

# PORNOPHOBIA, PORNOPHILIA, AND THE NEED FOR A MIDDLE PATH

A Review Essay of Nadine Strossen's *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*

TERESA M. BRUCE\*

## INTRODUCTION

Catharine A. MacKinnon's legal scholarship has produced "dominance theory," a feminist discourse in which women's subordination is perceived to result from male hegemony.<sup>1</sup> Some of her most controversial works argue for the regulation of pornography.<sup>2</sup> Professor MacKinnon claims that the production, distribution, and consumption of pornography "causes ... [the] violence and discrimination that define the treatment and status of half of the population."<sup>3</sup>

In 1983, she and Andrea Dworkin drafted a model anti-pornography law<sup>4</sup> that would authorize private citizens to bring civil

---

\* Staff Attorney, Paul, Weiss, Rifkind, Wharton & Garrison; J.D., 1996 Cornell Law School; B.S., 1988, Colorado State University. I would like to thank Professor Steven H. Shiffrin and the students in his Spring 1996 Constitutional Law and Political Theory seminar, for inspiring this Essay.

1. See CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 32-45 (1987) (arguing gender equality has been incorrectly categorized as arising from gender differences, rather than a system of dominance where men set the standards in their own image).

2. See generally CATHARINE A. MACKINNON, ONLY WORDS (1993); Catharine A. MacKinnon, *Pornography, Civil Rights and Free Speech*, 20 HARV. C.R.-C.L. L. REV. 1 (1985); Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y REV. 321 (1984) (each discussing, at least in part, constitutionality of model anti-pornography statute co-drafted with Andrea Dworkin).

3. MACKINNON, *supra* note 1, at 147 (footnote omitted); see also MACKINNON, *supra* note 1, at 264 n.9 (citing studies supporting her assertion).

4. MACKINNON, *supra* note 1, at 262 n.1 (stating that the law would apply to "the graphic sexually explicit subordination of women ... in pictures or in words, that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or (vii) women are presented as

suits for damages and injunctive relief if they could demonstrate that exposure to pornography caused them to be subjected to an assault or physical attack.<sup>5</sup> Germany, the Philippines, Sweden, the State of Massachusetts, and several U.S. municipalities, including Minneapolis, Minnesota, have considered such laws.<sup>6</sup> In 1992, in *Butler v. The Queen*, the Canadian Supreme Court incorporated some of the "MacKinnonite"<sup>7</sup> language into Canada's obscenity laws, outlawing sexually explicit materials that "degrade" or "dehumanize."<sup>8</sup>

Professor MacKinnon's advocacy of anti-pornography laws has engendered vigorous debate in the legal and feminist communities, and has provided an impetus for defenders of pornography. Notably, in 1995, Nadine Strossen, president of the American Civil Liberties Union, published *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*.<sup>9</sup> This Essay reviews Ms. Strossen's manuscript. Part I presents her defense of unregulated pornography; Part II explores the strengths and weaknesses in her argument; and Part III concludes that the feminist community—caught between a McCarthy-like "porn scare" on the one hand, and a veritable celebration of patriarchal propaganda on the other—desperately needs to forge a middle path.

---

whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.)" The law would extend to "the use of men, children or transsexuals in the place of women." *Id.* See *infra* note 34.

5. NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* 75 (1995) (indicating that persons could also bring claims against traffickers in pornography, those who coerce others into the creation of pornography, or those who force pornography on others).

6. *Id.* at 77. The other municipalities include: Los Angeles County, California; Indianapolis, Indiana; Cambridge, Massachusetts; Suffolk County, New York; Bellingham, Washington; and Madison, Wisconsin. *Id.*

7. For simplicity, this Essay will use the term "MacKinnonite" to describe the model ordinance co-drafted by Catharine MacKinnon and Andrea Dworkin.

8. STROSSEN, *supra* note 5, at 19 (referring to *Butler v. The Queen*, [1992] S. C. R. 452 (Can.)); see *infra* note 28 and accompanying text (discussing Canadian law which was so strictly construed that books like MacKinnon's were deemed obscene).

