

# PORNOGRAPHY: ALTERNATIVES TO CENSORSHIP

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It must be understood that there are a few "givens" which underly this analysis of pornography: that pornography is not "erotica"; that it is not titillating fun — a night out with the boys; that it is not "naughty" sex play, offensive only to "prudes"; it is not a manifestation of free expression or opinion. It *is* hate literature against women,<sup>1</sup> against the vulnerable, and, paradoxically, against the feared. It *is* a political tool in the long-raging war between patriarchy and gynocentric values.

I begin by setting out the feminist perspective within which I operate and which serves as the departure point for the analysis; I go on to define pornography in terms of violence and abuse, rather than sex; I then discuss the functions and briefly the effects of pornography — briefly because I take the position that specific effects are less significant than the general effects it has; and I respond to the problems by suggesting that censorship is an inappropriate response, that our attentions should be directed towards provincial and federal human rights legislation in conjunction with other legal methods of curtailing pornography.

## **I. Feminism: the departure point**

It is not possible, nor necessary, within the confines of this analysis to consider feminist theory in detail. Certainly it has been done elsewhere.<sup>2</sup> It will have to be sufficient to set out the major elements of feminism, against which, it will be argued, pornography is directed.

Feminist analysis is founded in the central aspect of reproduction for all species, including our own: that is, reproduction in the sense of creativity.

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Women and the life principle (that symbolic power to create and recreate) are central to feminism. Reproduction is the epitome of creativity, the ultimate creative act, belonging particularly to women; reproduction also means the growth and development of human beings: thus there is species reproduction, as well as individual reproduction.

The public and the private, the objective and the subjective, merge in feminist theory. As human beings, we are able to make rational, conscious decisions in addition to our ability to act intuitively, not only, but most notably, in the spheres of reproduction and production. In feminism, then, is synthesis.

It is *because* of our reproductive power that women have been oppressed, both because our more immediate ties with children have resulted in women's almost total responsibility for caring for children, and because our caring for children has defined us; it is also *through* our reproductive power that we women assert ourselves. But note the metaphysical self-definition which has its roots, but not necessarily its expression, in biological reality: it is not the physical *act* of childbirth but the *capacity* of creation that will make women free.

While reproduction has been a private activity — indeed, until relatively recently, pregnancy was meant to be kept “secret” among the upper and middle classes — it will become public by positing the reproduction synthesis as the core of public activity, by making it the central or organizing principle of society. The result is a drastic reformation of the principles which become important: nurture, creation, integration, recognition of other, rather than dismissal, destruction, separation, satisfaction of self which have been the dominant male principles.

Thus we can summarize the principles of feminist theory, for the purposes of this analysis, as follows:

- 1. the reason for women's oppression, our capacity to reproduce, is the means to the end of our oppression;*
- 2. the significance of reproduction/creation is that it would constitute the core organizing principle of a feminist society;*
- 3. a society based on feminist life principles is incompatible with a society based on malist death principles; and*
- 4. feminism is defined by women who are thus initiators rather than reactors, activists rather than recipient vessels, self-defined rather than mirror-images or other-determined.*

The feminism from which I move directs its attention to ideology and structure, for while there are individual men who may in fact be enemies of women's freedom (indeed, there are many of them), our concern is less with them than with male ideology, with *malism*. Feminism poses a challenge to malism of unprecedented proportions and thus poses a threat to those who benefit from malism. It is inevitable that as men perceive that feminism threatens the structures and institutions of a society of male structures and institutions and threatens the complex web of interlocking thought that has comprised their

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definition of self and the basis of their expectations in this world, they will become afraid and strike women who personify the threat.

Pornography has a role in this struggle in the sense that it constitutes an assault upon women's self-assertion and separation from a male-defined and male-serving existence, for pornography represents the most basic service woman has provided man.

### II. Pornography: what it is

In graphically representing women's sexual subservience to men, women in the service of men, Woman in the service of Man, pornography has two major characteristics:

1. *it is the representation of the debasement of women through sex and violence or compulsion,*<sup>3</sup> and
2. *it is in itself an institution of patriarchal sexuality.*

The characterization of pornography as violent sexuality (or as compelled sexuality), either explicitly or with force hovering in the background, and as a tool of domination is a significant development in the analysis of pornography. Until feminists appropriated the issue, pornography was defined almost entirely as sexual expression — and either condemned or lauded because of that.

Thus wrote one author twenty years ago: "It is generally agreed that the essential characteristic of pornography is its sexuality."<sup>4</sup> More recently, the Williams Committee in England also defined it in sexual terms: "it has a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity, etc.)."<sup>5</sup>

It is probably natural, then, that the debate around pornography (or obscenity) focussed on moral depravity, and that pornography would be described as an "attempt to crush the delicate qualities of shame, bashfulness and reserve which set *men* apart from the beast".<sup>6</sup> The political right has declared its opposition to porn in unequivocal terms. But not because of what it does to women; rather because it is part of a "humanist-secularist atheistic thrust". The right tosses porn into the same bag with "abortion on demand, divorce by consent, euthanasia, the abolition of the teaching of religion in schools".<sup>7</sup>

Those who have opposed porn have been vocal in their disgust at the homosexual and lesbian sex which appeared in porn magazines and films (although the former was more abhorrent since woman-centred sexuality has never been treated as seriously: it was difficult for men to understand that women might have a sexuality apart from men). The Longford Committee, established in Britain to explore the question of obscenity, asked:

Does the community really desire the active encouragement of widespread promiscuity or homosexual practices; or does it wish to take reasonable precautions to preserve the integrity of family life?<sup>8</sup>

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The fear of homosexual sex continues as the treatment of *The Body Politic* and the bathhouse raids evidence.

The fear expressed by the right is less surprising when set against the encouragement given writers and publishers of obscenity by liberals. They praised the spread of obscene materials and defended them on the witness stand as a source of enlightenment in a repressive sexual era. In response to the Longford Committee's recommendations for restricting pornography, for example, Brigid Brophy explained that "[t]he Longford legislation is a prescription for replacing the permissive society by a stagnant society. A society that is not free to be outraged is not free to change"<sup>9</sup> One has to recognize that speaking out for explicit sexuality has been considered to be a "good cause"; yet that liberation has occurred on the backs (and in the genitals and other orifices) of the most vulnerable members of our society.

The more blasé among us have taken a different tack, well represented by a much-praised piece by George Steiner in which he complains that pornography is boring. That verbal yawn is, however, merely a prelude to Mr. Steiner's major concern: pornography is a subversion of privacy — not the privacy of the victims, as one might foolishly think, but of the consumers. (Mr. Steiner, we might note in passing, had an interesting opinion of the relations between the sexes: sexual activities, he remarks with the appropriately worldly air of someone who has nothing to learn, "have remained fairly generally the same since man first met goat and woman".<sup>10</sup> We hope we are not being too sensitive when we wonder if the order is significant?) Unhappy man, whose own pornographic books "leave a man less free, less himself, than they found him;... they leave language poorer, less endowed with a capacity for fresh discrimination and excitement".<sup>11</sup> And how do they leave woman, then, she who has bared all physically and suppressed all emotionally just to have men bored and bored poorer for her effort?

I mention this attitude because it is, in my view, a dangerous one, all the more so because it is so cavalier about what is involved in pornography and because it so clearly misses the reality of porn: the increasingly lurid scenes which are necessary to satisfy those who are regularly exposed to it. Steiner is likely right when he criticizes porn for being boring, but he fails to take the next step: a realization that that does not mean the end of porn but merely the development of even worse representations.

We have the nonchalance of the discriminating reader; the cry that pornography is in the vanguard of the great liberal advance — a freeing of inhibitions, a contribution to the free expression of natural *man*, a welcome escape from the stifling preoccupation with the evils of sex; and the lament that it will lead to the break up of the family and the death of god.

*In none of these views does anyone express any concern for women as individuals.* And that is the problem: women in pornography are anonymous, they are secondary, *they are not real*. To the men who look at them, they are as plastic dolls, the life size mannequin of the pathetic pervert. But of course they *are* real. And it is hard for us as women to believe that no association is made between the representation on the screen or on the magazine page and women in their

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homes, on the street, standing in a bookshop next to a man who is perusing the naked woman bound in chains in his favourite magazine: is it possible for that man to treat me, that woman beside him, as a human being when he received gratification from seeing someone who looks like me bound, beaten, humiliated?

Defenders of porn would have us believe that he could, that there is no confusion in the consumer's mind between the performer and the "real" woman. Women who attend porn films "are ignored by the men in the audience" who are engaged in "private fantasy" and "[t]he real woman within touching distance has not the attraction of the images",<sup>12</sup> the men are there to see what they do not get of home, and they are hardly likely to rush home and order their wives to perform fellatio just because they saw a stud do so in the movies".<sup>13</sup>

In case we miss the point that the "real thing" cannot live up to the fantasy, Peter Michelson makes it succinctly: the process of commercializing sex in *Playboy* and elsewhere

is rather subtle, and one is seldom conscious of himself as the *Playboy*. Nor does one think of *his woman* as a whore. So long as he has Playmates, Bunnies and their analogues, the movie sex stars . . . , he needn't think of her — if he thinks of her at all, his mind being filled with more enticing fantasies — as such, or as property. She may continue in her time-honored rhetorical role of the sometimes dull, sometimes bright but always slightly irrelevant companion.<sup>14</sup>

One feels compelled to ask what would make this "companion" relevant — a willingness to engage in one of the "enticing fantasies"?

