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## CATHARINE MACKINNON

### Pornography, Civil Rights, and Speech

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I will first situate a critique of pornography within a feminist analysis of the condition of women. I will speak of what pornography means for the social status and treatment of women. \* \* \*

\* \* \* Once power constructs social reality, as I will show pornography constructs social reality of gender, the force behind sexism, the subordination in gender inequality, is made invisible; dissent from it becomes inaudible as well as rare. What a woman is, is defined in pornographic terms; this is what pornography *does*. If the law then looks neutrally on the reality of gender

so produced, the harm that has been done *will not be perceptible as harm*. It becomes just the way things are. \*\*\*

In the philosophical terms of classical liberalism, an equality-freedom dilemma is produced: Freedom to make or consume pornography weighs against the equality of the sexes. Some people's freedom hurts other people's equality. \*\*\* Equality for women is incompatible with a definition of men's freedom that is at our expense. What can freedom for women mean, so long as we remain unequal? Why should men's freedom to use us in this way be purchased with our second-class civil status?

I. There is a belief that this is a society in which women and men are basically equals. Room for marginal corrections is conceded, flaws are known to exist, attempts are made to correct what are conceived as occasional lapses from the basic condition of sex equality. Sex discrimination law has centered most of its focus on these occasional lapses. It is difficult to overestimate the extent to which this belief in equality is an article of faith to most people, including most women, who wish to live in self-respect in an internal universe, even (perhaps especially) if not in the world. It is also partly an expression of natural law thinking: If we are inalienably equal, we can't "really" be degraded.

This is a world in which it is worth trying. In this world of presumptive equality, people make money based on their training or abilities or diligence or qualifications. They are employed and advanced on the basis of merit. In this world of just deserts, if someone is abused, it is thought to violate the basic rules of the community. If it doesn't, that person is seen to have done something she could have chosen to do differently, by exercise of will or better judgment. Maybe such people have placed themselves in a situation of vulnerability to physical abuse. Maybe they have done something provocative. Or maybe they were just unusually unlucky. In such a world, if such a person has an experience, there are words for it. When they speak and say it, they are listened to. If they write about it, they will be published. If there are certain experiences that are never spoken, or certain people or issues seldom heard from, it is supposed that silence has been chosen. The law, including much of the law of sex discrimination and the first amendment, operates largely within the realm of these beliefs.

Feminism is the discovery that women do not live in this world, that the person occupying this realm is a man, so much more a man if he is white and wealthy. This world of potential credibility, authority, security, and just

rewards, recognition of one's identity and capacity, is a world that some people do inhabit as a condition of birth, with variations *among them*. It is not a basic condition accorded humanity in this society, but a prerogative of status, a privilege, among other things, of gender.

I call this a discovery because it has not been an assumption. Feminism is the first theory, the first practice, the first movement, to take seriously the situation of all women from the point of view of all women, both on our situation and on social life as a whole. \*\*\*

Looking at the world from this point of view, a whole shadow world of previously invisible silent abuse has been discerned. Rape, battery, sexual harassment, forced prostitution, and the sexual abuse of children emerge as common and systematic. We find rape happens to women in all contexts, from the family, including rape of girls and babies, to students and women in the workplace, on the streets, at home, in their own bedrooms by men that they do not know, and by men that they do know, by men they are married to, men they have had a social conversation with, or, least often, men they have never seen before. Overwhelmingly, rape is something that men do or attempt to do to women (forty-four percent according to a recent study) at some point in our lives. Sexual harassment of women by men is common in workplaces and educational institutions. Up to eighty-five percent of women in one study report it, many in physical forms. Between a quarter and a third of women are battered in their homes by men. Thirty-eight percent of little girls are sexually molested inside or outside the family. Until women listened to women, this world of sexual abuse was *not spoken* of. It was the unspeakable. What I am saying is, if you *are* the tree falling in the epistemological forest, your demise doesn't make a sound if no one is listening. Women did not "report" these events, and overwhelmingly do not today, because no one is listening, because no one believes us. This silence does not mean nothing happened, and it does not mean consent. \*\*\*