9. STROSSEN, *supra* note 5.

## I. BACKGROUND: NADINE STROSSEN'S DEFENSE OF PORNOGRAPHY

Ms. Strossen defends pornography on three grounds. First, she defends it in terms of the law, claiming that MacKinnonite regulations on pornography would contravene well-established constitutional doctrine.<sup>10</sup> Second, she defends it in terms of social policy, claiming that the suppression of pornography would have detrimental effects on the women's movement.<sup>11</sup> Third, she defends it existentially, claiming that attacks on pornography would perpetuate a diseased version of human sexuality.<sup>12</sup> This Section discusses each of these arguments in turn.

### A. A Legal Defense

According to Ms. Strossen, regulations on pornography violate two cardinal tenets of constitutional law. First, they violate the "bedrock principle" of viewpoint neutrality.<sup>13</sup> This principle "holds that government may never limit speech just because any listener — or ... indeed, the majority of the community — disagrees with or is offended by its content or the viewpoint it conveys."<sup>14</sup> Second, they violate the "clear and present danger test," which insures that "a restriction on speech can be justified only when necessary to prevent actual or imminent harm, such as violence or injury to others."<sup>15</sup> Because pornography arguably expresses a political viewpoint on gender equality,<sup>16</sup> and because it seems to have no proven connection to sexual violence,<sup>17</sup> government cannot constitutionally suppress it.<sup>18</sup>

---

10. See STROSSEN, *supra* note 5, at 40-48 (discussing "preferred" status in hierarchy of Constitutional rights).

11. See STROSSEN, *supra* note 5, at 245 ("[I]t would perpetuate demeaning stereotypes about women [and the] ... disempowering notion that women are essentially victims; ... it would harm women's efforts to develop their own sexuality[.]").

12. See STROSSEN, *supra* note 5, at 107-18 (in part describing MacKinnonite theory as arguing that patriarchal society makes it impossible for women to freely consent to sex).

13. STROSSEN, *supra* note 5, at 41.

14. STROSSEN, *supra* note 5, at 41.

15. Nadine Strossen, *Hate Speech and Pornography: Do We Have to Choose Between Freedom of Speech and Equality?*, 46 CASE W. RES. L. REV. 449, 455 (1996).

16. See STROSSEN, *supra* note 5, at 38 (noting that courts have characterized pornography subject to regulation under MacKinnonite laws as political speech, the most protected type of speech).

17. See STROSSEN, *supra* note 5, at 251 (relating the National Research Council's finding that "[d]emonstrated empirical evidence links between pornography and sex crimes ... are weak or absent").

18. See STROSSEN, *supra* note 5, at 61-62 (arguing that MacKinnonite laws would be unconstitutional).

In Ms. Strossen's view, the Supreme Court has evidenced in these principles its understanding that "in a free society, the appropriate response to speech with which one disagrees is not censorship but counterspeech — more speech, not less."<sup>19</sup>

### *B. A Defense Based on Public Policy*

The majority of Ms. Strossen's arguments in defense of pornography lie in the area of public policy. She posits that regulations on pornography "would be enforced in a way that discriminates against the least popular, least powerful groups in our society, including feminists and lesbians."<sup>20</sup> She finds no comfort in the fact that private citizens would enforce MacKinnonite laws. In her view, the government would ultimately decide which sexual expressions subordinate and which liberate, even though the "crackdown on particular words or images ... [would be initiated by] citizen vigilante[s] rather than ... [by] government agents."<sup>21</sup> The Supreme Court itself has recognized that "'[t]he fear of damage awards' in civil liability actions 'may be markedly more inhibiting' to free expression 'than the fear of prosecution under a criminal statute.'"<sup>22</sup> Thus, the Court has, according to Ms. Strossen, reduced scholarly distinctions between civil and criminal enforcement mechanisms to "semantic quibbling."<sup>23</sup>

In support for her argument that anti-pornography ordinances would suffer from discriminatory enforcement, Ms. Strossen recounts the experiences of several university campuses which have implemented prohibitions on hate-speech. During an eighteen month period at the University of Michigan, for example, white students brought more than twenty cases charging African American students with violating the university's speech code.<sup>24</sup> Of the two cases that resulted in sanctions for such speech, both "involved the punishment of speech by or on behalf of black students."<sup>25</sup> The one student who received a full disciplinary hearing was African American.<sup>26</sup> Similarly, Jewish students were accused of anti-Semitic expres-

---

19. STROSSEN, *supra* note 5, at 454.

20. STROSSEN, *supra* note 5, at 245. See discussion *infra* notes 22-28 and accompanying text.

21. STROSSEN, *supra* note 5, at 200.

22. STROSSEN, *supra* note 5, at 65-66.

23. STROSSEN, *supra* note 5, at 65.

24. STROSSEN, *supra* note 5, at 223.

25. STROSSEN, *supra* note 5, at 223.

26. STROSSEN, *supra* note 5, at 223 (indicating that the student had allegedly uttered homophobic and sexist comments).

sion and Asian American students were accused of anti-black and homophobic expression.<sup>27</sup> Thus, the very students who should arguably have been empowered by the code, instead found themselves the targets of punishment.