What this is all meant to do is separate women from each other: reassure those who are not performers in pornography that they are not like those who *are* performers and therefore will not be treated like them; and flatter the performers that they have something the "real" women do not. The message to most women is: safer, indeed, to let the fantasy women take the brunt of pornographic need; the rest of us can keep our distance. It just ain't so. At the most basic level, there are women who have found themselves the unwilling participants in acted-out fantasies.<sup>15</sup> In these cases, husbands and male companions have "persuaded" or compelled women to engage in acts which the men have seen in movies or magazines. In other instances, men have re-enacted these portrayals with women who are strangers to them.

On another level, what these critics do not appreciate is that as feminists we cannot separate ourselves from the victims who are performers: we see the substance of ourselves reflected in those pages and on that screen. And we see ourselves, all of ourselves, as part of this campaign of woman-hatred.

The problem is the use of sex coupled with violence as a political tool in the perpetuation of patriarchy. A feminist definition of pornography takes cognizance of the coercive element in it: the portrayal, through pictorial or verbal form, of sexual activity which involves the encouragement or condonation of violence

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towards or degradation of any of the participants.<sup>16</sup>

A feminist definition identifies a political phenomenon rather than a moral one.<sup>17</sup> It is vital to an understanding of pornography not to sink into the morass of debate about moral or spiritual decay, to condemn it because of explicit sexuality (or to praise it for the same); the harm of pornography is its betrayal of the human integrity of its victims, its insistence that the vacuous nature of the representations are the portrayals of ideals, and above all, its blatant and brutal display of power of men over women, sold as the depiction of male fantasies, basing its appeal on the bringing to "life" of men's dreams — and women's nightmares.

It is the emphasis on violence rather than on sex which differentiates the feminist naming of pornography from the blunt and reactionary attack by the Right on the liberalization of sexual values, from the uncritical extolling of that same liberalization by liberals, and from the intellectual concerns of the sated. From a feminist point of view, the major concern about pornography is its treatment of women; for the others, it is secondary or irrelevant: that is because for them women are not independent dignified human beings. Thus they view the matter from the "larger" perspective of "society"; but this is a society which does not include women, for if it did, surely women could not so easily be sloughed off, *despite their centrality to pornography*.

The peculiarly *feminist* nature of the power analysis constitutes a proper appropriation of pornography as an issue that graphically illustrates the underlying basis of patriarchal society. The very existence of porn is itself the problem, because it both reflects and allows a particular view of women, one which is apparently acceptable to many members of society who seem to accept its "milder" form in Vogue fashion layouts or in store window mannequins wearing chains around their necks, without connecting it to "hard-core" porn, including the thrusting of phallic objects up the anuses of women and women hanging, bound, from meat hooks. Hard-core or mild, these are all scenes of male control of women. It is this general atmosphere pervading patriarchal society which is wrong: pornography is simply an undeniable expression of that wrong, not a distinct phenomenon.

It is not an easy task to specify the kinds of materials I am referring to when I use the term "pornography"; there are always examples which appear to straddle the line, wherever it is drawn.

I do distinguish "sexually explicit materials" from pornography; these are representations which two people might well find add to their own sexual lives by bringing something new to a jaded relationship or which they have found arouses them. What does *not* appear in the representation of such materials is violence or compulsion. I am going to avoid the question of whether *clearly* playful bondage or spanking constitutes violence or compulsion, although if it always occurs in one direction, it raises the question of domination and is more problematic. No doubt some people would argue that such activities can *never* be playful. These playful scenes, if such are possible, are the realities of private lives; yet we do not know whether that is because the pervasive sexual culture has made them that way, that most people cannot conceive of a sexuality which

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does not involve some element of dominance/subordination.

Certainly there are difficulties with any kind of sexual material today. It has been found that "much of the pornography implicated in the battery of women has been . . . so-called non-violent materials."<sup>18</sup> Recent studies have shown that non-violent representations may have the effect of increasing aggressive reactions towards women.<sup>19</sup> And sexually explicit materials are made by the same industry which as the porn industry, is built on deceit, victimization, poor working conditions and so on.<sup>20</sup>

Despite these problems, I do separate sexually explicit materials from materials which involve women taking off their clothes at gunpoint; foreign objects (other than a penis) in the vagina; women spreadeagled, exposed to men; directions on how to rape children; women sucking guns; women in degrading poses, in subordinate positions, tied up with ropes or chains, gagged; women raped by one or several men; women treated as sexually available to other men by one man; women physically attacked, cut with knives, slapped, whipped, spanked, punished; women defecated on; initials carved on the inside of a woman's thigh; an earring pierced through the vaginal area of a woman attached to a chain held by a man; women engaging in sex with each other, solely for the edification of men;<sup>21</sup> and on and on and on — all with the intent of showing that this is an exciting, desirable activity to engage in, that it is legitimate to be aroused by such portrayals, and that the victims themselves might be enjoying it (although this last is often part of the representation, it is not a *necessary* component: some people get their kicks from attacks on terrified women who beg them not to do whatever it is they are going to do or who are seen to beg in the porn).

### III. Pornography: its functions

The previous section touched briefly both on the effects and functions of pornography, but if we are to begin to understand how to respond to porn, we must have some understanding of its functions and its effects in greater detail. Its effects really relate to its place in the political system, that is, its function of helping to perpetuate patriarchy.

Pornography promises private, erotic thrills, portrays violence against and degradation of women, and encourages women-hatred and contempt. It revenges the ancient male fear of female sexuality; it justifies the domination of women through control of their sexuality by violence or the constant threat of violence at the hands of men.

One of its most insidious and humiliating characteristics is its co-optation of the smiling or coyly pouting victims themselves to express that hatred, a quality it shares in sad fact with other institutions of our patriarchal system: women's "participation" in pornography is merely a particularly graphic example of women's role as the primary agents of a socialization process which perpetuates their own subordination.

I use the word "institution" in the above paragraph deliberately: pornography is an element of the institution of patriarchal sexuality or, put another way, it is a

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supporting pillar. As such, it represents the forces of compulsion in the private sphere: the constant and graphic reminder of what might occur in any woman's bedroom. Public sexuality in magazines, films and videos is imported into private sexuality. But this is a sexuality of a certain kind: as with all institutions commanded by the dominant class, it carries with it the authority of force, compulsion, violence.

Pornography is in part male revenge for female sexuality. The men who act in porn movies (or pose in photographs) are the instrument of the revenge while the women are the object. Put another way, the men represent the avengers: they stand in for all the men who cannot play that role — but they show how that role can be played outside the boundaries of page and screen. The taming of women's sexuality which occurs through the medium of porn, reflects the ambivalent feelings men have always held about women's sexuality.<sup>22</sup>

Desirous of enjoying women's sexuality, men also feared that through their (women's) sexuality, women are able to control them. For the women closest to them — wives, sisters, mothers — men have devised rules which have the effect of shaping their sexuality into manageable proportions, primarily by acting as if such women are asexual: mothers are above sex, sisters are not interested (nor are daughters), wives must be forced. Yet men also want the evil temptress, the source of their downfall, whether Eve or the prostitute with her little book of prominent customers. Of course, the prostitute (or the mistress) is another man's sister, daughter, wife and/or mother.

Women's sexuality is an Unknown; it is mysterious; it is connected with recreation; it is capable of multiple pleasures: it is something to be both feared and envied. It is therefore something to be controlled: hence the brutality of pornography, the reassurance that man does in fact have the upper hand and will not be overwhelmed by woman. Through pornography, men can displace their fears about women's sexuality onto the women; they define it and put it to the service of men. For example,

Female sexual mutilation, often self-inflicted, indicates that she is, should be, can be castrated — even that she desires that castration (though he fears she desires and can accomplish *his* castration).<sup>23</sup>

Women's mouths are put to the service of men to prevent our assertion of our own integrity and self-definition of our own sexuality. It is telling that one common pornographic image is that of the woman on her knees, humbled before the man whose penis she has taken in her mouth — literally forced to swallow the sexual and power lie that is pornography. The man is so confident of his power he does not believe (and probably he is correct) that the woman at his feet will bite the penis that chokes her.

Yet while men are prepared to force women to have sex and while they resort to force to keep women in rein, they do not want to believe they have to force them: how insulting to admit that one is not desired by the object of one's own



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desires. And so the comfort of the willing victim, the rationalization that women are getting only what they want but pretend they do not:

Force is nature's victory over the constraints of civilization.  
Force is intrinsic to male sexuality and force used against her  
does not victimize her; it actualizes her.<sup>24</sup>

Thus force is a release for women and it is not surprising that men are able to believe that a woman who is forced to engage in sexual activity may come to enjoy it. Men need suffer few qualms at being aroused by violent or degrading treatment of women if they have convinced themselves that such treatment will benefit the women by bringing out their "true" desires.

