

violence, pornography plays a role in 'shaping certain forms of desire'. These forms, they argue, are essentially transgressive (ie it is 'illicit, forbidden, a dirty secret'): that is to say, that pornographic representations transgress the boundaries of acceptable sexual behaviour and practices and establish in the minds of its consumers, some normative standard to be achieved.⁴⁸ The harm caused by pornographic representations lies in the portrayal of men in a position of 'transcendence and mastery' over women. Women, conversely, are portrayed as the 'Other', the (submissive) object of desire of the male consumer. In moving beyond a debate focussing on the cause and effect relationship between pornography and sexual violence, the authors argue that feminists need to develop further an understanding of the effects of pornographic representation and sexual practices with a view to 'shaping alternative' visions of sexual practices which celebrate neither mastery nor submission.

Feminist legal theorists Catharine MacKinnon⁴⁹ and Andrea Dworkin⁵⁰ argue the case against pornography on the basis that it demeans women by 'objectifying' them – portraying women as merely objects to be used by men:⁵¹

Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, an institution of gender inequality. In this perspective, pornography, with the rape and prostitution in which it participates, institutionalises the sexuality of male supremacy, which fuses the erotisation of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constitutes the meaning of that sexuality. Men treat women as 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. In this light, obscenity law can be seen to treat morals from the male point of view, meaning the standpoint of male dominance. The feminist critique of pornography, by contrast, proceeds from women's point of view, meaning the standpoint of the subordination of women to men.⁵²

The Dworkin and MacKinnon Civil Rights' Ordinances

It is for reasons such as those expressed above that Catharine MacKinnon and Andrea Dworkin drafted, in 1983, the amendment to the Minneapolis Civil Rights Ordinance.⁵³ The amendment both defines what is to be regarded as pornography and also defines pornography as 'a form of discrimination of the basis of sex' which is actionable in law. In 1984 the Indianapolis City and

48 See L Kelly, *Surviving Sexual Violence* (Polity Press, 1989).

49 *Feminism Unmodified* (Harvard University Press, 1987).

52 *Pornography: Men Possessing Women* (Women's Press, 1981).

51 The literature is now extensive. See A Dworkin, *Pornography* (Women's Press, 1981); 'Against the Male Flood'; E Wolgast, 'Pornography' in *Feminist Jurisprudence* (ed) P White. Catharine MacKinnon: see *Feminism Unmodified* (Harvard University Press, 1987); *Towards a Feminist Theory of State* (Harvard University Press); *Only Words* (1993). See also C Smart, *Feminism and the Power of Law* (London: Routledge 1989), especially Chapter 6; C Itzin (ed), *Pornography: Women, Violence and Civil Liberties* (Oxford University Press, 1992).

52 C MacKinnon, *Toward a Feminist Theory of State* (Harvard University Press, 1989) Chapter 11, p 197.

53 On which see further below.

County Council adopted a modified version of the Dworkin-MacKinnon *Model Anti-Pornography Ordinance*. The Indianapolis Ordinance prohibited any 'production, sale, exhibition, or distribution' of the material defined as pornographic. Pornography is defined in the Minneapolis Civil Rights Ordinance as:

Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

- (i) women are presented dehumanised as sexual objects, things or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or
- (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or
- (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
- (v) women are presented in postures of sexual submission; or
- (vi) women's body parts – including but not limited to vaginas, breasts, and buttocks – are exhibited, such that women are reduced to those parts; or
- (vii) women are presented as whores by nature; or
- (viii) women are presented as being penetrated by objects or animals; or
- (ix) women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes those conditions sexual.

In addition the ordinance provided that:

The use of men, children, or transsexuals in the place of women in ... (i)-(ix) above is pornography ...