Ms. Strossen also describes Canada's experience thus far under the *Butler* regime, noting that the authorities have used *Butler* to "target[] ... gay, lesbian, and women's literature."<sup>28</sup> At least one court has "said that sex between men in and of itself [is] degrading and dehumanizing."<sup>29</sup> And officials have confiscated books by Langston Hughes, Audre Lorde, Oscar Wilde, and, ironically, by Andrea Dworkin herself.<sup>30</sup>

Ms. Strossen criticizes anti-pornography statutes on several other grounds as well. She contends that a focus on pornography distracts feminists from more urgent problems facing women.<sup>31</sup> She contends that MacKinnonite laws "perpetuate demeaning stereotypes about women," including stereotypes about women's sexual dysfunctions.<sup>32</sup> She contends that such laws harm women who voluntarily work in the sex industry;<sup>33</sup> that they reinforce political factions with patriarchal agendas;<sup>34</sup> that they suppress literary and artistic works valuable to the feminist community;<sup>35</sup> and that they equate woman-

27. STROSSEN, *supra* note 5, at 224.

28. STROSSEN, *supra* note 5, at 231.

29. STROSSEN, *supra* note 5, at 233 (quoting Karen Busby).

30. STROSSEN, *supra* note 5, at 237-38; *see supra* notes 3-4 and accompanying text.

31. STROSSEN, *supra* note 5, at 245.

32. STROSSEN, *supra* note 5, at 245.

33. STROSSEN, *supra* note 5, at 245.

34. When the Minneapolis City Council adopted a MacKinnonite law in 1983, its liberal Democratic Mayor, Donald Fraser, who had championed women's rights throughout his career, vetoed it twice on First Amendment grounds. In 1984, when Indianapolis adopted such a law, "[e]very Democratic member of the Indianapolis City Council voted against the law, while every Republican member voted for it." The National Organization for Women opposed the law and "prominent antifeminist" Phyllis Schlafly, who went on a one-woman campaign to defeat the Equal Rights Amendment in the 1970's, endorsed it. MacKinnon's closest ally in securing the law's passage was a conservative Republican woman, former Indianapolis City Council member Beulah Coughenour, who had been a leader of the Stop ERA movement. According to Sheila Sues Kennedy, a Republican feminist attorney, "[m]any supporters of this proposal have been conspicuously indifferent to previous attempts to gain equal rights for women." STROSSEN, *supra* note 5, at 77-78.

35. For example, officials removed an exhibit of works by Brazilian artist Zoravia Bettiol—a woman—from the Menlo Park, California City Hall after a female worker complained that the female nudes made her feel "violated." STROSSEN, *supra* note 5, at 135. Professor MacKinnon herself had a hand in closing down a video exhibit at the University of Michigan where she was a featured speaker at a symposium on prostitution. The exhibit contained artistic works which presented prostitutes' personal views and experiences. Strossen, *supra* note 5, at 212. At the University of Arizona in Tucson, students physically attacked graduate student Laurie Blakeslee's photographic self-portraits, which depicted the artist in her underwear. STROSSEN, *supra* note 5, at 23. Ms. Strossen points out that feminist anti-pornography arguments have even been used to label aerobics videos as "soft-porn." STROSSEN, *supra* note 5, at 97.

hood with victimhood.<sup>36</sup> Ms. Strossen predicts that such laws will ultimately deprive feminists of a powerful tool for advancing women's interests by undermining constitutional protection for political expression.<sup>37</sup> She warns that they may even provide sexually violent criminals with an excuse for their behavior,<sup>38</sup> adding another dimension to what she sees as Professor MacKinnon's "lack of concern with the moral relevance of human agency."<sup>39</sup>

