To Paola, my wife
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From the mid-1970s through the early 1990s, feminists in the United States were embroiled in a series of debates over matters pertaining to sex and sexuality that have come to be known as feminism’s “sex wars.” During the sex wars, feminists staked out a variety of positions on a number of issues, including pornography, prostitution, sadomasochism, heterosexuality, lesbianism, intergenerational sex, and butch-fem identifies and practices. Unfortunately, these complex and heterogeneous debates tend to be remembered as a rather straightforward conflict between “antipornography” feminists on one side and “sex radical” feminists on the other.

In my dissertation, I challenge this simplistic and inaccurate view of the sex wars. Rather than focusing exclusively on the differences dividing antipornography and sex radical feminists, I highlight significant points of contact and overlap between them, particularly the challenges they posed to the sexual politics of post-war liberalism. I also highlight other conflicts and relationships that, I argue, were central to the sex wars, including conflicts and improbable alliances between antipornography feminists, sex radical feminists, and liberals of various stripes.

By reimagining the sex wars in this way, I hope to provide not only a more nuanced, richly contextualized, and complete account of the sex wars than has heretofore been available,
but also to illuminate in fresh and provocative ways a range of contemporary phenomena that, I argue, the sex wars helped produce, including recent controversies over the use of trigger warnings on college and university campuses, the increasingly carceral character of modern feminism, and the narrow and unimaginative politics of so-called “sex positive” feminism.
CHAPTER 1
INTRODUCTION

On April 24, 1982, some 800 scholars, students, artists, and activists convened at Barnard College for a conference entitled “The Scholar and the Feminist IX: Towards a Politics of Sexuality.” According to Carole Vance, the academic coordinator for the conference, the conference’s aim was to “refocus” the “feminist agenda on sexuality” by addressing “women’s sexual pleasure, choice, and autonomy, acknowledging that sexuality is simultaneously a domain of restriction, repression, and danger as well as a domain of exploration, pleasure, and agency” (Vance 1993a, 294; Vance 1984, 443). Judith Butler, who attended the conference as a graduate student and reviewed its controversial program, A Diary of a Conference on Sexuality, stated the conference’s aim more directly: “The clear purpose of the Diary – and of the Barnard conference – is to dislodge the anti-pornography movement as the one and only feminist discourse on sex” and “counterbalance the anti-pornography perspective on sexuality with an exploration into women’s sexual agency and autonomy” (Butler 1982).

Not all those who attended the Barnard conference embraced this aim. In fact, on the morning of the conference, just outside the gates of Barnard Hall, a group of self-identified “radical” and “lesbian feminists” formed a picket line. Sporting t-shirts that read “For a Feminist Sexuality” on the front and “Against S/M” on the back, the protestors distributed a two-page leaflet accusing the conference of endorsing “sexual institutions and values that oppress all women,” including “pornography,” “butch-femme sex roles,” “sadomasochism,” “violence against women,” and the sexual abuse of children. Although the leaflet was signed “the Coalition for a Feminist Sexuality and Against Sadomasochism (Women Against Violence Against Women; Women Against Pornography; New York Radical Feminists),” it was soon discovered
to have been the almost exclusive handiwork of Women Against Pornography (WAP), the leading antipornography feminist organization in the U.S. at the time.³

The events I have just described are often portrayed as the catalyst for feminism’s sex wars,⁴ a series of conflicts over matters pertaining to sex and sexuality that embroiled the feminist movement in the United States from the mid-1970s to the early 1990s.⁵ In the course of these conflicts, feminists staked out a variety of positions on a number of issues, including pornography, prostitution, sadomasochism, butch-fem identities and practices, intergenerational sex, the nature and limits of law, the meaning of the First Amendment’s free speech guarantee, the wisdom and sufficiency of state-centered politics, and how (and whether) to define the boundaries of the category of woman. However, the sex wars tend to be remembered as coextensive with the conflict that erupted at the Barnard conference: a straightforward clash between two opposing feminist sides.

One of the earliest and most influential accounts to present the sex wars in this manner is Ann Ferguson’s article “Sex War: The Debate between Radical and Libertarian Feminists.” In this article, which was first published in the fall of 1984 in a special issue of the feminist periodical Signs on “the feminist sexuality debates,” Ferguson describes “an increasing polarization of American feminists into two camps on issues of feminist sexual morality” (Ferguson 1984, 106). “The first camp,” according to Ferguson, “… holds that sexuality in a male-dominant society involves danger – that is, that sexual practices perpetuate violence against women” (Ferguson 1984, 106). “The opposing camp,” Ferguson continues, holds that “the key feature of sexuality is the potentially liberating aspects of the exchange of pleasure between consenting partners” (Ferguson 1984, 106). In this account, Ferguson not only portrays the sex wars as a clear-cut conflict between two opposing feminist “camps,” she parses this conflict in
terms of the “pleasure and danger” couplet coined by Carole Vance in the Barnard conference’s concept paper (Vance 1984, 442). Thus, Ferguson’s article, in addition to giving the sex wars their name, seems to have established the metonymy between the sex wars and the Barnard conference.

More recently, several prominent feminist historians have followed Ferguson in portraying the sex wars as, essentially, the Barnard conflict writ large. For example, in The World Split Open: How the modern women’s movement changed America (2000), Ruth Rosen describes “the pornography wars” as “debates over pornography” that “polarized the women’s movement” and “turned on whether sex represented more of a danger than a pleasure” (Rosen 2000, 191; 193; 416). Similarly, in The Feminist Promise: 1792 to the present (2010), Christine Stansell presents the sex wars as a “bitter and irreconcilable” “division between antipornography crusaders and their opponents, the ‘pro-sex’ radicals” (Stansell 2010, 346). “Each side accused the other of advocating ideas that would destroy feminism,” Stansell elaborates, with “pro-sex feminists decr[ying] the self-righteous morality of the antipornography forces and its animus to free speech” and antipornography feminists “accus[ing] their critics of being brainwashed by patriarchal sexuality and ignoring the deadly injuries pornography inflicted on millions of voiceless women” (Stansell 2010, 346). Finally and most starkly, in Desiring Revolution: Second-Wave feminism and the rewriting of American sexual thought, 1920-1982 (2001), Jane Gerhard writes of the sex wars as though they were interchangeable with the Barnard conference. For example, in the book’s index, readers interested in the Barnard conference are referred to the entry for the sex wars, and, in the concluding chapter, entitled “Negotiating Legacies in the Feminist Sex Wars, 1982,” the only place in which Gerhard “negotiates legacies” is the proceedings of the Barnard conference (Gerhard 2001, 229; 183-195).
Despite this widespread agreement amongst scholars that the sex wars were a straightforward, two-sided, and wholly internecine feminist conflict, there is little consensus regarding the names of these sides. For instance, in her influential 1984 *Signs* article, Ferguson described a conflict between “radical” and “libertarian” feminists. Since Ferguson’s article first appeared, names for the sex wars’ central combatants have proliferated. “Anti-pornography” and “pro-sex” feminists, “pro-censorship” and “anti-censorship” feminists, “anti-sex” and “pro-sex” feminists, and “sex-negative” and “sex-positive” feminists are among the most common (Bronstein 2011; Stansell 2010; Strossen 1993 and 1995; Vance and Snitow 1984; Rubin 1983; Strub 2011; Fahs 2014). Others include “anti-pornography” and “pro-pornography” feminists, “antipornography” and “anti-anti-pornography” feminists, “radical” and “sex radical” feminists, “sexism” and “sex” feminists, “dominance feminists” and “sex positivists,” and “radical feminists” and “sexual liberals” (Vance 1993a; Rosen 2000; Chapkis 1997; Chancer 1998; Bazelon 2015; Leidholdt and Raymond 1990).

That simply naming the sex wars’ central combatants has proved to be such a bewildering task is telling. Not only does it point to the extent to which many of the sex wars’ constitutive conflicts remain unsettled, it also raises serious doubts about any attempt to portray the sex wars as a Manichean struggle between two clear-cut and diametrically opposed sides. After all, if the sex wars were straightforward enough to lend themselves to some tidy dichotomous schema, then why is there such widespread dissensus concerning which tidy dichotomous schema is most appropriate? The answer is, of course, that the sex wars were not so straightforward, and a guiding aim of the present work is to represent (rather than resent and repress) their complexity.
Key to this task is situating the sex wars in a broader historical, political, and ideological context than is customary. In the present work, I do this in a number of ways. First, rather than adopting the conventional narrative framework that presents the sex wars as coextensive with the clash between “antipornography” and “sex radical” feminists that erupted at the Barnard conference in the spring of 1982, I cast my gaze “beyond Barnard,” so to speak, and explore the origins of antipornography feminism and sex radical feminism in the early 1970s. More specifically, I show how antipornography feminism and sex radical feminism emerged not exclusively (or, in the case of antipornography feminism, not even primarily) in relation to one another, but also in relation to a particular liberal discourse on sex and sexual expression that gained ascendancy in the United States in the 1950s and 60s. This liberal discourse, which originated as a counter to a conservative discourse that portrayed all public manifestations of sex and sexuality as socially noxious, figured pornography (and sexuality more generally) as private, apolitical, and harmless, a mundane bit of veniality deserving of moral opprobrium and some forms of government regulation, but not full-on prohibition. As I show in the chapters that follow, both antipornography feminism and sex radical feminism emerged, at least in part, as critical responses to this ambivalent liberal discourse.

The present work also looks “beyond Barnard” and broadens the context in which the sex wars are typically considered by exploring the ways in which antipornography feminism, sex radical feminism, and liberalism continued to interact with and influence one another throughout the 1980s and 90s. The occasion for this continued interaction and influence was the controversy surrounding Catharine MacKinnon’s and Andrea Dworkin’s antipornography civil rights ordinance, a municipal ordinance that defined pornography as the “graphic sexually explicit subordination of women” and gave individuals the right to sue its producers and distributors for
damages (Dworkin and MacKinnon 1988, 113). As the ordinance wended its way through municipal legislatures and federal courts, sparking impassioned debate at every turn, the rancor that had characterized the relationships between antipornography feminism, sex radical feminism, and liberalism throughout the 1970s began to subside. In fact, beginning in the mid-1980s, a surprising range of scholars, activists, jurists, and legal theorists began invoking liberal principles to bolster antipornography feminist and sex radical feminist claims. In the present work, I consider these improbable developments in great detail and reflect on their implications for our contemporary understandings of both the history and legacies of the sex wars.

While my account of the sex wars is the first to cast liberalism in a central role and to attend to the relationships between antipornography feminism, sex radical feminism, and liberalism in all of their complexity and variability, one other scholar has made note of antipornography feminism’s early and often contentious relationship with liberalism, albeit in a flawed and limited way. In the sixth chapter of her masterful study of the first decade of antipornography feminist organizing in the United States, entitled Battling Pornography: The American feminist anti-pornography movement, 1976-1986 (2011), Carolyn Bronstein recounts an important confrontation between antipornography feminists and civil libertarians in the winter of 1978 at a colloquium at the New York University School of Law. According to Bronstein, the conflict that played out at this colloquium was one between “classical liberalism,” represented by the civil libertarians, and “a communitarian social position,” represented by the antipornography feminists (Bronstein 2011, 181). “Sometimes,” Bronstein writes, summarizing what she purports to have been the antipornography feminist critique of liberalism articulated at this colloquium, “the interests of the group [have] to be taken into account and given priority over those of the individual to achieve a common good” (Bronstein 2011, 182).
While Bronstein deserves credit for recognizing the significance of this colloquium and for bringing the relationship between antipornography feminism and liberalism into view, her reduction of this relationship to a clash between liberalism and communitarianism reveals the extent to which she fails to apprehend the true nature of the political theoretical chasm that divided antipornography feminists and liberals at this time. Contrary to Bronstein’s claim, antipornography feminists did not offer a communitarian critique of liberalism. They did not assail liberals for their aspirations to universality at the expense of particularity, their atomized vision of the self, or their tendency to denigrate the claims of tradition, culture, and community. In fact, many antipornography feminists expressed what can only be described as anti-communitarian views. For instance, at the colloquium Bronstein discusses, Florence Rush blamed the sexual abuse of children on traditional notions of marriage and family and Andrea Dworkin impugned appeals to the common good as ideological ploys used to dupe women into defending a society in which “they have absolutely no stake” (Law 2011, 225, 242). Thus, despite the great discernment Bronstein shows in situating antipornography feminism in relation to liberalism, her account of the relationship between these two positions is deeply flawed. It is also incomplete, for, as I show in chapters two and three, the complex and shifting relationship between antipornography feminism and liberalism began well before and persisted well beyond the 1978 colloquium that is the focus of Bronstein’s analysis. In the present work, I offer what I believe is a much more accurate and complete elucidation of the relationship between antipornography feminism and liberalism than Bronstein provides.

Unlike antipornography feminism’s relationship to liberalism which chroniclers of the sex wars have largely neglected, the relationship between sex radical feminism and liberalism is frequently noted in accounts of the sex wars. However, almost invariably in these accounts sex
radical feminism is made out to be a species of liberalism rather than a critical engagement with it. One of the earliest examples of this (mis)representation of sex radical feminism appears in the edited volume *Against Sadomasochism: A radical feminist analysis* (1982). Here, philosopher Bat-Ami Bar On accuses sex radical feminist defenders of sadomasochism of “taking liberal trends to their logical conclusion” and employing “a liberal conception of sexual liberation in which sexual conduct is a matter of individual expression” devoid of any “relational context” (Bar On 1982, 72). Two years later, in an article in *Feminist Review*, Marie France proffered a similar reading, accusing sex radical feminists of defending sadomasochism “by means of the liberal credo, a strategy based on a distinction between public and private morality where law only regulates public activity” (France 1984, 35). In that same year, Ann Ferguson’s aforementioned *Signs* article appeared characterizing sex radical feminists as “libertarians” (Ferguson 1984, 107). In 1990, this interpretative thesis reached its apogee with the publication of Dorchen Leidholdt’s and Janice Raymond’s *The Sexual Liberals and the Attack on Feminism* (1990). Throughout this collection, the politics of sex radical feminists like Gayle Rubin are lumped together with those of civil libertarians like Hugh Hefner and both are derided for their “sexual liberalism” (Leidholdt and Raymond 1990, xi; 15, 133).

In my view, such interpretations of sex radical feminism’s relationship with liberalism are misleading and mistaken. Not only do they overlook the substantial political differences that existed between sex radical feminists and liberals on issues like pornography, public sex, intergenerational sex, and gay rights in the late 1970s and early 1980s, but they obscure many of sex radical feminism’s most distinctive features. As I demonstrate in the fourth chapter of the present work, sex radical feminists condemned defenses of sexual behavior rooted in appeals to privacy, rejected individualistic conceptions of sexual identity and freedom, questioned
portrayals of sexual desire as natural or innate, and demanded a sexual freedom that entailed the destruction of the complex of laws, norms, and social practices that Gayle Rubin called “the system of sexual oppression” as well as the cultivation of diverse sexual identities and erotic communities. Taken together, all of this indicates that sex radical feminism was not a species of liberalism, but a critical engagement with it. An important contribution of the present work is to explicitly and thoroughly refute the interpretive thesis that claims otherwise.

To sum up then, my goal here is to unsettle the widely accepted view that the sex wars were a sororocidal conflict between two opposing feminist sides by foregrounding another set of complex and contentious relationships that, I argue, were also central to the sex wars: those between antipornography feminists, sex radical feminists, and liberals of various stripes. By reimagining the sex wars in this way, I hope to provide not only a more nuanced, richly contextualized, and complete account of the sex wars than has heretofore been available, but also to illuminate in fresh and provocative ways a range of contemporary phenomena that, I argue, the sex wars helped bequeath to the present, including recent controversies over the use of trigger warnings on college and university campuses, the increasingly carceral character of modern feminism, and the narrow and unimaginative politics of so-called “sex positive” feminism. Thus, my efforts here might be best described as historico/theoretical, or historical in a capacious and unabashedly critical Foucauldian sense. By revisiting and revising our commonly accepted narratives of the sex wars, I hope to offer contemporary feminists what Foucault described as “a critical ontology of ourselves,” “a critique of what we are” that “is at one and the same time the historical analysis of the limits that are imposed on us and an experiment with the possibility of going beyond them” (Foucault 1984, 50). As Wendy Brown has incisively observed, “theory’s most important political offering is [the] opening of a breathing space between the world of
common meanings and the world of alternative ones, a space of potential renewal for thought, desire, and action” (Brown 2002, 574). My intention in the historical investigation that follows is to do just that: to offer “a critique of what we are saying, thinking, and doing” and, thus, “the possibility of no longer being, doing or thinking what we are, do or think” (Foucault 1984, 46).

**Terminology**

Before I expound all of this more fully, a few clarifying remarks are in order. In the foregoing section, I made use of several terms that need explication. The first of these terms is “antipornography feminism.” By “antipornography feminism” I mean the set of positions and beliefs defended by feminists who, beginning in the mid-1970s, formulated a distinctly feminist critique of pornography and worked in various ways to curtail the production, distribution, and display of pornographic materials. As I noted above, this set of positions and beliefs has been described by many names (e.g. anti-sex feminism, sex-negative feminism, and pro-censorship feminism). I describe it as “antipornography feminism” for two reasons. First, unlike other descriptions, “antipornography feminism” nicely captures the defining feature of this set of positions and beliefs: its critical orientation toward pornography. Second, the name “antipornography feminist” would have been, at the very least, tolerable to the individuals who embraced and defended this set of positions and beliefs during the sex wars. The same cannot be said of the other possible alternatives, which seem more designed to malign and impugn than identify and describe.

So, who were these antipornography feminists and what exactly were the positions and beliefs they embraced? During the sex wars, antipornography feminists like Kathleen Barry, Susan Brownmiller, Andrea Dworkin, Susan Griffin, Catharine MacKinnon, Robin Morgan, Adrienne Rich, Diana Russell, and Gloria Steinem contended that pornography was the linchpin of women’s oppression. This was not on account of its sexual explicitness, which conservatives
had long condemned, but its tendency to “objectify” women. By portraying women as “anonymous, panting playthings, adult toys, dehumanized objects to be used, abused, broken and discarded,” antipornography feminists believed that pornography made rape, battering, sexual harassment, incest, child abuse, forced prostitution, and every other imaginable form of gender-based violence and subordination appear normal, natural, and even pleasurable for both perpetrators and victims (Brownmiller 1975, 394). This belief is what fueled antipornography feminist opposition to pornography. Thus, despite the single-minded focus on pornography that their name implies, antipornography feminists were, in fact, concerned with a large brace of issues related to gender-based violence and subordination. By curtailing the availability and visibility of pornography, antipornography feminists believed they could short-circuit the process of objectification, curb gender-based violence, and strike a decisive blow against patriarchal power.

The term “sex radical feminism” also needs clarification. By “sex radical feminism” I mean the set of positions and beliefs embraced by feminists who, also beginning in the mid-1970s, formulated a distinctly feminist vindication of sexual freedom and worked to end the stigmatization and marginalization of sexual minorities, including sadomasochists, fetishists, “butch/fem” lesbians, and sex workers, in the feminist community and beyond. As I noted above, this set of positions and beliefs has been described by many names (e.g. pro-sex feminism, sex-positive feminism, and anti-censorship feminism). In using the name “sex radical feminism,” I follow Carole Vance who has persuasively argued that other possible names oversimplify and misrepresent this complex set of positions and beliefs (Vance 1993a, 297; Vance 1984, 127). So, who were these sex radical feminists and what exactly was this distinctly feminist vindication of sexual freedom that they formulated? During the sex wars, sex radical feminists
like Pat Califia, Amber Hollibaugh, Lisa Duggan, Nan Hunter, Cherrie Moraga, Gayle Rubin, Anne Snitow, and Carole Vance argued that depriving women of sexual pleasure and autonomy was key to shoring up male dominance. By cutting women off from sexual experiences that sex radical feminists considered to be vital sources of power, identity, community, and resistance, sex radical feminists believed that patriarchy ensured women’s isolation, compliance, and resignation. Upending the complex system of stigmatization, medicalization, and criminalization that kept women (and many men) within the bounds of monogamous, procreative, “vanilla” heterosexuality was, thus, key to sex radical feminists’ agenda for women’s liberation. To this end, they vindicated a variety of unconventional and, in their minds, subversive sexual practices for women, including the production and consumption of pornography, nonmonogamy, sadomasochism, lesbian sex, commercial sex, public sex, and even consensual intergenerational sex.\(^{17}\) As leading sex radical feminists Dierdre English, Amber Hollibaugh, and Gayle Rubin once put it, the goal of sex radical feminism was, essentially, to make good on the promise of the sexual revolution by bringing about a genuine “sexual liberation that is not sexist” (English, Hollibaugh, Rubin 1982, 41-42).

As I noted above, much has been made of the conflicts between antipornography and sex-radical feminists - so much, in fact, that these conflicts have frequently been presented as coextensive with the sex wars themselves. And, of course, as the descriptions I have just offered indicate, antipornography feminists and sex radical feminists disagreed on many fundamental matters. For instance, they offered markedly different accounts of women’s oppression with antipornography feminists emphasizing the sexual objectification of women and the veritable onslaught of violence it provoked and sex radical feminists emphasizing women’s sexual deprivation and the resignation and isolation it engendered. Antipornography feminists and sex
radical feminists also pursued markedly different political programs, particularly where pornography was concerned. For antipornography feminists, sexually explicit materials that objectified women were oppressively ubiquitous and they set about devising means to curtail and resist their dehumanizing influence. For sex radical feminists, by contrast, sexually explicit materials, particularly those depicting non-normative sexual fantasies and practices, were marginalized to the point of invisibility and they set about devising ways to enhance and promote their potentially liberatory influence.