Rather than seeking to prohibit the production and distribution of pornography, a solution which is favoured by right-wing moralists, the Ordinances provided not for prohibition and enforcement thereof through the criminal law agencies, but by using the civil law to provide remedies for those harmed by pornography – either directly or indirectly. The Ordinances cannot therefore be seen as attempted censorship, but rather the provision of civil remedies for those harmed by pornography.⁵⁴ How have the Ordinances fared? They have, in short, been declared unconstitutional on the basis of violating the First Amendment to the US Constitution: the right to freedom of speech.⁵⁵ In *American Booksellers Association Inc v Hudnut*, the Circuit Court for the Seventh Circuit upheld the District Court's ruling and the Supreme Court summarily refused to review that decision. Judge Easterbrook in the Circuit Court ruled that nothing must be censored 'because the message it seeks to deliver is a bad one, or because it expresses ideas that should not be heard at all'.⁵⁶

54 For an analysis of the strengths and weaknesses of the campaign, see Mary Joe Frug, *The Politics of Postmodern Feminism: Lessons from the Anti-Pornography Campaign in Postmodern Legal Feminism* (Routledge, 1991) Chapter 8.

55 *American Booksellers Association Inc v Hudnut* 771 F 2d aff'd S Ct 1172 [1986].

56 Cited in R Dworkin, *Liberty and Pornography*, p 117, *The Problem of Pornography*, *op cit*.

In the first extract in this Chapter, feminist writer Andrea Dworkin⁵⁷ defines pornography from a radical feminist perspective. In *Whores* Andrea Dworkin analyses pornography. Women are defined by pornographic representations and by prostitution – women become defined as little more than sexual objects. For the author, as will be seen, there is a politics to pornography: both left and right, which together collude to mask the real meaning of pornography.

In *Francis Biddle's Sister*, feminist lawyer Professor Catharine MacKinnon argues that pornography constructs the social reality of gender – the subordination and inequality of women. Pornography defines women. Pornography's effect is to make the twin relationships of male domination and female subordination into the reality of sex. Pornography is the practice of sexual discrimination.

In the Preface to *Only Words*,⁵⁸ Catharine MacKinnon advances the feminist analysis of the potentiality of law for the control of pornography. If, the author argues, individuals may be prosecuted for standing by and actively encouraging a murder, why should not the same argument be made for those active in the pornography industry: do not they also participate in the violation and abuse of women?

Elizabeth Wolgast analyses the traditional liberal tradition in relation to pornography. In *Pornography and the Tyranny of the Majority*,⁵⁹ the author considers liberalism as characterised by John Stuart Mill. Would Mill, despite his clear injunction regarding the use of law to intervene in matters of private morality in the absence of proof of clear harm? Should the First Amendment of the United States' Constitution be employed to protect pornography as an incident of free speech. The author analyses that there are reasons why it should not do so. For Wolgast, the issue is one of respect for women versus their continued inferiority which is promoted by pornography.

Emily Jackson, in *The Problem with Pornography: A Critical Survey of the Current Debate*,⁶⁰ considers the difficulties in defining pornography; the differing interpretations of pornography; the opposing analyses of 'what to do about' pornography and the role of law in its regulation.

PORNOGRAPHY: MEN POSSESSING WOMEN⁶¹

Andrea Dworkin

The word 'pornography', derived from the ancient Greek '*pornê*' and '*graphos*', means 'writing about whores'. '*Pornê*' means 'whore', specifically and exclusive the lowest class of whore, which in ancient Greece was the brothel slut available to all male citizens. The *pornê* was the cheapest (in the literal sense), least regarded, least protected of all women, including slaves. She was, simply and clearly and absolutely, a sexual slave. '*Graphos*' means 'writing, etching, or drawing'.

57 In *Pornography: Men Possessing Women* (The Women's Press, 1981).

58 Harper Collins, 1994.

59 *The Grammar of Justice* (Ithica: Cornell, 1987).

60 [1995] *Feminist Legal Studies* 49.

