

GAY DOES NOT NECESSARILY MEAN GOOD: A CRITIQUE OF JEFFREY SHERMAN'S "LOVE SPEECH: THE SOCIAL UTILITY OF PORNOGRAPHY"

BRIDGET J. CRAWFORD*

"[Pornography] sexualizes inequality. It makes dominance and submission into sex. Inequality is its central dynamic; the illusion of freedom coming together with the reality of force is central to its working." — Catharine A. MacKinnon¹

"[P]ornography - at least gay male pornography — is to be valued as serving a social good: It enables its consumers to realize satisfying, nurturing sexual lives." — Jeffrey G. Sherman²

INTRODUCTION

Jeffrey Sherman's recent article, "Love Speech: The Social Utility of Pornography," makes a strong but incomplete case for gay male pornography. Sherman suggests that unlike heterosexual pornography, gay pornography serves a useful social function because it helps gay consumers lead "nurturing sexual li[ves]"³ which will in turn make them "full citizens."⁴ Although positive images are certainly important to the development of a healthy sexual identity, Sherman tends to define images categorically according to the gender of the participants. Gender alone does not determine an individual's sense of power and domination. A complete analysis of pornography re-

* B.A. Yale University, 1991. J.D. University of Pennsylvania Law School, 1996. Associate, Milbank, Tweed, Hadley & McCloy, New York City. Special thanks to Barry Burland, Sarah Baringer Gordon, Darren Rosenblum and Katharine Silbaugh for their helpful comments.

1. Catharine A. MacKinnon, Francis Biddle's Sister: Pornography, Civil Rights and Speech, in *FEMINIST JURISPRUDENCE* 325 (Mary Becker ed., 1994).

2. Jeffrey G. Sherman, Love Speech: The Social Utility of Pornography, 47 *STAN. L. REV.* 661, 662 (1995).

3. Sherman, *supra* note 2, at 669.

4. Sherman, *supra* note 2, at 671 (defining full citizenship in a political context as the "[s]elf-acknowledgment and self-definition that every group needs to participate fully in civic life").

quires relentless scrutiny of the ways in which such images are produced, consumed and interpreted.

This critique attempts to analyze Sherman's claim for the exceptionalism of gay male pornography. Although Sherman begins his article with a sweeping endorsement, he falls short for three reasons. First, Sherman simply ignores certain categories of images. Sherman dismisses those genres of pornography which he does not think are praise-worthy. Second, given his selective discussion, Sherman's article reads more like an argument for better sex education for young homosexuals than as a categorical endorsement of pornography. Finally, Sherman portrays sexual identity as a fixed, immutable construction and places himself in a privileged position which uniquely enables him to determine what images are good for gay men. In his analysis, those not belonging to the particular group portrayed in pornography are unfitting commentators. This critique strikes a more hopeful note, hinted at by Sherman himself,⁵ and suggests that discussions about heterosexual and homosexual pornography must be informed by a multitude of viewpoints.

I. "SAME STATION WITHIN THE HIERARCHY:"⁶ SHERMAN'S VERSION OF PORNOGRAPHY

At the outset of his article, Sherman carefully marks his territory. He disclaims any connection his "praise" for gay male pornography⁷ might have to the contemporary debate on heterosexual pornography: "Whether the good that I identify (the abatement of hierarchy based on sexual orientation) outweighs the harm identified by the feminist critics (the maintenance of hierarchy based on gender) is a judgment I leave to others, for I offer my argument exclusively in the context of gay male pornography."⁸ Indeed, Sherman's version of "pornography" bears little resemblance to Catharine MacKinnon's dominance theory of pornography.⁹ While MacKinnon stresses that pornography depicting women perpetuates inequality,¹⁰ Sherman insists that there is no inequality in gay male pornography.¹¹

