The Prefeminist Debate on Pornography

I. Cultural Conservatives: Legal Moralism and Legal Paternalism

1. Good sex is always heterosexual, usually takes place in marriage, and oriented toward procreation.
2. Sexually explicit material activates all those polymorphous perverse snakes deep within us that threaten to undo civilization in general and each of us in particular.
3. Sexually explicit material is either not real speech, because it is a noncognitive mode of expression appealing not to brains but to penises and the like or, if real speech, then lacking in serious literary, artistic, political, or scientific value and therefore undeserving of First Amendment protection.
4. The law ought to serve as morality’s handmaiden, protecting it from the forces of the flesh that would, if they only could, devour it.

II. Civil Libertarians: The Harm Principle and the Offense Principle

1. Good sex is a matter of aesthetics, not ethics, of taste, not virtue.
2. Sexually explicit material invites us to try out a variety of sexual experiences and to overcome any number of our unhealthy Puritanical and Victorian sexual inhibitions.
3. Sexually explicit material is real speech with a socially valuable message.
4. The law ought to serve simply as a system of green and red lights that permits each of us to get our sexual satisfaction whenever, wherever, however, and with whomever or whatever we please, provided that no one, with the possible exception of ourselves, is either harmed or egregiously offended in the process.

Feminist Antipornographers

Focus on the harm principle and harm done to women. Distinction between:

-Erotica: love or a creative principle. Erotic representations show sexual relationships between fully consenting adults, equal partners who identify emotionally with each other. Erotica encourages both men and women to treat each other as full human persons.

-Thanatica: death or a destructive principle. Thanatic representations show sexual relationships in which full consent, real equality, and emotional identification are absent. Thanatica encourages men in particular to treat women as mere objects.

Whatever First Amendment protection thanatica has, it is overridden by the likelihood that it harms women: specifically by promoting sexual harassment, rape, and woman battering, and generally by degrading them. If any sexually explicit depictions and descriptions may be legally regulated, feminist AP maintain that it is those where inequalities between coercing, abusing men and coerced, abused women are too blatant to be explained away as freely chosen, sadomasochistic fun and frolic.
Objection: Although there may be legal grounds for restricting forms of pornographic behavior such as sexual harassment, rape, and woman battering, these grounds cannot be invoked to restrict representations of such behavior because pornographic depictions and descriptions are not harmful per se.

Responses:

1. Although in and of itself pornography is not harmful in the way that sexual harassment, rape, and woman battering are, it encourages people (men) to behave in these harmful ways.

BUT: This argument is based on the belief that that thought leads to action, a widely held belief that is nevertheless enormously difficult to prove.

   Problems:

   • distinction between sex and violence
   • uncertain causal relationship between seeing x and doing x
   • commitment to First Amendment

2. Pornography is in and of itself harmful because it defames and/or discriminates against women. Defamation and Tort Law: Defamatory communications are those that damage a person’s reputation by expressing to third parties thoughts that either diminish the esteem in which the defamed party is held or excite adverse feelings or opinions against him/her. Because pornographic films defame women by telling a deep and vicious lie about them—that they are all crazed masochists who crave sexual abuse—then women as individuals and perhaps as a group may bring civil suits against pornographers.

   Three problems with this approach:

1. It is not clear that pornographers flash images of sexually abused women across the screen in order to make statements, defamatory or otherwise, about women. The typical pornographer does not intend to state anything in particular.
2. Even if it could be established that most pornographers do intend to communicate women-degrading messages to their audiences, the objection will be made that Anglo-American law simply has no way to handle cases of group defamation. Traditionally, the law of defamation is concerned with the protection of an individual’s reputation, not with that of a group’s, especially an unwieldy and huge group like women.
3. Even if it could be established that women as a group are defamed by pornography, a group defamation approach would open the floodgates to all manner of lawsuits.

Civil Rights and Anti-Discrimination Law (Mackinnon and Dworkin): Premised as it is on inequality, pornography leads men not only to think less of women, but to treat women as second-class citizens, as less than full, human persons. For this reason, pornography can
and ought to be controlled as a civil offense, a civil rights violation. Any woman should be granted a legal cause of action if she is:

• coerced into a pornographic performance
• has pornography forced on her
• has been assaulted or attacked because of a particular piece of pornography

Further, any woman should be able to bring suit against traffickers in pornography on behalf of all women.

From Wikipedia:
Dworkin and MacKinnon placed special emphasis on the legal definition of pornography provided in the civil rights ordinance. The civil rights ordinance characterizes pornography as a form of "sex discrimination" and defines "pornography" as "the graphic sexually explicit subordination of women through pictures and/or words," when combined with one of several other conditions. In the "model ordinance" that they drafted, Dworkin and MacKinnon gave the following legal definition:

1. "Pornography" means the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following:
   a. women are presented dehumanized as sexual objects, things or commodities; or
   b. women are presented as sexual objects who enjoy humiliation or pain; or
   c. women are presented as sexual objects experiencing sexual pleasure in rape, incest, or other sexual assault; or
   d. women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
   e. women are presented in postures or positions of sexual submission, servility, or display; or
   f. women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or
   g. women are presented being penetrated by objects or animals; or
   h. women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual.

2. The use of men, children, or transsexuals in the place of women in (a)-(h) of this definition is also pornography for purposes of this law.

3. "Person" shall include child or transsexual.

Objections to Mackinnon and Dworkin:
1. Vagueness of its central terms.
2. How much do interpretations of a text depend on contextual factors. Mackinnon’s response: There is only one context: male domination and female subordination. Is this an acceptable claim? It gets to the issue of interpretation of texts.
3. Focus on the assault clause: It is difficult to prove that a man assaulted a woman because he saw a pornographic film. We must investigate the issue of the media’s impact on human behavior. We might wonder where this leaves us. Given that we
as yet do not have clear evidence of the media’s impact of human behavior, what
ought we to do?
4. Focus on force clause: There is no clear line between force and persuasion.
Lacking an adequate criterion for what constitutes force, this clause is too vague.
Is this true?
5. Focus on coercion clause: it renders meaningless any distinction between consent
and nonconsent. If women are incapable of consent, what entitles them to be
treated less paternalistically than children? Women either have or do not have the
capacity to consent, and no one can afford to remain undecided on the issue.
6. Focus on the trafficking clause. Under this clause, absent any showing of harm to
herself or to women in general, a woman may secure an injunction against the
distribution, sale, exhibition, or production of any sexually explicit item that fits
Mackinnon and Dworkin’s definition of pornography.
7. Given what they regard as the vagueness of M&D’s pornography definition, liberal
feminists worry that the trafficking clause may have the effect of limiting the free
speech of bad sexist boys as well as good feminist girls.
8. Conservatives could use M&D’s pornography definition to secure injunctions
against sexually explicit feminist texts.
9. Men are also demeaned, degraded, and defamed by pornography. What do you
think of this response?
10. Is pornography central to women’s subordination? To suggest that P contributes
to women’s oppression more than does lack of access to good jobs, affordable
child care, and quality education, is, insist liberal feminists, to suggest something
about which the typical woman on welfare can only shake her head in disbelief.
11. Issues raised by feminist sexual libertarians who object to the erotica/thanatica
distinction on the grounds that it suggests that the only good sex is vanilla sex.
Under no circumstances should a woman be told that if she wants to be a feminist,
then only certain sorts of sexual encounter are for her.

Much of this material comes from Rosemarie Tong: *Feminist Thought*