

January 1993

BEING A FEMINIST MEANS YOU ARE AGAINST SEXISM, NOT AGAINST SEX

Karen DeCrow

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

Recommended Citation

Karen DeCrow, *BEING A FEMINIST MEANS YOU ARE AGAINST SEXISM, NOT AGAINST SEX*, 38 N.Y.L. SCH. L. REV. 359 (1993).

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

BEING A FEMINIST MEANS YOU ARE AGAINST SEXISM, NOT AGAINST SEX

KAREN DECROW*

I. INTRODUCTION

Not wanting to intrude, or appear unsisterly, I have nonetheless begun to worry about this younger generation of feminists. The new puritanism is terrifying.

A quarter-century ago, what we feminists had in mind included sexual liberation—the recognition that physical pleasure was for us, too. What our well-meaning mothers and grandmothers were telling us, in the only way they knew, was that because women were excluded from equality in the marketplace, we were required to trade sex for food. What the women's liberation movement had in mind twenty-five years ago was ending the double standard. If women craved and adored sex also, it could hardly be used for barter.

Now, a feminist in her twenties has courageously taken the current movement to task. Katie Roiphe, author of *The Morning After: Sex, Fear, and Feminism on Campus*, describes and laments the new puritanism:

The image that emerges from feminist preoccupations with rape and sexual harassment is that of women as victims, offended by a professor's dirty joke, verbally pressured into sex by peers. This image of a delicate woman bears a striking resemblance to that fifties ideal my mother and other women of her generation fought so hard to get away from. They didn't like her passivity, her wide-eyed innocence.¹

For those under age 55 (my age and that of Katie Roiphe's mother), some American social history is in order, albeit a tale limited to females in the middle class. What were male-female relations like in the 1950s? What was it like at those beach parties, in the back seats of those two-toned Chevy Bel Aires?

The aim of the dating game for the girls was not to have fun, or even a pleasant evening. The goal was to catch a husband and getting that husband was not just *a* goal; it was the *only* goal.

* Author and attorney specializing in constitutional law. I wish to acknowledge Elizabeth Wright and Cheryl Kimball for their editorial assistance.

1. KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* 6 (1993).

We were instructed to find the husband sooner, rather than later. As described in the classic novel *Marjorie Morningstar* beauty was alleged to fade rapidly.² Why would a boy want someone of 21 when he could find someone of 18? Thus, engaged at 18, married at 18½ was considered safest. Career plans for women were not relegated to second place—they had no place.

Sexual innocence also played a major role. Girls had to acquiesce to the myth that sensual delight was for men only. Translated, this meant that we could not pay our own bills, and if we wanted men to marry us and pay the bills for us, we had to provide something precious in return. This myth was no favor to the men, either. They were required to quickly locate occupations that could support an adult female and children.

So, along with child care, cooking, laundry service, escort service to professional and family dinners, we could provide sexual service. The cult of female virginity and purity was part of the second-class citizenship of women. Demeaning and oppressive, it was a "dumbing down," a companion to the "dumbing down" we were taught to exhibit in the classroom, on dates, and indeed in every situation where females smilingly could glance at males and mumble, "I am innocent. Teach me."

Katie Roiphe writes that her grandmother carefully instructed Katie's mother to drink sloe gin fizz on dates so that she wouldn't drink too much and "go too far."³ The implication was that only the boy wanted to go too far. No one except a husband, and then only after the ceremony was over and your father had paid the orchestra, was supposed to "go below the waist." Compared to my mother, Katie's grandma was a libertine. My mother suggested drinking chocolate milk. A young woman was to keep her mouth shut for two reasons: don't be funnier than the date, and no french kissing. Girls had to be shorter than boys. My sister, eight years my junior and a competent aide, had the job of checking the chart I had made on the front door (the kind now used to identify the height of supermarket thieves) to tell me whether to wear low- or spiked-heel shoes.

However, the oppression of young female students was not being whistled at, or even slurped at. It was the chilling recognition in the bad old days that one could never be mayor, governor, senator, attorney general, or a justice of the Supreme Court. Indeed, what was stultifying about the 1950s was not that boys would routinely snap one's bra strap, but that we were judged by our sexual behavior, and virgin and slut were the only two categories.

2. HERMAN WOUK, *MARJORIE MORNINGSTAR* 271, 396, 559 (1955).

3. ROIPHE, *supra* note 1, at 83.

Perhaps this is a good time for a mid-course correction to avoid the danger of, as Katie Roiphe says, "remaking love in its old image."⁴ What we had in mind twenty-five years ago was not a new puritanism, but freeing women from being eternal children. As grown-ups, we have won the right to say "no" and to be believed and taken seriously. As grown-ups, we also have the right to repeat after Molly Bloom, "yes I said yes I will Yes."⁵

II. LEGISLATE FOR RIGHTS, NOT THE FAR RIGHT

Today the notion of pornography has united strange bedfellows: The far right wing in American politics (they rarely meet an idea they like) is busy at city council and school board meetings with such work as cutting all funding for the arts in Cobb County, Georgia, in order to do away with funding for a "dirty play."⁶ United in an unholy dance of ignorance with these folks is a very vocal segment of the feminist movement that claims that sexually explicit materials, by their very nature, demean women, and thus should be censored.

