Only Words

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IMAGINE that for hundreds of years your most formative traumas, your daily suffering and pain, the abuse you live through, the terror you live with, are unspeakable—not the basis of literature. You grow up with your father holding you down and covering your mouth so another man can make a horrible searing pain between your legs. When you are older, your husband ties you to the bed and drips hot wax on your nipples and brings in other men to watch and makes you smile through it. Your doctor will not give you drugs he has addicted you to unless you suck his penis.[1]

You cannot tell anyone. When you try to speak of these things, you are told it did not happen, you imagined it, you wanted it, you enjoyed it. Books say this. No books say what happened to you. Law says this. No law imagines what happened to you, the way it happened. You live your whole life surrounded by this cultural echo of nothing where your screams and your words should be.

In this thousand years of silence, the camera is invented and pictures are made of you while these things

are being done. You hear the camera clicking or whirring as you are being hurt, keeping time to the rhythm of your pain. You always know that the pictures are out there somewhere, sold or traded or shown around or just kept in a drawer. In them, what was done to you is immortal. He has them; someone, anyone, has seen you there, that way. This is unbearable. What he felt as he watched you as he used you is always being done again and lived again and felt again through the pictures—your violation his arousal, your torture his pleasure. Watching you was how he got off doing it; with the pictures he can watch you and get off any time.[2]

Slowly, then suddenly, it dawns on you: maybe now I will be believed. You find a guarded way of bringing it up. Maybe the pictures are even evidence of rape.[3] You find that the pictures, far from making what happened undeniable, are sex, proof of your desire and your consent.[4] Those who use you through the pictures feel their own pleasure. They do not feel your pain as pain any more than those who watched as they hurt you to make the pictures felt it. The pictures, surrounded by a special halo of false secrecy and false taboo—false because they really are public and are not really against the rules—have become the authority on what happened to you, the literature of your experience, a sign for sex, sex itself. In a very real way, they have made sex *be* what it is to the people who use you and the pictures of you interchangeably. In this, the pictures are not so different from the words and drawings that came before, but your use for the camera gives the pictures a special credibility, a deep verisimilitude, an even stronger claim to truth, to being incontrovertibly about you, because they happened and there you are. And because you are needed for the pictures, the provider has yet another reason to use you over and over and over again.

Finally, somehow, you find other women. Their fathers, husbands, and doctors saw the pictures, liked them, and did the same things to them, things they had never done or said they wanted before. As these other women were held down, or tied up, or examined on the table, pictures like the pictures of you were talked about or pointed to: do what she did, enjoy it the way she enjoyed it. The same acts that were forced on you are forced on them; the same smile you were forced to smile, they must smile. There is, you find, a whole industry in buying and selling captive smiling women to make such pictures, acting as if they like it.

When any one of them tries to tell what happened, she is told it did not happen, she imagined it, she wanted it. Her no meant yes. The pictures prove it. See, she smiles. Besides, why fixate on the pictures, the little artifact, at most a symptom? Even if something wrong was *done* to you, how metaphysically obtuse can you be? The pictures *themselves* do nothing. They are an expression of

ideas, a discussion, a debate, a discourse. How repressed and repressive can you be? They are constitutionally protected speech.

Putting to one side what this progression from life to law does to one's sense of reality, personal security, and place in the community, not to mention faith in the legal system, consider what it does to one's relation to expression: to language, speech, the world of thought and communication. You learn that language does not belong to you, that you cannot use it to say what you know, that knowledge is not what you learn from your life, that information is not made out of your experience. You learn that thinking about what happened to you does not count as "thinking," but doing it apparently does. You learn that your reality subsists somewhere beneath the socially real—totally exposed but invisible, screaming yet inaudible, thought about incessantly yet unthinkable, "expression" yet inexpressible, beyond words. You learn that speech is not what you say but what your abusers do to you.

Your relation to speech is like shouting at a movie. Somebody stop that man, you scream. The audience acts as though nothing has been said, keeps watching fixedly or turns slightly, embarrassed for you. The action onscreen continues as if nothing has been said. As the echo of your voice dies in your ears, you begin to doubt that you said anything. Soon your own experience is not real

to you anymore, like a movie you watch but cannot stop. This is women's version of life imitating art: your life as the pornographer's text. To survive, you learn shame and how to cover it with sexual bravado, inefficacy and how to make it seductive, secrecy and the habit of not telling what you know until you forget it. You learn how to leave your body and create someone else who takes over when you cannot stand it any more. You develop a self who is ingratiating and obsequious and imitative and aggressively passive and silent—you learn, in a word, femininity.

I am asking you to imagine that women's reality is real—something of a leap of faith in a society saturated with pornography, not to mention an academy saturated with deconstruction.[5] In the early 1980s women spoke of this reality, in Virginia Woolf's words of many years before, "against the male flood":[6] they spoke of being sexually abused. Thirty-eight percent of women are sexually molested as girls; twenty-four percent of us are raped in our marriages. Nearly half are victims of rape or attempted rape at least once in our lives, many more than once, especially women of color, many involving multiple attackers, mostly men we know. Eighty-five percent of women who work outside the home are sexually harassed at some point by employers.[7] We do not yet know how many women are sexually harassed by their doctors or how many are bought and sold as sex—the one thing

men will seemingly always pay for, even in a depressed economy.