Sherman suggests that gay male sexual acts and pornography are

5. Sherman, *supra* note 2, at 703-705.

6. Sherman, *supra* note 2, at 691.

7. Sherman, *supra* note 2, at 662 (stating "I come to praise pornography, not to defend it.") (citation omitted).

8. Sherman, *supra* note 2, at 667.

9. See MacKinnon, *supra* note 1, at 325 and *infra* notes 13-15 & accompanying text.

10. See MacKinnon, *supra* note 1, at 325.

11. Sherman, *supra* note 2, at 667.

different from their heterosexual counterparts.¹² He reasons that "[a] woman brings to any sexual encounter with a man the experience of having been a member, since birth, of the subordinated gender,"¹³ whereas "[s]exual acts between gay men involve persons of the same station within the hierarchy [such that] each man comprehends that his partner is neither his subordinate nor his superior"¹⁴ Sherman's version of pornography is one in which actors and directors are completely equal.¹⁵ They participate in pornography of their own free will and engage in sexual acts out of desire.¹⁶

Yet, examination of the pornography industry yields many stories of inequality. In "The Real Linda Lovelace," for example, Gloria Steinem details the coercion and abuse which forced Linda Marchiano to participate in pornographic films.¹⁷ Sherman, however, fails to explain why all gay pornography is insulated from such coercion. He ignores the fact that gender parity does not necessarily mean parity of power; men, like women, can be coerced. Sexual partners, though of the same sex, may differ in terms of race, class, age, or power in a relationship.¹⁸

Similarly, Sherman's theory fails to address the possibility that actors in pornographic films or photographs can experience real harm by engaging in sexual acts for the camera. The potential harm, at least for women, is made clear from the testimony of one pornography participant who described, "a couple of [film] sets where the young ladies have been forced to do even anal sex scenes with a guy which [sic] is rather large and I have seen them crying in pain."¹⁹ Even if, as Sherman posits, men possess certain underestimated sexual capacities,²⁰ some men, like some women, may experience actual

12. Sherman, *supra* note 2, at 691.

13. Sherman, *supra* note 2, at 691.

14. Sherman, *supra* note 2, at 691.

15. Sherman, *supra* note 2, at 691.

16. Sherman, *supra* note 2, at 691.

17. Gloria Steinem, *The Real Linda Lovelace* (1980), reprinted in GLORIA STEINEM, *OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS* 243-52 (1993).

18. Later in the article, Sherman makes clear that his endorsement of pornography does not extend to child pornography (Sherman, *supra* note 2, at 699) (stating, "[t]o treat homosexuality as just another of those aberrant sexual behaviors, like... pedophilia, utterly misconceives homosexuality"). He does concede, however, that age could still be a hierarchical factor insofar as age may represent more experience, authority, or even money.

19. DIANA H. RUSSELL, *MAKING VIOLENCE SEXY* 12 (1993) (quoting testimony before the 1986 Attorney General's Commission On Pornography).

20. Sherman, *supra* note 2, at 690 n.152 (remarking, "Professor MacKinnon either exaggerates human dimensions or underestimates human perseverance.") (replying to MacKinnon's suggestion that performance of "deep throat" required "hypnosis") (citation omitted).

pain in the making of pornographic films.²¹ Sherman evades this criticism by claiming that his theory of gay male pornography should be evaluated based on its "moral weight," and not on empirical evidence.²² This technique conveniently permits Sherman to focus only on certain aspects of gay pornography.

