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## The Reasoning Game: Some Pragmatic Suggestions

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# Pornographies\*

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## I. PARADIGMS OF PORNOGRAPHY

TO be radical about pornography used to mean that one favored less censorship; now it often means that one favors more. That political change reflects a shift in the dominant paradigm of pornography and its putative evils. Until quite recently, most people who believed pornography wrong thought that it offended against decency and propriety and was therefore *obscene*. That was certainly the view of the law. English judges first created the crime of obscene libel in 1727 on the basis that such expression tended to corrupt the morals of the King's subjects,<sup>1</sup> a thought that inspired most subsequent legislation in the common-law world. Sometimes the underlying concern really was paternalistic: pornography degrades and corrupts its producers and consumers; the law forces them to become better people. More often, however, it was just moralism of the familiar sorts: the view that a majority of a community is entitled to enforce its moral views on the rest, either because that is democratic or because that is just what it means to be a community. The obscenity paradigm thus had two features. First, it was illiberal: it ranked personal autonomy below realizing the good,

enforcing the majority will, or embodying communitarian values. Second, it was gender neutral: to understand the nature of pornography did not require theorizing relations between men and women. On the obscenity paradigm, pornography was a matter of virtue versus vice, majorities versus minorities.

The new paradigm is importantly different, for now the antagonists are understood to be men versus women. First, the kind of moral concern pornography raises is no longer thought to be a matter of decency or propriety, and the injury it does is neither personal nor social corruption. Pornography, as the subtitle of Andrea Dworkin's book puts it, is about men possessing women."<sup>2</sup> In the words of Catharine MacKinnon and Andrea Dworkin's model legislation, it is the graphic sexually explicit subordination of women in pictures and/or words."<sup>3</sup> Thus, pornography is understood to be *harmful* to women, and public policy in this area is a special case of fulfilling the duty to prevent harm. How is pornography harmful? First, it desensitizes men and incites them to rape, abuse and discriminate against women. It may also encourage some women to internalize men's view of them as sexual objects open to such abuse. Those are its contingent causal effects. But it also harms in a second way, by legitimating and even constituting certain practices of sex discrimination: on this view, pornography simply is the subordination and silencing of women.<sup>4</sup>

The new paradigm consorts easily with liberal values, and one should not be misled by the fact that its most articulate defenders are feminists who say

they reject liberalism, nor by the fact that many self-styled liberals reject the restrictions on freedom of expression that these feminists endorse. Its liberal credentials are signaled not merely by the fact that it endorses personal autonomy, but by its settled preference for autonomy over decency, democracy or community. It does, however, insist that autonomy must be made real and that it must be for all. The free speech of men silences the free speech of women," says MacKinnon, It is the same social goal, just other *people*."<sup>5</sup> That the liberty of some may be restricted to promote a greater liberty of all is not in itself a radical thought. What is new and challenging is rather the claim that that is what censorship actually does.

Not only does the new paradigm offer a recognizably liberal argument, it also offers a moral argument about pornography, for it endorses (or is at least consistent with) the familiar harm principle. Indeed, since J.S. Mill claimed that the sole valid reason for exercising coercive power over rational adults is to prevent harm to others, this has been a centerpiece of liberal political morality.<sup>6</sup> So one should not be misled by the fact that many feminists would also say, with MacKinnon, that pornography is not a moral issue."<sup>7</sup> They only mean that we should not restrict pornography in order to enforce conventional morality, while conceding that if that *were* the aim, then we should favor freedom of expression instead. They also believe, however, that conceptual and empirical considerations show that pornography is extremely harmful, at least to women, and thus belongs with other categories of expression that are properly subject to restriction. That explains why, as I said at the outset,

the old radicalism of opposing censorship has been replaced by a new radicalism favoring it.

The paradigm shift has not, of course, been complete in either theory or practice. Among philosophers, there is still considerable debate about how best to understand the concept of harm" for these purposes. There is no argument about things like being raped, beaten, enslaved or discriminated against. The worries surround the ideas of being subordinated" or silenced," notions which can slide into *feeling* subordinated or *feeling* silenced, which are in turn inextricably bound up with feeling put upon, outraged or offended, at which point we may approach moralism of the old sort. So there is a theoretical dispute about exactly how the old and new paradigms are to be distinguished, and a good deal of polemic on the part of anti-censorship writers trying to push pro-censorship writers back into the obscenity model together, it must be said, with a certain amount of unprovoked backsliding on the part of the pro-censorship forces themselves.

At the level of practice things are even more ambiguous. We can develop our theories afresh but we must often reform our institutions piecemeal, especially when that reform is undertaken by judges. For example, the Supreme Court of Canada, in a judgment much admired by supporters of the new paradigm, tried to fashion the silk purse of harm-prevention out of the sow's ear of moralism. In *R. v. Butler*, the Court recycled the obscenity prohibitions of the Criminal Code, holding that material is obscene not because it offends against morals, but because it is perceived by public opinion to be harmful to society, particularly to

women."<sup>8</sup> On that basis it upheld criminal obscenity laws against a challenge based on freedom of expression. However, it seems that the Court did not fully understand the distinction it adopted. For the new paradigm prohibits things that are *in fact* harmful, not things that are perceived by public opinion" to be harmful. Unwilling, or perhaps unable,<sup>9</sup> to let go fully of moralism, the Court found the things perceived harmful to be those very things held repugnant by present conventional morality; it said that pornography is second-class expression because "It appeals only to the most base aspect of individual fulfillment";<sup>10</sup> and it announced that "the notions of moral corruption and harm to society are not distinct . . . but are inextricably linked. It is moral corruption of a certain kind which leads to the detrimental effect on society."<sup>11</sup> I am sure that Canadians have only begun to reap the fruits of this confusion.

In such tentative and disordered ways the new paradigm displaces the old; but displace it it does. It is not that we are now agreed about what to do: we disagree strenuously about the significance of pornography, about what harm it causes, about the risks of limiting free expression, and about matters of institutional design. The point is rather that these disagreements are increasingly framed by the assumptions that freedom of expression must not be limited unless harm can be shown, and that no such analysis can ignore the context of gender relations.

## II. GAY PORNOGRAPHY AND THE NEW PARADIGM

As new paradigms do, however, this one gives rise to new controversies, one of the most interesting of which involves sexual orientation. If pornography is about men harming women, how should we understand gay male pornography? It

poses no special problem for the old paradigm: gay pornography is as obscene as straight pornography, maybe more obscene. (It certainly attracted more than its proportionate share of prosecutions.) But how are we to bring it within the new paradigm?

Most feminist discussions proceed on the basis that pornography is heterosexual in its nature and audience. Is this innocuous? One cannot write about everything and maybe it is just as well if philosophers avoid subjects where their factual knowledge is modest or their empathy slight. Nevertheless, there may be risks here. I must content myself with one example. In a helpful and lucid paper, Rae Langton defends the new paradigm by explaining how pornography may literally subordinate or silence women. Her main idea is that pornographic utterances have something in common with the performatives" of speech-act theory: they may authoritatively establish which moves in the sexual game are legitimate."<sup>12</sup> Pornography is thus like a biased umpire in a game among players of vastly unequal power. She thinks that liberal debate" operates on the frail assumption that pornographic utterances are made by a powerless minority, a fringe group especially vulnerable to moralistic persecution," whereas in reality pornography's voice is the voice of the ruling power."<sup>13</sup>

Langton's heterosexual presumption is fundamental to her polemical project: she is trying to make analytical sense out of, and answer criticism of, some central texts of radical feminism, a theory whose center of gravity is the critique of *sexism* and whose attitude towards the critique of *heterosexism* is often coy and sometimes hostile.<sup>14</sup> But what happens if we release our thinking from that

harness? Will it then remain plausible to speak of the language game of sex"? What answer will we give to the question of whether pornography is the voice of the ruling power"? Will it still seem foolish to think that pornography is produced by fringe group[s] especially liable to moralistic persecution"? Without the heterosexual presumption, these questions may all take new answers. Perhaps, then, silence about sexual orientation is not so benign after all. Perhaps if we theorize about pornography as if its heterosexual variant were the only case, the paradigm case, or even just the most interesting case, we will miss things that are important for both theory and practice.