61 Women's Press, 1981.

The word 'pornography' does not mean 'writing about sex' or 'depictions of the erotic' or 'depictions of sexual acts' or 'depictions of nude bodies' or 'sexual representations' or any other such euphemism. It means the graphic depiction of women as vile whores. In ancient Greece, not all prostitutes were considered vile: only the *porneia*. Contemporary pornography strictly and literally conforms to the word's root meaning: the graphic depiction of vile whores, or, in our language, sluts, cows (as in: sexual cattle, sexual chattel), cunts. The word has not changed its meaning and the genre is not misnamed. The only change in the meaning of the word is with respect to its second part, *graphos*: now there are cameras – there is still photography, film, video. The methods of graphic depiction have increased in number and in kind: the content is the same; the meaning is the same; the purpose is the same; the status of the women depicted is the same; the sexuality of the women depicted is the same; the value of the women depicted is the same. With the technologically advanced methods of graphic depiction, real women are required for the depiction as such to exist.

The word pornography does not have any other meaning than the one cited here, the graphic description of the lowest whores. Whores exist to serve men sexually. Whores exist only within a framework of male sexual domination. Indeed, outside the framework the notion of whores would be absurd and the usage of women as whores would be impossible. The word whore is incomprehensible unless one is immersed in the lexicon of male domination. Men have created the group, the type, the concept, the epithet, the insult, the industry, the trade, the commodity, the reality of woman as whore. Woman as whore exists within the objective and real system of male sexual domination. The pornography itself is objective and real and central to the male sexual system. The valuation of women's sexuality in pornography is objective and real because women are so regarded and so valued. The force depicted in pornography is objective and real because force is so used against women. The debasing of women depicted in pornography and intrinsic to it is objective and real in what women are so debased. The uses of women depicted in pornography are objective and real because women are so used. The women used in pornography are used in pornography. The definition of women articulated systematically and consistently in pornography is objective and real in that real women exist within and must live with constant reference to the boundaries of this definition. The fact that pornography is widely believed to be 'sexual representations' or 'depictions of sex' emphasises only that the valuation of women as low whores is widespread and that the sexuality of women is perceived as low and whorish in and of itself. The fact that pornography is widely believed to be 'depictions of the erotic' means only that the debasing of women is held to be the real pleasure of sex. As Kate Millett wrote, women's sexuality is reduced to the only essential: 'cunt ... our essence, our offence.' The idea that pornography is 'dirty' originates in the conviction that the sexuality of women is dirty and is actually portrayed in pornography; that women's bodies (especially women's genitals) are dirty and lewd in themselves. Pornography does not, as some claim, refute the idea that female sexuality is dirty: instead, pornography embodies and exploits this idea; pornography sells and promotes it.

In the United States, the pornography industry is larger than the record and film industries combined. In a time of widespread economic impoverishment, it is growing: more and more male consumers are eager to spend more and more money on pornography – on depictions of women as vile whores. Pornography is now carried by cable television; it is now being marketed for home use in video machines. The technology itself demands the creation of more and more *porneia* to meet the market opened up by the technology. Real women are tied

up, stretched, hanged, fucked, gang-banged, whipped, beaten and begging for more. In the photographs and films, real women are used as *porneia* and real women are depicted as *porneia*. To profit, the pimps must supply the *porneia* as the technology widens the market for the visual consumption of women being brutalised and loving it. One picture is worth a thousand words. The number of pictures required to meet the demands of the marketplace determines the number of *porneia* required to meet the demands of graphic depiction. The numbers grow as the technology and its accessibility grow. The technology by its very nature encourages more and more passive acquiescence to the graphic depictions. Passivity makes the already credulous consumer more credulous. He comes to the pornography a believer; he goes away from it a missionary. The technology itself legitimises the uses of women conveyed by it.

In the male system, women are sex; sex is the whore. The whore is *pornê*, the lowest whore, the whore who belongs to all male citizens: the slut, the cunt. Buy her is buying pornography. Having her is pornography. Seeing her is pornography. Seeing her sex, especially her genitals, is seeing pornography. Seeing her in sex is seeing the whore in sex. Using her is using pornography. Wanting her means wanting pornography. Being her means pornography.⁶²

WHORES⁶³

Andrea Dworkin

The best houses do not exhibit the women in cages. (The Nightless City or the History of the Yoshiwara Yukwaku, 1899 report on a red-light district in Japan.)