A recent book, *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800*, edited by Lynn Hunt, demonstrates that this notion of pornography is a recent one.⁷ Prior to the nineteenth century, pornography was not a separate and distinct genre created to arouse sexual feelings.⁸ Instead, it was a vehicle used to criticize the political and religious authorities through the shock of sex.⁹ Unfortunately, the shock of sex (is it that too many of us were raised to think that all lust is evil?) has beclouded the judgment of many progressives, obscuring the important political and religious issues of today. Distracting at best, a cop-out at worst, this obsession with the portrayal of sexual activities has diverted precious intellectual and political energies.

Physical violence also should not be the key focus of energy for the feminist movement. Although it is true that violence is a horrific

4. *Id.*

5. JAMES JOYCE, *ULYSSES 767* (Random House 1934) (1918).

6. Two weeks after a resident complained about references to homosexuality in the play *Lips Together, Teeth Apart*, which was showing at a local theater, the County Board of Commissioners voted to cut all arts funding. See Peter Applebome, *Avoiding a Values Test, County Cuts All Art Funds*, N.Y. TIMES, Aug. 26, 1993, at A16.

7. See Lynn Hunt, *Introduction to THE INVENTION OF PORNOGRAPHY: OBSCENITY AND THE ORIGINS OF MODERNITY 1500-1800*, at 43-45 (Lynn Hunt ed., 1993).

8. *Id.* at 10.

9. *Id.*

problem, it is a problem of civilization, a proof of the lack of rationality in the human species which cannot be altered by women alone. Conversely, we too often ignore the *silent* violence that is killing women. The punches, the battering, even the rapes and the murders—as hideous as they are—are infrequent compared to the violence that occurs in the life of every woman, even if she has never experienced a slap on the face.¹⁰

It is the silent violence which the feminist movement must address. By concentrating on physical violence and the depiction of physical violence or sexuality, we are passing up opportunities to gain gender equality.¹¹ We are spending our vital energy, our money, and most importantly, our time advocating censorship in the name of feminism. Yet, women, for centuries, were not able to express themselves because of the existence of debilitating censorship.

Each crime wave, each disturbance in domestic harmony, brings on a new wave of censors, zealots looking for the quick fix, looking for the easy answer. Today is no exception. In 1992, the Senate Judiciary Committee, still red-faced and properly feeling guilty for the way in which its members grilled Anita Hill, engineered a misguided attempt to do something for the ladies. The committee passed the particularly foolish, but very dangerous, Pornography Victims' Compensation Act.¹² The Act would have held producers, distributors, and sellers of so-called "obscene" materials liable for sex offenses that were foreseeably caused,

10. The silent violence which affects almost all women is that which stereotypes and deprives females routinely of opportunities in education and employment. Dr. Robert Seidenberg spoke of this concept of silent violence in a recent speech to a group of mental health professionals in Syracuse, New York: "You can injure people by cutting off their food stamps, by cutting them off Medicaid. You can hurt people by not teaching them what they need to know. No blow is delivered, but the violence is there, as if by decree." Seidenberg spoke of it as perhaps the distinction between the violence perpetrated by those who are literate, in contrast to those who are non-literate.

11. Even if we were to conclude that physical violence is our worst problem, there is no proof that reading about rape and murder increases the incidence of rape and murder. For example, Marjorie Heins notes that two Presidential panels convened to study pornography, the first in 1970 and the second in 1985-86, found the evidence linking pornography and sexual violence inconclusive. MARJORIE HEINS, *SEX, SIN AND BLASPHEMY: A GUIDE TO AMERICA'S CENSORSHIP WARS* 147-49 (1993).

12. S. REP. NO. 372, 102d Cong., 2d Sess. 1 (1992); S. REP. NO. 30, 103d Cong., 1st Sess. 52 (1993) (reporting that the Senate Judiciary Committee approved the proposed Pornography Victims' Compensation Act by a vote of 7 to 6 on June 25, 1992, but that no action was taken by the full Senate during the session). See also Tamar Lewin, *Pornography Foes Push for Right to Sue*, N.Y. TIMES, Mar. 15, 1992, at A16 (quoting Leanne Katz, executive director of the National Coalition Against Censorship, who stated that the imposition of liability for exposure to ideas is "a truly terrifying prospect"); Teller, *Movies Don't Cause Crime*, N.Y. TIMES, Jan. 17, 1992, at A29 (referring to the proposed Act as "a death knell for creativity").

in substantial part, by the sex offender's exposure to the obscene material.¹³ The sponsors of the bill, Sen. Mitch McConnell (R-Kentucky) and Sen. Charles Grassley (R-Iowa) have falsely, and perhaps cynically, determined that the bill would help curb violence against women.¹⁴ However, organizations representing the arts, civil liberties, and entertainment opposed the bill, as did the National Organization for Women (NOW) New York State Executive Committee.¹⁵ Although the full Senate took no action on the Act in 1992, the feminist anti-pornography movement is likely to have similar bills introduced at the national and local levels throughout the 1990s.¹⁶