A long time before the women's movement made this information available, in the absence of the words of sexually abused women, in the vacuum of this knowledge, in the silence of this speech, the question of pornography was framed and debated—its trenches dug, its moves choreographed, its voices rehearsed. Before the invention of the camera, which requires the direct use of real women; before the rise of a mammoth profitmaking industry of pictures and words acting as pimp; before women spoke out about sexual abuse and were heard, the question of the legal regulation of pornography was framed as a question of the freedom of expression of the pornographers and their consumers. The government's interest in censoring the expression of ideas about sex was opposed to publishers' right to express them and readers' right to read and think about them.

Frozen in the classic form of prior debates over censorship of political and artistic speech, the pornography debate thus became one of governmental authority threatening to suppress genius and dissent. There was some basis in reality for this division of sides. Under the law of obscenity, governments did try to suppress art and literature because it was sexual in content. This was

before the camera required live fodder and usually resulted in the books' becoming bestsellers.

Once abused women are heard and—this is the real hitch—become real, women's silence can no longer be the context in which pornography and speech are analyzed. Into the symbiotic dance between left and right, between the men who love to hate each other, enters the captive woman, the terms of access to whom they have been fighting over.[8] Instead of the forces of darkness seeking to suppress what the forces of light are struggling to free, her captivity itself is made central and put in issue for the first time. This changes everything, or should. Before, each woman who said she was abused looked incredible or exceptional; now, the abuse appears deadeningly commonplace. Before, what was done to her was sex; now, it is sexual abuse. Before, she was sex; now, she is a human being gendered female—if anyone can figure out what that is.

In this new context, the expressive issues raised by pornography also change—or should. Protecting pornography means protecting sexual abuse *as* speech, at the same time that both pornography and its protection have deprived women *of* speech, especially speech against sexual abuse. There is a connection between the silence enforced on women, in which we are seen to love and choose our chains because they have been sexual-

ized, and the noise of pornography that surrounds us, passing for discourse (ours, even) and parading under constitutional protection. The operative definition of censorship accordingly shifts from government silencing what powerless people say, to powerful people violating powerless people into silence and hiding behind state power to do it.

In the United States, pornography is protected by the state.[9] Conceptually, this protection relies centrally on putting it back into the context of the silence of violated women: from real abuse back to an "idea" or "viewpoint" on women and sex. In this de-realization of the subordination of women, this erasure of sexual abuse through which a technologically sophisticated traffic in women becomes a consumer choice of expressive content, abused women become a pornographer's "thought" or "emotion." This posture unites pornography's apologists from libertarian economist and judge Frank Easterbrook[10] to liberal philosopher-king Ronald Dworkin,[11] from conservative scholar and judge Richard Posner[12] to pornographers' lawyer Edward DeGrazia.[13]

In their approach, taken together, pornography falls presumptively into the legal category "speech" at the outset through being rendered in terms of "content," "message," "emotion," what it "says," its "viewpoint," its "ideas." Once the women abused in it and through it are

elided this way, its artifact status as pictures and words gets it legal protection through a seemingly indelible categorical formalism that then must be negated for anything to be done.

In this approach, the approach of current law, pornography is essentially treated as defamation rather than as discrimination.[14] That is, it is conceived in terms of what it says, which is imagined more or less effective or harmful as someone then acts on it, rather than in terms of what it does. Fundamentally, in this view, a form of communication cannot, as such, *do* anything bad except offend. Offense is all in the head. Because the purveyor is protected in sending, and the consumer in receiving, the thought or feeling, the fact that an unintended bystander might have offended thoughts or unpleasant feelings is a mere externality, a cost we must pay for freedom. That the First Amendment protects this process of interchange—thought to thought, feeling to feeling—there is no doubt.

Within the confines of this approach, to say that pornography is an act against women is seen as metaphorical or magical, rhetorical or unreal, a literary hyperbole or propaganda device. On the assumption that words have only a referential relation to reality, pornography is defended as only words—even when it is pictures women had to be directly used to make, even

when the means of writing are women's bodies, even when a woman is destroyed in order to say it or show it or because it was said or shown.

A theory of protected speech begins here: words express, hence are *presumed* "speech" in the protected sense. Pictures partake of the same level of expressive protection. But social life is full of words that are legally treated as the acts they constitute without so much as a whimper from the First Amendment. What becomes interesting is when the First Amendment frame is invoked and when it is not. *Saying* "kill" to a trained attack dog is only words. Yet it is not seen as expressing the viewpoint "I want you dead"—which it usually does, in fact, express. It is seen as performing an act tantamount to someone's destruction, like saying "ready, aim, fire" to a firing squad. Under bribery statutes, saying the word "aye" in a legislative vote triggers a crime that can consist entirely of what people say. So does price-fixing under the antitrust laws. "Raise your goddamn fares twenty percent, I'll raise mine the next morning" is not protected speech; it is attempted joint monopolization, a "highly verbal crime." In this case, conviction nicely disproved the defendant's view, expressed in the same conversation, that "we can talk about any goddamn thing we want to talk about."[15]

Along with other mere words like "not guilty" and "I do," such words are uniformly treated as the institutions

and practices they constitute, rather than as expressions of the ideas they embody or further. They are not seen as saying anything (although they do) but as doing something. No one confuses discussing them with doing them, for instance discussing a verdict of "guilty" with a jury's passing a verdict of "guilty." Nobody takes an appeal of a guilty verdict as censorship of the jury. Such words are not considered "speech" at all.