So the first problem is one of scope: the new paradigm may only apply to some pornography. This leads to a second problem. When the new paradigm is used to recommend censorship, it is on the basis that this will promote the autonomy and equal citizenship of women. However, generic restrictions on pornography, applied without regard to sexual orientation, may offend the underlying ideals. Representations of minority sexualities are not a staple of public discourse, advertising campaigns, schoolbooks, television, etc. As Eve Sedgwick remarks, advice on how to help your kids turn out gay, not to mention your students, your parishioners, your therapy clients, or your military subordinates, is less ubiquitous than you might think."<sup>15</sup> Our public culture in fact presents a heterosexual uniformity that is quite astonishing when compared with the diverse realities of our lives. So gay people largely make their own way, their existence and needs acknowledged only in the margins of popular and high culture. This has a consequence: if there are significant differences among different

sexualities-different social meanings, different structures of power, different possibilities for change-then uniform regulations governing something called "pornography" are liable to have different effects on different groups. When books, magazines, art, theatre, films and videos fall under the ban of the censor or the chill of lawsuits, it is almost certain that the burden will fall more heavily on sexual minorities than on the majority. Heterosexuality does not become invisible when the censor cuts. Thus, before we help ourselves to attitudes towards, and then prescriptions regarding, "pornography" we had better consider whether these differences are indeed significant.

Here, I offer some reasons for thinking that the differences are real and crucial. I defend three claims. First, the meanings of gay pornography cannot be reduced to the heterosexual variant, so the new paradigm has no direct application here. Second, there is no evidence that gay pornography harms men in the way that heterosexual pornography is alleged to harm women, and some reason to suspect that it does not do so. Finally, and more speculatively, I suggest that some features of gay male pornography, in particular its capacity to objectify people, are not necessarily harmful and may even be beneficial in the gay male context. I conclude with some suggestions about what all this might mean for our understanding of pornography in general, and for the sorts of policies we ought to endorse.

Occasionally, proponents of the new paradigm do discuss gay male pornography, in an attempt to assimilate it to their model. Most philosophically interesting is the claim that gay pornography *does* in fact harm women and is therefore not

fundamentally different from heterosexual pornography. This conclusion is reached, not by positing an unusual causal path from the effects of pornography on its gay consumers to its results for women, but rather by offering a particular view of what it is to count as a woman." To be sure, other claims and attitudes also seem to play a role in the theory. Let us here notice but set aside the panicky homophobia to which even radical feminists may fall prey. Andrea Dworkin for instance says that: Male homosexuals, especially in the arts and in fashion, conspire with male heterosexuals to enforce the male-supremacist rule that the female must be that made thing against which the male acts to experience himself as male."<sup>16</sup> Thus we have a world homosexual conspiracy allied with the heterosexuals-Tchaikovsky with Wagner, Michelangelo with Rubens, Proust with Lawrence, Isaac Mizrahi with Ralph Lauren-all shoulder to shoulder, or penis to penis, in league against women. Traditionally the last to be chosen for every team, gay men are now promoted to first string without any try-outs. But the stereotyped association of male homosexuals" and arts and fashion" and the suspicions of conspiracy are not secure foundations for a serious social theory. That gay men are men, that they can be misogynists and that they enjoy some of the benefits of male privilege are all both true and significant. But those facts are as true of gay truck-drivers, lawyers, baseball players and university professors as they are of film makers, fashion designers and interior decorators. And what we need to show here is that *gay male pornography* causes or contributes to the vices that gay men can share with other men. Overt hostility to those in stereotypically gay professions does not, as far as I can see, advance this case.

### III. REDUCTIVISM

#### A. THE HONORARY WOMEN THESIS

Here is a better start. Dworkin also says, "The feminine or reference to women in male homosexual pornography clarify for the male that the significance of the penis cannot be compromised . . . In pornography, the homosexual male, like the heterosexual male, is encouraged to experience and enjoy his sexual superiority over women."<sup>17</sup> This might strike the casual reader as a misprint, or as post-modernism *avant la lettre*-there generally *are* no women in gay male pornography, for the unprofound reason that gay men rarely find women sexually arousing. How then are we to make sense of the claim that such pornography nonetheless contains the feminine" or makes reference" to women thereby clarifying"-in case there were any doubt-the significance of the penis in gay male sexuality?

Perhaps the argument might be completed this way.<sup>18</sup> Even if there are no *females* in the text or images, there is always someone who plays the role that patriarchal sexuality assigns to *women*, the role of receptivity, passivity, subordination, etc. If one thought that in most homosexual acts one partner is

being the man" and that another is being the woman," then we could have representations that, in a sense, make reference to women. And since the general dominance-based account of pornography already has a story (indeed, a number of stories) about how women in pornography are dominated in pornography, and about how women's domination in pornography causes and constitutes women's domination in the world, we have most of what we need for an account

of how a female-less pornography nonetheless literally harms women. We can have women without having any females. Thus, we reduce what initially seems like an exceptional case to the standard case. In MacKinnon and Dworkin's model anti-pornography ordinance we find this definition, Pornography shall mean the graphic sexually explicit subordination of women . . . The use of men, children or transsexuals in the place of women . . . shall also constitute pornography under this section."<sup>19</sup> Now, this is a piece of proposed legislation, not political theory; but we can see how it might draw inspiration from, and in any case promote, the theory just sketched. The thought that men may, in a certain way, take the place of women" in pornography I shall call the Honorary Women Thesis.

As reconstructed, however, the Honorary Women Thesis is open to objection. For the thesis reduces homosexual acts to *ersatz* heterosexual acts by projecting onto those acts meanings, conventions and distinctions that are indeterminate, unstable, and parochial. Consider, for instance, the distinction between active" and passive" often used to distinguish masculine and feminine roles in sex. That this distinction is often indeterminate is evident if we consider, say, an image of two people kissing or engaging in mutual masturbation. Is there a plausible way to classify one of them as active and the other passive? Is there in fellatio? It is only when we can map the distinction onto some conventional view about appropriate gender roles that we say which is which. But in many cases we simply cannot.<sup>20</sup> The distinction is also unstable. There is often no guarantee as to who will end up doing what to whom: a penetrator in one scene may end

up being penetrated in another. This is not to deny that some gay men, including some gay male pornography stars, experience role stability in some of their sexual interests. The point is that this is not, over the entire repertoire of familiar sexual acts, sufficiently common to support a reductivist interpretation about the categories into which the persons fall.

Finally, and most important, the distinction is parochial. The meanings that heterosexual cultures assign to particular gay male sex acts may not be the meanings that gay subcultures assign to them. For a pornographic text or image to bear the meaning, for example, "Women may be subordinated," in a way that causes harm, the audience must take it to mean that. It is through attitudinal change in its consumers that pornography is said to do its harm. Thus, we need to show, not merely that there is a *possible* gendered reading of the pornographic text or image, but that that is the normally recognized *conventional* reading among its audience. Straight men, it is true, sometimes imagine that it is less gay" to be felled than to perform fellatio, and that tells us something important about the meanings that *they* assign to sex acts. But straight men are not the standard audience for gay pornography. Consumers of gay pornography normally do not and certainly need not interpret their own sexuality through that lens. The parochialism of these distinctions needs to be understood in light of audience segregation. Gay consumers of pornography normally consume gay male pornography when it is available, and heterosexual men appear not to have any significant erotic interest in gay male pornography.<sup>21</sup> So even if some people would be inclined to construe some men performing some acts as taking the place of

women," they are likely to be a minority of the audience for gay male pornography, and their tastes and interests are unlikely to be catered to by its producers.

Perhaps some of these objections can be met if we construe the thesis more abstractly. One might say that it is not the projection of gendered meanings onto body parts, acts, etc. that recapitulates the dominance of men over women, but rather the objectifying sexual attention *itself*. It may not matter that gay men do not see other gay men playing the woman" or that they shift in and out of gendered sexual roles. It may be enough that gay male pornography, like other pornographies, makes images of bodies available to the gaze for sexualized consumption, and that to be the object to another's subject is in itself to be feminized. Thus, not merely passive or receptive males, but *anyone* in the objectified mode, even the so-called "active" partner, is in that way an honorary woman, for he functions in the system of sexualized power in just the way that women function, and thus pornography remains the graphic sexually explicit subordination of women.