Male sexual domination is a material system with an ideology and a metaphysics. The sexual colonisation of women's bodies is a material reality: men control the sexual and reproductive uses of women's bodies. The institutions of control include law, marriage, prostitution, pornography, health care, the economy, organised religion, and systematised physical aggression against women (for instance, in rape and battery). Male domination of the female body is the basic material reality of women's lives; and all struggle for dignity and self-determination is rooted in the struggle for actual control of one's own body, especially control over physical access to one's own body. The ideology of male sexual domination posits that men are superior to women by virtue of their penises; that physical possession of the female is a natural right of the male; that sex is, in fact, conquest and possession of the female, especially but not exclusively phallic conquest and phallic possession; that the use of the female body for sexual or reproductive purposes is a natural right of men; that the sexual will of men properly and naturally defines the parameters of a woman's sexual being, which is her whole identity.

The metaphysics of male sexual domination is that women are whores. This basic truth transcends all lesser truths in the male system. One does not violate something by using it for what it is: neither rape nor prostitution is an abuse of the female because in both the female is fulfilling her natural function; that is why rape is absurd and incomprehensible as an abusive phenomenon in the male system, and so is prostitution, which is held to be voluntary even when the prostitute is hit, threatened, drugged, or locked in. The woman's effort to stay

62 *Pornography: Men Possessing Women*, pp 199–202.

63 Andrea Dworkin, *Pornography: Men Possessing Women* (Women's Press, 1981), Chapter 7.

innocent, prove innocence, her effort to prove in any instance of sexual use that she was used against her will, is always and unequivocally an effort to prove that she is not a whore. The presumption that she is a whore is a metaphysical presumption: a presumption that underlies the system of reality in which she lives. A whore cannot be raped, only used. A whore by nature cannot be forced to whore – only revealed through circumstance to be the whore she is. The point is her nature, which is a whore's nature. The word 'whore' can be construed to mean that she is a cunt with enough gross intelligence to manipulate, barter, or sell. The cunt wants it; the whore knows enough to use it. 'Cunt' is the most reductive word; whore adds the dimension of character – greedy, manipulative, not nice. The word whore reveals her sensual nature (cunt) and her natural character.

'No prostitute of anything resembling intelligence', writes Mencken, 'is under the slightest duress ...'.⁶⁴ 'What is a prostitute?' asks William Acton in his classic work on prostitution. 'she is a woman who gives for money that which she ought to give only for love ...'.⁶⁵ Jane Addams, who worked against the so-called white slave trade, noted that '[t]he one impression which the trial [of procurers] left upon our minds was that all the men concerned in the prosecution felt a keen sense of outrage against the method employed to secure the girl [kidnapping] but took for granted that the life she was about to lead was in the established order of things, if she had chosen it voluntarily'.⁶⁶ Only the maternal can mitigate the whorish, an opposition more conceptual than real, based on the assumption that the maternal or older woman is no longer desired. Freud writes to Jung that a son approaching adulthood naturally loses his incestuous desires for the mother 'with her sagging belly and varicose veins'.⁶⁷ Rene Guyon, who argued for male-defined sexual liberation, writes that '[w]oman ages much sooner. Much earlier in life she loses her freshness, her charm, and begins to look withered or overripe. She ceases to be an object of desire'.⁶⁸ The mother is not the whore only when men have stopped desiring her.

