

January 1993

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Recommended Citation

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FALSE PROMISES: FEMINIST ANTI-PORNOGRAPHY LEGISLATION*

LISA DUGGAN, NAN D. HUNTER & CAROLE S. VANCE**

I. INTRODUCTION

In the United States, after two decades of increasing community tolerance for dissenting or disturbing sexual or political materials, the 1980s have produced a momentum for retrenchment. In an atmosphere of increased conservatism, support for new repressive legislation of various kinds—from an Oklahoma law forbidding schoolteachers from advocating homosexuality¹ to new anti-pornography laws passed in Minneapolis² and Indianapolis³—has emerged as a powerful force.

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1. See OKLA. STAT. tit. 70, § 6-103.15(A)(2) (1981) (allowing suspension of public school teachers for “advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees”). This law was later held unconstitutional. See *National Gay Task Force v. Oklahoma City Bd. of Educ.*, 729 F.2d 1270, 1272-73 (10th Cir. 1984), *aff’d*, 470 U.S. 903 (1985).

2. Minneapolis, Minn., Ordinance (Dec. 30, 1983; July 13, 1984) (amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 139); Minneapolis, Minn., Ordinance (Dec. 30, 1983; July 13, 1984) (amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 141). The two ordinances were passed twice by the city council but vetoed each time by the mayor. Chapters 139 and 141 of the Minneapolis, Minn., Code of Ordinances, as amended by the two ordinances, will be collectively referred to hereinafter as the “Minneapolis Ordinance.”

See also Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 1 n.1 (1985) [hereinafter MacKinnon, *Pornography*] (noting the

The anti-pornography laws have mixed roots of support, however. Though they are popular with the conservative constituencies that traditionally favor legal restrictions on sexual expression of all kinds,⁴ they were drafted and are endorsed by anti-pornography feminists, who oppose traditional obscenity and censorship laws. The model law of this type was drawn up in the politically progressive city of Minneapolis by two radical feminists, author Andrea Dworkin and attorney Catharine MacKinnon.⁵ It was passed by the city council, but vetoed by the mayor.⁶ A similar law, enacted in Indianapolis,⁷ was ruled unconstitutional by the Supreme Court in 1986.⁸

Dworkin, MacKinnon and their feminist supporters believe that these proposed anti-pornography ordinances are not censorship laws.⁹ They also claim that the legislative effort behind them is based on feminist

legislative history of the ordinance); E.R. Shipp, *A Feminist Offensive Against Exploitation*, N.Y. TIMES, June 10, 1984, § 4, at 2 (reporting that Minneapolis Mayor Donald M. Fraser vetoed the ordinance because, according to him, it "threatened First Amendment guarantees").

3. Indianapolis and Marion County, Ind., General Ordinance No. 24, 1984 (Apr. 23, 1984) (amending INDIANAPOLIS AND MARION COUNTY, IND., CODE ch. 16, §§ 16-1 to -28); Indianapolis and Marion County, Ind., General Ordinance No. 35, 1984 (June 11, 1984) (further amending INDIANAPOLIS AND MARION COUNTY, IND., CODE ch. 16, §§ 16-1, -3, -16, -17, -26, & -27). Chapter 16 of the Indianapolis and Marion County, Ind., Code, as amended by one or both of these two ordinances, will be referred to hereinafter as the "Indianapolis Ordinance."

4. See Lisa Duggan, *Censorship in the Name of Feminism*, VILLAGE VOICE, Oct. 16, 1984, at 11; Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, 79 VA. L. REV. 1099, 1114-16, 1164-66 (1993) (noting that these groups include the National Coalition Against Pornography, Phyllis Schlafly's Eagle Forum, and Concerned Women for America, and arguing that when women's rights advocates ally themselves with such groups over pornography, they promote the conservatives' anti-feminist agenda while undermining women's rights).

5. See MacKinnon, *Pornography*, *supra* note 2, at 1 (acknowledging that both the author and Andrea Dworkin conceived of the ordinances and listing those who helped them pass such laws).

6. See *supra* note 2.

7. Indianapolis Ordinance, *supra* note 3; see also Shipp, *supra* note 2 (reporting that the Indianapolis ordinance was adopted by the city-county council by a vote of 24 to 5, and signed into law by Indianapolis Mayor William H. Hudnut).

8. See *American Booksellers Ass'n v. Hudnut*, 475 U.S. 1001 (1986), *aff'g* 771 F.2d 323 (7th Cir. 1985), *reh'g denied*, 475 U.S. 1132 (1986).

9. See, e.g., MacKinnon, *Pornography*, *supra* note 2, at 2, 67-68 (arguing that anti-pornography laws are consistent with the First Amendment).

support.¹⁰ Both of these claims are dubious at best. Though the new laws are civil laws that allow individuals to sue the makers, sellers, distributors or exhibitors of pornography,¹¹ and not criminal laws leading to arrest and imprisonment, their censoring impact would be substantially as severe as criminal obscenity laws. Materials could be removed from public availability by court injunction,¹² and publishers and booksellers could be subject to potentially endless legal harassment. Passage of the laws was therefore achieved with the support of right-wing elements who expect the new laws to accomplish what censorship efforts are meant to accomplish.¹³ Ironically, many anti-feminist conservatives backed these

10. See Catharine A. MacKinnon, *Liberalism and the Death of Feminism*, in *THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM* 3, 9 (Dorchen Leidholdt & Janice G. Raymond eds., 1990) (stating that MacKinnon and Andrea Dworkin conceived and designed the model pornography law based on "the politics of the women's movement" that they believed they were a part of, and "fielded it with others who were under the same illusion").

11. See Minneapolis Ordinance, *supra* note 2, § 141.60(a)(1) ("An individual alleging a violation of this ordinance may bring a civil action directly in court."); *id.* §§ 139.40(l) & (l)(3) (defining "discrimination against women" to include "[t]he production, sale, exhibition, or distribution of pornography" and giving "[a]ny woman . . . a cause of action hereunder as a woman acting against the subordination of women"); Indianapolis Ordinance, *supra* note 3, §§ 16-3(g)(4) & (g)(4)(C) (defining "trafficking in pornography" to include "[t]he production, sale, exhibition, or distribution of pornography" and giving "[a]ny woman . . . a cause of action hereunder as a woman acting against the subordination of women"). Section 16-3(g)(4)(C) of the Indianapolis Ordinance was later amended to delete the civil cause of action. See Indianapolis and Marion County, Ind., General Ordinance No. 35, 1984 (June 11, 1984) (amending INDIANAPOLIS AND MARION COUNTY, IND., CODE ch. 16, §§ 16-1, -3, -16, -17, -26, & -27).

12. See Minneapolis Ordinance, *supra* note 2, § 141.50(l)(3) ("[A] hearing committee or court may order relief, including the removal of violative material, permanent injunction against the sale, exhibition or distribution of violative material, or any other relief deemed just and equitable, including reasonable attorney's fees."); Indianapolis Ordinance, *supra* note 3, § 16-27(a) (permitting broad sanctions against violators, including temporary or permanent injunctive relief, affirmative relief, and equitable relief).

13. See *Debate Persists on Rights and Smut*, N.Y. TIMES, Nov. 21, 1984, at A17 (reporting that feminists and conservatives united in coalitions to pass MacKinnon-style ordinances because that approach served to "wipe out adult bookstores, theaters and massage parlors where zoning and criminal obscenity laws have failed"); *Court Says Pornography Not Sex Discrimination*, CHI. TRIB., Feb. 25, 1986, at 1 (reporting that feminists who oppose pornography because they believe it leads to violence against women, joined with conservatives who oppose the material on moral grounds to propose ordinances defining pornography as sex discrimination, not as obscenity).

laws, while many feminists opposed them.¹⁴ In Indianapolis, the law was supported by extreme right-wing religious fundamentalists, including members of the Moral Majority, while there was *no* local feminist support.¹⁵ In other cities, traditional pro-censorship forces expressed interest in the new approach to banning sexually explicit materials.¹⁶ Meanwhile, anti-censorship feminists became alarmed at these new developments and are seeking to galvanize feminist opposition to the new anti-pornography legislative strategy pioneered in Minneapolis.¹⁷

One is tempted to ask in astonishment, how can this be happening? How can feminists be entrusting the patriarchal state with the task of legally distinguishing between permissible and impermissible sexual images? But in fact this new development is not as surprising as it at first seems. Pornography has come to be seen as a central cause of women's oppression by a significant number of feminists.¹⁸ Andrea Dworkin argues that pornography is the root of virtually all forms of exploitation and discrimination against women.¹⁹ It is a short step from such a belief

14. See DONALD ALEXANDER DOWNS, *THE NEW POLITICS OF PORNOGRAPHY* 87 (1989) (detailing the political atmosphere surrounding the passage of the Minneapolis Ordinance).

