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Jeneanne Orłowski

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Beyond Gratification: The Benefits of Pornography and the
Demedicalization of Female Sexuality

BEYOND GRATIFICATION: THE BENEFITS OF PORNOGRAPHY AND THE DEMEDICALIZATION OF FEMALE SEXUALITY

By: Jeneanne Orlowski¹

This Paper argues that non-obscene adult pornography should remain protected by the United States Constitution because it has contributed to the demedicalization of female sexuality. There is an on-going debate among feminists regarding the value of pornography and whether it should be protected under the First Amendment. This Paper explains the background of the debate regarding the status of pornography as a form of speech and whether it has value that warrants its protection. Specifically, this Paper focuses on the removal of nymphomania from the Diagnostic and Statistical Manual and its absence as a modern medical diagnosis as an example of the demedicalization of female sexuality. The demedicalization of female sexuality has positively affected women in the United States. Catalysts for this demedicalization include the production and consumption of adult pornography by women. For this reason, adult pornography deserves continued protection as a form of free speech under the First Amendment.

I. Introduction

There is an on-going debate regarding the values of pornography and the effects that may result from its production and consumption.² Under the First Amendment, there is a presumptive protection of all speech.³ In order for sexual speech to fall beyond that protection, there must essentially be a showing that the speech is obscene, which means that the material: 1) appeals to a prurient interest in sex; 2) is patently offensive to contemporary community standards; and 3) is “utterly without redeeming social value.”⁴ There are arguments that non-obscene pornography causes harm to women and society, but these purported harms are not substantial enough to outweigh the benefits of pornography. This Paper argues that pornography has played a substantial

role in the demedicalization⁵ of female sexuality and should remain protected by the First Amendment. Specifically, there should be continued protection of non-obscene pornography. However, some pornography should remain unprotected under the First Amendment and classified as obscene because their harms are so great, such as child pornography. The current definition of obscenity seems to adequately reflect this difficult boundary and, therefore, non-obscene pornography should remain protected under the First Amendment.

Historically, female sexual expressions that violate social norms⁶ have been stigmatized which caused women to believe that their desires were symptoms of disease and led doctors to treat them.⁷ Female sexuality is one of many natural processes, in addition to childbirth, homosexuality, and drug addiction,⁸ that has been medicalized.⁹ Medicalization has often arisen in connection with issues surrounding the control of women’s reproduction, especially women’s sexuality.¹⁰ An example of this medicalization is nymphomania, which was used as a catchall term for women’s actions, usually sexual actions, that society frowned upon, such as wearing revealing clothing or engaging in premarital sex. Nymphomania reflected society’s disapproval and anxieties about gender roles and social norms.¹¹ Many of the same acts that resulted in society labeling a woman as a nymphomaniac were considered socially acceptable for a man, and did not result in similar labeling.¹² In 1987, the term nymphomania was removed from the *Diagnostic and Statistical Manual of Mental Disorders* and, as a result, is no longer a recognized psychosexual disease.¹³ This achievement potentially resulted from many catalysts. This Paper focuses on pornography’s role in achieving the demedicalization of female sexuality.

Part II of this Paper explains the history of nymphomania and the medicalization of female sexuality. Included is a description of nymphomania and the ways in which it has been connected to illness. Additionally, this Part addresses how the concept of nymphomania has managed to continue in its existence and change over time. Lastly, this Part examines how nymphomania and its relation to female sexuality are treated in modern American culture.

Part III discusses why and how society medicalizes nonmedical issues. Ultimately, this Paper argues that medicalization of female sexuality is at least partially an attempt to reinforce male gender superiority over women. It then compares the medicalization of birth control and abortion and how they have also been used to reinforce the gender hierarchy.

Part IV summarizes the current debate regarding the censorship of pornography. Proponents for the protection of pornography argue that pornography can be a release of sexual tension that contributes to a decrease in sexual violence.¹⁴ They also claim that pornography contributes to greater female social equality, and pushes the boundaries of social conservatism.¹⁵ Pro-censorship supporters argue that pornography degrades women, contributes to gender inequality, and leads to acts of misogyny, many of which would not occur but for the production of pornography.¹⁶ Catharine MacKinnon, a pro-censorship advocate, argues that pornography causes direct harm to the individual women involved in making pornography¹⁷ and to society as a whole because it socially subordinates women and turns them into the sexual property of men.¹⁸ Furthermore, pro-censorship supporters argue that pornography does not deserve constitutional protection at all because it is conduct, not speech.¹⁹ This Part summarizes both sides of the censorship argument and concludes that the risk of harm caused by pornography is outweighed by the benefits that can result from the production and consumption of pornography.

Part V explains the benefits of pornography and argues that it should remain a protected form of speech. Additionally, Part V addresses the strongest counterargument to the thesis of this Paper: child pornography. An argument could be made that the benefits that result from adult pornography could also apply to child pornography; however, such an argument about child pornography does not stand because child pornography causes different types of

harm that outweigh any benefits supporters might argue that it has. Therefore, the harms caused by the production and consumption of child pornography negate the presumptive protections for free speech under the First Amendment.

II. Nymphomania and the Medicalization of Female Sexuality

Beginning in the late 19th century, and up through the mid-20th century, there was a widely held belief that strong sexual desires in a woman were a symptom of disease.²⁰ Medical texts had used science and biological reasoning to reinforce the sexual norms of society and to treat conduct that failed to conform to society's sexual code as a malady.²¹ Medical professionals used the respect and illusiveness of their field to legitimize the code of acceptable sexual behavior and gender roles between men and women by medicalizing any sexual acts that deviated from those norms.²² Even today American women sometimes seek advice on how to fix their sex "problems" when their sexual desires do not conform to acceptable societal gender norms.²³ Historically, acceptable sexual expression has had many more boundaries for women than for men. For example, doctors previously blamed a woman's dissatisfaction with intercourse on her insatiable reproductive organs or her brain instead of considering the man's possible impotence or his sexual inexperience as the cause.²⁴ Additionally, women who took on dominant or aggressive sexual characteristics were often seen as sick or deviant.²⁵ Clearly, women who deviate from social norms risk being mistreated or diagnosed as ill by society for acts that men can commit without the same risk of stigma.

The dominant ideology during the Victorian era was that women were "passionless" and "the passive objects of male desire."²⁶ This mentality persisted throughout this period and continued into the twentieth century,²⁷ there was an assumption that women were mainly valued for their capacity to produce children and that their sole interest in sex was to procreate.²⁸ Many Victorian women internalized these societal expectations,²⁹ which led many women to consult their doctors about their sexual "problems" when they deviated from societal notions of healthy sexual expression.³⁰ However, the

defining characteristics of nymphomania³¹ were not compiled by physicians alone. Women also shared in the construction of nymphomania, although probably unintentionally.³² For example, a woman who could not achieve an orgasm or who wanted to be on top during intercourse might interpret these feelings as indicative of a personal problem, which would often cause her to seek medical advice for her “condition.”³³ Thus, women also played a part in the association of their sexual feelings with disease and the need for treatment.

As a result of hegemonic³⁴ gender ideals, women became patients because they believed that their “unnatural” feelings were symptoms of disease.³⁵ The social norms maintained that it was only proper for women to participate in intercourse in order to produce children and that women were supposed to passively submit to their husbands’ sexual advances. If a woman deviated from those gender norms, she might become fearful that she was sick and that she needed medical treatment, which is a demonstration of women medicalizing their own sexuality as a disease. Doctors often facilitated and perpetuated women’s fear by diagnosing the symptoms and treating them as an actual disease.³⁶ Therefore, both women and doctors contributed to and reinforced the medicalization of female sexuality.

Physicians have historically connected illness in women to their reproductive organs, whereas they were much more hesitant to attribute male sickness to their genitalia.³⁷ For instance, when a couple started experiencing sexual dysfunction where the woman was not satisfied by intercourse, the doctor often diagnosed the woman as a possible nymphomaniac. The doctor would label the woman as suffering from insatiable desire and enlarged reproductive organs rather than looking to the man and potential erectile dysfunction as the cause of the sexual unhappiness.³⁸ Doctors reframed sexual dissatisfaction as a “woman’s problem” and thus took away women’s ability to seek out pleasure, enjoy their bodies, and their ability to find the true remedy to their sexual unhappiness, such as their husbands’ impotence.³⁹ As a result of these stereotyped medical beliefs, the male form of nymphomania, “satyriasis,”⁴⁰ was diagnosed less frequently,⁴¹ treated differently, and was more obscure than the feminine nymphomania.⁴² Furthermore, in some instances a highly sexual woman, unable to relieve her sexual desires, risked the removal of her

clitoris or ovaries if the doctor felt it could relieve her “insatiable” sexual desires.⁴³ Thus, the medicalization of female sexuality resulted in biased diagnosing and labeling of women that caused them to be unfairly stigmatized, unlike their male counterparts who were exhibiting the same conduct.

Nymphomania had much broader implications, as it functioned as a catchall for women who did not conform to societal expectations regarding sex, which was reflected by societal fears and anxieties over changing social roles.⁴⁴ American society once considered a woman who preferred to be on top during intercourse or who could only climax on top to be a betrayer of the feminine role and “[p]otentially nymphomaniacal.”⁴⁵ Here, the woman was considered too aggressive and taking on too much of a masculine role, which she was socialized to believe made her sick or in need of medical treatment.⁴⁶ The diagnosis of nymphomania was a tool used to medicalize behavior that society did not understand or that threatened hegemonic gender ideals.