Guyon, in whose name societies for sexual freedom exist today, held that women were defined exclusively by their sexuality, which was essentially and intrinsically the sexuality of the prostitute. 'Womens sexual parasitism', writes Guyon, 'is innate. She has a congenital tendency to rely on man for support, availing herself of her sexual arts, offering in return for maintenance (and more, if she can get it) the partial or complete possession of her person'.⁶⁹ This propensity for exchanging her body for material goods is her sexuality, her purpose, her passion, and consequently '[s]ale or contract, monogamy or harem – these words mean little to her in comparison with the goal'.⁷⁰ For this reason, Guyon contends that even the so-called white slave trade – the organised abduction of lone or young or destitute women for the purposes of prostitution – cannot be construed as forcible prostitution:

64 HL Mencken, *In Defence of Women* (Garden City Publishing Co, 1922), p 187.

65 William Acton, *Prostitution* (New York: Frederick A Praeger, 1969), p 118.

66 Jane Addams, *A New Conscience and An Ancient Evil* (New York: Macmillan, 1914), p 40.

67 Sigmund Freud, *The Freud/Jung Letters*, ed William McGuire, trans Ralph Manheim and RFC Hull (Princeton University Press, 1974), p 503.

68 R Guyon, *Sexual Freedom*, trans Eden and Cedar Paul (New York: Alfred A Knopf, 1958), p 239.

69 *Ibid*, p 198.

70 *Ibid*, p 200.

How hypocritical it is to speak of the White [*sic*] Slave Trade only as a means for recruiting the ranks of prostitution. The White [*sic*] Slave Trade is universal, being carried on with the consent of the 'slaves', since every woman has a specific sexual value. She must sell herself to the highest bidder, even though she cheat as to the quality of the goods.⁷¹

Like most male advocates of sexual freedom (the unrestrained expression of male sexuality) Guyon theoretically and repeatedly deplors the use of force; he simply never recognises its existence in the sexual use of women.

Typically, every charge by women that force is used to violate women – in rape, battery, or prostitution – is dismissed by positing a female nature that is essentially fulfilled by the act of violation, which in turn transforms violation into merely using a thing for what it is and blames the thing if it is not womanly enough to enjoy what is done to it.

Sometimes 'consent' is construed to exist. More often, the woman is perceived to have an active desire to be used by the male on his terms. Great Britain's *Wolfenden Report*, renowned for its recommendation that legal persecution of consenting male homosexuals cease, was also a report on female prostitution. The report stressed that 'there are women who, even when there is no economic need to do so, choose this form of livelihood'.⁷² It recommended increasing legal penalties against prostitutes and argued for more stringent enforcement of laws aimed at prostitutes. Male sexual privilege was affirmed both in the vindication of consensual male homosexuality and in the advocacy of greater persecution of female prostitutes. At the same time, women's degraded status was affirmed. The whore has a nature that chooses prostitution. She should be punished for her nature, which determines her choice and which exists independent of any social or economic necessity. The male homosexual also has a nature, for which he should not be punished.

This desire of the woman to prostitute herself is often portrayed as greed for money or pleasure or both. The natural woman is a whore, but the professional prostitute is a greedy whore: greedy for sensation, pleasure, money, men. Novelist Alberto Moravia, like many leftist writers seemingly obsessed with the prostituted woman, writes in an assumed first-person female voice to convey the woman's pleasure in prostitution:

The feeling I experienced at that moment bewildered me and, no matter how or when I have received money from men since, I have never again experienced it so clearly and so intensely. It was a feeling of complicity and sensual conspiracy ... It was a feeling of inevitable subjection which showed me in a flash an aspect of my own nature I had ignored until then. I knew, of course, that I ought to refuse the money, but at the same time I wanted to accept. And not so much from greed, as from a new kind of pleasure which this offering had afforded me.⁷³

The pleasure of the prostitute is the pleasure of any woman used in sex – but heightened. The specific – the professional whore – exists in the context of the general – women who are whores by nature. There is additional pleasure in

71 *Ibid*, p 204.