15. See Shipp, *supra* note 2 (reporting that the Rev. Greg Dixon, a former Moral Majority official, along with his followers, packed city council hearings to lobby for the proposed ordinance). See also Walter Goodman, *Battle on Pornography Spurred by New Tactics*, N.Y. TIMES, July 3, 1984, at A8 (reporting that the Moral Majority supported the Indianapolis proposal); Nan D. Hunter & Sylvia A. Law, *Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al.*, in *American Booksellers Association v. Hudnut*, 21 J.L. REFORM 69, 74 (1987-1988) (reprinting and discussing the amicus curiae brief of the Feminist Anti-Censorship Task Force (FACT) and others in *Hudnut*, and noting that a broad range of feminists and feminist organizations opposed the Indianapolis ordinance, including Kate Millett, Adrienne Rich, and the Women's Legal Defense Fund).

16. See, e.g., John Rather, *Pornography Bill Stirs Furor in Suffolk*, N.Y. TIMES, Oct. 7, 1984, § 21, at 1 (describing Michael D'Andre, a backer of the proposed anti-pornography bill in Suffolk County, New York, as "a conservative Republican who has a narrow interpretation of the First Amendment").

17. See e.g., Hunter & Law, *supra* note 15.

18. See, e.g., CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 197 (1989) [hereinafter MACKINNON, *THEORY OF THE STATE*] (stating that pornography, in the feminist view, "institutionalizes the sexuality of male supremacy"); see also ROSEMARY TONG, *FEMINIST THOUGHT: A COMPREHENSIVE INTRODUCTION* 112-16 (1989) (indicating that anti-pornography feminists see pornography as an issue of male power exerted over females, not one of sex).

19. See, e.g., ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 24-25 (1989) [hereinafter DWORKIN, *PORNOGRAPHY*] (stating that the "major theme of pornography is male power," and that the degradation of women in pornography "exists

to the conviction that laws against pornography can end the inequality of the sexes. But this analysis takes feminists very close—indeed, far too close—to measures that will ultimately support conservative, anti-sex, pro-censorship forces in American society, for it is with these forces that women have forged alliances in passing such legislation.

The first feminist-inspired anti-pornography law was passed in Minneapolis in 1983.²⁰ Local legislators had been frustrated when their zoning restrictions on porn shops were struck down in the courts.²¹ Public hearings were held to discuss a new zoning ordinance. The Neighborhood Pornography Task Force of South and South Central Minneapolis invited Andrea Dworkin and Catharine MacKinnon, who were teaching a course on pornography at the University of Minnesota, to testify.²² They proposed an alternative that, they claimed, would completely eliminate, rather than merely regulate, pornography. They suggested that pornography be defined as a form of sex discrimination, and that an amendment to the city's civil rights law be passed to proscribe it. City officials hired Dworkin and MacKinnon to develop their new approach and to organize another series of public hearings.²³

The initial debate over the legislation in Minneapolis was intense, and opinion was divided within nearly every political grouping.²⁴ By contrast, the public hearings held before the city council were tightly controlled and carefully orchestrated; speakers invited by Dworkin and MacKinnon—sexual abuse victims, counselors, educators, and social

to postulate, exercise, and celebrate male power”).

20. See Minneapolis Ordinance, *supra* note 2.

21. See *Alexander v. City of St. Paul*, 227 N.W.2d 370, 372-73 (Minn. 1975) (holding that the zoning ordinance amounted to an unconstitutional prior restraint on freedom of expression); see generally Goodman, *supra* note 15, at A8 (reporting that pornography businesses have generally been protected by the courts against local efforts to close them).

22. See Shipp, *supra* note 2, at 2.

23. See *id.*; see also DWORKIN, PORNOGRAPHY, *supra* note 19, at xxviii-xxix (stating that she and Catharine MacKinnon were hired by the city of Minneapolis to draft an amendment to the city's civil rights law, whereby pornography would be recognized as a “violation of the civil rights of women, as a form of sex discrimination, [and] an abuse of human rights”).

24. See Paul Brest & Ann Vandenberg, *Politics, Feminism, and the Constitution: The Anti-Pornography Movement in Minneapolis*, 39 STAN. L. REV. 607, 617-20 (1987) (describing the public debate which took place before the MacKinnon and Dworkin hearings); DOWNS, *supra* note 14, at 87 (noting the divisions existing within political and social groups in Minneapolis at the time of the passage of the ordinance).

scientists—testified about the harm pornography does to women.²⁵ (Dworkin and MacKinnon's goal was to compile a legislative record that would help the law withstand inevitable court challenges.) Supported by anti-pornography feminists, neighborhood groups concerned about the effects of porn shops on residential areas, and conservatives opposed to the availability of sexually explicit materials for "moral" reasons, the legislation passed.²⁶

In Indianapolis, the alignment of forces was different. For the previous two years, conservative anti-pornography groups had grown in strength and public visibility, but had been frustrated in their efforts.²⁷ The police department could not convert its obscenity arrests into convictions; the city's zoning law was also tied up in court challenges.²⁸ At that point, Mayor William Hudnut III, a Republican and a Presbyterian minister, learned of the Minneapolis law. He thought Minneapolis's approach might be the solution to his city's problems.²⁹ Beulah Coughenour, a conservative Republican stop-ERA activist, was recruited to sponsor the legislation in the city-county council.³⁰

Coughenour engaged MacKinnon as consultant to the city. MacKinnon worked with the Indianapolis city prosecutor (a well-known anti-vice zealot), the city's legal department, and Coughenour on the

25. See Brest & Vandenberg, *supra* note 24, at 620-29 (describing how Dworkin and MacKinnon prepared for the hearings and detailing testimony given at the hearings); see also Catharine A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U.L. REV. 793, 798-99 (1991) [hereinafter MacKinnon, *Defamation*] (describing some of the testimony).

26. See Minneapolis Ordinance, *supra* note 2 (tabulating city council vote). Nonetheless, the ordinance was vetoed by the mayor, and the city council failed to override the veto. Shipp, *supra* note 2, at 2.

27. See, e.g., Goodman, *supra* note 15, at A8 (reporting that local efforts around the country have failed to close sex shops, peep shows, and X-rated movie theaters, and discussing a federal court decision which overturned a Miami, Florida ordinance outlawing sexually explicit programs on cable television).

28. See, e.g., *Indianapolis v. Cutshaw*, 443 N.E.2d 853 (Ind. Ct. App. 1983) (massage parlor owners and operators, an adult-theater owner, and adult bookstore owners sued the City of Indianapolis seeking a declaratory judgment that the city's zoning ordinance was unconstitutional).

29. See E.R. Shipp, *Civil Rights Law Against Pornography Is Challenged*, N.Y. TIMES, May 15, 1984, at A14 (reporting that after the Minneapolis ordinance was vetoed by Mayor Donald Fraser of Minneapolis, Mayor William Hudnut of Indianapolis began the effort to draft a similar ordinance for Indianapolis).

30. See *id.* (reporting that Indianapolis mayor William Hudnut introduced Beulah A. Coughenour, who worked with MacKinnon on the Minneapolis ordinance, to Indianapolis city council member Charlee Hoyt, at a National League of Cities meeting. Hoyt would later co-sponsor the Indianapolis ordinance.).

legislation.³¹ The law received the support of neighborhood groups, the Citizens for Decency, and the Coalition for a Clean Community. There were no crowds of feminist supporters—in fact, there were no feminist supporters at all. The only feminists to make public statements opposed the legislation, which was nevertheless passed in a council meeting packed with 300 religious fundamentalists.³² All twenty-four Republicans voted for its passage; all five Democrats opposed it to no avail.

Before the Supreme Court ruled it unconstitutional,³³ mutated versions of the Dworkin-MacKinnon bill began to appear. A version of the law introduced in Suffolk County, Long Island, in New York emphasized its conservative potential—pornography was said to cause “sodomy” and “disruption” of the family unit, in addition to rape, incest, exploitation, and other acts “inimical to the public good.”³⁴ In Suffolk, the law was advanced by a conservative, anti-ERA male legislator who wished to “restore ladies to what they used to be.”³⁵ The Suffolk County bill clearly illustrates the repressive, anti-feminist potential of the new anti-pornography legislation.

The support of such legislation by anti-pornography feminists marks a critical moment in the feminist debate over sexual politics. We need to examine carefully these proposed new laws and expose their underlying

31. *See id.*

32. *See Shipp, supra* note 2 (reporting that the sponsors of the Indianapolis ordinance had the support of the Rev. Greg Dixon, a former Moral Majority official, who, with his followers, packed Indianapolis city council hearings to lobby for passage of the ordinance).

33. *American Booksellers Ass'n v. Hudnut*, 475 U.S. 1001 (1986), *aff'g* 771 F.2d 323 (7th Cir. 1985), *reh'g denied*, 475 U.S. 1132 (1986).

34. *See Suffolk County, N.Y., Resolution No. 1920-84 to Limit Violence Against Women § 1* (September 11, 1984) [hereinafter *Suffolk County Resolution*]. The resolution proposed that Suffolk County adopt as part of its record and findings the transcript of the Minneapolis hearings on pornography as discrimination against women. *Id.* The resolution also adopted a definition of “objectionable pornography” similar to the definition provided in the Minneapolis and Indianapolis pornography ordinances. *Id.* § 2. Unlike the Minneapolis and Indianapolis ordinances however, the Suffolk County resolution only provided an aggrieved party with a right to bring a civil action in court, not before a civil rights or human relations commission. *Id.* § 3. The resolution failed to pass by a vote of 8-9. *Id.* *See also* Rather, *supra* note 16, at 1 (reporting that the bill's author was concerned about a decline in public morality and pornography's threat to the “health, safety, morals and general welfare” of Suffolk County residents).