I could, of course, go on cataloguing the differences and disagreements between antipornography feminists and sex radical feminists for many pages. However, rather than repeating what is obvious and already sufficiently well established, I would like to undertake a different and potentially more illuminating task. Without denying the significance of the differences between antipornography feminists and sex radical feminists or the severity of the rancor to which these differences gave rise during the sex wars, I would like to highlight some often overlooked affinities between these otherwise bitter feminist rivals.

The first affinity concerns antipornography feminists’ and sex radical feminists’ views regarding gender and sexuality. While both frequently accused one another of propagating essentialist notions of gender and sexuality – of claiming that men were innately and inalterably sexually aggressive or that sexual desire was born of instinctive and inexorable “drives” – both antipornography feminists and sex radical feminists, in fact, eschewed such simplistic notions and embraced some version of a social constructivist thesis where gender and sexuality were concerned. This aspect of sex radical feminism is most readily evident in the work of Gayle Rubin who argued emphatically that “sexuality is not natural, not an unchanging, ahistorical item in the human repertoire of behavior” and defended what she described as a “constructivist
alternative to sexual essentialism” rooted in the work of historians of sexuality like Jeffrey Weeks, Judith Walkowitz, and Michel Foucault (English, Hollibaugh, and Rubin 1982, 41; Vance 1984, 276). On the antipornography feminist side, Catharine MacKinnon embraced a similarly thoroughgoing constructivist view, arguing that “the condition of the sexes and the relevant definition of women as a group is… social down to the somatic level. Only incidentally, perhaps even consequentially, is it biological” (MacKinnon 1989, 46).

In addition to this shared anti-essentialism, antipornography feminists and sex radical feminists also exhibited similarly critical orientations toward conventional, or what we might today call “normative,” heterosexuality. In the antipornography feminist view, heterosexuality was a “political institution” that ensured that women’s sexual, economic, creative, and reproductive capacities would be brought and remain under men’s control. As Andrea Dworkin once described it, under cultural conditions of male supremacy, heterosexuality is the “penultimate expression of male dominance” (Moorcock 1995). A guiding aim of antipornography feminism was, thus, to dismantle the political institution of heterosexuality by depriving it of what antipornography feminists believed to be one of its most potent forms of propaganda: pornography.

Sex radical feminists offered a different but no less pointed critique of heterosexuality. In the sex radical feminist view, heterosexuality functioned as a regulatory norm in a regime of sexual control designed to stifle erotic creativity, diversity, and dissent. This sex radical feminist critique of heterosexuality was put forward most forcefully by Gayle Rubin in her influential contribution to sex radical feminist thought, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality” (1984). In this essay, Rubin described married, monogamous, “vanilla” heterosexuality as occupying the center of a “charmed circle” of “good, normal, natural, blessed
sexuality,” while all other manifestations of human sexual capacity were relegated to the “outer limits” of “bad, abnormal, unnatural, and damned sexuality” (Rubin 1984, 281). A central goal of sex radical feminism was, thus, to decenter heterosexuality and subvert the “system of erotic stigma” that maintained its normative status (Rubin 1984, 280; 282).

One final affinity between antipornography feminism and sex radical feminism that I would like to call attention to is their shared commitment to politicizing sex and sexuality in ways that ran counter to the hegemonic liberalism of their day. I will take the case of antipornography feminism first. Because antipornography feminists understood pornography to be an imminently political practice aimed at the oppression of women, they were willing to employ a variety of tactics, ranging from letter writing campaigns and consumer boycotts to zoning regulations and civil rights laws, to limit its visibility and accessibility. This willingness to bring political power, including the power of the state and the law, to bear on sexually explicit expression set antipornography feminists in frequent and often bitter conflict with their liberal contemporaries who saw pornography, by and large, as private, apolitical, and harmless speech that should be exempt from governmental regulation in the name of individual liberty.

While sex radical feminists did not share (and, in fact, vehemently criticized) antipornography feminists’ desire to curtail the production and consumption of pornography, they did share with antipornography feminists a desire to politicize sex and sexual expression in ways that flouted liberal convention. While liberals had traditionally defended a narrow range of sexually explicit materials as private, apolitical, and harmless speech, sex radical feminists insisted that virtually all forms of sex and sexual expression, including the most stigmatized and marginalized, ought to be affirmed, even celebrated, as indispensable to individual and communal freedom and identity.23 This radical vindication of sexual freedom sat uneasily
alongside the tepid politics of individual liberty, privacy, and free speech embraced by pornography’s liberal defenders.

This third and final affinity between antipornography feminism and sex radical feminism, their shared opposition to the sexual politics of mid-century liberalism, is, in many ways, the inspiration for this entire project. As I have already stated, my aim in the present work is to unsettle conventional narratives of the sex wars by reimagining this contentious episode in recent feminist history as a complex and shifting array of conflicts and relationships between antipornography feminists, sex radical feminists, and liberals of various stripes. Acknowledging and exploring the conflicts that transpired between antipornography feminists, sex radical feminists, and liberal opponents of obscenity regulation throughout the 1970s and 80s is one crucial aspect of this reimagining.

This discussion of the conflicts between antipornography feminism, sex radical feminism, and liberalism leads me to the final term that I must clarify before my project can proceed. “Liberalism” is a notoriously promiscuous term that can be used to signify everything from “progressivism” to its opposite.24 In the present work, I use the term to denote a range of positions articulated in the course of the sex wars premised on “the belief that the freedom of the individual is the highest political value” and that “freedom of conscience, freedom of occupational choice, privacy and family rights all place limits on what governments may do” (Ryan 2012, 362; 366; 364; 377). At the heart of liberalism so conceived is a distinction between the “public” and the “private” where the “public” is figured as a sphere of justice in which law serves as a neutral guarantor of liberty amongst free and equal individuals, while the “private” is figured as a sphere “beyond justice” in which law and liberty are fundamentally at odds (Okin 1989, 25).25 While liberals have traditionally presented the public/private distinction as a means
of securing individual liberty against the encroachments of overweening governments, feminist political theorists have noted its utility for other purposes. As Carole Pateman has incisively observed, given “the way in which women and men are differentially located within private life and the public world,” liberalism’s public/private distinction “obscures the subjection of women to men within an apparently universal, egalitarian individualist order” (Pateman 1989b, 120). It is “liberalism” in this sense that, I argue, played such a crucial role during the sex wars. 26

In the late-1950s, it was this brand of liberalism that provided the ideological foundation for a campaign waged by a cadre of devout civil libertarians, including book and magazine publishers, film distributors, and attorneys like Barney Rossett, Hugh Hefner, Charles Rembar, Harold Price Fahringer, and Edward de Grazia, to roll back the Comstock-era regime of obscenity regulation and clear the way for the virtually unregulated private consumption of pornography in the United States. Beginning in the early-1970s, this campaign drew fire from both antipornography feminist and sex radical feminist quarters. Antipornography feminists assailed it for employing conceptions of harm, liberty, and the public and the private too rigid and formalistic to accommodate even the most basic pleas for justice on behalf of women. Sex radical feminists took a somewhat different tack, criticizing civil libertarians for defending pornography and sexuality more generally by relegating them to an apolitical private sphere where their liberatory potential as instruments of community building, identity articulation, and erotic dissent would languish unrealized.

Thus, in the 1970s and early 1980s, the relationship between antipornography feminism, sex radical feminism, and liberalism was profoundly strained. Antipornography and sex radical feminists challenged conventional liberal notions of the public and the private by insisting on the imminently political character of pornography and sexuality, while liberals insisted on viewing
these matters through the prism of free speech, personal choice, and private morality. Then, beginning in the early 1980s, as antipornography feminists championed an ordinance that would have made pornography actionable as a violation of women’s civil rights and as feminism’s sex wars reached a rolling boil, this relationship began to change. Influential liberals began mounting recognizably liberal defenses of antipornography feminist arguments and legislative proposals. Meanwhile, sex radical feminists began to strategically employ the liberal rhetoric of “civil liberties” and “free speech” that they had once so roundly criticized in their efforts to resist the passage of antipornography feminist legislation. In short, what began in the late 1970s as a triangular argument between tepid liberal defenders, impassioned feminist critics, and radical feminist proponents of pornography, expanded over the course of 1980s and 90s into a much more complicated array of argumentative positions with liberalism inflecting virtually all sides. In the chapters that follow, I narrate these complex and improbable developments and reflect on their implications for contemporary understandings of the sex wars and their legacies.

**Chapter Summaries**

My project begins with two chapters chronicling the complex and frequently contentious relationship between antipornography feminism and liberalism. In chapter two, I show how, in the early 1970s, antipornography feminism was born in white-hot hostility to a particular brand of liberalism prevalent in the 1950s, 60s, and 70s that sought to upend the legal regulation of obscenity in the United States in the name of privacy and free speech. In the third chapter, I recount the improbable reconciliation of antipornography feminism to liberalism that began in the mid-1980s and continued well into the 1990s. Led by some of the most prominent figures in contemporary political philosophy and legal theory, this reconciliation, I argue, is an aspect of the history of antipornography feminism and the sex wars that has been unjustly neglected.
In the fourth chapter, I narrate the complex and shifting relationship of sex radical feminism and liberalism. I begin by showing how sex radical feminism, which is often portrayed as a critical response to antipornography feminism’s emphasis on sexual danger at the expense of sexual pleasure, can also be seen as a critical engagement with the ambivalent sexual politics of mid-century liberalism. Although sex radical feminists did not engage in dramatic public debates and confrontations with liberals comparable to those engaged in by antipornography feminists in the 1970s and early 1980s, their audacious demands for a vibrant and diverse public sexual culture stood in stark contrast to the measured pleas of mid-century civil libertarians for a somewhat wider berth for certain forms of sexual expression. In this sense, sex radical feminism, much like its foil, antipornography feminism, can be seen as a critical response to the limited sexual politics of post-war liberalism.

After elucidating sex radical feminism’s quarrel with liberalism, I proceed to a description of the emergence of a strategic alliance between sex radical feminists and civil libertarians to oppose the Dworkin/MacKinnon antipornography ordinance in the early 1980s. This alliance, I argue, gave rise to an improbable liberal-feminist hybrid discourse, “ant censorship/pro-sex” feminism. While this discourse proved effective insofar as it contributed to the defeat of the Dworkin-MacKinnon ordinance and opened up space within the conceptual confines of liberalism for a more robust defense of sexual freedom, this effectiveness came at a price. Aspects of sex radical feminism not readily assimilable to a liberal idiom were obscured and, by the mid-1990s, sex radical feminism had been overtaken by a markedly more liberal project.

In the fifth chapter, I reflect on the implications of the complex relationships between antipornography feminism, sex radical feminism, and liberalism I have recounted for
contemporary feminist politics. More specifically, I argue that both liberal antipornography feminism and anti-censorship/pro-sex feminism are to some extent complicit in the increasingly carceral character of contemporary feminist politics. I also argue that the tepid and culturally ubiquitous ideological formation that travels under the sign of “sex positive” feminism as well as recent calls for trigger warnings on college and university campuses are heavily influenced by the liberal-feminist hybrid positions that the sex wars produced.

Notes

1 In addition to attending the conference, Butler participated in a post-conference “Speakout on Politically Incorrect Sex” organized by the Lesbian Sex Mafia. A brief account of Butler’s contribution can be found amongst Off Our Back’s extensive coverage of the Barnard Conference. See Moira, “Lesbian sex mafia [‘l s/m’] speakout,” 1982. Butler also signed a letter decrying the antipornography feminist protest against the Barnard conference published in Feminist Studies 9 (1): 177-180.

2 The full text of the leaflet was reprinted nearly a year after the conference in Feminist Studies 9(1): 180-182.

3 According to Pat Califia, by the time of the Barnard conference, New York Radical Feminists existed “only as a post office box” (Califia 1983, 594). Lisa Orlando, a former member of New York Radical Feminists, corroborates this in an article for Gay Community News (Orlando 1982). Historian Carolyn Bronstein has also called into question WAVAW’s involvement with the leaflet. According to Bronstein, at the time of the Barnard conference, WAVAW was in such a “state of disarray” that “any support for the leaflet could not be said to truly represent the views of a national membership” (Bronstein 2011, 305).


5 As Gayle Rubin has recently observed, “as yet, there is no comprehensive history of feminism’s sex wars” (Rubin 2011a, 27). There is, however, a substantial body of scholarship chronicling and reflecting on certain aspects of this contentious episode in recent feminist history. See, for instance, Bronstein, Battling Pornography, 2012; Rubin, Deviations, 2012; Love, GLQ, 2011; Press, The Communication Review, 2008; Duggan and Hunter, Sex Wars, 2006; Gerhardt, Desiring Revolution, 2001; Cornell, Feminism and Pornography, 2000; Chancer, Reconcilable Differences, 1998; Vance, “More Danger, More Pleasure,” 1993.

6 This couplet also served as the title for the published proceedings of the Barnard conference, Pleasure and Danger: Exploring female sexuality (1984).

7 In the fall of 1983, one year prior to the publication of Ferguson’s article, Feminist Studies published a letter from Gayle Rubin that described clashes between antipornography and sex radical feminists as “sex wars” (Rubin 1983, 600).

8 Another prominent example can be found in Clare Snyder-Hall’s contribution to a recent symposium on “choice feminism” in Perspectives on Politics. “[T]he second-wave of the American feminist movement split over issues related to sexuality,” Snyder-Hall explains, adding that during this episode “feminists found themselves on opposite sides of a series of contentious debates about issues such as pornography, sex work, and heterosexuality, with one
side seeing evidence of gender oppression and the other opportunities for sexual pleasure and empowerment” (Snyder-Hall 2010, 255).

9 In an article published in Feminist Review in 1983, Elizabeth Wilson also described the opposition to the antipornography feminist movement as “libertarian” and accused leading sex radical feminist theorist Gayle Rubin of “simply [restating] an unreconstructed libertarian position” (Wilson 1983, 36; 38).

10 Whether you view sex wars’ era feminist critics of pornography as “pro-censorship” and “anti-sex” bluenoses or “radical feminist” critics of “sexism” and male “dominance” depends, of course, on where you position yourself in the context of sex wars’ era debates concerning the relationship of sex and sexual expression to gender-based violence and oppression. Similarly, whether you view sex wars’ era feminist critics of pornography’s feminist critics as “sex-positive” and “pro-sex” opponents of censorship or “pro-pornography” “sexual liberals” depends on whether or not you find their positions compelling or agreeable. Doubtlessly, the fact that present-day feminists are still at odds over many of the contentious questions the sex wars pointed up has contributed to the proliferation of names ascribed to the sex wars’ central combatants.

11 In posing this question, I do not mean to imply that all dichotomous schemas proposed to describe the sex wars are created equal. In fact, I believe that some do much more violence to the complex reality of the sex wars than others. For example, I find the “anti-sex”/“pro-sex” and “sex-negative”/“sex-positive” dichotomies to be particularly reductive and the “antipornography”/“anticensorship” dichotomy to be significantly less so. Nevertheless, I believe that our understanding of the sex wars is poorly served by continuing to parse them in simplistic, dichotomous terms.

12 Carole Vance, a prominent player in the sex wars, has also criticized the tendency to portray the sex wars in simplistic, dichotomized terms. Interestingly, she lays the blame for this tendency at the feet of her sex wars’ era opponents. More specifically, Vance traces this tendency back to fallout from the Scholar and the Feminist IX Conference at Barnard College. According to Vance, who was one of the Barnard conference’s lead organizers, the conference aimed to resist the temptation to choose sides when it came to divisive and controversial sexual matters. “The purpose of the conference,” Vance writes, “… was unassailably balanced and inclusive: a feminist politics of sexuality must address both pleasure and danger” (Vance 1993, 296). However, according to Vance, these noble intentions were lost on the conference’s antipornography feminist detractors who unfairly depicted the gathering as “a mindless, hedonistic extravaganza doubling as an attack on feminism” (Vance 1993, 296). In Vance’s view, this “erroneous” narrative about the conference caught on and eventually gave rise to “the common conceptualization that the sex debates had two ‘sides,’ dichotomized by opposing positions (pro- or antipornography, or pro- or anti-sex, for example)” (Vance 1993, 296). While I agree with Vance that portrayals of the sex wars as a battle between two diametrically opposed sides are simplistic and misleading, I am reluctant to follow her in laying the blame for their ubiquity at the feet of antipornography feminists. Such an account, in my view, simply perpetuates the idea that the sex wars were a simple, two-sided, and wholly internecine feminist conflict.

13 Gayle Rubin has made several admirable efforts to contextualize her own contributions to the sex wars, including her groundbreaking essay “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” first presented at the Scholar and the Feminist IX conference “Towards a Politics of Sexuality” in the spring of 1982. Many of these efforts are now conveniently compiled in one volume, Deviations: A Gayle Rubin Reader (2011). Rubin’s fellow feminist sex radicals, Lisa Duggan and Nan D. Hunter, have also attempted to lend some much-needed context to the sex wars. Their chapter “Contextualizing the Sexuality Debates: A Chronology 1966-2005” in Sex Wars: Sexual Dissent and Popular Culture (2006) is particularly helpful. The finest work in this vein has been done by Carolyn Bronstein in her wonderfully detailed study of the antipornography feminist movement, Battling Pornography: The Feminist Antipornography Movement, 1976-1986 (2011). Bronstein’s work has made an immense contribution to scholarly understandings of the sex wars. Unfortunately, because Bronstein’s study is focused primarily on the internal dynamics of the antipornography feminist movement, it does not attend to antipornography feminism’s interlocutors and opponents in much detail. Nor does it focus on later developments in antipornography feminism, developments that, I argue, are crucial to recognizing and evaluating the sex wars’ legacies. Thus, while I will signal my disagreement with Bronstein on a number of issues throughout the present work, on the whole, I see the account I offer here as a supplement to and an extension of her own.
I explain and defend my choice of the names “antipornography” feminism and “sex radical” feminism in the main body just below.

Several scholars have attempted to complicate the traditional narrative of the sex wars by arguing that the clash at Barnard was prefigured by earlier clashes between antipornography feminists and lesbian sadomasochists in San Francisco in the late 1970s. See, for instance, Vance, “More Danger, More Pleasure,” 1993; Rubin, “Blood Under the Bridge,” 2011. While these accounts are invaluable insofar as they extend the historical frame of reference for the sex wars back beyond the Barnard conference, ultimately, they fail to challenge the notion that the sex wars were a simple, two-sided, internecine feminist affair and, thus, do little to displace the Barnard conference from the center of the sex wars narrative.

In a footnote in “Thinking Sex,” Gayle Rubin describes these descriptions as “erroneous and misleading” (Rubin 2011, 390). According to Rubin, while it is true that both sex radical feminists and libertarians largely “agree on the pernicious qualities of state activity in [the area of consensual sex],” the similarity between these two parties ends there. As Rubin explains, “Feminist sex radicals rely on concepts of systemic, socially structured inequalities, and differential powers. In this analysis, state regulation of sex is part of a more complex system of oppression that it reflects, enforces, and influences. The state also develops its own structures of interest, powers, and investments in sexual regulation” (Rubin 2011, 390).

Some sex radical feminists, notably Gayle Rubin and Pat Califia, vindicated many of these practices for men as well. However, many sex radical feminists were reluctant to endorse such an unfettered exercise of sexual freedom for men. The “Author’s Note” at the beginning of Barbara Ruth’s contribution to What Color Is Your Handkerchief?: A lesbian s/m sexuality reader, entitled “Catheysis,” is representative in this regard. “I believe,” Ruth explains, “that sadomasochism as a liberating practice is only possible for women within a lesbian-feminist context… S-M can equalize a power imbalance in a love relationship, but only between members of the same sexual caste. As a lesbian-feminist, I believe it would be extremely self-destructive for any woman to play either role in an S-M relationship with any man. S-M as described below is only possible in a situation of profound trust. For a woman to trust a man to such an extent would not be in her best interests. Such an action would be a perversion of masochism and counter-revolutionary” (Samois 1979, 8).

In “Blood under the Bridge,” Rubin vividly conveys just how rancorous the disagreements between antipornography feminists and sex radical feminists could be. Of the infamous clash between antipornography feminists and their critics at the Barnard Conference, Rubin writes that, rather than feeling privileged to have been a first-hand witness to such a momentous event in feminist history, she “nurse[s] the horror of having been there” (Rubin 2011, 195). “Like many others involved in the sex wars,” Rubin continues, “I was thoroughly traumatized by the breakdown of feminist civility and the venomous treatment to which dissenters from the antiporn orthodoxy were routinely subjected” (Rubin 2011, 195).

As Judith Grant has observed, despite her reputation as “the quintessential essentialist,” social constructivist views of gender and sexuality are also evident throughout Andrea Dworkin’s oeuvre. See Grant, “Andrea Dworkin and the Social Construction of Gender,” 2006.

This shared critical orientation toward heterosexuality is not surprising when one considers how heavily both antipornography and sex radical feminism were influenced by lesbian feminism. Formulated in the early 1970s as a reaction to the homophobia and heteronormativity of both the moderate and radical wings of the women’s movement, lesbian feminism figured lesbianism as the sine qua non of feminist politics. (See, for instance, Radicalesbians, “The Woman-Identified Woman,” 1970 and Myron and Bunch, Lesbianism and the Women’s Movement, 1975.) Carolyn Bronstein has identified lesbian feminism as a crucial antecedent to antipornography feminism (Bronstein 2011, 52-59). As for sex radical feminism, it was a movement founded largely by lesbian sadomasochists who felt excluded from lesbian feminist circles on account of their unconventional sexualities. The influence of lesbian feminism is evident throughout some of the earliest and most influential sex radical feminist writings, including What Color Is Your Handkerchief?: A lesbian s/m sexuality reader (1979) Coming to Power: Writings and graphics of lesbian s/m (1981), and Sapphistry: The Book of Lesbian Sexuality (1980).