Despite all that, the exercise of force is a source of pleasure and arousal in itself. Force is control is power; power ultimately depends on fear which ultimately depends on force. If the sexual experience *were* mutual, this element would be lacking and the reader or viewer left unsatisfied for that reason.

Pornography also enjoys the power to dismiss, to test us and find us wanting, hidden in the reassurance that we should not worry for we cannot match the ideal of the model. It is in fact irrelevant whether the women in the audience or on the street going to dinner or to a play or to the office, factory, hospital, or bar to work, look like the ideal; for the ideal is only a collection of eroticisms which are shared by all women who are treated not as people but as walking erotic figures.

The easy availability of pornography serves men very well; it should be expected that they try to diminish its importance by claiming it has no effect (it is simply fantasy, forgotten outside the theatre) or that it is all really just too boring to worry about, except that it does nasty things to the language. Men seek pornography to "overcome or deny outright any feelings of passivity, fear, disgust, or inadequacy . . . Rape fantasies — or sometimes real rape — reinforce men in the belief that they are superior to women and so can 'have' a women whenever they choose to".<sup>25</sup> As one playwright wrote to the Longford Committee,

Sex as an instrument for the working out of fear, hatred, rape, guilt and personal inadequacy *at the expense* of women is quite appallingly powerful, prevalent and indeed pornographic . . .<sup>26</sup>

The prevalence of pornography and its use in seemingly innocuous contexts enhances the idea that any woman is available for men to use to work out their inadequacies. For these base purposes, there are sufficient numbers of women that no man need feel deprived: he can just pick one at random.<sup>27</sup> Just as employers who might otherwise compete with each other, are prepared to cooperate in the face of some perceived threat from workers or in order to fix prices, men who might otherwise engage in competitive seduction, find "the sharp and bitter edge of male rivalry is dulled, if not sweetened, by such shared

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patriarchal illusions" as that "every man is at least sexually (and therefore in every other way) superior to all women" and that some woman is always available to every man.<sup>28</sup>

If there is indeed any one characteristic that enables pornography to exert its power, to exercise its role in the continuation of patriarchy, it is its ability to catch all women in its net. Even if we believe that only beautiful women appear as models and since we are not beautiful, we can escape, we know that the reality, of which porn is the image, is indiscriminate: we know the brutal violence that can be inflicted on a children's nanny, a lawyer, a mother, a prostitute, the teenager next door. Despite our searching for a pattern which will exclude us, our deepest sense knows there is not one to find: it is intended that we know there is not one to find, to know we can never feel excluded, never feel safe.

The images of pornography are a reminder that any woman can find herself in some terrifying real life re-enactment of those images. Pornography controls because its real-life counterpart's selection is random: its subject could be any woman and so its victim could be any woman.<sup>29</sup> The objectification of women — that is, the making of each of us into an object interchangeable with every other each of us, with every other woman-object — transforms us into commodities and "all commodity is available to him who has the power to take it".<sup>30</sup>

### Pornography: its effects

People are much readier to curtail porn if it can be shown (without doubt) that after looking at pornography, men will carry out a vicious sexual assault. Such a view misses the point: porn is bad because it reflects assumptions about women and implicitly suggests that it is perfectly alright to treat us as we are treated in pornography. It is bad because it has become part of everyday commerce, appearing on billboards, record album covers, rock videos and in fashion magazines. It is bad because it is widespread: *illicit* porn is a \$63 million business in Canada.<sup>31</sup>

It is the contention here that the very existence of pornography is the problem and that while there is evidence to suggest a correlation between exposure to porn and the commission of brutal sexual acts against women,<sup>32</sup> the connection is not necessary to justify controlling pornography.

In addition to a host of studies, however, we have dramatic examples of men who commit heinous crimes and who have been porn aficionados: Clifford Olsen is one such example; Ferdinand Robinson had porn magazines with him when he murdered Barbara Schlifer. At the least, and in my view, it is enough, we must recognize that the factors which allow ever more brutal porn also encourage sex crimes against women and children; and we can go further: pornography invites imitation because, like the cigarette and beer ads, it promises pleasure and success.

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Thus it is sufficient that such treatment as is meted out to women in porn is represented on a wide scale in Canada<sup>33</sup> to warrant condemnation of it. Even without further consequences (and these seem to occur), it is the portrayal of women in the sexual service of men that must be censured (but not necessarily censored). It has been understood for some time that societal disapproval of racism is necessary, regardless of the effects of racism on racial minorities, and that it is incumbent upon society to assert that there is "an important difference between the loathsome and the decent"; such a statement is crucial because it can have an impact in "shaping individual attitudes in . . . a desirable direction".<sup>34</sup> We need the same kind of assertion in relation to women.

Yet the manifestation of hatred is increasing in the case of women. The spread of pornography is evidence that its worst effect is a desensitization of many members of the community towards abuse of women. Aggressive pornography appears not only in soft-core magazines such as *Playboy*, but in fashion magazines, on record album covers, on billboards, in advertisements. The violent and/or degrading sexual treatment of women has moved out of the pages of the brown-wrapped or cellophane-covered "speciality" magazines into mainstream media where the pictures may be more "refined" and the photography more skillful but the image and the message are similar. Over a decade ago, the sub-committee on written pornography for the Longford Committee believed that "the trade was now largely engaged in raising the pornographic ante . . ."<sup>35</sup>

Dorothy Inglis traces the development from the "innocent titillation" of the first *Playboy* editions to the current *Playboy* programming on television which features *inter alia* "graphic scenes of gang rape . . . and . . . masochism"<sup>36</sup> In a recent article, a journalist who immersed himself in hours of video porn found that the porn available today is not the sort once seen at men's stags:

The videos are infused with meanness. They smell of fear and sparkle with hate. It is as though a new hand and identity stepped in behind the camera and suddenly gave pornography a point of view.<sup>37</sup>

He saw in the porn images themselves "pathological cravings for power and control, a ruthlessness and a life fear that you would imagine goes along with being able to exploit the intimate life functions of other people to make money".<sup>38</sup> The viewers of such porn attain the same feelings of power vicariously, through their voyeuristic attention to the images on the screen; whether they then realize those feelings through action or are content to let them lie, their feelings of power derive from watching the abuse of women or, put another way, their own self-satisfaction is linked to the ill-treatment of women.

The slide into the hard-core porn occurs easily because it is merely an extension of its milder antecedent, different in degree, not in kind. Despite the acknowledged difference between a *Playboy* spread of a woman fingering her

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genitals or thrusting her ass at the camera, inviting men to contemplate the thrills to be found there, and the notorious *Hustler* cover of a woman being put through a meat-grinder, both are "anonymous" women, even with the individualized textual accompaniment in *Playboy*; the display of women in the service of male readers is the purpose in both cases, the debasement is merely more subtle in the first.

One of the dangerous consequences of the fundamental similarity between soft and hard-core pornography is that the softcore porn no longer seems particularly offensive; what it portrays acquires an even more acceptable connotation. When the context of the soft-core variety is not a "men's magazine" but a billboard, for example, or some other site which is open and public, what is portrayed seems to be perfectly normal. The Longford Committee was advised of the serious ramification of allowing such an appearance of "normality":

The image of women [in advertisements] is based on the same perversions as those embodied in much pornography, but its message is couched in language which the average person does not regard as outrageous; so he listens.<sup>39</sup>

Nor can we ignore that if advertisers include a woman bound in chains in an advertisement, it is because they believe that the subtle message conveyed by that image will help to sell their product: not just any old image will do; it must be an image that will invoke a positive response from the consumer, even if it is not ostensibly connected with the actual product.

As already suggested, the pervasiveness of pornography is central to its effect: it is ready at hand for men to read, hear and watch, to seize whenever they want to do so; at the same time, women are constantly reminded of what it says about us, of the instructions it gives us about the way to behave. The presence of pornography on newsstands and its "respectable" reflection in advertising and fashion photography, and similar contexts, is a reminder not to step out of line, not to give the slightest pretext for excuse — the power is that *any* behaviour serves as an excuse: she was a "bad" girl and deserved to be punished; but if she refused to be "bad", she was "uppity" and deserved to be put in her place.

Women do not have to experience the direct effect of pornography — they do not have to be in it or to be raped by a man whose bedroom walls are plastered with pornographic pictures — in order to be subject to the impact of porn. Rosemarie Tong draws a useful distinction between being *hurt* by pornography<sup>40</sup> and being *harmed* by it:

The fact that some women are not *hurt* by thanatica does not mean that they are not *harmed* thereby. To be harmed is to have one's legitimate interests violated. To be hurt by such violations is to be painfully aware that one's legitimate interests have indeed been violated.<sup>41</sup>

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It is not necessary that the majority of women are conscious of the way in which they are represented in pornography in order for the representation to be deplorable, to be morally, politically and personally unjust. An insult behind one's back is no less an insult, after all. From a strategic point of view, however, it is desirable that as many women as possible understand the dreadful extent of pornography and appreciate the impact it has on all of us, in order to develop effective countermeasures.

Porn also has an effect in regard to the women whom it buys directly: those who perform. Whatever element of deceit<sup>42</sup> and/or compulsion<sup>43</sup> there might be in that regard, the fact is that these women are portraying degraded, humiliated and physically abused sisters. They are real women who are playing women being abused, and perhaps being abused themselves, in an atmosphere of approval.