In the early to mid-20th century, the women’s movement set out to change the circumstances of women.⁴⁷ The women’s movement politicized sex and, by doing so, illustrated “that what went on in the bedroom was not really private. In fact, the relationship in the bedroom replicated women’s subordinate position and economic dependence in the outside world.”⁴⁸ The power of the women’s movement came from the dialogue between women allowing them to realize that many women had the same desires and fears.⁴⁹ The women’s movement, along with psychologists and advice columnists,⁵⁰ tried to understand and explain women’s sexual desires and experiences.⁵¹ Women in the 1950s and 1960s found themselves struggling with feelings of dissatisfaction in their lives.⁵² However, the 1960s brought an end to the notion that women were happy with their melancholy lives, and the “problem that had no name”⁵³ finally began to be addressed.⁵⁴ Not a month went by without the publication of a book or article advising women on how to achieve greater fulfillment in life through sex.⁵⁵ In the mid-20th century, women began to see new attention paid to their happiness and sexuality, which allowed them to achieve more personal empowerment.

In the 1970s and 1980s, pornography began to reflect these cultural changes and to depict more active females who were the aggressors, openly seeking

the sexual acts that they found more pleasurable instead of just responding to what men enjoyed.⁵⁶ Pornography played a dual role reflecting and influencing women's sexuality; however, this time it influenced women in a way that liberated their sexual expression.⁵⁷ This new style of pornography allowed women to see other women acting out the things that they might desire to do without being treated as sick or deviant. Perhaps it is no coincidence that at the same time that pornography shifted to reflect female sexual interests, the illness "nymphomania" was removed from the *Diagnostic and Statistical Manual of Mental Disorders* (hereinafter DSM).⁵⁸ Although the DSM still lists other types of sexual maladies and "abnormalities,"⁵⁹ "nymphomania," a term charged with social judgments and a history of bias, is no longer a valid medical diagnosis.

Indeed, the abandonment of nymphomania as an illness and the liberalization of female sexuality help to explain why "nymphomania" no longer carries with it the deviant or sick connotation it once had.⁶⁰ Today, "nympho" is a common term for a woman who enjoys sex or who has a lot of sex.⁶¹ For the most part, it carries a more positive connotation than "nymphomaniac" did a hundred years ago since it no longer indicates a diagnosable disease. However, the negative history surrounding that word still taints its reputation, as illustrated by some women who still seek advice in articles on "how to tell if I am really a nympho" and "the warning signs of nymphomania."⁶²

Despite the demedicalization of "nymphomania," female sexuality is still a focus of laws and medical treatment used to control women. Women have made much progress in their sexual freedoms; however, the effects of medicalizing female sexuality as a disease like nymphomania are still present in our culture.⁶³ The labeling of deviant behavior essentially discourages or shames individuals from exhibiting those actions or viewpoints.⁶⁴ This categorization discourages a woman from acting in that fashion in the future for fear that she will continue to receive negative attention. The rest of this Paper attempts to break down the reasons for medicalization and shed light on how pornography has helped demedicalize female sexuality.

III. Why Do We Medicalize Sexuality?

Medicalization has occurred not only for forms of socially "deviant" behavior, such as alcoholism, but also for many normal or "natural life processes," such as menopause.⁶⁵ A common reason for the medicalization of an arguably non-medical problem is to gain or enforce social control by one social group over another.⁶⁶ Medicine is a popular mechanism of social control because it is a respected field that is not well-understood by the general public. This lack of knowledge by the general public regarding medicine has made it difficult for individuals who are targeted by social control mechanisms to fight back. Furthermore, doctors defend their control of medicine by making efforts to prevent midwives and, historically, female doctors from entering the profession who might challenge their control over medical diagnosis and treatment.⁶⁷ There are numerous accounts of the medicalization of natural functions of women's lives, especially those pertaining to reproduction,⁶⁸ and, most notably, women's sexuality.⁶⁹ This Part examines the possible reasons that women's sexuality has been a target for medicalization and discusses how birth control and abortion have affected the medicalization of female sexuality.

The ability to reproduce is one of the most unique qualities that women possess and has the potential to give women great power. The potential for power arises because "a woman's ability to bear children is linked to the continuity of families, racial and ethnic lineage, the perpetuation of social groups and classes, the control of property, the relationship between men and women, and the expression of sexuality."⁷⁰ Thus, men have historically been motivated to control women's sexuality⁷¹ and discourage promiscuity,⁷² not only to maintain social control but also to ensure that their wives' offspring were biologically their own.⁷³ Historically, women across cultures have been socialized to only have a proper interest in sexual intercourse when it is for the purpose of reproduction.⁷⁴ Socializing women to limit their interests in sexuality ensures that women will not stray from their male partners to fulfill sexual desires.⁷⁵ Men's control over women's sexuality allows them to monopolize power in the family because it gives reproductive power and control over

lineage back to the men. Thus, it is clear that men have maintained an interest in controlling women's sexuality to ensure their continued status as the more powerful gender.

American society has historically labeled non-procreative intercourse as deviant.⁷⁶ Only with the advent of birth control were women able to freely embrace sexuality without the fear of pregnancy. Doctors sought to protect their monopoly on reproduction for the benefit of their medical practices.⁷⁷ As a result, doctors reproduced gender norms by arguing that abortion and birth control threatened male authority over women and claimed that an absence of risk of pregnancy would cause women to relax their sexual morals and become promiscuous.⁷⁸ Additionally, birth control affected men's power over reproduction and family lineage because a woman who used birth control had the power to decide when and how many children the couple would have. While some men also benefitted from birth control because it allowed them to engage in carefree sexual experiences without marrying, there were still many men who found the ability of women to enjoy the same freedoms as a threat to patriarchy and their social prowess.⁷⁹ Thus, birth control directly threatened male control over female reproductive power and, subsequently, female sexuality.

In addition to birth control, abortion threatened male dominance and class control. In the late 19th and early 20th centuries, "doctors emphasized that abortion was most frequently practiced by married women, particularly those of the so-called 'native' middle class."⁸⁰ As a result, doctors politicized women's reproduction and urged the middle-class to object to abortion and contraception in order to maintain the power of the middle-class.⁸¹ Similar to birth control, abortion also gave women a means to control pregnancy and the blood line, which threatened men's patriarchal social dominance. Men responded to this threat with the passage of the Comstock Laws in order to prevent the dissemination of information regarding contraception.⁸² The Comstock Act, passed in 1873, defined information about women's sexuality and reproductive options as obscene,⁸³ and consequently prevented the distribution of this information.⁸⁴ Thus, men have used their power, as well as censorship of certain speech, to control women's sexuality and to prevent women from exercising power over men.

In order to understand demedicalization it is important to see the reasoning and process that led to a condition's medicalization. Female sexuality threatens male social and political power because reproduction affects qualities linked to power, such as progeny and inheritance.⁸⁵ The repeal of the majority of the Comstock Act in 1936 led to easier accessibility of information regarding birth control and abortion, which challenged male control of reproduction. The women's movement is largely responsible for the demedicalization of female sexuality. Pornography is an example of women's agency that has allowed women to learn from each other and given women a voice in the sexual liberation movement. The controversy over pornography and the ways it has helped demedicalize female sexuality are discussed in Parts IV and V.

IV. The Censorship Debate

This Part is divided into two subsections. Subsection A presents common arguments against the censorship of pornography. Subsection B presents common arguments in favor of censorship. These arguments are presented here to serve as a background on the current censorship debate. Furthermore, this comparison supports the argument that while there may be harms caused by the production and consumption of pornography, the overall benefits that result from pornography outweigh those harms and therefore should be protected as a form of speech.

a. Argument Against Censorship

A common anti-censorship argument is that sexism and violent imagery of women would still exist even in the absence of pornography.⁸⁶ Pornography is only a small percentage of material that is misogynistic or depicts women in degrading ways.⁸⁷ Furthermore, given the sheer volume of imagery that the public consumes on a daily basis, violent or misogynistic pornography is only a very small percentage of the imagery consumed.⁸⁸ Thus, pornography does not permeate the lives of a large enough portion of the population⁸⁹ for it to be the primary motivator for sexism and misogyny. A ban on pornography would not mark the end of misogynistic and subordinating depictions of women because not all viewers identify with pornography in the same way.⁹⁰ Sexual inequality

has pervaded American culture for centuries, and no single change will cause it to disappear overnight.⁹¹ Surely, sexism and violent imagery will continue even if pornography were censored; therefore, that reasoning does not justifiably support a censorship of pornography.

Anti-censorship supporters also argue that the censorship of pornography could lead to greater oppression of women and could hinder progress toward social equality.⁹² While many pro-censorship supporters argue that taking away First Amendment protections of pornography will result in the stifling of speech that encourages the subordination of women, censorship is actually more likely to be used to stifle the speech of advocates for social and sexual equality.⁹³ For example, pro-censorship crusaders Catharine MacKinnon and Andrea Dworkin authored anti-pornography legislation for adoption in Minnesota that was similar to censorship legislation adopted in Canada. The Canadian legislation resulted in the suppression of gay and lesbian publications and feminist works, which were very different from the pornographic materials pro-censorship advocates wanted to suppress.⁹⁴ Similar unintended suppression of speech could result if pornography was censored in the United States. Another concern is that the censorship of pornography will extend to the censorship of violent sexual imagery produced by artists, whose works are primarily used as a tool to fight for greater gender equality by educating the public on the struggles of women and to combat sexual violence.⁹⁵ Thus, many activists and artists who use these words and images that pro-censorship feminists condemn would also risk censorship if pornographic materials were to lose their protection under the First Amendment.⁹⁶ Consequently, pornography censorship advocates “endanger a great deal of activist speech” beyond pornography and can lead to a regression of women’s rights instead of their advancement.⁹⁷ Thus, the significant benefits of pornography outweigh its costs and justify its continued protection under the First Amendment.