This critique is laid out most explicitly by Adrienne Rich is her influential essay “Compulsory Heterosexuality and Lesbian Existence” (1980). Rich was a founding member of Women Against Pornography (WAP) and the
Pornography as heterosexual propaganda is a recurring trope in antipornography feminist discourse. For example, in “Compulsory Heterosexuality and Lesbian Existence,” Adrienne Rich describes pornography as part of the “cultural propaganda” that sustains the domination of women by men in the institution of heterosexuality (Rich 1980, 141). Several years earlier, in the concluding chapter of Against Our Will: Men, Women, and Rape, Susan Brownmiller described pornography as “the undiluted essence of anti-female propaganda” and “a male invention, designed to dehumanize women, to reduce the female to an object of sexual access” (Brownmiller 1976, 394).

This difference raises serious questions about attempts to portray sex radical feminism, particularly in its earliest articulations, as a species of libertarianism. I address this issue in detail in the fourth chapter of the present work.

As Judith Shklar has observed, “years of ideological conflict… have rendered [liberalism] so amorphous that it can now serve as an all-purpose word, whether of abuse or praise” (Shklar 1989, 3). Duncan Bell has recently echoed Shklar’s observation, describing liberalism as “a hyper-inflated, multi-faceted, body of thought” and “a deep reservoir of ideological contradictions” (Bell 2014, 691).


My use of the term “liberal” differs in significant respects from the uses of other scholars who have written about this same period in feminist history. For instance, in her discussion of the American women’s movement of the 1960s and 70s in The Feminist Promise: 1792 to the present (2011), historian Christine Stansell uses the term “liberal” to distinguish feminists who favored “incremental change and electoral politics” from “radicals” whom Stansell describes as practicing a “searing, melodramatic, and rambunctious… politics of confrontation, catharsis, and personal transformation” (Stansell 2011, 222-223). In my view, applying the term “liberal” in this sense to the sex wars breeds much in the way of confusion and misunderstanding. Consider, for example, antipornography feminists like Susan Brownmiller, Andrea Dworkin, Dorchen Leidholdt, and Catharine MacKinnon. By crafting and advocating on behalf of a municipal ordinance that made pornography a civil rights violation, these antipornography feminists engaged in a style of politics that Stansell calls “liberal.” However, as they engaged in this “liberal” politics, each of these antipornography feminists offered searing indictments of the “liberals” who opposed them and of conceptions of harm, liberty, and privacy firmly rooted in the liberal political tradition. Additionally, many antipornography feminists who engaged in Stansell’s “liberal” politics also engaged in a politics that Stansell would undoubtedly call “radical.” For instance, Andrea Dworkin, who both co-authored antipornography legislation and served as what Stansell has aptly described as the “obsessed melodramatic polemicist of the antipornography feminist movement,” is a prime example of an antipornography feminist who confounds Stansell’s liberal/radical dichotomy (Stansell 2011, 346).
Prior to the advent of antipornography feminism in the mid-1970s, the most prominent critics of pornography were conservatives. Conservatives opposed the widespread availability of sexually explicit materials on the grounds that such materials are “obscene,” from the Latin for “filthy” and “inauspicious,” and, therefore, corrosive of the moral foundation of a well-ordered society.\(^1\) One prominent expositor of this conservative view in the United States was Anthony Comstock, a nineteenth century anti-vice crusader and champion of the sweeping federal obscenity law that bears his name, the Comstock Act.\(^2\) In *Traps for the Young* (1883), an advice manual for concerned parents, Comstock likened a wide range of “obscene” materials, from pulp novels to classic works of literature like Boccaccio’s *Decameron*, to contagious diseases imported from abroad threatening the future stewards of American society, boys and young men (Comstock 1883, x). Nearly 80 years later, echoes of Comstock’s views were still audible in Lord Patrick Devlin’s influential second Maccabaeian Lecture to the British Academy, “The Enforcement of Morals” (1959). Framed as a critique of the philosophical underpinnings of liberal arguments for the decriminalization of homosexuality, Devlin’s lecture argued that every society has an essential right to preserve itself by “eradicat[ing]” threats to its “public morality,” including pornography and other forms of sexual malfeasance (Devlin 1965, 17).

The feminist critique of pornography that emerged in the 1970s bore little resemblance to these conservative critiques. Unlike conservatives, antipornography feminists did not object to sexually explicit materials tout court nor did they consider such materials “obscene.” In fact, many antipornography feminists vigorously criticized the whole notion of obscenity, called for the outright repeal of all obscenity laws, and affirmed many materials and practices conservatives abhorred, including “erotica” and lesbianism.\(^3\) What antipornography feminists did
object to was “pornography.” Pornography, in their view, was defined not by its prurience or its morally deleterious effects, but by its tendency to contribute to women’s subordination by eroticizing gender inequality and violence. As Susan Brownmiller, a leader in what would eventually become a full-fledged antipornography feminist movement, explained in a 1979 issue of Newsday Magazine, “the feminist objection to pornography is based on our belief that pornography represents hatred of women, that pornography’s intent is to humiliate, degrade, and dehumanize the female body for the purpose of erotic stimulation and pleasure” (Lederer 1980, 254). “Pornography,” Brownmiller declared elsewhere, “is the undiluted essence of anti-female propaganda” (Brownmiller 1975, 394).

This newfangled feminist perspective on pornography differed not only from traditional conservative perspectives, but from well-established liberal perspectives as well. In the course of fending off conservative calls for censorship, liberals had long portrayed pornography as a private, apolitical, and essentially harmless vice deserving of moral opprobrium and some forms of government regulation, but not full-on censorship. John Stuart Mill’s remarks in On Liberty (1869) concerning “offences against decency” reflect this quintessentially liberal view. “There are many acts,” Mill writes, “which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited” (Mill 1989, 98). “Of this kind,” Mill continues, “are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so” (Mill 1989, 98). Mill’s equivocal defense of private indecency lived on well into the 20th century, shaping the thinking of some of pornography’s
most prominent liberal defenders. For instance, in a 1981 essay, esteemed liberal political philosopher Ronald Dworkin vindicated a “right to pornography,” construed as a right to the voluntary consumption of “depressingly obscene photographs and films” in private, while simultaneously defending prohibitions against the public display of such photographs and films (Dworkin 1981, 182). Joel Feinberg, another liberal luminary, took a similar tack, arguing that voluntary private consumption of pornography is harmless to others and, therefore, to be tolerated, but that the public display of pornography may be prohibited to protect others from moral offense (Feinberg 1984). Thus, for more than a century, liberals have considered pornography to be, at best, an undignified diversion, and, at worst, a potential source of offense to others.⁴

This liberal take on pornography flew in the face of the antipornography feminist charge that pornography is tantamount to “blueprints for female enslavement and gynocide” (Barry 1979, 214). Given this fundamental disagreement, it is, perhaps, not surprising that the earliest encounters between antipornography feminists and liberals were marked by grave suspicion and, at times, outright hostility. Antipornography feminists saw liberals as well-heeled shills for the pornography industry and the patriarchal power it served. One prominent antipornography feminist, for instance, went so far as to describe the American Civil Liberties Union as the center of “the pro-pimp lobby” (MacKinnon and Dworkin 1997, 11). Liberals, for their part, reciprocated this contempt by portraying antipornography feminists as little more than Victorian bluenoses in radical feminist drag. For instance, in the preface of one of his most celebrated works, Ronald Dworkin accused antipornography feminists of being in league with religious conservatives. “Old wars over pornography and censorship have new armies in radical feminists and the Moral Majority,” Dworkin warned, repeating an allegation that dogged the
antipornography feminist movement for much of its existence (Dworkin 1985, 1).5

Thus, throughout the 1970s and early 1980s, the relationship between antipornography feminists and liberals was profoundly strained. Then, beginning in the early 1980s, as antipornography feminists championed a municipal ordinance that would define pornography as the “graphic sexually explicit subordination of women” and give individuals who could prove they had been harmed by pornography the right to sue its producers and distributors for damages, this relationship began to change (Dworkin and MacKinnon 1988, 113). Influential liberal thinkers began to mount recognizably liberal defenses of antipornography feminist claims and legislative proposals, giving rise to a truly improbable ideological position: liberal antipornography feminism. In this chapter and the next, I tell the story of how the feminist critique of pornography, which emerged in the early 1970s as an emphatic critique of liberalism, was remade over the course of the 1980s and 90s into a widely accepted tenet of liberalism itself.

**Antipornography Feminism and Liberalism: The Early Years**

To appreciate the improbability of the emergence of liberal antipornography feminism in the 1980s, one must first appreciate just how far removed the liberal position on pornography was from the antipornography feminist position in the 1970s and the first half of the 1980s. Prior to the mid-1980s, when a variety of recognizably liberal perspectives on the issue of pornography began to emerge, the conversation concerning the regulation of sexually explicit material in the United States was dominated by liberals of a distinctly civil libertarian bent. Since the days of Anthony Comstock’s reign as postal inspector (1873-1915), liberals in the United States had been fighting conservative efforts to regulate sexual expression. Through organizations like the National Liberal League (1876), the National Defense Association (1878), and the Free Speech League (1902), liberals lobbied for the amendment or outright repeal of the
federal Comstock Act and its state-level progeny. Some of these liberals, like Free Speech League founder Theodore Schroeder, advocated what has since come to be known as an “absolutist” interpretation of the First Amendment, insisting that “all present State and Federal laws against ‘obscenity’” are unconstitutional (Schroeder 1911, 11). Others, like National Liberal League president Thaddeus Wakeman, took a more moderate line, arguing that government regulation of obscenity was permissible, but that the legal definition of obscenity should be a narrow one, applicable only to works that “excite the amative passions, [and] arouse lascivious and lewd thoughts” (Horowitz 2002, 428). Despite the efforts of these liberal reformers, Comstock-era obscenity regulations remained in force in the United States well into the 20th century. However, when the United States Supreme Court revamped federal obscenity standards in Roth v. United States (1957), a cadre of civil libertarians, including book and magazine publishers, film distributors, and attorneys, saw an opportunity to succeed where their forebears had failed.

At first glance, the Roth decision does not appear to hold out much hope for liberal opponents of obscenity regulations. Roth presented the high court with an opportunity to declare the Comstock Act and its ilk prima facie unconstitutional, but the majority demurred. In fact, the central holding in Roth is that the First Amendment “was not intended to protect every utterance” and that obscenity is “outside the protection intended for speech and press.” Nevertheless, ingenious liberal auditors of the court’s work discerned in Roth what one has described as “a subsidiary theme – a freedom-favoring tail that would, in time, powerfully wag the censorship dog” (de Grazia 1992, 320). This was the Roth majority’s contention that obscenity is speech “utterly without redeeming social importance” that “deals with sex in a manner appealing to the prurient interest.” To conservatives, these seemingly trivial pieces of dicta were mere statements
of the obvious. To liberals, however, they were an opportunity. If the court meant what it said here, that a work is obscene if it “utterly” lacks “redeeming social importance” and appeals to a “prurient interest” in sex, then it follows, liberals reasoned, that a work with even a modicum of social importance that appeals to a healthy and normal interest in sex is not obscene, and, is therefore, entitled to the protection of the First Amendment. No sooner had the *Roth* decision been handed down than outspoken civil libertarian attorneys like Charles Rembar, Edward de Grazia, Ephrahim London, and Albert Benich were successfully employing this innovative interpretation to vindicate works whose publication had been unthinkable prior to *Roth*.

At the forefront of this post-war crusade against the regulation of obscenity were the alternative publishing house Grove Press and its maverick owner, Barney Rosset. As Loren Glass has emphasized in his study of Grove, *Counterculture Colophon* (2013), Rosset’s press was no mere publishing house; it was the siege engine in what Rosset described as “a carefully planned campaign, much like a military campaign” against the entire legal regime of literary censorship in the U.S. (Glass 2013,101). The first victory in Rosset’s campaign came in 1959 in *Grove v. Christenberry*, a case that ended a decades-long ban on the publication of *Lady Chatterley’s Lover*. The proceeding decade would bring many more victories for Rosset and Grove, including hard-fought exoneration of Henry Miller’s *Tropic of Cancer* and William Burrough’s *Naked Lunch*.

After successfully championing what might best be described as the “literary obscene,” Rosset turned Grove’s energies and resources to the publication of more straightforwardly pornographic materials: erotic texts, mostly from the nineteenth and early twentieth centuries, that had previously been available only “under the counter” in the United States (Glass 2013, 131). Among these black-market staples were the wildly explicit works of the Marquis de Sade,
a French aristocrat, revolutionary, and libertine from whose name the words “sadism” and “sadistic” are derived. In 1965, to the sound of comparatively little controversy, Grove issued the first volume in what would be a massive three-volume collection of Sade’s work. In the following year, Grove published the first American edition of My Secret Life, an eleven-volume anonymous autobiography documenting the sexual adventures of a Victorian gentleman known only as “Walter.” By the end of the 1960s, Grove had exhumed an entire catalog of Edwardian and Victorian pornography, issuing titles like Man With A Maid (1968), the erotic saga of the notorious Fanny Hill’s only daughter, and The Pearl (1968), a 19th-century magazine of “voluptuous reading,” under a series of new imprints such as Venus Library, Zebra Books, and Black Circle (Glass 2013, 140).

Buoyed by his success as a publisher of sexually explicit books, Rosset decided to try his hand at the distribution of sexually explicit motion pictures. To this end, in 1967, Grove licensed I Am Curious (Yellow), an arty Swedish film that mixed leftist politics with explicit sex, for distribution in the United States. When customs officials confiscated the six 35 mm. reels containing the film at the U.S. border, Rosset and his legal team successfully sued the federal government for their release. Later, in 1969, when the owners of a Boston movie theatre screening I Am Curious (Yellow) were indicted for violating state obscenity laws, Grove Press and the defendants successfully fought the case all the way up to the Supreme Court. In the wake of these legal victories, Grove quickly became a major distributor and exhibitor of pornographic films (Glass 2013, 140). In the summer of 1969, Rosset’s reputation as an unrepentant pornographer was cemented when Life magazine christened him “The Old Smut Peddler” (Glass 2013, 143).
Barney Rosset’s all-out war against the regulation of obscenity in the United States set the stage for the first confrontation between the distinctive brand of liberalism animating his crusade and the emerging feminist critique of pornography. On April 13, 1970, a group of thirty women forcibly occupied Grove Press’s executive offices in Greenwich Village. The occupation was, in part, a response to the firing of several employees who had been working to unionize Grove, an action widely perceived (and, eventually, confirmed by the National Labor Relations Board) to be union busting. However, it was also a protest against Grove’s involvement in the publication and distribution of materials the occupiers believed degraded women. In a set of demands issued just before their arrest, the occupiers accused Grove and its subsidiaries of profiting from “the basic theme of humiliating, degrading, and dehumanizing women through sadomasochistic literature, pornographic films, and oppressive exploitive practices against its own female employees” (Lederer 1980, 269). “In self-defense,” the occupiers declared, “we women are holding the Grove offices in trust [until] all publication of books and magazines, and all distribution of films that degrade women [are] stopped” (Lederer 1980, 269). Looking back on these events, Robin Morgan, one of the occupation’s organizers who would go on to coin the defining antipornography feminist slogan “Pornography is the theory. Rape is the practice.” and co-founded the Women’s Anti-Defamation League, the predecessor organization to WAP (Women Against Pornography), described the takeover of the Grove Press offices as “the first time feminists openly declared pornography as an enemy” (Lederer 1980, 268). It was also the first time feminists openly called into question liberal efforts to cast pornography as private, harmless, and constitutionally protected speech.

Over the next five years, feminists built upon the critique of pornography that had inspired the Grove Press occupation, and, as they did, the conflict between liberalism and what
would eventually cohere into a full-fledged antipornography feminist ideology became increasingly explicit. For example, in the concluding chapter of her groundbreaking feminist history of rape, *Against Our Will: Men, Women, and Rape* (1975), Susan Brownmiller, who would go on to serve as the first president of WAP (Women Against Pornography) in 1979,22 berated liberals for placing the rights of producers, purveyors, and purchasers of “ugly smut” above the rights of women (Brownmiller 1975, 392). “The case against pornography and the case against prostitution are central to the fight against rape,” Brownmiller wrote, “and if it angers a large part of the liberal population to be so informed, then I would question in turn the political understanding of such liberals and their true concern for the rights of women” (Brownmiller 1975, 390). In the course of mounting this blistering critique of the liberal position on pornography, Brownmiller drew parallels between the early opposition of the ACLU (American Civil Liberties Union) to feminist efforts to reform rape law and current efforts to make “obscenity the new frontier in defense of freedom of speech” (Brownmiller 1975, 390). The same “defense lawyer mentality” that blinded civil libertarians to the injustice and sexism of the corroborative proof requirements written into the rape laws of many states23 blinds them now, Brownmiller argued, to the fact that “‘adult’ or ‘erotic’ books and movies” are not “a valid extension of freedom of speech that must be preserved as a Constitutional right,” but “the undiluted essence of anti-female propaganda” (Brownmiller 1975, 390; 394-395).

In January of 1977, just over a year after the publication of Brownmiller’s *Against Our Will*, Andrea Dworkin brought her distinctive brand of antipornography feminism to the campus of the University of Massachusetts at Amherst. In response to a controversy surrounding student government funding for student organizations hosting screenings of sexually explicit films on campus,24 Dworkin delivered a speech entitled “Pornography: The New Terrorism.” The
speech’s grandiose prose, vivid analogies, and blistering indictment of civil libertarianism would elevate it above its narrow provenance and make it into an instant antipornography feminist classic (Dworkin (1978) 1993, 201; 199).25

As the title of Dworkin’s speech proclaims, in her view, pornography is a form of terrorism aimed at frightening women into “silent acceptance of female degradation as a fact of life” (Dworkin (1978) 1993, 201). Like the “tiger cages” of Côn Sơn Island were to the South Vietnamese and the death camps of the Third Reich were to the Jews of Europe, pornographic words and images are, in Dworkin’s words, “death threats to a female population in rebellion” (Dworkin [1978] 1993, 201). This means that, in Dworkin’s view, civil libertarians like Barney Rosset who purported to be fighting for the right of free speech were, in fact, fighting to win constitutional protection for a reactionary campaign of terror against women. “The concept of ‘civil liberties’ in this country,” Dworkin thundered, “has not ever, and does not now, embody principles and behaviors that respect the sexual rights of women,” and those who “ritualistically claim to be the legal guardians of ‘free speech,’” are, in fact, “the legal guardians of male profit, male property and phallic power” (Dworkin [1978] 1993, 202).

One year later, at a colloquium at the New York University School of Law entitled “Obscenity: Degradation of Women versus Right of Free Speech,” Dworkin delivered this influential speech once again, only this time her audience consisted of more than just sympathetic college students. Sponsored by the New York University Review of Law and Social Change, the colloquium brought leading civil libertarians, including Herald Price Fahringer, attorney for adult entertainment moguls Al Goldstein and Larry Flynt, together with leading antipornography feminists, including Dworkin and Brownmiller, to discuss the issue of pornography. The stated aim of the colloquium was to quell the rancor between antipornography
feminists and liberals and identify possible opportunities for collaboration between them. “We hoped,” Lisa Lerman, the colloquium’s coordinator, explains in her preface to a transcript of the event published in the New York University Review of Law and Social Change, “to get the civil libertarians ‘unstuck’ from addressing only the obsolete moralistic objections to pornography, and also to discuss what legal remedies may be available to women subjected to the dehumanization and the physical threats posed by violent pornography” (Lerman 1979, 181). By practically all accounts, these aims went unfulfilled. As Lerman herself describes it, the colloquium was marked by “a general failure of communication”; “the attorneys… interpreted the [feminist] outcry against violent pornography as a call for censorship and… focused on defending the first amendment” and the feminists “described the evils of violent pornography in subjective, emotional terms” and “were oblivious to the need for specificity, proof of injury, or ‘hard evidence’” (Lerman 1979, 182-184). In short, Lerman concludes, “the lawyers spoke legalese; the feminists spoke feminese” (Lerman 1979, 184).26 However, the colloquium was a success in at least one respect: by bringing antipornography feminists and liberals directly into conversation with one another for the first time, it clarified the nature and extent of the theoretical chasm that divided them.27

Nowhere was this theoretical chasm more evident than in a confrontation between Paul Chevigny, a law professor and former civil liberties lawyer, and Andrea Dworkin during a panel entitled “Effects of Violent Pornography.” The first shots in this spirited exchange were fired by Chevigny. “There is nothing to be said, nothing rational to be said,” Chevigny declared in his opening statement, “for any government censorship of any writings that relate to sex. It would be an inexcusable interference with the freedom of everyone… in this country” and a destructive intrusion into “the emotional relations between men and women” (Chevigny 1979, 232-233).
Having painted his antipornography feminist interlocutors as irrational busybodies, Chevigny proceeded to criticize them for failing to address the panel’s topic. While they may have shown that “women are an oppressed class” and that “pornography is a form of propaganda” that “creates an atmosphere which is degrading to women,” they had not, Chevigny admonished, offered any evidence that pornography “really hurts women” (Chevigny 1979, 233). “No one here has said any of the things I thought we were going to hear about effects of pornography,” Chevigny exclaimed, “I did not hear anything about any specific effects. Not a syllable. Nothing” (Chevigny 1979, 233). Chevigny expressed a similar frustration later in the panel, this time, the transcript indicates, while “banging on the table” (Chevigny 1979, 241).

