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## A Feminist Agenda for Gay Men (Or: Catharine MacKinnon and the Invention of a Sex-Based Hope)

Shannon Gilreath<sup>†</sup>

*Every Night & every Morn  
Some to Misery are Born . . .  
Some are Born to Endless Night*  
— William Blake, *Auguries of Innocence*<sup>1</sup>

*It's a depressingly masculine world we live in, Dolores.*  
— Vera Donovan, in Stephen King's *Dolores Claiborne*<sup>2</sup>

### Introduction

In this Article, I concentrate on two main themes: (1) I use the work of Professor MacKinnon and her colleague Andrea Dworkin to critique the destructive role of pornography in gay men's lives, and (2) I use this theory to expose the dangerousness of the poststructuralist theoretical project generally named "queer theory" when it is offered as an explanation of our lives and as a tool for "liberation." I aim to show just exactly what its engagement with reality on a contingency basis only (making it an antithesis of feminism) costs. Of course, queer theory and queer legal theory are not monoliths. Not all work identifying with queer theory or as queer aligns itself with heterosexual male supremacy in the ways I critique in this essay.<sup>3</sup> However, much of, if not most of, queer

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1. William Blake, *Auguries of Innocence*, POETRY FOUND., <https://www.poetryfoundation.org/poems-and-poets/poems/detail/43650> (last visited Apr. 1, 2017).

2. DOLORES CLAIBORNE (Columbia Pictures 1995).

3. Professor Francisco Valdes's work is a noteworthy example. See, e.g., Francisco Valdes, *Outsider Scholars, Critical Race Theory, and "OutCrit"*

theory and queer legal theory shares the characteristics I critique below.

Engaging both pornography and queer theory simultaneously as I do here makes sense, since queer theory emerged, as Professor Janet Halley has said, principally as a line of defense against Professor MacKinnon's recognition of pornography as a violation of civil and human rights.<sup>4</sup> Professor Halley's supposition about the nexus of queer theory and pornography in legal theory echoes, as do many of her primary points, the work of Judith Butler. Butler claimed, as Halley would go on to do, that feminist critique of pornography is itself an act of sex discrimination—a practice of sexual subordination—problematically entrenching gender norms.<sup>5</sup> In this upside-down postmodern thinking, pornography is a/the solution to the problem of gender, not a primary engine of the gender binarism that enslaves us. The gay liberation alternative to queer theory's madness is Professor MacKinnon's feminism—which is to say: sex equality feminism: FEMINISM UNMODIFIED.<sup>6</sup>

It is, in my view, essential that the gay agenda be a feminist agenda. Professor MacKinnon's feminism made it possible for survivors of pornography to be heard. Her work made it possible for pornography's potent male supremacy to be challenged, even by gay men. It made it possible for me to say what it is necessary to say in this context as a gay man for gay men.

### I. Pornography: The Real and the Un-Real

*Pornography is a means through which sexuality is socially constructed, a site of construction . . . .*<sup>7</sup>

When you are gay in this culture, your experience with your own sexuality is often the experience of being alien to it. In very

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*Perspectivity: Postsubordination Vision as Jurisprudential Method*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 399 (Francisco Valdes et al. eds., 2002) (considering the ways outsider scholarship from Critical Race Theory, feminist, queer, and other perspectives can inform one another).

4. Halley argues that queer theory emerged, at least in part, as an opposition force to the MacKinnon/Dworkin anti-pornography civil rights ordinance (discussed in Section IV of this Article). Ian Halley, *Queer Theory by Men*, 11 DUKE J. GENDER L. & POLY 7, 50 (2004). (“[W]e probably wouldn't have queer theory if there had not been the need for articulate pro-sex opposition to cultural feminist moralism and to male/female regulatory ambitions (for example, anti-pornography ordinances).”).

5. See Judith Butler, *Against Proper Objects*, in FEMINISM MEETS QUEER THEORY 1, 9–10 (Elizabeth Weed & Naomi Schor eds., 1997).

6. The reference here is, of course, to Professor MacKinnon's book *Feminism Unmodified: Discourses on Life and Law*. CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1988).

7. CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 139 (1989).

real ways, it is stolen from one. First, it is stolen by parents who, perceiving some difference—usually a gender-based difference—react. The parental impulse, in perceiving gender nonconformity, is to transfer it to the sexual, and to attempt to correct it. Actually, I think the supposition on the part of parents that gender and sexuality are inextricably intertwined is exactly right, and exactly in line with Professor MacKinnon’s explanation of sexuality, in the sense that “sexuality itself is a social construct, gendered to the ground,”<sup>8</sup> and that “[g]ender is sexual.”<sup>9</sup> The first sexualized injuries of a gay man’s life have their root here. The home, the family, the parental unit is the *factum est primum* of sexual abuse. Gay youth are disproportionately homeless, addicted, prostituted, and pornographed on account of the desire of many parents to enforce the sexual meaning of gender at early stages of development.<sup>10</sup> Gay youth are also disproportionately dead on account of it.<sup>11</sup>

If we survive this—hopefully physically *and* existentially—we manage some form of adult life as “gay” or (increasingly) “queer.” But what is this life? And how frequently does anyone actually ask this question? Sometimes I think about “coming out” as a metaphor for claiming—sometimes, often times, over spilled blood and broken bones—a gay identity, and I wonder: What does one “come out” into? The honest, unsettling answer is that one frequently comes out into a pornographic sexuality that is no less scripted and no less heterosexual than the enforced sexuality of one’s youth—and no less lethal. In gay pornography, “[v]isual and verbal intrusion, access, possession, and use is predicated upon and produces physical and psychic intrusion, access, possession, and use.”<sup>12</sup> And it is “a means through which sexuality is socially constructed, a site of construction, a domain of exercise.”<sup>13</sup> When young gay men tell me that they use pornography to learn how to have sex, this site of construction is live.

And what exactly do they see in pornography?

Celebration of the straight masculine ideal—either as celebration of the subordinating power of straight masculinity or denigration of gay submission to it—is the predominating theme of

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8. *Id.* at 198.

9. *Id.* at 197.

10. SHANNON GILREATH, *THE END OF STRAIGHT SUPREMACY: REALIZING GAY LIBERATION* 134–36 (2011).

11. *Id.* at 135.