Men *are* damaged by sexism. (By men, I am referring to the status of masculinity which is accorded to males on the basis of their biology, but is not itself biological.) But whatever the damage of sexism is to men, the condition of being a man is not defined as subordinate to women by force. Looking at the facts of the abuses of women all at once, you see that a woman is socially defined as a person who, whether or not she is or has been, *can at any time* be treated in these ways by men, and little, if anything, will be

done about it. This is what it means when feminists say that maleness is a form of power and femaleness is a form of powerlessness.\*\*\*

I could describe this but I couldn't explain it until I started studying a lot of pornography. In pornography, there it is, in one place, all of the abuses that women had to struggle so long even to begin to articulate, all the *unspeakable* abuse: the rape, the battery, the sexual harassment, the prostitution, and the sexual abuse of children. Only in the pornography it is called something else: sex, sex, sex, sex, and sex, respectively. Pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them. More generally, it eroticizes the dominance and submission that is the dynamic common to them all. It makes hierarchy sexy.\*\*\*

\*\*\*Pornography's world of equality is a harmonious and balanced place. Men and women are perfectly complementary and perfectly bipolar. Women's desire to be fucked by men is equal to men's desire to fuck women. All the ways men love to take and violate women, women love to be taken and violated. The women who most love this are most men's equals, the most liberated; the most participatory child is the most grown-up, the most equal to an adult. Their consent merely expresses or ratifies these preexisting facts.

\*\*\* Women are there to be violated and possessed, men to violate and possess us either on screen or by camera or pen on behalf of the consumer. On a simple descriptive level, the inequality of hierarchy, of which gender is the primary one, seems necessary for the sexual arousal to work.\*\*\*

What pornography *does* goes beyond its content: It eroticizes hierarchy, it sexualizes inequality. It makes dominance and submission sex. Inequality is its central dynamic; the illusion of freedom coming together with the reality of force is central to its working.\*\*\*

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, fusing the erotization of dominance and submission with the social construction of male and female. To the extent that gender is sexual, pornography is part of constituting the meaning of that sexuality. Men treat women as who they see women as being. Pornography constructs who that is. Men's power over women means that the way men see women defines who women can be. Pornography is that way.\*\*\*

\*\*\* Pornography *participates* in its audience's eroticism through creating an accessible sexual object, the possession and consumption of which is male sexuality, as socially constructed; to be consumed and possessed as

which, is female sexuality, as socially constructed; and pornography is a process that constructs it that way.

\*\*\* Pornography defines women by how we look according to how we can be sexually used. Pornography codes how to look at women, so you know what you can do with one when you see one. Gender is an assignment made visually, both originally and in everyday life. A sex object is defined on the basis of its looks, in terms of its usability for sexual pleasure, such that both the looking—the quality of the gaze, including its point of view—and the definition according to use become eroticized as part of the sex itself. This is what the feminist concept “sex object” means. In this sense, sex in life is no less mediated than it is in art. One could say men have sex with *their image* of a woman. It is not that life and art imitate each other; in this sexuality, they *are* each other.

\*\*\* To defend pornography as consistent with the equality of the sexes is to defend the subordination of women to men as sexual equality. What in the pornographic view is love and romance looks a great deal like hatred and torture to the feminist. Pleasure and eroticism become violation. Desire appears as lust for dominance and submission. The vulnerability of women’s projected sexual availability, that acting we are allowed (i.e. asking to be acted upon), is victimization. Play conforms to scripted roles. Fantasy expresses ideology, is not exempt from it. Admiration of natural physical beauty becomes objectification. Harmlessness becomes harm. Pornography is a harm of male supremacy made difficult to see because of its pervasiveness, potency, and, principally, because of its success in making the world a pornographic place.\*\*\*

## II.

Obscenity law provides a very different analysis and conception of the problem. In 1973, the legal definition of obscenity became that which

the average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest; that which depicts and describes in a patently offensive way [You feel like you’re a cop reading someone’s *Miranda* rights] sexual conduct as defined by the applicable state law; and that which, taken as a whole, lacks serious literary, artistic, political or scientific value.<sup>1</sup>

