

Pornography: The Theory

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Source: *Critical Inquiry*, Spring, 1995, Vol. 21, No. 3 (Spring, 1995), pp. 670-695

Published by: The University of Chicago Press

Stable URL: <https://www.jstor.org/stable/1343941>

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# Pornography: The Theory

Frances Ferguson

What does Catharine MacKinnon mean by pornography?<sup>1</sup> What account of pornography is she putting forward when, in “Francis Biddle’s Sister: Pornography, Civil Rights, and Speech,” she writes that pornography is “a practice of sex discrimination” that “combines a mode of portrayal that has a legal history—the sexually explicit—with an active term that is central to the inequality of the sexes—subordination”?<sup>2</sup> What do she and Andrea Dworkin mean to accomplish, and what do they accomplish, by talking about what pornography does rather than about what pornography is?<sup>3</sup> In the essays MacKinnon wrote on pornography in the 1980s,

I am grateful to Robert Post, Bernard Williams, and Linda Williams for their thoughtful responses to an earlier version of this paper that I presented under the auspices of the Townsend Humanities Center at the University of California, Berkeley. I also thank the editorial board of *Critical Inquiry* for their careful readings.

1. I tend to leave Andrea Dworkin’s work somewhat to the side in this essay. This is not by any means intended as a gesture of disparagement of Dworkin’s work on pornography or the importance of her collaboration with MacKinnon. It is merely to avoid the awkwardness of continually using both names to refer to a position that I am, in the present essay, describing almost exclusively through MacKinnon’s writing.

2. Catharine A. MacKinnon, “Francis Biddle’s Sister: Pornography, Civil Rights, and Speech,” *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass., 1987), p. 176; hereafter abbreviated “FBS.”

3. This formulation is virtually omnipresent in the work of both Dworkin and MacKinnon. MacKinnon has stated it relatively recently in saying that “the deepest injury of pornography is not what it says, but what it does” (“Pornography as Defamation and Discrimination,” *Boston University Law Review* 71 [Nov. 1991]: 803).

*Critical Inquiry* 21 (Spring 1995)

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she spoke of “pornography as a practice of sex discrimination” and of “what it does behaviorally” (“FBS,” pp. 176, 177). In her most recent book, *Only Words*, she speaks continually of pornography in terms that treat it as an action—or a variety of actions—rather than as an object—or a collection of objects. This is a formulation or verbal habit sufficiently interesting to require some examination. We could portray it as simply a matter of rhetorical escalation, a histrionics designed largely for demagogic effect.<sup>4</sup> Or we could render it fatuous by paraphrasing it as a statement that all speech is behavior, thus making pornography look like a subset of language in general, merely one example among the myriad examples of the operations of prose. The aim of this essay is to set aside those two dismissive accounts of MacKinnon’s position, to examine some of the arguments of some of her opponents, and to isolate what I take to be the most interesting aspect of the Dworkin-MacKinnon position, namely, its attempt to suggest a connection between pornography and action that continually demands a revision of the ways in which the law acknowledges and, indeed, formulates action.

There are, however, considerable difficulties that one must engage in advance. First among these is that MacKinnon’s opponents continually represent her position as necessarily involving censorship, with censorship being traced through its full pedigree for suppression of dissent. (Indeed, the “feminist anticensorship” position has made its act of self-naming an implicit characterization of the MacKinnon-Dworkin position; and the free-speech position—whether linked with or uncoupled from feminism—has repeatedly argued that the potential “chilling effect” that would be produced by the enforcement of any civil rights ordinances against pornography would be the functional equivalent of censorship.)<sup>5</sup> Second, there is the problem of MacKinnon’s recurrent use of statistical

4. Richard Posner has recently reviewed MacKinnon’s latest book in such terms: “The title of Catharine A. MacKinnon’s new book is intended as an ironic commentary on the belief that pornography is ‘only words’ and therefore, unlike sticks and stones, can never hurt anyone. There is a further irony that is unintended: *Only Words* is a rhetorical, rather than an analytical, production; it is only words” (Richard A. Posner, “Obsession,” review of *Only Words*, by MacKinnon, *New Republic*, 18 Oct. 1993, p. 31).

5. Robert Post has, in a series of articles, provided accounts of the legal traditions governing freedom of expression in Britain and the United States. See Robert C. Post, “Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment,” *California Law Review* 76 (Mar. 1988): 297–335; “The Social Foundations of Privacy: Com-

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studies as if they indicated clear causal patterns between pornography and imitative crimes including rape and murder. It has been a simple enough exercise to find statistical studies that appear to maintain the reverse.<sup>6</sup> Moreover, leaving aside the studies that seem to acquit pornography in the aggregate, commentators have found it all too easy to make the point that pornography must be a relatively indirect or remote cause of serious crimes against women if pornography is as nearly omnipresent as MacKinnon says it is and if substantial numbers of women nonetheless take themselves not to have been harmed by it.<sup>7</sup> This is as much as to say that, although many have claimed that MacKinnon cites only studies that overstate the number of rapes and acts of sexual abuse, even her comparatively large numbers are not large enough to make the case for anything like a regular causal connection between pornography and crimes against women.<sup>8</sup>

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munity and Self in the Common Law Tort," *California Law Review* 77 (Oct. 1989): 957–1010; and "The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and *Hustler Magazine v. Falwell*," *Harvard Law Review* 103 (Jan. 1990): 601–86. In this last in particular he has emphasized the tradition of separating public discourse from community values and has argued that the difficulty of sustaining such a separation has accounted for the "uneven course of first amendment doctrine" (p. 603) because he conceives of public discourse "as situated in a triangular space" formed by community, "which regulates speech in the interests of civility and dignity," organization, "which regulates speech in the interests of instrumentally attaining explicit objectives," and public discourse, "which alone carries within it the freedom of critical interaction that we, in our culturally diverse nation, associate with democratic processes" (p. 685). As will become apparent, I think that this particular division of labor can easily militate against equality interests by minimizing the significance of organization in liberal democracy.

6. Berl Kutchinsky's work on the pattern of sex crimes in Denmark has to many seemed to provide the most reliable information on the effect of pornography on sex crimes because it has been the only study that has been able to take advantage of a clear shift in the law (as Denmark abolished its prohibition on written pornography in 1967 and its prohibition on obscene pictures in 1969). Yet if Kutchinsky's work was once taken to indicate that the legalization of pornography resulted primarily in a change—a decrease—in sexual crimes against children, it has recently been more strongly challenged. See *Obscenity and Film Censorship: An Abridgement of the Williams Report*, ed. Bernard Williams (Cambridge, 1981), pp. 80–83, and *Pornography: Women, Violence, and Civil Liberties*, ed. Catherine Itzin (Oxford, 1992), pp. 248–383.

7. The existence of the feminist anticensorship position itself amounts to an implicit argument about the inefficiency of pornography as a cause of crimes against women. That is, in addition to making the argument that no causal connections have plausibly been established between pornography and crimes against women, anticensorship feminists introduce themselves and their own sense of not having been harmed as further evidence that pornography does not regularly result in harm against women. While MacKinnon has frequently argued that women ought to feel more fear than they allow themselves to feel, these writers represent her position as an exercise in the promotion of fear. See *Pleasure and Danger: Exploring Female Sexuality*, ed. Carole S. Vance (Boston, 1984); *Women against Censorship*, ed. Varda Burstyn (Vancouver, 1985); *Caught Looking: Feminism, Pornography, and Censorship*, ed. Kate Ellis et al. (Seattle, 1988); and Katie Roiphe, *The Morning After: Sex, Fear, and Feminism on Campus* (Boston, 1993).