12. MACKINNON, *supra* note 7, at 195.

13. *Id.* at 139.

gay pornography. It is also the currency of popular pornography websites. Gay pornography reinforces the idea that the man who does the fucking is not gay. The man who gets fucked or “owned” or “hazed” is feminized and treated like property. In an advertisement for the gay porn site hazehim.com, a clothed young man in a football jersey, his erection visibly protruding from the fly of his jeans, approaches another young man, stripped and on all fours, from behind. The caption over the head of the clothed man reads, “Your ass is mine freshman.” The caption next to the stripped man reads, “Oh No!!! Here Comes the Quarterback.” The college quarterback represents the masculine, straight ideal. The hazing context allows for the fullness of masculinity’s mystique. The quarterback might be homosexual, but it is more likely that he will fuck the other man in the context of hazing, as a form of degradation and punishment, not for his own sexual gratification per se. The fact that the fucker does not enjoy the fucking as sex, existentially, makes him more believably straight; and it makes the sex somehow sexier. Indeed, the fact that the sex is intended as violation makes it sexier, the stripped man’s protest belied by his faintly visible smile.

In this way, gay pornography, as Professor MacKinnon explains of pornography generally, “institutionalizes the sexuality of male supremacy, which fuses the eroticization of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constitutes the meaning of that sexuality.”<sup>14</sup> This realization invites us to ask *what* sexuality, and *whose*? As MacKinnon explains:

The larger issue raised by sexual aggression for the interpretation of the relation between sexuality and gender is: what is heterosexuality? If it is the eroticization of dominance and submission, altering the participants’ gender does not eliminate the sexual, or even gendered, content of aggression. If heterosexuality is males over females, gender matters independently. Arguably, heterosexuality is a fusion of the two, with gender a social outcome, such that the acted upon is feminized, is the “girl” regardless of sex, the actor correspondingly masculinized. Whenever women are victimized, regardless of the biology of the perpetrator, this system is at work. But it is equally true that whenever powerlessness and ascribed inferiority are sexually exploited or enjoyed . . . the system is at work.<sup>15</sup>

Therefore, whatever homosexuality is, and however it is supposed to be oppositional, the homosexuality constructed through

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14. *Id.* at 197.

15. *Id.* at 178–79.

gay pornography is thoroughly heterosexual in function. In gay pornography, we see what heterosexuality is.

## II. Queer Legal Theory: Pornography as Identity

Queer theory emerged first as a defense against anti-pornography feminism.<sup>16</sup> What it offers queer people as an alternative to feminism is an utterly pornographic identity in which sexual injury is rarely, if ever, real. Consider, for example, the queer theory response to *Oncale v. Sundowner Offshore Services*.<sup>17</sup> *Oncale* established that same-sex sexual harassment was actionable;<sup>18</sup> thus, men could no longer sexually dominate more vulnerable men in the workplace and be untouchable.

Joseph Oncale's life was one of pornographic torture. While working on an oil rig in the Gulf of Mexico, he was subjected to sexual torture by several male co-workers and supervisors.<sup>19</sup> He was sexually assaulted on several occasions during which he was held down while a co-worker placed his penis on Oncale's body.<sup>20</sup> He was threatened with rape and only narrowly escaped one rape attempt perpetrated in a communal shower.<sup>21</sup> Eventually, fearing for his safety, Oncale quit his job.<sup>22</sup> The U.S. Supreme Court found his claims of sex discrimination through same-sex sexual harassment actionable under Title VII.<sup>23</sup> Professor MacKinnon wrote an amicus brief in support of Oncale, urging the Court to recognize male-male sexual harassment as actionable under the statute.<sup>24</sup> MacKinnon's brief recognized that same-sex sexual harassment is sex discrimination, and that "[m]en raping men is a serious and neglected social problem with deep roots in gender inequality."<sup>25</sup> Often, as MacKinnon notes in her brief, "men perceived not to conform to stereotyped gender roles [are] the targets of male sexual aggression."<sup>26</sup>

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16. See Butler, *supra* note 5, at 9–11.

17. 523 U.S. 75 (1998).

18. *Id.* 79–80.

19. *Id.* at 77.

20. Brief for Nat'l Org. on Male Sexual Victimization, Inc. et al. as Amici Curiae Supporting Petitioner, *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998) (No. 96-568), *reprinted in* 8 UCLA WOMEN'S L. J. 9, 13 (1997) [hereinafter MacKinnon Amicus Brief].

21. *Id.*

22. *Oncale*, 523 U.S. at 77.

23. *Id.* at 82.

24. MacKinnon Amicus Brief, *supra* note 20 at 9, 14.

25. *Id.* at 14.

26. *Id.* at 20.

Professor Janet Halley, however, offered a queer theory critique of the *Oncale* decision and condemned the result as an assault on gay male sexuality.<sup>27</sup> In order to justify her conclusions, Halley imagined Oncale's rape ordeal as a pornographic "fantasy" come to life.<sup>28</sup> According to Halley (and every patriarchal apologist for rape who has ever lived), Joseph Oncale's no really meant yes. Oncale really *wanted* this rape *as a gay man*.<sup>29</sup> He wanted to be sexually dominated by (ostensibly) straight men. Halley writes:

We can imagine a plaintiff with these facts willingly engaged in erotic conduct of precisely the kinds described in Oncale's complaint, or engaged in some of that conduct and fantasized the rest, or, indeed, fantasized all of it—and then was struck with a profound desire to refuse the homosexual potential those experiences revealed in him.<sup>30</sup>

Halley's pornographic fantasy of Oncale's real life is an extension of the ethic of derealizing the real that flavors queer theory as an extension of postmodernism.<sup>31</sup> It also clearly demonstrates how "[q]ueer theory . . . has in significant ways aligned itself with male supremacy and its regulation of the general erotic economy that gives meaning to women's and men's sexual lives."<sup>32</sup>

As an epistemological project—as an explanation of how we know who we are as gay men and women—queer theory effectively turns "the Closet" inside out. The Closet ordinarily functions as a shroud. It is the place to which gay people retreat in order to escape persecution and stigma. The price for this escape is invisibility. Thus, in order to be "free" from stigma (and consequently to have or retain any value whatsoever) in this meanest conceptualization of what that means, gays must accept their place in the heterosexual hierarchy. Just as gays had forced the door of this existential deathtrap open, queer theory came along and said that in order to live meaningful, fulfilled lives—indeed in order to *be*—gays/queers should open ourselves up to the erotic possibilities of the very sexual hierarchy that is the engine of male supremacy. This means for gay men (as Halley reveals in her *Oncale* critique) that to be fucked by

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27. Janet Halley, *Sexuality Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 182, 183 (Catharine A. MacKinnon & Reva B. Siegel eds., 2004).

28. *Id.* at 192.