Later, when it was her turn to speak, Andrea Dworkin fired back. Taking up Chevigny’s charge that she and her fellow antipornography feminists had failed to speak directly to pornography’s effects, Dworkin insisted that “we have been here all day discussing the issue of pornography [and] articulating our social situation as women and the fact is that it didn’t take, did it? No matter how often we explain rape to the rapist, we explain woman battering to the woman batterer, we explain pornography to the pornographers or the consumers of pornography, we explain that law is usually a weapon used against us to the lawyers, no matter how often we explain it reasonably in a realm of rational discourse, within which we are told to stay, it doesn’t take” (Dworkin 1979b, 238). “Women,” Dworkin continued, “are denied freedom of expression by rape, by battering,… by violence on every level, by sexual harassment…, by being unable to make the decent living that gives one the freedom to speak one’s mind… When I tell you that pornography silences me… and Phyllis Chesler has testified to it, and Leah Fritz has, and Florence Rush has,29 and women all over the country have, and we are told we haven’t said
anything about the effects of pornography…, then we understand that we are operating in a
moral vacuum” (Dworkin 1979b, 239).

This exchange between Chevigny and Dworkin is a synecdoche for the conflict that
defined the relationship between antipornography feminism and liberalism throughout the 1970s.
Chevigny’s insistence that antipornography feminists were right regarding pornography’s role in
women’s subordination but wrong in their presumption that, in pointing to this role, they were
saying anything at all about pornography’s “effects” evinces his investment in a quintessentially
liberal notion of the public and the private. For Chevigny, the “degrading atmosphere” that
pornography begets is not properly considered an “effect of pornography” because, in his
conventionally liberal view, this “degrading atmosphere” does not, as he puts it, “really hurt
women.” What Chevigny means by this is not that living in a culture that widely sanctions
women’s subordination is good for women, but that the subordination of women through
pornography is a “private” as opposed to a “public” harm that admits of no legal remedy. If a
legal remedy for such a harm were adopted, so Chevigny’s liberal reasoning goes, the
implications for individual liberty would be disastrous: such a law would ride roughshod over the
public/private distinction and subject fundamentally private matters such as “the emotional
relations between men and women” to government regulation and control (Law 1978, 234).

In her response to Chevigny, Dworkin challenges this liberal analysis head on. By
insisting that pornography “silences” women, Dworkin both contested liberal figurations of
women’s subordination through pornography as a merely “private” harm and radically called
into question the status of liberalism’s public/private distinction as a safeguard for individual
liberty. After all, if practices liberals cordon off from the reach of law and government in the
name of individual liberty actually work to systematically undermine the liberty of women, then
liberalism’s public/private distinction begins to look less like a bulwark against tyranny and more like an instrument of patriarchal domination.

As this exchange between Chevigny and Dworkin attests, despite its organizers’ best efforts, the colloquium seems to have left civil libertarians and antipornography feminists even more deeply divided over the issue of pornography. As the 1970s gave way to the 1980s, liberals and feminists remained at odds over the issue of pornography. By the summer of 1980, Aryeh Nair, then the national executive director of the ACLU, had dubbed pornography’s feminist critics “the new censors” in an editorial in *The Nation* (Neier 1980, 737). In the spring of 1981, a debate between Andrea Dworkin and outspoken civil libertarian defense attorney Alan Dershowitz at the Schlesinger Library at the Radcliffe Institute for Advanced Study turned so rancorous that it made earlier clashes between antipornography feminists and liberals look almost congenial in comparison. According to an account published in the *Boston Phoenix*, the debate was “a classic confrontation between the radical and liberal” (Diamant 1981). Dworkin gave “a dramatic speech about male supremacy” and Dershowitz, who had just successfully defended Harry Reems, the male star of the film *Deep Throat*, in an obscenity trial in Memphis, Tennessee, followed with “a series of outraged gasps about dangers to the First Amendment” (Diamant 1981). According to Dershowitz, the predominately feminist audience tried to “censor” his speech with chants of “Down with the pornocrats!” (Dershowitz 1982, 190). Dershowitz also claims that a leather-clad contingent of Dworkin’s supporters carried chains into the auditorium and “threatened violence” (Dershowitz 1982, 190). Tensions between Dershowitz and Dworkin reached a fever pitch when Dershowitz suggested that feminist opposition to pornography would culminate in the censorship of Dworkin’s own writings. “You can’t have it both ways,”
Dershowitz admonished the audience, “You want Dworkin, you’ve got to take pornography” (Diamant 1981). Dworkin responded by giving him the finger (Dershowitz 2002).

Clearly, by the end of the 1970s, antipornography feminists and liberals had reached an impasse. Holding fast to the public/private distinction and the liberty they believed it safeguarded, liberals either rejected antipornography feminist claims regarding pornography’s harmfulness altogether or insisted that these harms, though regrettable, could not justify any serious efforts to curtail pornography’s production, distribution, or consumption. Meanwhile, in the face of what they perceived as liberals’ calloused obstinacy, antipornography feminists mercilessly condemned what they perceived as liberals’ fanatical adherence to conceptions of harm, liberty, and the public and the private too narrow and formalistic to accommodate even the most basic pleas for justice on behalf of women. “I think the inviolability of the First Amendment has replaced God, motherhood, and patriotism as a sacrosanct refuge for those who prefer to rely on sacred cows rather than the working out of complex societal problems in the public arena,” Brownmiller told the audience at WAVPM’s Feminist Perspectives on Pornography conference in 1978, summing up what was, at the time, a rapidly growing consensus among antipornography feminists concerning the limits of liberalism (Bronstein 2011, 161). As the 1970s gave way to the 1980s, and antipornography feminists began to champion an ordinance figuring pornography as legally actionable sex discrimination as opposed to constitutionally protected speech, the already profound theoretical differences separating antipornography feminists and liberals seemed poised to deepen.

In the fall of 1983, at the request of the City of Minneapolis, Andrea Dworkin and Catharine MacKinnon drafted the first version of their pornography civil rights ordinance. Premised on the defining dogma of antipornography feminism that pornography threatens
women’s physical, political, and economic wellbeing, the ordinance consisted of a series of amendments to Minneapolis’s existing civil rights code. It singled out pornography as a form of sex discrimination and defined specific acts, including “trafficking in pornography,” “coercion into pornographic performances,” “forcing pornography on a person,” and “assault or physical attack due to pornography” as civil rights violations (Dworkin and MacKinnon 1985, 101). As Dworkin, MacKinnon, and their sympathizers frequently emphasized, the ordinance was a civil, as opposed to a criminal law, that placed “enforcement in the hands of the victim,” not police and prosecutors (MacKinnon, 1987, 203). More specifically, the ordinance gave women, as well as any other persons who could prove to the satisfaction of a trier of fact that their civil rights had been violated through a particular piece of pornography, a cause of action to sue the producers and distributors of the material implicated in the civil rights violation for damages as well as a permanent injunction against the sale, exhibition, and distribution of that material (Dworkin and MacKinnon 1988, 101).

Perhaps the most controversial aspect of Dworkin and MacKinnon’s Minneapolis ordinance was its definition of pornography. In order for materials to be deemed “pornographic” and, therefore, actionable under the ordinance, the ordinance stipulated that materials had to “graphically” depict, in either pictures or words, “the sexually explicit subordination of women” (Dworkin and MacKinnon 1985, 101). Actionable materials also had to include at least one of nine additional elements: women presented “dehumanized as sexual objects, things, or commodities,” “as sexual objects who enjoy pain or humiliation,” “as sexual objects who experience sexual pleasure in being raped,” “as sexual objects tied up or cut up or mutilated or bruised or physically hurt,” “in postures of sexual submission, servility, or display,” in such a way that they are “reduced to [their] body parts – including but not limited to vaginas, breasts, or
buttocks,” “as whores by nature,” “as being penetrated by objects or animals,” or “in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual” (Dworkin and MacKinnon 1988, 101). Materials found by a trier of fact to meet the ordinance’s definitional requirement would be subject to civil action by any individual alleging that their civil rights had been violated through those materials.

The Minneapolis City Council passed two versions of what eventually came to be known as the “Dworkin-MacKinnon ordinance,” the first in December of 1983 and the second in July of 1984. The city’s mayor, Don Fraser, vetoed both of them citing First Amendment concerns. Over the next two years, versions of the ordinance were also considered in Indianapolis, Indiana, Madison, Wisconsin, Suffolk County, New York, Bellingham, Washington, Los Angeles County, California, and Cambridge, Massachusetts. The ordinance also sparked interest at the federal level, and, between the summer and winter of 1985, MacKinnon, Dworkin and two other prominent antipornography feminists, Dorchen Leidholdt and Diana Russell, accepted invitations to testify about the ordinance before the Attorney General’s Commission on Pornography. In its final report, issued in July of 1986, the Commission expressed its “substantial agreement with the motivations behind the ordinance and the goals it represents” and recommended that Congress “conduct hearings and consider legislation recognizing a civil remedy for harm attributable to pornography” (Attorney General’s Commission on Pornography 1986, 62; 186).

Despite these early successes, in the summer of 1986, the ordinance’s momentum began to flag. This was, in large part, due to the Supreme Court’s summary affirmance of the decision in American Booksellers Association v. Hudnut (771 F.2d 323 (7th Cir. 1985)). In this decision, handed down in August of 1985, the U.S. Court of Appeals for the Seventh Circuit struck down Indianapolis’s version of the Dworkin-MacKinnon ordinance on first amendment grounds,
holding that the law amounted to a content-based restriction on speech that was not neutral in regard to viewpoint. Invoking the same quintessentially liberal notions of the public and the private that antipornography feminists had been assailing since the 1970s, Judge Frank Easterbrook, writing for the majority in *Hudnut*, likened the Dworkin-MacKinnon ordinance to “thought control” (328). Granting that “depictions of subordination tend to perpetuate subordination,” Easterbrook nevertheless maintained that legal interventions aimed at curtailing subordinating depictions of women were illegitimate (325). According to Judge Easterbrook, “all of [pornography’s] unhappy effects depend on mental intermediation” and to permit the mitigation of these effects through the regulation of pornography would be to invite the government into the “private” sphere of thoughts and intimate relations, to establish in law “an approved view of women [and] of how the sexes may relate to each other,” and to leave “the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us” (328)

While the court’s finding of unconstitutionality in *Hudnut* was based solely on the ordinance’s ambition to establish what Judge Easterbrook called an “‘approved’ view of women” and its consequent failure to remain neutral in regard to the content of the speech it sought to regulate, the *Hudnut* opinion is brimming with dicta echoing many well-worn liberal ideas concerning the regulation of sexually explicit materials. For instance, the *Hudnut* majority is critical of the ordinance’s definition of pornography because it fails to take into account “literary, artistic, political, or scientific value” (325). “Under the ordinance,” Judge Easterbrook observes, “… speech that… presents women as enjoying pain, humiliation, or rape, or even simply presents women in ‘positions of servility or submission or display’ is forbidden, no matter how great the literary or political value of the work taken as a whole” (328). The *Hudnut* decision also
takes the Dworkin-MacKinnon ordinance to task for eschewing the established liberal framework for the regulation of “obscenity.” “The Indianapolis ordinance does not refer to the prurient interest, to offensiveness, or to the standards of the community,” Judge Easterbrook remarks, and “under the ordinance… speech that portrays women in positions of equality is lawful, no matter how graphic the sexual content” (324; 328). Finally, and most significantly, the Hudnut opinion affirms the longstanding liberal view that non-obscene sexually explicit materials, even those that, by the Hudnut majority’s own admission, “lead to affront and lower pay at work, insult and injury at home, battery and rape on the streets,” are, for all intents and purposes, harmless (329). All of these “unhappy effects depend on mental intermediation,” Judge Easterbrook writes (329). The implication here is that, as liberals have long maintained, the alleged “harms” pornography inflicts are not truly harmful, or at least not harmful in a sense that would justify the sort of regulation represented by the Dworkin-MacKinnon ordinance (329). In summarily affirming the Hudnut ruling, the Supreme Court effectively ratified all of these long uncontested liberal views.

Without a doubt, the Hudnut ruling was a victory for civil libertarians. The ACLU and numerous other affiliated civil liberties organizations dealt a fatal blow to the Dworkin-MacKinnon ordinance and hastened the decline of the antipornography feminist movement that had been its champion. However, the defeat of the Dworkin-MacKinnon ordinance and the subsequent decline of the antipornography feminist movement did not mark the end of antipornography feminism’s influence and relevance. In fact, as the ordinance’s momentum waned and as the antipornography feminist movement disintegrated, antipornography feminist ideas underwent a renaissance of sorts at the hands of some very unlikely allies. In the mid-1980s, prominent liberal jurists and political philosophers began translating the feminist critique
of pornography into a liberal idiom and, in doing so, they dramatically reconfigured the relationship between antipornography feminism and liberalism.

**Antipornography Feminism and Carole Pateman’s Critique of Liberalism**

Before chronicling the surprising turns the relationship between antipornography feminism and liberalism took in the wake of the defeat of the Dworkin-MacKinnon ordinance, I would like to explore one significant mark that these conflicts between antipornography feminists and liberals have made in the discipline of political theory. More specifically, I would like to highlight the influence of several key concepts, ideas, and arguments developed by antipornography feminists in the course of their critical engagements with civil libertarian defenses of pornography on the work of Carole Pateman, a feminist political theorist who has been one of the discipline’s most incisive critics of liberalism for the past four decades.

In 1980, in what is widely regarded as the flagship journal of the discipline of political theory, *Political Theory*, Carole Pateman published an article entitled “Women and Consent.” This article, which forms a link between Pateman’s earlier work in *The Problem of Political Obligation: A Critique of Liberal Theory* (1979) and her later and more expressly feminist work in *The Sexual Contract* (1988), draws explicitly on feminist analyses of the laws and “social beliefs and practices” surrounding rape in an effort to bring what Pateman describes as “the suppressed problems of consent theory” to the surface (Pateman 1980, 156). In Pateman’s estimation, consent theory is far from the radical anti-patriarchal doctrine it purports to be. In fact, according to Pateman, it is merely a novel means of justifying the patriarchal relationships that voluntarist theories of society and politics threaten to undercut (Pateman 1980, 151). That the concept of consent functions in this conservative manner is especially obvious, Pateman argues, in the laws, social beliefs, and practices surrounding rape where submission, including
enforced submission, is routinely identified with consent and where gendered conventions of appropriate sexual behavior render notions such as “consent” and “non-consent” virtually meaningless (Pateman 1980, 156; 161).

Among the feminist works informing Pateman’s analysis in “Women and Consent” is Susan Brownmiller’s *Against Our Will: Men, Women, and Rape* (1975). Pateman explicitly references Brownmiller’s book twice in her article. The first reference is in a footnote supporting her claim that rape is a widespread phenomenon affecting all women, even those who could not plausibly be said to have “precipitated” an assault such as the very old, the very young, and the heavily pregnant. As Pateman puts it in this footnote, “no woman is immune” (Pateman 1980, 166). Pateman’s second reference to Brownmiller’s book is in a footnote supporting her claim that rapes are intentional acts perpetrated by rational men rather than mistaken or accidental acts perpetrated by “stupid or careless” men (Pateman 1980, 160). Taken together, these two claims comprise what might be described as the thesis of *Against Our Will*, summed up here in one of the book’s most familiar passages: “Rape is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear” (Brownmiller 1975, 15).

By the time “Women and Consent” was published in the spring of 1980, arguments Brownmiller makes in *Against Our Will* regarding the centrality of rape to women’s oppression, the practical indistinguishability of rape and consensual sex, and the interrelationship of rape, pornography, and prostitution had become central tenets of antipornography feminist politics and ideology. In fact, in the year leading up to the publication of Pateman’s article, Brownmiller herself became a leading voice in the antipornography feminist movement, leveraging her notoriety as the author of *Against Our Will* to found Women Against Pornography (WAP), the first national antipornography feminist organization in the United States.
In “Women and Consent,” Pateman does not directly reference Brownmiller’s influential claims concerning the interrelation of rape, pornography, and prostitution. She does, however, repeat and affirm other closely related claims, which, at the time of the article’s publication, were widely and quite publicly embraced by the antipornography feminist movement. For instance, Pateman challenges the conventional distinction between rape and consensual sex. More specifically, Pateman resists the view that “rape is… a unique act that stands in complete opposition to the consensual relations that ordinarily obtain between the sexes” and characterizes it instead as “the extreme expression or an extension of the accepted and ‘natural’ relation between men and women” (Pateman 1980, 161). Brownmiller puts forward an almost identical argument in Against Our Will. “The real reason for the law’s everlasting confusion as to what constitutes an act of rape and what constitutes an act of mutual intercourse,” Brownmiller writes, “is the underlying cultural assumption that it is the natural masculine role to proceed aggressively toward [insertion of the penis], while the natural feminine role is to ‘resist’ or ‘submit’” (Brownmiller 1975, 383).

Thus, for both Pateman and Brownmiller, the naturalization and normalization of force in conventional heterosexual relations makes the line between mutual heterosexual sex and rape exceedingly difficult if not impossible to determine. In Brownmiller’s influential antipornography feminist analysis, this claim plays a crucial role: it serves as the opening premise in a line of argument linking pornography (as well as prostitution) to rape. According to Brownmiller, both pornography and prostitution are among the most potent cultural forces at work naturalizing and normalizing force in putatively “consensual” heterosexual sex. In Brownmiller’s words, pornography and prostitution “promote and propagandize [the ideology of rape]” and “offer men, and in particular, impressionable adolescent males… the ideology and
psychologic encouragement to commit their acts of aggression without awareness, for the most part, that they have committed a punishable crime…” (Brownmiller 1975, 391). This argument is, of course, the sine qua non of antipornography feminism and the fact that Pateman’s “Women and Consent” recapitulates its foundational premise shows that, by 1980, antipornography feminist ideas and arguments regarding the continuity between rape and “consensual” heterosexual sex had made inroads into Pateman’s political theorizing.

Pateman’s article bears other marks of antipornography feminist influence. For instance, in “Women and Consent,” Pateman, much like her antipornography feminist contemporaries, privileges sexuality as a site in which women’s more generalized subordinate status is rendered especially visible and obvious. In Pateman’s view, modern liberal societies’ laws as well as their less formalized beliefs and attitudes concerning rape and “consensual” heterosexual sex reveal something deeper about the status of women in these societies, namely, that, “notwithstanding their formal civic status, women are regarded as men’s ‘natural’ subordinates, and hence as incapable of consent” (Pateman 1980, 154). Brownmiller makes a similar inference from the voluminous data on sexual assault she compiles in Against Our Will. According to Brownmiller, the failure of modern liberal societies to acknowledge and redress the sexual injuries sustained by women living within them evinces that the “male liberal tradition” is steeped in the “philosophy of rape” and, consequently, views women “as anonymous panting playthings, adult toys, dehumanized objects to be used, abused, broken, and discarded,” not as free and equal rights-bearing individuals (Brownmiller 1975, 391; 394). For both Pateman and antipornography feminists like Brownmiller, then, sex and sexuality have pride of place analytically because they are seen as giving the lie to claims that gender equality is an accomplished fact in modern liberal regimes.
Pateman’s analysis privileges sex and sexuality in another way that is wholly consonant with antipornography feminism. Like Brownmiller in Against Our Will, in “Women and Consent,” Pateman figures rape as a prime mover driving, exacerbating, and reinforcing women’s social, political, and economic subordination. “Rape is central to the problem of women and consent in everyday life,” Pateman writes, echoing the claims of antipornography feminists like Brownmiller that “the ideology of rape” permeates “every level of our society” and affects “all women” (Pateman 1980, 156; Brownmiller 1975, 15; 389). Similarly, when Pateman argues that the morass of problems concerning women and consent in modern liberal societies presents “an entirely sufficient argument, not only for the democratic reconstruction of the liberal state, but for a simultaneous reconstruction of our sexual lives,” she echoes the claims of Brownmiller and antipornography feminists more generally that rape and the constellation of patriarchal myths and attitudes surrounding it may be “the central key” to understanding and unlocking women’s oppression (Pateman 1980, 163; Brownmiller 1975, 397).

While Pateman’s “Women and Consent” bears many marks of antipornography feminist influence, namely, its interrogation of the conventional distinction between “consensual” heterosexual sex and rape, its privileging of sex and sexuality as sites and sources of women’s subordination, and its frustration with traditional liberal responses to the problem of the sexual oppression of women, it stops short of advocating a full-blown antipornography feminist agenda. In “Women and Consent,” Pateman’s primary aim is political theoretical. She is not out to criticize pornography, prostitution, and the ideology of male supremacy that they support, but to expose the inegalitarian implications of liberal consent theory as it has been applied in the context of rape law. Eight years later, Pateman would expand upon this project and amplify her critique of the concept of consent in The Sexual Contract (1988). In this work, Pateman would
also advocate and pursue a recognizably antipornography feminist agenda, including figuring both pornography and prostitution as crucial sites, sources, and symptoms of women’s subordination.