Social inequality is substantially created and enforced—that is, *done*—through words and images. Social hierarchy cannot and does not exist without being embodied in meanings and expressed in communications. A sign *saying* "White Only"[16] is only words, but it is not legally seen as expressing the viewpoint "we do not want Black people in this store," or as dissenting from the policy view that both Blacks and whites must be served, or even as hate speech, the restriction of which would need to be debated in First Amendment terms. It is seen as the act of segregation that it is, like "Juden nicht erwünscht!"[17] Segregation cannot happen without someone *saying* "get out" or "you don't belong here" at some point. Elevation and denigration are all accomplished through meaningful symbols and communicative acts in which saying it is doing it.

Words unproblematically treated as acts in the inequality context include "you're fired," "help wanted—male," "sleep with me and I'll give you an A," "fuck me

or you're fired," "walk more femininely, talk more femininely, dress more femininely, wear makeup, have your hair styled, and wear jewelry," and "it was essential that the understudy to my Administrative Assistant be a man."[18] These statements are discriminatory acts and are legally seen as such. Statements like them can also evidence discrimination or show that patterns of inequality are motivated by discriminatory animus. They can constitute actionable discriminatory acts in themselves or legally transform otherwise nonsuspect acts into bias-motivated ones. Whatever damage is done through such words is done not only through their context but through their content, in the sense that if they did not contain what they contain, and convey the meanings and feelings and thoughts they convey, they would not evidence or actualize the discrimination that they do.

Pornography, by contrast, has been legally framed as a vehicle for the expression of ideas. The Supreme Court of Minnesota recently observed of some pornography before it that "even the most liberal construction would be strained to find an 'idea' in it," limited as it was to "who wants what, where, when, how, how much, and how often."[19] Even this criticism dignifies the pornography. The *idea of* who wants what, where, and when sexually can be expressed without violating anyone and without getting anyone raped. There are many ways to say what pornography says, in the sense of its content.

But nothing else does what pornography does. The question becomes, do the pornographers—saying they are only saying what it says—have a speech right to do what only it does?

What pornography does, it does in the real world, not only in the mind. As an initial matter, it should be observed that it is the pornography industry, not the ideas in the materials, that forces, threatens, blackmails, pressures, tricks, and cajoles women into sex for pictures. In pornography, women are gang raped so they can be filmed. They are not gang raped by the idea of a gang rape. It is for pornography, and not by the ideas in it, that women are hurt and penetrated, tied and gagged, undressed and genitally spread and sprayed with lacquer and water so sex pictures can be made. Only for pornography are women killed to make a sex movie, and it is not the idea of a sex killing that kills them. It is unnecessary to do any of these things to express, as ideas, the ideas pornography expresses. It *is* essential to do them to make pornography. Similarly, on the consumption end, it is not the ideas in pornography that assault women: men do, men who are made, changed, and impelled by it. Pornography does not leap off the shelf and assault women. Women could, in theory, walk safely past whole warehouses full of it, quietly resting in its jackets. It is what it takes to make it and what happens through its use that are the problem.

Empirically, of all two-dimensional forms of sex, it is only pornography, not its ideas as such, that gives men erections that support aggression against women in particular. Put another way, an erection is neither a thought nor a feeling, but a behavior. It is only pornography that rapists use to select whom they rape and to get up for their rapes. This is not because they are persuaded by its ideas or even inflamed by its emotions, or because it is so conceptually or emotionally compelling, but because they are sexually habituated to its kick, a process that is largely unconscious and works as primitive conditioning, with pictures and words as sexual stimuli. Pornography consumers are not consuming an idea any more than eating a loaf of bread is consuming the ideas on its wrapper or the ideas in its recipe.

This is not to object to primitiveness or sensuality or subtlety or habituation in communication. Speech conveys more than its literal meaning, and its undertones and nuances must be protected. It is to question the extent to which the First Amendment protects unconscious mental intrusion and physical manipulation, even by pictures and words, particularly when the results are further acted out through aggression and other discrimination.[20] It is also to observe that pornography does not engage the conscious mind in the chosen way the model of "content," in terms of which it is largely defended, envisions and requires. In the words of Judge Easterbrook,

describing this dynamic, pornography "does not persuade people so much as change them."[21]

Pornography is masturbation material.[22] It is used as sex. It therefore is sex. Men know this. In the centuries before pornography was made into an "idea" worthy of First Amendment protection, men amused themselves and excused their sexual practices by observing that the penis is not an organ of thought. Aristotle said, "it is impossible to think about anything while absorbed [in the pleasures of sex.]"[23] The Yiddish equivalent translates roughly as "a stiff prick turns the mind to shit."[24] The common point is that having sex is antithetical to thinking. It would not have occurred to them that having sex *is* thinking.