But how can we talk about the women who take part in pornography as victims or consider them exploited? Do they not perform in blue movies (presumably however dark a blue that may be) voluntarily? How can they be exploited asks Joseph Slade, when they are paid to be . . . To be what? . . . pseudo (or in fact?) beaten, to have guns pushed into mouths or buttocks, to be spread-eagled across the hood of a car and raped? After all, when we're talking commodity, we're talking market value: Slade wonders, "Are prostitutes (and that is what the sex film roles come down to) necessarily exploited if they receive their asking price?"<sup>44</sup> And, he asks (somewhat disingenuously, we must believe), "are the female models any more exploited than the males?" If slavery makes the master a slave, then it could be said in a philosophical moment, that men who degrade women are themselves degraded by that act. One supposes they are, but the point gets lost in the shuffle of rape, wife assault, and the other joys of womanhood.

Slade is not content with even musings such as these; he claims that women ("often humiliated and degraded by the sexual treatment they receive in the films") suffer "less than the males". The explanation for this inversion? The women are "pretty" while the men are "ciphers of no consequence". The women "reacquire their virginity from one picture to the next", somehow making them distinct and dominant individuals; they are even exalted and "stand on pedestals". Slade has obviously been around and he foresees the obvious retort: he admits that one *could* argue that "the males elevate her only to gloat over her abuse", but responds that in these films "male revenge does not come easily, and one wonders just who is being exploited".<sup>45</sup> It is hard not to see this as twisted logic, given the sex of the persons who make most of the porn,<sup>46</sup> the sex of the characters who wield the whip most of the time, the sex of the vast majority of readers and viewers.

In fact, Slade has missed the best point of all: if men in porn are the exploited ones, if they really are the ones who are insignificant, then the fact men relish porn so much must mean that old myth that women are masochists has been misapplied all along — what could be more masochistic than watching one's alter ego be diminished and exploited?

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### V. And so, what to do?

Mechanisms of controlling pornography — and I start, perhaps too pessimistically, with the premise that it cannot be eradicated, at least under the current system — need to take into account the nature of porn as set out earlier: porn as the ultimate in misogyny, communication of hatred, emotional assault on the reader and viewer, possibly resulting in physical assault, abuse and death for victims and compulsion for the performers. It is these qualities, along with the ridicule of women and the constant underlying threat which porn poses to women that must be addressed.

Porn is in great measure a weapon against feminism. Although pornography has been directed against other groups,<sup>47</sup> it has never been as widespread as today: furthermore, the majority of porn is based on heterosexuality. Consider the focus of pornography: to a great extent, on those parts of the female body which are associated with reproduction. This is not, of course, insignificant and, I suggest, not coincidental, since it is through our reproductive power that women assert ourselves: that is to say, not through the act of childbirth, but the capacity of creation of the female sex. The capacity of women to reproduce the human race (and the incapacity of men to do so in the same way), the initial dependence of all men on women, the alignment of women with nature, all combine to instil a fear and awe in the male sex which can be quieted only by the abuse of those very parts of the body which are most connected with reproduction: having come out of the vagina, the man now asserts the right to return; having suckled the breast, he now asserts the right of ownership through clamping of the nipples. The dependence of birth is reversed because women, to be free of pain, are dependent now on men's goodwill". Thus is pornography a weapon against feminism: for if women do not have control of these anatomical parts, how can we assert reproduction as the means by which we assert ourselves?

Several methods of dealing with pornography have been suggested and tried. I now consider a few of them, dealing first with a variety of partial solutions which could be applied in conjunction with others (these are called "adjunct solutions"), then with the "equal" porn view, with censorship and finally recommending that we direct our efforts to human rights legislation.

### Adjunct Solutions

#### *Self-help*

There are several variants of this kind of approach, some of which are available to almost any woman (or man).

At one end of the continuum is the kind of action taken by women in British Columbia, the bombing of porn outlets. In British Columbia, obscenity includes "sado-masochistic material depicting violence combined with sex", but, reports Jillian Ridington, "it took almost a year of lobbying, organizing and demonstrating before charges were laid against Red Hot Video"<sup>48</sup> (Red Hot Video

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is a chain of video stores stocking a high proportion of hard-core pornographic videos). Members of a group called Wimmin's Fire Brigade firebombed three of the stores on November 22nd, 1982, attempting to accomplish what the authorities had shown they were most reluctant to do: close down these outlets of anti-woman propaganda and hate pornography.

At the other end of the spectrum is the simple request to corner stores and other magazine outlets, not to stock porn; letter-writing to advertisers whose advertisements reflect porn themes; letters to the editor complaining about specific items; boycotting and picketing of films, as was done in relation to the "snuff" films.

Another form of self-help is suggested by the store clerk who refused to sell the *Penthouse* containing the Williams photographs who said, "No woman should have to sell pornography if they [sic] feel it is against their [sic] rights". The woman was dismissed from her job for taking that stand.<sup>49</sup>

### *Municipal By-laws*

A municipal by-law may require that magazines containing pornographic material be placed at a height which would be above that of the eye-level of children or that covers be hidden except for the title.<sup>50</sup> Although pornography can be sold, such a by-law at least means that it cannot be flaunted. The City of Vancouver has a by-law which excludes as a permitted use of land, the "retail of sex-oriented products"; it refers only to sex, not violence. The by-law was upheld when challenged in the courts.<sup>51</sup>

### *Living off the Avails*

In Sweden, feminists have tried, unsuccessfully, to bring their "indecent law" to bear on pornographic material. The law makes it illegal to "earn money from other people's bodies",<sup>52</sup> and appears to be similar to section 195 of the Criminal Code which makes it illegal to live off the avails of prostitution. By analogy, it should be illegal to live off the avails of pornography, as a producer, distributor or seller, since it also abuses human bodies.

### *Consecutive Penalty*

The Report on Visible Minorities has recommended that judges be allowed to impose a consecutive penalty for racially motivated crimes.<sup>53</sup> Consideration could be given to a similar power in regard to an assault motivated by woman-hatred.

### *Libel and Slander Act*

Defamation legislation could be amended "to permit civil action against hate propagandists by groups of persons victimized by such material".<sup>54</sup> Under the Manitoba Defamation Act, a member of an identifiable group which is the subject of hate propaganda may bring an action against the propagandist. Remedies include an injunction, damages and fines.

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### *Section 281.2 of the Criminal Code*

Section 281.2 prohibits hate literature or hate propaganda against minority groups:

281.2(2) Everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group

is guilty of an offence. "Identifiable group" means "any section of the public distinguished by colour, race, religion or ethnic origin". In practice this section remains almost completely unused,<sup>55</sup> with no final convictions under it, but it is a recognition that such statements — if they are against persons of distinguishing colour, race, religion or ethnic group, but not sex — are not acceptable, even if the result is a restriction of free speech (these provisions could be challenged under the Charter of Rights and Freedoms but it is likely they would be upheld as a reasonable limit on freedom of expression).

This section could be strengthened by removing the requirement that intention to promote hatred be required, by permitting private prosecutions under it instead of requiring the consent of the provincial attorney-general, as is now the case, and by adding "gender" to the list of "identifiable groups" (the leaders of three major political parties have agreed they would support such an amendment).<sup>56</sup>

In May 1984, Project H was established in Toronto to examine materials which could be considered hate literature under section 281.2 and pass along such literature to the Ontario Ministry of the Attorney General for a decision on prosecution.<sup>57</sup>

### Counter with "equal" pornography

Ann Garry suggests that it is possible to have pornography which is "nonsexist, nondegrading, morally acceptable".<sup>58</sup> She contends that "[t]he key to making the change is to break the connection between sex and harm" and she cites some examples: "a high-ranking female Army officer, treated with respect by men and woman alike, could be shown not only in various encounters with other people but also carrying out her job in a humane manner".<sup>59</sup> Garry does express concern that the typical porn audience might not appreciate the more uplifting aspects of such "pornography" and would see the Army officer as a plaything or "unusual" prostitute, with the result that "women are still degraded"; she therefore has reservations about whether one should give "wholehearted approval to any pornography seen today".

My concerns stem from a different direction and I have two in particular. My basic position is that there is no such animal as "equal" porn, since once the connection between harm and sex is broken, there is no longer pornography, at least by the definition I have been using: porn is the coupling of harm and sex. Thus there cannot be by definition, porn which is "nonsexist, nondegrading, morally acceptable"; rather, such representations in my scheme would be



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sexually explicit materials, not pornography, far preferable, but unlikely to be accepted as a substitute for pornography by those who seek the latter.

My second concern arises from Garry's suggestion that her new porn might have an educational value. While it is unhappily true that porn does have an educational effect in the sense that it provides models for "acceptable" ways to treat women, I would be reluctant to propose self-consciously educational sexually explicit materials for normal use (although indeed one partner might take advantage of such materials to show the other partner something about the nature of the kind of sex he or she would like). Such "educational" intentions would be the ultimate turn-off in the average situation.<sup>60</sup>

The distinction between Garry's definition and mine is significant, for what is lacking in Garry's non-sexist "pornography" and is overwhelmingly present in pornography as I describe it, is *power*. The themes of dominance-subordination appear not only in the pornographic pictures, films, videos, and descriptions, but also constitute the role it plays in systemic power, in supporting patriarchy. Thus there can be no non-sexist porn (because non-sexism does not involve power).