8. She states in *Only Words* that "thirty-eight percent of women are sexually molested as girls; twenty-four percent of us are raped in our marriages. Nearly half are victims of

In the following essay, I attempt to locate what I take to be a fundamental insight of the argument that MacKinnon and Dworkin, individually and together, have articulated against pornography. I take that project centrally to involve the claim that pornography is only significant insofar as it involves acts—as it puts representations to use. (Moreover, I see that claim as entirely consistent with the assertion that positive uses of pornographic representations are indeed positive and that they would call for no legal action.) In the process of analyzing and defending what I take to be the most powerful aspects of this position, I shall also be arguing that neither censorship nor a simplistic claim that pornography directly causes readily predictable instances of extreme violence is central to that position. With regard to the question of censorship, I am not so much arguing a new point as simply recognizing and following the logic that MacKinnon herself has repeatedly laid out. With regard to the question of pornography and behavior, I am proposing a modification of what her position sometimes—perhaps even frequently—appears to be.

Briefly, I see MacKinnon as addressing a central question for modern self-governing societies, namely, how can such societies modify their own tendencies to replicate the power structures that already exist? How can they avoid simply responding to the precedential appeal of the stereotypes that are stereotypes because they come with the recommendation of existence? However far political thinking may qualify its truth-claims to insist upon the impossibility or unavailability of knowledge apart from the conditions of our knowledge, some version of those claims reemerges in the perception of value. Stereotypes are stereotypes because they reflect judgments of value, judgments that have particular force as implicit maxims because they claim the authority of what has been credited over what has not.<sup>9</sup> They represent what has been called—usually with a certain edge—the dividend of membership in certain groups in recognition of the relative value of advantaged groups; and they carry an analogous penalty as well in recognition of the relative value of disadvantaged groups.<sup>10</sup>

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rape or attempted rape at least once in our lives, many more than once, especially women of color, many involving multiple attackers, mostly men we know. Eighty-five percent of women who work outside the home are sexually harassed at some point by employers” (MacKinnon, *Only Words* [Cambridge, Mass., 1993], pp. 7–8; hereafter abbreviated *O*).

9. Kant’s discussion of the aesthetic normal idea presents one of the most important discussions of the norm or stereotype, and his argument for its insufficiency in accounting for our responses to the things we find beautiful has been important for its emphasis on aesthetic judgments as something other than a response to our composite past experience. See Immanuel Kant, *Critique of Judgment*, trans. J. H. Bernard (New York, 1966), p. 72.

10. Richard Rorty makes a version of this point in testifying that “in our society, straight white males of my generation—even earnestly egalitarian straight white males—cannot easily stop themselves from feeling guilty relief that they were not born women or gay or black, any more than they can stop themselves from being glad that they were not born mentally

When feminism has occupied itself with pornography, it has done so because pornography, in its appeal to viewers, clearly emphasizes the issue of evaluation—the value that is placed on a person or a thing in the literal or metaphorical marketplace.<sup>11</sup> The visibility of pornography is thus important not because it involves a tacit claim that visual imagery has an unusual immediacy by comparison with other representational media but rather because of its obvious orientation towards viewers and their evaluations. It emphasizes individual value as it is assigned rather than a notion of intrinsic worth (as it might be postulated by an abstract account of individualism) or a notion of self-worth (as it might be postulated by someone's constituting him- or herself as an ideal market or audience for him- or herself).

Adherents to a variety of political perspectives are willing to grant a value to what has been credited, but they draw widely different conclusions about the proper way of recognizing it. On the one hand, an essentially libertarian view affirms that experience continually ratifies existing distributions of power and that efforts to counteract the ratifications of daily experience are at best pointless.<sup>12</sup> On the other, classical liberalism has frequently been seen as enunciating a strong argument for individuals as political equals that tries to offset the value of what has already been credited by suggesting its contingency, the possibility of things having been different from what they in fact were. As critics of classical liberalism have repeatedly suggested, however, seeing the essential or potential equality of conspicuously different people does not in itself alter their practical inequality, the inequality of their capacities for action and of the values that other people attach to them. In other words, the classical liberal analysis of politics as something other than a continuation of the status quo may argue in favor of a basic notion of the equality of individuals, but that analysis tends to stop short of providing accounts of the possible redistributions of the conditions of equality. (Indeed, insofar as classical liberalism argued for the equality of individuals by claiming that individuals could form ideas and judgments and actions that went beyond the norms of previous actions and perceptions, it has plausibly seemed to make specific models and examples look like a distraction.)<sup>13</sup>

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retarded or schizophrenic" (Richard Rorty, "Feminism and Pragmatism," *Michigan Quarterly Review* 30 [Spring 1991]: 248).

11. Both antipornography and anticensorship feminists agree on this much. Anticensorship feminists are simply quicker to accept the economy as relatively just for individual women.

12. I am essentially echoing the account that John Rawls gives of libertarianism in his *Political Liberalism* (New York, 1993).

13. Rawls's work constitutes the most significant effort to argue for the compatibility between a liberal conception of equality with the diversity of circumstances that actually obtain for individuals. See his *A Theory of Justice* (Cambridge, Mass., 1971) and *Political Liberalism*.

The economic analysis of Marxism and many of the policies of the modern welfare state have attempted to address this problem of liberal abstraction—a problem that is, arguably, not really so much one of abstraction as of a reluctance to see existing examples as bounding the field of possibilities. Yet, whatever the successes of these approaches, they have had considerable difficulty addressing inequality as a more than temporary and local phenomenon. For, even in the process of rejecting the liberal focus on the value of the individual, they have tended to imagine that inequality can be dealt with almost exclusively in the present, whereas, as Pierre Bourdieu suggests in his sociological investigations of the operations of class, “precocity is an effect of seniority.”<sup>14</sup> Precocity in Bourdieu’s analysis is what we might recognize more generally as the recommendation of membership in a group, the increased likelihood that others will value an individual in ways that resemble the way they have valued other individuals who resemble him or her by virtue of membership in the same family, association, race, religion, or gender. It is the condition of being able to be credited with quickness for not having had much distance to cover.

The interest of MacKinnon’s work, as I see it, lies in its implications for the question I have briefly been identifying—the question of the valuing of persons—and in its analysis of the resources available for altering the values of individuals as they are assigned in the present on the basis of registrations of past value. Of the efforts to claim that one can identify the value of individuals as anything other than a recognition of present norms and values, the two most prominent are the law of torts and the liberal assertion of the fundamental equality of persons. Each of these approaches makes a more or less compelling argument for insisting upon the superiority of an assigned value that differs from that of present circumstances, and a brief canvas of their central features can serve to indicate the uses and limitations of each.

Tort law makes claims about the proper value of an individual largely by identifying an incident that interrupts the value that a person would have had in the most plausible projection of his future as a direct extension of his past. That is, it assigns persons property not only in all the things that are most obviously property but also in a variety of extrapolations of actual physical property (potential earnings over a lifetime, psychological distress, reputation, and so forth). It makes claims for the value of what would probably have occurred as opposed to the value of what actually has come to be and tries to compensate an individual for the value that an unblemished reputation, undamaged property, or uninjured limbs would have had for him or her.

14. Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, trans. Richard Nice (Cambridge, Mass., 1984), p. 70. Bourdieu’s theme is the transmission of an effective aristocracy even in the absence of explicit ranks and titles.

