so often the radical feminists are preaching to the choir. The solution lies not in reaffirming the views of their supporters but in persuading a new audience.

Women are saying quite a bit about pornography these days. Robin Morgan said, “Pornography is the theory, and rape the practice” (Collins and Skover 1397). Wendy Kaminer wrote, “Pornography is speech that legitimizes and fosters the physical abuse and sexual repression of women” (Collins and Skover 1397). Andrea Dworkin and Catharine A. MacKinnon wrote: “The harm of pornography includes dehumanization, psychic assault,
sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment” (Collins and Skover 1397). These women are recognized as radical or anti-pornography feminists. Their voices speak the loudest, and their statements are the most inflammatory in the pornography debate. Their accusatory language succeeds in getting their point across: Pornography is harmful and it is most harmful to women.

The radical feminists’ attack pornography on three levels:

1. Pornography is morally wrong.
2. Pornography leads directly toward violence against women.
3. Pornography, in and of itself, is violence against women. It is violence in several ways:

   (a) Women are physically coerced into pornography;
   (b) Women involved in the production of pornography who have not been physically coerced, have been so psychologically damaged by patriarchy that they are incapable of giving informed or ‘real’ consent;
   (c) Capitalism is a system of ‘economic coercion’ that forces women into pornography in order to make a living;
   (d) Pornography is violence toward women who consume it, and thereby reinforces their own oppression; and
   (e) Pornography is violence against women, as a class, who must live in fear because of the atmosphere of terror it creates (McElroy 97).

The women suggest that no women involved in the production of pornography are there of their own free will. Those not physically coerced must be mentally impaired. There is no other option. The women involved in pornography have been damaged by patriarchy, yet the anti-pornography feminists have somehow escaped its ill effects. That is never explained. Those authors must be the least damaged of all women, so much luckier than the
rest that they can remove themselves from the system and evaluate it from the outside. Given their exhaustive list of how all women are affected by pornography, this seems improbable.

Certainly, some women are physically coerced into pornography. Some women might have been raised in an overly patriarchal environment, and that could affect their reasoned judgment and capability of giving consent. Some women might become involved in pornography out of economic necessity, but the system of capitalism is highly unlikely to be the sole factor in such a case. Also, pornography use is probably unhealthy for some women. Finally, some women might live in fear because of pornography. Most do not. Each of these points can be conceded when some women are discussed. However, these cannot be assumed to be mutually exclusive categories. Many women would not fit into any of these categories. The anti-pornography feminists' response to this would probably be that all women do fit into the list somewhere, they just do not realize it because the system of patriarchy is all they have ever known. This is a convenient way to include all women yet allow none to decide anything for themselves. Only the anti-pornography feminists can determine pornography's effects. The question to ask is how did the authors manage to escape the capitalistic, patriarchal system of oppression to become the prophets of the anti-pornography feminist movement? Once again, they leave much unexplained. In their own arguments, “data are insufficient and knowledge is small.” Opinion, however, is overabundant.

C. The Inequality of the Sexes and Sexual Objectification

A third area of the debate that receives much attention is the relationship between pornography and sexual equality. The anti-pornography feminists claim that pornography
both promotes and perpetuates the objectification of women and that this objectification hinders the attainment of sexual equality. They believe that pornography casts women as subhuman. Women are things to be used for sex, while men have many other fulfilling roles in their lives. Women are things, animals at best, but men are thought of and treated as humans. Women appear both indispensable and inferior. Men and women are not equal in pornography.

In *Only Words* MacKinnon states that at the heart of the pornography issue is the “power over sexuality, over [women’s] social definition and treatment” (MacKinnon 1994:8). In the book, she discusses three harms that result from the existence of pornography in our country: (1) the physical abuse of the actresses and models involved, (2) the encouragement of acts of violence directed toward women, and (3) the support of the old-fashioned notion that women are subordinate to men.

The first two harms listed by MacKinnon have been examined above, so the focus now shifts to the third. The ideas promoted through pornography are not gender neutral, not positive, and not beneficial to sexual relationships. To MacKinnon, the notion that pornography should be allowed in society because it fits in the marketplace of ideas and thus promotes the general equality of the sexes is preposterous. She writes, “To defend pornography as consistent with the equality of the sexes is to defend the subordination of women to men as sexual equality” (MacKinnon 1987:348). MacKinnon also claims that “all pornography is made under conditions of inequality based on sex, overwhelmingly by the poor, desperate, homeless, pimped women who were sexually abused as children”
(MacKinnon 1994:20). While her words are provocative, she fails to empirically support the claim.