29. It is important to note that Joseph Oncale, so far as I am aware, never identified as gay.

30. Halley, *supra* note 27, at 192.

31. See Catharine A. MacKinnon, *Points Against Postmodernism*, 75 CHI.-KENT L. REV. 687, 704–05 (2000).

32. Marc Spindelman, *Discriminating Pleasures*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 201, 202. (Catharine A. MacKinnon & Reva B. Siegel eds., 2004).

a straight man—to be dominated sexually—is the apogee of liberation.<sup>33</sup>

Thus, in the insistence on the absence of all limits as the essence of sexual liberation, queer theory suggests something much more alarming than that lesbians and gay men cannot be legally liable for the sexual injuries they cause. Instead, it suggests that such sexual injuries are not possible or, more precisely, are a function of the victim's own internal homophobia—his refusal to live outside of the Closet. If this is what Halley means when she says that queer theory deemphasizes the differences between heterosexual and homosexual,<sup>34</sup> then we should all—gay and straight alike—be terrified of it. Whatever other conclusions may be drawn from it, it certainly illumines what Halley means when she says that queer theory “thinks it is fine to be ‘queer in the streets, straight in the sheets.’”<sup>35</sup> Sex equality feminism, by contrast, works to undermine male supremacy. The life-force of feminist jurisprudence is the belief that in order for any of us to exercise any legal right—certainly the right to free speech or the right to equality or the right to privacy—we must first have an integrity of the body that is absolute.

### III. Pornography and Male Supremacy

It is worth noting that Janet Halley, openly lesbian, claims to articulate queer theory in a *male* voice.<sup>36</sup> It is no surprise, given her project, that Halley would desire to align herself with a heterosexual male agenda or that queer legal theory would be distinctly heterosexual in functionality and, just below the surface, in theory. Male supremacy is the heart of a “queer” politics that begins with the appropriation of gay identity and ends with its elimination—its subsumption into heterosexuality.<sup>37</sup>

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33. See Halley, *supra* note 27, at 192.

34. *Id.* at 194.

35. *Id.*

36. See Robyn Wiegman, *Dear Ian*, 11 DUKE J. GENDER L. & POL'Y 93, 93 (2004).

37. Heterosexual objectification of gay-ness and, in particular, of gay men is, in fact, the root of queer theory. The seminal (and this is an intentional pun) work in this enterprise was done by a heterosexual woman, Eve Kosofsky Sedgwick, who made gay men the primary object of her theorizing. See EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* 16 (1990). This is a curious detail—not an unimportant one—to process and deconstruct. Sedgwick, among the most celebrated of queer theorists, reflected and propped up gay male masculinity. Interestingly, like Halley's adoption of a male *nom de plume*, Sedgwick went so far as to say that her identity was that of a “gay man.” See Emily Apter, *New Conjugations: On Eve Kosofsky Sedgwick*, ARTFORUM (Sept. 2009), <https://www.artforum.com/inprint/issue=200907&id=23498>. This shift by one of queer theory's most celebrated

Consider Janet Halley's (writing as Ian Halley) "queer" embrace of Professor Duncan Kennedy's defense of male supremacy in his book *Sexy Dressing, Etc.*<sup>38</sup>:

[Kennedy] argues from a position of highly identified "erotic interests"—his own—which he bluntly characterizes as those of a heterosexual white middle-class male who wants there to be women (on the street, in the media, at work) who can afford to be erotically thrilling *to him* . . . . The project is unequivocally pro-sex.

To me, moreover, it is distinctly "queer" in its analysis of sexuality, power, and knowledge. It fragments and "flips" the male/female model . . . ; however, because its reasons for doing so emerge not from Freud, but from social theory, the resulting pattern of sexual complexities is more explicitly political . . . . It's not feminist. It Takes a Break from Feminism. Moreover, seeing it as "queer" instead—*because* of its embrace of male heterosexual erotic interests—provides deep satisfaction to my own ambition that queer work would be able to Take a Break not only from these feminist structures, but also the homo- and bi-supremacy that more or less go with the term so far.<sup>39</sup>

In calling Kennedy's straight-male "algorithm" for maintaining straight male supremacy "queer,"<sup>40</sup> Halley lays queer theory's cards on the table. In her reimagining of Oncale's ordeal, the acme of homosexual male sexual experience is taken to be rape. In her reading of Kennedy, the theme is broadened to include sexual objectification and intrusion generally. Halley claims this "flips" the male/female model, thus undermining structuralism of the feminist sort that Kennedy claims is "paranoid."<sup>41</sup> But, of course, nothing is flipped here. One needs to look no further than gay male pornography for evidence.

A popular genre of this pornography is "gay for pay" porn, in which an ostensibly straight man is induced into sex with a gay-identified man by one of two manipulations: either the straight man is persuaded to have sex with the gay man by the mediating influence of a woman, either for promise of sex with the woman (whom he really wants), or because she tells him it turns her on sexually to see him with another man; or he is induced into pornography through an exploitation of sheer economic desperation, i.e., by promise of money, hence the "gay for pay" styling of much of this material.<sup>42</sup> In the first scenario, wherein a

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progenitors is not individualistic.

38. DUNCAN KENNEDY, *SEXY DRESSING, ETC.* (1993).

39. Ian Halley, *Queer Theory by Men*, 11 DUKE J. GENDER L. & POL'Y 7, 29 (2004).

40. *Id.* at 29.

41. *Id.* at 29, 33; KENNEDY, *supra* note 38, at 157.

42. For a more detailed discussion, see GILREATH, *supra* note 10, at 174–75.

straight man is induced to have sex with a gay man because he wants a woman, the intractability of the male/female model, as Halley styles it, should be obvious enough.

The second scenario, in which money serves as a form of force, may need more unpacking. In the system of male supremacy, money is acutely sexual and is, indeed, indistinct from heterosexuality in operation, such that heterosexuality as we know it would cease to exist if the money were extracted from it.<sup>43</sup> “Gay for pay” pornography is in keeping with this general script of male supremacy because what makes sex with straight men sexy is that, in each of these cases, gay men work out the “objectification” of the straight men in explicitly straight male terms. In other words, this pornography reveals that masculinity follows from the use of money as force, primary in the acquisition of sex, and internalized in gay men as a function of the masculine process taken as the route to value. “A commitment to money as such follows as an obvious and public commitment to the display of masculinity as an aggressive and an aggrandizing drive.”<sup>44</sup>

A scene from the gay pornographic website rawrods.com opens with the protagonist, “Rock” (of the three men in the film, his is the only name we know), working on his laptop. Rock represents all that is most desirable about the pornographed male ideal, principally that he is not gay at all—not really. He is bisexual, which means that, like a real man, he also fucks women. He is also the flick’s straight man because he is a capitalist. Rock has the power of money. The two other men in the scene come to Rock because they need financial help. Rock makes his money by making pornography, so he is paradigmatically straight in that he has commodified sex and profits from it. On this point, though, the script is interesting, because Rock is not the character who proposes the exchange of sex for money. He hints at it, hesitantly. It is left to the gay figures to offer themselves, underscoring that this is their purpose and casting the gay men unequivocally as the “whores.”<sup>45</sup>

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43. As Andrea Dworkin observed,

Money is primary in the acquisition of sex and sex is primary in the making of money: it is tied into every industry through advertising . . . , or items are eroticized in and of themselves because of what they cost. In the realm of money, sex and women are the same commodity. Wealth of any kind, to any degree, is an expression of male sexual power.

ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 20–21 (1981).

44. *Id.* at 22.

45. I should acknowledge that “gay pornography” is something of a misnomer. The word “pornography” does not mean “writing about sex” or “depictions of the erotic” or “depictions of sexual acts” or “depictions of nude bodies” or “sexual representations” or any other such euphemism. It is “derived from the ancient Greek

As the scene progresses to sex, Rock disrobes to reveal his enormous cock, 10.5 inches and extremely thick.<sup>46</sup> Rock starts to put on a condom, at which point the other men protest, “Raw ridin’ only.” That the sex is bareback is important to the pornographic image. It valorizes real men as those who fuck “raw.”<sup>47</sup>

The sex that follows is very rough. Rock pounds the smaller of the two visitors. The larger visitor then takes over—but only when Rock indicates that it is okay for him to do so. Rock, as the straight man, owns the gay body he is using, and only he can grant access to it. Rock controls the action, directing as he watches.<sup>48</sup> The scene

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words *pornē* and *graphos*, meaning “writing about whores.” See DWORKIN, *supra* note 43, at 199–200. “Pornē” was the designation for the lowest of the sexual low: the brothel whore, available to all male citizens. The *pornē* were sex slaves. “Graphos” means “writing, etching, or drawing.” *Id.* So we get “pornography”: the graphic depiction of whores. I say “gay pornography” is a misnomer because originally, of course, pornography was the graphic depiction of women as whores (the *pornē*). Gay pornography must have come later. But it is still the graphic depiction of whores—male whores. That use of the adjective “male” is necessary to distinguish from those people defined as whores by birth, as Kate Millet observed: women. The central insight of Kate Millett’s now classic *Sexual Politics* is that gender is created by sexuality through the process of the attachment of certain political and social meanings to biological sex—a process that Millett describes as beginning in the cradle. The perfection of this process—the “perfection of the feminine existence”—as Millett puts it in her reading of Henry Miller, is the production of the “ideal woman” as “a whore.” See KATE MILLETT, *SEXUAL POLITICS* 16, 301 (1970). In gay pornography, a man takes the place of a woman. So perhaps there is no misnomer at all. This is made plain by the ubiquitous presence of the straight man (or his proxy the “straight-acting” gay male) even in gay pornography. Whores exist to serve a man—all men—sexually.

46. Dworkin explains that the penis is a “symbol of terror.” DWORKIN, *supra* note 43, at 15. The bigger the penis, the more damage it can do; perversely, in gay pornography, the more desirable it is.

47. Barebacking, the subculture euphemism for sex without a condom, conjures images of the North American cowboy and his quintessential masculinity so important to the iconography of American male power and to those who want to claim its legitimacy. Also, a useful way of understanding the raw fuck, following on Dworkin’s explication of the male power to terrorize, *id.*, is to see the real threat of HIV to be one that is understood but, nevertheless, sought after. The terror of HIV exposure is transmuted by gay men, alienated from the masculine power structure, into a kind of talisman of male power in reverse—a willing assumption by bottoms, who are at the greatest risk of being infected, of the top’s ability to terrorize in this uniquely masculine, insertive way. The gay bottoms claim some return to the gender system from which they have been alienated by claiming the possibility of HIV infection as a gendered gift. It is also an element of the overt sexualization of racist stereotypes present in much pornography (the black man as breed stud) and amplified in this flick, in which all three men are black (and in which the fraternal “nigga” is peppered throughout), and of the overt sexualization of careless masculinity. For example, Rock, the principal character, proudly identifies as “gangsta.” The unprotected sex thus underlines what makes a man a man, a gangsta—taking risks, heedless of consequences, and breeding men in the way that women are bred, when men take the place of women.

48. Rock then has one man lie on top of the other and proceeds to take turns fucking both of them. Rock then has the smaller man sit down on the other man’s

ends when the smaller man comes while Rock is fucking him. Rock and the other man then jerk off on the smaller man. As the scene ends, one of the men asks Rock, “What about that money?” Rock responds, “Access granted.” Rock, as bisexual, as capitalist, exacts sex as payment, and does it raw.

What is made plain in this example, revolving around common themes, is that, in both form and function, “gay” pornography is compulsorily heterosexual. No “break” from “homo-supremacy” need be taken.<sup>49</sup> Straight men remain in control ontologically, because their existence as straight men drives the fantasy and shapes its parameters. The gay experience is little more than their desires, and the process for achieving them, functionally translated, however briefly, into “queer” form. A theory aggrandizing this as subversive is a case of The Emperor Having New Clothes.<sup>50</sup> As I have noted elsewhere, “[i]n gay pornography we see what heterosexuality is.”<sup>51</sup> In Halley’s explication of queer theory, we see it too.

In many ways, queer theory is late to this party. Liberalism and liberal moral theory already took up the defense of pornography on these terms. Consider the liberal gay philosopher Richard Mohr’s 1992 book *Gay Ideas*, in which he argues that “the hypermasculine is not necessarily morally objectionable, that a male-identified male need not be sexist.”<sup>52</sup> This is not, of course, exactly the same thing as Halley’s argument, which is, essentially, that sexism “is good.” Rather Mohr goes on to argue, rather acrobatically, that the obvious dominance in gay pornography is not really there.<sup>53</sup> It is very much akin to the mainstream liberal argument that pornography is fantasy and certainly thoroughly liberal in its insistence that the pornography question is subsumed in the moral question and, also, to the queer theory assertion that

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cock. Rock then proceeds to fuck the fucker. Rock fucks this bigger of the two men hard, telling him not to “bitch out” on him when the man begins to cry out in pain. The smaller man, while sucking Rock’s dick, then fucks the bigger man, with Rock continuing to direct the action. Rock spits on his cock and tells the smaller man to lick it off. He makes him say, “I want that dick, Rock.” Rock then fucks him again, while he is still inside the other man. Rock then fucks the other man again. Each time Rock pulls out, the men immediately start sucking him.

49. See Halley, *supra* note 39, at 29.

50. Or, if the reader prefers an analogy better made to high literature, perhaps “a tale [t]old by an idiot, full of sound and fury, [s]ignifying nothing[]” fits. WILLIAM SHAKESPEARE, *MACBETH* act 5, sc. 5.

