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ESSAYS

LESBIAN PORNOGRAPHY: ESCAPING THE BONDS OF SEXUAL STEREOTYPES AND STRENGTHENING OUR TIES TO ONE ANOTHER

Tamara Packard* & Melissa Schraibman**

INTRODUCTION

During the past decade of the feminist movement, while women have battled the government for our right to control our own bodies, employers for a safe and harassment-free workplace, and the media over its negative and inaccurate portrayal of women, we have also battled each other over the issue of pornography. Those who have taken a side are unshakable; when anti-pornography and anti-censorship feminists¹ happen to meet,² the

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1. These labels are problematic, particularly because they are identified as being against, rather than for, something. However, we use them because they are the ones commonly used to describe the two main positions in this debate. What "anti-pornography" feminists are for is well reflected by Catharine MacKinnon, as discussed in this Essay. What "anti-censorship" feminists support is harder to pin down. Professor Linda Williams suggests that this group is better called "social construction" feminists because of "their emphasis on social and historical factors in the construction of sexuality and their work to defend the expression of diverse sexualities Typical of the greater diversity of this 'position' is the fact that no single representative voice or theory speaks for it" LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE "FRENZY OF THE VISIBLE"* 23-24 (1989).

2. This is happening less and less often, at least in any setting where MacKinnon speaks. She refuses to share a platform with anti-censorship feminists, declaring that the organization of debates between herself and the anti-censorship feminists is

conversation often dissolves into a vitriolic name-calling session. For instance, Catharine MacKinnon, feminist law professor, legal theorist, and leading scholar of the anti-pornography movement, has called her opponents "house niggers who sided with the masters."³ Dorchen Leidholdt, feminist scholar and co-founder of Women Against Pornography, claims that "the pro-sexers aren't feminists . . . they support sexual oppression of women" and that they have been brainwashed by the sick male view of sexuality.⁴ From the other side come claims that the anti-pornography feminists are "the new puritans" who are "siding with fascism."⁵ The lesbian pornography magazine *On Our Backs* refers to Catharine MacKinnon and Andrea Dworkin as "the gruesome twosome."⁶

The anti-pornography side has received an overwhelming amount of institutional recognition. In addition to the two conferences cited in note three, the majority of law review articles on pornography have endorsed the MacKinnon/Dworkin position. A survey of law review pornography articles from the feminist point of view, excluding those by MacKinnon and Dworkin,

"the pimps' current strategy for legitimizing a slave trade in women. I do not need to be sucked into the pornographers' strategy." Nat Hentoff, *Catharine MacKinnon v. the First Amendment*, WASH. POST, Nov. 27, 1993, at A27. Anti-censorship feminist Nadine Strossen was invited to speak at the 1993 convention of the National Association of Women Judges, and was disinvited after organizers engaged MacKinnon to speak. *Id.*

3. Art Levine & Kathleen Currie, *Whip Me, Beat Me and While You're At It, Cancel My N.O.W. Membership; Feminists War Against Each Other Over Pornography*, WASH. MONTHLY, June 1987, at 17, 20. This name-calling is still alive and well, as evidenced by the behavior at two conferences we attended in 1992 and 1993: the University of Michigan Journal of Gender and Law's *Prostitution: From Academia to Activism* conference in October 1992 and the University of Chicago Law School's *Speech, Equality and Harm* conference in March 1993 (papers to be published in the spring of 1994 in *Speech, Equality and Harm*, edited by Laura Lederer). Neither conference featured any speaker with an anti-censorship perspective, even though the University of Chicago conference was subtitled "Feminist Legal Perspectives on Pornography and Hate Propaganda," suggesting that a range of perspectives would be presented. Nadine Strossen, *Censuring the Censors of Free Speech*, CHI. TRIB., Sept. 2, 1993 (Perspective), at 27 [hereinafter *Censuring the Censors of Free Speech*]. At the Michigan conference, anti-pornography conference speakers Evelina Giobbe and John Stoltenberg forced organizers to close a feminist artist's exhibit that included a videotape containing pornographic imagery. Tamar Lewin, *Furor on Exhibit at Law School Splits Feminists*, N.Y. TIMES, Nov. 13, 1992, at B16; see also MARJORIE HEINS, *SEX, SIN, AND BLASPHEMY* 163-64 (1993). At one point an audience member screamed at the artist, Carol Jacobsen, and was supported by the majority of attendees. At the Chicago conference, speaker Evelina Giobbe dismissed anti-censorship protestors as nineteen-year-olds paid by the pornographers.

4. Levine & Currie, *supra* note 3, at 17.

5. *Id.* at 19.

6. *Outlaw Censors, Not Prostitution*, ON OUR BACKS, Jan.-Feb. 1993, at 12.

showed that eighteen of the twenty articles published up to and including Spring 1993 agreed with MacKinnon and Dworkin.⁷ The authors of this Essay surveyed the Index to Legal Periodicals in February 1994 and found no significant shift in this pattern. The anti-pornography position is commonly referred to as "the feminist position" by anti-pornography feminists,⁸ feminist publications,⁹ and mainstream media.¹⁰

As a leader of the anti-pornography movement, Catharine MacKinnon argues that pornography is the sexually explicit subordination of women, and that it must be eliminated in order to end gender inequality.¹¹ This Essay begins by accepting many of MacKinnon's views on the power and operation of pornography in society and upon individuals. However, while her analysis of the way in which pornography operates may be valid for the dominant culture, her analysis is not valid when applied to pornography made and consumed within lesbian (sub)culture. Further, this Essay accepts that pornography has the power to define sexuality and portray what is Truth (or truths),¹² and argues that therefore women should not relinquish this power to the full and

7. Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, 79 VA. L. REV. 1099, 1107-08 (1993).

8. Professor MacKinnon has stated that "[p]ornography, in the feminist view, is a form of forced sex . . . an institution of gender inequality." Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y. REV. 321, 325 (1984).

9. Considered by many to be "the" feminist voice, *Ms.* magazine, while under Robin Morgan's editorial leadership, said that "feminists won a stunning victory" with Canada's *Butler* decision, discussed *infra* pp. 323-26. Michele Landsberg, *Canada: Antipornography Breakthrough in the Law*, *Ms.*, May-June 1992, at 14. Robin Morgan is the woman who first coined the phrase "pornography is the theory; rape is the practice." Robin Morgan, *Theory and Practice: Pornography and Rape*, in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY (Laura Lederer ed., 1980). Marcia Ann Gillespie, the new editor of *Ms.* magazine, made efforts to reflect the diversity of opinions among feminists on pornography in the Jan.-Feb. 1994 issue, even though she had been warned to avoid the pornography debate when she was named editor. Marcia Ann Gillespie, *Look Who's Talking*, *Ms.*, Jan.-Feb. 1994, at 1. Although the roundtable discussion (*Where Do We Stand on Pornography?*) was clearly dominated by Andrea Dworkin and like-minded others, anti-censorship feminists such as Jewelle Gomez, Holly Hughes, and Carole Vance, were quoted in the companion article, *Pornography: Does Women's Equality Depend on What We Do About It?* *Id.* at 32-45.

10. See Joe P. Bean, *A Feminist Interpretation of the First Amendment*, S.F. CHRON., Mar. 16, 1992, at A19; Charles Krauthammer, *Our Corrupting Mass Culture Deserves Attack*, HOUS. CHRON., July 26, 1992 (Outlook), at 3.

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

12. We use the capital "T" to indicate truth in an absolute sense, and the lower-case "t" to indicate truth in a relativistic sense.

exclusive control of men. Instead, lesbians, bisexual women, and straight women can and should take the traditionally male tool of pornography and reinvest it with our own meanings. The possibility that men may use pornography made by women and intended for women's consumption must not prevent feminists from creating representations of our sexuality. Women's relationship with our own sexuality has been tacit; women have until recently been only the described. As the editors of *Powers of Desire*, an anthology of writings on women's sexuality, put it, "To skirt sexual issues now . . . is to cede this crucial territory to those who have organized precisely toward the end of silencing feminism and the lesbian and gay movements."¹³ Anti-pornography feminists, although they claim to address sexuality, only address male sexuality and the supposed harm that results from the graphic depiction of that sexuality. They completely skirt the issue of female sexuality and deny women the power and right to present alternate views of sexuality. We can and should use pornography to reclaim and liberate women's sexuality from male definitions and directly oppose any attempts to silence us.¹⁴

This Essay focuses on lesbian pornography.¹⁵ We define lesbian pornography as sexually explicit material made by and for women who have erotic interest in other women.¹⁶ This defini-

13. Ann Snitow et al., *Introduction* to POWERS OF DESIRE: THE POLITICS OF SEXUALITY 9, 10 (Ann Snitow et al. eds., 1983) [hereinafter POWERS OF DESIRE].