### C. An Existential Defense

The final ground upon which Ms. Strossen defends pornography is existential. In Professor MacKinnon's view, human sexuality "is the dynamic of control by which male dominance—in forms that range from intimate to institutional, from a look to a rape—eroticizes as man and woman, as identity and pleasure, that which maintains and defines male supremacy as a political system."<sup>40</sup> MacKinnon claims that "women who believe they voluntarily engage in, and enjoy, heterosexual sex ... [suffer from] 'false consciousness.'"<sup>41</sup> According to Ms. Strossen, these assertions "revive tradi-

36. STROSSEN, *supra* note 5, at 245.

37. STROSSEN, *supra* note 5, at 245.

38. *See, e.g.*, STROSSEN, *supra* note 5, at 270 (describing the case of a criminal defendant who asked the trier-of-fact to consider his exposure to violent pornography as a mitigating factor in sentencing). Ms. Strossen warns that this behavior fits into a history in which criminal defendants have tried to blame their conduct on books. *Id.* at 257. In Ms. Strossen's view, exposure to pornography is an excuse for culpable behavior, not a cause for it. She suggests that Professor MacKinnon's approach to pornography reproduces the mistakes of first-wave feminists, who advocated for the prohibition of alcohol on the belief that it caused male violence against women.

39. STROSSEN, *supra* note 5, at 271 (quoting law professor C. Edwin Baker).

40. The complete quote reads as follows:

[W]hat is sexual is what gives a man an erection. Fear does; hostility does; hatred does; the helplessness of a child or a student or an infantilized or restrained or vulnerable woman does; revulsion does; death does. Whatever it takes to make a penis shudder and stiffen with the experience of its potency is what sexuality means culturally. Violation, conventionally through penetration and intercourse, defines the paradigmatic sexual encounter. Transgression, for which boundaries must first be created, then violated, is necessary for penetration to experience itself. All this suggests that what is called sexuality is the dynamic of control by which male dominance—in forms that range from intimate to institutional, from a look to a rape—eroticizes as man and woman, as identity and pleasure, that which maintains and defines male supremacy as a political system.

Catharine A. MacKinnon, *Pleasure Under Patriarchy*, in *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE* 158 (Mary Becker, Cynthia Grant Bowman & Morrison Torrey, eds. 1994).

41. STROSSEN, *supra* note 5, at 111. Strossen also presents MacKinnon's argument that "women who believe in their sexual agency are merely denying the 'unspeakable humiliation' of having been 'cajoled, pressured, tricked, blackmailed, or outright forced into sex.'" STROSSEN, *supra* note 5, at 111 (citation omitted). One feminist has even called the female orgasm "a form of manipulated emotional labour which women work[] at in order to reflect men and to maintain male values." STROSSEN, *supra* note 5, at 112 (quoting Sally Cline). This author also expresses her disdain for "sexual intercourse and general genital thrashing about ... ." STROSSEN, *supra* note 5, at 112.

tional, patriarchal, subordinating stereotypes that the feminism of the 1970s ... sought to repudiate."<sup>42</sup> In her view, human sexuality is healthy, fun, and liberating.<sup>43</sup>

In fact, Ms. Strossen argues that pornography itself can liberate women.<sup>44</sup> She observes that significant numbers of women consume pornography,<sup>45</sup> that "[w]omen ... make up a growing portion of those who produce erotic materials,"<sup>46</sup> and that lesbian pornography, in particular, serves important educational and political functions.<sup>47</sup> She "celebrates the 'wonderful diversity of [the] pornographic imagination'"<sup>48</sup> and argues that even rape scenes may liberate women by "express[ing] rebellion and individuality."<sup>49</sup> She states that she has, "[a]s a frequent traveler ... noticed that many hotels all over the United States, including some of the finest, now offer sexually explicit videos for in-room viewing," admitting openly that she herself has "certainly enjoyed!" this service.<sup>50</sup>

According to Ms. Strossen, "no credible evidence substantiates a clear causal connection between any type of sexually explicit material and any sexist or violent behavior."<sup>51</sup> She thinks that Professor MacKinnon's efforts to regulate pornography have contributed to the "sex panic" currently plaguing the United States. In the midst of this panic, "pornography" and even "sex" have become dirty words used to censor masterpieces like *The Nude Maja* by Francisco de Goya, as well as works by contemporary commercial and fine artists.<sup>52</sup> In addition, sexual harassment laws have begun to equate sex with sexism,<sup>53</sup> and the government has embarked on an all-out assault on themes of sexuality in the visual arts.<sup>54</sup> Thus, in addition to violating existing constitutional precepts and endangering the fight for women's rights, MacKinnonite ordinances, in Ms. Strossen's opinion,

42. STROSSEN, *supra* note 5, at 114.

43. STROSSEN, *supra* note 5, at 115.

44. STROSSEN, *supra* note 5, at 144.

45. STROSSEN, *supra* note 5, at 159.

46. STROSSEN, *supra* note 5, at 144.

47. STROSSEN, *supra* note 5, at 167.

48. Cass R. Sunstein, *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*, THE NEW REPUBLIC, Jan. 9, 1995, available in 1995 WL 12434028.