I reserve for Section 5 below discussion of "objectification" in its own right. Here I wish to focus only on the link between objectification and feminization, the idea that the objectified are somehow turned into women. The argument begins on the solid footing that gender is a social construction. As de Beauvoir rightly said, one is not born a woman. Rather, this is an identity constituted by a variable set of roles, meanings and expectations that are matters of human thought and practice. The most challenging varieties of contemporary feminism add another feature. A gendered position is not just a matter of social differences

projected onto anatomical differences, but it is also a matter of social domination, of the unjust disadvantage that those with female bodies experience as a result of the gender system. Let us assume that to be right. Does it follow, then, that anyone who is dominated in or through sex takes the place of a woman? It does not. For gender is not the only asymmetrically constructed social difference; the same is true of race and class and, in some societies, sexual orientation. To establish that convention or practice constructs an asymmetrical ranking of social positions, for instance objectifier and objectified, is not sufficient to show that the positions thus constructed are gendered ones. Being in a position of dominance is at best one necessary feature of the social construction "man." To count as a man one must not only have this (and other) social features, one must also have, pretend to have, or be taken to have certain *biological* features. In particular, one must have (or pretend etc. to have) enough of the anatomical features of the male *sex*.<sup>22</sup> The gender distinction is, among other things, a set of dominance relations projected onto (presumed) anatomical differences. Without the latter we may still have some sort of class-ordered relations, but we do not have gender. For that reason, the objectifying gaze in gay male pornography does not suffice to produce social women. To turn men into women the gaze would need to be a good deal more powerful than it in fact is.

## B. THE AFFIRMING EXCEPTION THESIS

The Honorary Women Thesis rests, then, on an over-simple view about the social construction of gender, and it fails to notice the importance of audience

segregation in pornography. But there may be forms of reductivism that do not fall into either trap. Consider what I shall call the Affirming Exception Thesis. This acknowledges that gay men are not in any relevant sense women, but maintains that the character of the sex acts depicted nonetheless supports heterosexual norms and in that way leads to harm to actual women. Here is MacKinnon's version:

The capacity of gender reversals (dominatrix) and inversions (homosexuality) to stimulate sexual excitement is derived precisely from their mimicry or parody or negation or reversal of the standard arrangement. This affirms rather than undermines or qualifies the standard sexual arrangement as the standard sexual arrangement.....<sup>23</sup>

The idea that homosexuality is in some way a gender inversion" is a bit quaint, but let this pass. What I want to pursue is the independent suggestion that mimicking, parodying, negating or reversing the standard" arrangement somehow affirms it.

Mimicry might be said to affirm a standard by copying it when one might have changed it; but the failure of the Honorary Women Thesis shows that gay sex is not normally a mimicry of straight sex. What then about parody, negation and reversal? Surely they function not as instances of the rule, but as exceptions to it. Does breaking a rule in some way affirm that rule? The claim that variations from a norm ratify that norm is true only if the variations are also seen as *deviations*, are criticized as such, and if the criticism is regarded as legitimate.<sup>24</sup> In that case, however, it is not the variations, but the critical reactions to them

that affirm the norm.

It is doubtless true that many critical reactions to gay pornography affirm sexist and heterosexist norms. To say that these representations are unnatural, sick, weird, disgusting, etc. is to endorse heterosexism. To say that they are degrading because they show men allowing themselves to be treated like women is also to affirm sexism. These repugnant, common attitudes are here irrelevant however, for even in its rare moments of ironic detachment, gay pornography does *not* stand as a critical commentary on the acts it displays and it does not elicit these or similar critical reactions from its normal audience. To the extent that gay pornography expresses any evaluative attitude at all towards its content, it is surely that of tolerating or endorsing it and thus of supporting a different norm.

If we reject those forms of reductivism, what then remains of the claim that gay pornography actually harms women? Perhaps it ultimately rests on the unacknowledged belief that male homosexuality *itself* harms women, together with the obvious truth that gay pornography affirms homosexuality. The thought that male homosexuality harms women is of surprisingly long pedigree: in 1785 Jeremy Bentham took it to be one of the main arguments he had to refute in defending gay people from persecution.<sup>25</sup> Two centuries later the argument persists, though in a modified form. No longer is the worry that male homosexuality robs women of husbands and children, now it is enough that it celebrates maleness, something not thought to promote gender equity.<sup>26</sup> As MacKinnon puts it, To the extent that gay men choose

men because they are men, the meaning of masculinity is affirmed as well as undermined."<sup>27</sup>

Let us explore this idea further, for I think that it motivates many of the familiar feminist reductionisms. There are two difficulties with the claim as it stands. First, gay men do not normally focus their love interests in all men but only in other *gay* men, who are not in fact icons of cultural masculinity. (Indeed, to the extent that masculinity-affirmation is done by love-interests at all, it is less the work of gay men than of heterosexual women, who usually fall in love with heterosexual men.) Second, it is odd to suppose that gay male desire is masculinity-affirming just because the love-*object* is male, for the object is loved by a male subject, and on conventional gender stereotyping that taints the masculinity of both. It is true that MacKinnon's comment allows that gay men both affirm and undermine masculinity in choosing men. But surely if something *both* affirms *and* undermines a certain meaning, the net effect may nonetheless be undermining if the aspects in which it undermines are more numerous, significant or weighty than those in which it affirms. Consider, for example, race-sensitive anti-discrimination laws. It is possible that in just naming and referring to races such legislation affirms what we should be concerned to deny: that racial kinds are a proper way to classify people. One might say on that basis that anti-discrimination laws partly serve to affirm racism. Nonetheless, such legislation simultaneously undermines-or at any rate tries to undermine-some of the more serious social consequences of racial classification. And if race came to have fewer

significant consequences, we might hope that racial classifications would become less salient and, perhaps, ultimately irrelevant. At the distant, utopian, end of this process, we might even hope for a world without a concept of race. Why should something analogous not be true about the current meanings of masculinity? Why must the male-centredness of gay male sexuality be *predominantly* masculinity-affirming?

Perhaps this ignores an important part of the thesis, however, for MacKinnon's complaint is that gay men choose men *because they are men*. I take this to mean that there is something at least *prima facie* undesirable about choosing men as love objects, because of certain things that any such choice must express or celebrate. But what does it mean to choose a man "because" he is a man? This is certainly not an empty idea, for a man might choose male sexual partners for other reasons: for example, because they are the only ones available, as in boarding schools, prisons or the navy. Perhaps the thought is this.<sup>28</sup> On a dominance view of gender, the class of men is in majority a class of those who oppress women. So gay men, in being attracted to members of that class, may be attracted to them in virtue of the oppressor-making characteristics or correlates of that class: they may seek lovers who are aggressive, domineering, self-centered, macho, and so forth. More generally, if the category "man" picks out a gender that is defined partly in virtue of its dominant social position, then it would be easy to think that if one loves men, one must love dominators. This is an ugly thought-though there are no doubt some gay men (and some heterosexual women) who do find these

traits attractive. But it is in any case mistaken. The context is an opaque one, so to say that Alex loves Abe, who *in fact* occupies the social role "man," does not entail that Alex loves Abe *in virtue of* this one of Abe's man-making features. He may love him in virtue of more benign man-making features, such as his courage. Or such social attributes of conventional masculinity may be wholly irrelevant to Alex—he may be attracted to Abe's unconventional masculinity, or to Abe's embodied maleness, without regard to the rest of his gender traits.

Even if dominance is a necessary feature of the social position "man," it is not sufficient; we also need to take into account the (real, pretended or perceived) anatomical features of the male sex. Homosexual desire, like any other, is individuated by its *object*, and here we need the familiar distinction between sex and gender. Homosexual desire in its standard forms is an attraction to people of the *same sex* as oneself, that is, to those with a similar sexual embodiment. The extent to which it is also an eroticized response to conventional masculine (or, in the case of lesbian, feminine) cultural or psychological traits is highly variable. I am not denying that there may be people whose sexuality is oriented to the social gender of the partner rather than to his anatomical sex. For instance, there probably are some men who are sexually enthusiastic about, but broadly indifferent among, any of the following set of people: feminine straight women, femme dykes, straight male cross-dressers, gay drag queens, and effeminate gay men. Such men are aroused by the feminine, but not necessarily by females. Does that make them heterosexual? For some reason, I find it hard to think of a man who chases cross-dressers and drag

queens as straight (unless he is very shortsighted).