14. If [feminist advocates of censoring "pornography"] are right that sex is central to patriarchal control of women, then freedom to explore it is crucial to women's ability to achieve change. Precisely to the extent that sexuality has historically been a crucial site of repression and oppression for women, it is critically important to women's liberation. Carlin Meyer, *Sex, Censorship, and Women's Liberation* 156 (unpublished manuscript, on file with the *Virginia Law Review Association*), cited in Strossen, *supra* note 7, at 1163.

15. While we applaud woman-made heterosexual pornography as a means to sexually empower women and redefine women's sexuality, it raises many uniquely problematic issues and is beyond the scope of this Essay.

Likewise, we do not address gay male pornography. For an anti-censorship article arguing that gay male pornography is liberating and a means of subverting dominant culture sexuality, see Carl F. Stychin, *Exploring the Limits: Feminism and the Legal Regulation of Gay Male Pornography*, 16 VT. L. REV. 857 (1992).

16. We reject, as both Andrea Dworkin and Gayle Rubin do, the distinction made by some anti-pornography feminists and others between pornography and erotica, because it is a meaningless distinction. ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 9-10 (1981); Gayle Rubin, *Misguided, Dangerous and Wrong: An Analysis of Anti-pornography Politics*, in *BAD GIRLS & DIRTY PICTURES: THE CHALLENGE TO RECLAIM FEMINISM* 18, 28 (Alison Assiter & Avedon Carol eds., 1993). It amounts to: "What I like is erotica and is acceptable, what you like is pornography and is prohibited." This distinction is particularly dangerous

tion excludes pornography made by men or for a male audience depicting women having sex with each other. We have chosen to focus only on lesbian pornography because it has unique potential as a starting point to liberate women's sexuality from patriarchal construction.¹⁷

Lesbians have more conceptual space in which to create and define our sexuality outside of dominant, male-defined sexuality. The absence of men in the picture (literally and conceptually) makes this so. Lesbians also have a particular need to explore our sexuality because dominant society defines us *only* in sexual terms, if at all. Either dominant society neglects to mention us and thus renders us invisible, as in the conspicuous absence of lesbians from the "gays in the military" discussion,¹⁸ or it sees us as deviant, sex-obsessed people who, for instance, should not be allowed to raise our own children.¹⁹

Because pornography is such a powerful tool in shaping sexuality, gender, and identity, lesbians can use it to reclaim and redefine lesbian sexuality both within the lesbian community and in dominant culture. Within our community, we can empower, educate, and foster communication about sexuality among ourselves through lesbian pornography. In the process of discussing and reclaiming our sexuality, we can make and redefine our com-

when it is applied to sexually explicit material portraying lesbians because it is applied within a dominant culture that views lesbianism as either inherently obscene or a subject for male titillation.

17. We feel particularly compelled to address the issue of lesbian pornography because it has been conspicuously absent from the academic pornography debate. For example, during the Chicago *Speech, Equality and Harm* conference cited in note 3, lesbian pornography was only mentioned once. Professor Mari Matsuda was directly asked by a member of the audience whether lesbian pornography required an analysis different from the standard anti-pornography approach. She responded that she did not really know much about it, but assumed that the same analysis applied.

Anti-censorship feminist Nadine Strossen does address lesbian pornography, but only as a small part of her general critique of the entire anti-pornography position.

18. A Nexis News search conducted on March 9, 1994 in the Wires file, using the search terms "gay w/10 military and not lesbian," found 1855 documents. In contrast, the same file contained only 937 documents using the search "gay w/10 military and lesbian," fewer than half the number of articles *not* mentioning lesbians. Nine out of ten letters sent to columnist Ellen Goodman on the topic were written by men, and virtually all of the men wrote about men. Ellen Goodman, *Now It's Men Worrying About Male Sexual Aggression*, CHI. TRIB., Jan. 31, 1993 (Tempo), at 4.

19. See, e.g., *Judge: Lesbian is Unfit Parent*, LEGAL INTELLIGENCER, Sept. 9, 1993, at 5.

munity.²⁰ In practice, lesbian pornography has begun to operate in this manner by opening the lesbian community to more open and honest discussions of sex. Lesbian pornography, by making lesbian sexuality (in its infinite varieties) visible on lesbian terms, can also affect the dominant culture's perception of lesbians.

Finally, censorship of pornography, whether by right-wing or feminist anti-pornography activists,²¹ harms the liberation and reclamation process. Lesbian materials are uniquely vulnerable to anti-pornography regulation because of the dominant culture's belief that lesbianism is obscene. While the anti-pornography ordinance written by Catharine MacKinnon and Andrea Dworkin has been found to be an impermissible content-based restriction of free speech,²² the MacKinnon-Dworkin harm-to-women based approach for determining what is pornography was adopted by the Canadian Supreme Court in 1992.²³ The first magazine to be stopped at the border under the new test was *Bad Attitude*, a lesbian pornography magazine.²⁴ Similar heterosexual male pornographic magazines have not been seized.²⁵ Even if they were, given the volume of straight male pornography and the numerous other fora for the portrayal of straight male-defined heterosexuality, their seizure would not silence straight male voices on the subject of sexuality. However, the seizure of lesbian pornography silences lesbian voices and harms the development of a lesbian community. Such seizures are especially damaging because there is relatively little lesbian pornography available and very few other fora for the portrayal of lesbian-defined lesbian sexuality.

In Part I, we outline the anti-pornography feminist theory as articulated by MacKinnon on the power and operation of pornography in society and upon individuals. In Part II, we describe

20. Terralee Bensinger, *Lesbian Pornography: The Re/Making of (a) Community*, DISCOURSE, Fall 1992, at 69, 72.

21. Rubin, *supra* note 16, at 21.

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

23. *Regina v. Butler*, [1992] 89 D.L.R. (4th) 449 (S.C.C.).

24. Nicholas Varchaver, *Protecting Women from Themselves*, AM. LAW., Sept. 1992, at 92; see also Leanne Katz, *Secrets of the Flesh: Censors' Helpers*, N.Y. TIMES, Dec. 4, 1993, § 1, at 21.

25. Strossen, *supra* note 7, at 1145-46. Customs officials banned at the border a "Dear-Abby-style book of advice" for gays and lesbians, called "How to be a Happy Homosexual." They did not restrict *Penthouse Letters*. Sarah Scott, *A Secretive Band of Bureaucrats Decide What We Read and Watch*, TORONTO STAR, Apr. 18, 1993, at B7.

MacKinnon's lack of recognition or understanding of the unique nature of lesbian sexuality, and the effects of that lack on her theories. In Part III, we discuss how lesbian sexuality is particularly suited to liberating women from dominant culture's sexual and gender norms. In Part IV, we discuss why lesbians need to confront and create representations of our sexuality, and how that confrontation and creation will lead to a more inclusive and cohesive lesbian community. Finally, in Part V, we show how and why lesbian pornography is particularly vulnerable to anti-pornography laws like the MacKinnon/Dworkin Model Anti-Pornography Law. Through a discussion of Canada's *Butler* decision, this section describes how such laws could harm the lesbian community.

MacKinnon's theory and ordinance presume that judges, censors and other representatives of the patriarchal system are capable and willing to apply these laws in the best interests of women and against the interests of the status quo. The experience in Canada shows that this is an unrealistic expectation. Rather than preventing harm to women or freeing us to find our own sexuality, when we give a feminist tool to the male culture, it appropriates the tool and uses it to maintain the status quo.²⁶

I. CATHARINE MACKINNON'S THEORY ON SEXUALITY AND PORNOGRAPHY

Catharine MacKinnon identifies sexuality as the most powerful force in our society. It drives not only our desires, but also the definition of the genders and their interaction with one another. Male power is exercised in society through the manipulation and control of sexuality — sexuality is “the primary social sphere of male power.”²⁷ Gender embodies sexuality, and the positions of male sexual dominance and female sexual submission construct the genders. To MacKinnon, then, gender and sexuality are essentially the same thing. If women's gender is de-

26. Strossen, *supra* note 7, at 1143 (“Vague censorship laws always rebound against the groups that hope to be ‘protected’ by them. This is because such laws are enforced by the very power structure against which the disempowered censorship advocates seek protection.”).