Fortunately, New York NOW was not fooled. Marilyn Fitterman, former president of New York State NOW, correctly pointed out that the bill would "censor many feminist materials, such as reproductive rights information, lesbian and gay information, and any other materials or literature that the Reagan/Bush appointed judges consider obscene."¹⁷ The bill would get the criminal off the hook by permitting the victim to sue the publisher of the material. Fitterman, however, believes "the result would be to inhibit writers from writing—even some articles that we may want to print in our state newspaper might be suspect, and the effect would be a 'chilling out' of educational information."¹⁸

Examining the history of the feminist movement, we see clearly that until the restrictions and censorship of explicit language were lifted, we were not able to publish information about birth control, abortion, or many other aspects of women's health. In fact, according to Fitterman, "censorship has been, throughout history, the single most widely used tool

13. S. REP. NO. 372, 102d Cong., 2d Sess. 12-13 (1992).

14. *Id.* at 6; S. 1521, 137 CONG. REC. S10,554-03 (daily ed. July 22, 1991) (Statement of Sen. McConnell).

15. See Richard Harrington, *Exercising the Right to Censor the Censors: One Man's Tactics to Ensure Freedom of Speech and Rap*, WASH. POST, July 7, 1991, at G1 (reporting the opposition of 18 groups to the Act, including the American Civil Liberties Union, the Motion Picture Association of America, the Recording Industry Association of America, the American Booksellers Association of America, the American Association of Journalists, and the Video Software Dealers Association); Clarence Page, *Dubious Notions About Sex Crimes and Pornography*, CHI. TRIB., Apr. 22, 1992, at 15 (reporting on NOW's opposition to the Act).

16. See generally Wendy Kaminer, *Feminists Against the First Amendment*, ATLANTIC, Nov. 1992, at 110 (tracing the history of feminist anti-pornography legislation on the local and national levels since the late 1980s and suggesting that efforts to pass such legislation will continue).

17. Telephone Interview with Marilyn Fitterman, former President of New York State NOW (Mar. 14, 1994).

18. *Id.*

for 'protecting' women from birth control, abortion, sexual satisfaction and non-heterosexual relationships."¹⁹ Thus, without free speech we can have no feminist movement.

However, a frequent telephone conversation runs as follows: "Have you heard the latest lyrics from 'Vicious Stud and the Bloody Devils'? I was driving in my car, and I almost had an accident, the song is so hideous."

I inquire: "Why didn't you turn it off?"

"Turn it off! I want it taken off the air. Can't you do something about it? I thought you were a friend of women?"

Today, the First Amendment is under attack generally, and it is no surprise that far right political groups are leading the war.²⁰ It is a surprise, however, that some feminists who join them do so under the guise of helping women. Whatever the justification, the censorship forces have been successful in forty-eight of the fifty states where school boards have banned books.²¹ However, in *Board of Education v. Pico*²² (often referred to as the "Island Trees case"), the Supreme Court stated that school boards may not ban books solely because of the ideas that they express.²³ As Justice Brennan wrote, "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books."²⁴

Passages have been cut from Shakespeare, Hemingway, and Hawthorne.²⁵ L. Frank Baum's *The Wizard of Oz* and Kurt Vonnegut,

19. Nat Hentoff, *Pornography War Among Feminists: Do Women Need State Protection From Sexually Explicit Materials?*, WASH. POST, Apr. 4, 1992, at A23 (quoting a letter that Fitterman, as President of New York State NOW, co-wrote to Catharine MacKinnon).

20. See, e.g., Herbert Mitgang, *Literary Vigilantes*, N.Y. TIMES, Oct. 23, 1993, § 7, at 24 (noting that some of the strongest supporters of censorship include the Rev. Jerry Falwell, Phyllis Schlafly, and others on the far right).

21. Judy Mann, *The 'Dumbing' of America*, WASH. POST, Dec. 19, 1984, at C3. See generally Donn Fry, *Banned Books Week Focuses on Censorship's Sorry Chapters*, SEATTLE TIMES, Sept. 28, 1992, at C3 (referring to a statement of Judith F. Krug, Director of the American Library Association's Office for Intellectual Freedom, that her office received more than 500 reports of attempted censorship in public schools and libraries in 1991, which she believes is only 15 to 20% of all cases).

22. 457 U.S. 853 (1982).

23. *Id.* at 870-71.

24. *Id.* at 872.

25. For a survey of the history of literary censorship in America, see Mann, *supra* note 21. See also Margaret A. Blanchard, *The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society—From Anthony Comstock to 2 Live Crew*, 33 WM. & MARY L. REV. 741 (1992).

Jr.'s *Slaughterhouse-Five* have been taken from libraries.²⁶ *The American Heritage Dictionary* has been banned in Alaska, California, Indiana, Missouri, Ohio, and Texas.²⁷ Attempts have been made to ban Mark Twain's *Huckleberry Finn*, one of the greatest American novels, in several communities including, ironically, at the Mark Twain Intermediate School in Fairfax, Virginia.²⁸

D.H. Lawrence has been attacked as a writer, and his books have been banned.²⁹ The assault has come both from those who believe that a "women's place is in the home" and from feminist scholars.³⁰ All are misguided and inaccurate. In addition to contributing scenes of passion and beauty to our literature, Lawrence was not anti-female. In *Sons and Lovers*, he wrote, "that she bear children is not a woman's significance. But that she bear herself, that is her supreme and risky fate." Likewise, he wrote, "[s]he could easily sacrifice herself. But dare she assert herself?"