35. Lisa Duggan & Ann Snitow, *Porn Law Is About Images, Not Power*, N.Y. NEWSDAY, Sept. 26, 1984, at 65. The resolution was co-sponsored by Suffolk County legislators Sandra M. Bachety and Joseph Rizzo. *See Suffolk Officials Vote Down Bill on Pornography*, N.Y. TIMES, Dec. 27, 1984, at B5 (reporting that Michael D'Andre, sponsor of the bill, described the bill as “part of a crusade to restore public morality”).

assumptions. We need to know why these proposals, for all their apparent feminist rhetoric, actually appeal to conservative anti-feminist forces, and why feminists should move in a different direction.

II. DEFINITIONS: THE CENTRAL FLAW

The anti-pornography ordinances introduced in Minneapolis and Indianapolis were framed as amendments to municipal civil rights laws.³⁶ They provide for complaints to be filed against pornography in the same manner that complaints are filed against employment discrimination.³⁷ If enforced, the laws would make illegal public or private availability (except in libraries) of any materials deemed pornographic.³⁸

Such material could be the object of a lawsuit on several grounds. The ordinances would penalize four kinds of behavior associated with pornography: its production, sale, exhibition, or distribution ("trafficking");³⁹ coercion into pornographic performance;⁴⁰ forcing pornography on a person;⁴¹ and assault or physical attack due to pornography.⁴²

36. Minneapolis Ordinance, *supra* note 2, § 1; Indianapolis Ordinance, *supra* note 3, § 1.

37. Minneapolis Ordinance, *supra* note 2, § 1 (providing that the "hearing committee [of the Minneapolis Civil Rights Commission] or court may order relief"); Indianapolis Ordinance, *supra* note 3, § 4 (providing that "[a] complaint charging that any person has engaged in or is engaging in a discriminatory practice" prohibited by the Indianapolis ordinance may be filed by any person "aggrieved by the [discriminatory] practice" or a member of the board or employee of the office who has "reasonable cause to believe that a violation" of the ordinance has occurred); *see also* MacKinnon, *Pornography*, *supra* note 2, at 25 (stating that both the Indianapolis and Minneapolis ordinances' "principle enforcement mechanism is the civil rights commission" even though both ordinances provide for direct access to courts as well).

38. Minneapolis Ordinance, *supra* note 2, § 4(l)(1); Indianapolis Ordinance, *supra* note 3, § 2 (g)(4)(A).

39. Minneapolis Ordinance, *supra* note 2, § 4(l); Indianapolis Ordinance, *supra* note 3, § 2 (g)(4).

40. Minneapolis Ordinance, *supra* note 2, § 4(m); Indianapolis Ordinance, *supra* note 3, § 2(g)(5).

41. Minneapolis Ordinance, *supra* note 2, § 4(n); Indianapolis Ordinance, *supra* note 3, § 2(g)(6).

42. Minneapolis Ordinance, *supra* note 2, § 4(o); Indianapolis Ordinance, *supra* note 3, § 2(g)(7).

Under such a law, a woman “acting as a woman against the subordination of women” could file a complaint;⁴³ men could also file complaints if they could “prove injury in the same way that a woman is injured.”⁴⁴ The procedural steps in the two ordinances differ, but they generally allow the complainant either to file an administrative complaint with the city’s equal opportunity commission (Minneapolis or Indianapolis),⁴⁵ or to file a lawsuit directly in court (Minneapolis).⁴⁶ If the local commission found the law had been violated, it would file a lawsuit.⁴⁷ By either procedure the court—not “women”—would have the final say on whether the materials fit the definition of pornography, and it would have the authority to award monetary damages or issue an injunction or order preventing further distribution of the material in question.⁴⁸

The Minneapolis ordinance defines pornography as “the sexually explicit subordination of women, graphically depicted, whether in pictures or words.”⁴⁹ To be actionable, materials would also have to fall within one of a number of categories: nine in the Minneapolis ordinance, six in the Indianapolis version.⁵⁰

Although proponents claim that the Minneapolis and Indianapolis ordinances represent a new way to regulate pornography,⁵¹ the strategy is still laden with our culture’s old, repressive approach to sexuality. The implementation of such laws hinges on the definition of pornography as interpreted by the judiciary. The definition provided in the Minneapolis legislation is vague, leaving critical phrases such as “the sexually explicit

43. Minneapolis Ordinance, *supra* note 2, § 4(l)(3); Indianapolis Ordinance, *supra* note 3, § 4(b).

44. Indianapolis Ordinance, *supra* note 3, § 4(b). The Minneapolis Ordinance allows a cause of action for a man “who alleges injury by pornography in the way women are injured by it.” Minneapolis Ordinance, *supra* note 2, § 4(l)(3).

45. Minneapolis Ordinance, *supra* note 2, § 1(3); Indianapolis Ordinance, *supra* note 3, § 4(a).

46. Minneapolis Ordinance, *supra* note 2, § 2(a)(1).

47. *See, e.g.*, Indianapolis Ordinance, *supra* note 3, § 6(a) (providing that “the [equal opportunity advisory] board may file in its own name . . . a complaint . . .”).

48. Minneapolis Ordinance, *supra* note 2, § 1(l)(3); Indianapolis Ordinance, *supra* note 3, § 6(a), (c).

49. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1).

50. *Id.* § 3(gg)(1)(i)-(ix); Indianapolis Ordinance, *supra* note 3, § 2(q)(1)-(6).

51. *See, e.g.*, DWORKIN, PORNOGRAPHY, *supra* note 19, at xxxiii (stating that the new pornography laws would allow women hurt by pornography to “redraw” the world created by “the makers, sellers, exhibitors, and distributors of pornography”); MacKinnon, *Pornography*, *supra* note 2, at 28 (describing her approach towards pornography as a “new legal theory, a new law . . .”).

subordination of women,"⁵² "postures of sexual submission,"⁵³ and "whores by nature"⁵⁴ to the interpretation of the citizen who files a complaint and to the judge who hears the case. The legislation does not prohibit just the images of rape and abusive sexual violence that most supporters claim to be its target, but instead drifts toward covering an increasingly wide range of sexually explicit material.

The most problematic feature of this approach is a conceptual flaw embedded in the law itself. Supporters of this type of legislation say that the target of their efforts is misogynous, sexually explicit, and violent representation, whether in pictures or words.⁵⁵ Indeed, the feminist anti-pornography movement is fueled by women's anger at the most repugnant examples of pornography.⁵⁶ But a close examination of the wording of the model legislative text, and examples of purportedly actionable material offered by proponents of the legislation in briefs defending the Indianapolis ordinance in a court challenge, suggests that the law is actually aimed at a range of material considerably broader than what the proponents claim is their target.⁵⁷ The discrepancies between the law's explicit and implicit aims have been almost invisible to us because these distortions are very similar to distortions about sexuality in the culture as a whole. The legislation and supporting texts deserve close reading. Hidden beneath illogical transformations, non sequiturs, and highly permeable definitions are familiar sexual scripts drawn from mainstream,

52. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1).

53. *Id.* § 3(gg)(1)(v).

54. *Id.* § 3(gg)(1)(vii).

55. *See, e.g.,* MacKinnon, *Defamation*, *supra* note 25, at 797-98, 801 (discussing her reasons for developing and supporting the anti-pornography ordinances, and defining their proscriptive objective as "graphic sexually explicit pictures or words that subordinate women").

56. *See, e.g.,* ANDREA DWORKIN, *Against the Male Flood: Censorship, Pornography, and Equality*, in *LETTERS FROM A WAR ZONE: WRITINGS 1976-1989*, at 253, 261 (stating, "[pornography] is women turned into subhumans, beaver, pussy, body parts, genitals exposed, buttocks, breasts, mouths open and throats penetrated, covered in semen, pissed on, shitted on, hung from light fixtures, tortured, maimed, bleeding, disemboweled, killed"); Morrison Torrey, *We Get the Message—Pornography in the Workplace*, 22 SW. U. L. REV. 53, 53 (1992) (referring to a "woman being shoved into a meat grinder" as an example of the viciousness of pornography).

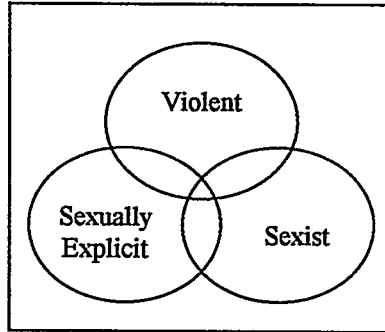
57. *See, e.g.,* Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, at 4, *American Booksellers Ass'n v. Hudnut*, 598 F. Supp. 1316 (S.D. Ind. 1984) (No. IP84-791C), *aff'd*, 771 F.2d 323 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986) [hereinafter Defendant's Memorandum in Opposition]; Brief of Linda Marchiano, *Amicus Curiae*, at 32, *American Booksellers Ass'n v. Hudnut*, 598 F. Supp. 1316 (S.D. Ind. 1984) (No. IP 84-791C), *aff'd*, 771 F.2d 323 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986) [hereinafter Brief of Linda Marchiano].

sexist culture that potentially could have very negative consequences for women.