51. GILREATH, *supra* note 10, at 169–70.

52. RICHARD D. MOHR, *GAY IDEAS: OUTING AND OTHER CONTROVERSIES* 163 (1992).

53. *Id.* at 164–66.

a surrender to objectification is somehow natural,<sup>54</sup> which, of course, is also a conservative and liberal argument.<sup>55</sup>

The limits of Mohr's subsequent moral analysis of gay pornography are apparent from the outset, and are largely coterminous with the limits of an obscenity analysis. For example, Mohr asks, "What, for instance, is one to make of a [George Dureau] photo of a gay-coded crippled midget in Nazi regalia posing and posed as though dreaming of the Hitler Youth? I think that there is no easy moral assessment here."<sup>56</sup> Well, damn. Perhaps we should all pause for a minute and appreciate that Professor MacKinnon has given us an alternative to this so-called morality.

Like virtually every defender of pornography, Professor Mohr asks us not to see what is apparent. He takes as an example of the transgressive potential of the hypermasculine a 1983 pornographic drawing by Rex.<sup>57</sup> In the drawing, "a kneeling, pantless, leather-jacketed" muscle man, thighs spread around a semi-erect, large, and dripping erection, beckons to the viewer.<sup>58</sup> In analyzing the photo, Mohr suggests that the obvious tropes of dominance described don't mean what they obviously mean. He writes, "He is not someone running away from culture's hatred of gays by first embracing manners and tropes from the dominant culture's arsenal of oppression and then enhancing the oppression by making its tropes sexy. A Rex man wants to have sex with hypermasculine

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54. *Id.* at 162 ("[F]orgoing of the development of a natural capacity that produces an inherent good—pleasure—is a normative failing of a certain type. It is analogous to the normative state that would hold if people failed to develop their natural capacity for language and communication, with an attendant failure to develop knowledge. We have here a normative failing that rests somewhere between an aesthetic failing and a moral failing. It has the same unclear status as if one were to consciously choose ill-health.").

55. Mohr sets up his defense of the hypermasculine this way:

The proper alignment of biological sex and gender, then, would have gender realizing the different capacities of biological sex—which for the most part . . . have nothing to do with reproduction but have a great deal to do with sexuality, erotics, and arousing attractions. Since biological sex pervades the whole appearance of a male, the male body, sexed all over as a subject, provides a highly determinate natural substrate with specific capacities for development of the male into a nonarbitrary masculine. When masculine presentations build on or actualize natural male capacities, the scents and forms of man, rather than being merely an array of arbitrary conventions and signs, they issue in the hypermasculine—a threshold-crossing intensification of the masculine. This natural but developed masculine body provides, in turn, a natural object for possible symmetrical erotic attractions, to wit, male homoeroticism.

*Id.* at 163.

56. *Id.* at 165.

57. *Id.* at 165–67.

58. *Id.* at 165–66.

men—men like himself.”<sup>59</sup> But the exclusion of “feminine” or non-hypermasculine men from this erotics is a politics: it is a patriarchal, misogynist politics. It tells us who matters, who is seen, and who is invisible.

Mohr next considers a drawing by Tom of Finland.<sup>60</sup> In this picture of a hitchhiker, a young, muscular man stands by the side of a road. Nearly naked, he wears only leather boots, a studded gladiator cuff on his wrist, and a tiny pair of leather hot pants, the outline of a firm, outsized cock and balls clearly visible. His right hand rests on some handcuffs by his waist, and his left thumbs for a ride.<sup>61</sup> Here, Mohr equivocates. First, he says that “the masculine is eroticized, but not in a way that affirms the oppressive features of traditional masculine roles.”<sup>62</sup> But immediately, Mohr pivots, claiming that the photo says, “I sniff, fuck with, and love males.”<sup>63</sup> Of course, how can Mohr miss that, unlike most women in pornography, the hitchhiker is not naked and prone. He stands erect. His cock is hard, meaning he is self-possessed, in control, totally. His hand rests on handcuffs, perhaps meant for the coming motorcyclist, should he stop.<sup>64</sup> Mohr’s formulation of “fucks with” is a loaded contrast to “gets fucked by.” The image oozes dominance, and if the hitchhiker, often a sinister image in pop fiction, will be dominated, it is only to the extent that he will allow himself to be dominated. This is the ultimate trump card of hypermasculinity. Violation is not really possible for real men.

But perhaps it is Mohr’s commentary on a self-portrait by Robert Mapplethorpe that is most revelatory.<sup>65</sup> In the photo, Mapplethorpe is crouched, left leg on a stool, buttocks revealed in a pair of leather chaps. Mapplethorpe gazes, or rather winces, at the viewer over his right shoulder, while stuffing the handle end of a stock whip up his ass.<sup>66</sup> Obviously, this is a masochist’s pose. But, according to Professor Mohr, something else is going on here. “This aspect of the photo says: ‘I’m a destroyer, a sexual killer. So there.’”<sup>67</sup> Surely, Mohr is right. Gay porn producer Chuck Holmes once said that his legendary porn production company, Falcon

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59. *Id.* at 167.

60. *Id.*

61. *Id.* at 168.

62. *Id.* at 167.

63. *Id.* at 167–69.

64. *Id.* at 168.

65. *Id.* at 171.

66. *Id.* at 170.

67. *Id.* at 171.

Studios, presented characters “who looked like they wouldn’t ever do anything but be the best little fellows—the little businessmen, the good members of their community—and all of a sudden they’d just kiss each other, and all hell would break loose, and they’d just try to fuck one another to death.”<sup>68</sup> If in pornography straight men are actualized by the fuck, both in the films and in the application of pornographic values in the real world (which civil libertarian defenders of pornography encourage us to think of as two separate spheres), gay men are actualized too, each according to his purpose. What both Holmes and Mohr elucidate is the stark difference in what this actualization means—the difference in what the fuck means: for gay men submerged in pornography and pornographic culture, fucking is annihilation. And it is more than just self-annihilation: it is mutual annihilation—not merely suicidal, but homicidal. Gay pornography is, thus, unique in that in it both sadism and masochism are practiced on the *male* body. As Marc Spindelman explains of gay sexuality, expanding on Professor MacKinnon’s rendering of male supremacy into grammar (“Man fucks woman; subject verb object.”<sup>69</sup>): “When a man is fucked, he dies as a man. Man fucks man, man kills man.”<sup>70</sup> So much for contingency, so much for choice. Thus one wonders, given Janet Halley’s pornographic reframing of Joseph Oncale’s experiences, what she would have said to Konerak Sinthasomphone, a fourteen-year-old victim of Jeffrey Dahmer. Konerak briefly escaped but was returned to Dahmer by Milwaukee police, despite his head bleeding from the obvious wounds where Dahmer had attempted to drill holes in his skull with a power drill, because the officers believed they were witnessing typical gay sex.<sup>71</sup> Let’s *imagine*, as queer theorists like to do, that Sinthasomphone, a Laotian immigrant,<sup>72</sup> made it to Harvard and encountered queer legal theory in all its macabre grandeur. Should he have taken Halley’s advice to embrace this torture—experienced as sexually arousing by Dahmer, thus as sex—to the point of death? This is not a rhetorical question.