Nor can there be porn for women, as the concept of "equal" porn suggests, not because some individual women do not react to current porn by becoming aroused, but because it is the *systemic* dominance of the male class which pornography at the same time reflects and helps to sustain.

It is characteristic of pornography that it is the instrument of men, that it does not serve the same function for women as it does for men. It is not coincidence that it is primarily designed for men nor that the only "pornography" designed for women is generally free of violence; nor is it the result of some supposed lesser interest in sex on the part of women.<sup>61</sup> There can really be no "female" equivalent of pornography because pornography is based on power, systemic power, and women do not exert systemic power over men in a patriarchy. As Brownmiller explains,

There can be no 'equality' in porn, no female equivalent, no turning of the tables in the name of bawdy fun. Pornography, like rape, is a male invention, designed to dehumanize women, to reduce the female to an object of sexual access, not to free sensuality from moralistic or parental inhibition.<sup>62</sup>

The pictures of naked men in *Playgirl* might arouse but they are just as likely to bring forth titters, not because women are embarrassed by looking at them, but because a picture of a man posed on skis, legs bent, wearing nothing but ski boots is inherently ridiculous.

The difference is this: the pornography of which women are the objects lies atop a mountain of patriarchal enforcement of women's subordination; sexual abuse — and non-sexual abuse — have both been methods of enforcement and they are combined in pornography and presented as something which is acceptable fantasy, encouraged dreams, condoned ideal. But sometimes the fantasy escapes and takes control and when it does, the dream, the ideal, the

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most graphic exercise of sexual dominance and ownership becomes the reality. The dream of Dorothy Stratten to become part of the fantasy world of *Playboy* ended in the real life pornography of her brutal murder and abuse at the hands of her pornography-manager husband.

We cannot *counter* porn with non-sexist porn or with "female" porn because they are a contradiction in terms; such sexually explicit materials might meet certain needs but not the needs of the porn aficionado.

### Censorship

We already have several forms of the what the Americans call "prior restraint" in Canada, including preventing materials crossing the border, licensing through the censor boards and threat of criminal sanction; these are all means by which distribution is prevented: in free speech terms, silencing the speaker before the speech is made.

The issue here is whether we should expand remedies in that direction: I argue against such expansion and, indeed, would argue against the continuance of the censor board at all because of its confusion of sexually explicit materials and pornography; I do not do so here, simply because the alternatives are not well-developed. One of my objections to censorship is that we cannot control it (the same censorship which *might* rid us of *Hustler* and its ilk also allows *The Diviners* to be pulled off the shelves<sup>63</sup>); it is not specifically designed to respond to what I have suggested is the feminist definition of pornography; and it is a tool, the expansion of which would be welcomed with glee by the right, a development to which I, for one, would be most reluctant to contribute.

Possibly a more serious objection is that reference to censorship invariably raise claims about the denial of freedom of expression. This article, as well as many other feminist analyses of pornography, make it clear that pornography is not free expression, but is, rather, an assault upon women's dignity and physical well-being. Freedom of expression initially referred to political speech, arising out of the democratic belief that the benefits of open dialogue and the desirability of allowing new ideas to be heard and debated outweigh possible insult to certain groups or persons that such dialogue might involve and outweigh, too, the dangers accruing to the state from the expression of extremist political opinion. As far as individuals are concerned, the law of defamation has been developed to attend to harm to reputation. The aversion to cutting off new ideas before they had a chance to be heard or rebutted; the reluctance to encourage what has been called in the United States, "the chilling effect" on people who are intimidated into silence by fear of censorship or other sanctions; and similar concerns have made the protection of free speech an important element in democratic systems, at least theoretically. One might legitimately dispute whether that theory is always realized in practice, but that reality has not prevented the free speech argument from assuming a dominant role against control of pornography. It has been a particularly forceful debate in the United States, but we can expect it to acquire a higher profile in Canada with the constitutional guarantee of freedom of expression under section 2(b) of the

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### Charter of Rights and Freedoms.

Let us assume, however, that pornography is in fact a form of speech and therefore *prima facie* entitled to claim the protection offered to speech. This seems to be accepted by the courts. It should be noted that the Charter uses the term "free expression" which is arguably broader than the American "free speech"; it may, therefore, be more difficult to claim that porn is not included under freedom of expression. Already the *Censor Board case*,<sup>64</sup> discussed below, has accepted that porn media are within the guaranteed freedoms of section 2(b), although it remains to be determined whether infringement of the section 2(b) rights may be justified in this instance.

One case which has at least raised the question of whether such materials should be offered section 2(b) protection is the *Koumoudouris case*<sup>65</sup>; it concerned a challenge to a by-law prohibiting nude dancing. The court considered whether burlesque falls within the guarantee of freedom of expression at all, an issue preliminary to whether, if it did, it deserved constitutional protection. In Eberle J.'s view, it is questionable whether the Charter is intended to protect "artistic expression" or whether the "thrust" of section 2(b) "is in the political and governmental domain"; freedom of expression refers to "the freedom of communication of ideas and opinions among the citizens of Canada..."<sup>66</sup> He did not need to decide the point since he classified nude dancing, not as artistic expression at all, but as the "exposure of performers' pubic areas for the purpose of stimulating liquor sales".

Eberle J.'s characterization is significant in relation to pornography; from the sellers' perspective, the purpose of porn is to make money, billions of dollars of it on this continent. The danger with Eberle J.'s approach, of course, is that one would not wish all artistic expression to be excluded from the Charter guarantee.

In any case, freedom of speech has never been held to be absolute. Exceptions have been made for defamatory statements, for example; nor can one falsely cry "fire" in a crowded theatre; similarly, one is not free to utter treasonous statements. In all these cases, the conflict between the right to say what one wishes and other values important in our society has been resolved in favour of the other values: the right not to have one's reputation unjustly tarnished, public safety and national security, respectively. Obscenity is another exception, not, I suggest, in order to protect public morality, but in order to protect the dignity and well-being of 52% of the population.

### *Customs Powers*

Canadian customs officials have the right to bar entry of materials which they consider to be immoral or indecent.<sup>67</sup> The problem here, of course, is that customs officials are unlikely to be making their selections from a feminist perspective; they are more likely to be motivated by a desire to control "deviant" sex. Nevertheless, the power exists and as feminists we might want to consider whether we would like this power strengthened with guidelines to determine

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what should not be imported, since importation of pornographic materials across the border is a serious problem. A challenge to a carefully defined power to control importation would likely fail under the reasonable limits justification made available by section 1 of the Charter.

### *Censor Boards*

Another form of prior restraint consists of the powers of the eight provincial censor boards to request cuts in films, prohibit them, or classify them, depending upon their regulatory mandate. When the Nova Scotia *Theatres Act* was challenged as being *ultra vires* the province, the Supreme Court of Canada held that censor boards are within provincial jurisdiction as being concerned with the regulation of local trade, the film industry (an indication of how intent the Court was on finding that the censor boards are valid); it rejected the argument that censorship is within the federal criminal power. Accordingly, at least as far as division of powers is concerned, the provinces can determine standards of propriety they expect films to meet.<sup>68</sup>

The challenge to censor boards under the Charter of Rights is based on the denial of the freedom of expression guaranteed by section 2(b). Even though the province has jurisdiction to establish a censor board, it cannot do so if by doing so, it would infringe a constitutionally guaranteed right. The Divisional Court of Ontario, upheld by the Court of Appeal,<sup>69</sup> held that the Ontario Censor Board does infringe freedom of expression and, since its criteria were not prescribed by law (that is, were merely guidelines established by the board itself), could not be justified under section 1 of the Charter. The case is to be heard by the Supreme Court of Canada. The Court of Appeal did not decide whether, if the criteria were prescribed by law, and the Ontario government has now set out in regulatory form such criteria, the censor board would then constitute a reasonable limit on freedom of expression in a free and democratic society. This major issue remains for further challenge.

### *Section 159 of the Criminal Code*

Early legal attempts to deal with obscenity reflected the general emphasis on sexuality already discussed. The predominant test was

whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.<sup>70</sup>

The Canadian Supreme Court gradually rejected this text. In *R. v. Brodie*,<sup>71</sup> the Court held by a 5-4 majority that *Lady Chatterley's Lover* was not obscene. Three members of the Court held that the *Hicklin* test (quoted above) was obsolete, while two others were of the view that the Criminal Code expanded *Hicklin* so that it was not necessary for material to deprave or corrupt in order to be obscene.<sup>71a</sup> This is important since section 159 emphasised the *nature* of the material itself rather than its effect. By 1978, the Court appeared to have finally determined that

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section 159 had superseded *Hicklin*.<sup>72</sup> Section 159 defines obscenity in terms of sex alone and of sex and one or more other characteristics, including violence:

any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

In Ontario, Project P is responsible for tracking down porn; it is composed of four persons from the Metro police force and the Ontario Provincial Police and in 1983, laid 119 charges under section 159.