49. STROSSEN, *supra* note 5, at 174.

50. STROSSEN, *supra* note 5, at 165; see Sunstein, *supra* note 48, at 15 (criticizing Strossen as stressing only the "positive aspects of pornography").

51. STROSSEN, *supra* note 5, at 251.

52. See STROSSEN, *supra* note 5, at 17, 21-22 (noting different examples of paintings and statues removed from public locations).

53. STROSSEN, *supra* note 5, at 119-40.

54. STROSSEN, *supra* note 5, at 92-106.

promote a perverted version of human sexuality.

## II. ANALYSIS: CELEBRATING SUBORDINATION OR REFUTING THE PORN SCARE?

In *Defending Pornography*, Ms. Strossen goes far beyond a mere affirmation of First Amendment principles, seeming, ultimately, to celebrate pornography in whatever form it takes.<sup>55</sup> She “does not present counter-arguments except in their most absurd form, and she does not investigate distinctions that might complicate her own view or lead to intermediate positions.”<sup>56</sup> Ultimately, therefore, she fails to refute Professor MacKinnon’s central thesis: that pornography debases women and that its message “find[s] an echo in wider society.”<sup>57</sup> After examining two major flaws in Ms. Strossen’s argument, this Section will discuss several of its strengths.

First, Ms. Strossen only superficially analyzes the relevant constitutional issues. The government can constitutionally regulate — and even prohibit — many types of speech, including unlicensed medical and legal advice, false or misleading advertisements, libel, fraud, perjury, bribery, and threats.<sup>58</sup> In order to successfully argue that a ban on pornography would violate the Constitution, then, one must distinguish sexually explicit expression from these categories of speech. But Ms. Strossen fails to do so, “rest[ing her argument] on the authority of a legal abstraction that can’t do the work.”<sup>59</sup> In addition, she advocates a marketplace-of-ideas version of free speech so piously that she ignores the familiar and potentially fatal criticisms of that theory.<sup>60</sup>

Second, Ms. Strossen attempts to make her case for free speech by using actual examples of censorship in schools, businesses, and public spaces. But those examples are not so clearly egregious as she seems to think. Consider the following:

---

55. See *supra* notes 42-49 and accompanying text.

56. Sunstein, *supra* note 48, at 7.

57. Melvin I. Urofsky, *Defending Pornography: Free Speech, Sex, and the Fight for Women’s Rights*, 29 U. RICH. L. REV. 401, 416 (1995) (reviewing Nadine Strossen’s book).

58. See generally LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 789-94, 849-56, 861-86, 890-919 (2d ed. 1988).

59. Sunstein, *supra* note 48, at 10.

60. Although Professor Urofsky considers this “a task for another book,” I do not. Urofsky, *supra* note 57, at 418. In order to successfully attack Professor MacKinnon’s construction of pornography, Ms. Strossen has to refute the criticisms of the marketplace-of-ideas version of free speech. Her failure to do so seriously undermines her argument. The closest she comes to taking on these criticisms is to say that the importance of free speech to the civil rights and feminist movements “belie[s] the central contention of those who claim an incompatibility between free speech and equality: that equality is an essential precondition for free speech.” Strossen, *supra* note 15, at 464.