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68. JEFFREY ESCOFFIER, *BIGGER THAN LIFE: THE HISTORY OF GAY PORN CINEMA FROM BEEFCAKE TO HARDCORE* 134–35 (2009) (emphasis added) (quoting Chuck Holmes).

69. MACKINNON, *supra* note 7, at 124.

70. See Marc Spindelman, *Sexuality’s Law*, 24 COLUMBIA J. OF GENDER & LAW 87, 198 (2013).

71. See *Milwaukee Panel Finds Discrimination by Police*, N.Y. TIMES (Oct. 16, 1991), <http://www.nytimes.com/1991/10/16/us/milwaukee-panel-finds-discrimination-by-police.html>; see also GILREATH, *supra* note 10, at 200.

72. *Milwaukee Panel Finds Discrimination by Police*, *supra* note 71.

The fascination with straight male desire—indeed the claim that it is the very plumb line by which desire should be plotted out—is common among queer theorists. Cherry Smyth, for example, wonders whether “straight SM [is] automatically queer, while a monogamous ‘vanilla’ lesbian couple living in suburbia isn’t[.]”<sup>73</sup> Sadoomasochism in the tradition of its progenitor Sade is simply heterosexuality perfected. Queer theory offers no critique of this, but rather an embrace; no critique of inequality in sex, but rather a pandering to hierarchy.<sup>74</sup>

The negation of women and female-ness is only half of the equation of the pornography of male sadism. It almost always contains an idealized view of male fellowship. This male fellowship is built on the negation of the feminine. What is fascinating about so much gay male pornography is the overt theme of feminine negation, which predominates. Take for example some pornography “of record,” so to speak. In 2000, the Supreme Court of Canada was faced with the question of whether gay pornography should be outlawed on the grounds that it violated the Canadian constitutional commitment to equality under the law.<sup>75</sup> In other words, was gay pornography a practice of sex inequality? In 1992, the Court held that heterosexual pornography could indeed be prohibited criminally on this basis.<sup>76</sup>

Material seized from the Little Sisters Book and Art Emporium and defended as necessary for the formation of gay identity by feminist and gay rights groups alike revolved around a male-male rape. Snippets of the dialogue reveal its utterly gendered form:

Now, fuck that hard ass man . . . Shove that big cock up there until he screams. Fuck him man, you know how bad he wants it. Just do it until he screams and you load him full of cream . . . The man’s got a tight, tight pussy man . . . Lean over and show this man your pussy ass.<sup>77</sup>

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73. CHERRY SMYTH, *LESBIANS TALK: QUEER NOTIONS* 36 (1992).

74. See Sue Wilkinson & Celia Kitzinger, *The Queer Backlash*, in *RADICALLY SPEAKING: FEMINISM RECLAIMED* 375, 382 (Diane Bell & Renate Klein eds., 1996) (“As the meanings of heterosexuality and homosexuality become blurred within a fantasy world of ambiguity, indeterminacy and charade, the material realities of oppression and the feminist politics of resistance are forgotten”).

75. See *Little Sisters Book & Art Emporium v. Canada* (Minister of Justice), [2000] 2 S.C.R. 1120, 1151–52 (Can.).

76. See *R. v. Butler*, [1992] 1 S.C.R. 452, 453 (Can.).

77. Christopher Kendall, *Pornography, Hypermasculinity, and Gay Male Identity: Implications for Male Rape and Gay Male Domestic Violence*, in *GENDERED OUTCASTS AND SEXUAL OUTLAWS: SEXUAL OPPRESSION AND GENDER HIERARCHIES IN QUEER MEN’S LIVES* 105, 113–14 (Christopher Kendall & Wayne Martino eds. 2012) (quoting *Little Sisters* Trial Exhibits, Exhibit 198, *ADVOCATE MEN* 39–40 (Dec.

That this would be defended as desirable—in fact, as more: as essential to the experience of gay male sexuality—seems ludicrous. Yet, in the light of queer theory’s agenda, how could it not be defended? As Sue Wilkinson and Celia Kitzinger put it, “The queer movement displays a continuing fascination with violence and degradation, including claiming as its own—and, if necessary, queer ‘avant la lettre’ supporters of pornography and sadomasochism.”<sup>78</sup> And, to the extent pleasure is prioritized over political analysis here, queer theory is in tow with liberalism and its mainstream gay rights offshoot.<sup>79</sup>

Where heterosexuality is the root sustaining a flowering male supremacist society that has sadism as its essence, queer theory’s allegedly-transgressive stance is little more than an offshoot of the heterosexual fusion of dominance and sex. In heterosexuality, the system is stacked against women. She is a metaphysical victim, so that when she is appropriated and used, very few notice. The fact that she does not literally give herself, but is rather taken, is obscured by a cult of romance. The system is designed—producing a metaphysical victim who is, as a consequence of her status, possibly not victimized at all—to invisibilize the force necessary to sustain its functioning. But in pornography, it is all open—raw. The very vocabulary employed betrays the degradation and negation at the dark heart of heterosexuality. The fact that this same vocabulary—taking pornography for a moment as discursive only, as the queer theorists would have us do—is reproduced in gay male pornography is telling. The paradigm remains steadfast. A male body is substituted for a female body, but the act—the fucking—definitionally the act of male possession of the body through intercourse, even unto death—is reproduced. And so queer theorist Leo Bersani can ask whether the rectum is a grave and can conclude that it is, and that it is a good thing that it is.<sup>80</sup> Death as a consequence of—even as a means to—the sexual is pleasure.

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1989)).

78. Wilkinson & Kitzinger, *supra* note 74, at 380 (internal citation omitted).

79. See ELISA GLICK, MATERIALIZING QUEER DESIRE: OSCAR WILDE TO ANDY WARHOL 162 (2009) (“To cite a few prominent examples: the rise of a new gay and lesbian niche market in the 1990s; the new ‘cultural visibility’ of queers in public life; the cultural fascination with the figure of the ‘metrosexual’; the recycling and mainstreaming of lesbian sartorial styles, ranging from the campiness of drag king culture to the refined and sexy androgyny of the L.A. lesbian look (popularized by the *The L Word*); and the neutralization of ‘queer’ through shows such as *Queer Eye for the Straight Guy*, which cemented the association of homosexual aestheticism with a particularly vapid and rationalized notion of lifestyle.”).