Even though Sherman states that his main argument is that "gay male pornography — is to be valued as serving a social good," he narrows the scope of his discussion to exclude or minimize the importance of those pornographic practices which he "cannot praise."²³ For example, Sherman denounces pornography which "constructs a hierarchy of sexual orientation," namely, pornography which "portrays heterosexual men sodomizing gay men while ridiculing and vilifying them for being gay."²⁴ Such pornography, Sherman explains, contributes to general homophobia and gay men's self-hatred.²⁵

Likewise, Sherman does not discuss child pornography in any meaningful way. It is not sufficiently part of Sherman's version of pornography to merit serious analysis.²⁶ He writes, "[b]eing gay is closer to being heterosexual than to being sexually drawn to quadrupeds or eight-year-olds. I am not going to discuss child pornography."²⁷ Sherman's dismissal of child pornography relates to his aversion to empirical investigation.²⁸ Even if the stereotype of gay sexual proclivity for children results from "the popular homophobic canard that gay men are child molesters by nature,"²⁹ this does not mean that some gay men, like some heterosexual men, are not sexually aroused by child pornography.³⁰

Sherman's version of gay pornography, however, is structured so as to take account of only *some* gay male pornography. What Sherman does not want to confront, he simply dismisses. On the one hand,

21. See Russell, *supra* note 19.

22. Sherman, *supra* note 2, at 665 (commenting that "the approach I offer in this article - is fundamentally a normative theory, reflecting judgments that contemporary social science has not yet found a way to test. [This and other theories of pornography] must stand or fall on the basis of their moral weight, not their empirical demonstrability").

23. Sherman, *supra* note 2, at 662, 702.

24. Sherman, *supra* note 2, at 702.

25. Sherman, *supra* note 2, at 702.

26. Sherman, *supra* note 2, at 699 & accompanying text.

27. Sherman, *supra* note 2, at 699.

28. Sherman, *supra* note 2 at 665. See also *supra* note 221.

29. Sherman, *supra* note 2, at 699.

30. CELIA DOYLE, HELPING STRATEGIES FOR CHILD SEXUAL ABUSE 27 (1995) (noting that incidents of homosexual pedophilia are likely unreported because of the stigma of homosexuality).

this is logical insofar as Sherman places himself in the subjective role of praise-giver.³¹ On the other hand, Sherman begins his article with the broad claim, "I come to praise pornography,"³² which would be more accurate if qualified. Furthermore, in dismissing child pornography, Sherman deems it unworthy of comment, thus implicitly creating a hierarchy of sexual behavior, a practice he denounces in other contexts.³³

Sado-masochism is included in the pornography that Sherman discusses.³⁴ In his paean, Sherman claims that sado-masochism is greatly misunderstood: "S/M is not about domination and submission. It is about trust."³⁵ According to Sherman, because society does not recognize and support gay relationships, sexual "novelty" functions as a crucial "securing force" in gay relationships.³⁶ He argues that sado-masochistic images uniquely inspire gay men to engage in "novel" sexual practices.³⁷ Yet his analysis is problematic in several respects. First, even assuming that sexual novelty keeps relationships together, Sherman does not explain why sado-masochism merits endorsement over a myriad of other "novel" sexual acts. Second, Sherman glosses over the fact that "[t]o the untutored eye, a photograph or film of a sado-masochistic encounter does seem to present a case of genuine physical abuse."³⁸ Claiming that sado-masochism "is about trust"³⁹ ignores the fact that trust and fear bear an extraordinary resemblance.⁴⁰ The fact that sado-masochistic pornography *looks* like abuse, as Sherman himself concedes, means that sado-masochistic images have no place in nurturing the "flourishing life."⁴¹ Insofar as Sherman's analysis hinges on the notion that

31. See *supra* note 7.

32. Sherman, *supra* note 2, at 662. Indeed, the subtitle of Sherman's article is "The Social Utility of Pornography," not "The Social Utility of Gay Male Pornography." Sherman, *supra* note 2, at 661.

33. See *infra* note 59 & *supra* note 24 & accompanying text.

34. Sherman, *supra* note 2, at 700-02.

35. Sherman, *supra* note 2, at 701.

36. Sherman, *supra* note 2, at 701.

37. Sherman, *supra* note 2, at 701.

38. Sherman, *supra* note 2, at 700.

39. Sherman, *supra* note 2, at 701.

40. Robin L. West, *The Difference in Women's Hedonic Lives*, in *FEMINIST JURISPRUDENCE* 90, 95 (Mary Becker ed., 1994) (stating, "I believe that sexual submission has erotic appeal and value when it is an expression of trust; is damaging, injurious and painful when it is an expression of fear; and is dangerous because of its ambiguity").