Ronald Collins and David Skover, the authors of an article entitled "The Pornographic State," understand why America’s radical feminists are making such a fuss. The feminists see a strong link between political power and sex. Men run the country, and they are quite content with the status quo, especially the current status of women. This is exactly what Catharine MacKinnon was arguing. “Essential to women’s political power, then, is control over both their bodies and over eroticized images of their bodies” (Collins and Skover 1387). The radical feminists are seeking increased regulation of pornography to help women attain equality.

Robert Jensen examined twenty pornographic novels written for the heterosexual man. He reports, “These pornographic novels constantly reminded the reader that, in the end, all women are the same in that all women are for sex” (Dines et al. 91). To Jensen, the novels preach sexual objectification. They constantly reinforce the idea that men are naturally dominant, that men are superior to women, and that their contentment comes from exercising this dominance over women.

The novels also portray men as “hypersexual beings.” In defense of the novels, one could claim that the men in the novels are objectified just as much as the women are. However, while assessing the novels, Jensen did not view the men as sex objects. The objectification was clearly reserved for the female characters. Any male objectification was aimed only at the penis, which was glorified. Jensen commented, “The penis was treated almost as a religious symbol” (Dines et al. 93).
Ann Garry, a professor of philosophy at California State University at Los Angeles, argues that it is possible to have non-degrading, non-sexist pornography (Garry 310). Garry writes that the respect for women that pornography supposedly lessens is “respect that is an outgrowth of the ‘double standard.’” She explains: “Women are to be respected because they are more pure, delicate, and fragile than men, have more refined sensibilities, and so on. Because some women clearly do not have these qualities, thus do not deserve respect, women must be divided into two groups--the good ones on the pedestal and the bad ones who have fallen from it” (Garry 311). Men define this respect, and naturally, they have it for their mothers, sisters, wives, and Sunday school teachers. However, this respect does not apply to all. Garry says, “‘Respect’ for those on the pedestal was not respect for whole, full-fledged people but for a special class of inferior beings” (Garry 312).

Garry claims that because people make the distinction between good women and bad women, along with the assumption that sex is dirty, that people think pornography is harmful to women. It is harmful in the sense that it portrays an inferior status of women. Garry is not discussing physical harm. She adds: “Pornography describes or shows women engaging in activities inappropriate for good women to engage in--or at least inappropriate for them to be seen by strangers engaging in. If one sees these women as symbolic representatives of all women, then all women fall from grace with these women” (Garry 312). Garry presents a very good point here. Are the women in pornography representative of all women? Many anti-pornography feminists would reply with an adamant “No!” to that question. In their own literature they sometimes refer to the models and actresses in the pornography industry as prostitutes, adding to those women’s occupations all of the stigma so
frequently attached to the word. Both pornography actresses and prostitutes are seen as highly immoral, and are described as such by many feminists. Yet their entire argument rests upon the theorization that these very women, the ones in the pornographic magazines and movies, are representative of all women. How these women are portrayed and treated is supposedly transferable to men's treatment of all women in our society. Why is this assumption made? Who expects any man to treat all women in the same manner? There are many disrespectful female characters on television and in film that come and go without criticism. It is when sexual activity is added into the equation that the criticism begins.

Garry lists two points that follow from her previous conclusions. The first is that it is much easier to lose respect for women as a class than to lose respect for men as a class. The second is that men are seen in the active role (Garry 312). She says: “If men lose respect for women because of something ‘evil’ done by women (such as appearing in pornography), the fear is that men will then do harm to women--not that women will do harm to men” (Garry 312). Yet if women lose respect for men, the assumption is still that men will do the harm, not that women will. Garry says this might result because of the way many people view sex--as a harm, a bad thing that men do to women. She says: “Our slang words for sexual intercourse...not only can mean harm but have traditionally taken a male subject and a female object. The active male harms the passive female. A ‘bad’ woman only tempts men to hurt her further” (Garry 312).

Garry does recognize the basis for an anti-pornography argument. She writes, “Because in our culture we connect sex with harm that men do to women, and because we
think of the female role in sex as that of harmed object, we can see that to treat a woman as a
sex object is automatically to treat her as less than fully human” (White 313).

Garry goes so far in her explanation that it seems she is arguing for greater protection
of women. She also sheds light on the connection between pornography and sexual
harassment. She says, “The sex-harm connection makes clear why it is worse to treat women
as sex objects than to treat men as sex objects, and why some men have had difficulty
understanding women’s anger about the matter” (Garry 314). The harm involved is
considered to be male-inflicted. The man hurts the woman. Women do not want to be
thought of as harmed objects. Yet Garry ironically points out that “Pornography, probably
more than any other contemporary institution, succeeds in treating men as sex objects.” That
seems to be something no one else has thought of or, at least, cares to emphasize.