Feminism doubts whether the average gender-neutral person exists; has more questions about the content and process of defining what community standards are than it does about deviations from them; wonders why prurience counts but powerlessness does not, and why sensibilities are better

<sup>1</sup> Miller v. California, 413 U.S. 15, 24 (1973).

protected from offense than women are from exploitation; defines sexuality, and thus its violation and expropriation, more broadly than does state law; and questions why a body of law which has not in practice been able to tell rape from intercourse should, without further guidance, be entrusted with telling pornography from anything less. Taking the work "as a whole" ignores that which the victims of pornography have long known: Legitimate settings diminish the injury perceived to be done to those whose trivialization and objectification it contextualizes. Besides, and this is a heavy one, if a woman is subjected, why should it matter that the work has other value? Maybe what redeems the work's value is what enhances its injury to women, not to mention that existing standards of literature, art, science, and politics, examined in a feminist light, are remarkably consonant with pornography's mode, meaning, and message. And finally—first and foremost, actually—although the subject of these materials is overwhelmingly women, their contents almost entirely comprised of women's bodies, our invisibility has been such, our equation as a sex *with* sex has been such, that the law of obscenity has never even considered pornography a woman's issue.

Obscenity, in this light, is a moral idea; an idea about judgments of good and bad. Pornography, by contrast, is a political practice, a practice of power and powerlessness. Obscenity is ideational and abstract; pornography is concrete and substantive. The two concepts represent two entirely different things. Nudity, excess of candor, arousal or excitement, prurient appeal, illegality of the acts depicted, and unnaturalness or perversion are all qualities that bother obscenity law when sex is depicted or portrayed. Sex forced on real women so that it can be sold at a profit to be forced on other real women; women's bodies trussed and maimed and raped and made into things to be hurt and obtained and accessed and this presented as the nature of women in a way that is acted on and acted out over and over; the coercion that is visible and the coercion that has become invisible—this and more bothers feminists about pornography. Obscenity as such probably does little harm. Pornography is integral to attitudes and behaviors of violence and discrimination which define the treatment and status of half the population.

### III.

At the request of the city of Minneapolis, Andrea Dworkin and I conceived and designed a local human rights ordinance in accordance with our approach to the pornography issue. We define pornography as a practice of sex discrimination, a violation of women's civil rights, the opposite of

sexual equality. Its point is to hold accountable, to those who are injured, those who profit from and benefit from that injury. It means that women's injury—our damage, our pain, our enforced inferiority—should outweigh their pleasure and their profits, or sex equality is meaningless.

We define pornography as the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities, enjoying pain or humiliation or rape, being tied up, cut up, mutilated, bruised, or physically hurt, in postures of sexual submission or servility or display, reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual. Erotica, defined by distinction as not this, might be sexually explicit materials premised on equality. We also provide that the use of men, children or transsexuals in the place of women is pornography. The definition is substantive in that it is sex-specific, but it covers everyone in a sex-specific way, so is gender neutral in overall design. \*\*\*

This law aspires to guarantee women's rights consistent with the first amendment by making visible a conflict of rights between the equality guaranteed to all women and what, in some legal sense, is now the freedom of the pornographers to make and sell, and their consumers to have access to, the materials this ordinance defines. Judicial resolution of this conflict, if they do for women what they have done for others, is likely to entail a balancing of the rights of women arguing that our lives and opportunities, including our freedom of speech and action, are constrained by—and in many cases flatly precluded by, in, and through—pornography, against those who argue that the pornography is harmless, or harmful only in part but not in the whole of the definition; or that it is more important to preserve the pornography than it is to prevent or remedy whatever harm it does.