I propose that all of us who are interested in gender equality run for the school board. We allow school boards to waste valuable time arguing about sexually explicit materials, rather than crowding the agenda with issues of importance. Thoughtful adults should run for the school board not merely to fight against censorship, but to get censorship off the agenda entirely. Arguments about "dirty" books teach our children a very dangerous lesson: that reading an idea, or a series of words, no matter how much we disagree with the content, can be stopped by a governmental entity.

Instead, we need to spend time at school board meetings arguing that boys and girls be educated in the same way, with equal opportunities. We need equal funding for sports for our daughters and sons. We need enforcement of Title IX of the Education Amendments of 1972.³¹ The promise of public education is an opportunity to free kids from the prejudices and ignorance of their parents. Yet, boys and girls are still

26. See Mitgang, *supra* note 20, at 24.

27. See Barbara Parker, *Am r ca s D l g nt C ns rs*, N.Y. TIMES, Jan. 21, 1984, § 1, at 21.

28. See Edwin McDowell, *From Twain, A Letter on Debt to Blacks*, N.Y. TIMES, Mar. 14, 1985, at A1, C21.

29. See Molly Ivins, *For D.H. Lawrence, Pagan Rites in Desert*, N.Y. TIMES, July 22, 1980, at C9.

30. See *id.* (commenting that feminist attacks on Lawrence rescued him from obscurity).

31. Pub. L. No. 92-318, § 901, 86 Stat. 373 (1972) (codified at 20 U.S.C. § 1681).

separated and segregated on the playing fields,³² in the classroom,³³ and in the vocational-education office.³⁴

First Amendment battles have been going on for a long time, and they are not over. Indeed, it is in the battle over unpopular forms of expression that the very foundations of American democracy have been grounded. What Justice Stewart wrote, speaking for the Supreme Court,³⁵ about New York's refusal to permit the showing of a 1959 film, *Lady Chatterley's Lover*, based on the novel by D.H. Lawrence, is as relevant today as when Stewart drafted his opinion. Justice Stewart stated that the film's representation of adultery as "proper behavior"³⁶ did not provide a rationale for proscribing it: "[W]hat New York has done . . . is to prevent the exhibition of a motion picture because that picture advocates an idea . . . Yet the First Amendment's basic guarantee is of freedom to advocate ideas. The State, quite simply, has thus struck at the very heart of constitutionally protected liberty."³⁷

D.H. Lawrence did not cause adultery, just as murder mysteries do not cause murder, or spy novels cause espionage. We all wish for the

32. See generally Matt Lorenz, *Ideal, Reality and Sports Participation in the NCAA*, ST. PETERSBURG TIMES, Sept. 5, 1993, at 1D (stating that while the intention of prohibiting sex discrimination in school athletic programs is "worthy," social programming, peer pressure, and television images make the disparity in sports funding between the sexes a fact of life).

33. See generally Marie C. Franklin, *Many Schools Trying Not to Shortchange Girls*, BOSTON GLOBE, Apr. 24, 1994, at B25 (pointing out numerous ways schools discriminate against girls); Jane Gross, *To Help Girls Keep Up: Math Class Without Boys*, N.Y. TIMES, Nov. 24, 1993, at A1 (reporting on an experiment in three California high schools to segregate girls' and boys' math classes because girls traditionally lag behind boys in math and science beginning in middle school due to the fact that they are often ignored and feel intimidated); Felicia R. Lee, *Cutting Chains That Still Bind Girls in School*, N.Y. TIMES, Apr. 10, 1994, §1, at 37 (reporting on a project in New York City to segregate math and science classes by gender because of "diminished expectations" for girls).

34. See Ina Aronow, *Crossing the 'Just for Boys' Frontier in Vocational Education*, N.Y. TIMES, Mar. 13, 1994, § 13WC, at 1 (reporting that enrollment figures for vocational programs offered by Southern Westchester, New York in 1993 showed all 94 automotive students were male and that only in travel and tourism classes did female students outnumber male students); Patricia Nealon, *Sex Biases Linger in Vocational Training*, BOSTON GLOBE, June 16, 1991, at 1 (reporting the results of a study showing that males and females continue to enroll in vocational programs that are traditional for their sex).

35. *Kingsley Int'l Pictures Corp. v. Regents of the Univ. of N.Y.*, 360 U.S. 684 (1959).

36. *Id.* at 688.

37. *Id.*

magic potion to stop crime, to end the horrible violence against women, children, and men. Censorship is not that balm. Erotica does indeed offend many people, some on religious grounds, some on aesthetic. Yet, there is a difference between thought and deed. Pictures and words about sex, or even about violent acts, are not the acts themselves.