80. See Leo Bersani, *Is the Rectum a Grave?*, 43 OCTOBER 197, 221 (1987).

With heterosexuality thus defined, let us return for a moment to Janet Halley's pornographic rendering of Joseph Oncale's reality of sexual abuse.<sup>81</sup> It is important to unpack the intellectual leap she is asking us to make, but also to understand its thoroughly masculine functionality—its essential heterosexuality. Halley is stating two essential premises of a queer theoretical understanding of homosexuality. She echoes the defense of the gay pornography at issue in the *Little Sisters* case.<sup>82</sup> Her analysis reveals why queer theory and pornography—thus, misogyny—are so inextricably intertwined.

First, the theoretical pretenses of queer theory amount to little more than a claiming of the heterosexual system as “queer.” The result is heterosexuality unmodified. The project is predictably postmodern in its insistence that identity be abandoned as a fulcrum of politics. Yet—and this is important—only gay male identity is waylaid and abandoned. Halley implies that Oncale should simply have surrendered to the pleasure potential—the masochistic pleasure of self-negation—inherent in submission to his assailants.<sup>83</sup> We don't know why Oncale was singled out for abuse in an all-male environment. We can assume that he was chosen because he was perceived to deviate from some gender norm; thus, he was vulnerable. Let's not pretend otherwise: fucking is a male act. It's not for sissies. It is designed as the *raison d'être* of the male system, in which masculinity is buoyed up—renewed—through the act of male dominance (he “took” her) and female submission in sex. Halley is simply suggesting that Oncale—or men in his position—should do what females are socialized from birth to do: submit to the system *and claim it as pleasurable*. Nothing is so much flipped here as intensified.

Halley's theory insists that homosexual men are real only to the extent that they identify themselves with heterosexual conventions of male power. Oncale, as the homosexual Halley imagines him to be, is homosexual only when he submits to the self-negation inherent in his role as the dominated party in sex. It is revealing that only Oncale's (he who would submit) sexuality is a cause for speculation here. The heterosexual character of the aggressors is simply unassailable. Perversely, homosexuality is

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81. See Halley, *supra* note 27, at 192.

82. See *Little Sisters Book & Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, 1246 (Can.) (discussing the value of homosexual literature as “an important means of self-discovery and affirmation for gay, lesbian and bisexual individuals”).

83. See Halley, *supra* note 27, at 192.

actualized here only through Oncale's fulfillment of his own negation, which is to say his femininity. All of this is, of course, gendered. Femininity is actualized in masochism, and masculinity is actualized in sadism. They do not exist in any other frame.<sup>84</sup> A conceptualization of homosexuality that is not essentially sadomasochistic might be transgressive; Halley's queer theory version doesn't come close. To adopt Halley's view is to renounce gay identity in favor of a "queer" one, where "queer" is simply pastiched heterosexuality.

Sadomasochism in gay sex is nothing remotely new. In 1980, Guy Hocquenghem reflected:

And as far as we gays think of ourselves mainly as sexual beings, S and M has become our main ideological problem. At the same time, it's a very idealistic scene—acting or creating the theater of sex, rather than simply "doing it"—and a very imperialist one as well: every gay person is supposed to be deeply, unconsciously perhaps, secretly at least involved in "heavy sex." If some don't do it, it's just because they are self-repressed. S and M is *the* sex: the kind we always desired from the time we became homosexuals, a sex game between real tough men—the theater of what male heterosexuals would be doing between themselves if they had sex together. It is also a very *fragile* theater, which is why it's a nonspeaking area: no critics allowed, actors perform only for a participating public.<sup>85</sup>

As Professor MacKinnon puts it, in a question asked and answered: "Why does having sex as object, observing sex objectively presented, cause the male viewer to experience his own sexuality? Because his eroticism is, socially, a watched thing."<sup>86</sup> And it is a fragile thing indeed. Hocquenghem thus names the thorough hetero-sexualness of the sexual ethic Halley vaunts, as well as exposes its imperialist posture.

Hocquenghem then posits what at first blush might seem a curious link between S-M and homophobia, stating: "S and M is the

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84. Andrea Dworkin explained it this way: "The female life-force itself is characterized as a negative one: [women] are defined as inherently masochistic; that is, [women] are driven toward pain and abuse, toward self-destruction, toward annihilation—and this drive toward [self] negation is precisely what identifies [women] as women." ANDREA DWORKIN, *OUR BLOOD: PROPHECIES AND DISCOURSES ON SEXUAL POLITICS* 104 (1976).

85. Mark Blasius, *Interview with Guy Hocquenghem*, in *THE CHRISTOPHER STREET READER* 355, 366 (1983). Hocquenghem was grappling with the central position S-M was occupying in gay men's sex lives in the 1970s—more than thirty years before the queer theorists "discovered" it. Hocquenghem's musings are worth considering in some detail. It's as if they are an answer from the past to Professor Halley's pornographic theory; it's as if Halley has, shall we say, gone back to the future.

86. MACKINNON, *supra* note 7, at 199.

theater of the real violence that imposes itself on gays, and we should note that the growth of the ‘new’ homophobia and of S-and-M sex are occurring at the same time.”<sup>87</sup> But of course there would be this corollary, since the value systems are essentially duplicative. As John Stoltenberg observed,

The values in the sex that is depicted in gay male sex films are very much the values in the sex that gay men tend to have. They are also, not incidentally, very much the values in the sex that straight men tend to have—because they are very much the values that male supremacists tend to have: taking, using, estranging, dominating—essentially, sexual power-mongering.<sup>88</sup>

Thus, to say as I have that Halley’s fantasy of Joseph Oncale’s reality is pornographic is to do no more than to say what pornography is: an effective propaganda for the transmission of the masculine value system that undergirds heterosexuality. Certainly, one cannot fault Halley for being disingenuous about a commitment to heterosexuality. She couldn’t be clearer about that. Less easily explained is her insistence that something new is happening here.<sup>89</sup> Why call it “queer”? She may as well say it is liberalism or conservatism, for it is both. Still, the commitment to heterosexual maleness is apparent, not hidden; she isn’t so much larcenous as she is dull. Homosexual men who want to claim male privilege as a defensible component of their practice of homosexuality might even thank her for the pat on the back that her work amounts to.

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87. Blasius, *supra* note 85, at 367.

88. John Stoltenberg, *Gays and the Pornography Movement: Having the Hots for Sex Discrimination*, in *MEN CONFRONT PORNOGRAPHY* 248, 249 (Michael Kimmel ed. 1990).