41. Sherman, *supra* note 2, at 669. See also *infra* notes 48-50 & accompanying text (explaining Sherman's use of the term "flourishing life" as achieving full potential, self-realization and character).

"pornography has behavioral and psychological effects,"⁴² it can be no answer to say that sado-masochism is really about trust. Even if men are "persons of the same station within the hierarchy" of gender,⁴³ a neophyte consumer of a sado-masochistic image will think that sado-masochistic pornography endorses domination.⁴⁴ A sado-masochistic image thus amounts to what the consumer thinks, or does after seeing an image that he or she believes is about domination and hierarchy.⁴⁵ In a theory based on the effects of pornography, albeit positive effects, disregarding the harmful effect of sado-masochistic pornography is incongruous.⁴⁶

II. AN ENDORSEMENT OF EROTICA ONLY?

If Sherman's praise of pornography is circumscribed in this way, it may be that his apparent endorsement of "pornography" is in fact a plea for certain sexual practices to be rescued from social scorn.⁴⁷ Although he claims to speak about gay male pornography generally, Sherman's support is not as unwavering as his tone would indicate. For example, Sherman claims that pornography is a necessary component to a gay man's "flourishing life."⁴⁸ At the core of his argument is the notion that "[f]or sexual interaction to be a component of the flourishing life, rather than a mere sensual distraction, a person's sexuality must be integrated with the rest of his life."⁴⁹ According to Sherman, a gay man's sexuality will only be "integrated," insofar as gay men have access to "passionate" and explicit portrayals of gay male sex.⁵⁰ Even if one accepts that such sexual images are needed, an endorsement of pornography does not necessarily follow.

Although pornography does not have a singular, widely-accepted definition, feminist proposals draw on the notion that pornography involves more than sexual explicitness.⁵¹ Pornography has been de-

42. Sherman, *supra* note 2, at 667.

43. Sherman, *supra* note 2, at 691.

44. Sherman, *supra* note 2, at 691 (noting that in the heterosexual image of sado-masochism, one partner dominates the other).

45. *Contra* Sherman, *supra* note 2, at 667 (arguing that the feminist view assumes that pornography's "consumers do not distinguish between reality and pornographic representation.")

46. See, e.g., Sherman, *supra* note 2, at 682-94.

47. Interview with Katharine Silbaugh, Boston University School of Law (Nov. 8, 1995). Thanks to Katharine Silbaugh for this insight.

48. Sherman, *supra* note 2, at 669-70.

49. Sherman, *supra* note 2, at 669-70.

50. Sherman, *supra* note 2, at 670, 682-85.

51. See, e.g., Catherine A. MacKinnon, *Francis Biddle's Sister: Pornography, Civil Rights and Speech*, in *FEMINISM UNMODIFIED* 171-79 (1987).

defined as "material that combines sex and/or the exposure of genitals with abuse or degradation in a manner that appears to endorse, condone, or encourage such behavior."⁵² According to Andrea Dworkin and Catharine MacKinnon's Model Ordinance, pornography means "graphic sexually explicit subordination of women [or men, children or transsexuals] through pictures and/or words that also includes" a portrayal of "pain," "submission," or "objectification."⁵³ Measured by these standards, it is far from certain that Sherman would insist that all pornography is a crucial component of gay men's self-realization. Images of degradation, even where a man has consented to having his genitals photographed, do little to promote "the flourishing life."⁵⁴ Sherman cannot, therefore, endorse all pornography. Rather, he must confine his analysis to a particular subset of sexually explicit images. He needs to make plain this limitation.