\*\*\* Pornography is a practice of discrimination on the basis of sex, on one level because of its role in creating and maintaining sex as a basis for discrimination. It harms many women one at a time and helps keep all women in an inferior status by defining our subordination as our sexuality and equating that with our gender. It is also sex discrimination because its victims, including men, are selected for victimization on the basis of their gender. But for their sex, they would not be so treated. \*\*\*

Pornography does treat the sexes differently, so the case for sex differentiation can be made here. Men as a group do not tend to be (although some individuals may be) treated like women are treated in pornography. But as

a social group, men are not hurt by pornography the way women as a social group are. \*\*\*

The first victims of pornography are the ones in it. \*\*\* This is particularly true in visual media, where it takes a real person doing each act to make what you see. This is the double meaning in a statement one ex-prostitute made at our hearing: "[E]very single thing you see in pornography is happening to a real woman right now." Linda Marchiano, in her book *Ordeal*, recounts being coerced as "Linda Lovelace" into performing for "Deep Throat," a fabulously profitable film, by abduction, systematic beating, being kept prisoner, watched every minute, threatened with her life and the lives of her family if she left, tortured, and kept under constant psychological intimidation and duress. \*\*\*

The further fact that prostitution and modeling are structurally women's best economic options should give pause to those who would consider women's presence there a true act of free choice. \*\*\* I will leave you wondering, with me, why it is that when a woman spreads her legs for a camera, what she is assumed to be exercising is free will. Women's freedom is rather substantively defined here. And as you think about the assumption of consent that follows women into pornography, look closely some time for the skinned knees, the bruises, the welts from the whippings, the scratches, the gashes. Many of them are not simulated. \*\*\*

Coerced pornography models encounter devastating problems of lack of credibility because of a cycle of forced acts in which coercion into pornography is central. For example, children are typically forced to perform the acts in the pornography that is forced on them; photographs are taken of these rapes, photographs which are used to coerce the children into prostitution or into staying in prostitution, telling them that if they try to leave, the pictures will be shown to the authorities, their parents, their teachers, (whoever is *not* coercing them at the time) and no one will believe them. This gets them into prostitution and keeps them there. Understand, the documentation of the harm as it is being done is taken as evidence that no harm was done. Partly, desire for the abuse is attributed to the victim's nature from the fact of the abuse: She's a natural born whore; see, there she is chained to a bed. \*\*\*

\*\*\* Marchiano now tells that it took kidnapping and death threats and hypnosis to put her there, [and] that is found *difficult to believe*. The point is not only that when women can be coerced with impunity the results, when mass-produced, set standards that are devastating and dangerous for all women. The point is also that the assumptions that the law of the first

amendment makes about adults—that adults are autonomous, self-defining, freely-acting, *equal* individuals—are exactly those qualities which pornography systematically denies and undermines for women. \*\*\* It is \*\*\* vicious to suggest, as many have, that women like Linda Marchiano should remedy their situations through the exercise of more speech. Pornography makes their speech impossible and where possible, worthless. Pornography makes their into objects. Objects do not speak. When they do, they are by then regarded as objects, not as humans, which is what it means to have no credibility. \*\*\*

\*\*\* Under the obscenity rubric, much legal and psychological scholarship has centered on a search for the elusive link between pornography defined as obscenity and harm. They have looked high and low—in the mind of the male consumer, in society or in its “moral fabric,” in correlations between variations in levels of anti-social acts and liberalization of obscenity laws. The only harm they have found has been one they have attributed to “the social interest in order and morality.” Until recently, no one looked very persistently for harm to women, particularly harm to women through men. The rather obvious fact that the sexes *relate* has been overlooked in the inquiry into the male consumer and his mind. The pornography doesn’t just drop out of the sky, go into his head and stop there. Specifically, men rape, batter, prostitute, molest, and sexually harass women. Under conditions of inequality, they also hire, fire, promote, and grade women, decide how much or whether or not we are worth paying and for what, define and approve and disapprove of women in ways that count, that determine our lives. \*\*\*

\*\*\* Recent experimental research on pornography shows that the materials covered by our definition cause measurable harm to women through increasing men’s attitudes and behaviors of discrimination in both violent and nonviolent forms. Exposure to some of the pornography in our definition increases normal men’s immediately subsequent willingness to aggress against women under laboratory conditions. It makes normal men more closely resemble convicted rapists attitudinally, although as a group they don’t look all that different from them to start with. It also significantly increases attitudinal measures known to correlate with rape and self-reports of aggressive acts, measures such as hostility toward women, propensity to rape, condoning rape, and predicting that one would rape or force sex on a woman if one knew one would not get caught. This latter measure, by the way, begins with rape at about a third of all men and moves to half with “forced sex.”