As journalist Ellen Willis puts it, “How long will it take oppressed groups to learn that if we give the state enough rope, it will end up around our necks?” Ellen Willis, *An Unholy Alliance*, *NEWSDAY*, Feb. 25, 1992, at 78.

27. Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 *SIGNS* 515, 529 (1982) [hereinafter *Agenda for Theory*].

defined only sexually, as MacKinnon claims it is,²⁸ then there is no aspect of female gender that is not sexual. The gender role "woman," as seen by MacKinnon, is "a being who identifies and is identified as one whose sexuality exists for someone else, who is socially male."²⁹ She is a person who at any time can be abused by men and little will be done about it.³⁰ The pursuit of control over women's sexuality, and thus also over the gender "woman," is the definitive characteristic of maleness.³¹ It is not gender that is the cause of women's oppression, but sexuality: "[S]exuality is the linchpin of gender inequality."³² Thus, the hierarchy of power in MacKinnon's theory looks like this (from the bottom up): women are oppressed in society through sexuality, which is embodied in gender roles. Male power controls and manipulates sexuality, and that control and manipulation is the essence of being male.

According to MacKinnon, in their pursuit to control women's sexuality, males created pornography. The goal of pornography is to define what a woman is.³³ Because pornography has great control over women, MacKinnon identifies pornography as a political practice which institutionalizes male supremacy. "Pornography constructs what a woman is in terms of its view of what men want sexually. . . ."³⁴ In MacKinnon's analysis, there is little if any difference between female sexuality and the female gender role because the gender role is wholly defined in sexual terms.³⁵ "Men treat women as who they see women as being. Pornography constructs who that is. Men's power over women means that the way men see women defines who women can be."³⁶ MacKinnon sees the power of pornography as nearly total, controlling the definition of the gender "woman" to such a degree that female sexuality cannot exist as something different from the embodiment of men's projected needs.

MacKinnon seeks a world in which men and women are truly equal, a world without subordination. She believes that

28. *Id.* at 530 ("[E]ach element of the female *gender* stereotype is revealed as, in fact, *sexual*.").

29. *Id.* at 533.

30. *Pornography*, *supra* note 11, at 15-16.

31. *Agenda for Theory*, *supra* note 27, at 532.

32. *Id.* at 533.

33. *Pornography*, *supra* note 11, at 17.

34. *Id.*

35. *Agenda for Theory*, *supra* note 27, at 530.

36. *Pornography*, *supra* note 11, at 18.

without the elimination of pornography, an end to gender inequality is impossible. This is because, in order to change gender roles and gender inequality, we must change that which creates gender — sexuality. According to MacKinnon, the norms of sexuality cannot be changed without the elimination of pornography because it has been the dominant definer of sexuality and gender. “Pornography is integral to attitudes and behaviors of violence and discrimination which define the treatment and status of half the population.”³⁷ To eliminate pornography, MacKinnon and Dworkin designed a model anti-pornography law in order to “help make sex equality real.”³⁸ The law enables women who claim injury from pornography to bring civil suit for monetary damages and injunctive relief against the makers, sellers, distributors, and exhibitors of pornography.³⁹ While MacKinnon’s goals are appealing in many ways, the harm to lesbian sexuality and community that would have resulted from this ordinance had it not been deemed unconstitutional is unacceptable. Lesbian pornography is uniquely vulnerable to any societal control because of society’s homophobia and historical repression of lesbian sexuality.⁴⁰

II. CATHARINE MACKINNON AND LESBIAN SEXUALITY

It is surprising that despite MacKinnon’s volumes of articles and speeches on female sexuality, gender, and pornography, she has only marginally recognized the fact that lesbians exist in this society. Although she has spent the last decade writing about sexuality, she has failed to address in any significant manner how lesbian sexuality fits into her theory. Nor does she recognize her omission. Ignoring all sexuality aside from that of the heterosexual dominant culture may have once served a strategic political function. However, this function has long since passed, and continuing to ignore multiple or contradictory differences in sexuality perpetuates the idea of an ordinary and singular

37. *Id.* at 22.

38. *Id.* at 27.

39. The MacKinnon/Dworkin Model Anti-Pornography Law § 5, reprinted in Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN’S L.J. 1 app. A (1985).

40. Strossen, *supra* note 7, at 1145 (“[S]uch censorship poses a special threat to any sexual expression that society views as unconventional. Censors would likely target ‘pornography’ that conveys pro-feminist or pro-lesbian themes, because of its inconsistency with ‘traditional family values’ or conventional morality.”).

heterosexuality.⁴¹ It is time for anti-pornography feminists to recognize the damage they do to lesbian sexuality, as well as to their larger goal of empowering women, in clinging to their anti-pornography approach.

The absence of lesbianism in MacKinnon's writing renders lesbians invisible and contributes to heterosexist views of sexuality. While MacKinnon neither prohibits us outright, as the laws of some states do to gay male and sometimes lesbian sexuality, nor appropriates our sexuality and turns it into a falsehood, as heterosexual male pornography does, she oppresses lesbians covertly by failing to present lesbians as subjects. We are "abjects," or unviable (un)subjects, in MacKinnon's theory.⁴² Her theory of sexuality does not allow for lesbian existence — if a woman is one who is fucked and a man is one who fucks,⁴³ how can two women have sex with each other? In order to fit her theory, one woman must be "socially male"⁴⁴ and thus the sex must be a socially heterosexual interaction. To put it in her own words, "Lesbians so violate the sexuality implicit in female gender stereotypes as not to be considered women at all."⁴⁵ Her use of the passive voice, "to be considered," nearly obfuscates her own acceptance of and participation in dominant culture's erasure of lesbians from the gender "woman." In a later footnote, MacKinnon dismisses the power of what she identifies as lesbian violation of sexuality by citing top and bottom roles of lesbian sadomasochism and butch/femme roles as evidence of sexual conformity: "Butch/femme as *sexual* (not just gender) role playing, together with parallels in lesbian sadomasochism's 'top' and 'bottom,' suggest to me that sexual conformity extends far beyond gender object mores."⁴⁶ In the first sentence she says lesbians *violate* dominant culture sexuality, but in the second sentence she says lesbians *conform* to dominant culture sexuality. She seems unable to consider the possibility that behaviors that look like conformity can be revolutionary when in a lesbian context, because the women participating in such activities violate gender stereotypes. Perhaps this is because MacKinnon is so confined to

41. Bensinger, *supra* note 20, at 77.

42. Judith Butler, *Imitation and Gender Insubordination*, in *INSIDE/OUT: LESBIAN THEORIES, GAY THEORIES* 13, 20 (Diana Fuss ed., 1991).

43. *Agenda for Theory*, *supra* note 27, at 541.

44. *Id.* at 533.

45. *Id.* at 530.

46. *Id.* at 534 n.42.

the heterosexual framework and so dependent on the woman as victim model.

Heterosexual structure binds MacKinnon so tightly that she cannot see anything besides heterosexual aping in lesbian sexuality and gender roleplaying. It is she who demands "a change in the very norms of sexuality"⁴⁷ and it is she who says sexuality forms gender. However, she fails to recognize the possibility that lesbianism can change the norms of sexuality and thereby subvert gender. By conceptualizing all sexual interaction within a heterosexual framework, MacKinnon ignores lesbians, whose sexuality exists at the margins of dominant culture. It is especially at these margins that feminists can claim and use self-determination and sexuality to free themselves from heterosexist, exploitive, oppressive constructs.

III. LESBIAN SEXUALITY AND PORNOGRAPHY

The existence of lesbians, as women who defy dominant culture's definition of female sexuality, shows not only where MacKinnon's theory fails to observe reality, but also exposes conceptual space overlooked by MacKinnon that women can use to liberate themselves from patriarchal definitions of women's sexuality. This is particularly true of lesbian sexuality because male power, the force at the top of MacKinnon's power hierarchy, is not present in lesbian sexuality — when women have sex with each other, there is no male present.⁴⁸

This is not to say that the absence of men necessarily means there is an absence of patriarchal ideas about women in lesbian sexuality; lesbians live in the dominant culture and are certainly influenced by misogynist ideas. However, because we exist at the margins of dominant culture without intimate male influence, les-

47. *Id.* at 534.