Sexual orientation is in fact about sex, not gender, and to be attracted to men because they are male is what it is for men to be homosexual. In a context where being male is an adequate guarantee of social masculinity the two will obviously overlap; they may even have identical extensions. In the *Symposium*, Aristophanes calls homosexual boys, the most manly in their nature," because they are chips off the original all-male block.<sup>29</sup> But in homophobic societies gay men are unlikely to be seen as the most manly of men, and choosing one as a lover is not in fact the most masculinity-affirming thing that a guy might do-and Aristophanes, that notorious joker, knows it.

The reductionisms of the Honorary Women Thesis and the Affirming Exception Thesis are made at all plausible only by indulging a familiar laxity about the concepts of sex and gender. This may reveal a mistaken theoretical view of the concept "sex" (that it is equivalent to our concept "gender") or it may just be an embarrassed euphemism. It may also be symptomatic of a deep-seated *dislike* of sexual orientations. John Stoltenberg is open about this. He writes: "To be 'oriented' toward a particular sex as the object of one's sexual expressivity means, in effect, having a sexuality that is like target practice-keeping it aimed at bodies who display a particular sexual definition above all else . . ." which, he thinks, is just another form of sex discrimination in the service of the status quo and thus to be resisted.<sup>30</sup> However, for most people sexual orientation is *nothing like* target practice-it requires neither skill, effort, nor repetition. Stoltenberg is here misled by his thought that sexual orientation is a

matter of keeping aimed" at bodies who display a particular sexual definition *above all else*. This is doubly misleading. First, one does not normally need to *try* to keep from drifting into an interest in sexes that are discordant with one's orientation. It just comes naturally, so to speak. Second, even when the sex of one's partner is a necessary condition for one's attraction and arousal, it is normally neither a sufficient nor a uniquely necessary condition-it might not even be among the most significant of the set of jointly necessary conditions. While gay men are indeed sexually attracted to other males, they are not typically attracted to all and any men. There is nothing odd about having other highly desirable or even necessary conditions in a boyfriend, for instance that he be intelligent, handsome, kind or honest.

Stoltenberg's wish that sexual orientation itself would go vanish so as to promote gender equality has certain affinities with the reductivist thesis. If there were no sexual orientations then how could gay male pornography *fail* to be just plain pornography? I am uncertain whether a world beyond sexual orientation, a world in which the sexed character of another's body would be beneath erotic notice, would be a better or more equitable world than our own. But it would not be our world, and possibly not even a world accessible from this one.

There is here an analogy with the old and dubious idea that androgyny might cure sexism. Of course, universal *bisexuality* would not itself change anything, since that too is a form of attraction oriented by sex, though it includes both homosexual and heterosexual responses. What Stoltenberg needs is a state of affairs in which people have sex *without regard* to sex at all, in which they

eroticize only unsexed features of their partners. What would it take to transform human sexuality in this way? It is unlikely, for example, that people might fail to notice the sex of their partners. Sally Haslanger has argued that sex and some form of gender distinctions will probably always be present in human society, for there are things about others' bodies that we will not, and possibly should not, fail to notice.

[T]here are reasons why sex is more socially significant than eye-color, that aren't wholly arbitrary. I may not notice the eye-color of my sexual partner, but I'd better notice whether we are of different sexes so that I can anticipate and be prepared for the possibility of conception. And it is not obvious that our cultural narratives should ignore the fact that female embodiment and male embodiment involve different experiences.....<sup>31</sup>

None of this is to deny that sex may become extraordinarily different for any of us from what it is now and that the hazards into which it may fall might be eliminated. But sexual orientation itself will probably remain, and remain what it is now: a benign human variation.

#### IV. ANALOGOUS HARMS

There may be other ways to defend the reductionist thesis, but let us leave it behind. Gay pornography might fall within the new paradigm even if gay men are in no sense women, if they occupy no similar position, and if sexual orientation is an inevitable feature of human sexuality. For even if gay male pornography does not harm women, it may do something relevantly similar: it may cause some men to harm *other men*. It may incite them to abuse, rape or

discriminate against other men; it may subordinate and silence the victims of this abuse; it may legitimate this whole system of oppression. This, then, is a second sense in which men might be said to "take the place of women" in pornography. I need to underscore that this is not what the new paradigm itself contemplates—as I said above, it is harm to women rather than harm to people in general that it takes to be distinctive of pornographic materials. Whether pornography might also harm men has not seemed an urgent worry.<sup>32</sup> In both cases, however, the moral concerns are similar. If harm to women warrants special attention, then so surely does harm to men. But does gay male pornography harm men?

Those who are confident that there are analogous harms may motivate their hypothesis with certain general claims about the nature of male sexual desire and the way it responds to pornography. Andrea Dworkin, for instance, says that,

[M]ale sexual aggression is the unifying thematic and behavioral reality of male sexuality; it does not distinguish homosexual men from heterosexual men"<sup>33</sup>—though, she admits, an "exceptional and minuscule" minority of both gay and straight men escape it. Normal male sexuality, on this view, is aggressive; sexual orientation is only a matter of the preferred victim. Domination is just what all men enact in sex; pornography incites and legitimates it. Straight men do it to women; gay men to men.

I will not here test these undefended assertions about the essence of male sexuality. But I do want to explore the connection between them and a dominance-based theory of pornography. If both aggressor and victim are of the

same sex, there can be no sex-linked definition of a victim-class. And if that is so, there can be no gay analogue of the war of men against women-gay male sexuality would be more like the war of all against all. How then does dominance figure in the homosexual context?

When we consider the constitutive harms of pornography, the subordination and silence that it is said to express and the discrimination that results, we need to keep track of who is doing what to whom. Let us look again at the way the new paradigm analyzes the heterosexual case. It begins with the observation that women suffer abuse and discrimination at the hands of an oppressor class of men, it formulates general psychological and sociological hypotheses about what causes the oppressors' attitudes, and then it suggests ways in which pornography might contribute to attitude formation: by conditioning, legitimating, and so on. Consider now the relevant analogy. Do gay men suffer analogous harms? Can they be imputed to the acts or blameworthy omissions of an oppressor class? And what is the composition and psychological make up of *that* class?

Allowing for difficulties in applying the notion of "oppression" to men, there is nonetheless no serious doubt that, even in so-called liberal countries, gay men are now often attacked, abused, subordinated, silenced and discriminated against.<sup>34</sup> So there is one similar set of harms. Here is another: gay boys and men may also internalize the homophobic attitudes of their environment and in that way come to share the oppressors' view of them. There is, therefore, at least a *prima facie* similarity in the nature and significance of the disadvantages in question. But is this causally connected with the existence or content of gay male

pornography? That is unlikely, for there is also a profound dissimilarity here. It is not *gay* people under the spell of their pornography that bash other gays, restrict their civil liberties, censor their expression, divide their families, inhibit their marriages, and so on. Whatever role straight pornography plays in the complex causal network that keeps women in their place, gay pornography obviously plays a much different role in keeping gay people in their place, for that is by and large the work of straight people. Here, the oppressor class, if there is one, is in the wrong socio-erotic location.

This elementary fact is shockingly under-recognized. The most significant forms of abuse and subordination that gay men suffer are at the hands of heterosexual people including, especially, their parents, siblings, pastors, teachers, doctors, landlords and employers. Still, in one authoritative compendium of research on the general subject of gender violence," we find thirty-four chapters about heterosexual male violence directed against women, and *one* about violence against gay men, and that is about *partner* abuse in lesbian and gay relationships.<sup>35</sup> Gay bashing-the most overt and familiar form of violence suffered by lesbians and, especially, gay men-is, in five hundred pages of close analysis by politically engaged scholars, mentioned exactly *once*. This example may fairly stand as a paradigm for the way many writers think about the oppression of gay men. In the first place, they do not. In the second place, they imagine it taking place at the hands of other gay men. Of course, if that were the reality then there might be some reason to wonder whether the new view of pornography might apply beyond the heterosexual context. What

*makes* gay men do this to each other?" they might ask. Someone will surely answer, "Their pornography!" The reality is quite otherwise. Although partner abuse is real enough, violence that targets gay people, as well as the more routine forms of hatred, discrimination and systematic disadvantage, may generally be imputed to people who are, or purport to be, heterosexual.