Anti-censorship feminists also argue that pornography might act as a release for men and result in a reduction of misogyny and the rates of sexual violence against women.⁹⁸ Pornographic material may serve as an outlet for men that allows them to enact their sexual desires independently instead of with women who would otherwise be subordinated by

the sexual contact.⁹⁹ Todd Kendall’s study analyzing correlations between access to the Internet and the number of rapes committed per year showed that with the increased popularity of the Internet came easier and more widespread access to pornography, and subsequently a decline in the number of rape victimizations.¹⁰⁰ Although there are contradictory studies, Kendall’s study illuminates that there is a potential for pornography to act as a substitute for rape¹⁰¹ and that it may actually lead to a decrease in violence against women.

Pro-sex feminists, another type of anti-censorship advocates, argue that women find pornography pleasurable and can gain empowerment by consuming it.¹⁰² Additionally, they argue that pornography can be used as a tool to educate women about their bodies and to educate their partners about more pleasurable sexual behaviors.¹⁰³ In 1987, women were estimated to watch 40% of the nearly 100 million pornographic films rented each year.¹⁰⁴ Furthermore, a 2003 online study by Texas Christian University has shown that more university women are approving of pornography each year, possibly as a result of greater feelings of empowerment among women.¹⁰⁵ Through pornography, women can take control of their own sexuality by learning new ways to sexually gratify themselves.¹⁰⁶ Therefore, if pornography inspires viewers to reenact the sexual depictions, then pornography that positively depicts strong women has the potential to redefine sex roles and empower women to interact as active sexual partners.¹⁰⁷ Pornography can and should be used to advance women’s sexual freedoms, which greatly justifies its protection under the First Amendment.

A final argument advanced by anti-censorship feminists is that women can produce pornography with positive images of women that illustrate a spectrum of female sexual desire.¹⁰⁸ Catharine MacKinnon argues that pornography sexually subordinates women, breaks down their self-esteem, and increases aggression and violence towards women.¹⁰⁹ Using this same logic, it can be inferred that pornography that depicts positive images of women would result in pornography benefiting women in positive ways.¹¹⁰ Thus, women should be encouraged to produce pornography that positively depicts women in order to break down gender stereotypes. Both sexes should be encouraged to use pornography as a tool to educate their partners

on the sexual spectrum and to promote a dialogue between people to express their feelings.¹¹¹ Suppression of pornography could cause women to feel ashamed about their desires because they do not have a private way of understanding what other women find enjoyable and comparing it to their own desires. Censorship of pornography takes away a means for women to see that their feelings or desires are not “weird” or “abnormal.”¹¹² Therefore, censorship of pornography may hinder women’s sexual and social progression towards equality by taking away a forum for women to discuss and learn about their sexuality.

b. Argument in Favor of Censorship

Anti-pornography crusader Catharine MacKinnon argues that pornography plays a leading role in the actualization and perpetuation of the subordination of women in a number of ways.¹¹³ MacKinnon and others argue that the first harm of pornography is its actual production,¹¹⁴ which involves the humiliation, beating, torturing, raping, and killing of women. The actual production of some pornography involves the coercion or forcible rape of women.¹¹⁵ An example of this is the pornographic film *Deep Throat*.¹¹⁶ Although the film depicts a willing participant, the woman in the film, Linda Marchiano, was actually being held against her will and forcibly raped in all of the scenes in which she was forced to participate.¹¹⁷ According to Marchiano, “during the filming of *Deep Throat* she was physically and psychologically imprisoned, sexually exploited, ‘beaten, hypnotized, raped and threatened with death or disfigurement.’”¹¹⁸ However, pornography films also have fictitious depictions of the rape of a woman. Therefore, it is difficult to determine whether rape is being perpetrated in the making of a film or the women are willing participants playing a role for the plotline. This inability to readily determine whether pornography depicts true acts or just fiction is important because it again illustrates that the purported harms of pornography are not concrete enough to overcome pornography’s protection under the First Amendment. While there are instances where the production of pornography is harmful to the women involved, the harms are not tangible enough to overcome the clear benefits that pornography can have for women and society.

Pro-censorship supporters argue that pornography sexualizes violence against women and portrays women as sexually subordinate to men.¹¹⁹ Similarly, pro-censorship supporters argue that pornography erodes moral standards and lowers resistance to deviant sexual behavior and expression.¹²⁰ For example, if pornography shows a man dominating a woman, the pornography eroticizes the subordination of women.¹²¹ A similar example is the eroticization of the use of violence against women in pornography, which results in consumers rationalizing and normalizing violence as acceptable both in sexual relations and in casual interactions with women. It follows that the consumption of this kind of pornography influences its viewers¹²² and causes them to normalize these interactions and, consequently, a gendered sexual hierarchy.¹²³ Therefore, pro-censorship supporters argue that pornography reflects the gender hierarchy of female subordination and then reinforces and normalizes these sexual interactions, which helps perpetuate them in real world interactions.¹²⁴ As pornography desensitizes its consumers to violence,¹²⁵ there is a subsequent increase in their tolerance and normalization of inappropriate sexual acts, such as rape and female sexual servitude,¹²⁶ and a decrease in the public perception of women.¹²⁷ On the other hand, pornography that depicts positive treatment of women could also normalize these interactions. The influence that pornography has on its viewers depends on the type of pornography available and the type consumed. Therefore, if more pornography is produced and consumed that positively depicts interactions between men and women, then the purported harms of pornography are much weaker. Thus, although pro-censorship feminists point out a valid concern about pornography, this harm can be changed into a benefit. It does not present a clear reason why pornography should lose its protection under the First Amendment.

Lastly, pro-censorship supporters have tried to use studies to support their assertion that the consumption of pornography desensitizes men to sexual violence against women and leads to increased incidences of sexual violence against women.¹²⁸ Supporters argue that pornography increases levels of aggression in its consumers,¹²⁹ which may lead to sexual violence directed at women “that would not have occurred but for the massive circulation

of pornography.”¹³⁰ Thus, pornography arguably influences how men think about and act towards women, resulting in men perpetrating acts of sexual violence against women.¹³¹ However, these studies are not conclusive and there are just as many studies that conclude that pornography actually decreases incidences of sexual violence towards women.¹³² Thus, the purported harms of pornography are not clear enough to overcome its protection as a form of speech under the First Amendment, especially in the face of studies that find that pornography plays a positive role in society.

The censorship debate illustrates the potential benefits and harms of pornography. The pro-censorship feminists warn about the harms of the production of pornography and the threat of increased misogyny. Anti-censorship feminists advance arguments that an absence of pornography will not bring an end to misogyny. Instead, they argue that pornography should be produced and consumed by women to counter gender inequality and to educate women on the spectrum of sexuality. A comparison of the arguments has shown that there are significant benefits of pornography and that there is not enough evidence of harm to justify the removal of the First Amendment protection of pornography. Non-obscene pornography should remain protected as a form of speech under the First Amendment because it has the potential to significantly benefit women and society beyond what it has already contributed to, such as the demedicalization of female sexuality. Furthermore, taking away pornography’s protection under the First Amendment might have many unforeseen and harmful consequences, such as taking away an artistic form of expression for artists and activists.

V. The Benefits of Pornography and the Child Pornography Counterargument

Part V will be advanced in two subsections. Below, Subsection A explains how the many benefits of pornography have played a role in the demedicalization of female sexuality. Subsection B addresses the problems with this Paper’s strongest counterargument: child pornography.

a. Analysis of Pornography and the Demedicalization of Female Sexuality

A very important feature of pornography is that it is defined as a type of speech, allowing it to have First Amendment protection. Many pro-censorship supporters, however, argue that pornography is conduct, not speech.¹³³ Professor Frederick Schauer argues that pornography should be classified as conduct because it produces “a purely physical effect.”¹³⁴ However, other forms of speech also produce physical effects, such as a book whose story causes its reader to cry or music that inspires listeners to dance.¹³⁵ Furthermore, sexual acts in and of themselves are connected to human identities and emotions. Therefore, as Professor David Cole argues, depictions of sexual interactions are equally connected to these innate human qualities. Cole claims that pornography cannot be classified only as conduct because it also provokes human emotional reactions and not purely physical reactions.¹³⁶ Pornography should continue to be protected speech because it has the ability to communicate important ideas to and between women and it evokes beneficial physical and emotional responses.