The Venn diagram illustrates the three areas targeted by the law, and represents a scheme that classifies words or images that have any of three characteristics: violence, sexual explicitness, or sexism.

Clearly, a text or an image might have only one characteristic. Material can be violent but not sexually explicit or sexist: for example, a war movie in which both men and women suffer injury or death without regard to or because of their gender. Material can be sexist but not sexually explicit or violent. A vast number of materials from mainstream media—television, popular novels, magazines, newspapers—come to mind, depicting, for example, either distraught housewives or the “happy sexism” of the idealized family, with mom self-sacrificing, other-directed, and content. Finally, material can be sexually explicit but not violent or sexist: for example, the freely chosen sexual behavior depicted in sex education films or women’s own explicit writing about sexuality.

As the diagram illustrates, areas can also intersect, reflecting a range of combinations of the three characteristics. Images can be violent and sexually explicit without being sexist—for example, a narrative about a rape in a men’s prison, or a documentary about the effect of a rape on a woman. The latter example illustrates the importance of context in evaluating whether material that is sexually explicit and violent is also sexist. The intent of the maker, the context of the film, and the perception of the viewer together render a depiction of a rape sympathetic, harrowing, even educational, rather than sensational, victim-blaming, and laudatory.



Another possible overlap is between material that is violent and sexist but not sexually explicit. Films or books that describe violence directed against women by men in a way that clearly shows gender antagonism and inequality, and sometimes strong sexual tension, but no sexual explicitness, fall into this category—for example, the popular genre of slasher films in which women are stalked, terrified, and killed by men, or accounts of mass murder of women, fueled by male rage. Finally, a third point of overlap arises when material is sexually explicit and sexist without being violent—that is, when sex is consensual but still reflects themes of male superiority and female abjectness. Some sex education materials could be included in this category, as well as a great deal of regular pornography.

The remaining domain, the inner core, is one in which the material is simultaneously violent, sexually explicit, and sexist—for example, an image of a naked woman being slashed by a knife-wielding rapist. The Minneapolis ordinance, however, does not by any means confine itself to this material.

To be actionable as pornography under the law, material must be judged by the courts to be “the sexually explicit subordination of women, graphically depicted whether in pictures or in words that also includes at least one or more” of nine criteria.⁵⁸ Of these, only four involve the intersection of violence, sexual explicitness, and sexism, and then only arguably.⁵⁹ Even in these cases, many questions remain about whether images with all three characteristics do in fact cause violence against women.⁶⁰ And the task of evaluating material that is ostensibly the

58. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(i)-(ix). The ordinance states:

(1) Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

- (i) women are presented dehumanized as sexual objects, things or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or
- (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or
- (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
- (v) women are presented in postures of sexual submission; or
- (vi) women’s body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or
- (vii) women are presented as whores by nature; or
- (viii) women are presented being penetrated by objects or animals; or
- (ix) women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

Id.

59. *See id.* § 3(gg)(1)(ii), (iii), (iv), and (ix) (violence in these sections of the ordinance is defined as representations of women enjoying pain, experiencing sexual pleasure in being raped, being tied up, cut up, mutilated, bruised, or physically hurt, and in sexual contexts of injury or torture).

60. *See generally* Donn Byrne & Kathryn Kelley, *Introduction: Pornography and Sex Research*, in *PORNOGRAPHY AND SEXUAL AGGRESSION* 1, 4-10 (Neil M. Malamuth & Edward Donnerstein eds., 1984) (arguing that the effects of exposure to erotica are complex, and that attempts to censor pornography based on the findings of research into those effects may be problematic at best, and counter-productive at worst); Varda

target of these criteria becomes complicated—indeed, hopeless—because most of the clauses that contain these criteria mix actions or qualities of violence with those that are not particularly associated with violence.⁶¹

The section that comes closest to the stated purpose of the legislation is clause (iii): “women are presented as sexual objects who experience sexual pleasure in being raped.”⁶² This clause is intended to cover depictions of rape that are sexually explicit and sexist; the act of rape itself signifies the violence. But other clauses are not so clear cut because the list of characteristics often mixes signs or by-products of violence with phenomena that are unrelated or irrelevant to judging violence.

Such a problem occurs with clause (iv): “women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt.”⁶³ All these except the first, “tied up,” generally occur as a result of violence. “Tied up,” if part of consensual sex, is not violent and, for some practitioners, not particularly sexist. Women who are tied up may be participants in nonviolent sex play involving bondage, a theme in both heterosexual and lesbian pornography.⁶⁴ Clause (ix) contains another mixed list, in which “injury,” “torture,” “bleeding,” “bruised,” and “hurt” are combined with phrases such as “degradation” and “shown as filthy or inferior,” neither of which is violent.⁶⁵ Depending on the presentation, “filthy” and “inferior” may constitute sexually explicit sexism, although not violence. “Degradation” is a sufficiently inclusive term to cover most acts of which a viewer disapproves.

Several other clauses have little to do with violence at all; they refer to material that is sexually explicit and sexist, thus falling outside the triad of characteristics at which the legislation is supposedly aimed. For example, movies in which “women are presented as dehumanized sexual objects, things, or commodities”⁶⁶ may be infuriating and offensive to feminists, but they are not violent.

Burstyn, *Appendix I: Making Sense of Research on Pornography, in WOMEN AGAINST CENSORSHIP* 181 (Varda Burstyn ed., 1985) (discussing the various forms of research into the effects of exposure to pornography and depictions of violence).

61. See *infra* notes 63-70 and accompanying text.

62. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(iii).

63. *Id.* § 3(gg)(1)(iv).

64. See LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE “FRENZY OF THE VISIBLE”* 196-98 (1989) (describing different types of heterosexual pornography in which bondage plays a role). See also Gayle Rubin, *The Leather Menace: Comments on Politics and S/M*, in *COMING TO POWER: WRITINGS AND GRAPHICS ON LESBIAN S/M* 194, 220-21 (Samois ed., 3d ed. 1987) (noting and discussing the existence of subgroups in lesbian, gay and heterosexual communities that practice sadomasochism).

65. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(ix).

66. *Id.* § 3(gg)(1)(i).

Finally, some clauses describe material that is neither violent nor necessarily sexist. Clause (v)—“women . . . in postures of sexual submission [or sexual servility, including by inviting penetration]”⁶⁷—and clause (viii)—“women . . . being penetrated by objects or animals”⁶⁸—are sexually explicit, but not violent and not obviously sexist unless one believes that penetration—whether heterosexual, lesbian, or autoerotic is indicative of gender inequality and female oppression. Similarly problematic are clauses that invoke representations of “women . . . as whores by nature”⁶⁹ and “women’s body parts . . . such that women are reduced to those parts.”⁷⁰

Texts cited in support of the Indianapolis law show how broadly it could be applied. In the amicus brief filed on behalf of Linda Marchiano⁷¹ in Indianapolis, Catharine MacKinnon offered the film *Deep Throat* as an example of the kind of pornography covered by the law.⁷² *Deep Throat* served a complicated function in this brief because the movie, supporters of the ordinance argue, would be actionable on two counts: coercion into pornographic performance because Marchiano alleges that she was coerced into making the movie;⁷³ and trafficking in pornography because the content of the film falls within one of the categories in the Indianapolis ordinance’s definition—that which prohibits presenting women as sexual objects “through postures or positions of servility or submission or display.”⁷⁴ Proponents of the law have counted on women’s repugnance at allegations of coerced sexual acts to spill over and discredit the sexual acts themselves in this movie.

The aspects of *Deep Throat* that MacKinnon considered to be indicative of “sexual . . . subordination” are of particular interest because any movie that depicted similar acts presumably could be banned under the law.⁷⁵ MacKinnon explained in her brief that the film “subordinates

67. *Id.* § 3(gg)(1)(v). The bracketed language was contained in the ordinance as originally proposed to the city council, but was dropped in the final version. *See* DOWNS, *supra* note 14, at 44.

68. *Id.* § 3(gg)(1)(viii).

69. *Id.* § 3(gg)(1)(vii).

70. *Id.* § 3(gg)(1)(vi).

71. The woman who portrayed “Linda Lovelace” in the film *Deep Throat*. *See* Brief of Linda Marchiano, *supra* note 57, at 13.

72. *See id.* at iii (asserting that Linda Marchiano is one example, “far from unique,” of a woman who has suffered harm as a result of pornography).

73. *Id.* at 38.

74. Indianapolis Ordinance, *supra* note 3, § 2(q)(6). *See also* Brief of Linda Marchiano, *supra* note 57, at 38.

75. *See* Brief of Linda Marchiano, *supra* note 57, at 39.

women by using women . . . sexually, specifically as eager servicing receptacles for male genitalia and ejaculate. The majority of the film presents 'Linda Lovelace' in, minimally, postures of submission and/or servility."⁷⁶ In its brief, the City of Indianapolis concurred: "In the film *Deep Throat*, a woman is being shown as being ever eager for oral penetration by a series of men's penises, often on her hands and knees. There are repeated scenes in which her genitalia are graphically displayed and she is shown as enjoying men ejaculating on her face."⁷⁷

These descriptions are very revealing since they suggest that multiple partners, group sex, and oral sex subordinate women and hence are sexist. The notion that the female character is "used" by men suggests that it is improbable that a woman would engage in fellatio of her own accord. *Deep Throat* does draw on several sexist conventions common in advertising and the entire visual culture of woman as object of the male gaze, and the assumption of heterosexuality, for example. But it is hardly an unending paean to male dominance, since the movie contains many contrary themes. In it, the main female character is shown as both actively seeking her own pleasure and as trying to please men; a secondary female character is shown directing encounters with multiple male partners. Both briefs describe a movie quite different from the one viewers see.