Our theories about pornography should therefore show some humility (and perhaps also shame) in the face of the lack of interest, of research and, thus, of evidence about the nature and sources of the harms suffered by gay men. Note that I am not arguing that because there is no available evidence that gay pornography causes gay men to harm other gay men, it must not. I am making only two points. First, if we begin with the new paradigm's view of the harm the pornography causes women, we will find that the analogous harms suffered by gay men are not in the main caused by gay men. They are caused by heterosexual women and men whose attitudes are not significantly influenced by gay male pornography. Thus, while in the gender-dominance theory of pornography the oppressor class and the class of consumers of pornography strongly overlap, in the reality of lesbian and gay life, the oppressor class and the class of consumers of gay pornography are disjoint. Second, while not denying that gay men may sexually abuse each other and discriminate against each other, there is no adequate evidence of the role of pornography in causing or constituting this abuse.

I want to conclude these admittedly sketchy remarks about evidence with one last point. It is important to bear in mind that if our question is what attitudes to

pornography we should adopt and what policies we should enforce, then we need to think in terms of a legislative standard of proof, and not an adjudicative standard. In many political systems courts have the power to review and strike down legislation if it offends the local constitution. But there is a crucial difference between the kind and weight of evidence a *court* needs to conclude that a legislature's act may stand, and the kind of evidence a *legislature* would need to be justified in legislating. Courts with review powers should generally defer to legislators about the relevant facts, for courts lack the time, resources and expertise to inquire into them. Thus, there might be enough evidence for a court to be justified in upholding such legislation *once passed*, and yet there may not have been enough evidence to warrant passing it in the first place. (And that is why arguments about the constitutionality of restricting pornography are a poor guide to the moral and political question of whether pornography should be restricted.) Ignoring this distinction has misled many theorists and, especially, many lawyers. MacKinnon, for example, has said of the Supreme Court of Canada's reasoning in *Butler* that, "The evidence on the harm of pornography was sufficient for a law against it."<sup>36</sup> This is wrong. Even if the evidence meets the deferential standard to which the Supreme Court of Canada holds its Parliament, it does not follow that it is sufficient to justify such a law. (Nor did the Court say that it was.) It shows only that it was held sufficient for such a law to be constitutional, that is, within the legal powers of the government. Whether criminalizing pornography is also a wise or just exercise of those powers is another question entirely. If we bring this distinction to bear on the possible harmfulness of gay pornography to gay men, I believe that

we will find that the evidence meets neither the legislative nor the adjudicative standard.<sup>37</sup> Compared to what is actually known about the harmfulness of straight pornography, the fairest way to describe what we know about the effects of gay pornography would be nothing at all". Taken together with the fact that the relevantly analogous harms are here caused by the wrong audience, the argument from analogy seems implausibly weak.

## V. OBJECTIFICATION AND SUBJECTIFICATION

I want to return now to the matter of sexual objectification. This is claimed to be one of the main ways that straight pornography harms women, and it is sometimes said that gay pornography promotes a similar sort of objectification of gay men.<sup>38</sup> Allowing that the evidentiary basis is poor, it may nonetheless be fruitful to explore some more speculative ideas, beginning with the notion of

objectification" itself. Martha Nussbaum thinks this is a kind of category mistake. One is treating *as an object* what is really not an object, what is in fact, a human being"; objectification is thus a matter of making into a thing, treating as a thing, something that is really not a thing."<sup>39</sup> This can be done in a variety of ways, she argues, for example, by treating people as instruments, by denying their subjectivity, denying their autonomy, or by treating them as lacking agency, or as violable, ownable, or fungible. Her subtle discussion establishes that there are complex relations among these and that whether objectification is morally problematic depends on the context.

While we can see what this Kantian distinction between persons and things is

driving at, it is also potentially misleading. For contrary to Nussbaum's suggestion, the objectification of people is not a matter of treating as an object what is not an object or a thing, because in many ordinary senses people *are* objects and things. Human beings are embodied; we are extended in space; we exist in time; and we are subject to the laws of nature. Objectification is not *reification*. It is a matter of treating as a *mere* object something that is also *more than* an object; it is a matter of denying or devaluing their subjectivity, of failing to recognize them as ends in themselves." To be treated as a sex object is, in part, for one's own desires, hungers and needs in sex to be removed from view and to be seen solely as a means to the fulfillment of the desires, hungers and needs of another.

The point I have in mind parallels one we must make about Kant's categorical imperative: Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."<sup>40</sup> There is here no prohibition on treating people as means. What is forbidden is to treat them *merely* as means. This puts a constraint on the instrumentality of others: they may be treated as means to our ends only if, in doing so, we also manage to respect their integrity as agents with their own purposes who, as Kant also puts it in another place, must themselves be able to share in the ends to which we put them.<sup>41</sup> That is why it is so difficult to lead a good life. We *must* treat others as instruments, for we need their skills, their company, and their bodies—in fact, there is little that we social creatures can do on our own, and so little of that is fulfilling. However, while we need to use

others, in doing so we may not treat them as mere instruments, and that is not always easy. In ordinary sex we need others as objects in some of the most ordinary senses of the term: they are intentional objects of our desire, we want to see, smell, touch and taste their bodies. This is not yet sexual objectification, however, for that involves subjecting them to our purposes without regard to their own. There is of course a tradition (of which Kant is one of the more notorious exponents<sup>42</sup>) that sees sexual desire as essentially fraught with danger. Despite some similarities with the new paradigm of pornography, this cannot be what is at issue here, for on the new view the gendered dimension is intrinsic to objectification—*men's* desire is inherently dangerous—while for Kant women's sexual desire for men is no better. The new idea is rather that straight pornography produces women as sexual objects because it represents women as meat, available for consumption and without regard to whether they can share in the ends to which they are put. Women, who are both objects and subjects, are said to be represented as mere objects. This causes two sorts of grave harm. First, it is a kind of subordination, since it injures their dignity by denying their personhood. That is what we might, to use Foucault's language, call the *productive* power of objectification. Second, having been constructed as objects, it leaves women open and available to abuse of other kinds: being beaten, raped, etc. This is the *repressive* power of objectification.

Objectification does not, however, actually change the moral status of a person, for that is not a matter of social convention.<sup>43</sup> To treat people as if they

are mere objects does not make them mere objects. Objectification says that people are not the very things that they are: the whole possibility of insulting or degrading someone's personhood begins on the footing that it embodies a kind of lie about her status. Our subjectivity is an un-won status, something we get for free, without effort, as is our objectivity. What has to be won is our own *awareness* of our subjectivity—we need to see ourselves as the ends that we in fact are—and others' *respect* for our subjectivity. However, and here is my main point, *the same is true of our objectivity*.

Let me approach this idea through an example. Our instrumentality is one important part of our objectivity; it is the property of being of potential use to others who may direct us to their own purposes. This is not sufficient for our dignity as persons; but some who endorse a disembodied view of personhood would go further and say that is it not necessary either. Interestingly, non-philosophers do not agree. Most people desperately *want* to be of use to others, and they come to understand themselves partly through their uses, actual and potential. Of course, they do not want only that, and they want to be of use and used subject to certain constraints—but the idea of being useful is in fact valued. Part of what is at stake when people age, when they are severely disabled, when they are chronically unemployed, is the fear that they are not, or are no longer, useful. Others do not want them; they fulfil no valued role. They miss not only their diminished agency, but also their diminished objectivity. In dire cases people may no longer see themselves as something desired, wanted, or useful at all, even as they retain their standing as civic

subjects, applicants, supplicants, users or consumers. They become, to coin a term, *subjectified*.