Pornography is an important type of speech because it plays a vital role in the communication of ideas. Without pornography, women would have no private means to gain knowledge about intercourse without actually engaging in sexual intercourse.¹³⁷ A limitation on access to pornography would force women to learn about their sexuality at the level of their partners, which opens up the possibility for an abuse of power by that sexual partner who might be more focused on his own sexual gratification and less interested in helping a woman understand what is pleasurable for her. This could cause a woman to potentially medicalize her dissatisfaction with her sexual relationship as women have done in the past, instead of identifying a problem with how her partner treats her.¹³⁸

Additionally, women who are unable to observe other sexual interactions may find themselves thinking that they are alone in their personal desires.¹³⁹ These are the feelings that gave nymphomania its power over women and enabled the stifling of female sexuality. However, when a woman sees pornography that shows a woman enjoying the things she desires to do with her partner, it may help the woman realize that

her desires are not abnormal. Thus, pornography has the ability to bring women together and identify with one another through a discussion of the interactions that they have seen in pornography. This dialogue may prevent women from labeling their feelings as symptoms of disease. Open communication plays a critical role in the demedicalization of female sexuality. Thus, pornography should not be censored because it disseminates new ideas and encourages a dialogue between women to share their feelings.¹⁴⁰

Similarly, pornography can be used as a tool to educate women and empower them. Pornography can change the way boys and girls and men and women learn about sex.¹⁴¹ Instead of having to actually engage in a sexual act to learn about sex, young adults can learn about their sexuality from the safety of their own homes.¹⁴² This allows them to avoid exposure to sexually transmitted diseases, pregnancy, and being labeled as a “nympho” or a “whore.”¹⁴³ Furthermore, the Internet “enables women to access pornography anonymously and free from embarrassment,”¹⁴⁴ which gives them greater control over their own sexual education.¹⁴⁵ It also allows women to try out new experiences without the fear that can accompany experimentation with another person.¹⁴⁶ Women can also use pornography to educate themselves on how to engage in sexual acts in pleasurable ways and how to develop healthy sexual identities by exploring their sexual feelings.¹⁴⁷ Pornography can inspire women to experiment and replicate the depictions of sexually strong and aggressive women. In turn, this empowers women to become active sexual partners and to redefine sexuality and sex roles that permeate a society.¹⁴⁸ Pornography has led to the demedicalization of female sexuality because it allows women to resist attempts by others to label their sexual acts and desires as disease by functioning as a tool for building personal knowledge and encouraging public discourse.¹⁴⁹

Pornography can also be used as a tool to fight the medicalization of female sexuality by having women produce pornography to ensure that the existing material liberates and empowers women.¹⁵⁰ If pornography shapes the viewpoints of its consumers like pro-censorship feminists argue, then pornography can be produced by or for women to sexually empower women and popularize notions of sexual equality.¹⁵¹ Thus, feminist producers of pornography can

integrate storylines and interactions into their films that teach women how to embrace their sexuality and understand that their desires are shared.¹⁵² The pornography industry realized decades ago “that traditional female repugnance to porn can melt when the product is cleaned up a bit and presented at home, where the woman can feel safe and treat the movie as a prelude to lovemaking.”¹⁵³ This kind of pornography already exists in films where, for example, women are the aggressors seeking pleasure instead of just responding to male sexual propositions.¹⁵⁴ The Internet is a great way to expand the availability of empowering pornographic material for women by making it easier to create, disseminate, access, and view pornography.¹⁵⁵ These pornographic depictions can push the limits of acceptable sexual boundaries¹⁵⁶ and prevent society from demonizing and medicalizing sexuality that deviates from traditional gender and sex norms. Women have already produced their own pornographic materials that send positive, sexually empowering messages to women.¹⁵⁷ In 1984, one of the best-known porn stars of her time, Candida Royale, established *Femme Productions*, a production company focused on producing pornographic films for women and couples, “because she wanted to make a different kind of porn film — one that showed women celebrating their own lustiness.”¹⁵⁸ By providing women with a new type of pornography that celebrated their sexuality, female producers of pornography like Candida Royale contributed to the demedicalization of female sexuality.

Part of the power of the label of “nymphomania” came from its ability to reinforce the gender hierarchy. Women can use pornography to raise their sexual equality to a level equal to men by turning the tables of sexual criticism on men. Pornography allows women to compare their male partners, their bodies, and their performances to the male actors on screen.¹⁵⁹ Women who compare their partners to the men on screen hopefully do so to improve the sexual experience for both partners in an amicable way. However, the argument has been made that men use pornography to subjugate and objectify women;¹⁶⁰ it would be naïve to think that women could not use pornography in this fashion just as easily against men. This would then be an example of women subverting patriarchy through pornography. Thus, women can use pornography to assert their

dominance over men and spread the notion that male sexual dominance is not inherent. Therefore, women have arguably used pornography to break down the strength of the sexual hierarchy by putting men's sexuality under the microscope.

Sexuality is still partially medicalized today in the form of sex addiction and sex therapy. However, sex therapy can be beneficial because the therapy itself may show a woman that her sexual desires are not indicative of illness, but are instead normal or common.¹⁶¹ Many women confuse their sexual frustrations and fantasies as signs of sexual deviance. One illustration of this follows: a woman, from a very religious background who married a man whom she does not find attractive and who was unable to sexually satisfy her, entered sex therapy because she had fantasies about being forced to unhappily dance naked for a group of men in a seedy room and then perform sexual acts on them.¹⁶² While this woman saw her fantasies as symptoms of disease, her therapist explained that her fantasy was the expression of a mix of feeling sexually empowered, sexually irresistible, and shameful about sexual enjoyment because of her childhood and the lack of sexual attraction in her marriage.¹⁶³ This woman's sexual anxieties were being played out in her dreams. Luckily, her therapist was able to help her interpret her dreams and fantasies instead of merely diagnosing her as diseased. Pornography can be used in individual or couples sex therapy to bring a couple closer together by taking the fear out of their sexual fantasies, and spicing up their sex lives.¹⁶⁴ Some sex therapists recommend that couples watch pornography together and use it to refresh their relationships or spark sexual desire.¹⁶⁵ Pornography has been blamed for tearing couples apart¹⁶⁶ because a spouse is hiding pornographic consumption or feeling that their sexual desires are indicative of disease.¹⁶⁷ However, pornography can also be used openly to bring a couple together as a form of therapy. Pornography should remain protected under the First Amendment because its advantages outweigh any disadvantages it might have.

b. Addressing the Counterargument of Child Pornography

Organizations such as the North American Man/Boy Love Association (hereinafter NAMBLA),¹⁶⁸ might argue that child pornography has similar

positive effects for men who are aroused by children as adult pornography has on women and for similar reasons should not be censored. As described in Subsection A,¹⁶⁹ pornography allows women to realize that their sexual desires are not symptoms of illness or feelings that "normal" women do not experience.¹⁷⁰ Adults aroused by children might make a similar argument that child pornography could be just as beneficial to them because it allows them to see that there are others like them and it prevents them from interpreting their feelings as symptoms of disease. However, there are important differences that explain why child pornography should be censored in all circumstances but not adult pornography.¹⁷¹ Child pornography should remain unprotected by the First Amendment because: 1) the government has an interest in protecting the wellbeing of children because of their unique social status,¹⁷² 2) the harms that child pornography causes have proven to be far greater than any benefits it might have,¹⁷³ and 3) child pornography involves an "underlying crime in its creation" where the minors depicted are under the age of consent.¹⁷⁴ The arguments in favor of adult pornography cannot be used to support child pornography because the harms child pornography causes are very distinct from those of adult pornography.

First Amendment law has essentially established a hierarchy of sexual speech, which creates some latitude to regulate sexual speech.¹⁷⁵ The most restricted sexual speech is child pornography primarily because children are a unique social group with vulnerable qualities and the state has an interest in protecting them.¹⁷⁶ In 1982, the Supreme Court held in *New York v. Ferber* that "the government may prohibit the exhibition, sale, or distribution of child pornography even if it does not meet the test for obscenity."¹⁷⁷ *Ferber* expounded the notion that child pornography has less protection than obscene speech and is *per se* subject to censorship; therefore, the state has a clear and long-standing interest in "safeguarding the physical and psychological wellbeing of a minor."¹⁷⁸ Children are a unique social group because of their inability to fully make choices for themselves to the extent that adults can.¹⁷⁹ Children are often easier targets of manipulation and make riskier decisions because their brains do not fully develop until they are in their twenties.¹⁸⁰ In most states, children cannot legally consent to sexual activities until the age of 16 or 17 years.¹⁸¹ However,

even children who have reached the age of consent may not fully appreciate the consequences that their acts can have in the future.¹⁸² It is hard for a child to comprehend that the acts that are recorded when the child is young might be available to any person for the rest of his or her life.¹⁸³

Children also need the protection of the state because they are inherently less powerful than adults, which may result in children feeling unable to communicate their unwillingness to participate in pornography.¹⁸⁴ Furthermore, the inherent powerlessness of children both physically and due to their undeveloped mental capacity will often make them unable to resist forced participation in pornography. The state has an interest in protecting children from harm that can result from being coerced into pornography because children do not have the mental capacity to make informed decisions regarding sexual activity.¹⁸⁵ Additionally, children are inherently dependent on adults to provide for them, making them vulnerable to coercion into child pornography because they lack the capacity to provide food, clothing, and shelter for themselves. This unique status of children allows them to be exposed to greater harm by child pornography than women are by adult pornography and therefore justifies the censorship of child pornography.