Taken as a whole, Sherman's work could be read as a case for erotica,⁵⁵ not pornography. Indeed, a sensual documentary or a photograph of a classical Greek male nude would be sufficient under his theory. After all, "[s]exual images' include more than images of men performing sexual acts with each other. Even a photograph of a naked man alone, if he is presented in circumstances that suggest sexual availability, can have a liberatory effect."⁵⁶ Yet Sherman makes no explicit distinction between erotica and pornography. His failure to do so has several explanations.

First, it may be impossible to construct definitions of pornography and erotica which make meaningful distinctions between the two. Second, it may be that Sherman himself makes no such distinction; he might endorse pornography even as defined by Russell, MacKinnon, and Dworkin.⁵⁷ His main concerns are gender parity and positive images of homosexual acts, or at least images which will be viewed as positive by the initiated.⁵⁸ Third, Sherman may want to en-

52. Russell, *supra* note 19, at 2-3.

53. Andrea Dworkin & Catharine MacKinnon, Model Antipornography Civil-Rights Ordinance, in *FEMINIST JURISPRUDENCE* 321-22 (Mary Becker ed., 1994).

54. Sherman, *supra* note 2, at 669. See *supra* notes 48-50, 38-41 & accompanying text.

55. American Heritage Dictionary 445 (1976) (defining erotica as "literature or art concerning or intending to arouse sexual desire").

56. Sherman, *supra* note 2, at 685 n.130 (explaining that non-sexual images during the Greek era included courtship. In contrast Sherman acknowledges that today's culture and literature concentrate mostly on passionate, heated sexual relations).

57. See *supra* notes 1, 19, 52, 53 & accompanying text. Whatever agreement he might have with their definitions, Sherman would likely object to the Dworkin and MacKinnon ordinance because it makes the mistake of "gender blind universalism" because gay men are not at all like women. Sherman, *supra* note 2, at 696, 691-2.

58. See *supra* notes 34-46 & accompanying text (discussing sado-masochism).

dorse pornography precisely because he opposes any "rigid model of what constitutes 'correct' and 'incorrect' sexual interactions."⁵⁹ To critique gay pornography, according to this rationale, would ostracize other gay men because it implicitly labels some methods of sexual gratification as more desirable than others. Finally, Sherman may be reluctant to distinguish between erotica and pornography because he believes that any anti-pornography view will be used against homosexuals.⁶⁰ The work of anti-pornography feminists, he explains, "strengthens political groups that may be expected to be overtly hostile to the aspirations of gays and lesbians ... A general campaign against sexual imagery ... is bound to have a disparate impact on gay men."⁶¹ Were Sherman to distinguish between pornography and erotica, he would, in his own estimation, contribute to hostile attitudes toward gay men. Ironically, Sherman's "praise" for gay pornography engenders more scrutiny from even pro-gay feminists because it is both sensational and ill-defined. Thus Sherman's endorsement of pornography is imprecise. His praise extends to some images, but not to all pornography. The circumstances under which certain sexual images such as genital degradation or even sado-masochism could contribute to a "flourishing life" are unclear.

III. PORNOGRAPHY AND IDENTITY POLITICS

Sherman sees a link between the cultural prejudice women and gay men experience. Homophobia and misogyny are "simply different aspects of the same hatred: hatred of femininity. 'Femininity' is a social construction, a classification to which patriarchal Western culture assigns many of the qualities it deems undesirable."⁶² In fact, what Sherman identifies as "obstacles to gay sexual integrity"⁶³ look similar to prejudices that women face. Just as heterocentrism and homophobia characterize national funding programs for the arts, "family life," and "resistance to gay-oriented literature,"⁶⁴ androcentrism and misogyny prevent women from obtaining arts funding, equal positions in a family, or an equal place for their literature in school curricula. Gay men's position in society resembles women's in this respect.