48. While male pornography has attempted to define lesbian sexuality, when and if lesbians consume male pornography depicting women having sex with each other, most lesbians view such pseudo-lesbian pornography with the knowledge that it was made by men for men's titillation. Lesbians are less likely to accept the dominant culture's definitions of lesbian sexuality and misogynist images in pseudo-lesbian pornography because lesbians have already rejected societal norms as to what comprises women's sexuality. Thus, few lesbians will take these negative images into society or to bed with them.

Second, having viewed several male-created pseudo-lesbian pornographic videos, as well as having viewed several lesbian pornographic videos, our experience is that the men do not depict reality or even much that lesbians find appealing, while the lesbian pornography is both more appealing and more reflective of what lesbians do.

biens have a unique perspective and therefore have more conceptual room to challenge and explore sexuality and gender constructions. Lesbians are less likely to have internalized dominant culture's definition of women's sexuality because lesbians break sexual rules by defying the heterosexual norm. In addition, because lesbians do not have intimate sexual relationships with men, those misogynist ideas are not imposed and enforced as personally as they may be for straight women. Straight women may justify their internalization of male images of female sexuality based on their love for a man.⁴⁹

Lesbian sexuality is thus particularly suited to liberating women from patriarchal definitions of sexuality; it is easier for women to find their own definitions in a space where rules do not exist or are not accepted than it is to break existing, entrenched and constantly enforced rules of male-female sexual behavior. Once lesbians have formulated new realities of sexuality, other women will find it easier to create their own non-patriarchal realities by borrowing lesbians' tools or by simply knowing that such creation is possible. Lesbian pornography is one location in which women can formulate and show sexualities that are not male-defined. Lesbian pornography can also destabilize concepts of sexuality as a whole by deconstructing and transfiguring traditional pornographic "ways of seeing."⁵⁰

The root of MacKinnon's anti-pornography stance is that male power uses pornography to define and enforce women's sexuality by constructing the gender "woman." Male power controls the pornography industry on a macro basis, and men enforce their definition of women's sexuality upon women on an individual basis. One way this is done is with pornography: as Andrea Dworkin puts it, men say to women "see this, do that."⁵¹ By focusing on MacKinnon's idea that gender is constructed, not natural, we begin to understand how crucial context is to the interpretation of ideas presented by any given representation of women. When we take the constructing and reflecting tool of pornography away from the context of male power and use it within the lesbian community, images of lesbian sexuality that would seem to ape heterosexual men and women immediately displace and reorder those images of gender and sexuality.

49. *Agenda for Theory*, *supra* note 27, at 531.

50. Bensinger, *supra* note 20, at 78.

51. Dworkin discussed this use of pornography during her speeches at both the Michigan and Chicago conferences. *See supra* note 3.

To illustrate this idea, let's look at the lesbian practice in which MacKinnon sees mere heterosexual aping: lesbian butch/femme roleplay. The butch/femme style came of age in the 1950s. Without a known history or models of their own,⁵² lesbians borrowed the only sexual model available — the heterosexual model. Lesbians utilized this model to indicate their membership in the lesbian community, and developed it into their own complex set of erotic and social statements.⁵³ Butch lesbians were not, for the most part, wearing men's clothes to pass as men in order to get jobs and social mobility as women had done in the past. Rather, 1950s butches wore masculine clothes primarily to signal to other lesbians that they were capable of taking erotic responsibility.⁵⁴ Nineteen-fifties femmes looked much like their heterosexual counterparts. However, these women chose to express their sexual power and lesbian desire by dressing in overtly sexual ways for other women and not for men.⁵⁵ Butch and femme lesbians, by expressing their sexuality within the context of lesbian culture, resisted and challenged dominant culture's views of women. Butch women in male "drag" subverted the male gender by looking masculine and being women, and subverted the female gender by not looking or acting like women were supposed to look and act. Femmes, by adopting the feminine manners and dress of heterosexual women in order to attract other women, subverted both the female and male genders by coupling with a woman instead of the societally-mandated male. Both butches and femmes exposed the constructed nature of both male and female sexuality and gender roles. This displacement of dominant sexuality and gender roles became very apparent when one saw a butch/femme couple. There were two women, attracted to each other, one looking similar to a man but being a woman, one looking similar to a straight woman but obviously not straight because of her erotic attraction to the butch. Although at first glance the couple appeared to copy heterosexual norms, they illustrated the "utterly constructed status of the so-called original"⁵⁶ of heterosexuality. The couple as a unit "subvert[ed] naturalized dominant meanings

52. LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS* 160 (1991).

53. Joan Nestle, *The Fem Question*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 232, 232 (Carole S. Vance ed., 1984) [hereinafter *PLEASURE AND DANGER*].

54. *Id.* at 235.

55. *Id.* at 236.

56. Butler, *supra* note 42, at 23.

through the process of recontextualization."⁵⁷ By focusing on context, we come to see that while the lesbian portrayals of gender and sexuality are not truthful, neither are the gender constructions in dominant culture. They are both merely copies without an origin.⁵⁸

Although no longer necessary for identification, butch/femme roles continue to be used within the lesbian community. Many modern lesbians use butch/femme roles consciously to subvert gender and play with erotic difference.⁵⁹ As Lesbian sex expert Susie Bright puts it, "'gender-bending' is the point."⁶⁰

Images that appear not only imitative but also objectionable when viewed by dominant culture also carry deeper, deconstructive possibilities when used within the lesbian community context. Images that, from a dominant culture perspective, appear to degrade, dehumanize, and disempower women (such as sado-masochism ("S/M"), rape scenes, and incest fantasies), can actually empower and strengthen some women and enable them to gain control over difficult issues when viewed or used in the context of the lesbian community.⁶¹ This is true within a lesbian context because power dynamics that exist between women differ from those that exist between men and women. It is easier to explore the operation of power in scenes between women (acted out or fantasized) than in a heterosexual context because in the latter context the man carries with him socially constructed power, privilege, and credibility, as well as physical power. In a lesbian context, the power dynamics are not necessarily as clear and entrenched.

For example, incest scenes within a lesbian context ("dyke daddy" fantasies) enable some women who have been victims of incest to take control of a similar situation within a trusting, caring environment. A woman who has been a victim of incest can reenact an incest scene but replace the male aggressor with a wo-

57. Bensinger, *supra* note 20, at 79.

58. Butler, *supra* note 42, at 22.

59. FADERMAN, *supra* note 52, at 267-68.

60. Walter Kendrick, *Increasing Our Dirty-Word Power: Why Yesterday's Smut is Today's Erotica*, N.Y. TIMES, May 31, 1992, § 7, at 3, 36.

61. See Strossen, *supra* note 7, at 1130 (discussing the subjective meaning of imagery: "Even scenes of ravishment, which could well be viewed as showing a woman's 'subordination,' may nevertheless be viewed by some feminist women as sexually pleasurable and liberating.").

man whom she trusts.⁶² The change from male to female and from a background of fear to one of trust can displace the original bad experience and allow the woman to regain the strength that the incestor took from her. She can also use her control over the scene to turn the incest into something pleasurable for her and thereby reconcile feelings of arousal that she may have had during the actual incest and about which dominant culture tells her she should feel guilty. One reader and incest survivor wrote to *On Our Backs* to explain lesbian pornography's impact on her: "One of my earliest sexual fantasies was about abuse. My perpetrator brutalized me and aroused me at the same time It feels good to be able to have S/M fantasies . . . that do not degenerate into actual rape and incest material. Thanks . . . for helping me make peace with a part of myself."⁶³ This same analysis can be applied to rape fantasies and other seemingly disempowering scenes.

Between heterosexual male pornography's attempts to erase lesbianism and re-present it as an object of male titillation, and MacKinnon's erasure of lesbian sexuality, it becomes a political imperative for lesbians to render lesbianism visible. One very powerful tool for accomplishing this is lesbian pornography. We face the challenge of making lesbianism visible without either confirming MacKinnon's suggestion that we are merely aping heterosexuality or asserting some sort of lesbian sexuality Truth.⁶⁴ Lesbian pornography is suited to meet this challenge because of its ability to place varying and opposing portrayals of lesbian sexuality side by side. Each image can thus displace the next to expose gender for the "drag" that it is and show the multiplicity of sexuality.