This difference in harms is one of the strongest reasons for the censorship of child pornography. As a result of being sexually abused in the creation of pornography, children “can incur physical injuries such as genital bruising, cuts, lacerations and sexually transmitted diseases. The children may [also] suffer psychological injuries including depression, anger, withdrawal, low self-esteem and feelings of worthlessness.”¹⁸⁶ Additionally, children may experience emotional harm in the form of anxiety, regret, or fear that comes with the possibility that the sexual acts may be distributed widely and viewed by anyone.¹⁸⁷ While adults forced into pornography production could experience some similar consequences, they are legally allowed to participate in sexual acts whereas children are not. This is presumptively because of the harmful effects participation in sexual activity can have on children, even when the participation in the sexual activity seems consensual.¹⁸⁸ Thus, child pornography is a very unique form of speech, which has harms so grave

that it does not warrant protection under the First Amendment.

An additional harm that results from child pornography is the sexualization of minors that could result in societal perceptions of children as sexual objects, possibly leading to widespread sexual abuse of children.¹⁸⁹ Although adult pornography might arguably inspire degrading acts against women,¹⁹⁰ there is a distinction between the harm that can result from the consumption of child pornography and the harm that can result from adult pornography. Child pornography is *per se* sexual abuse because of the child’s inability to consent, while adult women have the ability to consent and to participate in pornography. The sexualization of women should not inherently be feared because women can gain personal empowerment and pleasure out of their sexuality and are legally able to consent.¹⁹¹ Thus, sexualizing children and influencing societal perceptions of children as sexual objects is a far greater harm to children than the harms that can result from sexualizing women.

Child pornography is different from adult pornography and should remain censored because the actual acts are illegal activities where the child is under the age of consent.¹⁹² Depending on the jurisdiction, minors who are 16 or 17 years old may be old enough to consent to sexual acts.¹⁹³ However, approximately eighty percent of child pornography involves the images of pre-pubescent children.¹⁹⁴ Thus, a vast majority of child pornography includes children under the age of consent and by definition includes depictions of child sexual abuse and molestation. Adult pornography, on the other hand, is not *per se* illegal because it involves the participation of adults, who are legally capable of consent. While there may be instances where adult pornography includes depictions of women being raped,¹⁹⁵ it is difficult to differentiate between actual depictions of rape and fictional rape scenes. Furthermore, many of these harms are speculative and not readily identifiable. As a result, these hypothesized harms do not outweigh the numerous benefits that result from adult pornography generally. Child pornography, however, always causes harm to children because of their unique status in society and as a result of the illegality of sexual conduct under the age of consent. Therefore, child pornography does not deserve the protection from censorship that adult pornography deserves.

VI. Conclusion

Under current First Amendment doctrine, non-obscene pornography is a protected form of speech. While there are valid arguments that pornography can lead to misogyny and sexual violence against women, there are equally valid arguments that pornography can benefit women sexually, politically, and socially.¹⁹⁶ There is a presumption of protection for speech, including pornography, which requires that there be a showing that the harms caused by pornography outweigh the value in protecting pornography as a form of speech. There is not enough evidence to show that the potential harms from the production and distribution of pornography outweigh the vast number of benefits. It is clear, however, that the freedom to express one's views without fear of censorship or punishment is a greatly valued and important right. Censoring pornography would be a grave mistake that could detrimentally affect women socially, sexually, politically, and medically.

Historically, there have been times when a woman who had any sexual desires or who was sexually dissatisfied because of her partner's inability to perform sexually would have likely been diagnosed as a "nymphomaniac" or some other type of sexual deviant.¹⁹⁷ These labels often resulted in unnecessary medical treatment based on a dominant cultural stigma against women who strayed from "normal" sexual expression. Additionally, this labeling of women prevented both men and women from understanding the actual causes of their sexual and social dissatisfaction. Pornography has given women an outlet to express themselves, a form of literature to educate themselves, and a tool with which to communicate their feelings and lack of fulfillment. Pornography, like other forms of speech, contains the risk that its production might hurt others.¹⁹⁸ However, the United States would be setting an unprecedented restrictive standard if it chose to censor speech for fear that a few may be hurt, and First Amendment doctrine has long rejected this justification for censorship. Not only does this logic not make sense, but it also fails to take into account the abundant number of ways pornographic speech benefits society,¹⁹⁹ especially women. Specifically, there is evidence to show that pornography has helped lead to the demedicalization of female sexuality. The production and consumption of pornography by women has given women agency

in the fight against the medicalization of their sexuality. The censorship of pornography would risk stunting the sexual and social rights that women have gained in the last few decades, instead of causing the social progression that feminists seek. Women need more speech, not less, to successfully confront the patriarchal system and gain gender equality.²⁰⁰ Therefore, pornography should remain a protected form of speech under the First Amendment.

(Endnotes)

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² See Cheryl B. Preston, *Consuming Sexism: Pornography Suppression in the Larger Context of Commercial Images*, 31 GA. L. REV. 771, 772 (1997) (referring to the debates as the "porn wars.").

³ See U.S. CONST. AMEND. I ("Congress shall make no law... abridging the freedom of speech, or of the press...").

⁴ See *Miller v. California*, 413 U.S. 15, 21, 24 (1972).

⁵ See Peter Conrad, *Medicalization and Social Control*, 18 ANN. REV. OF SOC. 209, 224 (1992) ("Demedicalization refers to a problem that no longer retains its medical definition [and which is no longer the] subject of medical treatment").

⁶ See Leonore Tiefer, *Some Harms to Women from Restrictions on Sexually Related Expression*, 38 N.Y.L. SCH. L. REV. 95, 95 (1993) ("The societal message is that you *have* to be sexual, you have to *want* to be

sexual, you have to be *good* at being sexual, and you have to be *normally* sexual.”).

⁷ See CAROL GRONEMAN, *NYMPHOMANIA: A HISTORY* 43-45 (2000) (recounting similar stories of women who could not find adequate pleasure from their husbands and whose doctors negatively diagnosed them).

⁸ See Conrad, *supra* note 5, at 213.

⁹ See *id.* at 209 (“*Medicalization* describes a process by which nonmedical problems become defined and treated as medical problems, usually in terms of illnesses or disorders.”).

¹⁰ See *id.* at 221-22.

¹¹ See GRONEMAN, *supra* note 7, at xxii (“Nymphomania is a metaphor, which embodies the fantasies and fears, the anxieties and dangers connected to female sexuality through the ages.”).

¹² See GRONEMAN, *supra* note 7, xx (“Nevertheless, medical as well as popular beliefs considered lustfulness — although needing to be controlled — a natural state for men as it presumably no longer was for women. Consequently, the male equivalent of nymphomania, satyriasis, was diagnosed far less frequently and treated quite differently.”); see generally George Frank Lydston, *Sexual Perversion, Satyriasis, and Nymphomania*, in *ADDRESSES AND ESSAYS* 243, 259-263 (1892).

¹³ Compare DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 283 (Am. Psychiatric Ass’n ed., 3d ed. 1980), [hereinafter DSM III], with DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 296 (Am. Psychiatric Ass’n ed., 3d R ed. 1987) [hereinafter DSM III-R].

¹⁴ See Preston, *supra* note 2, at 793 (“[S]ome prosex feminists argue that pornography offers a safe sexual outlet for men and that such an outlet may actually reduce hostility towards women generally and ‘the demand for rape’ specifically.”).

¹⁵ See *id.* at 792.

¹⁶ See Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 595 (1986) (“[T]he reasoning behind antipornography legislation is found in three categories of concrete, gender-related harms: harms to those who participate in the production of pornography, harms to the victims of sex crimes that would not have been committed in the absence of pornography, and harms to society through social conditioning that fosters discrimination and other unlawful activities.”).

¹⁷ See Catharine A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U. L. REV. 793, 796 (1991) (“Women in pornography are bound, battered, tortured, harassed, raped, and sometimes killed; or, in the glossy men’s entertainment magazines, “merely” humiliated, molested, objectified, and used.”).

¹⁸ See MacKinnon, *supra* note 17, at 803 (“Pornography makes women a public sexual spectacle and common sexual property, works to lower the public standard of their perception and treatment, terrorizes and humiliates women, and also at times offends their sensibilities.”).

¹⁹ See John M. Kang, *Taking Safety Seriously: Using Liberalism to Fight Pornography*, 15 MICH. J. GENDER & L. 1, 4 (2008); MacKinnon, *supra* note 17, at 805 (“Not even clearly symbolic conduct such as cross burning has been considered protected by the First Amendment, even though, unlike pornography, it is pure expression.”).

²⁰ See GRONEMAN, *supra* note 7, at 6 (“In the Victorian period, both doctors and the patients who sought medical help believed that strong sexual desire in a woman was a symptom of disease.”).

²¹ See Lesley Dean-Jones, *The Politics of Pleasure: Female Sexual Appetite in the Hippocratic Corpus*, in *DISCOURSES OF SEXUALITY: FROM ARISTOTLE TO AIDS* 48, 51 (Domna C. Stanton ed., 1992), available at <http://ssrn.com/abstract=1010240>.

²² See GRONEMAN, *supra* note 7, at xix (“[M]edical men ... helped to legitimate a code of sexual behavior based on rigid distinctions between feminine and masculine activity.”).

²³ See Ruth Westheimer, Letter to Dr. Ruth, CHI. TRIB., Feb. 2, 1996, at 7 (“My friends think that I’m a nympho, but I don’t think that I am. What are the warning signs of nymphomania?”).