At its heart, this analysis implies that heterosexual sex itself is sexist, that women do not engage in it of their own volition, and that behavior pleasurable to men is intrinsically repugnant to women. In some contexts, for example, the representation of fellatio and multiple partners can be sexist, but are we willing to concede that they always are? If not, then what is proposed as actionable under the Indianapolis law includes merely sexually explicit representation (the traditional target of obscenity laws), which proponents of the legislation vociferously insist they are not interested in attacking.⁷⁸

Exhibits submitted with the City of Indianapolis brief and also introduced in the public hearing further illustrate this point. Many of the

76. *Id.* at 38.

77. Defendant's Memorandum in Opposition, *supra* note 57, at 63.

78. See, e.g., *The First Amendment, Under Fire from the Left: Whose Free Speech? A Discussion of Two Leading Authorities, Moderated by Anthony Lewis*, N.Y. TIMES, Mar. 13, 1994, §6 (magazine), at 40, 57 (featuring a discussion between Catharine MacKinnon and Floyd Abrams, a prominent First Amendment attorney, in which MacKinnon distinguishes laws proposed by her and Andrea Dworkin from traditional obscenity laws).

exhibits were depictions of sadomasochism (SM).⁷⁹ The court briefs treat SM material as depicting violence and aggression, not consensual sex, in spite of avowals to the contrary by many SM practitioners.⁸⁰ With this legislation, then, a major question for feminists that has only begun to develop would be closed for discussion. Instead, a simplistic reduction has been advanced as the definitive feminist position. The description of the material in the briefs focused on submissive women and implied male domination, highlighting the similarity proponents would like to find between all SM narratives and male/female inequality.⁸¹ The actual exhibits, however, illustrated plots and power relations far more diverse than the descriptions provided by MacKinnon and the City of Indianapolis would suggest, including SM between women and female dominant/male submissive SM.⁸² For example, the Indianapolis brief stated that in the magazine *The Bitch Goddesses*, "women are shown in torture chambers with their nude body parts being tortured by their 'master' for 'even the slightest offense' . . . [This] magazine shows a woman in a scenario of torture."⁸³ But the brief failed to mention that with one exception the dominants in this magazine are all female. This kind of discrepancy characterized many examples offered in the briefs.

This is not to say that such representations do not raise questions for feminists. The current lively discussion about lesbian SM clearly demonstrates that this issue is still unresolved.⁸⁴ But in the Indianapolis briefs all SM material was assumed to be male dominant/female submissive, thereby squeezing a nonconforming reality into prepackaged, inadequate—and therefore dangerous—categories. This legislation would

79. See Defendant's Memorandum in Opposition, *supra* note 57, app. (listing exhibits such as the magazines *Sophisticated Bondage* and *Rope*, and films such as *Lisa's Training*).

80. See, e.g., Rubin, *The Leather Menace*, *supra* note 64, at 204-05 (noting that the "SM community is obsessed with safety and has an elaborate folk technology of methods to maximize sensation and minimize danger").

81. See Defendant's Memorandum in Opposition, *supra* note 57, at 20-21 (describing the scenes of bondage and torture depicted in much of the material submitted in exhibit); Brief of Linda Marchiano, *supra* note 57, at 13-14 (describing how Linda Marchiano was forced against her will to perform sexual acts for her role as "Linda Lovelace" in the movie *Deep Throat*).

82. See, e.g., WILLIAMS, *HARD CORE*, *supra* note 64, at 196 (stating that male submissives apparently outweigh dominators in real-life heterosexual sadomasochistic practice); see also Rubin, *The Leather Menace*, *supra* note 64, at 215 (stating that there is nothing inherently feminist or non-feminist about SM).

83. Defendant's Memorandum in Opposition, *supra* note 57, at 63 (citation omitted).

84. See, e.g., Rubin, *The Leather Menace*, *supra* note 64, at 212-18 (discussing the strife within the feminist movement over lesbian SM).

virtually eliminate all SM pornography by recasting it as violent, thereby attacking a sexual minority while masquerading as an attempt to end violence against women.

Analysis of clauses in the Minneapolis ordinance and several examples offered in court briefs filed in connection with the Indianapolis ordinance show that the law targets material that is sexually explicit and sexist, but ignores material that is violent and sexist, violent and sexually explicit, only violent, or only sexist.

Certain troubling questions arise here, for if one claims, as some anti-pornography activists do, that there is a direct relationship between images and behavior,⁸⁵ why should images of violence against women or scenarios of sexism in general not be similarly proscribed? Why is sexual explicitness singled out as the cause of women's oppression? For proponents to exempt violent and sexist images, or even sexist images, from regulation is inconsistent, especially since they are so pervasive.

Even more difficulties arise from the vagueness of certain terms crucial in interpreting the ordinances. The term "subordination" is especially important, since pornography is defined as the "sexually explicit subordination of women."⁸⁶ The authors of this legislation intend it to modify each of the clauses, and they appear to believe that it provides a definition of sexism that each example must meet.⁸⁷ The term is never defined in the legislation, yet the Indianapolis brief, for example, suggests that the average viewer, on the basis of "his or her common understanding of what it means for one person to subordinate another," should be able to decide what is pornographic.⁸⁸ But what kind of sexually explicit acts place a woman in an inferior status? To some, *any* graphic sexual act violates women's dignity and therefore subordinates them.⁸⁹ To others, consensual heterosexual lovemaking within the boundaries of procreation

85. See, e.g., DWORKIN, PORNOGRAPHY, *supra* note 19, at 199-202 (discussing the connection between pornography and the abuse of women).

86. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1); Indianapolis Ordinance, *supra* note 3, § 2(q).

87. See Brief of Linda Marchiano, *supra* note 57, at 30 (claiming that pornography is not "the presentation or discussion or depiction or portrayal of the 'idea of' subordination . . . [but rather, pornography] is an active practice of the subordination of women").

88. Defendant's Memorandum in Opposition, *supra* note 57, at 42.

89. See, e.g., DWORKIN, PORNOGRAPHY, *supra* note 19, at 23 (describing sexual intercourse as an act of possession by the male "which is simultaneously an act of ownership, taking, force; it is conquering . . . requir[ing] that the male act on one who has less power and this valuation is so deep, so completely implicit in the act, that the one who is fucked is stigmatized as feminine during the act even when not anatomically female").

and marriage is acceptable, but heterosexual acts that do not have reproduction as their aim lower women's status and hence subordinate them. Still others accept a wide range of non-procreative, perhaps even nonmarital, heterosexuality but draw the line at lesbian sex, which they view as degrading.

The term "sex object" is also problematic.⁹⁰ The City of Indianapolis's brief maintains that:

The term "sexual object," often shortened to "sex object," has enjoyed a wide popularity in mainstream American culture in the past fifteen years, and is used to denote the objectification of a person on the basis of their sex or sex appeal. People know what it means to disregard all aspects of personhood but sex, to reduce a person to a thing used for sex.⁹¹

But, indeed, people do not agree on this point. The definition of "sex object" is far from clear or uniform. For example, some feminist and liberal cultural critics have used the term in to mean sex that occurs without strong emotional ties and experience.⁹² More conservative critics maintain that any detachment of women's sexuality from procreation, marriage, and family objectifies it, removing it from its "natural" web of associations and context. Unredeemed and unprotected by domesticity and family, women—and their sexuality—become things used by men. In both these views, women are never sexually autonomous agents who direct and enjoy their sexuality for their own purposes, but rather are victims. In the same vein, other problematic terms include "inviting penetration,"⁹³ "whores by nature"⁹⁴ and "positions of display."⁹⁵

Through close analysis of the proposed legislation one sees how vague the boundaries of the definitions that contain the inner core of the Venn diagram really are. Their dissolution does not happen equally at all points, but only at some: The inner core begins to include sexually explicit

90. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(i)-(iv); Indianapolis Ordinance, *supra* note 3, § 2(q)(1)-(3), (6).

91. Defendant's Memorandum in Opposition, *supra* note 57, at 43.

92. See, e.g., *Playboy Interview: Betty Friedan*, PLAYBOY, Sept., 1992, at 51, 52 (eliciting the argument by Betty Friedan, the well-known feminist, that the treatment of women as sex objects deprives women, and men, of sexual and human fulfillment).

93. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(v). The clause "or sexual servility, including by inviting penetration" was appended to subsection (v) of the Minneapolis Ordinance but was deleted prior to passage. See Burstyn, *supra* note 60, at 206; DOWNS, *supra* note 14, at 44.

94. Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(vii).