72 John Wolfenden, *Report of the Committee on Homosexual Offences and Prostitution* (London: HMSO, 1957), p 80.

73 Alberto Moravia, *The Woman of Rome*, trans Lydia Holland (New York: Manor Books, 1974), p 88.

being bought because money fixes her status as one who is for sex, not just woman but essence of woman or double-woman. The professional prostitute is distinguished from other women not in kind but by degree. 'There are certainly no women absolutely devoid of the prostitute instinct to covet being sexually excited by any stranger',⁷⁴ writes Weininger, emphasising both pleasure and vanity. 'If a woman hasn't got a tiny streak of a harlot in her', writes DH Lawrence, 'she's a dry stick as a rule'.⁷⁵ The tininess of Lawrence's 'streak' should not be misunderstood: 'really, most wives sold themselves, in the past, and plenty of harlots gave themselves, when they felt like it, for nothing.'⁷⁶ The 'tiny streak' is her sexual nature: without a streak of whore, 'she's a dry stick as a rule.'

There is a right-wing ideology and a left-wing ideology. The right-wing ideology claims that the division of mother and whore is phenomenologically real. The virgin is the potential mother. The left-wing ideology claims that sexual freedom is in the unrestrained use of women, the use of women as a collective natural resource, not privatised, not owned by one man but instead used by many. The metaphysics is the same on the left and on the right: the sexuality of the woman actualised is the sexuality of the whore; desire on her part is the slut's lust; once sexually available, it does not matter how she is used, why, by whom, by how many, or how often. Her sexual will can exist only as a will to be used. Whatever happens to her, it is all the same. If she loathes it, it is not wrong, she is.

Within this system, the only choice for the woman has been to embrace herself as whore, as sexual wanton or sexual commodity within phallic boundaries, or to disavow desire, disavow her body. The most cynical use of women has been on the left – cynical because the word 'freedom' is used to capture the loyalties of women who want, more than anything, to be free and who are then valued and used as left-wing whores: collectivised cunts. The most cynical use of women has been on the right – cynical because the word good is used to capture the loyalties of women who want, more than anything, to be good and who are then valued and used as right-wing whores: wives, the whores who breed. As Kate Millett writes: '... the great mass of women throughout history have been confined to the cultural level of animal life in providing the male with sexual outlet and exercising the animal functions of reproduction and care of the young.'⁷⁷

Men of the right and men of the left have an undying allegiance to prostitution as such, regardless of their theoretical relationship to marriage. The left sees the prostitute as the free, public woman of sex, exciting because she flaunts it, because of her brazen availability. The right sees in the prostitute the power of the bad woman of sex, the male's use of her being his dirty little secret. The old pornography industry was a right-wing industry: secret money, secret sin, secret sex, secret promiscuity, secret buying and selling of women, secret profit, secret pleasure not only from sex but also from the buying and selling. The new pornography industry is a left-wing industry: promoted especially by the boys of the 1960s as simple pleasure, lusty fun, public sex, the whore brought out of the bourgeois (*sic*) home into the streets for the democratic consumption of all men; her freedom, her free sexuality, is as his whore – and she likes it. It is her political

74 Otto Weininger, *Sex and Character* (New York: GP Putman's Sons, 1975), p 219.

75 DH Lawrence, *Sex, Literature and Censorship*, ed Harry T Moore (New York: Twayne Publishers, 1953), p 69.

76 *Ibid.*

77 Kate Millett, *Sexual Politics* (New York: Avon Books, 1971), p 119.

will as well as her sexual will; it is liberation. The dirty little secret of the left-wing pornography industry is not sex but commerce.

The new pornography industry is held, by leftist males, to be inherently radical. Sex is claimed by the left as a leftist phenomenon; the trade in women is most of sex. The politics of liberation are claimed as indigenous to the left by the left; central to the politics of liberation is the mass-marketing of material that depicts women being used as whores. The pimps of pornography are hailed by leftists as saviours and savants. Larry Flynt has been proclaimed a saviour of the counter-culture, a working-class hero, and even, in a full-page advertisement in the *New York Times* signed by distinguished leftist literati, an 'American Dissident' persecuted as Soviet dissidents are. Hugh Hefner is viewed as a pioneer of sexual freedom who showed, in the words of columnist Max Lerner, 'how the legislating of sexuality could be fought, how the absurd anti-play and anti-pleasure ethic could be turned into a stylish hedonism and a lifeway which includes play and playfulness along with work'.⁷⁸ Lerner also credits Hefner with being a precursor of the women's movement.