²⁴ See GRONEMAN, *supra* note 7, at 43-45 (explaining interactions between a physician and his female patients where the women were diagnosed with a problem when clearly their husbands were not responsive to their sexual feelings).

²⁵ See *id.* at 37 (“Not only too much sex, but too aggressive sex, the wrong kind of orgasm, and a catchall category of ‘masculinized’ women all became indicators of mental disorder.”).

²⁶ See George Chauncey, Jr., *From Sexual Inversion to Homosexuality: The Changing Medical Conceptualization of Female “Deviance,”* reprinted in *PASSION AND POWER: SEXUALITY IN HISTORY* 87, 89 (Kathy Peiss ed., 1989).

²⁷ See Laurette T. Liesen, *Feminism and the Politics of Reproductive Strategies*, 14 POL. AND THE LIFE SCI. 145, 149 (Aug. 1995).

²⁸ See GRONEMAN, *supra* note 7, at 15 (“[Her feelings] reflected prevalent assumptions that having children was not only a woman’s major function in life but also the focus of her sexuality.”); Paula Abrams, *Reservations About Women: Population Policy and Reproductive Rights*, 29 CORNELL INT’L L. J. 1, 2 (1996) (“Women have been valued historically for their capacity to bear children. Reproduction, along with other aspects of women’s lives, has generally been controlled by men.”).

²⁹ See *id.* at 13 (detailing the history of a female patient who constantly worried about her lascivious dreams and sought medical help).

³⁰ See *id.* at 13 (“Although we do not know how the great majority of women coped with these moral pressures, some at least . . . internalized contemporary notions of illness and consulted doctors with their sexual fears and concerns.”); see also Conrad, *supra* note 5, at 219 (“It is clear that patients are not necessarily passive and can be active participants in the process of medicalization.”).

³¹ See GRONEMAN, *supra* note 7 and accompanying text.

³² See *id.* at 11 (“[Patients], too, were highly suspicious and fearful of “unnatural” feelings and interpreted them to mean sexual disease.”).

³³ See *id.* at 6 (“women’s presumably milder sexual appetite meant that any signs of excess might signal that she was dangerously close to the edge of sexual madness.”).

³⁴ See Gila Stopler, “A Rank Usurpation of Power”-*The Role of Patriarchal Religion and Culture in the Subordination of Women*, 15 DUKE J. GENDER L. & POL’Y 365, 370 (2008) (describing hegemony as the power to define the common sense notions of society and create the social reality of a culture).

³⁵ See GRONEMAN, *supra* note 7, at 11 (“Patients shared similar ideas about the body and the passion. They, too, were highly suspicious and fearful of ‘unnatural’ feelings and interpreted them to mean sexual disease.”).

³⁶ See Conrad, *supra* note 5, at 211.

³⁷ GRONEMAN, *supra* note 7, at 4 (“[P]hysicians were less likely to connect men’s ailments to their genitalia, while assuming that women’s reproductive organs caused both physical and mental disease.”); accord Conrad, *supra* note 5, at 221-22; see also Lydston,

supra note 12, at 258 (“[Satyriasis] is not a frequent disease brought to the attention of the physician, probably because the opportunities for gratification of the male are relatively numerous”).

³⁸ See GRONEMAN, *supra* note 7 and accompanying text.

³⁹ See *id.*

⁴⁰ See Lydston, *supra* note 13, at 258.

⁴¹ See *id.*; GRONEMAN, *supra* note 7, at xx.

⁴² See GRONEMAN, *supra* note 7, at xx.

⁴³ See Lydston, *supra* note 12, at 263 (While clitoridectomies and removal of the ovaries were rarer forms of treatment, they still happened on occasion. Furthermore, some women sought the removal of their sex organs because they were convinced it was the only way to rid them of their sexual malady).

⁴⁴ See GRONEMAN, *supra* note 7, at 37.

⁴⁵ See *id.* at 45.

⁴⁶ See *id.*

⁴⁷ See *id.* at 127-28.

⁴⁸ *Id.* at 128.

⁴⁹ See BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 66 (W.W. Norton & Co., Inc. 2001) (1963) (proposing that women in the 1950s and 1960s were experiencing a common problem of dissatisfaction with their lives in American suburbia despite societal views that they had access to everything that should make them happy).

⁵⁰ See Westheimer, *supra* note 24 (showing that advice columns are still getting inquiries from women regarding nymphomania and the symptoms they have to watch for in themselves).

⁵¹ See GRONEMAN, *supra* note 7, at 159-60.

⁵² See FRIEDAN, *supra* note 49, at 57.

⁵³ See FRIEDAN, *supra* note 49, at 57 (referring to the term Friedan coined that described the inexplicable depression and dissatisfaction that American women experienced during the 1950s and 1960s despite their lives as stay-at-home housewives, which society had led them to believe would fulfill them and bring them happiness).

⁵⁴ See *id.* at 66 (describing the many and varied news sources that began speaking about the reality of unhappy housewives).

⁵⁵ See *id.* at 67.

⁵⁶ See GRONEMAN, *supra* note 7, at 160 (“Whereas images of ever-willing women had always been pornography’s bread and butter, something new was added in the seventies and eighties: women who actively sought their own pleasure, instead of simply responding to male desire.”).

⁵⁷ See Kang, *supra* note 19, at 9 (“[O]ne can argue that erotic speech can inform or reflect how we view men’s and women’s gender roles, and that such views can affect how we think about statutes concerning sexual harassment, gender discrimination, same-sex education, rape statutes, and gender-based affirmative action.”).

⁵⁸ Compare DSM III, *supra* note 13, at 283, with DSM III-R, *supra* note 13, at 296 (showing that the “Other Sexual Disorders” category no longer contains “nymphomania” as a disorder).

⁵⁹ See generally DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 493-522 (Am. Psychiatric Ass’n ed., 4th ed. 1994) (demonstrating persistent “Sexual Dysfunctions” diagnoses but the continued absence of “nymphomania” as a medical diagnosis).

⁶⁰ See GRONEMAN, *supra* note 7, at xv (comparing student understandings of nymphomania’s definition).

⁶¹ See *id.* (“An acquaintance remarked that her hip, twentysomething son and his crowd used ‘nympho’ as a positive comment about girls who liked sex.”).

⁶² See Westheimer, *supra* note 23 (stating questions asked in advice columns).

⁶³ See *id.*

⁶⁴ See HOWARD SAUL BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* 18 (1963) (describing the labeling and the resulting discrimination against such deviant or dysfunctional behavior).

⁶⁵ Conrad, *supra* note 5, at 212-13.

⁶⁶ See Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 297 (1992) (“Doctors described family and state as interdependent institutions, arguing that regulation of private conduct was necessary to preserve the character of public life. In nearly all antiabortion tracts, doctors emphasized that abortion was most frequently practiced by married women, particularly those of the so-called ‘native’ middle class. Abortion did not simply threaten the unborn; it threatened unborn populations.”).

⁶⁷ See *id.* at 300 (“During the period of the criminalization [of abortion] campaign, the gynecologists and obstetricians of the AMA were seeking to appropriate management of the birthing process from midwives, and to prevent women from entering the medical profession.”).

⁶⁸ See Conrad, *supra* note 5, at 221-22.

⁶⁹ See *id.*

⁷⁰ Bharati Sadasivam, *The Rights Framework in Reproductive Health Advocacy- A Reappraisal*, 8 HASTINGS WOMEN’S L.J. 313, 337 (1997).

⁷¹ See Liesen, *supra* note 27, at 151 (“Because of uncertainty about paternity, men in many cultures insist upon chastity and fidelity in marriage to insure that any children born are theirs and not another man’s.”).

⁷² See Gertrud M. Fremling & Richard A. Posner, *Status Signaling and the Law, with Particular Application to Sexual Harassment*, 147 U. PA. L. REV. 1069, 1078 (May 1999) (“Women compete for the high-status men, and the women who are successful in this competition will have a high female status. Promiscuous women will tend to lose out in this competition because men’s inclusive fitness is reduced if they expend resources on protecting other men’s children, unless the other men are close blood relatives.”).

⁷³ See Laurette T. Liesen, *Women, Behavior, and Evolution: Understanding the Debate Between Feminist Evolutionists and Evolutionary Psychologists*, 26 POL. AND THE LIFE SCI. 51, 54 (Mar. 2007).

⁷⁴ See GRONEMAN, *supra* note 7, at 15; see also Abrams, *supra* note 28, at 2 (“Women have been valued historically for their capacity to bear children.”).

⁷⁵ See Siegel, *supra* note 66, at 297 (discussing the old prevailing view that marital sex involved the production of the community).

⁷⁶ See *id.*

⁷⁷ See Lynn M. Paltrow, *The War on Drugs and the War on Abortion: Some Initial Thoughts on the Connections, Intersections and Effects*, 10 REPROD. HEALTH MATTERS 162, 163 (May 2002).

⁷⁸ See *id.*

⁷⁹ See Linda Gordon, *Who Is Frightened of Reproductive Freedom for Women and Why? Some Historical Answers*, 9 FRONTIERS 22, 25 (1986) (acknowledging that reproductive freedom could potentially undo “the basic gender organization of society,” and thereby affect masculinity as well).

⁸⁰ Siegel, *supra* note 67, at 297.