In 1970, President Nixon's Commission on Obscenity and Pornography spent two years and \$2,000,000 looking for the link between erotica and crime.³⁸ Its report concluded that there was no reliable evidence that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal sexual behavior. In 1986, President Reagan again tried to establish a reason for censorship, but even his Meese Commission on Pornography (its composition heavily stacked in favor of banning sexually explicit materials) failed to establish such a link.³⁹

Clinical research has led to a similar conclusion. For example, Dr. Martha Kirkpatrick, clinical professor in the Department of Psychiatry at the University of California at Los Angeles, concluded, after studying pornography and its effects, that "the evidence from all sources is dramatically clear: Pornography does not, per se, encourage sexual violence. We may not like that data; it may seem illogical. Rather than ignoring or working to discredit the data, let us try to understand what it could mean."⁴⁰

Gender discrimination, however, is real and has nothing to do with pornography. To combat it, we need the passage of some basic laws, and the enforcement of other laws, not an endless dialogue about nudity, rock videos, and sex in the movies. We need more laws such as the Freedom of Access to Clinic Entrances Act,⁴¹ so that women seeking medical services will have federal protection against anti-abortion nuts, who have now shown that they advocate murder—of physicians.⁴²

38. See COMM'N ON OBSCENITY AND PORNOGRAPHY, REPORT OF THE COMM'N ON OBSCENITY AND PORNOGRAPHY (1970).

39. See U.S. DEP'T OF JUSTICE, ATTORNEY GEN.'S COMM'N ON PORNOGRAPHY, FINAL REPORT 5 (1986).

40. Telephone Interview with Dr. Martha Kirkpatrick (Apr. 21, 1994).

41. Pub. L. No. 103-259, 108 Stat. 694 (1994) (to be codified at 18 U.S.C. § 248).

42. See, e.g., William Booth, *At Abortion Clinic, A Collision of Causes: Doctor, Accused Killer Both Impassioned*, WASH. POST, Mar. 12, 1993, at A1 (reporting on the shooting in Pensacola of Dr. David Gunn, who performed abortions, by Michael Griffin, an anti-abortion protester); Sam Howe Verhovek, *At Center of Abortion Shooting: An Avid Protester and an Uncertain Martyr*, N.Y. TIMES, July 31, 1994, § 1, at 26 (reporting on the killing of Dr. John Britton, who performed abortions, and his bodyguard friend in Pensacola, Florida, by Paul Hill, a Protestant minister and anti-abortion protester who had been advocating violence against doctors and clinics).

We need, in the feminist movement, to embrace reason, rationality, and science—and to eschew diversionary mysticism. When the display tables at a feminist conference are crowded with crystals, magic potions, tarot cards, and statues of the goddess, it is time to say “silly.” We do not need statues of the magic goddess, we need statutes for getting promoted on the job.

Gender discrimination is real. Not long ago I attended a garden party. A visitor from another state made her way to my umbrella-shaded table. “Karen, I have been wanting to talk to you,” she told me with gusto. “We want to draft a pornography law to distribute everywhere in the country—just like the one they had in Minneapolis. We want your help.”

“You want me to help with a dangerous law like that?” I inquired. “I’m opposed to it.”

She nearly fell into the punch bowl.

The Minneapolis city ordinance my acquaintance referred to, approved by the city council but vetoed by Mayor Don Fraser, defined pornography as discrimination that “adversely affects the health, welfare, peace and safety of the community.”⁴³ Incredibly, this was to be included in a law prohibiting discrimination on the basis of race, sex, religion, age, and national origin! Yet, the proposed law continued, “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.”⁴⁴

In a bizarre and subtle way, the Minneapolis ordinance *itself* presupposed that women have no dimension beyond the physical. For example, the section defining the “coercion [of women] into pornographic performances”⁴⁵ directed that a jury could find that a woman was coerced into pornographic acts, even if she knew that the purpose of these acts was to make pornography;⁴⁶ even if no physical force,⁴⁷ threats, or weapons⁴⁸ were used in the making of pornography; or even if she was paid or otherwise compensated.⁴⁹ The supporters of this law seem to be saying a woman is not free or competent to decide on her own to do certain kinds of work.

43. Minneapolis, Minn., Ordinance (Dec. 30, 1983) (amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 139), § 1(a) (1983).

44. *Id.* § 4(l)(2).

45. *Id.* § 4(m).

46. *Id.* § 4(m)(2)(ix).

47. *Id.* § 4(m)(2)(x).

48. *Id.* § 4(m)(2)(xii).

49. *Id.* § 4(m)(2)(xiii).

Furthermore, the Minneapolis ordinance stated, it doesn't legally matter if the woman signed a contract or otherwise made statements affirming her willingness to cooperate in the production of pornography.⁵⁰ In other words, a woman cannot make a contract. Under English common law, women, children, and idiots were prohibited from entering into contracts, as they were assumed not to have the capacity to consent.⁵¹ Are our new censors attempting, under the guise of feminism, to reinforce our culture's age-old tradition of paternalism—of treating women like infants?

Reactionary campaigns have eliminated the sale of pornography in Georgia, Ohio, and Indianapolis.⁵² The real question should be whether the status of women has been improved in those locations: Are more women receiving tenure in the colleges and universities? Are there more women judges? Are women in the factories getting the same jobs as men, and the same pay for doing them? Are women in the law firms becoming partners? Are women playing first-chair in the symphony orchestras?

The fear that is invoked in many women by sexually explicit material (and perhaps by sex) is understandable, because for most of our history, women have had to trade sex for food. We have been barred in most societies, in most centuries, from earning a living, and even where the barriers have been lifted—as for example, in the United States in the 1980s—women still earn 66 cents to a man's dollar.⁵³ Fewer than eighteen percent of us earn more than \$25,000 per year.⁵⁴

Therefore, it has been necessary for women to use men as tools of survival, rather than as a means of pleasure. As they say, if you give it away, you can't sell it. Women have not had the *luxury* of enjoying sensuality and sex. Even Erica Jong, who celebrated the "zipless fuck,"⁵⁵ has said that women should perhaps live by the motto: "I'm not going to give [sex] away . . . until I'm taken care of . . . It's really not

50. *Id.* § 4(m)(2)(xi).