On the left, the sexually liberated woman is the woman of pornography. Free male sexuality wants, has a right to, produces, and consumes pornography because pornography is pleasure. Leftist sensibility promotes and protects pornography because pornography is freedom. The pornography glut is bread and roses for the masses. Freedom is the mass-marketing of woman as whore. Free sexuality for the woman is in being massively consumed, denied an individual nature, denied any sexual sensibility other than that which serves the male. Capitalism is not wicked or cruel when the commodity is the whore. Profit is not wicked or cruel when the alienated worker is a female piece of meat. Corporate bloodsucking is not wicked or cruel when the corporations in question organised crime syndicates selling cunt. Racism is not wicked or cruel when the black cunt or yellow cunt or red cunt or Hispanic cunt or Jewish cunt has her legs splayed for any man's pleasure. Poverty is not wicked or cruel when it is the poverty of dispossessed women who have only themselves to sell. Violence by the powerful against the powerless is not wicked or cruel when it is called sex. Slavery is not wicked or cruel when it is sexual slavery; torture is not wicked or cruel when the tormented are women, whores, cunts. The new pornography is left-wing; and the new pornography is a vast graveyard where the left has gone to die. The left cannot have its whores and its politics too ...⁷⁹

... In the system of male sexual domination explicated in pornography, there is no way out, no redemption: not through desire, not through reproduction. The woman's sex is appropriated, her body is possessed, she is used and she is despised: the pornography does it and the pornography proves it. The power of men in pornography is imperial power, the power of the sovereigns who are cruel and arrogant, who keep taking and conquering for the pleasure of power and the power of pleasure. Women are the land, as Marcuse wrote. He did not write the rest: men are the army; penises and their symbolic representations are the weapons; terror is the means; violence is the so-called sex. And inside this system, women are porn, in our real live bodies the graphic depictions of whores, used as whores are used, valued as whores are valued.

78 Max Lerner, 'Playboy: An American Revolution of Morality' (1979) *New York Post*, 10 January.

79 Andrea Dworkin, *Pornography*, *op cit*, pp 203–09.

... We will know that we are free when the pornography no longer exists. As long as it does exist, we must understand that we are the women in it: used by the same power, subject to the same valuation, as the vile whores who beg for more. The boys are betting on our compliance, our ignorance, our fear. We have always refused to face the worst that men have done to us. The boys count on it. The boys are betting that we cannot face the horror of their sexual system and survive. The boys are betting that their depictions of us as whores will beat us down and stop our hearts. The boys are betting that their penises and fists and knives and fucks and rapes will turn us into what they say we are – the compliant women of sex, the voracious cunts of pornography, the masochistic sluts who resist because we really want more. All the boys are betting. The boys are wrong.⁸⁰

FRANCIS BIDDLE'S SISTER: PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH⁸¹

Catharine MacKinnon⁸²

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. I will briefly contrast that with the obscenity approach, the closest this government has come to addressing pornography. Next I will outline an argument for the constitutionality of the ordinance Andrea Dworkin and I conceived, in which we define pornography as a civil rights violation. Here I will address what pornography does as a practice of sex discrimination, and the vision of the First Amendment with which our law is consistent. Evidence, much of it drawn from hearings on the ordinance in Minneapolis, supports this argument. The Supreme Court has never considered this legal injury before, nor the factual support we bring to it. They have allowed the recognition of similar injuries to other people, consistent with their interpretation of the First Amendment. More drastic steps have been taken on a showing of a great deal less harm, and the courts have allowed it. The question is: will they do it for women? ...⁸³

... My formal agenda has three parts. The first treats pornography by connecting epistemology – which I understand to be about theories of knowing – with politics – which I will take to be about theories of power. For instance, Justice Stewart said of obscenity, 'I know it when I see it'.⁸⁴ I see this as a statement connecting epistemology – what he knows through his way of knowing, in this case, seeing – with the fact that his seeing determines what obscenity is in terms of what he sees it to be, because of his position of power. To wonder if he and I know the same things from what we see, given what's on the newsstand, is not a personal query about him.