95. Indianapolis Ordinance, *supra* note 3, § 2(q)(6).

and sexist material, and finally expands to include purely sexually explicit material. Thus "sexually explicit" becomes identified and equated with "violent" with no further definition or explanation.⁹⁶

It is also striking that so many feminists have failed to notice that the proposed laws (as well as examples of actionable material) cover so much diverse work, not just that small and symbolic epicenter where many forms of opposition to women converge. It suggests that for us, as well as for others, sexuality remains a difficult area. We have no clearly developed framework in which to think about sex equivalent to the frameworks that are available for thinking about race, gender, and class issues. Consequently, in sex, as in few other areas of human behavior, unexamined and unjustifiable prejudice passes itself off as considered opinion about what is desirable and normal. And finally, sex arouses considerable anxiety, stemming from both the meeting with individual difference and from the prospect—suggested by feminists themselves—that sexual behavior is constructed socially and is not simply natural.

The law takes advantage of everyone's relative ignorance and anxious ambivalence about sex, distorting and oversimplifying what confronts us in building a sexual politics. For example, anti-pornography feminists draw on several feminist theories about the role of violent, aggressive or sexist representations.⁹⁷ The first is relatively straightforward: that these images trigger men into action.⁹⁸ The second suggests that violent images act more subtly, to socialize men to act in sexist or violent ways by making this behavior seem commonplace and more acceptable, if not expected.⁹⁹ The third assumption is that violent, sexually explicit or even sexist images are offensive to women, assaulting their sensibilities and sense of self.¹⁰⁰ Although we have all used metaphors to exhort women to action or illustrate a point, anti-pornography proponents have frequently used these conventions of speech as if they were literal

96. *Id.* § 2(q)(2), (3), (5); Minneapolis Ordinance, *supra* note 2, § 3(gg)(1)(iii), (iv), (ix).

97. *See generally* MacKinnon, *Defamation*, *supra* note 25, at 798-800 (summarizing some of the research that shows that pornography results in increased aggressive and discriminatory behavior by men towards women, and that even non-violent pornography which degrades and dehumanizes women has been shown to lower men's inhibitions about aggression and callousness towards women).

98. *See id.* at 798 (describing how witnesses who related their experiences with pornography at hearings held before the Minneapolis City Council "told how pornography stimulates and condones rape").

99. *See id.* at 799 (citing research indicating that exposure to violent pornography can lead some men to believe that "violence against women is acceptable").

100. *See id.* at 803 (stating that pornography "makes women a public sexual spectacle . . . humiliates [them], and also at times offends their sensibilities").

statements of fact. But these metaphors have gotten out of hand, as Julie Abraham has noted, for they fail to recognize that the assault committed by a wife beater is quite different from the visual "assault" of a sexist ad on TV.¹⁰¹ The nature of that difference is still being clarified in a complex debate within feminism that must continue; this law cuts off speculation, settling on a causal relationship between image and action that is starkly simple, if unpersuasive.

These metaphors also pave the way for reclassifying images that are merely sexist as also violent and aggressive. Thus, it is no accident that the briefs supporting the legislation first invoke violent images and rapidly move to include sexist and sexually explicit images without noting that they are different.¹⁰² The equation is made easier by the constant shifts back to examples of depictions of real violence, almost to draw attention away from the sexually explicit or sexist material that in fact would be affected by the laws.¹⁰³

Most important, what underlies this legislation, and the success of its analysis in blurring and exceeding boundaries, is an appeal to a very traditional view of sex: Sex is degrading to women. By this logic, any illustrations or descriptions of explicit sexual acts that involve women are in themselves affronts to women's dignity. In its brief, the City of Indianapolis was quite specific about this point: "The harms caused by pornography are by no means limited to acts of physical aggression. The mere existence of pornography in society degrades and demeans all women."¹⁰⁴ Embedded in this view are several other familiar themes: that sex is degrading to women, but not to men; that men are raving beasts; that sex is dangerous for women; that sexuality is male, not female; that women are victims, not sexual actors; that men inflict "it" on women; that penetration is submission; that heterosexual sexuality, rather than the institution of heterosexuality, is sexist.

These assumptions, in part intended, in part unintended, lead us back to the traditional target of obscenity law: sexually explicit material. What initially appeared novel, then, is really the reappearance of a traditional theme. It is ironic that a feminist position on pornography incorporates most of the myths about sexuality that feminism has struggled to displace.

101. Carole S. Vance's conversation with Julie Abraham.

102. See Defendant's Memorandum in Opposition, *supra* note 57, at 4; Brief of Linda Marchiano, *supra* note 57, at 18-20.

103. See Defendant's Memorandum in Opposition, *supra* note 57, at 3, 20, 62-63, and 72, and Brief of Linda Marchiano, *supra* note 57, at 13-14 and 31-32 (describing sexually violent passages and scenes from various books and films where women are beaten, forced to have sex with animals, and threatened, wounded, or killed with guns or knives).

104. Defendant's Memorandum in Opposition, *supra* note 57, at 10.

III. THE DANGERS OF APPLICATION

The Minneapolis and Indianapolis ordinances embody a political view that holds pornography to be a central force in "creating and maintaining" the oppression of women.¹⁰⁵ This view appears in summary form in the legislative findings section at the beginning of the Minneapolis bill, which describes a chain reaction of misogynistic acts generated by pornography.¹⁰⁶ The legislation is based on the interweaving of several themes: That pornography constructs the meaning of sexuality for women and, as well, leads to discrete acts of violence against women; that sexuality is the primary cause of women's oppression; that explicitly sexual images, even if not violent or coerced, have the power to subordinate women; and that women's own accounts of force have been silenced because, as a universal and timeless rule, society credits pornographic constructions rather than women's experiences.¹⁰⁷ Taking the silencing contention a step further, advocates of the ordinance effectively assume that women have been so conditioned by the pornographic world view that if their own experiences of the sexual acts identified in the definition are not subordinating, then they must simply be victims of false consciousness.

The heart of the ordinance is the "trafficking" section, which would allow almost anyone to seek the removal of any materials falling within the law's definition of pornography.¹⁰⁸ Ordinance defenders strenuously

105. See Minneapolis Ordinance, *supra* note 2, § 1(a)(1); Indianapolis Ordinance, *supra* note 3, § 1(a)(2). The Indianapolis Ordinance states the findings of the Indianapolis City Council as:

Pornography is a discriminatory practice based on sex which denies women equal opportunities in society. Pornography is central in creating and maintaining sex as a basis for discrimination. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harm women's opportunities for equality of rights in employment, education, access to and use of public accommodations, and acquisition of real property; promote rape, battery, child abuse, kidnapping and prostitution and inhibit just enforcement of laws against such acts; and contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods.

Id.

106. Minneapolis Ordinance, *supra* note 2, § 1(a)(1).

107. *Id.* § 1-4.

108. *Id.* § 4(I). The section reads as follows:

Discrimination by trafficking in pornography. The production, sale, exhibition, or distribution of pornography is discrimination against women by means of trafficking in pornography:

protest that the issue is not censorship because the state, as such, is not authorized to initiate criminal prosecutions.¹⁰⁹ But the prospect of having to defend a potentially infinite number of privately filed complaints creates at least as much of a chilling effect against pornographic or sexual speech as does a criminal law. And as long as representatives of the state—in this case, judges—have ultimate say over the interpretation, the distinction between this ordinance and “real” censorship will not hold.

In addition, three major problems should dissuade feminists from supporting this kind of law: first, the sexual images in question do not cause more harm than other aspects of misogynist culture; second, sexually explicit speech, even in male-dominated society, serves positive social functions for women; and third, the passage and enforcement of anti-pornography laws such as those supported in Minneapolis and Indianapolis are more likely to impede, rather than advance, feminist goals.

Ordinance proponents contend that pornography does cause violence because it conditions male sexual response to images of violence and thus provokes violence against women.¹¹⁰ The strongest research they offer is based on psychological experiments that employ films depicting a rape scene, toward the end of which the woman is shown to be enjoying the attack.¹¹¹ The ordinances, by contrast, cover a much broader range of materials than this one specific heterosexual rape scenario. Further, the

(1) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves, shall not be construed to be trafficking in pornography but special display presentations of pornography in said places is sex discrimination.

(2) The formation of private clubs or associations for purposes of trafficking in pornography is illegal and shall be considered a conspiracy to violate the civil rights of women.

(3) Any woman has a cause of action hereunder as a woman acting against the subordination of women. Any man or transsexual who alleges injury by pornography in the way women are injured by it shall also have a cause of action.

Id. § 4(l)(1), (2), (3).

109. See Defendant's Memorandum in Opposition, *supra* note 57, at 55 (stating that the Indianapolis Ordinance would not make any acts criminal, and therefore actionable by the State).

110. See DWORKIN, PORNOGRAPHY, *supra* note 19, at xxviii-xxix (describing testimony before the Minneapolis City Council on the violence and degradation that women suffer because of pornography).

111. *Id.* at 137-38.

studies cited by ordinance supporters do not support the theory that pornography causes violence against women.¹¹²

In addition, the argument that pornography itself plays a major role in the general oppression of women contradicts the evidence of history. It need hardly be said that pornography did not lead to the burning of witches or the English common law treatment of women as chattel property. If anything functioned then as the prime communication medium for woman-hating, it was probably religion. Nor can pornography be blamed for the enactment of laws from at least the eighteenth century that allowed a husband to rape or beat his wife with impunity.¹¹³ In any period, the causes of women's oppression have been many and complex, drawing on the fundamental social and economic structures of society. Ordinance proponents offer little evidence to explain how the mass production of pornography—a relatively recent phenomenon—could have become so potent a causative agent so quickly.