⁸¹ See *id.* at 298 (“The physicians thus depicted reproductive conduct as public, urging middle-class audiences to repudiate practices of abortion and contraception in order to preserve the political power of their social class.”).

⁸² See NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN’S RIGHTS* 228 (1996).

⁸³ See Paltrow, *supra* note 77, at 163.

⁸⁴ See STROSSEN, *supra* note 82, at 228 (detailing the plights of women like Emma Goldman who suffered after the Comstock Laws were enacted).

⁸⁵ See Sadasivam, *supra* note 70, at 337.

⁸⁶ See STROSSEN, *supra* note 82, at 249.

⁸⁷ See Preston, *supra* note 2, at 811-12 (“Pragmatists stress that, if indeed sexist images do harm society and individuals, pornography is a relatively unimportant source of such images. Pornography reaches a fairly small portion of the population on a regular basis.”).

⁸⁸ See *id.*

⁸⁹ See *id.* at 811-812.

⁹⁰ See Amy Adler, *What’s Left?: Hate Speech, Pornography, and the Problem for Artistic Expression*, 84 CALIF. L. REV. 1499, 1529 (Dec. 1996); Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99, 148 (2007).

⁹¹ See Sunstein, *supra* note 16, at 601 (“Of course, pornography is only one of a number of conditioning factors, and others are of greater importance. If pornography were abolished, sexual inequality would hardly disappear.”).

⁹² See Hugh M. Hefner, *Hefner’s Views on Pornography*, L.A. TIMES, Oct. 26, 1985, at 2 (“If [censorship] is used today to prohibit sexually explicit words and images, it might be used tomorrow to prohibit other forms of expression.”).

⁹³ See Ruth Rosen, *MacKinnon Does Not Speak for Me: The Legal Scholar is Wrong to Make Pornography, Not Poverty, the Most Urgent Feminist Issue*, L.A. TIMES, Feb. 9, 1994, at 7 (“Chipping away at the First Amendment is rarely a good idea, and especially dangerous for groups committed to radical social change”).

⁹⁴ See STROSSEN, *supra* note 82, at 32.

⁹⁵ See Adler, *supra* note 90, at 1526-27.

⁹⁶ See *id.* at 1503-04 (noting that activists and artists utilize similar diction and expression in their work).

⁹⁷ See *id.* at 1499.

⁹⁸ See Preston, *supra* note 2, at 793 (“Finally, some prosex feminists argue that pornography offers a safe sexual outlet for men and that such an outlet may actually reduce hostility towards women generally and ‘the demand for rape’ specifically.”).

⁹⁹ See *id.*

¹⁰⁰ See Todd D. Kendall, *Pornography, Rape, and the Internet*, TODD KENDALL 24 (July, 2007) (unpublished manuscript) available at <http://www.toddkendall.net/internetcrime.pdf>.

¹⁰¹ See *id.* at 1.

¹⁰² See Preston, *supra* note 2, at 792 (“[P]rosex feminists began to emphasize the benefits of pornography for both society and individual women.... [B]ecause some women may find pleasure and empowerment in images others interpret as subordinating, prosex feminists argue government should not be in the business of drawing lines and limiting options.”); Wendy McElroy, *A Feminist Defense of Pornography*, FREE INQUIRY, Fall 1997, at 14, 15, available at http://www.secularhumanism.org/library/fi/mcelroy_17_4.html (defending the rights of women to participate in and consume pornography).

¹⁰³ See Preston, *supra* note 2, at 805 (“Pragmatists share the concern of prosex feminists about the need for women to understand sexuality and their bodies. The power to prohibit sexual material, they argue, may deprive women of information necessary to developing healthy attitudes about sex and sexual pleasure, and to recognizing and appropriately responding to disease and physical malfunctions.”).

¹⁰⁴ See John Leo & Scott Brown, *Romantic Porn in the Boudoir*, TIME, Mar. 30, 1987, at 63, 63, available at <http://www.time.com/time/magazine/article/0,9171,963897,00.html>.

¹⁰⁵ See Pamela Paul, *Behavior: The Porn Factor*, TIME, Jan. 19, 2004, at 99, 100, available at <http://www.time.com/time/magazine/article/0,9171,993158,00.html>.

¹⁰⁶ See Judith Kegan Gardiner, *What I Didn’t Get to Say on TV About Pornography, Masculinity, and Representation*, 38 N.Y.L. SCH. L. REV. 319, 331 (1993).

¹⁰⁷ See Courtenay W. Daum, *Feminism and Pornography in the Twenty-First Century: The Internet’s Impact on the Feminist Pornography Debate*, 30 WOMEN’S RTS. L. REP. 543, 563 (2009) (“Pornography created by and for women may change the way that men and women learn sex, and if men and women learn egalitarian sex or female-centric sex the current patriarchal system and its dependence on male-centric sex and women’s sexual dependence may be undermined.”).

¹⁰⁸ See Janis Searles, *Sexually Explicit Speech and Feminism*, 63 REV. JUR. U.P.R. 471, 488 (1994); see also Daum, *supra* note 107, at 560 (“Women can produce pornography that illustrates the broad variety of women’s sexual desires.”).

¹⁰⁹ See MacKinnon, *supra* note 17, at 798 (“Women told how pornography was used to break their self-esteem, train them into sexual submission, season

them to forced sex, intimidate them out of job opportunities, blackmail them into prostitution and keep them there, terrorize and humiliate them into sexual compliance, and silence their dissent.”); see also Daum, *supra* note 107, at 553 (“Anti-censorship feminists acknowledge that some pornography may present sexual stereotypes of women and incite some men to perpetuate violent acts against women ...”).

¹¹⁰ See Daum, *supra* note 107, at 563 (arguing that women can make beneficial pornography for themselves).

¹¹¹ E-mail from Amber Baig, Doctoral Student, Chi. Sch. Prof'l Psychology- L.A., to author (Mar. 8, 2011, 20:21 PST) (on file with author).

¹¹² See Crawford, *supra* note 90, at 139.

¹¹³ See MacKinnon, *supra* note 17, at 796 (“Pornography has a central role in actualizing this system of subordination in the contemporary West, beginning with the conditions of its production.”).

¹¹⁴ See MacKinnon, *supra* note 17, at 796; Searles, *supra* note 108, at 474.

¹¹⁵ See Karen Boyle, *The Pornography Debates: Beyond Cause and Effect*, 23 WOMEN'S STUD. INT'L F. 187, 189 (2000); Sunstein, *supra* note 16, at 595 (“[P]articipants have been beaten, forced to commit sex acts, imprisoned, bound and gagged, and tortured.”).

¹¹⁶ See Angela A. Liston, *Pornography and the First Amendment: The Feminist Balance*, 27 ARIZ. L. REV. 415, 421 (1985).

¹¹⁷ See *id.*

¹¹⁸ *Id.*

¹¹⁹ See Sunstein, *supra* note 16, at 592 (“The central concern is that pornography both sexualizes violence and defines women as sexually subordinate to men.”).

¹²⁰ See Preston, *supra* note 2, at 788 (“On the individual level, absolutists claim that pornography ‘ultimately constitute(s) ... self-understanding’ leading to a ‘distorted understanding of human personhood.... (Pornography) erodes our sense of moral responsibility and lowers resistance to more bizarre and deviant sexual images.’”).

¹²¹ See Preston, *supra* note 2, at 781; Searles, *supra* note 108, at 474.

¹²² Kang, *supra* note 19 and accompanying text.

¹²³ See Preston, *supra* note 2, at 781 (“As a primal experience of gender hierarchy, pornography is a major way in which sexism is enjoyed and practiced, as well as learned. It is one way that male supremacy is spread and made socially real.”) (citing Catherine

A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U. L. REV. 793, 802 (1991)).

¹²⁴ See Sunstein, *supra* note 16, at 601 (“Pornography acts as a filter through which men and women perceive gender roles and relationships between the sexes.”).

¹²⁵ See Sunstein, *supra* note 16, at 598 (“Some laboratory studies show a reduced sensitivity to sexual violence on the part of men who have been exposed to pornography.”).

¹²⁶ See MacKinnon, *supra* note 17, at 800 (“Such material has been shown to lower inhibitions on aggression by men against women, increase acceptance of women’s sexual servitude, increase sexual callousness toward women, decrease the desire of both sexes to have female children, increase reported willingness to rape, and increase the belief in male dominance in intimate relationships.”).

¹²⁷ See *id.* at 803 (“Pornography makes women a public sexual spectacle and common sexual property, works to lower the public standard of their perception and treatment, terrorizes and humiliates women, and also at times offends their sensibilities.”).

¹²⁸ See *id.* at 798.

¹²⁹ See Mike Allen et al., *A Meta-Analysis Summarizing the Effects of Pornography II: Aggression After Exposure*, 22 HUM. COMM. RES. 258, 271 (Dec. 1995) (debunking the expectations of social learning theory with data demonstrating that violent content in pornography is unnecessary to produce aggressive behavior).

¹³⁰ Sunstein, *supra* note 16, at 597.

¹³¹ See Charlotte Allen, *Penthouse Pest; Why Porn Crusader MacKinnon Is Right*, WASH. POST, Nov. 28, 1993, at C1.

¹³² See Kendall, *supra* note 100, at 24-25.

¹³³ See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 984 (2d ed. 2002); Kang, *supra* note 19, at 4.

¹³⁴ See CHEMERINSKY, *supra* note 133, at 984.

