

1995

Defending Pornography: Free Speech & the Fight for Women's Rights

Nadine Strossen

New York Law School, nadine.strossen@nyls.edu

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_books



Part of the [First Amendment Commons](#), [Law and Gender Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Strossen, Nadine, "Defending Pornography: Free Speech & the Fight for Women's Rights" (1995). *Books*. 42.
https://digitalcommons.nyls.edu/fac_books/42

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Books by an authorized administrator of DigitalCommons@NYLS.

DEFENDING PORNOGRAPHY

*Free Speech, Sex, and the Fight
for Women's Rights*

NADINE STROSSEN

SCRIBNER

New York London Toronto Sydney Tokyo Singapore

HQ
472
U6
S77
1995
C.3



SCRIBNER
1230 Avenue of the Americas
New York, NY 10020

Copyright © 1995 by Nadine Strossen

All rights reserved including the right to reproduce this book or portions thereof
in any form whatsoever.

SCRIBNER and colophon are trademarks of Simon & Schuster Inc.

Manufactured in the United States of America

10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data
Strossen, Nadine.

Defending pornography: free speech, sex, and the fight
for women's rights/Nadine Strossen.
p. cm.

Includes bibliographical references and index.

1. Pornography—Social aspects—United States. 2. Feminism—United States.
3. Feminist criticism—United States. I. Title.

HQ472.U6S87 1995 94-40372 CIP
363.4'7—dc20

ISBN 0-684-19749-9

Contents

Acknowledgments	7
Introduction	11
1. The Sex Panic and the Feminist Split	17
2. Sexual Speech and the Law	37
3. The Fatally Flawed Feminist Antipornography Laws	59
4. The Growing Suppression of "Sexpression"	83
5. Revealing Views of Women, Men, and Sex	107
6. Defining Sexual Harassment: Sexuality Does Not Equal Sexism	119
7. "Different Strokes for Different Folks": The Panoply of Pornographic Imagination	141
8. Positive Aspects of Pornographic Imagery	161
9. Posing for Pornography: Coercion or Consent?	179
10. Would-Be Censors Subordinate Valuable Works to Their Agenda	199
11. Lessons from Enforcement: When the Powerful Get More Power	217
12. Why Censoring Pornography Would Not Reduce Discrimination or Violence against Women	247
13. Toward Constructive Approaches to Reducing Discrimination and Violence against Women	265
Notes	281
Index	309

Introduction

Pornography, in the feminist view, is a form of forced sex, . . . an institution of gender inequality. . . . [P]ornography, with the rape and prostitution in which it participates, institutionalizes the sexuality of male supremacy.

CATHARINE MACKINNON¹

Feminist women are especially keen to the harms of censorship. . . . Historically, information about sex, sexual orientation, reproduction and birth control has been banned under the guise of . . . the "protection" of women. Such restrictions have never reduced violence. Instead, they have led to the jailing of birth control advocate Margaret Sanger, and the suppression of important works, from *Our Bodies, Ourselves* to . . . the feminist plays of Karen Finley and Holly Hughes. Women do not require "protection" from explicit sexual materials. . . . Women are as varied as any citizens of a democracy; there is no agreement or feminist code as to what images are distasteful or even sexist. It is the right and responsibility of each woman to read, view or produce the sexual material she chooses without the intervention of the state "for her own good." . . . This is the great benefit of being feminists in a free society.

FEMINISTS FOR FREE EXPRESSION²

The strain of anti-pornologism is hardly what's distinctive about feminism; whereas anti-anti-pornology—the critique of the anti-porn movement on grounds other than constitutional formalism or First Amendment pietism—is a distinctive feminist contribution.

HENRY LOUIS GATES

W. E. B. Du Bois Professor
Harvard University³

In the past decade, some feminists have dramatically altered the long-standing debate in this country about sex and sexually oriented expression. Liberals—including those who advocated women's rights—had long sought increased individual freedom, and decreased government control, in the realm of sexuality. Accordingly, liberals had urged the repeal both of laws restricting consensual private sexual conduct between adults, and laws restricting the production of or access to sexually oriented materials, including books, photographs, and films.

Conversely, conservatives—including those who opposed women's rights causes—had consistently advocated strict government controls over both sexual conduct and sexual expression. With the 1980 election of Ronald Reagan and the growing mobilization of the so-called Religious Right, what had become a conservative clamor gained enormous political clout. It led to the 1986 Report of the Meese Pornography Commission,⁴ which in turn led to sweeping new law enforcement crackdowns on all manner of sexual materials, including popular, constitutionally protected works such as *The Joy of Sex*⁵ and *Playboy* magazine.