51. See generally RESTATEMENT (SECOND) OF CONTRACTS § 12 cmt. b (1979) (commenting that, historically, married women, infants, and insane persons had no capacity to contract); A.W.B. SIMPSON, A HISTORY OF THE COMMON LAW OF CONTRACT: THE RISE OF THE ACTION OF ASSUMPSIT 539-50 (1975) (noting that infants and married women were denied contractual capacity).

52. GA. CODE ANN. § 16-12-80(a) (1993); OHIO REV. CODE ANN. § 2907.32(A)(2) (Baldwin 1993); Indianapolis & Marion Counties, Ind., Code §§ 16-1 to 16-28 (1993).

53. Tom Redburn, *New York City Women Edge Closer to Men in Pay*, N.Y. TIMES, Feb. 2, 1994, at B1 (noting that American women in general are paid only 66% of their male counterparts' earnings).

54. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 466 (1993).

55. ERICA JONG, FEAR OF FLYING 11 (1973).

incumbent upon men to be good providers. They can get all the sex they want anyway."⁵⁶

The sexual revolution of the late 1960s freed many women and men for pleasure by separating sex from procreation, but its advocates overlooked the crucial fact that one cannot be truly free until one is independent, emotionally and financially, and that women cannot reshape centuries of conditioning until they are permitted, encouraged—and even forced—to reshape the economics of their lives.

Despite this revolution, sexuality for women continues to be distorted and suppressed. How ironic that women themselves would want to add to this. The time is long overdue to be rid of the myth that if one believes in equality between the sexes, one is against erotic literature.

Being a feminist means you are against sexism, not against sex.

III. FROM BABBITT TO RABBIT TO JOHN WAYNE BOBBITT: THE EVOLUTION OF THE AMERICAN FOLK HERO

Since women began to fight for equality in the last century, one cry has been heard that is designed to send us back to our washboards. Or, at least, back to our drawing boards. "Ball buster." Thousands left the suffrage movement or quit NOW when this appellation was flung. One woman went on trial. Lorena Bobbitt, with no history of feminist activism, fed that stereotype right into the mouth (so to speak) of the world press. Please forget what you have read in the newspapers and saw on television: Lorena Bobbitt is not a feminist icon. Her action is not a metaphor for women's equality; it was a gory crime.

As we all now know, Lorena and John Wayne Bobbitt were not happy in their marriage. Various reports included allegations that he sexually assaulted her, that he raped her, and that he was insensitive to her sexual desires.⁵⁷ After she cut off his penis and threw it into a field she told the police, "he always has an orgasm and doesn't wait for me."⁵⁸

Lorena Bobbitt's act attracted world-wide attention. While her husband slept—after a marital rape, or after a "minute man" experience—she not only brutalized him, she reported it to the authorities, who promptly went on a penis search.⁵⁹ Fortunately for Mr. Bobbitt,

56. Carla Krupp, *People*, GLAMOUR, Oct. 1983.

57. See David A. Kaplan et al., *The Unkindest Cut*, NEWSWEEK, Aug. 16, 1993, at 56; Curtis Rist, *Why She Did It: Penis Cutter Tells Her Side*, NEWSDAY, Sept. 24, 1993, at 4; *Violence and the Bobbitts*, N.Y. TIMES, Jan. 22, 1994, § 1, at 20.

58. Kaplan et al., *supra* note 57.

59. See *id.* at 56.

who surely needed all the luck he could get, they found the penis, which was surgically reattached without delay.⁶⁰

Predictably, the media attention was, indeed, sensational. It was front-page news in the tabloids for days. More venerable newspapers also featured the story on page one, pushing NAFTA and Bosnia to the inside pages. Television went crazy. For example, John McLaughlin, with only twenty-two minutes for political commentary, used more than five minutes not only to discuss this significant event, but also to show us footage of the actual field where the penis was tossed.⁶¹

The *New York Times* ran a major op-ed piece on the Bobbitts by Anne Gottlieb,⁶² who incidentally is the author of a forthcoming book entitled, *Are Men Obsolete?* (Is her book title a clue? Is she a proper spokesperson for true equality?) Gottlieb's article expresses dismay, even anger, over the fuss made over John Bobbitt. For example, she takes to task Hugh Downs and Tom Jarriel of ABC, both fair-minded and civilized journalists, who used the words, "shocking," "abhorrent," and "unthinkable," during the discussion following a 20/20 report, to describe the removal of a penis from a sleeping person.⁶³

Gottlieb was furious: "They were not referring to the battering of three million to four million American women a year, but to the severing of a *single penis* (subsequently reattached by surgeons). This skewed expression of outrage makes women feel bitterly undervalued."⁶⁴

At first I thought her essay was satire. Alas, it was not.

The outrage that we should all experience is that the issue of domestic violence has been blurred and obfuscated by the Bobbitt case. Statistics show that the home is the most violent place in America—more dangerous

60. *See id.*

61. *The McLaughlin Group*, Federal News Service, Nov. 12, 1993.