- In 1992, English Professor Nancy Stumhofer complained that *The Nude Maja*, painted by Francisco de Goya, “embarrassed her and made her female students ‘uncomfortable.’” In response, Pennsylvania State University officials removed the work from the front wall of a classroom used for art history classes, where it had hung with reproductions of other masterpieces.<sup>61</sup>
- In 1993, the University of Nebraska at Lincoln ordered a graduate teaching assistant to remove a photograph from his desk on the grounds that it contributed to a hostile environment for female students, staff, and faculty. The photograph showed his wife wearing a bathing suit.<sup>62</sup>
- In 1993, Vermont authorities unveiled a new mural in the conference room of a state building. The mural showed Christopher Columbus (with “battle-axes and crucifix raised”) surrounded by bare-breasted Native American women. After several female employees complained, the state permanently concealed the painting.<sup>63</sup>
- In 1994, in response to a complaint made by a female student, the Chicago Theological Seminary disciplined Professor Graydon Snyder for using a Talmudic story to illustrate Jewish and Christian conceptions of culpability. In the story, “a man ... falls off a roof, lands on a woman, and accidentally has intercourse with her ... .” According to the Talmud, he is innocent of wrongdoing because the act was unintentional.<sup>64</sup>

Although Ms. Strossen apparently believes that these four examples illustrate a dangerous, uncontrolled, MacKinnonite sex panic, it is not clear to this writer that the images they involve are utterly innocuous. Much as I admire the work of Francisco de Goya, for example, it is not clear to me that an image of a frontally-nude, reclining woman—staring seductively at the viewer with her arms clasped above her head and her nipples erect—is conducive to an atmosphere of equality between male and female students. Ms. Strossen’s discussion of the incident, however, “suggests [that] ... since Goya

---

61. STROSSEN, *supra* note 5, at 22. Prior to removing the painting, “university officials offered to move [it] ... to a less prominent position in the classroom, such as the back wall,” to move Professor Stumhofer’s classes, or to remove the Goya whenever she taught in that particular classroom. *Id.*

62. STROSSEN, *supra* note 5, at 127.

63. STROSSEN, *supra* note 5, at 21-22.

64. STROSSEN, *supra* note 5, at 28.

was a celebrated painter, a complaint about the hanging of the painting on campus walls is automatically ridiculous."<sup>65</sup>

She describes the incidents in Nebraska and Vermont in similarly conclusory terms, assuming that her readers will naturally find the behaviors of university and state officials to be absurd.<sup>66</sup> Yet it is not clear to me that schools should allow teachers to greet their female students with photographs of adult women in a bathing suits. Nor is it clear to me that female officials can preserve their dignity and authority when they sit at conference tables beneath murals depicting bare-breasted women and fully-clothed, male conquerors. Furthermore, in a nation in which over a million women have survived rape,<sup>67</sup> the suggestion that a man could "accidentally" have nonconsensual sexual intercourse with a woman — and thereby escape culpability — is reckless and offensive.<sup>68</sup>

Ms. Strossen's defense of pornography suffers from other weaknesses as well. She reduces the debate over a civil, versus a criminal, enforcement mechanism to "semantic quibbling;"<sup>69</sup> she paints too rosy a picture of the sex industry and its workers; she ignores the possibility that pornography might reduce women's autonomy and individualism<sup>70</sup> (while bemoaning that loss for the creators and consumers of pornography in the event that MacKinnonite laws took hold); she exaggerates the positive aspects of sexually explicit expression; and she brushes aside any possible connection between sexual violence and pornography.<sup>71</sup> In addition, she does not ap-

---

65. Margaret McIntyre, *Sex Panic or False Alarm? The Latest Round in the Feminist Debate Over Pornography*, 6 UCLA WOMEN'S L.J. 189, 233 (1995) available in WL, JLR Database. Note that classes other than those concerning art history met in the room in which the Goya hung and that *The Nude Maja* occupied a central position on the front wall, behind the lectern.

After Professor Stumhofer distributed a portion of John Berger's book, *Ways of Seeing*, and invited people to read the article and discuss it with her, two men (one faculty member and one maintenance worker) brought a sexual harassment case against her. STROSSEN, *supra* note 5, at 129. They claimed that the article harassed them with pictures of nude women. Ms. Strossen's "failure to even suggest that the response was backlash against a woman speaking out about sexual harassment undermines her argument." McIntyre, *supra* at 233.

66. See *supra* notes 62-63 and accompanying text.

67. Carole J. Sheffield, *Sexual Terrorism: The Social Control of Women*, in ANALYZING GENDER: A HANDBOOK OF SOCIAL SCIENCE RESEARCH 183-84 (Beth B. Hess & Myra Marx Ferree, eds. 1987).