Straight women in a patriarchal society rarely have difficulty seeing themselves as sex objects: that idea is reinforced in myriad ways through parental and peer pressure, television, popular novels, music, videos, fashion, and also straight pornography. A better society should support a wider range of self-conceptions, enable all women more easily to see themselves as subjects, and secure greater respect for their subjectivity. But what about men, and, in particular, gay men? Andrea Dworkin thinks that objectification is just the essence of male sexuality and thus in male homosexuality both partners by definition objectify."<sup>44</sup> But definitional truths come too cheap. If instead we allow the facts to intervene, how frequently do gay men find themselves objectified (and objectifying) in a heterosexist society? Consider this observation by a gay American writer:

[W]ith the history many of us had of being branded eggheads or aesthetes, the prospect of being apprehended as pure, dumb, meat has an irresistible allure. It's as close as some of us can imagine to being loved unconditionally"-not for our clever accomplishments but simply for the mute flesh that we are.<sup>45</sup>

This passage suggests that being apprehended as pure, dumb, meat"-being in that way objectified-is for many gay men a substitute (and a poor substitute) for being the object of unconditional love. That is one explanation for why someone might *want* to feel the kind of objectification that results from some pornography: it may give access to what is socially foreclosed. Of course, this

suggests that that substitution is somewhat pathological, or at the very least, second-rate. But I think a broader, de-pathologized, version of this idea is worth exploring.

In a patriarchal society, and in its straight pornography, women *are* often apprehended as dumb meat. This is the social context of many pro-censorship arguments: they purport to be subjectivity promoting. In a heterosexist society, however, the standard apprehension of the gay man is quite different. First, he is most often simply invisible or non-existent. Second, when he does occasionally flit in and out of the frame, it is most often in the figure of one of the dominant stereotypes: aesthetic, sensitive, different, fabulous, foppish, and so forth. Whengay boys are taunted for being "fairies" the image is of something airy, silly and gossamer; it is stereotyped femininity *without* being a sex-object. (Do fairies even *have* sex?) It is not too difficult to see here the risk of a different sort of harm- the lack of public acknowledgement of, and sometimes even personal access to, one's sexuality. Another man writes in his autobiography:

Fearful of the intensity of my sexual longings and still wary of being punished if I admitted that being gay" was about sex and not about books or politics, I felt fragmented and even more isolated. Though I had constructed a life that revolved around my identity as a gay man, I refused to admit the importance that sexual desire played in this.<sup>46</sup>

Naturally, I do not claim that being subjectified in these ways represents the experience of all gay men, still less that it is true by definition. But it is one

common and especially salient experience and, as these passages show, one that is represented in gay culture and in the self-understanding of gay people. That is why coming out to oneself" means not just acknowledging one's own desires but also the harder work of seeing oneself as a possible object of the kind of desire that one has. I suggest that just as being objectified is a kind of motif experience<sup>47</sup> for straight women in patriarchal societies, being *subjectified* is a motif experience for gay people in heterosexist societies. I do not deny that there are also aspects of full civic and human agency that are denied gay people: innocent sex acts are widely criminalized, legal marriage is generally impossible, and so on. And it would be an exaggeration to think that the subjectivity of gay men is in every respect as precarious as that of heterosexual women. However, when lesbian and gay sexualities are regarded as unnatural, disgusting, perverted, immoral, sick, or just plain weird, one thing gay subjects may lose or fail to develop is a robust sense of their own *objectivity*. Without that, a gay sexuality still can be spiritual, political or intellectual. What it cannot be is hot, wet or fun. One can see oneself as different, special, or sensitive, or, in the jargon of post-modern queer theorists," as having an ironic, parodic or performative attitude to gender.<sup>48</sup> But one cannot easily see oneself as sexy. There is a real loss here. As Wallace Stevens put it in his poem, "Esthétique du mal":

The greatest poverty is not to live

In a physical world, to feel that one's desire

Is too difficult to tell from despair.<sup>49</sup>

We need therefore to be cautious in addressing and evaluating complaints about urban gay culture in wealthy countries: that it is looks-ist," that it overvalues youth, that it promotes the fungibility of sexual partners and the impermanence of relationships. Some of these do echo familiar complaints about sexist society. But there are also important differences. First, in the gay context these complaints embrace stereotypes whose foundations in reality need to be tested-particularly the association of gay men with promiscuity. Second, this culture is in any case but one, possibly small, fragment of life among homosexually inclined men in our societies. Third and most important, while heterosexual pornography may be said to reflect, repeat and endorse the general sexist view of women, homosexual pornography does not reflect, repeat or endorse the general heterosexist view of gay men.

In that social context, and facing those challenges, how should we regard texts or images that do objectify gay men? Ambivalently, I hope. As sexual beings gay men need to be treated as ends in themselves, and most pornography does little to help that; but if they are to be *sexual* they also need to be treated as, and to be able to see themselves as, the possible object of another's desire. That is one of pornography's contributions, some of the time. When gay pornography does objectify we still need to remember that that is but one vector in a complex space of social interactions. In a homophobic society most of those are, for gay men, both sex- and body-negative. In its dissenting voice, gay pornography celebrates the male body as sexually desirable to other men; it displays men enacting this desire; it focuses our attention on that one fact about them; it exaggerates and

overvalues it. Even if that is sometimes bad in itself, it does not follow that it is bad *overall*. That depends on what is going on in the rest of society, and not just on what is going on in an urban gay subculture. What if the dominant culture systematically denies and represses the desirability of men to other men? What if it targets for discrimination and abuse those who feel, acknowledge or act on that desire? What if it simply behaves as if sexual desire is by nature heterosexual? In that context-which is to say, in our context-how should the lusty voice of objectification be heard? What net effects on the lives of its consumers might it be expected to have? Gay pornography contributes to gay life what is everywhere else denied-that gay sexualities exist, that gay men are sexual beings, and that men may be objects of male desire. How highly we value all that surely depends on the baseline from which we start. For some objectivity comes easily, subjectivity must be won. For others, including many gay men, subjectivity is fairly secure; it is objectivity that feels precarious and fragile.

## VI. CONTEXTS AND CONCLUSIONS

Let me summarize, then moralize. There is little reason to think that gay pornography causes the same harms as straight pornography, or even analogous harms. Moreover, some common features of pornography, for instance, promoting sexual objectification, may be expected to have significantly different consequences for gay men than they do for straight women. So, whatever the (here unassayed<sup>50</sup>) strengths of the new paradigm in understanding heterosexual pornography, it will need substantial modification before it can begin to illuminate the moral problematic of gay pornography.

Could we just leave it there, confining the new paradigm to its natural habitat, and theorize non-heterosexual pornography separately?<sup>51</sup> That might be an advance. But perhaps the problem of sexual orientation suggests other sorts of trouble for the paradigm. Object choice—the kind of person or thing one finds arousing—is but one sort of sexual variation, and sex of object choice, what we usually call sexual orientation," is only one further subdimension. Our sexualities vary in many other ways. For instance, there are other, non-sexual, variations in object (some people prefer younger or older partners, homo- or hetero-racial partners, smarter and duller partners, and so on) and there is also what Freud called variations of sexual aim" (some people would rather look than touch, some are genitally-focussed others are not, etc.). The powerful, and artificial, binarisms of "gay" and "straight" currently dominate our public sexual culture, but they do not displace a lush ontology of private sexualities.

That being so, we might begin to wonder about other pornographies too. If gay male pornography is significantly different, then surely so is lesbian pornography—it is not difficult to see how some of the arguments offered here might be extended to that case. But then what about sado-masochistic pornography, or even heterosexual pornography catering to that exceptional and minuscule" proportion of non-violent male desire? Are we to say that these are not pornography" in the meaning of the act, that the new paradigm is correct and illuminating about the central case and inadequate only in marginal, deviant cases? Are we perhaps to say that these are not even pornography" at all, but erotica," or something else?