The applicability of the tort approach to women's equality suggested itself in MacKinnon's early work, *Sexual Harassment of Working Women*, in which she described sexual harassment as "tort-like." In its tortlike aspect, sexual harassment constitutes an interruption of an individual's projectable property in his or her job (with whatever compounding might seem appropriate).<sup>15</sup> Yet if tort law continually pleads the case for a plausible value against an actual one, its limitations in attesting to the values of persons who have not yet been valued are significant if not always obvious. Tort law requires that imagined losses become visible in conjunction with an actual past, and it primarily criticizes the current valuation of a person by way of a contrast with the value that one would have predicted for a person who had a particular recognizable value in the past. Insofar as it argues against the justice of a present assessment of value, it does so by reference to a past in which a higher value was clearly perceptible. Tort law does not attempt to redress past imperceptibility of value or deficient perceptions of value in the past.<sup>16</sup>

The equality model of liberalism, by contrast, does attempt to set aside such deficient perceptions of value in the past. Yet it does so largely by seeming to argue that the recommendations of experience ought simply to be rejected. In that sense, it seems abstract, committed less to countering the weight of specific examples than to dismissing them. Understood as an abstract affirmation of an abstract equality, liberalism may seem, as it does to MacKinnon, to claim that increasing the freedom of one always increases the freedom of all; it may seem to see its work as complete at the outset when it affirms the priority of virtually universal human faculties over particular circumstances.<sup>17</sup>

In the one case, that of tort, the notion of value is converted into a version of property, so that past possession seems the crucial means of asserting a claim to value. Tort law, for all its attentiveness to the significance of omission as well as to positive action, fails to provide a sense of potential value apart from a projected past. In the other case, liberalism, in its abstract characterization, may seem to emphasize potentiality in and of itself and thus to provide no counterweight at all to the images of past experience. The one gives all too much weight to experience in imagining the fu-

15. See her discussion of sexual harassment and her view that "to treat [sexual harassment] as a tort is less simply incorrect than inadequate" (MacKinnon, *Sexual Harassment of Working Women: A Case of Discrimination* [New Haven, Conn., 1979], p. 173). See also pp. 143–213, esp. 171–74.

16. MacKinnon's essay "Francis Biddle's Sister" plays on Virginia Woolf's discussion of "Shakespeare's Sister" to suggest that there is a positive purpose to be served by implanting artificial histories. Our current ability to imagine a person in the historical past attempts to capture the same force of recommendation that the actual past might have. See "FBS," pp. 195–97.

17. See in particular MacKinnon's claim, in the introduction to *Feminism Unmodified*, that "abstract equality undermines substantive inequality, but it reinforces it at the same time" (MacKinnon, "Introduction: The Art of the Impossible," p. 14).



ture as a direct extension of the past; the other, too little in seeming to imagine that the only way of repudiating the recommendations of present evaluations of individuals is to affirm that individuals are in principle equal.

In the following discussion I am essentially arguing, first, that MacKinnon's characterization of contemporary society as "a world made by pornography" is right insofar as it tries not simply to see pornography as an occasion for a judgment of value (a decision upon whether *it* is appealing or disgusting) but also to acknowledge the recommendation implicit in any representation as both an object for evaluation and also a representation of an evaluation. Second, and more important, I am arguing that, despite the difficulties that MacKinnon's analysis has in describing women as a group, her account of pornography as sex discrimination helps us to appreciate the problems that attach to the often-invoked injunction to treat everyone as an individual. Finally, I am suggesting that her account enables us to see the importance of artificial environments—the workplace, the school, and public spaces conceived on their model—for creating artificial groups that importantly alter the value of individuals. The right of access to value-altering groups is, I am arguing, a crucial one, and the case against pornography can be pressed most strongly when it is recognized as an attempt to restrict access to such groups.

The Minneapolis ordinance that Dworkin and MacKinnon coauthored in 1983 identified pornography in terms of "civil inequality" and stated in part that

the [Minneapolis city] council finds that pornography is central in creating and maintaining the civil inequality of the sexes. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harm women's opportunities for equality of rights in employment, education, property rights, public accommodations and public services; create public harassment and private denigration; promote injury and degradation such as rape, battery and prostitution and inhibit just enforcement of laws against these acts; contribute significantly to restricting women from full exercise of citizenship and participation in public life, including in neighborhoods; damage relations between the sexes; and undermine women's equal exercise of rights to speech and action guaranteed to all citizens under the constitutions and laws of the United States and the State of Minnesota.<sup>18</sup>

18. "Excerpts from the Minneapolis Ordinance," in *Women against Censorship*, p. 206. The ordinance was initially passed by the city council, vetoed by the mayor, reintroduced with slight modifications, passed in modified form, and vetoed again in 1984. Excerpts of it are also available in *Caught Looking*. Donald A. Downs provides a detailed account of the political process of the Minneapolis ordinance in *The New Politics of Pornography* (Chicago, 1989), pp. 34–94.

This statement, like the Minneapolis ordinance in general, has most frequently been seen as making the claim that pornographic images produce misogynistic behavior imitatively and that eradicating pornographic images would eliminate at least some misogynistic behavior.

That characterization is, of course, partially right. The Minneapolis ordinance seems to suggest, if only in the somewhat guarded language of “promoting,” “fostering,” and “contributing,” that pornographic images function as a pattern language. Pornography, in this sense, looks as though it gives people ideas, and the question is whether one can hold pornography responsible for the actions that result from those ideas. Someone like Robin Morgan (whose memorable phrase “pornography the theory, rape the practice” I have adapted in the title for this essay) seems to suggest this logic, when she speaks of pornography as simply the first stage of a continuous process culminating in rape.<sup>19</sup> Someone like Andrea Dworkin seems to, when she speaks of pornography as inseparable from rape.<sup>20</sup> In these extended accounts of action, being able to imagine a particular action is continuous with and functionally equivalent to producing an action; implementing such an intention appears as a necessary and unproblematic extension of it. Representations, in this sense, appear simply to distribute the intention and the execution of an action among persons (so that a pornographer might not depict an actual rape but might produce a simulation that leads to its being effected).

Against such a strong view of the inevitable connection between representations and actions, or the view that a representation produces a repetition of the represented action, anticensorship feminists and various proponents of a free-speech argument about pornography have focused on the weakness and unreliability of the connection between seeing pornographic images and acting them out. Thus, Sara Diamond attacks the MacKinnon-Dworkin position on the grounds of its supposed literalism, its not being able to distinguish between a representation of an action and an action, and Ann Snitow calls attention to its “misplaced concreteness” in thinking that images always depict actualities.<sup>21</sup> Lisa Duggan, Nan Hunter, and Carole Vance amplify this line of attack on MacKinnon’s antipornography position when they describe it as equating images with

19. See Robin Morgan, “Theory and Practice: Pornography and Rape,” in *Take Back the Night: Women on Pornography*, ed. Laura Lederer (New York, 1980), pp. 134–40.

20. “The very power to make the photograph (to use the model, to tie her in that way) and the fact of the photograph (the fact that someone did use the model, did tie her in that way, that the photograph is published in a magazine and seen by millions of men who buy it specifically to see such photographs) evoke fear in the female observer unless she entirely dissociates herself from the photograph. . . . Terror is finally the content of the photograph, and it is also its effect on the female observer” (Andrea Dworkin, *Pornography: Men Possessing Women* [New York, 1979], p. 27).

21. See Sara Diamond, “Pornography: Image and Reality,” in *Women against Censorship*, p. 41; Ann Snitow, “Retrenchment versus Transformation: The Politics of the Antipornography Movement,” in *Women against Censorship*, p. 119.

actions as if there were no escape from the lockstep of the trajectory projected by an image one has seen. In their view, MacKinnon and Dworkin adopt an especially narrow version of behaviorist psychology in equating images with actions and imagining a straightforward causal connection between the sight of images and one's subsequent behavior. There are, they argue, so many images that cause behavior that it is mistaken to single out pornographic images alone for attack. Having made that point, however, they proceed to advance two additional suggestions that they see as nullifying the negative force of pornography.