IV. LESBIAN PORNOGRAPHY AS A MEANS OF BUILDING AND UNITING A POLITICAL AND SEXUAL LESBIAN COMMUNITY

Not only does lesbian pornography offer an opportunity to explode sexuality and gender constructs and in the process weaken sexual boundaries that confine all women, it also offers a location for lesbians to gather and form a necessary political, so-

62. This may not be true or wanted by all incest victims, but some have found it to be empowering. Also, such a scene could conceivably be carried out within a trusting heterosexual relationship.

63. *Survival of the Sex-Positive*, ON OUR BACKS, May-June 1991 (Letters), at 7.

64. Butler, *supra* note 42, at 20.

cial, and sexual community. Creating and maintaining an inclusive, cohesive, and politically viable lesbian community is a difficult but necessary goal of the diverse group of women who identify themselves as lesbians. Lesbians are women of all races, cultures, religions, creeds, ages, and economic classes; we are united by a common sexuality and gender.⁶⁵ Many of us are ostracized from family, racial, ethnic, and religious communities because of our sexuality; our exclusion from traditional support networks makes the existence of a visible and supportive lesbian community essential. Our sexuality is simultaneously the source of our oppression and the binding force of our community. Because sexuality is so central to lesbian identification, visible and honest discussion among lesbians of sexuality is critical in creating and maintaining a strong, political, and diverse lesbian community.

We must create our own images of lesbian sex, reclaiming our eroticism from men who use depictions of us for their own titillation, and from feminists who either de-sexualize lesbianism for political palatability or erase us from existence by their theories. As Pat Califia, lesbian writer and activist, puts it, "[I]f we are ever going to be free, we must have a vision of . . . the future, including . . . ideas about what 'sexy' means and looks like, and what 'pleasure' is, and what it's worth."⁶⁶ Lesbian pornography provides a location for lesbians to reinvent, discuss, re-eroticize, and publicize lesbian sexuality; it is a place to challenge negative stereotypes, depict fantasies, explode myths, push beyond the confines of women's narrow sexual boundaries, and embrace sexual power. Through discovery and exploration of our long-hidden and devalued sexuality, lesbians can be and are being politically reenergized, personally empowered, and publicly proud of our identity.

Throughout history, dominant culture has portrayed lesbian sexuality as either nonexistent or a deviant turn-on for men. Mainstream culture has historically rendered lesbians invisible, dismissing us as friends and spinster roommates. The category "lesbian" did not even exist until the second half of the nineteenth century when sexologists decided to put women who loved other women into a separate classification. Sex was con-

65. Eloise Salholz et al., *The Power and the Pride*, NEWSWEEK, June 21, 1993, at 54, 59 ("In fact, the desire to sleep with other women is perhaps the only common denominator in today's extraordinarily diverse lesbian culture.")

66. PAT CALIFIA, MACHO SLUTS 14 (1988) [hereinafter MACHO SLUTS].

spicuously absent from women's writings on romantic love between women during and before the first decades of the twentieth century. Men had long appropriated lesbian sex for their own gratification in their pornography, and for years the only available images of women having sex with each other were created by men for their own sexual pleasure.⁶⁷ So-called "lesbian" sex continues to be a prominent theme within pornography made by and for heterosexual men.⁶⁸ Positive depictions of lesbians are almost nonexistent in mainstream media, and society presents heterosexuality as women's only natural and viable option. From birth, dominant culture indoctrinates women into compulsory heterosexuality through fairy tales, television, movies, and mainstream pornography.⁶⁹ Faced with the powerful combination of pro-heterosexual propaganda and the silencing of lesbian existence, lesbians have struggled and continue to struggle to discover their own sexual identity, find others like themselves, and validate their own sexuality.

By the 1970s, lesbians began to find each other within the burgeoning feminist movement. Radical feminism of the 1970s not only offered lesbians acceptance within the feminist community, but elevated lesbianism as the true practice and end result of the philosophy of feminism.⁷⁰ The move within feminism to equate lesbianism with feminism began as a result of lesbians fighting against homophobia within the National Organization for Women (NOW) in the early 1970s. Betty Friedan, the director of NOW, labeled lesbians a "lavender menace" sent by the CIA to infiltrate and discredit the feminist movement.⁷¹ Faced with such hatred, in 1970 a group of lesbians presented a manifesto entitled *The Woman Identified Woman* to the Second Congress to Unite Women. The manifesto condemned NOW's homophobia and defined lesbianism as "quintessential feminism."⁷² By defining lesbianism as feminism taken to its fullest extent (the practice of the philosophy and politics of feminism), these women attempted to gain acceptance and recognition within the feminist community by assimilating lesbians within

67. FADERMAN, *supra* note 52, at 113.

68. See DWORKIN, *supra* note 16, at 45-47, 129-33.

69. Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, in *POWERS OF DESIRE*, *supra* note 13, at 177, 182.

70. FADERMAN, *supra* note 52, at 216.

71. *Id.* at 212.

72. Bensinger, *supra* note 20, at 73-74.

feminism.⁷³ The strategy worked. In a 1971 resolution NOW acknowledged the inherent feminism of lesbianism and proclaimed lesbians to be the front-line troops of the women's movement.⁷⁴

By identifying lesbians as quintessential feminists, lesbian-feminists enclosed all lesbians within the political category of "woman" and analyzed their oppression solely in terms of gender. Lesbian-feminists moved away from a self-identification based on sexuality, and thereby rendered the essential sexual element of lesbianism invisible.⁷⁵ In the process, the lesbian community became fragmented; those who were not part of the feminist movement were further marginalized: butch-femme bar dykes, lesbians of color, and working class lesbians. In addition, the view of lesbianism as paradigmatic feminism perpetuated the myth that lesbians always had egalitarian sex and that sex was not the focus of the relationship. They had perfect sex (when they had it) because women inherently knew how to satisfy each other sexually, and therefore there was no need to discuss sex.⁷⁶

Adrienne Rich continued the tradition of encompassing lesbianism within feminism in her essay *Compulsory Heterosexuality and Lesbian Existence*.⁷⁷ Rich puts all woman-identified relationships, including non-sexual ones such as motherhood, friendship, and sisterhood, on a "lesbian continuum."⁷⁸ Although placing lesbian sexual relationships on such a continuum fosters understanding between straight and lesbian feminists and encourages women to question compulsory heterosexuality in our society, it also reduces lesbian sexual relationships to enhanced friendships between women, perpetuating lesbian sexual silence and denying and diluting the erotic power of lesbian sexuality. Rich states that the historic definition of lesbians solely in terms of their sexuality deprives lesbians of a political existence by erroneously grouping them with male homosexuals whose sexuality and values are foreign to the "profoundly female experience" of lesbianism.⁷⁹ However, defining lesbians solely in

73. *Id.* at 74.

74. FADERMAN, *supra* note 52, at 212.

75. Bensinger, *supra* note 20, at 73-74.

76. See PAT CALIFIA, *SAPPHISTRY: THE BOOK OF LESBIAN SEXUALITY* xiv (1980) [hereinafter *SAPPHISTRY*]. Califia recounts her frustrations with the mythology of perfect lesbian sex and her inability to find information about lesbian sex that led her to write her groundbreaking book.

77. Rich, *supra* note 69, at 177-205.

78. *Id.* at 192-94.

79. *Id.*

terms of their womanhood, as women who are "discovering the erotic in female terms: as that which is unconfined to any single part of the body or solely to the body itself,"⁸⁰ deprives lesbians of a concrete sexual existence.

As lesbians and women, we cannot accept a mysterious, invisible, undefined, sanitized sexuality. We are oppressed because of our erotic affiliation; as lesbians we must define our own sexuality in concrete terms because for us, the sexual is political. In their zeal to combat women's oppression, feminist theorists have failed to address the sexual realities of women in general and lesbians in particular. Sexual dialogue within feminism has for many years been mostly limited to discussions of how women have been victims of male sexuality through rape, incest, sexual harassment, domestic battery, and pornography. Efforts by feminist sexual radicals to talk about sexual practice have been met with angry protests and name-calling by anti-pornography feminists.⁸¹ This restriction of sexual discourse by some feminists has alienated some lesbians of color and working class lesbians who see the white, middle-class women's movement as pushing puritanical values down their throats.⁸² By envisioning sexuality as our commonality, our community can become more diverse and inclusive of lesbians of color and other groups historically absent from the lesbian-feminist movement. All lesbians, regardless of race or class, can identify with a common sexuality and use sexuality as a basis to unite. Lesbians need fora of sexual discussion in order to recognize the fullness and diversity of our community. Lesbian pornography can be one such forum.