As to that pornography covered by our definition in which normal research subjects seldom perceive violence, long-term exposure still makes

them see women as more worthless, trivial, non-human, and object-like, i.e., the way those who are discriminated against are seen by those who discriminate against them. Crucially, all pornography by our definition acts dynamically over time to diminish one's ability to distinguish sex from violence. The materials work behaviorally to diminish the capacity of both men and women to perceive that an account of a rape is an account of a rape. X-only materials, in which subjects perceive no force, also increase perceptions that a rape victim is worthless and decrease the perception she was harmed. \*\*\* Women are rendered fit for use and targeted for abuse. \*\*\*

In our hearings, women spoke, to my knowledge for the first time in history in public, about the damage pornography does to them. We learned that pornography is used to break women, to train women to sexual submission, to season women, to terrorize women, and to silence their dissent. It is this that has previously been termed "having no effect." Men inflict on women the sex that they experience through the pornography in a way that gives women no choice about seeing the pornography or doing the sex. Asked if anyone ever tried to inflict sex acts on them they did not want that they knew came from pornography, ten percent of women in a recent random study said yes. Twenty-four percent of married women said yes. That is a lot of women. A lot more don't know. \*\*\*

Pornography also hurts men's capacity to relate to women. \*\*\*

\*\*\* Substantively, pornography defines the meaning of what a woman is by connecting access to her sexuality with masculinity through orgasm. \*\*\*

\*\*\* Exceptions to the first amendment \*\*\* exist. The reason they exist is that the harm done by some speech outweighs its expressive value, if any.

\*\*\* One can say—and I have—that pornography is a causal factor in violations of women; one can also say that women will be violated so long as pornography exists; but one can also say simply that pornography violates women. Perhaps this is what the woman had in mind who testified at our hearings that whether or not pornography causes violent acts to be perpetrated against some women is not her only issue. "Porn is already a violent act against women. It is our mothers, our daughters, our sisters, and our wives that are for sale for pocket change at the newsstands in this country." *Chaplinsky v. New Hampshire* recognizes the ability to restrict as "fighting words" speech which, "by [its] very utterance inflicts injury. . . ." Perhaps the only reason that pornography has not been "fighting words"—in the sense of words which by their utterance tend to incite immediate breach of the peace—is that women have seldom fought back, yet. \*\*\*

The most basic assumption underlying first amendment adjudication is that, socially, speech is free. The first amendment says Congress shall not abridge the freedom of speech. Free speech, get it, *exists*. Those who wrote the first amendment *had* speech—they wrote the Constitution. *Their* problem was to keep it free from the only power that realistically threatened it: the federal government. They designed the first amendment to prevent government from constraining that which if unconstrained by government was free, meaning *accessible to them*. At the same time, we can't tell much about the intent of the Framers with regard to the question of women's speech, because I don't think we crossed their minds. It is consistent with this analysis that their posture to freedom of speech tends to presuppose that whole segments of the population are not systematically silenced, socially, prior to government action. If everyone's power were equal to theirs, if this were a non-hierarchical society, that might make sense. But the place of pornography in the inequality of the sexes makes the assumption of equal power untrue.

This is a hard question. It involves risks. Classically, opposition to censorship has involved keeping government off the backs of people. Our law is about getting some people off the backs of other people. The risks that it will be misused have to be measured against the risks of the status quo. Women will never have that dignity, security, compensation that is the promise of equality so long as the pornography exists as it does now. The situation of women suggests that the urgent issue of our freedom of speech is not primarily the avoidance of state intervention as such, but getting affirmative access to speech for those to whom it has been denied.