They claim, in the first place, that religion has historically been more misogynistic than pornography and proceed to suggest that any cause other than the most important is not merely subordinate but insignificant as well. As they put it, "it need hardly be said that pornography did not lead to the burning of witches or the English common law treatment of women as chattel property. If anything functioned then as the prime communication medium for women-hating, it was probably religion." (If not always a principal cause, then never a principal cause.) In the second place, they claim that insofar as pornography is sex, it is good, enlightened, and progressive: "the existence of pornography has served to flout conventional sexual mores, to ridicule sexual hypocrisy and to underscore the importance of sexual needs."<sup>22</sup> On their view, pornography serves a variety of purposes, with the balance falling on the side of those that are desirable rather than harmful. (If unconventional, then good.) Basically, that is, some anticensorship feminists have adopted what appears to be a strange form of relativism on the way to absolutism. If one possible cause of harm can be arguably trumped by another more important cause of harm, it is assumed not merely to be a lesser cause but basically a nonexistent one.

This style of arguing for pornography or arguing against censorship is sufficiently remarkable, in the first place, for seeing the two issues as the same. It is, however, equally remarkable for the all-or-nothing logic by which it advances, in suggesting that any but the most important and most thoroughly negative cause of misogyny is no cause at all—or else that it is good. The assertion that an antipornography position must resolve itself into a version of censorship, that is, converts itself into the assertion that being opposed to censorship also involves endorsing pornography. Under this approach, anticensorship feminists move almost effortlessly from arguing that pornography is not invariably bad to arguing that there is a readily recognizable category of things called pornography that is relatively stable and, on account of its irreverence for authority and authoritarianism, preponderantly beneficial.

Having, that is, begun by questioning the inevitability of a link be-

22. Lisa Duggan, Nan D. Hunter, and Vance, "False Promises: Feminist Antipornography Legislation in the U.S.," in *Women against Censorship*, pp. 144, 145.

tween an image and behavior that would in some sense re-create or reenact that behavior, anticensorship feminists have reinstated a strong claim for just such a link. Thus, the trajectory that the feminist antipornography argument traces is one that advances from skepticism about the regularity of the effects of pornography when those effects are seen to be negative to a strong claim about the positive benefits of pornography. For example, Gayle Rubin, in a series of essays, and Linda Williams, in her current project, argue that pornography not only does not cause harm to women but that it serves a positive educational purpose.<sup>23</sup> Pornography, in their treatment, has developed to the point of dividing into a variety of genres with a variety of target audiences; it performs a major service by educating a self-selecting audience into the possibility of sexual self-realization. The meaning of the pornographic object, in other words, is its audience's self-image. From this perspective, pornography teaches by giving one anticipations of certain actions that are merely an incidental expression of the sexual identity one has already (if only proleptically) achieved. Here one sees an important argument of feminist historians—that consumption is a considered and significant activity—developing into the extraordinary claim that consumption is inviolable, in that the process of consumption is an act of evaluation treated as if it could never fail because the consumer's evaluation is treated as if it were determinative of the value of every object. This particular version of the anticensorship view, in other words, supplements the maxim that the customer is never wrong with the corollary insistence that the customer is also never wronged.

Now what is puzzling about the anticensorship position is that it moves in two contradictory ways. On the one hand, it accurately captures a crucial problem of censorship—that it has a hard time registering the different uses to which pornographic representations may be put and, therefore, condemns the pornography of positive effects along with that of negative effects.<sup>24</sup> On the other, its central assertion—that even the images that produce negative impressions for some may have positive and instructive value for others—tends to be undercut by a renewed effort to generalize about the effects of pornography that would reclaim it

23. See Gayle Rubin, "The Leather Menace: Comments on Politics and S/M," in *Coming to Power: Writing and Graphics on Lesbian S/M*, ed. Samois (Boston, 1981), pp. 194–229 and "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in *Pleasure and Danger*, pp. 267–319. See also Linda Williams, *Hard Core: Power, Pleasure, and the "Frenzy of the Visible"* (Berkeley, 1989) and "A Symposium on Pornography," *Threepenny Review* (Fall 1993): 8–9.

24. I use *pornography* as an inclusive term incorporating material with both positive and negative effects. In that I am specifically departing from the practice that some antipornography feminists observe in drawing a distinction between *erotica*, which, in Gloria Steinem's description, "is about sexuality," and *pornography*, which is "about power and sex-as-weapon" (Gloria Steinem, "Erotica and Pornography: A Clear and Present Difference," in *Take Back the Night*, p. 38).

for self-affirmation and group-affirmation. That is, a position that recognizes that a pornographic object's meaning changes with its various uses by various audiences converts itself into a question of the rights of various audiences to have and use pornography.<sup>25</sup> Pornography thus comes to look like something you might have—as you might possess an object or hold a belief—rather than like something whose meaning is constituted by its use. The very right to be a group comes to be bound up in the right to have expressive forms, of which pornography would simply be one conspicuous example.<sup>26</sup>

The difference between anticensorship feminists and MacKinnon here is instructive. Where the former argue that the meaning and the effects of pornography essentially express a positive relationship to a group, MacKinnon does not see group membership as resolving the issue.<sup>27</sup> Although MacKinnon and sex-affirmative feminists would be in fundamental agreement with one another in resisting censorship, MacKinnon's argument against censorship is in fact significantly stronger than theirs. Sex-affirmative feminists continually point out that censorship creates problems of recognition, that it scapegoats minorities in the name of protection for persons and rounds up the wrong suspect. Yet MacKinnon's position, however much it may have been seen to be func-

25. The trial of Penguin Books for its publication of *Lady Chatterley's Lover* in an inexpensive and readily available format has, in line with the translation of access to potentially pornographic images into rights for groups, frequently been presented as upholding the rights of the working man to read literature that is great or pornographic or both. See *The Trial of Lady Chatterley: Regina v. Penguin Books Limited: The Transcript of the Trial*, ed. C. H. Rolph (London, 1990). In such a line of argument, censorship appears as an attack on the expressive rights of groups, whether defined in terms of social class, sexual minority status, or age. If much lesbian-, bisexual-, and gay-affirmative literature emphasizes how representations that are readily accepted as "decent" and "public"—the figure of the diva, for example, or the opulence of the opera more generally—may be turned to the purpose of a socially stigmatized sexual orientation, the right to have access to a more directly self-expressive pornography comes to be part of what it means to conceive group rights for members of what Gayle Rubin calls "sexual minorities." See Terry Castle, *The Apparitional Lesbian: Female Homosexuality and Modern Culture* (New York, 1993), and Wayne Koestenbaum, *The Queen's Throat: Opera, Homosexuality, and the Mystery of Desire* (New York, 1993).

26. See Rubin, "Thinking Sex," and Deirdre English, Amber Hollibaugh, and Rubin, "Talking Sex: A Conversation on Sexuality and Feminism," *Socialist Review*, no. 58 (July/Aug. 1981): 43–62, for a discussion of the question of decriminalizing all consensual sexual activity. Rubin's guiding view is that all statutory mechanisms that undermine the authority of individual consent to sex acts ought to be abolished. She thus advocates the elimination of antisodomy statutes (which suggest that the sexual consent of homosexuals is somehow deficient by comparison with a normal standard of consent) and, more controversially, the elimination of statutes against sex acts between adults and legal minors.

27. The problems associated with the group or club recur in a variety of discussions of pornography. One view is that memberships in groups or clubs establish willingness to see pornographic images and that this consent to participate in the group or the club makes it ludicrous to enforce obscenity laws, which concern the offensiveness that voluntary participants would never feel. This position is one that rejects the appeal to community norms, on the one hand, and that of the individual at odds with the group, on the other.

tionally equivalent to censorship, provides a critique of censorship that reaches much further than mistrust of the motivated perception of the censors. For pornography, in her account, essentially does not depend on depicting actions that one would endorse or repudiate if they were to be acted out in one's presence or on the notion that one can establish meaning as a function of its meaning for identity groups. This is to say that MacKinnon ultimately stakes very little on the notion of content, if content can be understood either as offering an image of an action that might be repeated or as emphasizing the likeness or identification between an actor depicted in a representation and the viewer of that action. Rather, MacKinnon is concerned with what action a representation is used to perform.