89. While rereading Richard Mohr’s *Gay Ideas*, I was struck by his observation that “[m]odernism is essentially male.” MOHR, *supra* note 52, at 150. Mohr quotes architect Louis Sullivan’s critique of the Marshal Field building in Chicago. “[F]our-square . . . the structure is massive, dignified and simple. But it is much more . . . Here is a *man* you can look at, . . . a real man, a manly man; a virile force—broad, vigorous and with a whelm of energy—an entire male.” *Id.* (omissions original). It was fascinating to see Mohr, a formidable liberal critic of queer theory, so approvingly repeat an obvious fusion of object and sexuality, where the literal object is proxy for the man—as the architect put it: *is* the “real man.” *Id.* It could be that old-fashioned liberalism and “queer theory,” with all its self-aggrandizing, showy newness, aren’t so different after all.

#### IV. Law and Feminism

*Sexuality free of male dominance will require change . . . .*<sup>90</sup>

Feminism is a practice. Thus, the question *What can be done?* takes on a real urgency for feminists. In 1983, lawmakers in Minneapolis employed MacKinnon and Andrea Dworkin to write a law that conceived of pornography as a civil rights violation.<sup>91</sup> The resulting law saw pornography as a practice of sex discrimination—and it gave victims a chance to go into court and prove how they had been harmed.<sup>92</sup> The brilliance of this approach is that it was not a criminal sanction and it was not censorship; rather it was a law that women (and men and transsexuals) harmed by pornography could use for themselves.

The public hearings used by the city council to ground and introduce the law documented the material harm pornography is and does. Gay men at the hearings testified about having been abused through pornography;<sup>93</sup> and about violent relationships based on the pornographic narrative, in which violence is tolerated or, indeed, embraced as the acme of sexual experience.<sup>94</sup> In other words, gay men were honest, which is a moment rarer than is often supposed, about life as we live it under patriarchy. Thus, one tremendous accomplishment of the ordinance is that it freed speech that was formerly suppressed. For perhaps the first time, victims and survivors spoke out, for themselves, publicly. The publication of the hearings made their stories undeniable. If ever there were an example of what Professor MacKinnon meant when she said that “[f]eminism was a practice long before it was a theory,”<sup>95</sup> the ordinance is it. The hearings are the ordinance in practice, producing the law as a response to the evidence provided by the survivors. The feminism with which I identify has always had this method of listening to survivors’ stories and believing them. Once discrimination and sexual abuse can be spoken aloud, it can be combatted.

90. MACKINNON, *supra* note 7, at 198.

91. Catharine A. MacKinnon, *The Roar on the Other Side of Silence*, in IN HARM’S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 3, 4 (Catharine A. MacKinnon & Andrea Dworkin eds. 1998).

92. For the ordinance’s definition of pornography, see MACKINNON, *supra* note 6, at 262.

93. See *The Minneapolis Hearings*, reprinted in IN HARM’S WAY, *supra* note 91, at 39, 107–08.

94. *Id.*

95. Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J. L. & FEMINISM 13, reprinted in RADICALLY SPEAKING: FEMINISM RECLAIMED, *supra* note 74, at 45, 46.

Proponents of pornography were also amply represented at the Minneapolis hearings and hearings in other cities which considered adopting similar ordinances.<sup>96</sup> What I found most striking about the testimony in regard to gay pornography was that it was discussed and defended as though it were the totality of the gay creative impulse. The possibility of the availability of civil damages to pornography's victims looked like open season on gays to some opponents of the ordinance who talked about the ordinance as if it would take away gays' ability to read and write. Carol Soble of the American Civil Liberties Union of Southern California defined pornography as "gay and lesbian literature,"<sup>97</sup> as if they were the same thing. Nobody equated pornography with the totality of straight male literature. Straight bookstores were not discussed as if the totality of their content was pornography, as gay bookstores were. And nobody asked why the shelves of so-called gay bookstores or the gay/lesbian sections of mainstream bookstores are freighted with pornography and sexually explicit material, while hardly anything else is available. Pornography was gay literature—all of it, period. That's quite a statement. It takes on a killing poignancy if we pause to consider that Oscar Wilde might have been right: What if life, as we experience it, is a self-conscious imitation of "art"?<sup>98</sup>

Thanks to the Internet, the pornography industry is bigger and, in fact, crueler than ever. We need a fresh approach to pornography and its harms, and there is absolutely no reason the MacKinnon/Dworkin approach couldn't be found constitutional today. The only court to deal with the ordinance, which struck it down as unconstitutional, didn't really rule on the ordinance at all.<sup>99</sup> Instead, the Seventh Circuit ruled on some imaginary law that prohibited "depictions."<sup>100</sup> But the ordinance deals with a *practice* of inequality, not the *idea* of inequality. It deals with sexualized injury, not point of view. Maybe it was easier for the court to imagine that inequality is only a question of ideas than it was to imagine sex as equal. Maybe we have more work to do. But Professor MacKinnon gives us equality as a possibility. The

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96. See, e.g., IN HARM'S WAY, *supra* note 91, 93–95, 341, 350–51, 378, 394, 416.

97. *Id.* at 350.

98. See OSCAR WILDE, *The Decay of Lying: An Observation*, reprinted in OSCAR WILDE, THE MAJOR WORKS 215, 233–34 (Isobel Murray ed., Oxford University Press 2000) (1891).

99. See *Am. Booksellers Ass'n. v. Hudnut*, 771 F.2d 323, 332 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986).

100. *Id.* at 324–25.

ordinance is one way to begin to achieve sex equality. There must be more ways, only waiting for us to invent them.

In his review of my book *The End of Straight Supremacy*, Professor Dennis Altman sharply criticized me for “[t]he application of anti-porn feminism to mainstream gay pornography.”<sup>101</sup> Altman wrote “the first” book on gay liberation.<sup>102</sup> Curiously, he titled his review of my book “Can the Revolution Be Recovered?”—a tip-off to his obvious feeling that it cannot. Professor Altman may not believe that the revolution can be reclaimed, but I do not agree. You see, the essence of feminism is optimism—a belief that people and the institutions that rule people can change. Catharine MacKinnon taught me that. “Sometimes,” as she told me, “even the law changes. Why shouldn’t we be the ones to change it?” Her theory and practice are proof that this is possible. It is this power to change circumstances and power realities that make feminism a necessary tool for gay liberation, not something to run away from or satirize. Now is the time for gay men to commit ourselves, again or for the first time, to invention. As Professor MacKinnon admonishes us, now is the time to “think about how, against all odds, against history, against all the evidence, we can create—invent—a sex-based hope.”<sup>103</sup>

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101. Dennis Altman, *Can the Revolution Be Recovered?*, GAY & LESBIAN REV. (Mar. 1, 2012), <http://www.glreview.org/article/can-the-revolution-be-recovered/>.

102. See DENNIS ALTMAN, *HOMOSEXUAL: OPPRESSION & LIBERATION* (1971).

103. CATHARINE A. MACKINNON, *WOMEN’S LIVES, MEN’S LAWS* 268 (2005).