Reacting to sexual repression within the feminist community and invisibility within mainstream culture, and searching for sexual identity and personal sexual gratification, lesbians began producing a flood of pornography in the mid-1980s. Lesbian hardcore pornography magazines *On Our Backs* and *Bad Attitude* began publication in 1984. Lesbians collected lesbian erotic fiction in anthologies such as *The Leading Edge*,⁸³ and business boomed for woman-owned sex toy catalogs such as Good Vibrations and

80. *Id.*

81. See *supra* note 2 and accompanying text; see also PLEASURE AND DANGER, *supra* note 53, at 431 (discussing the protest at the 1982 Barnard College conference *Towards a Politics of Sexuality*).

82. Amber Hollibaugh & Cherrie Moraga, *What We're Rollin Around in Bed With: Sexual Silences in Feminism*, in POWERS OF DESIRE, *supra* note 13, at 394, 404.

83. THE LEADING EDGE: AN ANTHOLOGY OF LESBIAN SEXUAL FICTION (Lady Winston ed., 1987) [hereinafter THE LEADING EDGE].

Eve's Garden. Many makers and writers of the new lesbian pornography have a feminist consciousness and view their work as politically necessary for lesbians.⁸⁴ As Pat Califia said in the introduction to her 1980 work *Sapphisty*, "This book is an attack on the repression and colonization of women's sexuality. It is intended to strengthen us and prepare us for a long, difficult struggle for liberation."⁸⁵ Lesbian feminist sadomasochists came out publicly in the book *Coming to Power: Writings and Graphics on Lesbian S/M*, making visible the margins of the spectrum of lesbian sexual pleasure and challenging existing lesbian-feminist ethics to allow for sexual frankness without stigmatization.⁸⁶ Lesbian icon Susie Bright, co-founder and columnist of *On Our Backs*, known also by her pen name Susie Sexpert, has emerged as a leader of the new lesbian sexual liberation. In her columns she has addressed diverse subjects such as the politics of packing a dildo,⁸⁷ how to have a successful sex party, safe sex for lesbians, and women with AIDS.⁸⁸

Many lesbians rejoice at the revitalization and re-eroticization of their sexuality in lesbian pornography: the best-selling lesbian publication in the country is *On Our Backs*.⁸⁹ Considered hard-core pornography, *On Our Backs* depicts graphic sex between women, sometimes involving heavy sadomasochism (S/M). Body piercing, leather, tattoos, and bondage get a lot of coverage, but "vanilla" (non S/M) sex is also shown (women bathing together, kissing, getting married, and even dancing naked in a circle).⁹⁰ Many of the articles are devoted to educating the

84. One *On Our Backs* model described her political and sexual philosophy as follows: "I don't abide by any given rules . . . I don't believe in top/bottom, male/female, or butch/femme. There are certainly more choices to be made . . . Sexuality and gender isn't [sic] automatically guaranteed because of our physical makeup." The accompanying photo spread depicts her in gender-bending and gender-mixing attire. In one photo, she appears in a feather boa and strap-on dildo, in another she holds a fan and wears a leather cap, and in another she wears jeans and a chain around her neck. *Talkin' Trash*, ON OUR BACKS, Jan.-Feb. 1993, at 16-19.

85. SAPPHISTRY, *supra* note 76, at xv.

86. Katharine Davis, *Introduction: What We Fear We Try to Keep Contained*, in *COMING TO POWER* 7, 7-13 (3d ed. 1987).

87. "Packing" refers to wearing a dildo in a harness underneath clothing, usually in a public place.

88. Many of these columns are collected in SUSIE BRIGHT, SUSIE SEPERT'S LESBIAN SEX WORLD (1990).

89. Lindsay Van Gelder, *Lipstick Liberation*, L.A. TIMES, Mar. 15, 1992 (Magazine), at 30, 32.

90. *The Initiation of Ninshubar*, ON OUR BACKS, Sept.-Oct. 1990, at 28. Lesbian-feminists might be surprised that the quintessential image of feminist egalitarian sex would appear in lesbian pornography.

reader about lesbian sexual practice and politics. Articles instruct women on the integral role of the G-spot in female ejaculation,⁹¹ the proper technique of vaginal fisting,⁹² and the availability of safe sex videos.⁹³ *On Our Backs* also has regular columns devoted to news of censorship affecting lesbian and gay publications and other lesbian news.

Although subtitled "Entertainment for the Adventurous Lesbian," the editors and readers of *On Our Backs* come out of an undeniably feminist tradition that is reflected in the tone of the articles and letters to and from the editor. Readers write to criticize a military uniform pictorial as "an unconscionable eroticization of war,"⁹⁴ to express their outrage at an illustration depicting a knife near the vagina of a blindfolded woman,⁹⁵ to cancel their subscription because of bondage and subordination portrayals,⁹⁶ and to ask for more pictures of women over thirty.⁹⁷ Readers thank *On Our Backs* for "being a leader in information and understanding regarding the lesbian community,"⁹⁸ for an article on lesbians and HIV, and also inject feminist sensibility: "As we celebrate women's sexual liberation, we must never forget that for too many women poverty and violence make sexual or any other type of freedom an impossibility."⁹⁹ Readers range from "a man-hating, lesbian feminist, Birkenstock-wearing, flannel-shirted dyke" who wants more "old women, fat women, leather women, and especially beaver shots,"¹⁰⁰ to a man who thinks lesbians "shouting politics during a strip show are exciting . . . because they dare to topple the mold men and society have created for the female sex."¹⁰¹ The new *On Our Backs* editor,

91. *This Is What Fanny's G-Spot Looks Like*, ON OUR BACKS, Sept.-Oct. 1992, at 8-9.

92. *The Ins and Outs of Fisting*, ON OUR BACKS, Jan.-Feb. 1992, at 15.

93. *Deep Inside Safe Sex Videos*, ON OUR BACKS, Jan.-Feb. 1990, at 14-15. A recent issue of *On Our Backs* documented the making of Fatale Video's safe sex film, "Safe is Desire." *Beyond the Scenes of Safe is Desire*, ON OUR BACKS, Sept.-Oct. 1993, at 23-27. Fatale Video is a lesbian owned production company of lesbian pornographic videos, and uses an all-female crew. *On the Set of Suburban Dykes*, ON OUR BACKS, Jan.-Feb. 1991, at 24.

94. *Make Love, Not War*, ON OUR BACKS, Jan.-Feb. 1992 (Letters), at 7.

95. *No Trespassing*, ON OUR BACKS, Jan.-Feb. 1991 (Letters), at 7.

96. *Not Bound for Glory*, ON OUR BACKS, Jan.-Feb. 1990 (Letters), at 5.

97. *Older Women Wanted*, ON OUR BACKS, Sept.-Oct. 1992 (Letters), at 7.

98. *Thanks for Not Conforming*, ON OUR BACKS, Jan.-Feb. 1992 (Letters), at 7.

99. *Prostitution in Amsterdam*, ON OUR BACKS, Jan.-Feb. 1993 (Letters), at 5.

100. *Change of Heart*, ON OUR BACKS, May-June 1991 (Letters), at 7.