Thus, far from being naive about representation or unable to tell the difference between an act and the representation of that act, the strength of MacKinnon's position is precisely its focus on the representation as act. A representation may have considerable overlap with an action—as in the cases that MacKinnon stresses most strongly in her earlier work in which her interest in coerced performance is an interest in showing that the production of a representation of a rape could sometimes itself be rape.<sup>28</sup> On the other hand, it may have little resemblance to actual persons, as in the case of cartoons or graffiti, in which the representation may work less as a lesson for imitation than as the assertion of the power to insult. What MacKinnon most importantly emphasizes about representations is not their capacity to frame actions for imitation or avoidance but their transitiveness. This is the point at stake when she and Dworkin describe pornography not as a description of sex but as sex, or speak of it not as a depiction of an idea of sex but as a product that can be made, sold, bought, and used to produce at least the action of masturbation.

In the Minneapolis ordinance and the essays in which she explained its rationale, MacKinnon approached the question of pornography's intermittent identity with sex in a variety of ways. She emphasized, first, that it was a product that was expressly made to produce masturbation, that it was not merely the random occasion for a series of erratic associations. Second, she asserted that pornography was a causal factor in some rapes. Third, she stressed that a camera-based pornography involving live actresses collapsed the distinction between having sex and represent-

28. See her discussion of Linda Marchiano (who appeared in *Deep Throat* under the name Linda Lovelace):

But here, put a gun to someone's head and say, act like you're enjoying it. If you have any kind of acting ability, as well as respect for your life, a desire to live, maybe you want to do it well once so you won't have to do a retake—you do it. . . . The fact that Linda was coerced makes the film no less protected as speech, even though the publication of *Ordeal* makes clear that the film documents crimes, acts that violate laws in all fifty states. [MacKinnon, "Linda's Life and Andrea's Work," *Feminism Unmodified*, p. 129]

ing sex for those actresses. (Moreover, she argued that, insofar as the legal system finds the two situations functionally indistinguishable, the law is itself functioning as an incentive system. In its strong version, this claim is that rape may be open to criminal punishment but that pornography, by virtue of being treated as yet another instance of representation, makes the notion of a documented rape look completely unavailable.) Finally, she outlined the view that pornographic representations might serve as harassment in being used to intimidate on the basis of sex.

The first of these claims—that pornography is a product of an industry that can continue in existence because the product delivers not just another reading experience but the activity of masturbating—puts in place MacKinnon's emphasis on action in discussing value. Her amplification of it—that pornography works by eroticizing abuse, at worst, or by eroticizing inequality, at least—attempts a comparison of intention and effect that would expose a view as ideological by pointing to the contradictions of its practice. If sexuality is taken to be an expression of affection, she asked, why does it take the form of apparent violence?

This view expresses a certain brilliant literalism in seventies feminism that had tried to argue that sexuality simply enacted hierarchy and inequality every time it got down to acts.<sup>29</sup> Yet that line of thinking had a hard time explaining just what the component parts of sexuality were and how one might locate the properly literal action and the properly framed intention that it was seen to express and contradict. Working within the framework of ideological critique, such accounts, like the instances in which MacKinnon tries to describe sexual violence as such, suggest that it is easy enough to identify the elements that will provide appropriate reciprocal commentary on one another; one can know something crucial about social domination and subordination, for instance, by looking at a pornographic image that seems to literalize domination and subordination in individual sex acts and their representations. Without such confidence in identifying the parts and wholes of sexual action and in establishing the correctness or incorrectness of their relationship to one another, one is hard pressed to say exactly when pornography fits or misfits its purposes.

The second aspect of MacKinnon's position—that rapists frequently use pornography as a kind of preparation for rape—also has its flaws. As I observed earlier in commenting on the importance of lesbian-, bisexual-, and gay-affirmative pornography, there may be widespread agreement that pornography may have causal effects, but it is hard to describe those effects except in the rather vague terms of something like self-recognition in terms of a group identity. If a central claim of sex-affirmative accounts of sexually explicit and sexually inexplicit representation is that repre-

29. See Leo Bersani, "Is the Rectum a Grave?" *October*, no. 43 (Winter 1987): 197–222, for an account of the misfit between sexuality and the acts that instantiate it.

sentations help one to begin imagining oneself as part of a community, that they give you home thoughts from abroad about who you are, that basic position rightly separates self-recognition from imitative action. Indeed, it would seem to suggest just the reverse; if the corrupting effect of pornography is imagined to be that you may recognize yourself in images of people doing things you have not done, then self-recognition is already detached from the notion of action. Individual identity—and identification with a group—need not resolve itself into a generalization about one's actions; and, once again, the notion that one's character or one's intentions might be contradicted by one's actions comes to seem peculiar if only because the experience of having a character, seeing oneself in terms of a group identity, is hard to correlate simply with the production of actions.

MacKinnon's interest in camera-based pornography, however, addresses a more powerful challenge to pornography. As her recurrent use of the Linda Lovelace/Linda Marchiano example is designed to demonstrate, two different views of pornographic representation collide in the case of photographic pornography.<sup>30</sup> On the one hand, one may take pornography to operate according to a conventional separation between actor/actress and action that is an underwriting condition of theater. As with other cases of acting for a camera of any kind, pornographic acting does not, in this view, involve the actors or actresses in feeling what they represent their characters as feeling. The represented emotions and sensations need not coincide with the actual emotions and sensations of the actor or actress.

On the other hand, one may see pornographic representations in live performance and for the camera as importantly imaging some form of representational collapse, in which the representation of action involves the action. Sometimes the perception of such a collapse extends past the recognition of the possible identity between action and representation to a renewed affirmation of their separation. Thus, the Committee on Obscenity and Film Censorship, chaired by Bernard Williams, justified the prohibition of live sex acts by drawing a distinction between representations and actions and by arguing that "what artistic or dramatic requirements do not involve is the performance of real sexual activity" while "the presentation of actual sex on the stage immediately introduces a presumption that the motives no longer have any artistic pretension."<sup>31</sup> As they put it, "the situation is changed completely when the spectator is confronted with, where that involves *being in the same space as*, people actually engaged in sexual activity" because that shared space provides "the

30. Linda Lovelace announced herself as Linda Marchiano in her book *Ordeal*, in which she described her pornographic performances as coerced. See Linda Lovelace and Michael McGrady, *Ordeal* (New York, 1981), and Lovelace, *Out of Bondage* (Secaucus, N. J., 1986).

31. *Obscenity and Film Censorship*, p. 139.



ground of a relation between performer and audience which is not present with, for example, a film of the same activity.”<sup>32</sup>

The burden of the Williams committee’s account of representational collapse thus falls on the representational distance between an action and the spectator observing it. Because their account essentially maintains that an action does not become a representation simply by virtue of being watched, they are concerned with the difference it would make to spectators to watch, on the one hand, simulated sexual activity in a camera image or, on the other, actual sexual activity occurring in their presence. MacKinnon and Dworkin have, however, sorted out the collapse between action and represented action quite differently. They have insisted, in the first place, that the camera is dependent on real action for its representations. Dworkin’s lurid assertion that pornographers “write their sentences with our bodies” attempts, that is, to short-circuit arguments about the conditions of representation by trumping them, in claiming that representations may do without many things but that they cannot do without the things they are made of—in this case, the bodies of porn actors and actresses. Pornography, whatever else it may do, alters behavior at least for the persons who appear in it.