Another example of the same conceptual connection is this. Having power means, among other things, that when someone says, 'This is how it is' it is taken as being that way. When this happens in law, such a person is accorded what is

80 *Pornography*, p 224.

81 *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, 1987). Footnotes edited.

82 At the time of writing, Professor of Law, University of Michigan.

83 *Francis Biddle's Sister*, p 163.

84 *Jacobellis v Ohio* 378 US 184 at 197 (1964).

called credibility. When that person is believed over another speaker, what was said becomes proof. Speaking socially, the beliefs of the powerful become proof, in part because the world actually arranges itself to affirm what the powerful want to see. If you perceive this as a process, you might call it force, or at least pressure or socialisation or what money can buy. If it is imperceptible as a process, you may consider it voluntary or consensual or free will or human nature, or just the way things are. Beneath this, though, the world is not entirely the way the powerful say it is or want to believe it is. If it appears to be, it is because power constructs the appearance of reality by silencing the voices of the powerless, by excluding them from access to authoritative discourse. Powerlessness means that when you say 'this is how it is', it is not taken as being that way. This makes articulating silence, perceiving the presence of absence, believing those who have been socially stripped of credibility, critically contextualising what passes for simple fact, necessary to the epistemology of a politics of the powerless.

My second thematic concern is jurisprudential. It is directed toward identifying, in order to change, one dimension of liberalism as it is embodied in law: the definition of justice as neutrality between abstract categories. The liberal view is that abstract categories – like speech or equality – define systems. Every time you strengthen free speech in one place, you strengthen it everywhere. Strengthening the free speech of the Klan strengthens the free speech of blacks. Getting things for men strengthens equality for women. Getting men access to women's schools strengthens women's access to education. What I will be exploring is the way in which substantive systems, made up of real people with social labels attached, are also systems. You can reverse racism abstractly, but white supremacy is unfudgeably substantive. Sexism can be an equal abstraction, but male supremacy says who is where. Substantive systems like white supremacy do substantively different things to people of colour than they do to white people. To say they are also systems is to say that every time you score one for white supremacy in one place, it is strengthened every place else. In this view, the problem with neutrality as the definition of principle in constitutional adjudications is that it equates substantive powerlessness with substantive power and calls treating these the same, 'equality.' The neutrality approach understands that abstract systems are systems, but it seems not to understand that substantive systems are also systems ...⁸⁵

... The *Lochner* line of cases⁸⁶ created concern about the evils of their substance, which, as women were erased, came to stand for the evils of substantivity as such. There has been correspondingly little discussion, with the partial exception of the debate on affirmative action,⁸⁷ on the drawbacks of abstraction as such. Granted, trying to do anything on a substantive basis is a real problem in a legal system that immediately turns everything into an abstraction. I do hope to identify this as something of a syndrome, as a risk of abuse. Considering it the definition of principle itself ensures that nothing will ever basically change, at least not by law.

85 *Francis Biddle's Sister*, p 164.

86 See *Lochner v New York* 198 US 45 (1905); *Allgeyer v Louisiana* 165 US 578 (1897) (invalidating maximum hours restrictions on the ground of liberty to freely contract).

87 See eg *Regents of the University of California v Bakke* 438 US 265 (1978); John Ely, *Democracy and Distrust: A Theory of Judicial Review* (1981), pp 54–55. But see Laurence Tribe, 'Speech as Power: Swastikas, Spending, and the Mask of Neutral Principles', in *Constitutional Choices* (1985).