Garry repeatedly claims that it is possible to have non-degrading, non-sexist
pornography. She says, however, that “very little contemporary pornography goes against
traditional sex roles” (Garry 315). The pornography that does exist, she admits, does very
little for promoting sexual equality, but that could be changed. Garry says, “The key to
making the change is to break the connection between sex and harm” (Garry 315). She
suggests a gender-neutral type of pornography. One example is a short film with no story
line that shows sexual activity between men and women functioning as equal partners. She
says, “Sexual intercourse would not be portrayed as primarily for the purpose of male
ejaculation--his orgasm is not ‘the best part’ of the movie” (Garry 316). This non-sexist
pornography could include various plots, as long as the characters treat each other with
respect and consideration. These films and pictures would include no instances of men
harming women or treating them brutally or disrespectfully. Garry also suggests casting women in high-power jobs, including those traditionally held by men, or in positions that are usually held in respect by pornography audiences. This would have pornography actually serving a positive function by promoting sexual equality.

MacKinnon, a radical feminist, is opposed to all pornography. Garry, a moderate feminist, understands how pornography objectifies women but opposes government intervention even on the basis of protecting women. On the liberal end of the feminist spectrum is Wendy McElroy. She has written an insightful book entitled *XXX: A Woman's Right to Pornography*. McElroy begins by saying, “Pornography benefits women, both personally and politically” (McElroy, i). She claims that the radical anti-pornography feminists try to silence any real discussion of pornography. Her book describes the pornography industry, defends pornography, and explains how pornography can benefit women while also promoting the cause of feminism. McElroy wrote: “The message of this book is: There’s nothing to be afraid of. Pornography is part of a healthy free flow of information about sex. This is information our society badly needs. It is a freedom women need” (McElroy, xi).

Unlike her feminist counterparts, Wendy McElroy finds value in pornography, and she clearly states her views. She says, “I contend: Pornography benefits women, both personally and politically” (McElroy 128). She gives examples of how it benefits them personally:

1. It provides sexual information on at least three levels: it gives a panoramic view of the world’s sexual possibilities; it allows women to “safely” experience sexual alternatives; and, it provides a different form of information
than can be found in textbooks or discussions; (2) Pornography strips away the emotional confusion that so often surrounds real-world sex; (3) Pornography breaks cultural and political stereotypes, so that each woman can interpret sex for herself; (4) Pornography is the great leveler of shame; (5) Pornography can serve as sexual therapy (McElroy 129).

Clearly, many of her fellow feminists would have at least a few complaints with these suggestions. However, McElroy bravely goes beyond the personal argument and into the political realm. She believes that pornography benefits women politically in the following ways:

(1) “Historically, pornography and feminism have been fellow travelers and natural allies; (2) Pornography is free speech applied to the sexual realm; (3) Viewing pornography may well have a cathartic effect on men who have violent urges toward women; (4) Legitimizing pornography would protect women sex workers, who are stigmatized by our society” (McElroy 129).

McElroy succeeds in making a few valid points. Pornography can be a source of sexual information, and it certainly portrays alternative sexual possibilities. Pornography can also be conducive to sexual exploration. Next, McElroy claims that pornography can strip away the emotional confusion surround real world sex. Perhaps it portrays sex without considering the romantic feelings of the participants involved, but pornography itself sparks an emotional reaction to the images it presents. Women can escape the emotional confusion of romantic relationships, but it seems probable that a different form of emotional confusion--e.g., about an act portrayed or, perhaps, even the idea that sex can be a pleasurable experience in the absence of feelings of love and attachment--would replace the first suggested form of emotional confusion.

McElroy claims that pornography breaks cultural and political stereotypes. This is exactly the opposite of what other feminists claim. It is possible that pornography works
against the stereotypes of what is acceptable sexual behavior, but pornography fails to break
down the typical stereotypes of women. She also says that pornography is the great leveler of
shame, but she does not clarify what she means by this. Finally, McElroy refers to
pornography as a valid form of sexual therapy. She offers no evidence to support this
“benefit” of pornography and leaves the reader to wonder what type of problem would be
eased by pornographic therapy.

McElroy’s argument about the political benefits of pornography is also questionable.
She refers to the past, casting pornography and feminism as allies. While pornography and
feminism have increasingly and almost simultaneously become more acceptable in the last
fifty years, the supporters of these two notions did not work together as McElroy suggests.