In MacKinnon and Dworkin’s treatment, the emphasis therefore shifts from a question of the motives for the representation to a question about its very materials—now identified as the actors and actresses whose bodies become its medium. In their view, pornography exists as a direct product of the actions of its willing or unwilling actors and actresses. Moreover, they see the legal treatment of pornography as effectively eliminating the possibility of distinguishing between consensual and nonconsensual pornographic performance. From this vantage, they point to pornography as the culmination of a formalist account of representation and the incentive system that it could be said to produce. For their analysis proceeds by emphasizing, with considerable shrewdness, that all of the legal attempts to deal with pornography have essentially revolved around judgments of the pornographic object alone, so that its subsequent effects have seemed a more considerable issue than the effects of its production. While only live sex acts may raise the question of “a relation between people,” between actors/actresses and spectators, MacKinnon would stress that such relations are constantly at issue for pornographic performance before the camera. Thus, in her account, the camera continually captures actions but, paradoxically, nullifies the possibility of their being witnessed by the very act of displaying them as representations. Acts are treated as fictitious representations merely because of their being watched by a camera and, subsequently, by an audience.

In its fullest extension, MacKinnon’s position on camera-based pornography reconciles itself to the claims that Susanne Kappeler, in *The*

32. *Ibid.*, p. 138.

*Pornography of Representation*, and Dworkin, in *Intercourse*, have made about non-camera-based representations of women: the formalist account of art that takes representations to exist in a separate space from actuality functions not simply to deny the links between art and actuality but also to make artistic representation into an alibi.<sup>33</sup> In this account, imitative actions—or, instances of actions that are substantially the same—can occur in actuality in both situations, but in the representation the action is continually treated as if it were fictitious (because the basic motive of producing a representation is taken to override all other motives, and to make them incidental). Representation, that is, provides quotation marks that may allow a perfect reproduction of an action and, at the same time, may suspend any interest in the effects of those actions.

In this third aspect of her critique of pornography, then, MacKinnon attempts to portray the inability of our present laws to distinguish the voluntary from the nonconsensual pornographic performance and to point to a fundamental inequity that potentially obtains in the treatment of pornographic representations. Such inequity might result from a complex set of assumptions about fictitious representations: for instance, that aesthetic objects necessarily involved something more than or different from the process of their production, that their being aesthetic objects meant that they could never retain documentary status.<sup>34</sup> Such inequity might result, as Richard Posner suggests, from the simple fact of the illegality of pornography, which consigns all of its participants to legal incredibility.<sup>35</sup> But whatever its causes might be, MacKinnon's claim is that pornography is the concrete and visible manifestation of what we cannot see.

When MacKinnon argues that pornographic camera images lose all their rightful value in documenting actual injury because they are continually treated as mere simulations and actuality is subjected to the conventions of fictional representation, her analysis treats the pornographic representation as a disseminator of action. In consuming pornographic images one need not commit further acts of injury in imitation of those images because the act of consumption and the techniques that govern its conversion from the documentary into the artifactual already function as actions. Insofar as the consumption of pornography is the production of an incentive for making more pornography, MacKinnon sees not toler-

33. See Susanne Kappeler, *The Pornography of Representation* (Minneapolis, 1986), and Dworkin, *Intercourse* (New York, 1987).

34. This problem revolves around nothing more than the recognition that being able to describe the actual past easily translates itself into the capacity to manufacture a fiction or a factitious past. See in particular Virginia Woolf, *A Room of One's Own* (London, 1929), for an implicit statement of the view that history invites the introduction of artificial epitomes, accounts that can be used as the basis for future behavior by actual persons.

35. "The pimp is an artifact of the illegality of prostitution, and the exploitation of pornographic actresses and models by their employers is parallel to the exploitation of illegal immigrant labor by their employers. These women would be better off if all pornography were legal" (Posner, "Obsession," p. 34).

ance for different sexual tastes but a “protection racket,” in which treating pornographic images under the sign of fictitious representations simply abrogates the recognition of the effects of one’s act of consumption.<sup>36</sup> Since the claim is that the continuing refusal to acknowledge the possibility of coercion is itself a recurrent and ongoing action, MacKinnon portrays the possibility of coerced performance as contaminating pornography in its various subsequent uses.

The drawback to that line of argument is its illimitability. In emphasizing conditions of production and consumption, it makes each individual action of consumption look as if it were answerable for all possible effects of that action. On the most practical level, the repeated assertion of the reality of injuries to women becomes a decision—simply on the basis of the images themselves—about which performances were consensual and which nonconsensual. As such, it converts what is at bottom a claim about a probability—that there might be producers of pornography who would recognize how to align pornography with the conventions of fictitious representation and thus create a cover for their coercion of porn performers—into a uniform law of pornographic production. MacKinnon’s conclusion, that is, may be different from the claim that pornographic images need no regulation, but she pursues similar general procedures of argument. Where the opponents of regulation emphasize that artistic and dramatic representations do not necessarily entail the performance of real sexual activity (with the suggestion that we must assume, as a working hypothesis, that none does), MacKinnon emphasizes that some pornographic performances do involve the performance of real sexual activity (with the suggestion that we must assume, as a working hypothesis, that all do). In either case, the effort to describe what happens in pornography moves immediately into an account of the conventions governing pornographic representations as instances of fictitious representations in general.

The attractiveness of this third aspect of MacKinnon’s argument is that it does not simply accept a broad set of conventions for dealing with visual images but defines pornography as a technological change in the production of images. Further, this aspect of her argument gestures towards the possibility of historical change not just in technology but in the acknowledgement of individuals. Just as we take earlier practices for instantiating equality to have failed in ways that are now conspicuous, so, MacKinnon suggests, will our own come to look deficient. Indeed, MacKinnon’s comparisons between the legal situations of women and blacks continually recall the ways in which earlier versions of equality look conspicuously inequitable from the vantage of the present.<sup>37</sup> Inasmuch as

36. MacKinnon, “The Art of the Impossible,” p. 15.

37. See Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), chap. 18.

one can see the difference between the equality that the eighteenth-century framers of the Constitution produced in practice and the equality that we take their principles to enjoin in the United States at the end of the twentieth century, one can imagine that many of our own practices will to later generations appear neither equitable nor even neutral, that they will seem like conspicuous contradictions of many of the principles that we take them to illustrate.

Yet the very attractiveness of this line of reasoning is also its greatest weakness. As a critique of ideology, it can provide a check on the sense of inevitability of one's own ideology, but it can do only that. MacKinnon's gestures towards the future and the strangeness it will impose on the present, like Dworkin's adaptations of literary classics to expose their misogyny by retelling them in tendentious paraphrase, may work to suspend our confidence in our views. Yet, as with ideological critique generally, the crucial difficulty is one of application, of translating a general notion of possibility into an available attitude about one's own circumstances and actions.

This is to say that MacKinnon's description of how "all the *unspeakable* abuse: the rape, the battery, the sexual harassment, the prostitution, and the sexual abuse of children" is in pornography "called something else: sex, sex, sex, sex, and sex, respectively" sweeps too broadly in imagining that one needs to root out both the unconscious and the conscious "lies" of ideology ("FBS," p. 171). It ends up creating categories that appear to exist independent of their use—so that coercion into pornographic performance must be treated as the clear-eyed account of even apparently consensual performances; and the difficulties of redressing abuse within family units must be converted into evidence of the abusiveness of the family unit itself.<sup>38</sup>

MacKinnon's strong claim—that we cannot see the harms of pornography "in a world made by pornography"—is in fact so strong as to be ineffectual (*O*, p. 67). It would seem, at this juncture, that MacKinnon's attack on pornography has included a variety of ways of describing pornographic action but that none of them has amounted to a case against pornography. If pornography produces an action in producing masturbation, we have nonetheless had a hard time extending that causal sequence to establish that violence, abuse, or domination is a necessary component of its erotic charge. If pornography can be said to depict abusive actions and in the process to teach abuse, the regularity of that connection has been difficult to sustain. And if MacKinnon describes pornography as appropriating conventions of representation in such a way as simultaneously to display actual abuse and to treat it as a simula-

38. "Bigotry as often produces unconscious lies as knowing ones, indeed often precludes the dominant from seeing the truth of inequality being lived out beneath their station, hence vision" (*O*, p. 80).

tion, that description of pornography continually suggests a standard of knowledge of reality that is unattainable. We are thus left with MacKinnon's argument against pornography as a vehicle for sexual harassment.