62. Anne Gottlieb, *Whose Shocking Crime?*, N.Y. TIMES, Nov. 5, 1993, at A35.

63. *Id.*

64. *Id.* (emphasis added).

than the inner city.⁶⁵ We all know that men beat up women, and increasingly, we are learning that sometimes women beat up men.⁶⁶

Frequently, we ask the wrong questions. The issue is not, do women really brutalize men as much as men brutalize women? The important question is why there is so much domestic violence? Why are people who are supposed to be getting along, watching TV together, making dinner and jokes and love together—maiming and killing each other?

It is a mystery why some women tried to shape Lorena Bobbitt's act into a women's rights issue. After John Bobbitt was acquitted by a jury of assaulting his wife, Lorena, one well-respected leader suggested that Lorena Bobbitt lost the battle but, in the process, raised issues that got the attention of the whole country focused on marital rape and domestic violence.⁶⁷ In truth, the media hype around Lorena's trial, was counterproductive to feminism, diverting attention from the real issues of equality: real violence, parity in the marketplace, equal opportunity in education, equal treatment of daughters and sons. Those interested in equality in the courts know that self-defense is a respected action in common law and in the statutes of every state. Cutting off the penis of a sleeping man doesn't, excuse me, make the cut.

Another issue raised by the case is that Lorena tells police she is furious at John because he comes too soon.⁶⁸ Meredith F. Small, an anthropologist at Cornell University, has written a provocative new book, *Female Choices: Sexual Behavior of Female Primates*. She explores the issue of the intensity of female sexual desire:

65. See generally *Domestic Violence: The Cost to Business*, WORKING WOMAN, Apr. 1994, at 17 (noting that domestic violence is the leading cause of injury among women between the ages of 15 and 44); Roberta Roesch, *Violent Families*, PARENTS, Sept. 1984, at 75 (claiming that, except for the police and the military, the family is the most violent group in society). Research indicates that each year as many as 16 million Americans are assaulted by members of their families. *Id.* at 76. See also *Government Says 450,000 Are Victims of Family Violence*, UPI, Apr. 23, 1984, available in LEXIS, News Library (reporting that a study conducted by the Bureau of Justice Statistics, Department of Justice, found 450,000 cases of domestic violence each year and that 57% of this violence is committed by spouses or ex-spouses); Dr. Joycelyn Elders, Remarks at the American Medical Association National Conference on Family Violence 3 (Mar. 13, 1994) (citing statistics that show 30% of emergency room visits by women result from domestic assaults) (transcript on file with the *New York Law School Law Review*). See also *infra* notes 73 & 74.

66. See, e.g., Nicholas Davidson, *The Myths of Feminism*, NAT'L REV., May 19, 1989, at 44 (citing a number of studies which indicate that females are not the sole victims of domestic violence and men are not its sole perpetrators).

67. *Trial to Begin for Woman Who Severed Penis*, N.Y. TIMES, Jan. 10, 1994, at A15 (referring to a statement by Vivian Todini, a spokeswoman for NOW in Manhattan).

68. See Kaplan et al., *supra* note 57, at 56.

The "double standard" is really a statement about the power to control (or attempt to control) rather than about differences in male and female sexuality. Extramarital affairs are allowed, or simply ignored, for men while the punishment for women is often severe. But as one anthropologist points out, just because women are punished more often, it doesn't necessarily follow that women are less interested in extramarital affairs. On the contrary, women are probably restricted *because* men are frightened of the sexual and reproductive potential of women. The more important point is that women continue to have extramarital affairs, even under the threat of harsh punishment. This fact underscores the strong human female sex drive.⁶⁹

IV. ON *PENTHOUSE*

Sexism can be defined as the belief that one sex is inferior to the other, and that one form of sex is superior to another. It is clear that *Penthouse* is a magazine devoted to sex, but is not a sexist magazine. Anyone who objects to *Penthouse*—whether a misguided feminist trying to have it removed from bookstores, or a misdirected parent trying to keep it away from a teenager, or a frightened preacher who thinks enjoying sex is a sure ticket to damnation—disapproves of it because of the sexual content.

Penthouse contains articles and photographs depicting heterosexual and homosexual sex, without a trace of homophobia.⁷⁰ *Penthouse* features articles which laud male pleasure and female pleasure equally. It calls itself "The International Magazine for Men," but I find no put-down of women, no suggestion that women are to be exploited, hurt, oppressed, or even asked to cook dinner. There is no suggestion that women be forced to have sex against their will. There is no hint that children are the sole responsibility of women. One article urged fathers to take equal responsibility for their children, during marriage or after divorce.⁷¹ There is no suggestion that men are intellectually superior. One issue stated: "although writing erotic stories is generally thought of as a man's job, this truism simply isn't true—as next month's selection of brilliant and sensuous stories by women will prove."⁷²

69. MEREDITH F. SMALL, *FEMALE CHOICES: SEXUAL BEHAVIOR OF FEMALE PRIMATES* 215-16 (1993) (citations omitted).

70. See, e.g., W. Hampton Sides, *Mel White*, *PENTHOUSE*, Apr. 1994, at 52 (interview with Mel White, a gay speech writer for televangelists).