Pateman’s principal argument in *The Sexual Contract* can be stated thusly: far from signaling the end of patriarchal rule and ushering in a new epoch of egalitarian and consensual social relations, the social contract described by classic contract theorists like Hobbes and Locke is a “sexual contract” that supplants the rule of men as fathers (a political arrangement Pateman terms “classical” patriarchy) and establishes “a specifically modern form of patriarchy,” “fraternal patriarchy,” or the rule of “men as men” (Pateman 1988, 1-3). The excavation of the neglected “sexual” dimensions of the classic social contract stories as well as an elucidation of their implications for contemporary politics and theory comprises the bulk of *The Sexual Contract*.

In the preface to *The Sexual Contract*, Pateman signals that her book is meant to be more than just another work of “mainstream political theory” (Pateman 1988, x). In fact, she marks the book as an expressly feminist project and situates it in the broader context of “radical feminist” theory and activism. “Some of my arguments,” Pateman writes, “have been prompted by writers customarily labeled radical feminists… [and] my deepest intellectual debt is to the arguments and activities of the feminist movement” (Pateman 1988, x-xi). Later, in the book’s first chapter, Pateman reveals that one of the radical feminist writers to whom she is most deeply indebted is Adrienne Rich. An acclaimed poet, essayist, and activist, Adrienne Rich was also a founding member of Women Against Pornography (WAP) and the author of an afterword to the antipornography feminist anthology *Take Back the Night: Women on Pornography* in which she likens pornography to “witch burning, lynching, pogroms, fascism,” and “slavery” (Lederer
In another essay, “Compulsory Heterosexuality and Lesbian Existence” (1980), Rich portrays pornography as an integral part of “compulsory heterosexuality,” a “political institution” comprised of a “pervasive cluster of forces” that “enforce women’s total emotional, erotic loyalty and subservience to men” and “assure male right of physical, economic, and emotional access” to women (Rich 1980, 637, 640, 647). By exerting a powerful “influence on consciousness,” Rich believes pornography brainwashes both women and men into believing “that women are natural sexual prey to men and love it,” effectively reifying what Rich calls “the law of male sex right to women” (Rich 1980, 641, 645).

In the first chapter of *The Sexual Contract*, Pateman references Rich’s concept, “the law of male sex right,” directly. Here is the relevant passage in full: “The original pact is a sexual as well as a social contract: it is sexual in the sense of patriarchal – that is, the contract establishes men’s political right over women – and also sexual in the sense of establishing orderly access by men to women’s bodies. The original contract creates what I shall call, following Adrienne Rich, ‘the law of male sex-right’” (Pateman 1988, 2). In this passage, Pateman positions the central argument of *The Sexual Contract*, that contract is the distinctively modern means of “establishing orderly access by men to women’s bodies” and shoring up “the law of male sex-right,” as a supplement to Rich’s account of compulsory heterosexuality (Pateman 1988, 2). Building on Rich’s contention that men secure access to women by way of a multifaceted “political institution,” Pateman suggests that, in modern liberal societies, one aspect of this political institution is contract (Pateman 1988, 2). Far from “exemplifying and securing individual freedom” Pateman argues that contracts, especially those to which women are practically by definition a party, such as the marriage contract, the prostitution contract, and the surrogacy contract, inevitably give rise to “relations of domination and subordination” in which a
woman (whether as a wife, a prostitute, or a “surrogate” mother) places the “right of command” over her body (evasively termed “the property in her person” in the language of contract) in the hands of a man (Pateman 1988, 8; 4-5).40 This argument, the defining argument of Pateman’s book, can be seen as a continuation and elaboration of Rich’s account of compulsory heterosexuality; it is an attempt to use the canonical texts and analytical tools of political theory to come to terms with precisely how the political institution that ensures men’s ready access to women and their unique capacities that Rich described as “compulsory heterosexuality” functions and is legitimated in modern liberal societies.

This continuity between Pateman’s *The Sexual Contract* and Rich’s “Compulsory Heterosexuality and Lesbian Existence” signals a wider continuity between Pateman’s book and antipornography feminist thought. Perhaps the most obvious feature common to both *The Sexual Contract* and virtually all antipornography feminist writing is the figuration of pornography as a key site, source, and symptom of women’s subordination to men. While it would be misleading to suggest that pornography is among Pateman’s central concerns in *The Sexual Contract*, it would be equally misleading to suggest that concern with pornography is completely absent from Pateman’s text. For instance, in the first chapter, Pateman observes that “men still eagerly press for the enforcement of the law of male sex-right and demand that women’s bodies, in the flesh and in representation, should be publicly available to them” (Pateman 1988, 14). Later in the text, Pateman expands upon this remark. “The general display of women’s bodies and sexual parts, either in representation or as live bodies,” Pateman writes, “is central to the sex industry and continually reminds men – and women – that men exercise the law of male sex-right, that they have patriarchal rights of access to women’s bodies” (Pateman 1988; Pateman 1999).
Such portrayals of pornography as a means by which men both proclaim and exercise their “patriarchal rights of access to women’s bodies” is typical of antipornography feminist writing. As we have already seen, this trope is present in Rich’s “Compulsory Heterosexuality” essay. It is also prominently featured in the title of Andrea Dworkin’s antipornography feminist manifesto, *Pornography: Men Possessing Women* (1979). The following passage from Dworkin’s text is exemplary in this regard: “In the male system,” Dworkin writes, “women are… the whore who belongs to all male citizens… Buying her is buying pornography. Having her is having pornography” (Dworkin 1979a, 202). Thus, for both Pateman and antipornography feminists like Rich and Dworkin, pornography is one common, highly visible, and virtually unregulated way in which men possess, control, and dominate women in contemporary liberal societies. However, it must be borne in mind that neither Pateman nor antipornography feminists believed pornography to be the sole means by which this was accomplished. Rather, as the passages quoted above intimate, both Pateman and antipornography feminists believed pornography worked in concert with another key institution of the “the law of male sex right”: prostitution.41

Perhaps the most prominent antipornography feminist to draw a link between pornography, prostitution, and women’s subordination to men is Susan Brownmiller. “The case against pornography and the case against toleration of prostitution are central to the fight against rape,” Brownmiller writes in the final chapter of *Against Our Will* (Brownmiller 1975, 390). In Brownmiller’s view, critiquing prostitution and pornography is crucial to anti-rape efforts because both pornography and prostitution “institutionalize the concept… that sex is a female service that should not be denied the civilized male,” just the sort of belief in masculine sexual entitlement that, Brownmiller argues, lurks behind acts of rape (Brownmiller 1975, 391-392).
“When young men learn that females may be bought for a price,” Brownmiller reasons, “… then how should they not also conclude that that which may be bought may also be taken without the civility of a monetary exchange?” (Brownmiller 1975, 391).

Andrea Dworkin also posits a fundamental relation between prostitution, pornography, and women’s subordination to men. In fact, in Dworkin’s view, this relationship is so fundamental that it has left its mark on the word “pornography” itself. “[P]ornography,” Dworkin explains in Pornography: Men Possessing Women, “derived from the ancient Greek pornē and graphos, means ‘writing about whores’” or “the graphic depiction of women as vile whores” (Dworkin 1979a, 199; 200). After making this etymological point, Dworkin proceeds to argue that the connection between pornography and prostitution runs even deeper. According to Dworkin, pornography does not merely represent women as “vile whores”; it actually reduces them to this degraded status. “In the system of male sexual domination,” Dworkin contends, “women are porneia, in our real live bodies the graphic depictions of whores, used as whores are used, valued as whores are valued” (Dworkin 1979a, 224).

Kathleen Barry, another notable antipornography feminist, posits a similar relationship between pornography, prostitution, and women’s subordination to men. In Female Sexual Slavery (1979), a book primarily concerned with laying bare the most horrific aspects of the international sex trafficking industry, Barry devotes an entire chapter – the book’s lengthiest, in fact – to elucidating the role pornography plays in the perpetuation and legitimation of forced prostitution. According to Barry, pornography embodies and promotes “the ideology of cultural sadism,” an ideology that, in her view, helps maintain “female sexual slavery” by making the sexual use and abuse of women appear normal, natural, and inevitable (Barry 1979, 182). By making men into “the powerful, objectifying aggressor” and women into “the naturally
masochistic sexual object existing only for male sexual use and satisfaction,” pornography, Barry explains, “encourage[s] and support[s] sexual violence, defining it into normal behavior,” thus enabling the forced prostitution of women and girls to flourish on a global scale with “safety, support, and impunity” (Barry 1979, 174; 184-185).

As these examples demonstrate, critiques of prostitution as an institution of men’s sexual dominance are part and parcel of antipornography feminist thought. In the antipornography feminist view, prostitution, like pornography, embodies and perpetuates the belief that women are objects who exist solely for men’s sexual use, a belief that, in turn, serves as the cornerstone of male supremacy. In The Sexual Contract, Pateman echoes this antipornography feminist critique of prostitution. In a chapter entitled “What’s Wrong with Prostitution?”, Pateman argues that, contrary to the sanguine views put forward by libertarians and even some feminists, prostitution is not “merely a job of work,” but an institution of “sexual mastery” (Pateman 1988, 190; 207). “When a man enters into the prostitution contract,” Pateman explains, “he is not interested in sexually indifferent, disembodied services;” he contracts to “obtain unilateral right of direct sexual use of a woman’s body” (Pateman 1988, 207; 204). He contracts, in other words, to constitute himself as a “civil master for a time” (Pateman 1988, 207). It is in this way, Pateman argues, that, through prostitution, “the law of male sex-right is publicly affirmed and men gain public acknowledgment as women’s sexual masters” (Pateman 1988, 208). This, Pateman forcefully concludes, “is what is wrong with prostitution” (Pateman 1988, 208).

It is also, in Pateman’s view, what is wrong with sadomasochism. According to Pateman, the fact that the sex industry caters to “a vigorous demand for ‘bondage and discipline’ or fantasy slave contracts” is further evidence that pornography and prostitution are primarily about the shoring up of “the law of male sex-right” (Pateman 1988, 199). Responding directly to Pat
Califia’s sex-radical feminist defense of s/m. Pateman argues that sadomasochism is not “a rebellious or revolutionary fantasy,” but “a dramatic exhibition of the logic of contract and of the full implications of the sexuality of the patriarchal masculine ‘individual’” (Pateman 1988, 186). Bearing in mind that Pateman’s central argument in The Sexual Contract is that contract is a modern means of instituting patriarchal domination, the characterization of sadomasochism she offers here is tantamount to an accusation that defenders of s/m like Califia are patriarchal collaborators.

Of course, such accusations are commonplace in antipornography feminist writing. For instance, in the introduction to Against Sadomasochism: A Radical Feminist Analysis (1982), a volume that features contributions from several antipornography feminist leaders including Women Against Violence in Pornography and Media (WAVPM) co-founders Kathleen Barry, Susan Griffin, and Diana Russell, sadomasochism is described as “firmly rooted in patriarchal sexual ideology” (Linden et al. 1982, 4). In her contribution to this volume, Russell, who is also one of the volume’s co-editors, offers a response to defenses of sadomasochism that emphasize its consensual nature. Russell’s response closely resembles the position staked out by Pateman in The Sexual Contract. Rather than questioning whether or not s/m encounters are actually consensual as their defenders maintain, Russell asserts that “wanting or consenting to domination and humiliation does not make it nonoppressive. It merely demonstrates how deep and profound the oppression is” (Linden et al. 1982, 177). For Russell, as for Pateman, the presence of genuine consent does not indemnify s/m against the charge that it is a reflection and affirmation of women’s subordinate status. In fact, that defenders of s/m so fervently and frequently invoke the language of consent and the “logic of contract” is further evidence of their complicity in modern modes of patriarchal domination.
Thus, it is not only in Pateman’s scattered remarks concerning pornography, but also in her much more developed critiques of prostitution and sadomasochism that the influence of antipornography feminist ideas and arguments on *The Sexual Contract* is readily visible. Like many antipornography feminists, including those she directly references in her text like Kathleen Barry and Adrienne Rich, Pateman conceives of pornography, prostitution, and sadomasochism as institutions of male dominance. They are not harmless or potentially liberating avenues of sexual exploration and expression to which both women and men should be permitted unfettered access as civil libertarians and sex radical feminists maintain. They are, rather, key means through which “the law of male sex-right” is proclaimed and enforced and, as Pateman is at continual pains to emphasize, the liberal ideology employed to legitimate them offers women little in the way of sexual freedom and autonomy.

Perhaps the most compelling evidence that a significant continuity inheres between the critiques of pornography, prostitution, and sadomasochism offered by Pateman in *The Sexual Contract* and those offered by antipornography feminists throughout the 1970s and 80s are Pateman’s own remarks on the matter. In 1990, one year after the publication of *The Sexual Contract*, Pateman published a review of Catharine MacKinnon’s *Feminism Unmodified: Discourses on Life and Law* (1989), a collection of speeches and writings composed by MacKinnon at the height of her involvement in the antipornography feminist movement. On the whole, Pateman’s review of MacKinnon’s book is sympathetic. She endorses MacKinnon’s view that “the cornerstone of men’s claim to jurisdiction over women is that they have right of sexual access to women’s bodies” (Pateman 1990, 402; 401). In fact, she describes “MacKinnon’s insistence that women’s subordination to men is different from the subjection of other groups or categories of people because it is sexual” as “the most important contribution of *Feminism*
*Unmodified*” and draws parallels between it and her own argument regarding the establishment of “the law of male sex right” through “the (story of the) sexual contract” in *The Sexual Contract* (Pateman 1990, 401).

Pateman also commends MacKinnon’s unsparing critique of pornography. “[I]n pornography,” Pateman writes, adopting MacKinnon’s own forceful rhetorical style, “what men can do when they have one of us has no limits. Women are represented as freely available for sexual use, whether or not they are willing, and violence, degradation, and humiliation are represented as sex; the meaning of womanhood is proclaimed to be sexual submission” (Pateman 1990, 407). Pateman even goes so far as to tentatively endorse the Dworkin-MacKinnon ordinance, which was, by the time Pateman’s review appeared, all but a lost cause thanks to the Supreme Court’s summary affirmance of the Hudnut ruling in 1986. “Use of law [to regulate pornography],” Pateman writes, “brings its own problems, such as black markets, smuggling, and the well-known problems of defining ‘pornography,’ but perhaps,” Pateman concludes, “the law is a necessary recourse for women given the scale of the [pornography] industry” (Pateman 1990, 407). That as late as 1990 Pateman was willing to give the Dworkin-MacKinnon ordinance the benefit of the doubt is powerful evidence of the influence antipornography feminist concerns, concepts, and arguments exerted on her political theorizing during this period.

Pateman’s favorable review of MacKinnon’s *Feminism Unmodified* and sympathetic deportment vis-à-vis the Dworkin-MacKinnon ordinance appear even more striking when they are considered alongside the chilly reception one of Pateman’s contemporaries, feminist political theorist Wendy Brown, offered MacKinnon’s ideas and legislative proposals around this same time. In a review of MacKinnon’s *Feminism Unmodified* published in the summer of 1989, just a few months before Pateman’s review appeared, Wendy Brown offered a scathing critique of
MacKinnon’s book and the antipornography feminist politics it elaborated. Brown’s review begins with an attack of MacKinnon’s oratorical style. “Oratory,” Brown writes, “is MacKinnon’s necessary medium, for her critical claims are hardly meditative reflections upon one of the most complex and subtle dimensions of our political and epistemological universe – gender power. They are searing manifestos intended to stir the sleeping, spur the complacent, and scorn the apologetic” (Brown 1989, 489). Brown is also highly critical of MacKinnon’s “infelicitous reliance” upon Marxism (Brown 1989, 490). “I am quite sure,” Brown writes, “that [Marxist] method,” with “its affinity with scientific discourse, its penchant for unambiguous categories, and its drive toward theorizing a totality,” “is anathema to intelligent analysis of gender or sexuality” (Brown 1989, 490). Moreover, Brown continues, MacKinnon’s thesis that gender inequality is “created, operationalized, and expressed through sexuality” in a manner analogous to the way in which class inequality is created, operationalized, and expressed through work in Marx’s theory is inconsistent with her claim that sexual difference and sexuality are socially constructed (Brown 1989, 489). In Brown’s words, “MacKinnon ends up casting women, men, and sexuality as thoroughly socially constructed at the same time she speaks of men expropriating female sexuality – as if this sexuality had some existence prior to and innocent of its social construction” (Brown 1989, 490).

Perhaps the most serious fault Brown finds with MacKinnon’s book is its failure to articulate what she calls “a political theory of sexuality” (Brown 1989, 491). Such a theory, Brown explains, “would have to explore rather than denounce the complex faces of power in sexuality… It would also have to account for rather than consign to the pathos of false consciousness the fact of female sexual diversity as well as the paradox that women have been profoundly injured sexually and women are alive and kicking sexually” (Brown 1989, 491). In
Brown’s view, MacKinnon’s “linear, systematic argument” concerning the way in which sexuality is forcibly constructed by and through male dominance is polemically powerful but, in the final analysis, irrelevant, even violent, “to the variegated character of sexual life and gender within and among diverse cultures, races, and epochs” (Brown 1989, 491).

In Brown’s view, the shortcomings of MacKinnon’s theory are nowhere more evident than in her analysis of pornography. “MacKinnon reads pornography,” Brown writes, “like cops read street signs: unambiguous directives to action that are never contradictory, complex, subversive, or contestable in meaning” (Brown 1989, 491). According to Brown, MacKinnon’s blanket assertions “that all pornography depicts the sexual subordination of women… and that all pornography is for men” are flat out wrong (Brown 1989, 491). Of what is, in her view, MacKinnon’s reductive and misleading characterization of pornography as a straightforward and all-powerful instrument of male dominance, Brown writes, “it is as if acknowledgment of cracks in the totality negate the possibility of feminism itself and as if complexity is incompatible with political struggle – sure symptoms, both, of political theory destined to colonize rather than illuminate or liberate its subject” (Brown 1989, 491).

The only kind words Brown has for Feminism Unmodified can be found in the final two paragraphs of her review. “MacKinnon’s feminist critique of liberalism,” Brown writes approvingly, “plunders every boundary operating within liberal discourse to obscure women’s situation,” “scathes every arm of the state and the law,” and “makes Feminism Unmodified a book worth reading” (Brown 1989, 492). However, Brown is quick to note that MacKinnon’s “incisive” and “graceful” critique of liberalism stands awkwardly alongside her turn to the liberal state and “the meager palliative of civil rights law” to redress women’s subordination (Brown 1989, 492). Ultimately, in Brown’s view, the single worthwhile aspect of MacKinnon’s book –
its searing indictment of liberalism – is undermined by MacKinnon’s “relentless depiction” of women as powerless victims of sexually predatory men, for it is this depiction that drives MacKinnon’s simplistic and problematically state-centered antipornography feminist politics (Brown 1989, 492).

Brown’s and Pateman’s assessments of MacKinnon’s *Feminism Unmodified* and the antipornography feminist politics it outlines could not be more different. Whereas Brown sees MacKinnon’s feminist political theory and the legislation it inspired as founded on faulty, sexist, and, ultimately, freedom-denying premises, Pateman praises MacKinnon’s theory of women’s sexual subordination and grants that the Dworkin-MacKinnon ordinance is, perhaps, a “necessary recourse” in women’s struggle for freedom and equality (Brown, 1989, 492; Pateman, 1990, 407). While it would be misleading and inaccurate to collapse Pateman’s position into MacKinnon’s or those of the other antipornography feminist theorists and activists Pateman cites and draws from, there are affinities between Pateman’s early feminist work and the ideas and arguments of the original antipornography feminists that cannot be denied and that Pateman herself acknowledged. These affinities are evidence not only of the powerful influence antipornography feminism exerted over feminist thinking during the late 1970s and early 1980s, but of the extent to which critical engagement with the core concepts of liberal theory was a central part of the antipornography feminist project at this time. Antipornography feminism was born in white-hot hostility to the liberalism espoused by mid-century civil libertarian opponents of obscenity regulation like Barney Rossett, Charles Rembar, and Alan Dershowitz. Attuning ourselves to the antipornography feminist resonances in the work of Carole Pateman, one of the discipline of political theory’s most unsparing critics of liberalism, underscores this important
fact and moves us toward a richer and more accurate view of the antipornography feminist movement.

**Notes**

1. As Joan DeJean notes in *The Reinvention of Obscenity: Sex, Lies and Tabloids in Early Modern France* (2002), for centuries *obscenus* and *obscenitas* were translated vaguely as “infamous” and “infamy.” “Obscenity” did not take on its modern sexual connotation until the original Latinate meaning of these terms was recovered in seventeenth-century France.

2. The actual name of the Comstock Act was the Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use. Passed by Congress in 1873, the act endowed the U.S. Postal Service with the power to prosecute and punish anyone using the mails to disseminate “obscene” materials, including pornography, contraceptives, abortifacients, masturbatory aids, and information or advertisements concerning contraception. From his position as special agent of the U.S. Post Office, Anthony Comstock oversaw the implementation of the act for nearly 40 years.


5. Defense attorney and outspoken civil libertarian Alan Dershowitz put forward a similar charge in *Shouting Fire: Civil Liberties in a Turbulent Age* (2002). “Recognizing the reality that most Americans do not want to censor ‘mere violence or sexism…, but do want to censor explicit sex, some feminists have created an unholy alliance with some fundamentalists, puritans, and other opponents of sexuality for sexuality’s sake” (Dershowitz 2002, 167). Leading antipornography feminist Catherine MacKinnon catalogues and responds to many instances of this charge in her preface to *In Harm’s Way: The Pornography Civil Rights Hearings* (1997).

6. This language comes from the pornography civil rights ordinance drafted by Andrea Dworkin and Catharine MacKinnon at the request of the City of Indianapolis in the early spring of 1984. I discuss the so-called “Dworkin-MacKinnon Ordinance” in more detail below.