¹³⁵ See *id.*

¹³⁶ See David Cole, *Playing by Pornography’s Rules: The Regulation of Sexual Expression*, 143 U. PA. L. REV. 111, 127 (1994).

¹³⁷ See Kent Greenfield, *Our Conflicting Judgments About Pornography*, 43 AM. U. L. REV. 1197, 1207 (1994) (discussing the history of pornography and its positive impact on women during eras like the Enlightenment).

¹³⁸ See GRONEMAN, *supra* note 7 and accompanying text.

¹³⁹ See Tiefer, *supra* note 6, at 98-99.

¹⁴⁰ While not all pornography portrays women as empowered, there exists a wide range of material. An analysis of the percentage of this type of pornography may prove very difficult to calculate.

¹⁴¹ See Paul, *supra* note 105, at 99; see also Daum, *supra* note 107, at 555 (“Sexually explicit materials may help women to liberate themselves by educating them about female sexuality.”).

¹⁴² See Andrew Koppelman, *Why Phyllis Schlafly is Right (But Wrong) About Pornography*, 31 HARV. J.L. & PUB. POL’Y 105, 119 (2007), available at http://www.law.harvard.edu/students/orgs/jlpp/Vol31_No1_Koppelmanonline.pdf.

¹⁴³ Labeling is another important social control mechanism that is worthy of discussion, but one that is not addressed in this Paper.

¹⁴⁴ Daum, *supra* note 107, at 562.

¹⁴⁵ See Greenfield, *supra* note 137, at 1207.

¹⁴⁶ See *id.*

¹⁴⁷ See Searles, *supra* note 108, at 487 (“Some examples of feminist concerns that could be harmed by restrictions on sexually explicit speech include working to overcome the virgin/whore dichotomy that constrains the way that women lead their lives and affects the way that women are perceived, providing better sex education to young adults to help them develop healthy sexual identities and to arm them with knowledge about sexually transmitted diseases, pregnancy, and sexual abuse, striving to distinguish between sex and violence, and breaking down sexual stereotypes and roles in all areas of society.”).

¹⁴⁸ Daum, *supra* note 107, at 563 (“[W]omen need to utilize the avenues that are available to them to produce speech that challenges patriarchal depictions. The Internet is a powerful tool for addressing these inequities because it enables everyone to be a producer.”); see Searles, *supra* note 109, at 487.

¹⁴⁹ See Searles, *supra* note 108, at 487 (arguing that women need more speech, not less, and that women can use pornography as a tool to educate themselves).

¹⁵⁰ See Daum, *supra* note 107, at 545 (“To the extent that the Internet enables women to identify and claim their sexual selves and to define what sex means to them by producing and consuming pornography, it has the potential to challenge the manner in which

society uses sex as created and defined in pornography as a tool to promote patriarchy and subsequently define and control women.”).

¹⁵¹ See Leo, *supra* note 104, at 63 (relating stories of pornography actresses and filmmakers who demand and create more story line and less hard core or degrading sexual acts in their films).

¹⁵² See GRONEMAN, *supra* note 7, at 161 (“One of the best known [porn stars,] Candida Royale, established Femme Productions in 1984 because she wanted to make a different kind of porn film — one that showed women celebrating their own lustiness.”).

¹⁵³ Leo, *supra* note 103, at 63.

¹⁵⁴ See *id.* at 65.

¹⁵⁵ See Daum, *supra* note 107, at 548 (“[I]t may be argued that the ease of creating, disseminating, accessing and viewing pornography on the Internet has great potential benefit for women—it enables women to define their sexuality and gain access to sexually explicit depictions and educational materials...”).

¹⁵⁶ See Preston, *supra* note 2, at 792.

¹⁵⁷ See GRONEMAN, *supra* note 7, at 161 (“Happy nymphos also began to appear in films made by a few female porn stars who moved behind the lights to produce and direct their own films.”).

¹⁵⁸ *Id.*

¹⁵⁹ See Gardiner, *supra* note 106, at 331.

¹⁶⁰ See Kang, *supra* note 19, at 3.

¹⁶¹ See Tiefer, *supra* note 6, at 98.

¹⁶² See *id.* at 98.

¹⁶³ See *id.* at 98-99.

¹⁶⁴ Email from Amber Baig, *supra* note 105.

¹⁶⁵ See Paul, *supra* note 105, at 100.

¹⁶⁶ See Ana J. Bridges et al., *Romantic Partners’ Use of Pornography: Its Significance for Women*, 29 J. SEX & MARITAL THERAPY 1, 1-2 (2003); Paul, *supra* note 105, at 100.

¹⁶⁷ See Paul, *supra* note 105, at 100.

¹⁶⁸ See *Who We Are*, NAMBLA, <http://www.nambla.org/welcome.html>.

¹⁶⁹ See *supra* text accompanying notes 138-139.

¹⁷⁰ See Preston, *supra* note 2, at 792 (“the prosex position affirms plurality and individuality among women and feminists.”).

¹⁷¹ There are instances where adult pornography should be censored and, as I discussed earlier, those should be limited to instances of obscenity.

¹⁷² See *New York v. Ferber*, 458 U.S. 747, 756-57 (1982).

¹⁷³ See *id.* at 758 (highlighting the numerous impacts of acting in pornography on children's mental and physical health).

¹⁷⁴ See Susan Hanley Duncan, *A Legal Response is Necessary for Self-Produced Child Pornography: A Legislator's Checklist for Drafting the Bill*, 89 OR. L. REV. 645, 659 (2010).

¹⁷⁵ See CHEMERINSKY, *supra* note 133, at 991.

¹⁷⁶ See Audrey Rogers, *Child Pornography's Forgotten Victims*, 28 PACE L. REV. 847, 855-56 (2008).

¹⁷⁷ CHEMERINSKY, *supra* note 133, at 988; *Ferber*, 458 U.S. at 747.

¹⁷⁸ *Ferber*, 458 U.S. at 756-57; see also *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) ("The state's authority over children's activities is broader than over like action of adults.").

¹⁷⁹ See *Prince*, 321 U.S. at 169-170.

¹⁸⁰ See Duncan, *supra* note 174, at 664 ("[T]he frontal lobes and prefrontal cortex remain under construction until the early twenties...").

¹⁸¹ See *Age of Consent Chart for the U.S.- 2010*, www.ageofconsent.us (last visited Apr. 9, 2011).

¹⁸² See Duncan, *supra* note 174, at 658 ("It is reasonable to conclude that persons 16 and 17 years old, although old enough to consent to sexual relations, may not fully appreciate that today's recording of a private, intimate moment may be the Internet's biggest hit next week.") (citing *State v. Senters*, 699 N.W.2d 810, 817 (Neb. 2005)).

¹⁸³ See *id.*

¹⁸⁴ See *id.* at 659 (discussing the numerous harms resulting from self-produced child pornography).

¹⁸⁵ Cf. *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944) (arguing that it is not even appropriate for children to make decisions about propagandizing communities about religious, political, or other matters until they reach the age of "full and legal discretion.").

¹⁸⁶ Rogers, *supra* note at 176, at 853.

¹⁸⁷ See Duncan, *supra* note 174, at 659 ("[T]he pictures in either case 'live on,' creating feelings of anxiety, regret, and fear that are similar to those experienced by traditional child pornography victims.").

¹⁸⁸ See *State v. Bruegger*, 773 N.W.2d 862, 886 (Iowa 2009) (relating the story of a girl who had sex at age fifteen with a twenty-one year old, believing him to be her boyfriend).

¹⁸⁹ See Child Pornography Prevention Act of 1996, 18 U.S.C.A. § 2251 (1996).

¹⁹⁰ See MacKinnon, *supra* note 17, at 796, 800.

¹⁹¹ See Preston, *supra* note 2, at 792.

¹⁹² See Duncan, *supra* note 174, at 659 ("[T]he production of traditional child pornography may involve an underlying crime in its creation...").

¹⁹³ See *id.* at 658 ("It is reasonable to conclude that persons 16 and 17 years old, although old enough to consent to sexual relations...") (citing *State v. Senters*, 699 N.W.2d 810, 817 (Neb. 2005)).

¹⁹⁴ See Rogers, *supra* note at 176, at 853.

¹⁹⁵ See Liston, *supra* note 116, at 421 (detailing the ordeal suffered by Linda Marchiano in the making of *Deep Throat*).

¹⁹⁶ See generally Daum, *supra* note 107, at 563-65 (acknowledging the anti-pornography arguments and the dangers of porn on the internet but advocating for the pro-sex and pro-pornography stance for its positive impact on sexual equality).

¹⁹⁷ See GRONEMAN, *supra* note 7, at 37 ("New categories of nymphomania appeared ... Nymphomania now threatened wives seeking erotic satisfaction in the bedrooms of America, sexually active working girls out for a night on the town, and career women whose independent lives challenged traditional notions of femininity.").

¹⁹⁸ See Daum, *supra* note 107, at 563 (citing some of the harms that may result from the production of pornography, but ultimately arguing that pornography gives women the opportunity to redefine sexuality).

¹⁹⁹ See Jeffrey G. Sherman, *Love Speech: The Social Utility of Pornography*, 47 STAN. L. REV. 661, 667 (1995), available at <http://www.jstor.org/stable/1229081> (arguing that pornography serves a social good).

²⁰⁰ See Daum, *supra* note 107, at 556.