We might of course do all of this, were there any reason to. But that merely shows that the new paradigm may be made consistent, not that it is correct. Here as elsewhere political philosophy cannot ride on the back of definition. While some suppose that there is an interesting distinction to be drawn between pornography and erotica, it is in fact idle. There is, of course, a usable distinction in ordinary language: erotica is less explicit and less visual than is pornography. But that is not what the objector has in mind, and her stipulative distinction misinterprets the interplay between our normative judgments and our classificatory systems in this area. People do not classify artifacts into

pornography" or erotica" and on *that* basis form moral and political judgments about them. On the contrary, the judgments are engaged from the beginning, and erotica" is often little more than a label whatever sort of pornography is judged tolerable. There is no point in stipulating a narrow definition of pornography" and then pretending, if it turns out that gay pornography slips through that net, there is no such thing as gay pornography *strictly speaking*. At this point, wisdom has taken a holiday. Gay male pornography is pornography if anything is, and if it does not harm women then that gives us all the reason we need to reject a gendered definition of pornography.

There is a broader conceptual point at stake here, and I want to conclude with a couple of remarks about it. Pornography is not an aesthetic kind, but a loosely related family of artifacts bound by analogy and function: it is mostly

masturbation material."<sup>52</sup> But when you think of it that way, it is easy to see why there are unlikely to be many true and morally significant generalizations about the harmfulness of such material. It all depends on who is aroused by what, and on what their respective social positions are. The only way there could be moral laws governing the kind, pornography," would be if our sexualities were more or less the same and if they were treated in more or less the same way by society. That they are not and that this makes all the difference has been the central argument of this paper.

Is the concern about context purely theoretical? Sadly, it is not. MacKinnon and Dworkin call the *Butler* decision a breakthrough in equality jurisprudence" for they suppose that it replaces moralism with attention to harm, and that it heralds a new sensitivity to equality. But after *Butler* the record of the state in attending to pornography has been just what one would have predicted<sup>53</sup>: among the first prosecutions was a lesbian magazine with a paid Canadian circulation of a few dozen. Then, Canadian customs officers continued their pattern of ignorant and homophobic seizures targeting women's and lesbian and gay bookstores. (One of the most amusing was the 1994 customs detention of *The Sexual Politics of Meat*, a tome of feminist-vegetarian critical theory en route to a bookstore specializing in women's spirituality and ecology.)

Wholly undeterred by these wholly predictable events, MacKinnon and Dworkin still defend their view. Now empiricists, they find the connection between upholding the obscenity laws and impounding lesbian, gay and feminist books deemed obscene to be based on sheer innuendo; no cause-and-effect

link has been shown. Canadian customs employees have been doing what they have been authorized to do for years before *Butler*.<sup>54</sup> But this ignores a point crucial to their analysis of heterosexual pornography. The fact that the oppression of women is *overdetermined* does not prove that pornography lacks any effect. It is practically certain that mainstream religions, popular music, professional sports and typical family life are all much more invasive and authoritative agents of sexist oppression than are pornographic books or videos—but that does not show that pornography is not *also* on the list. Likewise, the fact that there are other sufficient causes is quite consistent with the fact that customs officers feel reassured and even emboldened by the declared constitutionality of the obscenity laws. Upholding the constitutionality of criminal prohibitions on obscenity does not only effect criminal prosecutions about obscenity. Here, where the idea of

legitimation" has literal import, these theorists seem to miss it.

I began by criticizing some Canadian judges, so let me end by giving another Canadian judge the last word:

[E]rotica produced for heterosexual audiences performs largely an entertainment function, but homosexual erotica is far more important to homosexuals . . . [S]exual text and imagery produced for homosexuals serves as an affirmation of their sexuality and as a socializing force . . . it normalizes the sexual practices that the larger society has historically considered to be deviant . . . it organizes homosexuals as a group and enhances their political power. Because sexual practices are so integral to homosexual culture, any law proscribing representations of sexual

practices will necessarily affect homosexuals to a greater extent than it will other groups in society .....<sup>55</sup>

I hope that my arguments suggest why this is correct. And at least some forms of contemporary feminism have the conceptual resources to recognize it, for the new paradigm of pornography is not the only advance in the field. Equally important are the claims that the concrete is as important as the abstract, the contextual as the universal. Would it be all right to begin to take these ideas seriously-not just theories of knowledge or the metaphysics of morality, but even in practice and even in our thinking about pornography?<sup>56</sup> If we do, how long will we remain content with the idea that pornography is about men possessing women, that all male sexuality is about power, that sexualobjectification is always harmful, that pornographers set the rules in the one and only game of sex? And if those claims need qualification, how far will we need to rethink our prescriptions in the area of public policy? Will broad-ranging criminal prohibitions or wide rights of civil action prove justifiable? If, in sum, we regulate *pornographies* as if they were all just *pornography*, how will the values of autonomy or equality really be affected? To ask the question is to answer it.

## END NOTES

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<sup>1</sup>R. v. *Curl* (1727), 2 Stra. 788, 93 E.R. 849.

<sup>2</sup>Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Penguin, 1979).

<sup>3</sup>Andrea Dworkin and Catharine A. MacKinnon, *Pornography and Civil Rights: A New Day for Women's Equality* (Minneapolis: Organizing Against Pornography, 1988), Appendix D: Model Antipornography Civil-Rights Ordinance," s. 2(1) (p. 138).

<sup>4</sup>There are different ways of defending this claim. Compare, for instance: Melinda Vadas, "A first look at the pornography/civil rights ordinance: could pornography be the subordination of women?" *Journal of Philosophy*, 84 (1987), 487-511; Jennifer Hornsby, "Speech acts and pornography," *The Problem of Pornography*, ed. S. Dwyer (Belmont, Calif.: Wadsworth, 1995), pp. 220-32; and Rae Langton, "Speech acts and unspeakable acts," *Philosophy and Public Affairs*, 22 (1993), 292-330.

<sup>5</sup>Catharine MacKinnon, "Not a moral issue," *Feminism Unmodified* (Cambridge, Mass.: Harvard University Press, 1987), p. 156.

<sup>6</sup>For the suggestion that Mill himself would have been open to censoring pornography see David Dyzenhaus, "John Stuart Mill and the harm of pornography," *Ethics*, 102 (1992), 534-51.

<sup>7</sup>MacKinnon, "Not a moral issue."

<sup>8</sup>(1992) 89 D.L.R. (4th) 449, at 467 (Per Sopinka J.).

<sup>9</sup>If the original and recognized purpose of legislation was unconstitutional, the legislation cannot now be saved by imputing to it a new, shifting purpose": *R. v. Big M Drug Mart Ltd* [1985] 1 S.C.R. 295. That causes a problem for *Butler*, because the original purposes of the 1959 obscenity provisions certainly did include the enforcement of conventional morality. Now the court says that the "community standards" test of obscenity also included harm prevention, and thus there has been no shifting purpose" but only a permissible shift in emphasis" (*Butler* at 478). Though I cannot argue the point here, I think that the court is wrong about this.

<sup>10</sup>*ibid.*, at 476. Even worse is Justice Gonthier's concurring opinion that obscene materials convey a distorted image of human sexuality, by making public and open elements of the human nature [sic] which are usually hidden behind a veil of modesty and privacy" (490).

<sup>11</sup>*ibid.* at 477.

<sup>12</sup>Langton, "Speech acts and unspeakable acts," p. 312.

<sup>13</sup>*ibid.*, p. 311. I examine these arguments in my *Pornographizing, subordinating, silencing," Censorship and Silencing: Practices of Cultural Regulation*, ed. R. Post (Los Angeles: Getty Research Institute, 1998), pp. 285-31.

<sup>14</sup>For an example see Marilyn Frye, "Lesbian feminism and the gay rights movement", *The Politics of Reality* (Trumansburg, N.Y.: The Crossing Press, 1983). The compliment is sometimes returned, e.g. by John Morrison, "Is feminism hurting gay men?" *Christopher Street*, 14 (#2) (1991), 17-23. For a helpful account of the relationship between sexism and heterosexism, see Chesire Calhoun, "Separating lesbian theory from feminist theory," *Ethics*, 104 (1994), 558-81.

<sup>15</sup>Eve Kosofsky Sedgwick, *Tendencies* (Durham, N.C.: Duke University Press, 1993), p. 161.

<sup>16</sup>A. Dworkin, *Pornography*, p. 128.

<sup>17</sup>*ibid.*, p. 45.

<sup>18</sup>I do not claim that this is how Dworkin would choose to amplify the thesis, only that this makes best sense of it. For a related but more general move, see the discussion of the material accompanying note 19, below.