7. For accounts of the activities of these early liberal free-speech organizations, see David Rabban’s *Free Speech in its Forgotten Years* (1981) and Helen Horowitz’s *Rereading Sex* (2002).

8. When the ACLU was first formed in 1920, its founders were reluctant to acknowledge Schroeder and the Free Speech League among its progenitors.

9. These words were not spoken by Thaddeus Wakeman, but by his brother, Abram Wakeman, during the trial of D.M. Bennett on March 18, 1879. The Wakeman brothers served as co-counsel for Bennett, who was being prosecuted under the Comstock Act. That Thaddeus Wakeman shared the views expressed by his brother at
Bennett’s trial is made clear by comments he made on August 1, 1878 at an “indignation meeting” following the conviction of Ezra Heywood under the Comstock Act. “We are all agreed upon the question of obscenity; no one has a good word for that,” Thaddeus Wakeman reassured the gathering of Heywood’s supporters (Horowitz 2002, 423). Wakeman’s contention was simply that the Comstock Act was an imprecise and overreaching obscenity regulation and that obscenity ought to be stamped out by some other means.

While the laws themselves did not change, the common law standard by which judges and juries adjudged materials obscene, the so-called “Hicklin test,” was slightly modified. As Charles Rembar, an attorney who played a leading role in mid-20th century liberal campaigns against obscenity regulation, explains, “by the end of the 1940s, the prevailing view was that a book should be judged as a whole, not on the basis of isolated passages” (Rembar 1968, 22). Also, by this time, works were no longer judged obscene based on their tendency to “deprave and corrupt” a reader “whose mind is open to immoral influences” as the Hicklin test required, but by their effects on adult readers (Rembar 1968, 22).


Charles Rembar, an attorney who represented Grove Press during the Lady Chatterley’s Lover litigation, acknowledged Rosset’s central role in the “the end of obscenity,” writing that “Rosset is owed a debt of gratitude – or, if you happen to be on the other side of the fundamental issue, a deep reproach” (Rembar 1968, 27).

The Supreme Court ruled Tropic of Cancer not obscene in 1964 in Grove Press, Inc. v. Gerstein. Following the precedent set in this case and another in which the Supreme Court found the pornographic classic John Cleland’s Memoirs of a Woman of Pleasure (better known as Fanny Hill) not obscene, the Supreme Judicial Court of Massachusetts ruled Naked Lunch not obscene in 1966. For more detailed accounts of the trials surrounding the American publications of each of these works, see Charles Rembar’s The End of Obscenity (1968); Edward de Grazia’s Censorship Landmarks (1969) and Girls Lean Back Everywhere (1992); Raymond T. Caffrey’s “Lady Chatterley’s Lover: The Grove Press Publication of the Unexpurgated Text,” Syracuse University Library Associates Courier 20, no. 1 (1985): 49-79; Dirt for Art’s Sake: Books on Trial from “Madame Bovary” to “Lolita” (Ithaca, NY: Cornell University Press, 2006); Paul S. Boyer, Purity in Print: Book Censorship in American from the Gilded Age to the Computer Age (Madison: University of Wisconsin Press, 2002); Felice Flanery Lewis, Literature, Obscenity, and the Law (Carbondale: Southern Illinois University Press, 1976).

United States v. A Motion Picture Film


In Perversion for Profit (2011), Whitney Strub portrays the Grove occupation and other similar occupations undertaken by women’s liberationist in the late 60s and early 70s as primarily anti-capitalist gestures and only secondarily protests against pornography. This is in the service of his thesis that, early on in the second-wave, feminists viewed pornography as more of “an epiphenomenal annoyance” than “the root cause of women’s oppression” (Strub, 214). While Strub is right to emphasize that feminist thought on pornography evolved between the earliest days of women’s liberation and the hay day of Women Against Pornography, I believe he understates the antipornography feminist dimensions of the Grove Press occupation. Not only does pornography figure centrally in the demands issued by the Grove Press occupiers, but Robin Morgan, the occupation’s organizer, would go on to describe the occupation as “the first time feminists declared pornography as an enemy” (Lederer 1980, 268).

Morgan’s assertion is not entirely accurate. Prior to the Grove occupation, at least one feminist had openly declared pornography an enemy. In November of 1969, in an article entitled “Sexual Revolution: More of the Same,” Cell 16 founder Roxanne Dunbar offered a trenchant feminist critique of pornography (Echols 1989, 361). Andrea Dworkin’s description of the takeover of Grove Press as “the first antipornography feminist demonstration” is more accurate, although it does bear mentioning that, in January of 1970, women, some of whom identified as “women’s liberationists,” staged a takeover of one of the major “underground” newspapers of the New Left, Rat (Dworkin and MacKinnon 1997, 28). The Rat takeover was motivated, at least in part, by the paper’s publication of sexually explicit images of women. It was also the occasion of Robin Morgan’s famous diatribe “Goodbye to All That,” which criticizes Rat and other New Left publications for their “porny photos, sexist comic strips, and ‘nude chickie’ covers” (Morgan 1977, 122). In The World Split Open (2000), Ruth Rosen describes an even earlier women’s liberation action in the San Francisco Bay Area against a radical newspaper Dock of the Bay. The founders of Dock of the Bay planned to fund their endeavors through the publication of a pornographic magazine. Women’s liberationists caught wind of their plans and sabotaged the plates from which the magazine was to be printed. The publication folded.

The impact and significance of Brownmiller’s Against Our Will: Men, Women and Rape is difficult to overstate. In 1975, Brownmiller’s book was featured on the cover of the New York Times Book Review as one of the Best Books of the Year. In that same year, Time Magazine hailed Brownmiller as a Person of the Year, making her one of very few women to have ever received that distinction. Two decades later, in 1995, the New York Public Library included Against Our Will in its Books of the Century exposition.

Brownmiller was not only the first president of WAP. She was also its co-founder, chief spokesperson, as well as the author of the script used by the organization in its now legendary “porn tours” of Manhattan’s Time Square. Brownmiller’s involvement with WAP is recounted in great detail in Carolyn Bronstein’s Battling Pornography: The American Feminist Anti-Pornography Movement, 1976-1986 (Cambridge University Press: New York, 2011) as well as in Brownmiller’s memoir, In Our Time: A Memoir of A Revolution (Delta: New York, 2000).

Born of the entrenched perception that the accusation of rape is “easily to be made, hard to be proved, and harder to be defended,” corroboration rules stipulated that a rape conviction could not be sustained based solely upon the testimony of the “prosecutrix.” In the 1970s, feminists successfully campaigned for the repeal of these rules. For more information on this and many other aspects of rape law reform in the United States, see Susan Caringella’s Addressing Rape Reform in Law and Practice (2009) and Rose Corrigan’s Up Against A Wall: Rape Reform and the Failure of Success (2013).

This controversy was reported in a series of articles in the University’s student newspaper, The Collegian. See, for example, “Central defeats porno movie,” November 30, 1976, by Rose Conway, “SW must have sex, race programs,” December 1, 1976 by Barbara Hoffman, “Central govn’t debates movies guarantee,” December 7, 1976, by Rosemary Conway, “SWA votes to permit pornography,” February 16, 1977 by Larry Cohen.


An account of the day’s events published in the radical feminist periodical Off Our Backs offers a particularly grim assessment. “As the day wore on,” Off Our Backs reports, “the conflict between feminists and civil libertarians,
never exactly undercover, erupted into many bloody episodes, with feminists drawing most of the blood” (Brooke 1979).

27 Carolyn Bronstein has characterized the theoretical chasm on display at the colloquium as a conflict between “classical liberalism” represented by the civil libertarians and “a communitarian social position” represented by the antipornography feminists (Bronstein 181). While I think Bronstein’s characterization of the civil libertarians’ position is apt, I cannot say the same of her characterization of the antipornography feminists’ position. The antipornography feminists at the colloquium did not assail the liberals for their universal aspirations, their atomized vision of the self, or their tendency to denigrate tradition and culture. In fact, several of them expressed what can only be described as anti-communitarian views. For instance, Florence Rush blamed traditional notions of marriage and family for the sexual abuse of children and Andrea Dworkin impugned appeals to the common good as ideological ploys used to dupe women into defending a society in which “they have absolutely no stake” (Law 2011, 225, 242). For more on communitarian critiques of liberalism, see Bell, Communitarianism and Its Critics, 1992 and Delaney, The Liberalism-Communitarianism Debate, 1994.

28 Earlier that day, as Dworkin delivered her speech, “Pornography: The New Terrorism,” Chevigny became so incensed that he stood up and left the room (Klemesrud, “Women, Pornography, and Free Speech: A Fierce Debate,” December 4, 1978, D10). This surely must have heightened the drama of Dworkin’s response.

29 Phyllis Chesler, Leah Fritz, and Florence Rush had each presented on the panel prior to Dworkin.

30 Chevigny’s position here is reminiscent of John Stuart Mill’s position in On Liberty concerning expressions of the opinion that “corn-dealers are starvers of the poor” (Mill 1989, 56). “When simply circulated through the press,” Mill argued, this opinion “ought to be unmolested” (Mill 1989, 56). However, “when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard,” Mill contended, this opinion “may justly incur punishment” (Mill 1989, 56). What Mill meant by this is that, although accusations circulated through the press that corn-dealers are starvers of the poor are likely to prove “disastrous to the interests” of corn-dealers, merely “private” harms such as this cannot justify the imposition of a limit on the expression of an opinion (Jacobson 2000, 286). Only where the expression of an opinion can be shown to cause “public” harm of the sort likely to be brought about by an impassioned oration delivered to an angry mob can limits on speech be justly imposed in a Millian liberal view.


32 MacKinnon often juxtaposed the ordinance’s civil rights approach with the criminal approach embodied in extant obscenity law. As she once explained it, the ordinance “shifts [pornography] from the doctrine of offensive utterances to the doctrine of civil subordination, from the criminal law of morals regulation to the civil law of discrimination, from law that empowers the state to law that empowers the people [and]… redistribute[s] power to citizens” (Lederer and Delgado 1995; 301-302). Robin Morgan made a similar point in a letter to the editor published in the The New York Times Book Review defending the Dworkin-MacKinnon ordinance. “The ‘law’ drafted by Andrea Dworkin and Catharine MacKinnon,” Morgan explained, “was in fact an ordinance permitting civil – not criminal – action toward obtaining relief from pornography’s violent effects. This is a vital distinction. Having legal recourse to defend one’s civil rights is a far cry from censorship… I have never supported censorship (nor has Ms. Dworkin or Ms. MacKinnon)” (Morgan 1995).

33 The ordinance provided that “the use of men, children, or transexuals in the place of women” in materials bearing the features it outlines would also qualify as pornographic and, thus, be actionable under the ordinance (Dworkin-MacKinnon, 101).

In the final chapter of Battling Pornography: The American Feminist Anti-Pornography Movement, 1976-1986, Carolyn Bronstein describes the decline of the antipornography feminist movement in the early 1980s. By the time the Dworkin-MacKinnon ordinance was introduced in 1983, WAP was the only national antipornography feminist organization left standing and it “was a strong advocate for the MacKinnon Dworkin anti-pornography ordinances” (Bronstein 2011, 325). When the ordinance was defeated, Bronstein writes, “there was little to nothing left of the grassroots feminist anti-media violence movement to resuscitate” (Bronstein 2011, 329).

“Consent” functions in a similarly insidious manner, Pateman adds, in the laws and conventions concerning the employment and marriage contracts (Pateman 1980, 163). She develops these insights more fully in The Sexual Contract (1988).

As we will see, in her later work, The Sexual Contract (1988), Pateman does echo Brownmiller’s quintessentially antipornography feminist claims regarding prostitution and pornography.


Pateman’s primary concern in The Sexual Contract is women’s subordination through the marriage, prostitution, and surrogacy contracts. However, the book’s third chapter, “Contract, the Individual and Slavery,” explores the subordination of both women and men through another contract concerning “property in the person,” this time in the form of “labor power,” the employment contract.

Despite the single-minded focus on pornography their name implies, antipornography feminists were, in fact, concerned with many forms of what they considered “violence against women,” including pornography, of course, as well as rape, incest, wife battering, child abuse, sadomasochism, and prostitution. This wide array of concerns is reflected in many definitive antipornography feminist works, including Susan Brownmiller’s Against Our Will: Men, Women, and Rape, Andrea Dworkin’s Pornography: Men Possessing Women, the antipornography feminist anthology Take Back the Night: Women on Pornography, and Kathleen Barry’s Female Sexual Slavery. Also, the name of the first antipornography feminist organization in the United States, Women Against Violence Against Women (WAVAW), points to the fact that antipornography feminist concerns extended far beyond pornography. Carolyn Bronstein discusses the influence of feminist anti-violence activism on the emergence of antipornography feminism at some length in the second chapter of Battling Pornography: The American Feminist Anti-Pornography Movement, 1976-1986 (Cambridge University Press: New York, 2011).

In 1976, Kathleen Barry co-founded Women Against Violence in Pornography and Media (WAVPM), a San Francisco-based antipornography feminist organization that organized the first national feminist conference on pornography.

It is interesting to note that Barry’s Female Sexual Slavery is among the works that inspired Adrienne Rich to coin the phrase “the law of male sex right,” a phrase and concept that, as I have already discussed, figures prominently in Pateman’s The Sexual Contract. Also, in the course of laying out her own critique of prostitution in The Sexual Contract, Pateman cites Barry’s Female Sexual Slavery directly.

Pateman cites and criticizes Pat Califia’s article, “Feminism and Sadomasochism.” Califia wrote and published this article in 1981 as a rebuttal to antipornography feminist critiques of sadomasochism. Pateman’s comments in The Sexual Contract read as a sort of antipornography feminist rejoinder to Califia’s defense.

Pateman does disagree with MacKinnon’s analysis of pornography at one crucial juncture: she does not believe that pornography “turns sex inequality into sexuality and turns male dominance into the sex difference” (Pateman
In Pateman’s view, sex difference is not “merely an artifact of power,” but, to some significant extent, a natural fact (Pateman 1990, 406). Also, according to Pateman, pornography is not to blame for the fact that sexual difference has come to mean political difference. The sexual contract, Pateman explains, established the meaning of “sex” as “men’s mastery” long before pornography was even invented (Pateman 1990, 406). This important difference aside, Pateman is in broad agreement with MacKinnon that pornography does serious harm to women and that the rapid growth of the pornography industry should be a central feminist concern.

Note that the “problems” Pateman identifies with MacKinnon’s legal approach are merely technical and administrative ones, as opposed to the deep-seated normative and political problems that Wendy Brown identifies with it as I describe in the main body just below.

Brown returns to this theme later in the review when she derides MacKinnon’s “lawyer’s mind” for “silencing the requisite inquiries of nuanced political theory” and figures MacKinnon as a knife-wielding, syllogism-spouting castrator as opposed to a proper political theorist (Brown, 1989, 491; 492).
CHAPTER 3
LIBERAL APPROPRIATIONS OF ANTIPORNOGRAPHY FEMINISM

As the clashes between pornography’s feminist critics and liberal defenders throughout the 1970s and early 1980s demonstrate, a critical orientation toward liberalism was as fundamental to antipornography feminism in its earliest articulations as was a critical orientation toward pornography and other institutions of sexual oppression. Andrea Dworkin offered a quintessential expression of the regnant antipornography feminist appraisal of liberalism during this period in a brief and pugnacious essay, originally written in 1981, criticizing the American Civil Liberties Union (ACLU) (Dworkin 1993, 212). In Dworkin’s view, the “First Amendment absolutists” at the ACLU, who pride themselves on defending “pornographers, the Nazis, and the Klan,” operate on an “unembodied” and, therefore, “dangerous” principle (Dworkin 1993, 212). “[N]o matter what blood flows,” Dworkin charged, “the principle comes first; consequences do not matter; physical acts are taken to be abstractions; genocidal ambitions and concrete organizing toward genocidal goals are trivialized by male lawyers who are a most protected and privileged group. Meanwhile, those who are targeted as victims are left defenseless” (Dworkin 1993, 212). In the eyes of early antipornography feminists like Dworkin, liberalism was an instrument of domination, an ideology that shored up brutally enforced regimes of inequality by placing them beyond the reach of law and government all in the name of individual liberty.

Just as a critical orientation toward liberalism was a defining feature of antipornography feminism in its first decade, a broad consensus regarding antipornography feminism prevailed amongst liberals during this period. In the liberal view, pornography was disgusting, offensive, and degrading, but not harmful or oppressive in the manner antipornography feminists alleged. Therefore, liberals insisted, the problem of pornography could be satisfactorily addressed via private action, namely, avoidance on the part of those who find it displeasing. Herald Price
Fahringer, General Counsel for the First Amendment Lawyer’s Association and attorney for both Larry Flynt, publisher of *Hustler*, and Al Goldstein, publisher of *Screw*, gave voice to this widespread liberal view. “I find much of the sexually explicit material available today personally distasteful, and I recognize that some of it degrades women,” Fahringer confessed to a mixed audience of feminists and civil libertarians at the New York University School of Law in 1978 (Fahringer 1979, 251). “However,” he continued, “those who believe that this country’s new breed of publishers and filmmakers should have their mouths washed out with soap for using four-letter words or publishing pictures of nude women in obstetric poses must remember that no one is compelled to either see or read what is repulsive to him or her” (Fahringer 1979, 251). “Those who are appalled by these materials can ignore them,” Fahringer concluded, “And the few who gain some satisfaction from them should be allowed that small comfort” (Fahringer 1979, 251).

Thus, in the 1970s and early 1980s, antipornography feminists saw liberalism as the creed of the “pro-pimp lobby,” while liberals saw antipornography feminism as a renascent “puritan moralism” (MacKinnon and Dworkin 1997, 11; Richards 1979, 237). However, in the mid-1980s, in the aftermath of the defeat of the Dworkin-MacKinnon ordinance, all of this began to change. At a time when antipornography feminism’s prospects appeared most bleak and its relationship to liberalism most strained, influential liberals took up the antipornography feminist cause. Dissatisfied with both traditional antipornography feminist representations of the problem of pornography and pat liberal dismissals of antipornography feminist claims regarding pornography’s harmfulness, in the mid-1980s, liberal political philosophers and legal theorists began articulating an improbable ideological amalgam: liberal antipornography feminism.
Antecedents to Liberal Antipornography Feminism

While the emergence of a full-fledged liberal variant of antipornography feminism could not have been foreseen amidst the rancor and hostility that defined the relationship between antipornography feminism and liberalism during the 1970s and early-1980s, in retrospect, antecedents are discernible as early as the late 1970s. For instance, in 1978, at the same New York University School of Law colloquium where Paul Chevigny pounded on the table as he chided feminists for failing to offer proof of pornography’s harmful effects, two self-identified “civil libertarian feminists” and one anonymous audience member attempted to hew a middle ground.

One colloquium participant who sought to reconcile civil libertarian concerns about the first amendment and feminist concerns about pornography was Marjorie Smith, the Deputy Commissioner of the New York City Department of Consumer Affairs and former staff attorney for the Women’s Rights Project of the ACLU. In the midst of a starkly polarized gathering, Smith attempted to thread the needle, arguing that the strategy and tactics of the Los Angeles based antipornography feminist organization WAVAW (Women Against Violence Against Women) were consistent with “civil liberties principles” (250). Founded in 1976, WAVAW’s original mission had been to stop Snuff, a film purporting to document the actual sexual assault and murder of a woman, from being shown in Southern California theatres. Through a potent combination of protests, pickets, and appeals to local authorities to seize the film on the grounds that it violated state obscenity statutes, WAVAW succeeded in driving Snuff out of Southern California in less than a month. By December of 1978, when Smith offered her defense of the organization at the New York University colloquium, WAVAW had moved on to coordinating a national boycott against the recording industry for using images that “trivialized, glorified, sensationalized, or romanticized” violence against women to promote their products (Bronstein
Smith defended WAVA W’s use of “consumer boycott techniques such as picketing and letter-writing campaigns” against the recording industry as in keeping with the values enshrined in the first amendment (247). Conceding that “it is possible… for reasonable people to disagree about whether the problem of media glorification of violence against women in pornography or elsewhere… has sufficiently serious consequences to warrant involvement in the activities of a group such as Women Against Violence Against Women, the decision to become involved,” Smith insisted, “… can be made by a civil libertarian feminist without abandoning civil liberties principles” (Smith 1979, 250).

Smith’s defense of antipornography feminists’ use of private action to combat pornography met with grudging approval from her civil libertarian peers. The predominant view amongst civil libertarians at the colloquium was that private action against pornography, though technically in accord with civil liberties principles as Smith had argued, was a frivolous misallocation of feminist energy and resources. Law professor David Richards’ comments on this score are representative. “I want to say that pornography is, with respect to feminism, not a significant issue,” Richards told the audience, adding that “the significant issues seem to me to be family and occupational structure, sex roles, and the like” (237). “To persist in the argument of prohibiting pornography,” Richards emphasized, “trivializes feminism” (237). Nevertheless, Richards continued, if feminists insist on drawing attention to pornography, then they should confine themselves to private action. “Inform men of how you feel about these fantasies that they find natural… Make men feel guilty and ashamed,” Richards advised (237).