With pornography, men masturbate to women being exposed, humiliated, violated, degraded, mutilated, dismembered, bound, gagged, tortured, and killed. In the visual materials, they experience this *being done* by watching it *being done.* What is real here is not that the materials are pictures, but that they are part of a sex act. The women are in two dimensions, but the men have sex with them in their own three-dimensional bodies, not in their minds alone. Men come doing this. This, too, is a behavior, not a thought or an argument. It is not ideas they are ejaculating over. Try arguing with an orgasm sometime. You will find you are no match for the sexual access and power the materials provide.

The fact that this experience is sexual does not erupt *sui generis* from pornography all by itself, any more than the experience of access and power in rape or child abuse or sexual harassment or sexual murder is sexual in isolation. There is no such thing as pornography, or any social occurrence, all by itself. But, of these, it is only pornography of which it is said that the experience is not one of access and power but one of thought; only of pornography that it is said that unless you can show what it and it alone does, you cannot do anything about it; and only pornography that is protected as a constitutional right. The fact that pornography, like rape, has deep and broad social roots and cultural groundings makes it more rather than less active, galvanizing and damaging.

One consumer of rape pornography and snuff films recently made this point as only an honest perpetrator can: "I can remember when I get horny from looking at girly books and watching girly shows that I would want to go rape somebody. Every time I would jack off before I come I would be thinking of rape and the women I had raped and remembering how exciting it was. The pain on their faces. The thrill, the excitement."[25] This, presumably, is what the court that recently protected pornography as speech meant when it said that its effects depend upon "mental intermediation."[26] See, he was watching, wanting, thinking, remembering, feeling. He

was also receiving the death penalty for murdering a young woman named Laura after raping her, having vaginal and anal intercourse with her corpse, and chewing on several parts of her body.

Sooner or later, in one way or another, the consumers want to live out the pornography further in three dimensions. Sooner or later, in one way or another, they do. *It* makes them want to; when they believe they can, when they feel they can get away with it, *they* do. Depending upon their chosen sphere of operation, they may use whatever power they have to keep the world a pornographic place so they can continue to get hard from everyday life. As pornography consumers, teachers may become epistemically incapable of seeing their women students as their potential equals and unconsciously teach about rape from the viewpoint of the accused. Doctors may molest anesthetized women, enjoy watching and inflicting pain during childbirth, and use pornography to teach sex education in medical school. Some consumers write on bathroom walls. Some undoubtedly write judicial opinions.[27]

Some pornography consumers presumably serve on juries, sit on the Senate Judiciary Committee, answer police calls reporting domestic violence, edit media accounts of child sexual abuse, and produce mainstream films. Some make wives and daughters and clients and

students and prostitutes look at it and do what is in it. Some sexually harass their employees and clients, molest their daughters, batter their wives, and use prostitutes—with pornography present and integral to the acts. Some gang rape women in fraternities and at rest stops on highways, holding up the pornography and reading it aloud and mimicking it. Some become serial rapists and sex murderers—using and making pornography is inextricable to these acts—either freelancing or in sex packs known variously as sex rings, organized crime, religious cults, or white supremacist organizations. Some make pornography for their own use and as a sex act in itself, or in order to make money and support the group's habit.[28]

This does not presume that all pornography is made through abuse or rely on the fact that some pornography is made through coercion as a legal basis for restricting all of it.[29] Empirically, all pornography is made under conditions of inequality based on sex, overwhelmingly by poor, desperate, homeless, pimped women who were sexually abused as children. The industry's profits exploit, and are an incentive to maintain, these conditions. These conditions constrain choice rather than offering freedom. They are *what it takes* to make women do what is in even the pornography that shows no overt violence.

I have come to think that there is a connection between these conditions of production and the force that

is so often needed to make other women perform the sex that consumers come to want as a result of viewing it. In other words, if it took these forms of force to make a woman do what was needed to make the materials, might it not take the same or other forms of force to get other women to do what is in it? Isn't there, then, an obvious link between the apparent need to coerce some women to perform for pornography and the coercion of other women as a result of its consumption? If a woman had to be coerced to make *Deep Throat,* doesn't that suggest that *Deep Throat* is dangerous to all women anywhere near a man who wants to do what he saw in it?[30]

Pornography contains ideas, like any other social practice. But the way it works is not as a thought or through its ideas as such, at least not in the way thoughts and ideas are protected as speech. Its place in abuse requires understanding it more in active than in passive terms, as constructing and performative[31] rather than as merely referential or connotative.

The message of these materials, and there is one, as there is to all conscious activity, is "get her," pointing at all women, to the perpetrators' benefit of ten billion dollars a year and counting. This message is addressed directly to the penis, delivered through an erection, and taken out on women in the real world. The content of this message is not unique to pornography. It is the function of pornography in effectuating it that is

unique. Put another way, if there is anything that only pornography can say, that is exactly the measure of the harm that only pornography can do. Suppose the consumer could not get in any other way the feeling he gets from watching a woman actually be murdered. What is more protected, his sensation or her life? Should it matter if the murder is artistically presented? Shall we now balance away women's lesser entitlements—not to be raped, dehumanized, molested, invaded, and sold? Do the consequences for many women of doing this to some women, for mass marketing, weigh in this calculus? How many women's bodies have to stack up here even to register against male profit and pleasure presented as First Amendment principle?