The guide for whether a publication is obscene is whether the community (of Canada, not the locale in which charges have been brought) will tolerate it: community standards prevail<sup>73</sup> and the test of whether exploitation is "undue" is "whether the accepted standards of tolerance in the contemporary Canadian community have been exceeded". In pre-Charter cases, it was held that doubt is to be resolved in favour of free expression.<sup>74</sup> Despite the so-called Canadian standards, each province permits different types of activity or portrayals and prohibits others; for example, "scenes of ejaculation, masturbation, oral sex, anallingus, explicit penetration, and sex with a foreign object are all taboo" in Ontario; all would be allowed in Quebec except ejaculation. Because of the wording of section 159, "[m]ovies and magazines depicting women bound and gagged and trussed are acceptable, provided, in the judgment of Project P, these depictions do not have sexual connotations".<sup>75</sup>

Section 159 not only in part defines obscenity solely in terms of sex, but it also suggests that some degree of exploitation is acceptable. Nor does it include reference to degradation, unless that can be encompassed by "cruelty". Despite the obvious difficulties and failings of section 159, it is *possible* to interpret it in a manner which responds to feminist concerns.

The feminist appropriation of pornography as an issue has received judicial recognition and quasi-acceptance in *R. v. Doug Rankine Company Ltd*<sup>76</sup> which involved the question of whether twenty-five video-tapes were obscene. Fifteen of the tapes had been allowed into Canada by Customs and some had been approved by the Ontario Censor Board, but for mature audiences only. In his judgment, His Honour Judge Borins gave prominence to the expert testimony of Alderperson (for the City of Toronto) June Rowlands, rejecting the submission of defence counsel that her testimony reflected a "fashionable notion of militant feminism": His Honour coolly dismissed the attempt of the defence counsel to diminish Ms. Rowland's evidence by stating:

I can think of very few women in this country who would tolerate the distribution of motion pictures portraying indignities to other human beings, particularly women, in the name of entertainment. A woman does not have to be a

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'militant feminist' to be intolerant of what is portrayed in many of the films before the court. Nor does a woman have to be a 'militant feminist', or any other type of feminist, to believe that the distribution of such films would be unacceptable on the basis of current community standards. She need only be a person who respects the dignity of life and rejects those who seek to degrade it.<sup>77</sup>

(One wonders when the time will come that it will be possible to accept the label of "feminist" without such denial for fear of endangering the acceptability of the particular view expressed.)

June Rowlands distinguished between "elements of sex, violence and brutality" (which would not be tolerated) and "sexual acrobatics" (which would be) and Borins J. accepted this distinction, specifying that "group sex, Lesbianism, fellatio, cunnilingus, and anal sex" would be tolerated. Rowlands testified that "the great lie of these films before the court is that they depict women as enjoying sex and violence".<sup>78</sup> In his assessment of the films, Judge Borins identified the crucial connection between sex and violence which determines pornography from a feminist perspective:

many of the films are exploitive of women, portraying them as passive victims who derive limitless pleasure from inflicted pain and from subjugation to acts of violence, humiliation and degradation [sic]. Women are depicted as sexual objects whose only redeeming features are their genital and erotic zones which are prominently displayed in clinical detail. Whether deliberately or otherwise, most of the films portray degradation [sic], humiliation, victimization and violence in human relationships as normal and acceptable behaviour.<sup>79</sup>

Of the films he found obscene, most were on the ground of violent, humiliating sexual treatment of the women in the videos. Unfortunately, however, His Honour reverted to the more traditional view in finding a few of the films obscene because of "the degree of explicitness of the sexual acts"; there is no indication in the judgment of what these acts are. Of course, His Honour was bound by section 159 to determine obscenity both in relation to sex alone and to sex coupled with cruelty or violence. Despite the reversion to the standard of sex alone, his analysis of the issue and his inclusion of degradation among those treatments he would consider obscene, stand as an important contribution to the legal developments in this area. This approach would be aided by replacing section 159 with the clause recommended by the Metropolitan Toronto Task Force on Violence in the Media Against Women and Children which uses the term "pornography" rather than "obscenity":

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Pornography is any printed, visual, audio or otherwise represented presentation, or part thereof, with a theme of violence for the sexual gratification of another or others, including the depiction of submission, coercion, lack of consent or denigration of any human being where such behaviour can be taken to be condoned.

A challenge to section 159 as contravening section 2 of the Charter by Red Hot Video has been rejected by the British Columbia courts.<sup>80</sup>

### **Human Rights Legislation**

Censorship has been rejected as the primary solution to the pornography problem because it makes us vulnerable both to the right, who would expand it far beyond the boundaries we would set (a serious and likely danger) and to the left, who would argue on civil libertarian grounds that we are denying free speech (not likely to be a successful argument in the courts but still one progressive people have to confront).<sup>81</sup> An alternative approach now being considered by governments and by members of the women's movement<sup>82</sup> would base remedies on human rights legislation.

One line of approach would treat pornography as a form of sexual harassment; alternatively, use could be made of a provision similar to one already existing in the Saskatchewan Code which prohibits representations having the effect of ridiculing or expressing hatred towards a particular group. Class actions are permitted. Subsection 14(1) of the Saskatchewan Code reads, in part:

No person shall publish or display, or cause or permit to be published or displayed . . . any notice . . . or other representation . . . which exposes, or tends to expose, to hatred, ridicules, belittles, or otherwise affronts the dignity of, any person, any class of persons or a group of persons because of his or their race . . . [or] sex . . .

The section applies to newspapers, television, radio or any other broadcasting device or any printed matter or publication.

The Manitoba Act also contains a provision which could be employed in this way, but perhaps less effectively; section 2(1) prohibits any representation "exposing or tending to expose a person to hatred". Recently, the Manitoba Court of Queen's Bench decided that an editorial or journalistic comment was not a "representation" within the meaning of the section;<sup>83</sup> obviously, such an interpretation considerably reduces the value of the provision in relation to pornography. Although a proposed amendment to the Manitoba legislation would extend the scope of the provision, it does not respond to this particular limitation.

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A human rights approach permits women to initiate a complaint but saves them the burden of carrying the case since the human rights commission will proceed once it believes the complaint is substantiated sufficiently to warrant an inquiry and the usual attempts to resolve the matter have failed. Not all provinces are committed to human rights sufficiently to deal with the problem in this way, since British Columbia eliminated its commission; however, it is still a relevant possibility elsewhere. It directs the inquiry to the persons affected, rather than to the effect on the state or on the persons having access to the materials; most importantly, a human rights proscription is not a moral stricture but one based on civil rights.

A recent Saskatchewan case pointed out that under the criminal law, "it appears that women must take a circuitous route and employ the blunt instrument of the law relating to pornography, namely, obscenity to enforce protections from some of the widespread manifestations of hatred focussed upon them".<sup>84</sup>

The case involved a complaint about cartoons and articles which had appeared in the student newspaper of the College of Engineering at the University of Saskatchewan, *The Red Eye*. One article "welcomed" first year female students by informing them how easy it would be to "get a man". The Board of Inquiry found the article "indicated a message which disparages and depreciates women by denying them individual motivation, identity or the capacity for self-determination. It affronts their dignity, their quality of being worthy". The material generally ridiculed women "by deriving humour from the violent sexual degradation and physical destruction of women". Of particular importance is the link drawn in the decision between this kind of treatment of women and their treatment in society generally:

The effect of such representations is to reinforce and legitimate prejudice against women. It prolongs the existence of hangovers of prejudice against female participation in education, work, aspects of social life and the professions . . . Material of the kind in these newspapers serves to perpetuate a social climate discriminatory to women who are already targets of manifold discrimination and horrible violence. No social interest is served by tolerating the free expression of such material.<sup>85</sup>

(It should be noted that the Saskatchewan provision contains a saving provision for free speech.)

The Board ordered "that there be no further dissemination of the 1979 and 1981 editions of *The Red Eye*", that copies of the order be distributed at the same time as the next edition, and that all members of the paper's staff and executive of the students' society attend workshops arranged by the Human Rights Commission.



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In addition to giving the provincial commissions this kind of power, the Canadian Human Rights Commission could be given jurisdiction to hear complaints about the import of hate propaganda and its dissemination through the mail, radio, television and cable.<sup>86</sup> Provinces which attempt to maintain some control over the origin of porn have little control over the porn which is imported from other provinces where enforcement is more lax; for example, the Ontario authorities have to deal with porn couriered in from British Columbia.

Serious consideration will have to be given to the kinds of damages which would be awarded if this approach is implemented; the awards made by boards currently generally would not put much of a dent in the porn purveyor's wallet since it is not intended that awards be punitive in the usual case.

A significant advantage claimed by this approach over s.281.2 is that intent is not a necessary component of the case to be proved. Under the Saskatchewan provision, "It is the effect, not the intention, that is to be considered".<sup>87</sup> There is a danger, however, despite *The Red Eye case*, that the community standard test will be imported into the assessment under the human rights approach. As Susan Cole points out, those standards "in a sexist society, . . . are bound to be sexist".<sup>88</sup> That that is not inevitably so is evidenced by *The Red Eye case*.