Next, McElroy makes it clear that she considers pornography to be deserving of First
Amendment protection, since, in her opinion, it is speech in the sexual realm. On this point,
she certainly does not stand alone. Free-speech advocates and liberal feminists alike agree
with this. The third political benefit, pornography’s cathartic effect, also has some
supporters. However, McElroy includes no scientific evidence to support the suggested
cathartic effect.

Her final political benefit is hypothetical. McElroy suggests that we legitimize the
pornography industry. By doing so, she argues, more female sex workers could be protected.
The radical feminists should support this, since their goal is the increased protection of
women. It is not clear what steps McElroy deems necessary to legitimize the industry, but
any increase in respect for pornography’s female workers can only help them, and thus
improve the lot of women as a whole.
III. Conclusion

The debate itself is comprised of many opposing forces, each of which frames the issue to its own liking. This is especially easy to do with pornography because very little about it has been decided. The available data has only complicated the issue. Jensen, Russo, and Dines address this problem in their book. The authors point out that the lab experience is "unreal in terms of both the physical and psychological environments, and researchers have only the sketchiest notions of what they are measuring" (Dines et al. 104). They also conclude that the available evidence does little to resolve the argument. Jensen said, "Three decades of experimental research on pornography's effects have not answered questions about pornography and sexual violence" (Dines et al. 107). It is fitting that the evidence supports both sides. Even women are split on the issue, and as Jensen observes, "There is no need to pretend the women speak with one voice." The issue is not black and white. It is not women vs. pornography.

Initially, most women would likely identify with the radical feminists. The line of reasoning is this: Pornography is bad and it harms women the most, so restricting it is a good idea. Furthermore, it reflects a moral agenda. However, these women need to look further into the issue. It certainly is not as black and white as it appears. Any restriction, any censoring of pornography comes at a cost, although many people fail to realize this. That cost is a loss of freedom, specifically a loss of one's freedom to choose what to watch, read, or examine, for whatever reason.

One need not find value in pornography to be against the further restricting of it. One need only to be wary of overreaching censorship. There is no captive audience problem here,
as Justice Douglas said in *Miller v. California*. Wendy McElroy reaffirms this by observing, “My decision to consume pornography in no way infringes on another woman’s ability to walk right past it” (McElroy 127). The choice should remain ours.

Barry Lynn does not want the courts to tell us what is wrong because that leads to the courts telling us what is right. One could argue that to do either achieves the same goal. The courts, the law, the government—already they set standards of right and wrong that we follow and adopt. There is a trade-off between all of their rules and our freedom, but it is through those rules that we gain protection. The radical feminists’ argument is based upon that trade off. They believe that women need greater protection from the effects of pornography, and they would readily accept more rules and more censorship to attain that end. Because this cost is considered too great (and, in part, because their arguments are considered too extreme), the radical feminists have been largely unsuccessful. In the immediate future, that seems unlikely to change.

The best advice for women comes from Wendy McElroy. She finds pornography to be beneficial for women, so it would be easy to reject her argument. That is, after all, a controversial opinion. Her ideas are debatable, but what McElroy clearly nails is her argument about censorship. She said, as is mentioned above, that history has taught us two important lessons over and over again. They are: (1) “Censorship—or any sexual repression—inevitably rebounds against women, especially against those women who wish to question their traditional roles. Freedom of sexual expression, including pornography, inevitably creates an atmosphere of inquiry and exploration. This promotes women’s sexuality and freedom.” (2) “Censorship strengthens the position of those in power. This has never been
good news for women, who are economically, politically, and socially among the weakest members of society” (McElroy 56).

A solution to the conflict over pornography will not soon be found. Ann Garry makes some optimistic suggestions. She presented a goal that would not be impossible to achieve. Garry, too, is against increased regulation of pornography, for she does not view sex as an evil to be controlled (White 310). What Garry suggests is the creation of non-sexist, non-degrading pornography. Today, this type of pornography is very rare. Garry’s proposed pornography would be gender neutral and would help break the sex-harm connection. This type of pornography could actually play a positive role in society.

That is just one suggestion but there are others. Little, if any, progress will be made while the two sides remain so hostile toward each other. Working together is the key to a reconciliation. My hope is for a solution that does not include greater governmental censorship. The law remains open, and the definition remains unresolved. We can be certain that the debate will continue because we deal “with an area where knowledge is small, data are insufficient, and experts are divided” [354 U.S. 476 (1957)].
Bibliography