On the basis of its reality, Andrea Dworkin and I have proposed a law against pornography that defines it as graphic sexually explicit materials that subordinate women through pictures or words.[32] This definition describes what is there, that is, what must be there for the materials to work as sex and to promote sexual abuse across a broad spectrum of consumers. This definition includes the harm of what pornography says—its function as defamation or hate speech—but defines it and it alone in terms of what it does—its role as subordination, as sex discrimination, including what it does through what it says. This definition is coterminous with the industry, from *Playboy,* in which women are objectified

and presented dehumanized as sexual objects or things for use; through the torture of women and the sexualization of racism and the fetishization of women's body parts; to snuff films, in which actual murder is the ultimate sexual act, the reduction to the thing form of a human being and the silence of women literal and complete. Such material combines the graphic sexually explicit—graphically showing explicit sex—with activities like hurting, degrading, violating, and humiliating, that is, actively subordinating, treating unequally, as less than human, on the basis of sex. Pornography is not restricted here because of what it says. It is restricted through what it does. Neither is it protected because it says something, given what it does.

Now, in First Amendment terms, what is "content"—the "what it says" element—here?[33] We are told by the Supreme Court that we cannot restrict speech *because* of what it says, but all restricted expression says something. Most recently, we have been told that obscenity and child pornography are content that can be regulated although what distinguishes child pornography is not its "particular literary theme."[34] In other words, it has a message, but it does not do its harm through that message. So what, exactly, are the children who are hurt through the use of the materials hurt by?[35]

Suppose that the sexually explicit has a content element: it contains a penis ramming into a vagina. Does

that mean that a picture of this conveys the idea of a penis ramming into a vagina, or does the viewer see and experience a penis ramming into a vagina? If a man watches a penis ram into a vagina live, in the flesh, do we say he is watching the idea of a penis ramming into a vagina? How is the visual pornography different? When he then goes and rams his penis into a woman's vagina, is that because he has an idea, or because he has an erection? I am not saying his head is not attached to his body; I am saying his body is attached to his head.

The ideas pornography conveys, construed as "ideas" in the First Amendment sense, are the same as those in mainstream misogyny: male authority in a naturalized gender hierarchy, male possession of an objectified other. In this form, they do not make men hard. The erections and ejaculations come from providing a physical reality for sexual use, which is what pornography does. Pornography is often more sexually compelling than the realities it presents, more sexually real than reality. When the pimp does his job right, he has the woman exactly where the consumers want her. In the ultimate male bond, that between pimp and john, the trick is given the sense of absolute control, total access, power to take combined with the illusion that it is a fantasy, when the one who actually has that power is the pimp. For the consumer, the mediation provides the element of remove requisite for deniability. Pornography thus offers both types of generic sex: for those who want to wallow in filth without getting their hands dirty and for those who want to violate the pure and get only their hands wet.

None of this starts or stops as a thought or feeling. Pornography does not simply express or interpret experience; it substitutes for it. Beyond bringing a message from reality, it stands in for reality; it is existentially being there. This does not mean that there is no spin on the experience—far from it. To make visual pornography, and to live up to its imperatives, the world, namely women, must do what the pornographers want to "say." Pornography brings its conditions of production to the consumer: sexual dominance. As Creel Froman puts it, subordination is "doing someone else's language."[36] Pornography makes the world a pornographic place through its making and use, establishing what women are said to exist as, are seen as, are treated as, constructing the social reality of what a woman is and can be in terms of what can be done to her, and what a man is in terms of doing it.

As society becomes saturated with pornography, what makes for sexual arousal, and the nature of sex itself in terms of the place of speech in it, change. What was words and pictures becomes, through masturbation, sex itself. As the industry expands, this becomes more and more the generic experience of sex, the

woman in pornography becoming more and more the lived archetype for women's sexuality in men's, hence women's, experience. In other words, as the human becomes thing and the mutual becomes one-sided and the given becomes stolen and sold, objectification comes to define femininity, and one-sidedness comes to define mutuality, and force comes to define consent as pictures and words become the forms of possession and use through which women are actually possessed and used. In pornography, pictures and words are sex. At the same time, in the world pornography creates, sex is pictures and words. As sex becomes speech, speech becomes sex.

The denial that pornography is a real force comes in the guise of many mediating constructions. At most, it is said, pornography reflects or depicts or describes or represents subordination that happens elsewhere. The most common denial is that pornography is "fantasy." Meaning it is unreal, or only an internal reality. For whom? The women in it may dissociate to survive, but it *is* happening to their bodies. The pornographer regularly uses the women personally and does not stop his business at fantasizing. The consumer masturbates to it, replays it in his head and onto the bodies of women he encounters or has sex with, lives it out on the women and children around him. Are the victims of snuff films fantasized to death?