The sexual harassment argument does not stake anything on a claim that one can assess, on the basis of an image alone, the mixture of actuality and fictionality that it represents. Thus, the question of what pornography means need never ask what it meant for its performers or its producers, need never explain what the general conditions of theatrical performance are. For the argument about pornography in sexual harassment simply concerns its use in a specific situation, not its history or genealogy.

In this, the argument that focuses on sexual harassment does not preserve the insistence upon eliding individual consent or nonconsent with the imagined or enjoined consent of a group. Under the coercion-into-performance argument, MacKinnon had identified the consumption of pornography with participation in a network of incentives and exchanges that would, eventually, turn out to have actually violated someone's consent; she had, that is, suggested a strong connection between the consent of the performers and the consent of the viewer, arguing that the choice of theater—the individual viewer's ability to remain in the theater or depart from it—could not exculpate pornography as long as such freedom were not open to everyone involved in every stage of its production and circulation. She had thereby made the idea of the performers' consent look as though it was relevant because it somehow implied the consent of others. If pornographic performers were always volunteers, she had suggested, there might be a genuine erotica; but if Linda Lovelace “had to be coerced into making *Deep Throat*, doesn't that suggest that *Deep Throat* is dangerous to all women anywhere near a man who wants to do what he saw in it?” (*O*, p. 21).

Under the sexual harassment argument, however, the extension of consent or nonconsent from one person to another becomes unnecessary. If MacKinnon had suggested that a viewer's consent to see a pornographic image should not retroactively be used to establish the presumption of the performer's consent to act in it, the sexual harassment argument about pornography does not rely upon preserving similarity between pornographic performers and viewers in this regard. For the sexual harassment argument emphasizes that pornographic images may be put to use without regard to their previous histories of use. Moreover, it insists that not even the consent of pornographic performers can insure that its subsequent uses will reenact such consent; even if Linda Marchiano had consented to perform in pornography, her consent would be irrelevant to the question of the viewers' consent to watch that performance.

Essentially, I have been criticizing the aspects of MacKinnon's argument against pornography that revolve around resemblance or likeness,

or, rather, the aspects of that argument that suggest that resemblances—between one woman and another, between an action and a representation—provide a useful index to the value of the images. Whether these versions of her argument extrapolate from a represented action to the possibility of a similar action, or whether they suggest a similarity between one woman's freedom or coercion in pornography and other women's freedom or coercion, they emphasize similarity of actions (between pornographic representations and imitated actions) or similarity of effects (on one woman and on other women). And even when MacKinnon insists upon the similarity between action and representation in pornographic images in which actions are simply recorded, to argue that an action does not become a representation by being watched, the logic of resemblance is used to cast suspicion on all that it touches.

With the sexual harassment argument, however, MacKinnon is able to make a rather different point: an action may not become a representation by being watched, but a representation may become an action by being watched. As the proponents of sex-positivity maintain, it can create a kind of compact; as the analysts of its use in harassment argue, it can make the communication of an image from one person to another an assertion of difference. Like a variation on irony, with its rehearsal of the same words with a different meaning from that which they have previously carried, the harassing image is harassing not so much because of its content, what it says, but rather because it uses an image as a conspicuous expression of the difference between the parties who view it. A pornographic image need not be offensive in itself, need not even be sexually explicit, to be used in harassment. It need only be used as an ostensive definition of an individual's difference from the other members of a group.

The sexual harassment argument brings out a perhaps surprising aspect of the previous versions of MacKinnon's arguments against pornography, namely, that resemblance (between real and simulated sex for pornographic performers, between one woman and other women) is less central than the effort to identify women as nonassimilable to the artificial groups that do not so much confirm as add to the value we already have as persons. She has, in other aspects of her argument against pornography, insisted upon resemblance (in the similarity between simulated and actual instances of voluntary and coerced pornographic performance, in the similarity between one woman who had to be coerced into pornographic performance and all women) to suggest that a collective image (of women in general) affects women as individuals and to suggest that restrictions on pornography will importantly serve to revalue that image. Women, who are now women by virtue of social assignment, would be revalued in the process of altering the elements of the images through which that assignment worked.

That account plausibly stresses the importance of the image of the

group one is assigned to, but it has a hard time stating what a properly valuable group image might be and when one would know it had been achieved. Richard Rorty made a version of this point in his essay "Feminism and Pragmatism," in which he urged that MacKinnon withdraw her claims about the nature of pornographic objects and the reality of women's testimony and instead emphasize the importance of women as a group. Paraphrasing Marilyn Frye, he affirmed that "individuals—even individuals of great courage and imagination—cannot achieve semantic authority, *even semantic authority over themselves*, on their own," that getting authority over oneself means hearing "your own statements as part of a shared practice," and that "people in search of such authority need to band together and form clubs, exclusive clubs." One might, in his view, discard the claim that all women ought to be feminists and simply recognize the importance of feminism as an affinity group, in which the group as a community with mutually reinforcing views enhances the value of each of its members. As he says,

I am suggesting that we see the contemporary feminist movement as playing the same role in intellectual and moral progress as was played by, for example, Plato's Academy, the early Christians meeting in the catacombs, the invisible Copernican colleges of the seventeenth century, groups of workingmen gathering to discuss Tom Paine's pamphlets, and lots of other clubs which were formed to try out new ways of speaking, and to gather the moral strength to go out and change the world.<sup>39</sup>

In Rorty's view, feminism would profit from identifying itself more clearly in terms of affinity groups, collections of individuals who band together out of a sense of shared values and whose mutual agreement increases the authority of each.

Rorty's approach, politics by voluntary association, converts group membership into an expression of individual belief (much like the sex-affirmative arguments we have encountered earlier). In that, it sidesteps the difficulty that we have encountered with MacKinnon's arguments that emphasize resemblance. Those arguments—that a real action might imitate a simulated action, that real actions involving injury sometimes occur in the making of representations of those actions, and that membership in the class of women is "an assignment made visually"—continually de-emphasize the importance of individual beliefs ("FBS," p. 173). Insofar as you are who you are because of someone else's perception of you, group membership occurs, in MacKinnon's account, as a possibility that may be both positive (when one finds oneself surrounded by persons who imagine you to be like them) and privative (when one finds oneself, by virtue of one's membership in a stigmatized group, incapable of being

39. Rorty, "Feminism and Pragmatism," p. 247.

seen to act outside of the pejorative stereotypes of that group and vulnerable to the images that constrain one by applying those pejorative stereotypes).

The sexual harassment argument presents still another account of the significance of groups. Whereas Rorty emphasizes the voluntariness of association in common cause and whereas MacKinnon sometimes speaks of the global visual assignment of women to the category “woman,” MacKinnon’s focus on sexual harassment stresses that representations like pornography may be useful in the positive constitution of affinity groups only insofar as representations like pornography may also be useful (albeit negatively, for various disadvantaged groups) in the constitution of groups to which people do not intend to belong. And the fact that pornography may promote sexual freedom in promoting identification with a group is part and parcel of the fact that it may also promote sexual inequality whenever it is used to expel a person from a group.