While Smith was willing to defend only private action undertaken by feminists in their crusade against pornography, a second self-identified “civil libertarian feminist” at the colloquium was willing to grant antipornography feminists a much wider berth. Brenda Feigen
Fasteau, a former director of the ACLU’s Women’s Rights Project and a national Vice-President of N.O.W., began her prepared remarks with the following declaration: “As a feminist and a lawyer I do not think it is possible to be a feminist without believing in the first amendment” (282). “If we don’t recognize the first amendment,” Fasteau warned her fellow feminists, “then Ms. Magazine will end up being banned” (284). With her liberal bona fides firmly established, Fasteau went on to recommend two legal avenues feminists might pursue to curtail the production and distribution of pornography. Her first recommendation involved a creative expansion of existing libel laws to invent “a new tort” that would allow “for a class action to be brought by a group of women injured both mentally and physically by a particular movie or magazine” (292). “I think it is possible to create that,” Fasteau insisted, “without offending the first amendment if you can show damage” (300). Fasteau’s second recommendation was to enact “a statute prohibiting incitement of violence against women” that “would prohibit publications that demonstrated how to rape a woman, how to mutilate a woman” (300). “I think that such a statute would not offend first amendment values,” which, Fasteau reminded the audience, she considered “practically sacrosanct” (300).

As Carolyn Bronstein has noted, the legal reforms Fasteau recommended at the New York University colloquium foreshadowed the antipornography ordinance Catharine MacKinnon and Andrea Dworkin would put forward in Minneapolis just a few years later (Bronstein 2011, 185). As this affinity might lead one to expect, Fasteau’s proposals met with substantial resistance from her fellow civil libertarians at the colloquium. For instance, Ephraim London, a noted civil liberties attorney who handled a string of landmark obscenity cases in the 1950s and 1960s, rejected Fasteau’s recommendations, arguing that even a film documenting the rape of a woman ought to be accorded constitutional protection. “It has been suggested that it should be
unlawful to show a film of a woman being raped. But,” London reasoned, “that is not an act of rape then taking place. It is a statement of what is said to have occurred previously” (285). “Even if the film is intended to titillate,” London added, “the exhibition of the film should not, in my view, be prevented” (285). London further rejected Fasteau’s suggestion that “a new tort” might be created that would allow women who “can show damage” to sue pornographers without offending the first amendment. “I am willing to assume for the purpose of discussion,” London granted, “that pornography dealing with the torture of women, the rape of women, the degradation of women is harmful” (284). Nevertheless, London continued, “one solution we cannot resort to is government intervention… [T]he minute you give the government power to regulate what is to be read or seen or heard, you violate our constitutional freedom of expression” (284). “One cannot take the position that the first amendment prohibits government censorship of any kind except that which relates to the degradation of women,” London concluded (284). In 1978, Fasteau was clearly a woman apart amongst her liberal peers.

Aside from Smith’s and Fasteau’s remarks, there was one other instance at the New York University colloquium that, in retrospect, can be seen as anticipating the surprising shift that liberal thinking regarding the feminist critique of pornography would undergo in the late 1980s. This instance came at the end of a panel discussion on the regulation of pornography when an audience member whom the transcript does not identify spoke eloquently of the serious challenge the feminist critique of pornography posed for civil libertarians. “[A]s lawyers and civil libertarians,” the audience member began, “we want a society that provides for the free and robust exchange of ideas” (297). “Some of us,” the audience member continued, “have only recently come to the realization that we also want a society free from the kind of statistics [dealing with the kind and degree of violence being perpetrated on women by men] that have
been quoted today” (297). “Once we accept these values as perhaps of equal interest,” the audience member explained, “then the problem becomes one of reconciling these values to create a society that reflects both interests as best it can…, a society where the free exchange of ideas creates a climate in which women will grow up and live free from violence” (298). “Some restrictions on speech may be supportable as a means of reaching that kind of society,” the audience member concluded, adding, “the first amendment has to be reconciled with… the welfare of women” (298).

According to the colloquium’s official transcript, this unknown audience member’s suggestion that the liberal commitment to a society that provides for the “free and robust exchange of ideas” may have to be balanced against “the welfare of women” was not addressed by any of the colloquium’s participants. As the transcript has it, after the unknown audience member finished speaking, another audience member asked a question and the discussion amongst the panelists quickly turned to “building codes” and “local health laws” (298). The colloquium’s transcript also indicates that, just a few moments before the unknown audience member spoke, Susan Brownmiller said to Ephraim London,4 “Each of [the women’s movement’s] issues seems to cause the liberal establishment to have to do a lot of rethinking of its positions” (292). On that particular day in 1978, the “liberal establishment” appeared decidedly unwilling to rethink its position on pornography. However, some six years later, leading liberal theorists would undertake such a rethinking in earnest, making Brownmiller’s comment to London seem less ironic and more prescient.

**Liberal Antipornography Feminism**

One of the earliest examples of what I am calling “liberal antipornography feminism” can be found in the work of American legal scholar Cass Sunstein. In a string of articles and essays published between 1986 and 1993 in the wake of the defeat of the Dworkin-MacKinnon
ordinance in *American Booksellers Association v. Hudnut*, Sunstein endeavored to breathe new life into feminist efforts to curtail the production and distribution of pornography. Distancing himself from the characteristic liberal tendency “to dismiss the case against pornography as the product of prudishness or inhibition,” Sunstein unequivocally asserted that pornography is a cause of “serious harm, mostly to women” that could be legally regulated “without posing significant threats to a well-functioning system of free expression” (Sunstein 1986, 594; 591; 601; 626). Sunstein also distanced himself from what he calls the “speech is speech position,” according to which “all speech stands on the same ground and… government has no business censoring speech merely because some people or some officials are puritanical or offended by it” (Sunstein 1993, 267; 262). In lieu of these traditional liberal views, Sunstein explicitly advocated for the regulation of pornography. According to Sunstein, “Sexually explicit speech should be regulated not when it is sexually explicit (the problem of obscenity) but instead when it merges sex with violence (the problem of pornography). The problem of pornography does not stem from offense, from free access to sexually explicit materials, from an unregulated erotic life, or from the violation of community standards. Instead it is a result of tangible real-world harms, produced by the portrayal of women and children as objects for the control and use of others, most prominently through sexual violence” (Sunstein 1993, 263-264).

Judged solely on the basis of these broad claims, Sunstein’s position appears largely consonant with the positions of earlier antipornography feminists like Susan Brownmiller, Andrea Dworkin, and Catharine MacKinnon, all of whom Sunstein cites directly in the works considered here. However, when one looks beyond these generalities and examines Sunstein’s arguments in more detail, differences between Sunstein’s antipornography feminism and that
which preceded it begin to emerge, and what appeared, at first, to be a revival begins to look much more like a revision.\textsuperscript{7}

The most obvious difference between Sunstein and the antipornography feminists who preceded him is that Sunstein was a committed liberal formulating an approach to pornography regulation that conformed to, as opposed to defied or confounded, conventional liberal notions of harm, liberty, and the public and the private. Sunstein’s allegiance to liberalism is most readily evident in the range of materials he singled out for critique and regulation. From the women’s liberationists who occupied the offices of Grove Press in 1970 to the WAVAW activists who coordinated a three-year nation-wide boycott of Warner Bros. Records from 1976 to 1979, the original antipornography feminists were out to criticize a startlingly wide range of materials. For the Grove Press occupiers, the target was the publisher’s ever-expanding catalogue of books, magazines, and films that, in their view, “degrade[d] women” (Lederer 1980, 269). For the activists at WAVAW, the target was “images of physical and sexual violence against women in mass media,” including those used to promote best-selling albums like \textit{Love Gun} by Kiss and \textit{Black and Blue} by the Rolling Stones.\textsuperscript{8} Eventually, and despite the reservations of some movement leaders, antipornography feminists began to use the term “pornography” as a kind of short hand for a broad swath of materials that they believed sanctioned the sexual abuse and degradation of women.\textsuperscript{9} As Laura Lederer and Diana E.H. Russell explained in the November 1977 issue of the WAVPM (Women Against Violence in Pornography and Media) newsletter, the materials WAVPM opposed were “films…[,] books and magazines… [,] record album photos, fashion and men’s magazine layouts, department-store window displays, and billboards in which women are shown bound, gagged, beaten, whipped, and chained” (Lederer 1980, 24). All of these materials, Lederer and Russell contended, share “the message… that beating and
raping women, urinating and defecating on women, is erotic and pleasurable for men, and that women desire this kind of treatment, or at least expect it” (Lederer 1980, 24). In her contribution to the antipornography feminist anthology *Take Back the Night* (1980), feminist philosopher Helen Longino argued that this message was the *sin qua non* of pornography. “Pornography,” Longino wrote, “is material that explicitly represents or describes degrading and abusive sexual behavior so as to endorse and/or recommend the behavior as described” (Lederer 1980, 44). Underscoring the expansiveness of this definition, Longino added that “the pornographic view of women [is] no longer confined within plain brown wrappers,” but is instead “thoroughly entrenched in a booming portion of the publishing, film, and recording industries” (Lederer 1980, 44; 46).

When Andrea Dworkin and Catharine MacKinnon put forward their antipornography civil-rights ordinance in the early 1980s, their intention was to target a narrower range of materials than these earlier antipornography feminists had.10 This is not to say that Dworkin and MacKinnon did not believe messages condoning the sexual abuse and degradation of women permeated the culture. They did.11 However, as Dworkin and MacKinnon explain in a self-published defense of their civil rights approach to pornography regulation, *Pornography and Civil Rights: A New Day for Women’s Equality* (1988), their ordinance was designed to reach a quite specific set of materials. While “it is true,” Dworkin and MacKinnon granted, “that pornography exists on a larger social continuum with other materials that objectify and demean women” and “that many materials (such as some religious works and sociobiology texts) express the same message as pornography,” the ordinance takes the view that pornography is a distinct product manufactured, marketed, and sold by a distinct “industry” (Dworkin and MacKinnon 1988, 36). “No pornographer has any trouble knowing what to make. No distributor has any
trouble knowing what to carry. No retailer has any trouble knowing what to order. No consumer
has any trouble knowing what to buy,” Dworkin and MacKinnon observed (Dworkin and
MacKinnon 1988, 36). Because pornography is so distinct and the pornography industry so
clearly defined, in Dworkin’s and MacKinnon’s view, defining pornography is a rather
straightforward task: one must simply “look at the existing universe of the pornography industry
and… describe what is there” (Dworkin and MacKinnon 1988, 37).

Dworkin and MacKinnon’s ordinance describes “what is there” in the pornography
industry quite vividly. Their ordinance defines pornography as “the graphic sexually explicit
subordination of women through pictures and/or words that also includes one or more of the
following”: women presented “dehumanized as sexual objects, things, or commodities,” “as
sexual objects who enjoy pain or humiliation,” “as sexual objects who experience sexual
pleasure in being raped,” “as sexual objects tied up or cut up or mutilated or bruised or
physically hurt,” “in postures of sexual submission, servility, or display,” in such a way that they
are “reduced to [their] body parts – including but not limited to vaginas, breasts, or buttocks,”
“as whores by nature,” “as being penetrated by objects or animals,” “in scenarios of degradation,
injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that
makes these conditions sexual” (Dworkin and MacKinnon 1988, 101). The ordinance also
provided that “the use of men, children, or transsexuals in the place of women” in materials
bearing these features would be actionable (Dworkin-MacKinnon 1988, 101). In Only Words
(1993), a defense of the ordinance published nearly a decade after it was first proposed,
MacKinnon gives a concrete sense of the range of materials this definition was meant to cover.
 “[The ordinance’s] definition is coterminous with the [pornography] industry,” MacKinnon
explains, “from Playboy, in which women are objectified and presented dehumanized as sexual
objects or things for use; through the torture of women and the sexualization of racism and the fetishization of women’s body parts; to snuff films, in which actual murder is the ultimate sexual act, the reduction to the thing form of a human being and the silence of women literal and complete” (MacKinnon 1993, 22-23). As MacKinnon emphasizes here, the Dworkin-MacKinnon ordinance was designed to reach the entire range of wares peddled by the pornography “industry,” from “hardcore” materials in which women “are bound, battered, tortured, humiliated and killed” to “softcore” materials in which women are “merely taken and used,” no more and no less (MacKinnon 1987, 198).

The reason Dworkin and MacKinnon opted to eschew a broader definition of pornography and tailor their ordinance so specifically was their belief that pornography, as the ordinance defines it, does something that other media purveying “the same message of sexualized misogyny” does not: actively subordinates women (Dworkin and MacKinnon 1988, 37). On the basis of their own research as well as testimony presented at public hearings conducted for the ordinance in Minneapolis, Indianapolis, Los Angeles, and Boston, Dworkin and MacKinnon argued that pornography is “a major force for institutionalizing a subhuman, victimized, and second-class status for women” (MacKinnon 1987, 200-201). It does this, they believed, in a variety of ways. First, Dworkin and MacKinnon contended, pornography subordinates women through its production. Unlike “mainstream media,” where “violence is done through special effects,” “in pornography women shown being beaten and tortured report being beaten and tortured,” Dworkin and MacKinnon maintained (MacKinnon 1993, 27). As MacKinnon once succinctly put it, “pornography has to be done to women to be made” (MacKinnon 1993, 39). Additionally, Dworkin and MacKinnon argued, many women who appear in pornography “are poor and without options and formerly abused if not overtly coerced
or tricked into being there” (Dworkin and MacKinnon 1988, 40). Such conditions are, in their view, “what it takes to make women do what is in even the pornography that shows no overt violence” (MacKinnon 1993, 20). In this way, Dworkin and MacKinnon concluded, pornography creates a powerful incentive to maintain women in positions of relative inequality and powerlessness (MacKinnon 1993, 20).

Dworkin and MacKinnon also believed pornography subordinates women through its use. As survivor after survivor at the public hearings held on behalf of the ordinance testified and as Dworkin and MacKinnon were at continual pains to emphasize, pornography, including “nonviolent materials,” is sometimes used by rapists to plan their crimes or to silence and humiliate their victims (Dworkin and MacKinnon 1988, 40). It is also used, Dworkin and MacKinnon noted, to intimidate and harass women in the workplace (MacKinnon 1987, 198-199). Most significantly, Dworkin and MacKinnon maintained, the use of pornography “change[s] attitudes and impel[s] behaviors in ways that are unique in their extent and devastating in their consequences” (MacKinnon 1993, 37). It “increase[es] the acceptability of forced sex,” “diminish[es] men’s vision of the desirability and possibility of sex equality,” “[reduces women] to subhuman dimension to the point where they cannot be perceived as fully human,” and “makes orgasm a response to bigotry” (Dworkin and MacKinnon 1988, 40; 38; MacKinnon 1987, 200). “Pornography,” in MacKinnon’s words, “makes the world a pornographic place” and creates a “hostile, unequal living environment” for women (MacKinnon 1993, 25; 36). It “is an eight-billion-dollar-a-year industry of rape and battery and sexual harassment, an industry that both performs these abuses for the production of pornography and targets women for them society wide” (MacKinnon 1987, 198).
While Dworkin and MacKinnon were convinced that their ordinance offered a “closed, concrete, and descriptive” definition of pornography that would reach only those materials that subordinated women through their production and use, their critics were not. As Alan Dershowitz quipped, “the novels of Henry Miller and D.H. Lawrence are as dangerous and pornographic to MacKinnon as the video Sex Kittens” (Dershowitz 2002, 165). The amici who opposed the ordinance in American Booksellers v. Hudnut shared Dershowitz’s view. Their briefs alleged that the ordinance would lead to the suppression of “works from James Joyce’s Ulysses to Homer’s Iliad” (325). The diversity of the plaintiffs in Hudnut, who, taken together, made, sold, or read everything “from hard-core films to W.B. Yeats’ poem ‘Leda and the Swan’” also indicates that concerns regarding the breadth of the ordinance’s definition of pornography were widespread amongst its opponents (327).13

Surprisingly, these concerns appear to have been shared by Sunstein as well. While Sunstein was in broad agreement with Dworkin and MacKinnon that pornography was harmful and that its legal regulation could be justified, he also agreed with Dworkin and MacKinnon’s critics that parts of their ordinance, as he put it, “might be faulted for overbreadth” (Sunstein 1988, 844). Thus, Sunstein proposed an alternative approach to the regulation of pornography that targeted a much narrower range of materials than Dworkin and MacKinnon had hoped to reach.

As Sunstein explained in “Pornography and the First Amendment,” an article published in the Duke Law Journal in 1986, “properly regulable pornography (a) [is] sexually explicit, (b) depict[s] women as enjoying or deserving some form of physical abuse, and (c) ha[s] the purpose and effect of producing sexual arousal” (Sunstein 1986, 592). The most readily apparent difference between the definition of pornography Sunstein offers here and the definition
Dworkin and MacKinnon offered in their ordinance is that Sunstein’s definition describes pornography in terms of “physical abuse” whereas Dworkin and MacKinnon’s describes it in terms of “subordination.” Unlike Dworkin and MacKinnon, who targeted graphic sexually explicit materials that subordinated women through a variety of means ranging from “objectification” to “express violence,” Sunstein argued for the regulation of only what he called “violent pornography” (Dworkin and MacKinnon 1985, 39; Sunstein 1992, 21). Sunstein was forthcoming about his departure from Dworkin and MacKinnon in this regard. “The approach proposed here,” he conceded, is “tightly targeted to… portrayals of sexual violence” and “excludes sexually explicit materials that do not sexualize violence against women” (Sunstein 1986, 616; 592). This exclusion, Sunstein acknowledged, makes his approach “somewhat narrower than the one suggested by the Indianapolis ordinance, which created liability for graphic sexually explicit subordination of women as ‘sexual objects’” (Sunstein 1986, 592).

Just how much narrower Sunstein’s approach was becomes clear when one considers the examples Sunstein furnished of the sorts of materials his regulation was meant to cover. Whereas Dworkin and MacKinnon had their sights set on the entire range of materials produced by the “pornography industry,” Sunstein emphasized that his proposed legislation would cover only a fraction of those materials. Based on a study published in the American Journal of Psychiatry, Sunstein estimated that 17.2% of “pornographic magazines” sold in New York City would fit his definition of “pornography” because that was the percentage of magazines surveyed in the study whose covers “were explicitly devoted to violent themes such as bondage and domination” (Sunstein 1986, 593). The title of this study, “Pornographic Imagery and the Prevalence of Paraphilia,” sheds additional light on precisely what type of material Sunstein intended for his definition to cover: “Paraphilia,” fringe material, magazines with titles like “Black Tit and Body
Torture, Tit Torture Photos, and Chair Bondage,” were Sunstein’s quarry, not mainstream materials like Deep Throat and Playboy (Sunstein 1986, 593). Sunstein justified the narrower focus of his proposed legislation by referring to scientific research into the effects of sexually explicit material on individual attitudes and behavior. In Sunstein’s view, “there is empirical support for drawing a distinction between violent and nonviolent sexually explicit materials” because “it appears that ‘the aggressive content of pornography… is the main contributor to violence against women’” (Sunstein 1986, 592).

That Dworkin and MacKinnon thought Sunstein’s narrower definition of pornography deeply misguided is undeniable. In a passage that could have been addressed specifically to Sunstein, Dworkin and MacKinnon insisted that “limit[ing] the definition of pornography to violent materials” ignores the fact that “nonviolent materials are also known to be harmful… - for instance, in their use by rapists and child molesters, in increasing the acceptability of forced sex, and in diminishing men’s vision of the desirability and possibility of sex equality” (Dworkin and MacKinnon 1988, 40). MacKinnon made a similar point several years earlier in her 1984 Francis Biddle Memorial Lecture at Harvard Law School. “As to that pornography covered by [Andrea Dworkin’s and my] definition in which normal research subjects seldom perceive violence, long-term exposure,” MacKinnon maintained, “still makes them see women as more worthless, trivial, non-human, and objectlike, that is, the way those who are discriminated against are seen by those who discriminate against them” (MacKinnon 1985, 54). “You may think snuff is one thing, Playboy another,” MacKinnon told the audience at the National Conference on Women and the Law in the spring of 1985, but “our law says something very simple: a woman is not a thing to be used, any more than to be abused” (MacKinnon 1987, 200). Sunstein’s narrow definition of “pornography,” which left what MacKinnon once described as
“so-called sex only materials [emphasis added]” untouched, clearly set his approach apart from the approach embodied in the Dworkin-MacKinnon ordinance (MacKinnon 1987, 187).

Sunstein’s definition of pornography was also narrower than Dworkin and MacKinnon’s in other ways. For instance, unlike the Dworkin-MacKinnon ordinance, which defined pornography as “the sexually explicit subordination of women through pictures or words [emphasis added],” Sunstein believed that “antipornography legislation should be addressed only to movies and pictures” (Sunstein 1992, 24). Such a limitation is justified, Sunstein explained, because “abuse of participants will occur only in movies and pictures” (Sunstein 1992, 24).

“Moreover,” Sunstein added, “the evidence on pornography as a stimulus to violence deals mostly with movies and pictures, and the immediacy and vividness of these media suggest a possible distinction from written texts” (Sunstein 1992, 24). In short, in Sunstein’s view, crafting antipornography legislation in such a way as to “exempt the written word” meant that the legislation would be more precisely tailored “to the cause of the harm: the production and dissemination of portrayals of sexual violence” (Sunstein 1992, 24; Sunstein 1986, 616).