The startling new development is that, since the late 1970s, the traditional conservative and fundamentalist advocates of tighter legal restrictions on sexual expression have been joined by an increasingly vocal and influential segment of the feminist movement. Both groups target the sexual material they would like to curb with the pejorative label "pornography." Led by

University of Michigan law professor Catharine MacKinnon and writer Andrea Dworkin, this faction of feminists—which I call “MacDworkinites”⁶—argues that pornography should be suppressed because it leads to discrimination and violence against women. Indeed, MacKinnon and Dworkin have maintained that somehow pornography itself *is* discrimination and violence against women; that its mere existence hurts women, even if it cannot be shown to cause some tangible harm.⁷

I share the fears, frustration, and fury about the ongoing problems of violence and discrimination against women, which no doubt have driven many to embrace the “quick fix” that censoring pornography is claimed to offer. Who wouldn’t welcome an end to the threat of violence that so many women feel every time they venture out alone in the dark? But censoring pornography would not reduce misogynistic violence or discrimination; worse yet, as this book shows, it would likely aggravate those grave problems. In the words of feminist attorney Cathy Crosson, while the procensorship strategy may be superficially appealing, at bottom it reflects “the defeated, defeatist politics of those who have given up on really altering the basic institutions of women’s oppression and instead have decided to slay the messenger.”⁸

The pornophobic feminists have forged frighteningly effective alliances with traditional political and religious conservatives who staunchly oppose women’s rights, but who also seek to suppress pornography. As noted by feminist anthropologist Carole Vance, “Every right-winger agrees that porn leads to women’s inequality—an inequality that doesn’t bother him in any other way.”⁹

Under their joint antipornography banner, the allies in this feminist-fundamentalist axis have mounted increasing—and increasingly successful—campaigns against a wide range of sexually oriented expression, including not only art and literature, but also materials concerning such pressing public issues as AIDS and other sexually transmitted diseases, abortion, contraception, sexism, and sexual orientation.

So influential have the MacDworkinites become that all too

many citizens and government officials believe that the suppression of sexually oriented materials is a high priority for all feminists, or even for all women. But nothing could be further from the truth.

An increasingly vocal cadre of feminist women who are dedicated to securing equal rights for women and to combating women's continuing second-class citizenship in our society strongly opposes any effort to censor sexual expression. We are as committed as any other feminists to eradicating violence and discrimination against women; indeed, many of us work directly for these goals every day of our lives. But we believe that suppressing sexual words and images will not advance these crucial causes. To the contrary, we are convinced that censoring sexual expression actually would do more harm than good to women's rights and safety. We adamantly oppose any effort to restrict sexual speech not only because it would violate our cherished First Amendment freedoms—our freedoms to read, think, speak, sing, write, paint, dance, dream, photograph, film, and fantasize as we wish—but also because it would undermine our equality, our status, our dignity, and our autonomy.

Women should not have to choose between freedom and safety, between speech and equality, between dignity and sexuality. Women can be sexual beings without forsaking other aspects of our identities. We are entitled to enjoy the thrills of sex and sexual expression without giving up our personal security. We can exercise our free speech and our equal rights to denounce any sexist expressions of any sort—including sexist expressions that are also sexual—rather than seek to suppress anyone else's rights.

Women's rights are far more endangered by censoring sexual images than they are by the sexual images themselves. Women do not need the government's protection from words and pictures. We *do* need, rather, to protect ourselves from any governmental infringement upon our freedom and autonomy, even—indeed, especially—when it is allegedly “for our own good.” As former Supreme Court Justice Louis Brandeis cautioned: “Experience should teach us to be most on our guard to protect liberty when

the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."¹⁰ Or *women* of zeal.

The feminist procensorship movement* is a far greater threat to women's rights than is the sexual expression it condemns with the epithet "pornography." For women who cherish liberty and equality, Big Sister is as unwelcome in our lives as Big Brother. Defending the sexual expression that some feminists condemn with the dread *P* word is thus a critical element in our support of free speech, sexual and reproductive autonomy, and women's equality.

Traditional explanations of why pornography must be defended from would-be censors have concentrated on censorship's adverse impacts on free speech and sexual autonomy. This book supports the anticensorship position from an important different perspective, which is not as widely understood. In light of the increasingly influential women's rights-centered rationale for *censoring* pornography, this book focuses on the women's rights-centered rationale for *defending* pornography. It explains why the procensorship faction of feminism poses a serious threat not only to human rights in general but also to women's rights in particular.

*Dworkin, MacKinnon, and others have protested that their proposals for suppressing pornography should not be labeled "censorship." To borrow the title of MacKinnon's latest book, such a protest is "only words." The reasons why the MacDworkinites' antipornography scheme is fairly considered censorship, no matter what euphemism they might prefer, are discussed in chapter 3.