The silencing of women is another example of the harm attributed to pornography.¹¹⁴ Yet if this argument were correct, one would expect that as the social visibility of pornography has increased, the tendency to credit women's accounts of rape would have decreased. In fact, although the treatment of women complainants in rape cases is far from perfect, efforts by the women's movement have resulted in marked improvements. In many places, the corroboration requirement has now been abolished,¹¹⁵ evidence of a victim's sexual experiences has been made

112. Hunter & Law, *supra* note 15, at 112-14 (citing researchers, on whom ordinance supporters relied, on the limited extent to which the social science literature supports the hypothesis of a connection between pornography and violence against women).

113. See, e.g., *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1528 (D. Conn. 1984) (stating that English common law during the eighteenth century recognized the right of husbands to physically discipline their wives, and that American common law adopted this right, provided that no permanent injury was inflicted upon the wife) (citations omitted); *State v. Black*, 60 N.C. (Win.) 162, 163 (1864) (holding that "the law permits [a husband] to use towards his wife such a degree of force as is necessary to control an unruly temper and make her behave herself . . ."). See also Kathleen E. Mahoney, *The Constitutional Law of Equality in Canada*, 24 N.Y.U. J. INT'L L. & POL. 759, 762 (1992) (chronicling the development of the common law and the rights of women, and stating that the common law permitted a husband to beat his disobedient wife and rape her without fear of punishment).

114. See CATHARINE A. MACKINNON, *Linda's Life and Andrea's Work*, in *FEMINISM UNMODIFIED* 127, 129-30 (1987) (arguing that pornography "promotes freedom for men and enslavement and silence for women").

115. See Cynthia Ann Wicktom, *Focusing on the Offender's Forceful Conduct: A Proposal for the Redefinition of Rape Laws*, 56 GEO. WASH. L. REV. 399, 410-11 n.78 (1988) (noting that the corroboration requirement has been eliminated by statute and

inadmissible;¹¹⁶ and a number of police forces have developed specially trained units and procedures to improve the handling of sexual assault cases.¹¹⁷ The presence of rape fantasies in pornography may in part reflect a backlash against these women's movement advances, but to argue that most people routinely disbelieve women who file charges of rape belittles the real improvements made in social consciousness and law.

The third type of harm is a kind of libel: The maliciously false characterization of women as a group of sexual masochists.¹¹⁸ To claim that all pornography is a lie is a false analogy. If truth is a defense to charges of libel, then surely depictions of consensual sex cannot be thought of as equivalent to a falsehood. For example, some women (and men) do enjoy being tied up or displaying themselves. The declaration by fiat that even sadomasochism is a "lie" about sexuality reflects an arrogance and moralism that feminists should combat, not engage in. When mutually desired sexual experiences are depicted, pornography is not "libelous."

Not only does pornography not cause the kind and degree of harm that can justify the restraint of speech, but its existence serves some social functions which benefit women. Pornographic speech has many, often anomalous, characteristics. Certainly one is that it magnifies the misogyny present in the culture and exaggerates the fantasy of male power. Another, however, is that the existence of pornography has served to flout conventional sexual mores, to ridicule sexual hypocrisy, and to underscore the importance of sexual needs. Pornography carries many messages other than woman-hating; it advocates sexual adventure, sex outside of marriage, sex for no reason other than pleasure, casual sex, anonymous sex, group sex, voyeuristic sex, illegal sex, public sex. Some of these ideas appeal to women reading or seeing pornography, who may interpret some images as legitimating their own sense of sexual urgency or desire to be sexually aggressive. Women's experience of pornography is not as universally victimizing as the ordinance would have it.

Anti-pornography laws, as restrictions on sexual speech, in many ways echo and expand upon the traditional legal analysis of sexually

judicial decision because the victim's testimony is now believed to be as reliable as any other form of evidence).

116. *See, e.g.*, FED. R. EVID. 412 (prohibiting admission of all opinion and reputation evidence concerning a rape victim's prior sexual behavior but allowing other evidence of the victim's sexual history under certain circumstances).

117. *See* Frank Tuerkheimer, *A Reassessment and Redefinition of Rape Shield Laws*, 50 OHIO ST. L.J. 1245, 1246 (1989) (stating that the development of sensitive crime units has led to increased responsiveness to victims of sexual assault by law enforcement agencies).

118. *See* DWORKIN, *supra* note 19, at 148-49.

explicit speech under the rubric of obscenity. The Supreme Court has consistently ruled that sexual speech, defined as "obscenity," does not belong in the system of public discourse, and is therefore an exception to the First Amendment and hence not entitled to protection under the free speech guarantee.¹¹⁹ The definition of obscenity has shifted over the years and remains imprecise. In 1957, the Supreme Court ruled that obscenity could be suppressed regardless of whether it presented an imminent threat of illegal activity.¹²⁰ In the opinion of the Supreme Court, graphic sexual images do not communicate "real" ideas.¹²¹ These, it would seem, are found only in the traditionally defined public arena. Sexual themes can qualify as ideas if they use sexuality for argument's sake, but not if they speak in the words and images of "private" life—that is, if they graphically depict sex itself. At least theoretically, and insofar as the law functions as a pronouncement of moral judgment, sex is consigned to remain unexpressed and in the private realm.

The fallacies in this distinction are obvious. Under the U.S. Constitution, for example, it is acceptable to write "I am a sadomasochist" or even "Everyone should experiment with sadomasochism in order to increase sexual pleasure." But to write a graphic fantasy about sadomasochism that arouses and excites readers is not protected unless a court finds it to have serious literary, artistic or political value, despite the expressive nature of the content.¹²² Indeed, the fantasy depiction may communicate identity in a more compelling way than the "I am" statement. For sexual minorities, sexual acts can be self-identifying and affirming statements in a hostile world. Images of those acts should be protected for that reason, for they do have political content. Just as the personal can be political, so can the specifically and graphically sexual.

Supporters of the anti-pornography ordinances both endorse the concept that pornographic speech contains no ideas or expressive interest, and at the same time attribute to pornography the capacity to trigger violent acts by the power of its misogyny. The City's brief in defense of

119. *See, e.g., Miller v. California*, 413 U.S. 15 (1973) (establishing guidelines for the trier of fact to determine whether material is obscene and thus not protected by the First Amendment); *Roth v. United States*, 354 U.S. 476 (1957) (rejecting claim that obscene materials are protected by the First Amendment); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (stating that lewd or obscene utterances are not an essential part of any exposition of ideas).

120. *Roth v. United States*, 354 U.S. at 485-86.

121. *Id.* at 484-85.

122. *See Miller*, 413 U.S. at 24 (announcing a three-part obscenity test, part of which requires the work in question to have serious literary, artistic, political or scientific value).

the Indianapolis ordinance expanded this point by arguing that all sexually explicit speech is entitled to less constitutional protection than other speech.¹²³ The anti-pornography groups have cleverly capitalized on this approach—a product of a totally nonfeminist legal system—to attempt, through the mechanism of the ordinances, to legitimate a new crusade for protectionism and sexual conservatism.

The consequences of enforcing such a law, however, are much more likely to obstruct than advance feminist political goals. On the level of ideas, further narrowing of the public realm of sexual speech coincides all too well with the privatization of sexual, reproductive and family issues sought by the far right. Practically speaking, the ordinances could result in attempts to eliminate the images associated with homosexuality. Doubtless there are heterosexual women who believe that lesbianism is a “degrading” form of “subordination.” Since the ordinances allow for suits against materials in which men appear “in place of women,” far-right anti-pornography crusaders could use these laws to suppress gay male pornography. Imagine a Jerry Falwell-style conservative filing a complaint against a gay bookstore for selling sexually explicit materials showing men with other men in “degrading” or “submissive” or “objectified” postures—all in the name of protecting women.

And most ironically, while the ordinances would do nothing to improve the material conditions of most women’s lives, their high visibility might well divert energy from the drive to enact other, less popular laws that would genuinely empower women—comparable worth legislation, for example, or affirmative action requirements, or fairer property and support principles in divorce laws.

Other provisions of the ordinances concern coercive behavior: physical assault which is imitative of pornographic images directly,¹²⁴ coercion into pornographic performance,¹²⁵ and forcing pornography on others.¹²⁶ On close examination, however, most of these provisions are problematic.

Existing law already penalizes physical assault, including when it is associated with pornography. Defenders of the laws often cite the example of models who have been raped or otherwise harmed while in the process of making pornographic images. But victims of this type of attack

123. Defendant’s Memorandum in Opposition, *supra* note 57, at 17, 27, and 34.

124. Minneapolis Ordinance, *supra* note 2, § 4(o).

125. *Id.* § 4(m).

126. *Id.* § 4(n).

can already sue or prosecute those responsible.¹²⁷ Indeed, the ordinances do not cover assault or other harm incurred while producing pornography, presumably because other laws already achieve that end.