By describing groups as products of common beliefs and interests, as expressions of affinity, Rorty makes an individual’s membership in a group look continually like a positive assertion—a voting that one does with one’s feet by staying in one place rather than going to another, by joining this group rather than that. Moreover, the description of pornography in terms of theater, which spectators ratify or condemn with their presence or departure, maintains a similar approach; what you do, including what you are willing to see, expresses your beliefs and choices, and a group can promote that process by hearing, ratifying, and echoing them.

Rorty’s recommendation, that an individual define herself in terms of the maximal consistency of her beliefs and values with those of a group, would, that is, confirm MacKinnon’s feminism. But it would do so by disregarding the claim that MacKinnon’s account of sexual harassment rests on—that spaces like the workplace and the school are not mere locations but fundamental vehicles for framing action, and that pornography is sexual harassment not by virtue of its representation of bodies but by virtue of its action on the body of its victim, its effort to deny access to the group economies created by such environments.<sup>40</sup>

When Richard Posner observes, therefore, that “pornography is not interested in relationships,” one can take his meaning—that pornography does not concern itself with lasting emotional ties, with mutuality and affection—but one can also see the plausibility of the obverse, that pornography is about nothing but “relationship”—the ways in which pornography revolves around the reliance of individual action on other

40. There is no need to confine the workplace to an actual physical location. As the recent success of upscale strip clubs oriented towards businessmen demonstrates, a moveable office—work that can be taken virtually anywhere—provides new opportunities for exclusion. See Dirk Johnson, “Strip Clubs Putting on a Suit and Tie,” *New York Times*, 26 Mar. 1994, p. A5.



persons.<sup>41</sup> On the one hand, a group seems most completely a group when the individuals in it share a maximal number of beliefs, as did the early Christians; freedom and authority alike stem from the capacity to function as a group. On the other, there is a less psychologically immediate account of groups that specifically minimizes the place of common belief. That account, articulated most clearly in Jeremy Bentham's descriptions of the schoolroom and the workhouse, dispenses with a host of beliefs and common attributes as the basis for a working relationship because these are social organizations that do not so much reflect common views as substitute for them. In this account, the factory system magnifies individual action in the process of specializing it (so that the turn of a screw might become a recognizable act in the building of a car); the schoolroom continually revalues an individual's answers and omissions by routing them through the answers and omissions of others (so that individual merit—the rank in one's class—continually displays itself as both agreement with and difference from other individuals).<sup>42</sup>

However much the school and the factory have been viewed as instruments for inducing conformity, the Benthamite description of them suggests their unique importance in revaluing individuals and their actions. The artificial group that can restrict its claims on common beliefs to something very close to the mere belief in the group and its very restricted action—that this is going to school, that this is doing work—revalues the importance of individual action by giving it significance in relation to the economy of the group. As opposed to the various analyses that attempt to look at action simply in terms of its expression of what one believes, the artificial group can be assimilative precisely because it has so comparatively few requirements for entry and participation.<sup>43</sup>

41. Posner, *Sex and Reason* (Cambridge, Mass., 1992), p. 373.

42. See Jeremy Bentham, "A View of the Hard-Labour Bill" and "Panopticon; or, The Inspection-House," *The Works of Jeremy Bentham*, ed. John Bowring (New York, 1962) and *Chrestomathia*, ed. M. J. Smith and W. H. Burston (Oxford, 1983).

43. Bentham's commitment to these social structures as promoters of individual rights reaches its apogee when religious belief, for instance, comes to be seen as not simply as religious belief but as religious belief that cannot detach itself from a host of daily routines. Thus, even though Bentham's *Defence of Usury* (London, 1818) argues for the positive value of moneylending and thereby makes it hard to sustain anti-Semitism as an appropriate judgment on an evil practice, he expresses anxiety about the problems that Jewish dietary laws would present to his proposals for workhouses. If his earlier view allowed room for a connection between one particular kind of action and a group of people and merely urged a revaluation of that action and the group that engaged in it, his later account emphasizes the artificial environment as a means for minimizing such connections. In this regard, Foucault's *Discipline and Punish*, while providing an extraordinary account of the behavioral purchase of Bentham's work, tends to use Bentham's panoptic model in a fashion that threatens to elide Bentham's effort to free individuals from the character of their group and from the sense that individuals have self-consistent characters with the rise of social scientific character types. See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, 1977).

If MacKinnon once presented her antipornography position in terms of its connection with “a mode of portrayal that has a legal history—the sexually explicit,” I am suggesting, she was relying on the wrong legal history (“FBS,” p. 176). Inasmuch as that legal history has been seen in terms of the rights of groups to be groups and the rights of the individuals who represent those groups to express their views freely, it has been hard to explain how the assault on sexual explicitness would not advance some groups at the expense of others.<sup>44</sup> MacKinnon’s argument from sexual harassment, however, suggests the importance of these artificial environments for creating groups that have, and need, relatively little agreement and resemblance among the individuals that form them. For sexual harassment in her account requires no more or less than the effort to treat these environments and the groups they produce as if they could be reconverted into statements of affinity and the groups that they determine. The harm of pornography, that is, does not lie in the fact that it takes images that one might consent to see in private and makes them public, nor in the fact that pornography may in this sense be assaultive and actlike. Rather, the harm of pornography used in sexual harassment is that it would effectively eliminate the publicness of the public sphere in continually trying to reread the minimal agreements of modern public spaces as if they ought always to resolve themselves into private compacts and to reconstrue the minimal actions of secular groups as if they always involved unanimity about not one action but many. I take this to be the essential meaning of her statement that “the workplace and the academy are the sites of this confrontation [between free speech and discriminatory expression] not only because inequality is crucially enacted there, but because equality is crucially guaranteed there” (*O*, p. 54).<sup>45</sup> The question that argument poses is not why there is not full equality in every instance and in every context. It is, rather, why we extend the artificial environments of the school and the workplace only intermittently and restrict their claim that school and work and public accommodation and

44. See Post, “Cultural Heterogeneity and Law,” and Posner, “Obsession,” pp. 35–36.

45. MacKinnon also sometimes includes the family and public spaces in her list of environments to which women are given inadequate access. I single out the points at which she focuses on the school and the workplace because they seem to me to present the clearest model for understanding how artificial groups and environment may foster behavior. I have avoided the question of the family because it seems to me that two quite different sets of issues—the emotional ties between family members and the functioning of the family as an essentially artificial unit in which each member is continually valued in relation to the whole—tend to be elided. I would argue, however, that the centrality that MacKinnon gives to the school and the workplace help to explain her reaction to some of the negative reviews of her work. Reviews tend to be treated as relatively favorable or unfavorable reactions to a thing that exists, a comparison between it and some imagined standard by which it might be judged good; MacKinnon, I think, would want to advance the argument that some of the negative reviews of her work simply attempt to deny her access to participation in the public sphere.

housing should not be a matter of similarity of belief or its physical equivalent.

The pornography debate, in other words, raises the question of toleration as fully as virtually every commentator has suggested. What I have been arguing is that we can crucially misconceive the nature and value of that toleration when we continually appeal to a genealogy of cases that treat that public sphere as a demilitarized zone in which the conflicting views of a variety of groups may and, indeed, ought to be expressed. For if we frequently do what we do out of a commitment to the beliefs that we hold and acknowledge by our membership in groups, the artificial environments that constitute an important aspect of the public sphere also (and perhaps more significantly) promote toleration by lightening the grip of individual beliefs and the group memberships that they entail and express. For, by contrast with the view that, with enough performative ingenuity, anyone can become anything he or she can identify with, the logic of these artificial environments opens individuals to act in concert with a group to which they do not already belong. Its aim is to render irrelevant the aspects of individual identity (the gender and race continually resurrected by visual assignment) that are minimally susceptible to change on the basis of one's beliefs.