71. Sidney Siller, *Men's Rights*, *PENTHOUSE*, Dec. 1992, at 50.

72. *Coming in the October Penthouse*, *PENTHOUSE*, Sept. 1984, at 226.

Showing women in the nude is not necessarily exploitation. For millenia artists have celebrated human life by painting and sculpting the nude human form. It was the nude male body that was shown, and revered, in ancient Greece. It was Michelangelo's "David" that during the Renaissance aided western civilization in its return to the idea of humanism as an ideal, one lost for centuries by the medieval repression of anything physical or sensual.

The recent outcry against beauty contests, against photographs of nude women, against sensuality itself has been, in my opinion, a result of the limited options open to women. When I was growing up, the highest goal, the brightest dream for a girl was that someday she could become Miss America. Once it is established that women can become doctors, lawyers, executives, professors, and national leaders it becomes insignificant to enter a beauty pageant. Once we have greater goals, it doesn't rankle so if we also have lesser ones.

If I had a son, would I want him to pose nude for *Penthouse*? Would I want him to enter beauty contests? Of course not. If I had a son, I would want him to be president of the United States.

If I had a daughter, would I want her to pose nude for *Penthouse*? Would I want her to enter beauty contests? Of course not. If I had a daughter, I would want her to be president of the United States.

Hopefully, we can all agree: Violence and abuse are objectionable. Our aversion to this cruelty is both reasonable and justified by horrifying statistics. But where is the center of this violence? On television? In "dirty" books and magazines? Adult videos? According to reports these elements are found in alarming proportions in the American family today. The statistics overwhelmingly indicate that the most violent place in America is not the street corner, but the home.⁷³

Our creative artists, and the media that portray their ideas, and the sponsors that fund the projects, all have the right—indeed the duty, the responsibility—to reflect both the sweet and the ugly. The violence they show, unnerving though it is, is pure and safe compared to what is

73. See *How Doctors Can Curb Family Violence*, AM. MED. NEWS, Nov. 4, 1991, at 29 (reporting the results of an AMA sponsored survey showing that domestic violence touches one quarter of all American families); Roesch, *supra* note 65, at 75 (citing sociologists who claim that the American family is more violent than a crime-infested street or battlefield); Richard Whitmire, *Survey: More People Witness Domestic Violence than Crime*, GANNETT NEWS SERVICE, Apr. 19, 1993, available in LEXIS, News Library (reporting that 34% of Americans have witnessed domestic violence).

commonplace in our homes.⁷⁴ I see it constantly in my law practice. Ask any judge.

This is what family values really mean in late twentieth-century America. Portraying some of the repulsive aspects of what goes on in the family may serve to be corrective, rather than prescriptive. Certainly we are grateful to Honoré de Balzac, Charles Dickens, Gustave Flaubert, Theodore Dreiser, and Marcel Proust, who, in their time suffered slings and arrows because of their explicit writing about the family, and how its secrets affected its members, and the entire society.

V. CONCLUSION

No one can doubt that the feminist movement has made enormous strides during the past quarter century, but problems of gender discrimination still exist. In order to remedy the injustice, we must have all our resources focused on the roots of the problem, not on side issues that only divert our energies from the real battles and make us seem foolish and irrational.

Censoring pornography will not stop violence against women. It will not ease discrimination against women. It will only take the marchers away from the vital task of protesting unequal conditions in the employment world, in order to effect a mindless, self-defeating plan to ban books and other forms of expression. We are too smart for that, too smart to take the road traveled by those, who throughout history tried to suppress ideas, and ended up revealing only their own ignorance.

If I have learned one lesson during the decades of feminist activism, it is that the public has much to learn about sexism as a concept distinct

74. See Lynne Marek, *U.S. Joining War on Domestic Violence*, CHI. TRIB., Mar. 12, 1994, at 2 (noting that the Department of Health and Human Service claims one of four American women will be assaulted by a domestic partner in her lifetime); Amanda Martin, *Garcetti Announces Coalition Against Domestic Violence*, UPI, Aug. 9, 1993, available in LEXIS, News Library (reporting that every 10 days Los Angeles District Attorney Gil Garcetti's office files murder charges in a case where the deceased is a victim of domestic violence); Tracey Webb, *Violence Against Women Committed More by Family Members*, UPI, Jan. 14, 1991, available in LEXIS, News Library (citing a Justice Department report that found that 25% of violent crimes against women were committed by family members or boyfriends, and that an additional 27% of crimes sustained by women were committed by other people the victims knew); Whitmire, *supra* note 73 (citing an FBI estimate that a woman is beaten by her husband or boyfriend every 15 seconds); Laurie Wilson, *Women Who Suffer Violence Often Know Attacker*, DALLAS MORNING NEWS, Jan. 31, 1994, at 6A (citing a Justice Department report stating that 28% of women who are victims of violent crimes are attacked by a husband or a boyfriend and 39% by a relative or acquaintance, and that women are 10 times more likely than men to be victimized by someone they know). See also *supra* note 65.

from "sex" and as a discernible construct that can be abated without damage to our First Amendment guarantees. Let us be wise enough to keep our movement credible, so that the next generation—female and male—can concentrate on ensuring equality in love and work, and not on unpromising gender wars.