Another common evasion is that pornography is "simulated." What can this mean? It always reminds me of calling rape with a bottle "artificial rape."[37] In pornography, the penis is shown ramming up into the woman over and over; this is because it actually was rammed up into the woman over and over. In mainstream media, violence is done through special effects; in pornography, women shown being beaten and tortured report being beaten and tortured. Sometimes "simulated" seems to mean that the rapes are not really rapes but are part of the story, so the woman's refusal and resistance are acting. If it is acting, why does it matter what the actress is really feeling? We are told unendingly that the women in pornography are *really* enjoying themselves (but it's simulated?). Is the man's erection on screen "simulated" too? Is he "acting" too?

No pornography is "real" sex in the sense of shared intimacy; this may make it a lie, but it does not make it "simulated." Nor is it real in the sense that it happened as it appears. To look real to an observing camera, the sex acts have to be twisted open, stopped and restarted, positioned and repositioned, the come shot often executed by another actor entirely. The women regularly take drugs to get through it. This is not to say that none of this happens in sex that is not for pornography; rather that, as a defense of pornography, this sounds more like an indictment of sex.

One wonders why it is not said that the pleasure is simulated and the rape is real, rather than the other way around. The answer is that the consumer's pleasure requires that the scenario conform to the male rape fantasy, which requires him to abuse her and her to like it. Paying the woman to appear to resist and then surrender does not make the sex consensual; it makes pornography an arm of prostitution. The sex is not chosen for the sex. Money is the medium of force and provides the cover of consent.

The most elite denial of the harm is the one that holds that pornography is "representation," when a representation is a nonreality. Actual rape arranges reality; ritual torture frames and presents it. Does that make them "representations," and so not rape and torture? Is a rape a representation of a rape if someone is watching it? When is the rapist *not* watching it? Taking photographs is part of the ritual of some abusive sex, an act of taking, the possession involved. So is watching while doing it and watching the pictures later. The photos are trophies; looking at the photos is fetishism. Is nude dancing a "representation" of eroticism or is it eroticism, meaning a sex act? How is a live sex show different? In terms of what the men are doing sexually, an audience watching a gang rape in a movie is no different from an audience watching a gang rape that is reenacting a gang rape from a movie, or an audience watching any gang rape.

To say that pornography is categorically or functionally representation rather than sex simply creates a distanced world we can say is not the real world, a world that mixes reality with unreality, art and literature with everything else, as if life does not do the same thing. The effect is to license whatever is done there, creating a special aura of privilege and demarcating a sphere of protected freedom, no matter who is hurt. In this approach, there is no way to prohibit rape if pornography is protected. If, by contrast, representation *is* reality, as other theorists argue, then pornography is no less an act than the rape and torture it represents.[38]

At stake in constructing pornography as "speech" is gaining constitutional protection for doing what pornography *does:* subordinating women through sex. This is not content as such, nor is it wholly other than content. Segregation is not the content of "help wanted—male" employment advertisements, nor is the harm of the segregation done without regard to the content of the ad. It is its function. Law's proper concern here is not with what speech says, but with what it does.[39] The meaning *of* pornography in the sense of interpretation may be an interesting problem, but it is not this one. This problem is its meaning *for* women: what it does in and to our lives.

I am not saying that pornography is conduct and therefore not speech, or that it does things and therefore

says nothing and is without meaning, or that all its harms are noncontent harms. In society, nothing is without meaning. Nothing has no content. Society is made of words, whose meanings the powerful control, or try to. At a certain point, when those who are hurt by them become real, some words are recognized as the acts that they are. Converging with this point from the action side, nothing that happens in society lacks ideas or says nothing, including rape and torture and sexual murder. This presumably does not make rape and murder protected expression, but, other than by simplistic categorization, speech theory never says why not. Similarly, every act of discrimination is done because of group membership, such as on the basis of sex or race or both, meaning done either with that conscious thought, perception, knowledge, or consequence. Indeed, discriminatory intent, a mental state, is required to prove discrimination under the Fourteenth Amendment.[40] Does this "thought" make all that discrimination "speech"?

It is not new to observe that while the doctrinal distinction between speech and action is on one level obvious, on another level it makes little sense. In social inequality, it makes almost none. Discrimination does not divide into acts on one side and speech on the other. Speech acts. It makes no sense from the action side either. Acts speak. In the context of social inequality, so-

called speech can be an exercise of power which constructs the social reality in which people live, from objectification to genocide. The words and images are either direct incidents of such acts, such as making pornography or requiring Jews to wear yellow stars, or are connected to them, whether immediately, linearly, and directly, or in more complicated and extended ways.

Together with all its material supports, authoritatively *saying* someone is inferior is largely how structures of status and differential treatment are demarcated and actualized. Words and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized.[41] Social supremacy is made, inside and between people, through making meanings. To unmake it, these meanings and their technologies have to be unmade.

A recent Supreme Court decision on nude dancing provides an example of the inextricability of expression with action in an unrecognized sex inequality setting. Chief Justice Rehnquist wrote, for the Court, that nude dancing can be regulated without violating the First Amendment because one can *say* the same thing by dancing in pasties and a G-string.[42] No issues of women's inequality to men were raised in all the pondering of the First Amendment, although the dancers who

were the parties to the case could not have been clearer that *they* were not expressing anything.[43] In previous cases like this, no one has ever said what shoving dollar bills up women's vaginas expresses.[44] As a result, the fact that the accessibility and exploitation of women through their use as sex is at once being said *and done* through presenting women dancing nude is not confronted. That women's inequality is simultaneously being expressed and exploited is never mentioned. Given the role of access to women's genitals in gender inequality, dancing in a G-string raises similar "themes" and does similar harms, but neither says nor does exactly the same thing.