The ordinances do penalize coercing, intimidating or fraudulently inducing anyone into performing for pornography.¹²⁸ Although existing law already provides remedies for fraud or contracts of duress, this section of the ordinance seeks to facilitate recovery of damages by, for example, pornography models who might otherwise encounter substantial prejudice against their claims. Supporters of this section have suggested that it is comparable to the Supreme Court's ban on child pornography.¹²⁹ The analogy has been stretched to the point where the City of Indianapolis brief argued that women, like children, need "special protection."¹³⁰ "[C]hildren are incapable of consenting to engage in pornographic conduct, even absent physical coercion and therefore require special protection," the brief stated.¹³¹ "By the same token, the physical and psychological well-being of women ought to be afforded comparable protection for the coercive environment in which most pornographic models work vitiates any notion that they consent or 'choose' to perform in pornography."¹³²

The reality of women's lives is far more complicated. Women do not become pornography models because society is egalitarian and they exercise a "free choice," but neither do they "choose" this work because they have lost all power for deliberate, volitional behavior. Modeling or acting for pornography, like prostitution, can be a means of survival for those with limited options. For some women, at some points in their lives, it is a rational economic decision. Not every woman regrets having

127. See James R. Branit, *Reconciling Free Speech and Equality: What Justifies Censorship?*, 9 HARV. J.L. & PUB. POL'Y 429, 449 (1986) (pointing out that virtually every offense which occurs during the filming of pornography has a remedy in existing criminal and civil law).

128. Minneapolis Ordinance, *supra* note 2, § 4(m); Indianapolis Ordinance, *supra* note 3, § 2(g)(5).

129. See Defendant's Memorandum in Opposition, *supra* note 57, at 23-24 (asserting that just as a child is incapable of consenting to engage in pornographic conduct, "the coercive environment in which most pornographic models work vitiates any notion that they consent or 'choose' to perform"); *Osborne v. Ohio*, 495 U.S. 103 (1990) (holding that a state's prohibition against the possession and viewing of child pornography complies with the First Amendment); *New York v. Ferber*, 458 U.S. 747 (1982) (holding that child pornography is not entitled to First Amendment protection provided that the conduct prohibited is adequately defined by applicable state law).

130. Defendant's Memorandum in Opposition, *supra* note 57, at 24.

131. *Id.*

132. *Id.*

made it, although no woman should have to settle for it. The fight should be to expand the options, as well as to insure job safety for women who do become pornography models. By contrast, the impact of the ordinance as a whole would be either to eliminate jobs or drive the pornography industry further underground.

One of the vaguest provisions in the ordinance prohibits "forcing" pornography on a person.¹³³ "Forcing" is not defined in the law, and one is left to speculate whether it means forced to respond to pornography, forced to read it, or forced to glance at it before turning away. Also unclear is whether the perpetrator must in fact have some superior power over the person being forced—that is, is there a meaningful threat that makes the concept of force real.

Again, widely varying situations are muddled and a consideration of context is absent. "Forcing" pornography on a person "in any public space" is treated identically to using it as a method of sexual harassment in the workplace.¹³⁴ The scope of "forcing" could include walking past a newsstand or browsing in a bookstore that had pornography on display. The force involved in such a situation seems mild when compared, for example, to the incessant sexist advertising on television.

The concept behind the "forcing" provision is appropriate, however, in the case of workplace harassment. A worker should not have to endure, especially on pain of losing her job, harassment based on sex, race, religion, nationality or any other factor. This general policy was established by the U.S. courts as part of the guarantees of Title VII of the 1964 Civil Rights Act.¹³⁵ Pornography used as a means of harassing women workers is already legally actionable, just as harassment in the workplace by racial slurs is actionable.¹³⁶ Any literature endorsing the

133. Minneapolis Ordinance, *supra* note 2, § 4(n).

134. *Id.*

135. *See Harris v. Forklift Systems, Inc.*, 114 S. Ct. 367 (1993) (holding that Title VII's prohibition against discrimination with respect to "terms, conditions, or privileges of employment" based on race, color, religion, sex, or national origin is not limited to economic or tangible discrimination, but extends to the entire spectrum of disparate treatment of men and women in employment, which includes requiring people to work in discriminatorily hostile or abusive environments); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (holding that a claim of hostile environment sexual harassment is a form of sex discrimination actionable under the Title VII employment discrimination statute).

136. *See, e.g., Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n*, 541 N.E.2d 1248 (Ill. App. Ct. 1989) (finding that a former probationary police officer proved his allegations of racial harassment and discriminatory discharge and was entitled to back pay and damages); *Broad Elm Auto Centers v. New York State Div. of Human Rights*, 552 N.Y.S.2d 763, 764 (App. Div. 1990) (stating that unlawful racial discrimination encompasses racial or ethnic assaults and harassment).

oppression of women—whether pornography or the Bible—could be employed as a harassment device to impede a woman's access to a job, or to education, public accommodations or other social benefits. It is the usage of pornography in this situation, not the image itself, that is discriminatory. Appropriately, this section of the Minneapolis ordinance provides that only perpetrators of the forcing, not makers and distributors of the images, could be held liable.¹³⁷

Forcing pornography on a person is also specifically forbidden "in [the] home."¹³⁸ In her testimony before the Indianapolis City Council, Catharine MacKinnon referred to the problem of pornography being "forced on wives in preparation for later sexual scenes."¹³⁹ Since only the person who forces the pornography on another can be sued, this provision becomes a kind of protection against domestic harassment. It would allow wives to seek court orders against husbands or damages for some uses of pornography. Although this is a fascinating attempt to subvert male power in the domestic realm, it nonetheless has problems. "Forcing" is not an easy concept to define in this context. It is hard to know what degree of intrusion would amount to forcing images onto a person who shares the same private space.

More important, the focus on pornography seems to be a displacement of the more fundamental issues involved in the conflicts that occur between husbands and wives, or lovers, over sex. Some men may invoke images that reflect their greater power to pressure women into performing the supposedly traditional role of acceding to male desires. Pornography may facilitate or enhance this dynamic of male dominance, but it is hardly the causative agent. Nor would removing the pornography do much to solve the problem. If the man invokes instead his friends' stories about sexual encounters or his experiences with other women, is the resulting interaction with his wife substantially different? Focusing on the pornography, rather than on the relationship and its social context, may serve only to channel heterosexual women's recognition of their own intimate oppression toward a movement hailed by the far right as being anti-perversion rather than toward a feminist analysis of sexual politics.

The last of the sections that deals with actual coercive conduct is one that attempts to deal with the assault, physical injury or attack of any person in a way that is directly caused by specific pornography.¹⁴⁰ The ordinance would allow a lawsuit against the makers and distributors of pornographic materials that were imitated by an attacker—the only

137. Minneapolis Ordinance, *supra* note 2, § 4(n).

138. *Id.*

139. See Defendant's Memorandum in Opposition, *supra* note 57, at 10, 12.

140. Minneapolis Ordinance, *supra* note 2, § 4(o).

provision of the ordinance that requires proof of causation.¹⁴¹ Presenting such proof would be extremely difficult. If the viewer's willful decision to imitate the image were found to be an intervening, superseding cause of the harm, the plaintiff would lose.

The policy issues here are no different from those concerning violent media images that are nonsexual: Is showing an image sufficient to cause an act of violence? Even if an image could be found to cause a viewer's behavior, was that behavior reasonably foreseeable? So far, those who have produced violent films have not been found blameworthy when third persons acted out the violence depicted. If this were to change, it would mean, for example, that the producer of the TV movie *The Burning Bed*, which told the true story of a battered wife who set fire to her sleeping husband, could be sued if a woman who saw the film killed her husband in a similar way. The result, of course, would be the end of films depicting real violence in the lives of women.

The ordinances' supporters offer no justification for singling out sexual assault from other kinds of violence. Certainly the experience of sexual assault is not always worse than that of being shot or stabbed or suffering other kinds of nonsexual assault. Nor is sexual assault the only form of violence that is fueled by sexism. If there were evidence that sexual images are more likely to be imitated, there might be some justification for treating them differently. But there is no support for this contention.

Laws which would increase the state's regulation of sexual images present many dangers for women. Although these proposals draw much of their feminist support from women's anger at the market for images of sexual violence, they are aimed not at violence, but at sexual explicitness. Far-right elements recognize the possibility of using the full potential of the ordinances to enforce their sexually conservative world view, and have supported them for that reason.¹⁴² Feminists should therefore look carefully at the text of these "model" laws in order to understand why many believe them to be a useful tool in *anti*-feminist moral crusades.

The proposed ordinances are dangerous because they seek to embody in law an analysis of the role of sexuality and sexual images in the oppression of women with which even all feminists do not agree. Underlying virtually every section of the proposed laws there is an assumption that sexuality is a realm of unremitting, unequalled victimization for women. Pornography appears as the monster that made this so. The ordinances' authors seek to impose their analysis by putting state power behind it. But this analysis is not the only feminist perspective on sexuality. Feminist theorists have also argued that the

141. *Id.*

142. *See* Duggan, *supra* note 4, at 11.

sexual terrain, however power-laden, is actively contested. Women are agents, and not merely victims, who make decisions and act on them, and who desire, seek out, and enjoy sexuality.