The outstanding benefit of the human rights approach is that it links the nature of the problem and a possible solution together. While the treatment of pornography is fundamentally a political problem arising out of the relations between men and women in a patriarchy, reality demands that we deal with the problem here and now; we cannot wait until the end of patriarchy. On that level, pornography denies women basic civil rights: the right to dignity and bodily integrity, the right to be free from harassment, ridicule, and debasement. It is such a denial that human rights legislation was designed to address and remedy; it is therefore appropriate that it be available to women who believe they have been denied such rights by pornography to allow them, as individuals and as a class, to lay complaints against the makers, publishers, distributors, sellers and promoters of porn.

### Conclusion

In one sense pornography both reflects and encourages a certain kind of reality, that of a world in which women's subordination is supported and sustained by threats of violence and humiliation. Yet the reality of pornography is selective: it reflects that women are sexually abused but does not reflect that we are harmed by it, that we do not enjoy it. The horror of pornography lies not only in its mirroring of the actual bondage, the beating, the degradation, the naked power over naked bodies, the terror, the mutilation, the death; the ultimate degradation, the abuse that is done to all women, is that pornography purports to speak for us, its victims.

Women are placed on a pedestal, claims Slade, while in fact pornography has us grovelling at the feet of the man who tears us with his penis and with meat hooks, beats us with whips, violates us with his hands:

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The most enduring sexual truth in pornography — widely articulated by men to the utter bewilderment of women — throughout the ages — is that sexual violence is desired by the normal female, needed by her, suggested or demanded by her. She — perpetually coy or repressed — denies the truth that pornography reveals. It is either/or. Either the truth is in the pornography or she tells the truth. But men are the tellers of truth and men are the creators of and believers in pornography. She is silenced altogether — she is not a voice in the cultural dialogue, except as an annoying or exceptional whisper — and when she speaks, she lies.<sup>89</sup>

Women are not allowed an independent sexual existence or sexuality: their sexuality is merely a tool for men's satisfaction. Whether it is denied and hidden in petticoats and artificialized in bustles or whether it is exalted and thrust before the nose of every milk store customer, women's sexuality does not belong to us — and yet it is Woman. Without it, men say, women are dull and usually irrelevant companions. The duty of women to permit their sexuality to be usurped is so whether it occurs under the covers in a darkened Victorian bedroom or vividly splashed across the pages of magazines or the silver screen or in shadowy images on grainy film.

Our obligation to ourselves and our sisters, and to the children who early fall into the sexual lie,<sup>90</sup> is to reappropriate our sexuality as we must reappropriate the other aspects of our lives which have been stolen from us by patriarchy. For pornography is an instrument of death: the death of the ideal of a free, independent and secure female population, of women who take joy in their womanness, for whom it is a source of strength. The choice is between the death of women and the death of pornography; the survival of our feminism depends much on our ability to destroy the pornographic instruments of patriarchy.

Toronto, Ontario

### Notes

1. Pornography may also victimize gays and children. I discuss neither of these forms of pornography, but I do recognize that paedophilia in particular is considered by many people to be the worst form of pornography and that the only solution is to make it an offence under the criminal law to use children in pornography. Although this analysis concentrates on the exploitation of women, the principles surrounding dominance/subordination apply to all pornography.
2. For the development of the views expressed here, see an earlier analysis of mine in (1979) 5 *Atlantis* 16; also see several articles in *Feminism in Canada*, Angela Miles and Geraldine Finn, eds. (Black Rose, 1982).
3. The sex component may not appear in the representation itself but rather be the intended effect of sexual arousal; similarly, no violence may appear in the representation but may be lurking in the wings or in the actual filming or photography sessions.
4. H. Montgomery Hyde, *A History of Pornography* (Heinemann, 1964), 1.

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5. Excerpts of the Williams Report on Obscenity and Film Censorship are found in David Copp and Susan Wendell, eds., *Pornography and Censorship* (Prometheus Books, 1983), 185, at 196.
6. Ed. Dearn, *Pornography Degrades* (Renda Publications, c.1975), 2 (emphasis added).
7. *Ibid.*, 13.
8. "The Effects and Control of Pornography", *Pornography: The Longford Report* (Coronet Books, 1972) (hereinafter *The Longford Report*), 312.
9. Brigid Brophy, *The Longford Threat to Freedom* (National Secular Society, 1972), 11.
10. George Steiner, "Night Words: High Pornography and Human Privacy", in Ray C. Rist, ed., *The Pornography Controversy* (Transaction Books, 1975), Of twelve individual contributors to this book on pornography, not one is a woman.
11. *Ibid.*, 213.
12. Joseph P. Slade, "Pornography Theaters", in Rist, *op. cit.*, 126.
13. *Ibid.*, 127.
14. Peter Michelson, "The Pleasures of Commodity, or How to Make the World Safe for Pornography", in Rist, *op. cit.*, 150 (emphasis added).
15. Diana E.H. Russell, "Pornography and Violence: What does the New Research Say?" in Laura Lederer, ed., *Take Back The Night: Women on Pornography* (Bantam, 1982), 223-24.
16. Cf. the definition postulated by Helen E. Longino in "Pornography, Oppression, and Freedom: A Closer Look" in Lederer, *ibid.*, 28:

verbal or pictorial explicit representations of sexual behaviour that . . . have as a distinguishing characteristic 'the degrading and demeaning portrayal of the role and status of the human female . . . as a mere sexual object, to be exploited and manipulated sexually'.

The words in quotation marks are taken from the Report of the Commission on Obscenity and Pornography. A more extensive definition is offered by Jillian Ridington in "Pornography: What does the New Research Say?" in *Status of Women News* (Summer, 1983), 9:

Pornography is a presentation, whether live, simulated, verbal, pictorial, filmed or videotaped, or otherwise represented, of sexual behaviour in which one or more participants are coerced overtly or implicitly into participation; or are injured or abused physically or psychologically; or in which an imbalance of power is obvious, or implied by virtue of the immature age of any participant or by contextual aspects of the presentation, and in which such behaviour can be taken to be advocated or endorsed.

17. There is a moral component in the sense that pornography concerns the treatment of one portion of humanity by another.
18. Susan G. Cole, "Combatting the Practice of Pornography", (August/September, 1984) 5 Broadside 6.
19. See, for example, studies referred to in note 32 below.
20. See, for example, "An interview with a Former Pornography Model", in Lederer, *op. cit.*, 45-59.
21. For examples, see references in Andrea Dworkin, *Pornography: Men Possessing Women* (G.P. Putnam, 1981), *passim*; Leo Groarke, "Pornography: From Liberalism to Censorship", (1983) 90 *Queen's Quarterly* 1108, at 1110; David Lees, "Nasty Business", *Toronto Life* (September 1984), 56, at 89; *Not a Love Story*; the 500 pornographic magazines available in Canada, compared to 30 fifteen years ago (figures provided by Maude Barlow during televised debate on pornography).

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22. See Esther R. Greenglass, *A World of Difference: Gender Roles in Perspective* (John Wiley, 1982), 108ff. for a brief general discussion of this ambivalence.
23. Susan Lurie, "Pornography and the Dread of Women: The Male Sexual Dilemma", in Lederer, *op. cit.*, 165. Lurie neatly reverses several other shibboleths about women's sexuality.
24. Dworkin, *op. cit.*, 198.
25. Phyllis Chesler, "Men and Pornography: Why they Use It" in Lederer, *op. cit.*, 150.
26. *The Longford Report*, *op. cit.*, 61 (emphasis in original).
27. For a glance into the mind of someone who did exactly this, see "Portrait of a Sex Killer", *Chatelaine* (November 1983), 69.
28. Chesler, *op. cit.*, 151.
29. See Michele Landsberg, "Not taking No for an Answer", in *Women and Children First* (Penguin, 1983); also see Longino, *op. cit.* 26ff., esp. 31.
30. Michelson, *op. cit.*, 150.
31. Lees, *op. cit.*, 87.
32. The Longford Committee cited one study that showed 80% of rapists studied were trying to imitate an act seen by them in pornographic materials when they raped their victims: "The Effects and Control of Pornography", *The Longford Report*, *op. cit.*, 197; on imitative abuse, see Russell, *op. cit.*; on the complexity of the findings, including the increase in aggressive reactions to women after exposure to aggressive-erotic stimuli and the role of previous anger, see Edward Donnerstein, "Pornography and Violence Against Women: Experimental Studies", in Copp and Wendell, *op. cit.*, 219; on the effect of the victim's response on the viewer, see Donnerstein and Leonard Berkowitz, "Victim Reactions in Aggressive Erotic Films as a Factor in Violence Against Women", in Copp and Wendell, *op. cit.*, 233; generally, see Copp and Wendell, *op. cit.*, Part Two; and for criticisms of studies, see Pauline B. Bart and Margaret Jozsa, "Dirty Books, Dirty Films, and Dirty Data", in Lederer, *op. cit.*, 201 and Irene Diamond, "Pornography and Repression: A Reconsideration of 'Who' and 'What'", in Lederer, *op. cit.*, 183.
33. In the sense that a great deal of money is involved (over \$60m. in illicit porn only); that much is available (hundreds of magazines, videos, films); and that it is echoed in mainstream media (see Landsberg, *op. cit.*)
34. James Q. Wilson, "Violence, Pornography and Social Science", in Rist, *op. cit.*, 242. Wilson's concern is in part traditional: a desire to protect his children from "easily available materials that portray what should be tender and private as base and brutal".
35. "Books, Magazines and Newspapers", in *The Longford Report*, *op. cit.*, 318.
36. Dorothy Inglis, "Pornography: Newfoundland Women Fight Back", *Status of Women News* (Summer 1983), 15.
37. Lees, *op. cit.*, 89.
38. *Ibid.*, 91.
39. *The Longford Report*, *op. cit.*, 89.
40. Tong uses the term "thanatica" by which she means hard-core pornography, that is, that pornography which degrades the participants and which endorse the degradation: Rosemarie Tong, "Feminism, Pornography and Censorship", (1982) 8 *Social Theory and Practice*, 2.
41. *Ibid.*, 14 (emphasis in original).