68. STROSSEN, *supra* note 5, at 28. It makes no difference, despite Ms. Strossen's intimations to the contrary, that Professor Snyder, an "ordained minister," had taught the parable for thirty years or that the story had its source in the Bible. See *id.*

69. STROSSEN, *supra* note 5, at 247-64.

70. Professor MacKinnon is correct that "liberalism has never understood that the free speech of men silences the free speech of women." MACKINNON, *supra* note 1, at 156.

71. STROSSEN, *supra* note 5, at 65.

pear to take sexual harassment seriously.<sup>72</sup>

Despite these failings, however, Ms. Strossen argues quite convincingly that the feminist community should, for pragmatic reasons, resist Professor MacKinnon's approach to pornography. She presents powerful anecdotal evidence to support her contention that MacKinnonite laws would ultimately silence the voices of feminists,<sup>73</sup> lesbians, and gay men.<sup>74</sup> She argues persuasively that the pornography debate has distracted women from fighting the real causes of sexual violence and discrimination — like sex-segregated labor markets, unequal pay, and inadequate health and child care.<sup>75</sup> And she presents a sobering picture of Professor MacKinnon's relationship to political factions with patriarchal agendas.<sup>76</sup>

In addition, Ms. Strossen presents an admirable and impassioned defense of the arts. In my view, she correctly advises feminists to oppose laws and policies that will chill artistic speech.<sup>77</sup> Even incremental restraints on such expression should give us pause. Sexism and misogyny permeate world culture so thoroughly that feminists cannot attack them through censorship without losing a great deal. I cannot agree with Marilyn French, that in “[v]isiting galleries and museums (especially the Pompidou Center in Paris) I feel assaulted by twentieth-century abstract sculpture that resembles exaggerated female body parts, mainly breasts.”<sup>78</sup> I myself felt exhilarated at the

---

72. *But see* Urofsky, *supra* note 57, at 411 (claiming that “Strossen knows quite well that there are many real cases of sexual harassment and exploitation ...”). Ms. McIntyre points out that women have for years had to change their behavior to fit into a male workplace and that their acquiescence in the matter was “tacitly accepted.” But in order to get men to change their behavior to comport with women's needs, the law must demand it. McIntyre, *supra* note 65, at 235.

73. STROSSEN, *supra* note 5, at 168-70.

74. STROSSEN, *supra* note 5, at 104-06, 168-70.

75. STROSSEN, *supra* note 5, at 266-68.

76. STROSSEN, *supra* note 5, at 90-91, 217-18.

77. STROSSEN, *supra* note 5, at 21-23, 99-106.

78. STROSSEN, *supra* note 5, at 104 (quoting MARILYN FRENCH, *THE WAR AGAINST WOMEN*). Artists present women as solely sexual beings far too often and feminists are correct to challenge this practice. Nevertheless, women are, in reality, sexual beings; sexuality does not comprise our sum total, but it is one aspect of our humanity. In addition, women have an undeniably special connection to reproduction. We cannot excise sexuality from images of women without foregoing images of women entirely. Taking the sexuality out of women in art and literature would be like taking the African ancestry out of African-Americans. We would wind up with only images of European-looking people.

I wonder what Ms. French thinks of feminist sculptor Judy Chicago and her very famous work, *The Dinner Party*. That work consists of a table set with numerous hand-crafted ceramic plates. Each plate depicts the abstract image of a vulva, and each vulva represents a different, historically important woman. Judy Chicago intended the work to exalt female sexuality, to describe female genitalia as beautiful, to celebrate the female reproductive anatomy in the same way that the phallus is celebrated, and to educate viewers about women's history. But one could certainly argue that the plates reduce these historical figures to their genitalia.

Pompidou Center, elated at the prospect of seeing in person so many fine works of art that I had previously seen only in books.<sup>79</sup>

Finally, Ms. Strossen offers a far more salubrious viewpoint on human sexuality than does Professor MacKinnon who "embraces a deeply reactionary theory of the flesh ... ." <sup>80</sup> According to Lisa Duggan, Nan Hunter, and Carole Vance, Professor MacKinnon's theory evidences

several ... familiar themes: that sex is degrading to women, but not to men; that men are raving beasts; that sex is dangerous for women; that sexuality is male, not female; that women are victims, not sexual actors; that men inflict "it" on women; that penetration is submission; [and] that heterosexual sexuality, rather than the institution of heterosexuality is sexist.<sup>81</sup>