101. *If Looks Could Kill*, ON OUR BACKS, May-June 1991 (Letters), at 7. This male reader, rather than simply appropriating the images in lesbian pornography for

Heather Findlay, told her readers that she plans "to make the magazine more 'queer'. . . [with] more representations of other sexual minorities like sex workers, transgender folk, bisexual women, etc." She promised special issues on "what's hot in lesbian sexual culture," including an issue on lesbians, sex, and motherhood.¹⁰²

The lesbian pro-sex position, introduced at the margins of discourse by lesbian pornography, has become more mainstream in the 1990s, especially with younger lesbians. Following the tremendous success of *On Our Backs* and *Bad Attitude*, *Deneuve*, a national lesbian magazine, began publishing in 1991. *Deneuve* is now available in 1000 Walden Book Stores across the United States and Canada. Although not pornographic, *Deneuve* is clearly sex-positive and aware of lesbian sex politics, featuring cover stories on safe sex¹⁰³ and articles lauding the onset of the lesbian sexual revolution and lesbian sex clubs,¹⁰⁴ along with interviews with prominent lesbians like Linda Villarosa¹⁰⁵ and articles on lesbian lawyers.¹⁰⁶

The acceptance of the lesbian pro-sex position has not been confined to publications. Lesbians are becoming more public and are demonstrating our sexual pride through other venues. Erotic videos and go-go dancers are featured at new, upscale lesbian bars such as New York's Clit Club and San Francisco's G-Spot. Lesbian music, previously almost totally confined to the earthy folk-music genre, has become more visible and sexier. Publicly lesbian country and torch musician k.d. lang is the new lesbian sex symbol, and lesbians such as rock musician Melissa Etheridge and members of punk groups Bikini Kill, Tribe 8, and L7 have successfully entered powerful, highly sexualized, and previously almost exclusively male musical genres. The Lesbian Avengers, a new "in-your-face" lesbian political action group, proudly displays sexual power in their Dyke Manifesto, the head-

his own sexual stimulation, appears to grasp the full message of lesbian pornography, including its political nature.

102. Heather Findlay, *Letter from the Editor*, ON OUR BACKS, Sept.-Oct. 1993, at 4.

103. *The How-Tos of Safe Sex*, DENEUVE, Feb. 1993, at 54.

104. Michele Fisher, *Rants and Raves*, DENEUVE, May-June 1993, at 50-51.

105. Victoria A. Brownworth, *Linda Villarosa Speaks Out: The Essence of Being Lesbian*, DENEUVE, May-June 1993, at 16. Villarosa is the senior editor of *Essence* magazine.

106. Jane Goldman, *Gays at Law: Coming Out Strong*, DENEUVE, May-June 1993, at 24.

ing of which emblazons "Lesbian Sex" between "Lesbian Power" and "Lesbian Activism." The Avengers "[t]hink sex is a daily libation" which corrals "[g]ood energy for actions," and list being "pro-sex" as number three in the top ten Avenger qualities.¹⁰⁷

Making and consuming pornography is one powerful and transformative way for lesbians to reclaim and discuss our sexuality. We can answer the perennial and ultimate question of "what do lesbians do in bed?," we can decide for ourselves what we think about particular sexual practices, and we can see other sexually powerful lesbians. Most importantly, we can and have re-introduced sexuality on our terms into the category of "lesbian." By exposing our sexuality to our own bright light of lesbian pornography, we can open and expand lesbian sexual discourse and power for other venues. By focusing on sexuality as the common bond between lesbians, we can build a lesbian community based not only on a common resistance to dominant culture prejudice but also based on the celebration, affirmation, and creation of our own sexuality.

Pornography, completely dominated by men until recently, is the most explicit, pointed, and established location to discuss and develop sexuality. Without lesbian pornography, discussion of lesbian sexuality in true and tangible terms is much more difficult; men will continue to be the sole definers of lesbian sexuality in concrete terms through their false depiction of lesbianism in male pornography. Given that lesbians share the commonality of sexuality and that society defines us solely in terms of our sexuality, the continuing definition of lesbian sexuality by men weakens lesbian community. Community is essential to lesbian identity because our very identity is founded on our ability to create a meaningful personal life from our erotic associations outside the societally-mandated heterosexual family.¹⁰⁸ Censoring lesbian pornography destroys an important, personally empowering tool that we can use to build a strong and diverse lesbian community and stifles original sexual discussion within our community. Any restriction on community-building threatens our personal iden-

107. Quoted from *Dyke Manifesto*, distributed at the Dyke March on Washington, April 23, 1993, an event co-organized by the Lesbian Avengers. The Lesbian Avengers are profiled in, Ilsa Jule & Laurie Marin, *The Lesbian Avengers*, DENEUVE, May-June 1993, at 42.

The *Dyke Manifesto* is a stark contrast to the *Woman Identified Woman* manifesto of lesbian feminists discussed in Bensinger, *supra* note 20, at 73.

108. John D'Emilio, *Capitalism and Gay Identity*, in POWERS OF DESIRE, *supra* note 13, at 100, 105.

tity. Anti-pornography legislation that is passed, enforced, and interpreted within our heterosexist society has, and will inevitably continue to censor lesbian pornography disproportionately, undermine our community, and threaten our very lesbian identity.

V. LESBIAN PORNOGRAPHY AS UNIQUELY VULNERABLE TO
CENSORSHIP UNDER THE MACKINNON-DWORKIN
ORDINANCE IN PARTICULAR AND ANTI-
PORNOGRAPHY LEGISLATION IN
GENERAL

The harm-based analysis of pornography and the stated goals of the MacKinnon-Dworkin anti-pornography ordinance are attractive in the abstract; making male pornographers, who make large sums of money from selling sexual gratification to men, pay damages to women who have been victims of male sexual violence seems a just and laudable purpose. However, the reality of their anti-pornography legislation is that rich male pornographers do not pay and lesbian and gay pornography is censored.

MacKinnon's harm-based analysis legitimizes anti-pornography legislation for feminists and liberals who generally oppose any obscenity legislation that imposes majoritarian morality on the rest of the population. Many feminists and liberal-minded people, concerned about the horrific epidemic of violence against women but skeptical of the biases and prejudices that a community-morality standard of obscenity would reflect, are drawn to an analysis intended to punish the makers of material that is harmful to women. Adding feminist and liberal supporters of new, harm-based anti-pornography legislation gives liberal legitimacy and political clout to a movement already supported by the conservative, religious fundamentalist contingent.

A coalition of conservatives and feminists enacted the MacKinnon-Dworkin ordinance in Indianapolis. In *American Booksellers v. Hudnut*,¹⁰⁹ Seventh Circuit Court of Appeals Judge Easterbrook held that the ordinance was an impermissible content-based regulation of speech and struck it down under the First Amendment. The ordinance allowed plaintiffs to recover monetary damages and receive injunctions to eliminate specific

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

item(s) of pornography from public view and consumption.¹¹⁰ It gave automatic standing to all women who act "against the subordination of women," and also allowed standing to anyone else who alleged injury by pornography in the way that women are systematically injured.¹¹¹ The ordinance's expansive grant of standing could have allowed homophobic women and men to feign injury in order to impose their own moral judgment on lesbians and censor lesbian pornography. The vague wording in the ordinance, such as the terms "submission," "degradation," and "display," left it open to subjective interpretation. Given society's disapproval of lesbian sexuality, vague wording would inevitably have been interpreted by courts and police to restrict lesbian pornography. The costs of defending such a lawsuit, not to mention the costs of civil damage awards, would have a disparate impact on small lesbian pornography producers¹¹² and bookstores,¹¹³ and could cause irreparable harm to the lesbian community. MacKinnon is aware of the possible misuse of her ordinance; however, she believes that the risks are outweighed by the ordinance's positive effects.¹¹⁴ As we have already explained, MacKinnon is either unable to understand or simply refuses to acknowledge the importance of pornography to the lesbian community. Therefore, her conclusion that the ordinance's benefits outweigh the risks of its misuse is flawed because she does not include lesbian pornography in her calculation.

Stymied in *Hudnut* by America's expansive free speech tradition, advocates of the MacKinnon harm-based analysis began formulating a strategy for Canada, where the tradition of free speech is not as dominant. The Women's Legal Education and Action Fund (LEAF) successfully intervened in *Regina v. But-*

110. The MacKinnon/Dworkin Model Anti-Pornography Law § 5, *supra* note 39.

111. *Id.* § 3(2)(iii).

112. Producers of lesbian pornography generally operate on small budgets and do not often profit monetarily from their work. See MACHO SLUTS, *supra* note 66, at 11. Lesbian pornography could be effectively eliminated if its few producers were forced to pay legal fees and civil judgments. This is in contrast to the mammoth, billion dollar, heterosexual pornography industry, which would not be significantly affected as an industry by even substantial monetary awards to plaintiffs.

113. Lesbian and women's bookstores tend to be small and few in number, operate for the benefit of the community, and survive on shoestring budgets. Most could not survive a substantial tort liability judgment, while the adult bookstore industry would probably not be significantly affected by such a judgment.