<sup>19</sup>Dworkin and MacKinnon, *Pornography and Civil Rights*, p. 114.

<sup>20</sup>Even Freud cautions against an over simple identification here: in the sphere of human sexual life you soon see how inadequate it is to make masculine behaviour coincide with activity and feminine with passivity." The equation serve[s] no useful purpose and adds nothing to our knowledge." *New introductory Lectures on Psychoanalysis*, trans. J. Strachey (Harmondsworth, Mdx.: Penguin, 1973) p. 148.

<sup>21</sup>It is said that heterosexual men take an erotic interest in lesbian pornography. I know of no evidence that this appetite is a common one.

<sup>22</sup>It is not necessary for present purposes to specify these features, nor to try to understand whether any of them are more salient than others. Note also that this definition does not commit us to the view that sexes, "male" and "female," divide the population clearly or exhaustively.

<sup>23</sup>Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989), p. 144.

<sup>24</sup>These are part of the practice conditions for the existence of social rules. See H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), pp. 54-5.

<sup>25</sup>Jeremy Bentham, "An essay on paederasty," *Philosophy and Sex*, ed. Robert Baker and Frederick Elliston, rev. edn (Buffalo, N.Y.: Prometheus Books, 1984).

<sup>26</sup>For a typical statement, see Marilyn Frye, "Lesbian feminism and the gay rights movement."

<sup>27</sup>MacKinnon, *Towards a Feminist Theory of the State*, p. 142.

<sup>28</sup>I owe this suggestion to Rae Langton.

<sup>29</sup>Plato, *Symposium*, 192A.

<sup>30</sup>John Stoltenberg, *Refusing to be a Man: Essays on Sex and Justice* (New York: Meridian Books, 1990), p. 106.

<sup>31</sup>Sally Haslanger, "Gender and race: (what) are they? (what) do we want them to be," online at <http://www.mit.edu/~shaslang/wigmous.html>. Abbreviated version forthcoming in *Noûs*.

<sup>32</sup>An anonymous reader for this journal put the objection-revealingly if unintentionally-this way: "Sexually explicit materials which do not harm women count by definition as erotica", and there are no good liberal grounds to legislate against materials in that class since they are, by definition, the sexually explicit materials that do not harm anyone." The easy transition from the fact that pornography does not harm *women* to the peculiar conclusion that it does not therefore harm *anyone* may just be a slip of the pen. Or it may, as I fear, show one of the consequences of an uncritical endorsement of the gendered paradigm.

<sup>33</sup>A. Dworkin, *Pornography*, p. 57.

<sup>34</sup>See, for example, Amnesty International, *Breaking The Silence: Human Rights Violations Based on Sexual Orientation* (London: Amnesty International United Kingdom, 1997), and Gary David Comstock, *Violence Against Lesbians and Gay Men* (New York: Columbia University Press, 1991).

<sup>35</sup>Laura L. O'Toole and Jessica R. Schiffman, eds, *Gender Violence: interdisciplinary Perspectives* (New York: New York University Press, 1997).

<sup>36</sup>Catharine A. MacKinnon, *Only Words* (Cambridge, Mass.: Harvard University Press, 1993), p. 101.

<sup>37</sup>Mr. Justice Ken Smith of the British Columbia Supreme Court does not agree with me, though he seems to think that the adjudicative standard in Canada is *any evidence whatever*. *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)* [1996], 13D.L.R. (4th) 486, at 540. I do not believe that is the law in Canada; there is nothing in *Butler* or *Irwin Toy* to suggest that any evidence at all, however limited, however unreplicated, is sufficient for a reasonable basis." Compare the American approach in *Paris Adult Theatre I v. Slaton* (1972) 413 U.S. 49, at 60-1.

<sup>38</sup>See, e.g. John Stoltenberg, "Gays and the propornography movement: having the hots for sex discrimination," *Men Confront Pornography*, ed. Michael S. Kimmel (New York: Meridian, 1990), pp. 248-62, and his *Refusing to be a Man*, pp. 41-56.

<sup>39</sup>Martha Nussbaum, "Objectification" *Philosophy and Public Affairs*, 24 (1995), p. 257.

<sup>40</sup>Kant, *The Moral Law*, trans. H.J. Paton, 3rd edn (London: Hutchinson, 1956), p. 96.

<sup>41</sup>*ibid.*, p. 97.

<sup>42</sup>Kant, *Lectures on Ethics*, trans. L. Infield (London: Methuen, 1930), pp. 163-8. For illuminating commentary, see Barbara Herman, "Could it be worth thinking about Kant on sex and marriage?" *A Mind of One's Own: Feminist Essays on Reason and Objectivity*, ed. L. M. Antony and C. Witt (Boulder, Colo.: Westview Press, 1993), pp. 49-67.

<sup>43</sup>I mean this to be neutral among a variety of meta-ethical positions, including realism and anti-realism. The point is that whatever the best explanation of moral standing, it does not lie in such *surface* conventions. Even in a slave-owning society people may condemn slavery as violating the moral standing of slaves. This is clear because our moral vocabulary has resources to criticize such conventions as wrong, unjust etc. Whether at a deeper level this criticism may be shown to depend on other social conventions is not an issue we need to decide here.

<sup>44</sup>A. Dworkin, *Pornography*, p. 122.

<sup>45</sup>David Crawford, *Easing the Ache* (New York: Plume Books, 1991), pp. 145-6.

<sup>46</sup>Michael Bronski, Cambridge, Massachusetts, "Hometowns," ed. John Preston (New York: Dutton, 1991), p. 179.

<sup>47</sup>There are many generalizations of similar character. For instance, it is not the case that all women in patriarchal societies are discriminated against, but it is still a common experience and one with central cultural significance. Our usual vocabulary is too poor for such cases, for I do not think it illuminating to say that all women are discriminated against qua women, or as a class. Instead, I propose that we think of this as a *motif experience*, by which I mean one that is (a) quite common, (b) part of the public culture of the society and (c) often part of the self-understanding of those who do not in fact share the experience.

<sup>48</sup>As Leo Bersani has wisely remarked about some texts central to "queer theory," "You would never know, from most of the works I discuss, that gay men, for all their diversity, share a strong sexual interest in other human beings anatomically identifiable as male". *Homos* (Cambridge, Mass.: Harvard University Press, 1995), pp. 5-6.

<sup>49</sup>Wallace Stevens, *Poems*, ed. S. F. Morse (New York: Vintage, 1959), p. 124.

<sup>50</sup>I have discussed some aspects of the paradigm in "Pornographizing, subordinating, and silencing."

<sup>51</sup>I think that is the approach recommended by, e.g., Drucilla Cornell in her *imaginary Domain: Abortion, Pornography, and Sexual Harassment* (New York: Routledge, 1995), pp.106-12.

<sup>52</sup>The phrase is MacKinnon's, *Only Words*, p. 17.

<sup>53</sup>See Janine Fuller and Stuart Blackley, *Restricted Entry: Censorship on Trial* (Vancouver, BC: Press Gang Publishers, 1995), and B. Cossman et al., eds, *Bad Attitude!s on Trial: Pornography, Feminism, and the Butler Decision* (Toronto, Ont.: University of Toronto Press, 1997).

<sup>54</sup>Catharine A. MacKinnon and Andrea Dworkin, Statement regarding Canadian customs and legal approaches to pornography," a press release issued August 26, 1994. What is even more puzzling here is that MacKinnon and Dworkin used to be associated with the view that criminal law is an inappropriate instrument in this area, for it renders the victim a mere witness, it accords the accused stringent procedural and other protections, and it leaves power in the hands of the state.

<sup>55</sup>*Little Sisters*, at 522. (Summarizing and accepting expert testimony.) But the judge also found that the disparate impact of any obscenity regulation on gay people is "inevitable" and "unavoidable" and thus not discriminatory within s.15(1) of the Charter: paras.133-6. He also held that these differences are not sufficient to establish a different legal status for gay pornography. This was upheld by the B.C. Court of Appeal and is now under consideration by the Supreme Court of Canada.

<sup>56</sup>MacKinnon resists the relevance of context in understanding or evaluating pornographic expression. She says, Pornography, under current conditions *is* largely its own context" (*Only Words*, p. 108)-a thought that I do not understand.