Justice Souter, in a separate concurrence, got closer to reality when he said that nude dancing could be regulated because it is accompanied by rape and prostitution.[45] These harms are exactly what is made worse by the difference between dancing in a G-string and pasties, and dancing in the nude. Yet he did not see that these harms are inextricable from, and occur exactly through, what nude dancing *expresses.* Unlike the majority, Justice Souter said that dancing in a G-string does not express the same "erotic message"[46] as nude dancing. In other words, men are measurably more turned on by seeing women expose their sexual parts entirely to public view than almost entirely. Nobody said that expressing eroticism is speech-think for engaging in public sex. Justice Souter did say that the feeling nude dancing expresses "is

eroticism."[47] To express eroticism is to engage in eroticism, meaning to perform a sex act. To say it is to do it, and to do it is to say it. It is also to do the harm of it and to exacerbate harms surrounding it. In this context, unrecognized by law, it is to practice sex inequality as well as to express it.

The legal treatment of crossburning in another recent Supreme Court opinion provides yet another example of the incoherence of distinguishing speech from conduct in the inequality context. Crossburning is nothing but an act, yet it is pure expression, doing the harm it does solely through the message it conveys. Nobody weeps for the charred wood. By symbolically invoking the entire violent history of the Ku Klux Klan, it *says,* "Blacks get out," thus engaging in terrorism and effectuating segregation. It carries the message of historic white indifference both to this message and to the imminent death for which it stands. Segregating transportation expressed (at a minimum) the view that African-Americans should ride separately from whites; it was not seen to raise thorny issues of symbolic expression. Ads for segregated housing are only words, yet they are widely prohibited outright as acts of segregation.[48]

Like pornography, crossburning is seen by the Supreme Court to raise crucial expressive issues. Its function as an enforcer of segregation, instigator of lynch mobs, instiller of terror, and emblem of official impunity is transmuted

into a discussion of specific "disfavored subjects."[49] The burning cross is the discussion. The "subject" is race—discriminating on the basis of it, that is. The bland indifference to reality is underlined by the lack of a single mention of the Ku Klux Klan. Recognizing the content communicated, Justice Stevens nonetheless characterized the crossburning as "nothing more than a crude form of physical intimidation."[50]

In this country, nothing has at once expressed racial hatred and effectuated racial subordination more effectively than the murder and hanging of a mutilated body, usually of a Black man. I guess this makes Black male bodies the subject of the discussion. Lynching expresses a clear point of view.[51] Photographs were sometimes taken of the body and sold, to extend its message and the pleasure of viewing it.[52] More discussion. Are these acts inexpressive and contentless? Are the pictures protected expression? Is a Black man's death made unreal by being photographed the way women's subordination is?[53] Suppose lynchings were done to make pictures of lynchings. Should their racist content protect them as political speech, since they do their harm through conveying a political ideology? Is *bigoted* incitement to murder closer to protected speech than plain old incitement to murder?[54] Does the lynching itself raise speech issues, since it is animated by a racist ideology? If the lynching includes rape, is it, too, potentially speech? A categorical no will

not do here. Why, consistent with existing speech theory, are these activities not expressive? If expressive, why not protected?

Consider snuff pornography, in which women or children are killed to make a sex film. This is a film of a sexual murder in the process of being committed. Doing the murder is sex for those who do it. The climax is the moment of death. The intended consumer has a sexual experience watching it. Those who kill as and for sex are having sex through the murder; those who watch the film are having sex through watching the murder. A snuff film is not a discussion of the idea of sexual murder any more than the acts being filmed are. The film is not "about" sexual murder; it sexualizes murder. Is your first concern what a snuff film *says* about women and sex or what it does? Now, why is rape different?

Child pornography is exclusively a medium of pictures and words. The Supreme Court has referred to it as "pure speech."[55] Civil libertarians and publishers argued to protect it as such.[56] Child pornography conveys very effectively the idea that children enjoy having sex with adults, the feeling that this is liberating for the child. Yet child pornography is prohibited as child abuse, based on the use of children to make it.[57] A recent Supreme Court case in passing extended this recognition of harm to other children downstream who are made to see and imitate the pictures.[58] Possessing and distributing such pic-

tures is punishable by imprisonment consistent with the First Amendment, despite the fact that private reading is thereby restricted. Harm like this may be what the Supreme Court left itself open to recognizing when it said, in guaranteeing the right to possess obscenity in private, that "compelling reasons may exist for overriding the right of the individual to possess" the prohibited materials.[59]

The point here is that sex pictures are legally considered sex acts, based on what, in my terms, is abuse due to the fact of inequality between children and adults. For seeing the pictures as tantamount to acts, how, other than that sexuality socially defines women, is inequality among adults different?