Despite any similarities in the way in which gay men and women

59. Sherman, *supra* note 2, at 695.

60. Sherman, *supra* note 2, at 694-95.

61. Sherman, *supra* note 2, at 694-95.

62. Sherman, *supra* note 2, at 703.

63. Sherman, *supra* note 2, at 675.

64. Sherman, *supra* note 2, at 677-81.

are perceived, Sherman contends that gay male pornography is not like heterosexual pornography: "[t]he men in the gay pornographic films [are] not being treated like women; they [are] being treated like gay men."⁶⁵ Thus, while Sherman concedes that gay men are treated like women by a homophobic society, he insists that privately, gay men are unlike women. Sherman wants to distance gay men from women precisely because society associates women with weakness. If gay pornography is not like heterosexual pornography, Sherman implies that gay men should not occupy the social ladder's lowest rung, as women do. Sadly, Sherman's significant efforts to distance gay men from women look like the very "hatred of femininity" he denounces.⁶⁶

Sherman asserts that unlike a woman depicted in heterosexual pornography, a gay man does not feel subordinated by pornography because his status in society is equivalent to that of his partner.⁶⁷ This theory requires that gay men do not bring to pornography an internalized sense of hierarchy in the way that heterosexual men do.⁶⁸ Otherwise, gay pornography begins to resemble heterosexual pornography, and would be prone to all of the same criticisms.

Sherman appeals to a fundamental premise of feminism in an attempt to bolster his analysis of gay pornography. Just as feminists give credence to women's accounts of "sexual use and abuse by men,"⁶⁹ Sherman asserts that "[g]ay men's accounts of their own sexuality and their own pornography are entitled to no less belief."⁷⁰

65. Sherman, *supra* note 2, at 691.

66. Sherman, *supra* note 2, at 703. Comparatively, some feminists such as Susan Brownmiller have adopted "personal guidelines and political stances that reject feminine fashion, makeup, and self-adornment as uncomfortable, inconvenient, and supportive of damaging gender distinctions." See Katharine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality*, 92 MICH. L. REV. 2541, 2580 (1994) (citation omitted). See also *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 777* (Mary Becker ed., 1994) (stating, "[m]any women would ... feel uncomfortable (emotionally and politically) wearing extremely frilly or sexy clothing.") That is, it might be possible to view women who eschew traditionally "feminine" ways of dressing as "demonstrat[ing] a contempt for femininity that is part of a submerged contempt for women." Comments from Katharine Silbaugh, Boston University School of Law (Dec. 5, 1995). Like Sherman, these feminists disavow a social construct of "femininity," insofar as the feminine is considered powerless. It is problematic, however, to separate a rejection of "femininity" from a disparagement of women, given that a significant number of women dress or behave in ways that the majority of society considers "feminine."

67. Sherman, *supra* note 2, at 691.

68. Sherman, *supra* note 2, at 691 (commenting, "[w]hen a heterosexual man speculates about or engages in homosexual sex, he brings with him his internalized sense that sex is hierarchical: One partner (the 'man') must dominate and the other (the 'woman') must be subordinated by the experience...").

69. Sherman, *supra* note 2, at 692 (quoting Catharine MacKinnon) (citation omitted).

70. Sherman, *supra* note 2, at 692.

A key premise of Sherman's argument is that one cannot describe the experiences of a group or its constituent members if one is not part of that group. The gay experience is as Sherman claims it is, then, simply because he and presumably other gay men say so. Outsiders who attempt to explain such experiences commit a "marginalizing error of conflation."⁷¹ They cannot understand what it is like to be gay since identity is impermeable.