They rightly consider it "ironic that a feminist position on pornography incorporates most of the myths about sexuality that feminism has struggled to displace ... ." <sup>82</sup> Like a conservative political theorist who worries that sexual freedom will unleash violence at the body politic, Professor MacKinnon worries that sexual expression will "unleash violent desire at women's bodies."<sup>83</sup> In contrast, Ms. Strossen argues that sex is a healthy, natural function and that women's liberty depends in part on their ability to enjoy and express their sexuality. In her view, "free sexual expression is intimately connected with equality."<sup>84</sup>

### III. CONCLUSION: THE NEED FOR A MIDDLE PATH

Over a million American women — or "nearly 10 percent of the current female population" — have survived rape.<sup>85</sup> In 1991, one rape occurred every five minutes.<sup>86</sup> This omnipresent threat of sexual violence prevents women from freely entering the public sphere.

---

79. It seems to me that women cannot ask for a sort of revisionist history that would delete all reference to their subordination; we would dishonor ourselves and our foremothers if we removed that history from the public dialog. I am not sure how to resolve the problems presented in the four examples discussed at page 401, however. I sincerely believe that the images at issue hamper women's ability to thrive educationally and professionally. But I worry that regulating such images in schools, businesses, and public spaces will chill artistic expression.

80. STROSSEN, *supra* note 5, at 116 (quoting feminist law professor Jeanne Schroeder).

81. STROSSEN, *supra* note 5, at 107-08.

82. STROSSEN, *supra* note 5, at 107-08.

83. Edward de Grazia, *Defending Pornography*, THE NATION, Feb. 20, 1995, at 242, 260.

84. Strossen, *supra* note 5, at 477 (quoting Kenneth Karst).

85. Emilie Buchwald, Pamela R. Fletcher & Martha Roth, *Are We Really Living in a Rape Culture?*, in TRANSFORMING A RAPE CULTURE 9 (Emilie Buchwald, Pamela R. Fletcher & Martha Roth, eds. 1993).

86. Correcting for under-reporting, the FBI calculates that one rape occurs every two minutes. Sheffield, *supra* note 67, at 183.

We do not possess the security — the freedom from others' violence — that John Locke identified as the defining characteristic of liberty.<sup>87</sup> Professor MacKinnon's anger about such violence is therefore appropriate. The pornography she targets in her model ordinance probably adds little of value to the public discourse. It encourages misogyny and sexism and contributes at least to discrimination, if not to violence, against women. Although MacKinnonite laws would decrease the liberty of producers, distributors, and consumers of pornography, shrinking the "marketplace" with respect to their ideas, such laws would also (perhaps dramatically) increase the liberty and equality of female citizens. Governments might, therefore, view certain restrictions on pornography as furthering a compelling state interest.

But feminists should move cautiously in this area, paying heed to Ms. Strossen's catalogue of horrors. We should seriously consider the possibility that MacKinnonite laws would ultimately advance a patriarchal political agenda, silencing the voices of feminists and lesbians. And we should continue to embrace our sexuality. We should, in addition, revel in the arts, guarding our history of subordination just as we guard our history of strength, beauty, humanity, and resistance. And finally, we should not allow the pornography debate to distract us from the real-world problems facing women.

Perhaps, in the end, Professor MacKinnon overstates both the inherent evils of pornography and its connection to violence and discrimination against women. Pornography exists within a patriarchal culture fraught with habits, traditions, and beliefs that subordinate women.<sup>88</sup> If women want to attack misogyny, they should attack its roots in politics, science, law, and theology. They should work for equitable workplaces, schools, and homes. In the words of Carlin Meyer,

[i]t seems implausible, to say the least, that pornography is more centrally responsible either for rendering erotic or for making possible the actualization of male violence against women than are the ideologies and practices of religion, law, and science. These institutions far more deeply and pervasively undergird male domination of women.<sup>89</sup>

---

87. Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517, 520, 520 n.11 (1993) (quoting Locke discussing "that tranquillity of spirit which comes from ... security ...").

88. See Catherine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 11-18 (1985) (discussing the subordination of women in the context of patriarchal culture and pornography).

89. STROSSEN, *supra* note 5, at 266 (quoting law professor Carlin Meyer).

Pornography is just the symptom of a larger problem. Feminists must, therefore, forge a middle path between the philosophies of Catharine MacKinnon and Nadine Strossen. We must acknowledge and resist pornography's harms, but we should not digress into an argument for traditional morality that would ultimately betray our movement.