Now compare the lynching photograph and the snuff film with a *Penthouse* spread of December 1984 in which Asian women are trussed and hung.[60] One bound between her legs with a thick rope appears to be a child. All three express ideology. All had to be done to be made. All presumably convey something as well as provide entertainment. If used at work, this spread would create a hostile unequal working environment actionable under federal sex discrimination law.[61] But there is no law against a hostile unequal living environment, so everywhere else it is protected speech.

Not long after this issue of *Penthouse* appeared, a little Asian girl was found strung up and sexually molested in

North Carolina, dead.[62] The murderer said he spent much of the day of the murder in an adult bookstore. Suppose he consumed the *Penthouse* and then went and killed the little girl. Such linear causality, an obsession of pornography's defenders, is not all that rare or difficult to prove. It is only one effect of pornography, but when one *has* that effect, is restricting those pictures "thought control,"[63] the judicial epithet used to invalidate our law against pornography? Would the girl's death be what *Penthouse* "said"? If she was killed because of its "content," should it be protected?[64]

Should it matter: the evidence of the harm of such materials—from testimony of victims (called evidence, not anecdote, in court) to laboratory studies in which variables and predisposed men are controlled for, to social studies in which social reality is captured in all its messiness—shows that these materials change attitudes and impel behaviors in ways that are unique in their extent and devastating in their consequences. In human society, where no one does not live, the physical response to pornography is nearly a universal conditioned male reaction, whether they like or agree with what the materials say or not. There is a lot wider variation in men's conscious attitudes toward pornography than there is in their sexual responses to it.

There is no evidence that pornography does no harm; not even courts equivocate over its carnage anymore.[65]

The new insult is that the potency of pornography *as idea* is said to be proven by the harm it does, so it must be protected as speech.[66] Having made real harm into the idea of harm, discrimination into defamation, courts tell us in essence that to the extent materials are defamatory, meaning they contain defamatory ideas, they are protected, even as they discriminate against women from objectification to murder.

"Every idea is an incitement," said Justice Holmes in a famous dissent in an early case on freedom of speech.[67] Whether or not this is true to the same degree for every idea, it has come to mean that every incitement to action that has an idea behind it—especially a big idea, and misogyny is a very big idea—is to that degree First Amendment protected territory. This doctrine was originally created to protect from suppression the speech of communists, thought by some to threaten the security of the U.S. government. This experience is the crucible of the "speech" doctrine, its formative trauma, the evil of suppression of dissent that First Amendment law, through coming to terms with this debacle, has been designed to avoid. This is where we got the idea that we must protect ideas regardless of the mischief they do in the world, where the First Amendment got its operative idea of what an "idea" is.

Applying this paradigm for political speech to pornography requires placing, by analogy, sexually abused

women relative to their abusers, in a position of power comparable to that of the U.S. government relative to those who advocated its overthrow. This is bizarre, given that risk of harm is the issue. Women are far more likely to be harmed through pornography than the U.S. government is to be overthrown by communists. Putting the pornographers in the posture of the excluded underdog, like communists, plays on the deep free speech tradition against laws that restrict criticizing the government. Need it be said, women are not the government? Pornography has to be done to women to be made; no government has to be overthrown to make communist speech. It is also interesting that whether or not forced sex is a good idea—pornography's so-called viewpoint on the subordination of women—is not supposed to be debatable to the same degree as is the organization of the economy. In theory, we have criminal laws against sexual abuse. We even have laws mandating sex equality.

Yet the First Amendment orthodoxy that came out of the communist cases is reflexively applied to pornography: if it is words and pictures, it expresses ideas. It *does* nothing. The only power to be feared as real is that of the government in restricting it. The speech is impotent. The analogy to communism has the realities reversed. Not only is pornography more than mere words, while the words of communism *are* only words. The power of pornography is more like the power of the state.[68] It is

backed by power at least as great, at least as unchecked, and at least as legitimated. At this point, indeed, its power *is* the power of the state. State power protects it, silencing those who are hurt by it and making sure they can do nothing about it.

Law is only words. It has content, yet we do not analyze law as the mere expression of ideas. When we object to a law—say, one that restricts speech—we do not say we are offended by it. We are scared or threatened or endangered by it. We look to the consequences of the law's enforcement as an accomplished fact and to the utterance of legal words as tantamount to imposing their reality. This becomes too obvious to mention not only because the First Amendment does not protect government speech but because law is backed by power, so its words are seen as acts. But so is pornography: the power of men over women,[69] expressed through unequal sex, sanctioned both through and prior to state power. It makes no more sense to treat pornography as mere abstraction and representation than it does to treat law as simulation or fantasy. No one has suggested that our legal definition of pornography does what the pornography it describes in words does; nor that, if enacted in law, our ordinance would be only words.

As Andrea Dworkin has said, "pornography is the law for women."[70] Like law, pornography does what it says. That pornography is reality is what silenced women have

not been permitted to *say* for hundreds of years. Failing to face this in its simplicity leaves one defending abstraction at the cost of principle, obscuring this emergency because it is not like other emergencies, defending an idea of an "idea" while a practice of sexual abuse becomes a constitutional right. Until we face this, we will be left where Andrea Dworkin recognizes we are left at the end of *Intercourse*:[71] with a violated child alone on the bed—this one wondering if she is lucky to be alive.