114. *Pornography*, *supra* note 11, at 68.

ler,¹¹⁵ the Canadian Supreme Court's 1992 landmark obscenity case. *Butler* considered whether section 163 of the Canadian Criminal Code, which defined and criminalized as obscene "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of . . . crime, horror, cruelty, and violence,"¹¹⁶ violated the Canadian Charter of Rights and Freedoms that guarantees freedom of expression without regard to content. Employing MacKinnon's harm-based analysis, as articulated by Kathleen Mahoney of LEAF, the Canadian Supreme Court found that section 163 did not violate the Charter. The court reasoned that the objective of section 163, the avoidance of harm to society, was sufficiently important to override the limited freedom of expression guarantees that should be given to material appealing "only to the most base aspect of individual fulfillment, . . . primarily economically motivated."¹¹⁷

The court divided pornography into three categories: (1) explicit sex with violence; (2) explicit sex without violence that subjects people to treatment that is degrading or dehumanizing; and (3) explicit sex without violence that is neither degrading or dehumanizing.¹¹⁸ The court then modified the existing "community standards of tolerance" test to accommodate a harm-based analysis, directing courts to "determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure."¹¹⁹ The court specified harm as something that predisposes a person to engage in anti-social conduct, defined as that "which society formally recognizes as incompatible with its proper functioning."¹²⁰ The court went on to analyze the three categories of pornography, stating that portrayal of sex with violence would almost always be undue exploitation of sex in violation of section 163, that portrayal of degrading and dehumanizing explicit sex may be undue if there is enough risk of harm, and that portrayal of explicit but not violent nor degrading and dehumanizing sex would virtually never violate the statute unless children were involved.¹²¹

115. [1992] 89 D.L.R. (4th) 449 (S.C.C.).

116. Criminal Code, R.S.C., ch. C-46, § 163(8) (Can.).

117. *Butler*, 89 D.L.R. (4th) at 488.

118. *Id.* at 470.

119. *Id.*

120. *Id.* at 471.

121. *Id.*

Although *Butler* contains language that shows the court's awareness of harm to women, it leaves lesbian and gay communities open to increased attack upon their pornography. The *Butler* harm-based standard is still a community standard, subject to deeply entrenched community biases and prejudices. Like the MacKinnon/Dworkin ordinance, it employs the terms "degrading" and "dehumanizing," both of which are amorphous and open to homophobic interpretation by judges, police, and customs officials. These officials are likely to see lesbian pornography with a gaze blurred by heterosexist conditioning that lesbian sex is, by definition, obscene. Canadian customs officials in particular have a history of homophobia, and have detained shipments to lesbian and gay bookstores.¹²² *Butler's* vague terminology, maintenance of a community standard, and definition of harm as that which encourages anti-social conduct, along with the enthusiastic acceptance and celebration of the decision by some liberals, feminists, and conservatives, opened the door for censorship of any pornography customs officials and police might choose.

Predictably, the first publication that police seized after the *Butler* decision was *Bad Attitude*, a lesbian-made pornographic magazine.¹²³ Police brought criminal charges against Toronto's Glad Day Bookshop (a gay bookstore) and the employee who sold the magazine. On February 16, 1993, a Toronto lower court, in an unpublished decision, applied the *Butler* obscenity test and ruled *Bad Attitude* obscene, banning its importation into the country.¹²⁴

In a previous case on May 14, 1992, Glad Day Bookshop went before the Ontario Court of Justice to defend five shipments of gay male pornography that were detained in 1989, prior to the *Butler* decision.¹²⁵ The Ontario Court of Justice applied the *Butler* harm-based obscenity test and found all of the seized items, gay male pornographic magazines and videos, legally obscene. Some of the seized material was defined as "degrading" by Judge Hayes because of its "excessive descriptions" of sexual encounters involving oral and anal sex.¹²⁶ The opinion dismissed

122. Scott, *supra* note 25, at B7; Strossen, *supra* note 7, at 1146.

123. Varchaver, *supra* note 24, at 92.

124. 8(3) *BAD ATTITUDE* 2 (1993).

125. *Glad Day Bookshop v. Deputy Minister of Nat'l Revenue for Customs and Excise*, 1992 Ont. C. J. LEXIS 1296, at *1.

126. *Id.* at *32.

the testimony of a professor of sociology who specialized in sexuality as unhelpful to the community standard of harm because his views were "largely restricted to the gay community and oriented around consensual activity which he indicates should be allowed."¹²⁷

Butler and *Glad Day Bookshop* seem to have renewed the censorial zeal of customs officials; in November of 1992 they seized copies of the comic *Hothead Paisan, homicidal lesbian terrorist* bound for the Toronto Women's Bookstore, unofficially stating that one of the issues was "sexually degrading."¹²⁸ Ironically, Dworkin's books, *Woman Hating* and *Pornography: Men Possessing Women*, in which she passionately argues for the censorship of all pornography, were also seized by Customs and defined as obscene because they eroticized pain and bondage. Customs admitted their "mistake" a week later.¹²⁹

The *Butler* decision was lauded by some feminists and the editors of *Ms.* magazine as a "stunning victory."¹³⁰ The unfortunate reality for lesbian and gay bookstores in Canada is increased censorship and silencing. So long as dominant society sees lesbian and gay sexuality as inherently disgusting and degrading violations of the majority's community standard, any provision which allows for censorship of legally-created pornography will be used to harm lesbians and gays.

CONCLUSION

It is imperative for lesbians and other women to discover the erotic on our terms, in all our multiplicity and diversity. For too long, as Catharine MacKinnon so forcefully and convincingly asserts, men have appropriated and constructed women's sexuality for their own sexual gratification. MacKinnon's solution to the problem is the elimination of pornography; her view not only perpetuates the image of woman as victim, but also unacceptably restricts the ability of women, particularly lesbians, to explore our own sexuality. Instead of relinquishing the arena of sexuality to men and attempting to regulate male sexuality via the restriction of pornography, women should explore, re-eroticize, and take control of our own sexuality. We will wait forever if we wait

127. *Id.* at *26.

128. *Banned in Canada*, DENEUVE, Feb. 1993, at 8.

129. Sarah Scott, *Porn Police: Who Decides What to Ban at the Border?*, GAZETTE (Montreal), Apr. 14, 1993, at A1.

130. See Landsberg, *supra* note 9, at 14.

for men to release their grasp on female sexuality. Through our sexual empowerment, we can change sexuality and gender as we know it. As men have shown women, pornography is a powerful tool in making and transforming women's sexuality. We should subvert it for our own empowerment.

Anti-pornography feminist theory and legislation ignores lesbian existence and the important function that lesbian pornography can and does serve both in forming sexuality and in fostering community. When anti-pornography feminists give the tool of their ordinance to dominant culture, they endanger materials which can be used to create new models of sexuality that challenge the status quo. The anti-pornography position also hinders discussion of sexuality within the feminist community by eliminating a forum of discussion and concentrating on the negative aspects of sexuality. As Ellen Willis puts it, "[T]he last thing women need is more sexual shame, guilt, and hypocrisy — this time served up as feminism."¹³¹ By silencing sexual discourse in the feminist community, anti-pornography feminists participate in male suppression and control of female sexuality.

It is imperative for lesbians to reclaim and remake our own sexuality because sexuality is so central to our identity. Making and consuming lesbian pornography, the representation of lesbian sexuality, is an act of courage, pride, and self-definition. In making and consuming it, we claim our sexuality as our own and take from male culture its heretofore nearly exclusive (though not very persuasive) power to define lesbian sexuality. As novelist and former sex worker Kathy Acker says: "Sexuality is something we were defined by, and now we want to define it."¹³²

Through the forum of lesbian pornography, lesbians can create a new and more cohesive community, focused on our commonality of sexuality and aware of our variety of differences. "[I]f enough of us speak out about our dreams and obsessions, a body of genuine knowledge can accumulate, and make all of us feel less crazy and less alone" ¹³³ Lesbian pornography offers a unique starting ground to liberate all women's sexuality because it offers us the chance to create a "new feminine system

131. Ellen Willis, *Feminism, Moralism, and Pornography*, in *POWERS OF DESIRE*, *supra* note 13, at 460, 462.

132. Lisa Palac, *Kathy Acker: The On Our Backs Interview*, *ON OUR BACKS*, May-June 1991, at 19.

133. *MACHO SLUTS*, *supra* note 66, at 14.

of erotic symbols”¹³⁴ through which all people can transform their view of sexuality and gender.

134. Pat Califia, *Introduction: The Edge of Cunt*, in *THE LEADING EDGE*, *supra* note 83, at viii.