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42. There is a serious possibility of deceit in the Vanessa Williams case. The former Miss America returned her "crown" because *Penthouse* published pictures taken prior to her becoming Miss America. The spread showed her engaged in sex with another woman. Apparently, she had been told the pictures would be in silhouette but in fact she was clearly identifiable. In addition, she had been paid a small fee for posing and nothing when the pictures were published, although *Penthouse* had increased its price for that sold-out edition (an anniversary issue). She had signed a standard form contract which all models sign and in regard to which they have little if any negotiating power or legal advice. Ironically, despite the furore resulting from the whole episode, and the "holier than thou" attitude taken by the pageant organizers, the Miss America pageant is simply a milder form of female exploitation than is *Penthouse* which, in turn, is milder than some other magazines, videos and films.
43. Linda Lovelace Marchiano is the foremost example of compulsion, by her husband who forced her to perform in porn movies and beat her when she cried; also see, "An interview with a Former Pornography Model", *op. cit.*
44. Slade, *op. cit.*, 126.
45. *Ibid.*, 131-32.
46. Men are not the only purveyors of porn. Apart from female photographers, there are women responsible for producing porn. A mother of four children was recently convicted in the United States for distributing child pornography: "prosecutors said she supplied 80 per cent of the child pornography in the United States before her arrest in May, 1982": *Toronto Star*, June 30th, 1984. Since we have not heard that there has been a significant lack of such pornography since then, we must assume that she was very quickly and easily replaced.
47. For example, in "socialist" countries, there is pornography "in which bureaucrats get buggered" and in "church-oppressed countries", pornography "in which nuns are sexually defiled or priests pictured as satyrs": Slade, *op. cit.*, 135. Anti-semitic pornography in Germany in the early 1930's, vivid portrayals and descriptions of Jewish men sexually attacking aryan women and children, helped to establish, by reinforcing an already existing climate of prejudice, a climate in which the "final solution" was not difficult to implement: *The Longford Report, op. cit.*, 47.
48. Ridington, *op. cit.*, 9; also see "The Pornography Debate", Chatelaine (September 1983), 193 for a history of the Red Hot Video case, and note 80 below for citations of the decisions by British Columbia courts.
49. Report in *Toronto Star*, c. July 1984.
50. See, for example, Hamilton Municipal By-law 79-144 based on section 368b of the *Municipal Act* of Ontario which was tested in court: *Re Hamilton Independent Variety & Confectionery Stores Inc. and City of Hamilton* (1983), 4 C.C.R. 230 (Ont. C.A.). The by-law was declared invalid because the definition of erotic goods was too vague (goods "appealing to or designed to appeal to erotic or sexual appetites or inclinations"). Curiously, neither *Playboy* nor *Penthouse* was intended to be subject to the by-law.
51. *Re Red Hot Video Ltd. and the City of Vancouver* (1983) 5 D.L.R. (4th) 61 (B.C.S.C.).
52. "Pornography in Sweden: A Feminist's Perspective", in Lederer, *op. cit.*, 76.
53. *Equality Now!* Report of the Special Committee on Visible Minorities in Canadian Society (March 1984), 74.
54. Roy McMurtry, quoted in *Toronto Star*, January 30th, 1984 A3. In the United States, the Minneapolis Ordinance gives a woman the right to sue a pornographer if, for example, the pornography has influenced her attacker: see Cole, *op. cit.*, for elaboration and other examples of when it would apply.

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55. In February 1984, charges were laid against a Toronto man for unlawfully publishing false statements about the Holocaust: *Toronto Star*, February 7th, 1984, E5. Charges were also laid against James Keegstra for teaching anti-semitism in his history classes; he has now been committed for trial after a preliminary inquiry.
56. See *Equality Now!*, *op. cit.* 72; Attorney-General of Ontario, Roy McMurtry supports these proposals: *Toronto Star*, August 28th, 1984, A11.
57. *Toronto Star*, September 1st, 1984, B7.
58. Ann Garry, "Pornography and Respect for Women", in Copp and Wendell, *op. cit.*, 61, at 76.
59. The Army officer position was chosen because it is one "usually held in respect by pornography audiences": *ibid.*, 77.
60. Garry does wonder whether the non-sexist educational "porn" she describes would be pornography at all — because presumably it would not arouse people, a component of her own definition — but brushes off the possibility as "too remote to worry" her: *ibid.*, 81, n.35.2. Garry's definition of pornography does not require violence but refers to "those explicit sexual materials intended to arouse the reader or viewer sexually": *ibid.*, 62. I find this definition too broad since it makes it more difficult to establish what is "bad" about pornography.
61. Some of the studies set out in note 32 above indicate women are aroused by erotic stimuli: see the Donnerstein studies in particular.
62. Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Bantam, 1976), 443.
63. Margaret Laurence, author of *The Diviners*, explains her opposition to censorship in "The Greater Evil," *Toronto Life* (September 1984), 58. Like many of us, she admits her feelings are ambivalent; she is opposed to censorship but abhors pornography and knows no solution is entirely adequate.
64. *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80, affirming decision of the Divisional Court (1983), 41 O.R. (2d) 583.
65. *Re Koumoudouros and Municipality of Metropolitan Toronto* (1984), 45 O.R. (2d) 426 (Div. Ct.).
66. Eberle J. was joined by Sirois J. The third judge, Osler J., took the position that freedom of expression includes expression "by means of the written or spoken word, the painted canvas, the etched stone, or a print thereof, a musical composition, or an idea conveyed through the medium of dance": *ibid.*, 428.
67. *Customs Tariff Act*, R.S.C. 1970, c. C-41, tariff item 99201-1.
68. *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; McNeil had challenged the validity of the Board after it had prohibited the showing of "Last Tango in Paris".
69. See above, note 64.
70. This test was pronounced in the *Hicklin* case: (1868) L.R. 3 Q.B. 360 at 379. For a summary of criticisms of the test, see Anne M.K. Curtis, "Note on *Dechow v. The Queen*", (1979) 11 *Ottawa L. Rev.* 501.
71. (1962), 132 C.C.C. 161 (S.C.C.).
- 71a. *Ibid.*, at 174 per Fauteux J.
72. *Dechow v. The Queen*, 1978 1 S.C.R. 951: this case dealt with the sale and description of sexual aids, not films or books.
73. See *Brodie*, *op. cit.*, 161, per Judson J.
74. See a recent statement on this point in *R. v. Doug Rankine Company Ltd.* (unreported; Ont. Co. Ct., October 24th, 1983), at 10, citing *R. v. Sudbury News Service Ltd.* (1978), 39 C.C.C. (2d) 1 (Ont. C.A.), at 6-7, per Howland C.J.O.

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75. Lees, *op. cit.*, 57.
76. See note 74.
77. *Ibid.*, 8.
78. *Ibid.*, 7.
79. *Ibid.*, 24.
80. *Red Hot Video Limited v. The Queen* (unreported; B.C. Co. Ct., March 4, 1984); *Regina v. Red Hot Video Ltd.* (1983), 6 C.C.R. 169 (B.C. Prov. Ct.).
81. For example, Alan Borovoy, general counsel of the Canadian Civil Liberties Association was quoted in the *Toronto Star* as opposing strengthening the hate literature provisions: "All of these risks to nail what? . . . A group of pathetic, peripheral creeps whose constituency could not fill a telephone booth": August 28th, 1984, A11.
82. See, for example, Cole, *op. cit.*
83. *Warren v. Chapman, Board of Adjudication* (1984), 5 C.H.R.R. D/2226.
84. *Saskatchewan Human Rights Commission v. Waldo, et al* (1984), 5 C.H.R.R. D/2074.
85. *Ibid.*, D/2089.
86. See *Equality Now!*, *op. cit.* 73.
87. *McKinley v. Cranfield and Dial Agencies* (1980), 1 C.H.R.R. D/246, at D/247. McKinley laid a complaint about a letter posted in the window of a business premises which she believed to be an affront to her because of its references to the handicapped; she had epilepsy.
88. Cole, *op. cit.*
89. Dworkin, *op. cit.*, 166.
90. In a relatively mild example, the December 1983 *Harper's Bazaar* contained a perfume feature showcasing little girls whose faces are made up to look like "little women", sophisticated and alluring, while their upper bodies, including glimpses of their chests, are left naked.