Sherman reinforces a fixed view of gender and sexual identity throughout his analysis. He begins his article with an explanation of why he only discusses gay male pornography:

To counter the feminist antipornography critique in the context of heterosexual or lesbian pornography requires challenging the assumptions about female sexuality underlying that critique [A]ny such challenge should come from women scholars, not from me [S]exuality and sexual response are so personal and idiosyncratic, and the sexual responses of men and women are so demonstrably different, that each sex may be particularly ill-suited to make assertions about the other's sexuality.⁷²

Sherman assumes that men cannot make claims about women's sexuality and vice versa. While claiming that sexual response is "personal," Sherman also suggests that it is also possible for one woman to make meaningful observations about all women's experiences. Indeed, Sherman's theory of gay male pornography rests on the belief that one gay man knows what is good for all gay men.⁷³ Yet women, because they are not gay men, are incapable of commenting meaningfully on the gay male experience. When women do make observations that encompass the gay experience, they are likely to be wrong,⁷⁴ or public expression of such observations can have negative implications for gay men.⁷⁵

Sherman justifies his essentialist approach by explaining that it "deals with gay men's genital-sexual awakening and therefore with a time in life in which gay men often view their sexuality 'essentially.'"⁷⁶ Yet in light of his prior suggestion that femininity is "a social con-

71. Sherman, *supra* note 2, at 690, 692 (referring to arguments of anti-pornography activists such as Kathleen Mahoney, who argued before the Canadian Supreme Court that gay men engaging in pornography share the same experiences as women).

72. Sherman, *supra* note 2, at 667-68.

73. See Sherman, *supra* notes 70-71 & accompanying text.

74. See Sherman, *supra* notes 20, 65, 71 & accompanying text.

75. Sherman, *supra* note 2, at 694 ("[T]he campaign strengthens political groups that may be expected to be overtly hostile to the aspirations of gays and lesbians.").

76. Sherman, *supra* note 2, at 675.

struction, a classification to which patriarchal Western culture assigns many of the qualities it deems undesirable,"⁷⁷ Sherman cannot view identity as completely impenetrable at the level of gender or even sexual orientation. He argues that like race, homosexuality is "an identity category [that] is socially constructed."⁷⁸ According to Sherman, such a constructivist perspective is valuable because it provides gay men with "two powerful and liberating ideas:⁷⁹ [F]irst, that [gay men's] 'condition' is imposed from without by a homophobic society...And second that their differentness is not merely one of genital behavior."⁸⁰ As Sherman points out, the main shortcoming of a constructivist theory of sexuality is that it eliminates a sense of gay history, a necessary comfort for gay men who are coming out.⁸¹

CONCLUSION

Ultimately, if one's sexuality is not inherent to one's gender or sexual orientation, but is defined within a specific society based on that society's history and culture,⁸² gay pornography cannot be insulated from critiques aimed at heterosexual pornography. The fact that two men are depicted does not render pornography non-hierarchical.⁸³ Non-hierarchical sexual images are created when individuals engage in specific acts of their own will. Those acts must not harm either partner, and images of those acts must not lead to harmful ideas or actions by the consumer of the pornography. Thus, Sherman's advocacy of gay pornography cannot be extended to all gay pornography, or even to all of the pornography he discusses.

Finally, because sexuality is a permeable construct, it is both possible and necessary to engage in discussions about pornography that cut across gender identities and sexual orientations. Pornography is not "bad" or "good" simply because one group member declares that his or her fellow members are helped or harmed by it. Entire categories of pornography cannot be shielded from scrutiny. Instead, we must continue to ask what harm pornography perpetuates. Although I will not attempt to address that issue here, the commitment to ending homophobia and misogyny requires vigorous scrutiny of

77. See Sherman, *supra* note 62 & accompanying text.

78. Sherman, *supra* note 2, at 673.

79. Sherman, *supra* note 2, at 673-74.

80. Sherman, *supra* note 2, at 674-75.

81. Sherman, *supra* note 2, at 674-75.

82. Sherman, *supra* note 2, at 673.

83. Sherman, *supra* note 2, at 702 (acknowledging that hierarchical pornography can be just as harmful to gay men as it is to women).

all sexual images. When this occurs, no group of images should be deemed "good" simply because of the gender of the represented subject or the consumer's sexual preference.