Sunstein was also amenable to the idea of grafting customary exemptions to obscenity laws onto his proposed antipornography legislation. For instance, Sunstein suggested, “it might be desirable to limit antipornography legislation so that it applies to work ‘taken as a whole’ or at the very least protects ‘isolated passages’ in longer works” and exempts “material having significant social value” (Sunstein 1986, 624; Sunstein 1988, 844). Sunstein was willing to accept these exemptions because, in his view, “materials that have pornographic components,” such as “a motion picture [that] contains pornographic scenes as part of a more general enterprise[,]… are… less likely to produce sexual violence” and “may on the whole generate little of the relevant harm” (Sunstein 1986, 624). Dworkin and MacKinnon, of course, were
reluctant to incorporate such exemptions into their ordinance. As Dworkin and MacKinnon saw it, “taking the work ‘as a whole’ ignores that which the victims of pornography have long known: legitimate settings diminish the perception of injury done to those whose trivialization and objectification they contextualize” (MacKinnon 1985, 21). Regarding exemptions for material that possesses “significant social value,” MacKinnon protested, “If a woman is subjected, why should it matter that the work has other value?” (MacKinnon 1985, 21).16

The relatively narrow range of materials Sunstein aimed to reach with his proposed antipornography legislation points to another significant difference between Sunstein and the antipornography feminists that preceded him: his comparatively narrow view of pornography’s harms. As Sunstein explained in “Pornography and the First Amendment” (1986), in his view, pornography contributes to “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” (Sunstein 1986, 595). Some six years later, in an article published in the Columbia Law Review entitled “Neutrality in Constitutional Law (With Special Reference to Pornography, Abortion, and Surrogacy),” Sunstein offered a similar description of pornography’s harms: “The harms [of pornography] fall in three categories. First, the existence of the pornography market produces a number of harms to models and actresses… Second, there is a causal connection between pornography and violence against women… Third, and more generally, pornography reflects and promotes attitudes toward women that are degrading and dehumanizing and that contribute to a variety of forms of illegal conduct, prominently including sexual harassment” (Sunstein 1992, 23-25). Based on these descriptions, it is clear that Sunstein, like virtually all antipornography feminists who came
before him, believed that pornography contributed to widespread violence and illegal acts of discrimination and harassment against women. However, notably absent from Sunstein’s catalogue of pornography’s harms is a harm that had been of central concern to earlier antipornography feminists: “objectification.”

As far back as the occupation of Grove Press in 1970, antipornography feminists had called attention to “objectification” as a principal way in which women were oppressed and, therefore, harmed by pornography.18 “No more using of women’s bodies as filth-objects,” the Grove Press occupiers demanded, “No more peddling… movies… that force women to act out their bestialized oppression while the whole world is watching!… No more male radicals who can ignore the oppression of women… as sex objects…” (Lederer 1980, 271). Several years later, in the concluding chapter of Against Our Will: Men, Women, and Rape (1975), Susan Brownmiller presented “objectification” as a harm endemic not only to pornography, but to rape as well. “Pornography, like rape,” Brownmiller contended, “is a male invention, designed to dehumanize women, to reduce the female to an object of sexual access” (Brownmiller 1975, 394). In the November 1977 issue of WAVPM’s newsletter, Newspage, Diana Russell and Laura Lederer repeated Brownmiller’s claims regarding the harm of objectification. When asked if they object to “pornography in which there is no violence,” Russell and Lederer said, “Yes.” (Lederer 1980, 24). “Not all pornography is violent,” Russell and Lederer explained, “but even the most banal pornography objectifies women’s bodies” and “an essential ingredient in much rape and other forms of violence to women is the ‘objectification’ of the woman” (Lederer 1980, 24). As these quotations illustrate, the earliest antipornography feminists believed that pornography did more than merely prime its consumers to physically harm or illegally discriminate against
women. In their view, pornography “objectified” women and “objectification” constituted a harm in and of itself.

This understanding of objectification as one of pornography’s principal harms is reflected in the Dworkin-MacKinnon antipornography ordinance. The ordinance defines pornography as “the graphic sexually explicit subordination of women through pictures and/or words” that also includes at least one additional element. The ordinance’s list of additional elements includes depictions of things generally recognized as harmful, like torture and mutilation, but it also includes depictions of things not generally recognized as such, like “women… dehumanized as sexual objects, things or commodities” and “women… in postures or positions of sexual submission, servility, or display” (Dworkin and MacKinnon 1988, 36). As Dworkin and MacKinnon make clear in their self-published defense of the ordinance, this was by design. “Some of the enumerated subparts [of the ordinance’s definition of pornography],” Dworkin and MacKinnon explained, “specify presentations of women that show express violence; some focus on acts of submission, degradation, humiliation, and objectification that have been more difficult to see as violation because these acts are most distinctively done to women and called sex” (Dworkin and MacKinnon 1988, 39). Among the central aims of the Dworkin-MacKinnon ordinance was to make the harmfulness of these seemingly harmless acts legible, to make “the harm of being seen and treated as a sexual thing rather than as a human being” visible and, most importantly, legally actionable (Dworkin and MacKinnon 1988, 45). As MacKinnon emphasized, even the public hearings organized on behalf of the ordinance were guided by this aim. “These hearings,” MacKinnon wrote in the introduction to In Harm’s Way: The Pornography Civil Rights Hearings (1997), “were the moment when…, against a backdrop of
claims that [they] do not exist…, the harms of pornography stood exposed and took shape as potential legal injuries” (MacKinnon and Dworkin 1997, 4).

As Sunstein readily acknowledged, his proposals for regulating pornography differed from Dworkin and MacKinnon’s in this regard. Whereas his legislative recommendations “deal with pornography as a subject of regulation only to the extent that it is associated with violence against women (an important ingredient in sexual inequality),” Dworkin and MacKinnon’s, Sunstein explained, “deal far more broadly with the role of pornography in creating inequality, in part through its place in the sexual subordination and objectification of women” (Sunstein 1993, 393; Sunstein 1992, 21). In a review of MacKinnon’s *Feminism Unmodified: Discourses on Life and Law*, Sunstein expressed serious reservations about this aspect of Dworkin and MacKinnon’s project. “Some of MacKinnon’s rhetoric [with respect to pornography’s harmful effects] is overstated,” Sunstein wrote, adding that MacKinnon’s claim that “the sexual objectification of women, and sexuality in general, [is] a central cause of sexual subordination” is the “aspect of MacKinnon’s critique that has made her views so controversial” and stirred so much “resistance to the antipornography movement” (Sunstein 1988, 843; 835; 846). While Sunstein was willing to concede (once in a footnote) that “it is more than plausible to think that objectification is a serious social harm,” he was not willing to support Dworkin and MacKinnon’s efforts to secure for it legal recognition and redress (Sunstein 1992, 21). Sunstein may have been prepared to use the law to regulate materials that contributed to violence against women and other “illegal conduct,” but when it came to materials implicated in the not-yet-legally-recognized harm of objectification, he demurred (Sunstein 1992, 23-25).

It is impossible to discuss the reasons behind Sunstein’s demurral without delving into one of the most fundamental difference between Sunstein and the antipornography feminists who
preceded him. Unlike his antipornography feminist predecessors who considered the “silencing” and “objectification” of women in and through “so-called sex only” pornography to be full-fledged “public” harms, Sunstein was a committed liberal offering a feminist critique of pornography that employed a conventionally liberal conception of harm. Sunstein so scrupulously set his sights on “violent pornography” because, he argued, only materials that combine sexual explicitness with violence contribute to what he tellingly described as pornography’s “principal” and “concrete, gender-related harms,” like “violence against women,” “sexual harassment,” and other “illegal conduct” (MacKinnon 1987, 187; Sunstein 1992, 21; 25; Sunstein 1986, 592; 595). As Sunstein acknowledged, “not all of those who focus on [the problem of pornography] treat pornography as a problem of sex discrimination only because it is associated with violence”; however, Sunstein believed that crafting antipornography legislation with a “broader understanding of the harms of pornography, including the very large category of objectification” in mind was a mistake (Sunstein 1992, 21). Sounding very much like one of antipornography feminism’s liberal critics, Sunstein maintained that “one cannot find [pornography’s silencing effects] to be a reason for regulation without making excessive inroads on a system of free expression” and raising “severe First Amendment difficulties” (Sunstein 1992, 25; 21). “The notion of objectification,” Sunstein cautioned, “is one with which it is extremely difficult for a legal system to work” (Sunstein 1992, 25). Far better, Sunstein advised, to adopt an approach to pornography regulation that “does not go so deep” and that “deals with pornography as a subject of regulation only to the extent that it is associated with violence against women” or other criminal acts (Sunstein 1988, 846; Sunstein 1992; 21).

Of course, Sunstein’s antipornography feminist forebears agreed that antipornography legislation designed to address pornography’s harms, including the harm of objectification,
buked liberal convention and thus raised “severe First Amendment difficulties.” This is precisely why many of them adopted such critical postures vis-a-vis conventional first amendment doctrine and the liberal assumptions undergirding it.21 “Liberal legalism,” MacKinnon declared in the concluding chapter of Toward a Feminist Theory of the State (1989), “is… a medium for making male dominance both invisible and legitimate by adopting the male point of view in law at the same time as it enforces that view on society… In the liberal state, the rule of law – neutral, abstract, elevated, pervasive – both institutionalizes the power of men over women and institutionalizes power in its male form” (MacKinnon 1989, 237-238). Similarly, in Pornography and Civil Rights: A New Day for Women’s Equality (1988), Dworkin and MacKinnon described the first amendment as a means of shoring up “power disguised as rights protected by law that fosters inequality” (Dworkin and MacKinnon 1988, 22). In an address delivered at the 1979 New York University colloquium “Obscenity: Degradation of Women versus Freedom of Speech,” Susan Brownmiller put forward a similar view. “The first amendment of late has been stretched out of shape,” she lamented, and used by “a powerful group, a sick group, a mentally unstable group, an evil group” to secure “a protected right to promote sexual violence against an oppressed group for commercial exploitation and gain” (Brownmiller 1979, 255).22 As these quotations evince, antipornography feminists tended to view the first amendment as the cornerstone of a dysfunctional system in which “the free speech of men [was permitted to silence] the free speech of women” (MacKinnon 1985, 65). To repair this dysfunction and bring about a system of free expression deserving of the name, Dworkin and MacKinnon proposed a “new model for freedom of expression” (MacKinnon 1993, 109). Under this “new model,” as MacKinnon described it, “the free speech position” would “no longer support social dominance” because “the state [would] have as great a role in providing relief from injury to equality through
speech and in giving equal access to speech as it has now in disciplining its power to intervene in that speech that manages to get expressed” (MacKinnon 1993, 109). Under this new model, in other words, pornography, with its singular capacity to “deauthorize and reduce and devalidate and silence,” would no longer be protected in the name of freedom of expression, but restricted instead (MacKinnon 1985, 63).²³

While antipornography feminists like Dworkin and MacKinnon were out to break with convention and revolutionize the constitutional meaning of freedom of expression, Sunstein was out to accomplish something quite different. His goal was not to shift the parameters of existing constitutional law to accommodate the feminist critique of pornography, but to fashion a feminist critique of pornography that conformed to the parameters of existing constitutional law. While he admitted that “antipornography legislation tests constitutional doctrine in unexpected ways,” he insisted that “it is possible to defend such legislation within the confines of conventional doctrine” (Sunstein 1986, 626). In fact, in the conclusion of his earliest published antipornography feminist effort, Sunstein explicitly states that his “purpose has been to show that pornography can be regulated without doing violence to the first amendment…” (Sunstein 1986, 624). Sunstein made this same point even more forcefully some two years later in his review of MacKinnon’s *Feminism Unmodified* for the *Harvard Law Review*. In what reads like a thinly veiled repudiation of Dworkin and MacKinnon’s “new model for freedom of expression,” Sunstein contended that “first amendment doctrine furnishes the building blocks for a quite conventional argument for regulation of pornography” (Lederer and Delgado 1995, 258; Sunstein 1988, 844).

The “quite conventional argument for regulation of pornography” that Sunstein cobbled together out of “the building blocks” furnished him by the first amendment goes something like
this: Contrary to the claims of first amendment absolutists, the first amendment does not, in fact, accord equal protection to all speech. For example, commercial speech, labor speech and other speech that is “far afield from the central concern of the first amendment, which, broadly speaking is effective popular control of public affairs” has been found to fall within the category of “low-value” speech and low-value speech may be regulated “on the basis of a far less powerful demonstration of harm” than is necessary in the case of high-value speech (Sunstein 1986, 602-603). Pornography, defined as sexually explicit depictions of women enjoying physical abuse designed to produce sexual arousal, is “more akin to a sexual aid than a communicative expression,” and is, therefore, properly considered low-value speech (Sunstein 1986, 606). Pornography so defined is also linked to a number of harms, including violence against women and other illegal acts of sex discrimination. While the evidence of pornography’s harmfulness is not dispositive, because pornography is low-value speech, the evidence is strong enough to permit regulation, provided, of course, that such regulation is sufficiently narrowly tailored to pornography’s harms.

As Sunstein emphasized, his argument for the regulation of pornography “is hardly an endorsement of the broader position that the first amendment should essentially be irrelevant to the debate, because it protects those who ‘have’ speech against those who ‘have not’ the power of speech” (Sunstein 1986, 624). Sunstein was not out to champion a radically new model of freedom of expression. In fact, Sunstein agreed with eminent liberal political philosopher Ronald Dworkin (one of MacKinnon’s most outspoken critics) that the fact “that pornography sometimes plays a part in ‘silencing women’ – not by criminalizing their speech, but by discrediting it” is no reason to abandon a conventional and wholly negative understanding of the freedom of expression.24 As Sunstein put it, pornography’s “silencing effect is an important part
of the political argument against pornography; but it probably should not be part of the First Amendment debate” (Sunstein 1992, 25-26). What this shows is that, while Sunstein was generally sympathetic to the feminist critique of pornography, he was also wary of those aspects of it that he believed raised “severe first amendment difficulties,” made “excessive inroads on a system of free expression,” “threaten[ed] areas thought to be personal and private,” and “pointedly part[ed] company with certain aspects of mainstream liberalism” (Sunstein 1992, 21; 26; Sunstein 1988, 835; 846). This wariness drove him “to generate a defense of antipornography legislation that,” by his own admission, “does not go so deep,” that employs a highly restrictive definition of pornography and that addresses itself to a much narrower range of harms (Sunstein 1988, 846).

Of course, it should not be overlooked that Sunstein was also wary of many aspects of what had been, at least since the 1950s, the unquestioned liberal orthodoxy on pornography. Sunstein did not think that sexually explicit speech was, for the most part, harmless and deserving of constitutional protection and he believed much liberal skepticism toward antipornography legislation was misplaced. Nowhere is this more evident than in his incisive critique of the Seventh Circuit Court’s decision in American Booksellers Association v. Hudnut. In this decision, the court struck down the version of the Dworkin-MacKinnon ordinance adopted by the City of Indianapolis on the grounds that it amounted to a content-based regulation of speech that was not neutral in regard to viewpoint. In Sunstein’s view, the distinction between “viewpoint-neutral” and “viewpoint-based” regulation upon which the court relied in this ruling is unsustainable. “Regulation based on viewpoint is common in the law,” Sunstein observed, citing examples such as bribery laws, which make it a crime to “offer $100 to tempt a person to commit murder,” but permit “a $100 offer to build a fence” (Sunstein 1986, 613-614). Obscenity
laws, Sunstein added, are also viewpoint-based insofar as they prohibit only those sexually explicit materials that “portray sexual conduct in a patently offensive way, measured by ‘contemporary community standards’” and, therefore, necessarily draw a line “between messages on the basis of social attitudes toward sexual mores” (Sunstein 1986, 613-614; 595). The reason such laws are typically not construed as “viewpoint-based” and struck down is because “one does not ‘see’ a viewpoint-based restriction when the harms invoked in defense of a regulation are obvious and so widely supported by social consensus that they allay any concern about impermissible government motivation” (Sunstein 1986, 615). Because the Hudnut court subscribed to the classical liberal notion that serious threats come “exclusively from the public sphere,” a notion that, Sunstein emphasized elsewhere, represents “a quite narrow aspect of the liberal tradition,” it “[undervalued] the harm pornography produces,” “[misapplied] conventional doctrines requiring viewpoint neutrality” and “[overvalued] the dangers posed by generating a somewhat different category of regulated speech bound to have some definitional vagueness” (Sunstein 1988, 835; Sunstein 1986, 626). In short, Sunstein faulted the Hudnut majority, and many of his liberal peers, for their failure to see that the purpose of “legislation aimed at pornography… [is] to prevent sexual violence and discrimination, not to suppress expression of a point of view” (Sunstein 1986, 612).

By breaking in all these ways with both his antipornography feminist and liberal peers, Sunstein, whether he intended to or not, pioneered a highly improbable argumentative position. Prior to Sunstein, liberals had, for the most part, been unwilling to take virtually any aspect of the feminist critique of pornography seriously. By limiting antipornography feminism’s broad definition of pornography to “violent pornography” and narrowing its expansive conception of harm to violence and other “illegal conduct,” Sunstein changed this. He devised an
antipornography feminist approach that sought to mitigate “sexual inequality,” without, in his words, “threaten[ing] areas thought to be personal and private” or offending “traditional First Amendment doctrine” (Sunstein 1992, 21; Sunstein 1988, 835; Sunstein 1986, 608).25 He devised, in other words, what I have called “liberal antipornography feminism,” a variant of antipornography feminism that employs, as opposed to resists, fundamental liberal principles.

In the wake of Sunstein’s pioneering efforts, scholars across a variety of disciplines began adapting the feminist critique of pornography to the strictures of liberalism and established constitutional law. For instance, in a series of articles published throughout the 1990s, philosopher Rae Langton ingeniously employed the theory of equality and rights laid out by Ronald Dworkin in Taking Rights Seriously (1978) to formulate a refutation of Dworkin’s own defense of pornography in “Do We Have A Right to Pornography?” (1981).26 Langton’s argument goes something like this: The cornerstone of Dworkinian liberalism is the principle of equal concern and respect. A “permissive policy” regarding “violent and degrading pornography” violates this principle because the policy is rooted in preferences that are dependent upon the view that women are not deserving of equal concern and respect (Langton 1990, 353). In Dworkin’s theory, such preferences are called “external preferences” and the policies they favor (racial segregation is the example Dworkin furnishes) can be overridden by the rights of anyone whom those policies disadvantage. As antipornography feminists have persuasively argued, a permissive policy regarding violent and degrading pornography disadvantages women, and, therefore, “women as a group… have rights that are trumps” against it (Langton 1990, 346). In short, Langton concludes, “a prohibitive policy… is not only consistent with, but apparently demanded by, liberal theory” (Langton 1990, 354).
While Langton mined Dworkinian liberalism for antipornography feminist resources, others sought them in what had historically been the citadel of liberal opposition to pornography regulation, the liberal theory of John Stuart Mill. For instance, in an article entitled “John Stuart Mill and the Harm of Pornography” (1992), David Dyzenhaus argued that pornography violates Mill’s “harm principle” and, therefore, merits regulation. On Dyzenhaus’s readings of both On Liberty and the “curiously neglected” The Subjection of Women, Mill is not solely, or even primarily, concerned with harms brought about through “state action” (Dyzenhaus 1992, 537; 545). Rather, according to Dyzenhaus, “Mill clearly sees, that the practices of a moralistic majority,” including a patriarchal one, “can be as coercive and as harmful to [the interest individuals have in autonomy] as any state action” (Dyzenhaus 1992, 545). Because pornography makes “inequality… between men and women appear legitimate as well as sexy,” Dyzenahus argued, it contributes to “a regime of inequality” that “prevents women from articulating and living out conceptions of the good life which would be theirs to explore were they in a position of substantive equality” (Dyzenhaus 1992, 536, 550). Pornography, in other words, harms the interest women have in autonomy. This, Dyzenhaus concludes, is why liberals laying claim to the Millian tradition “must be open to the legitimacy of coercive action to eradicate pornography” (Dyzenhaus 1992, 536, 550).

While Langton’s and Dyzenhaus’s contributions to liberal antipornography feminism were significant, they pale in comparison to what came next. On March 5-7, 1993, some 700 lawyers, scholars, students, and activists convened at the University of Chicago School of Law for a conference entitled “Speech, Equality, and Harm: Feminist Legal Perspectives on Pornography and Hate Propaganda.” Conferees included veteran antipornography feminist leaders like Catharine MacKinnon, Andrea Dworkin, Dorchen Leidholdt, Laura Lederer, and
Kathleen Barry as well as prominent liberal legal scholars like Cass Sunstein, Frank Michelman, Elena Kagan, John Powell, and Frederick Schauer and leading critical race theorists like Kimberle Crenshaw and Richard Delgado. Their goal in coming together was to address “the role of pornography and hate propaganda on the safety and status of women, people of color, gay men and lesbians”\textsuperscript{28} by developing legal solutions to the problems of pornography and other forms of “harmful speech,” defined by two of the conference’s lead organizers, as “speech that harms the individual who is [its] target… and … perpetuates negative stereotypes, promotes discrimination, and maintains whole groups of people as second-class citizens, hampering their participation in our democracy” (Lederer and Delgado 1995, 5).\textsuperscript{29} While a handful of proposals presented at this conference bucked liberal conventions and concepts,\textsuperscript{30} many were carefully tailored to accord with central liberal tenets, signaling a growing common ground between pornography’s liberal and feminist critics.

Prior to this conference, the last time antipornography feminists and liberals had formally convened to discuss legal perspectives on pornography was in 1978 at the New York University School of Law colloquium, “Obscenity: Degradation of Women versus Right of Free Speech.” As you will recall from the previous chapter, the discussions at this colloquium were not particularly productive. In fact, according to the colloquium’s organizer, the event was marked by “a general failure of communication” with liberals “interpret[ing] the [feminist] outcry against violent pornography as a call for censorship” and an attack on the first amendment and feminists “describ[ing] the evils of violent pornography in subjective, emotional terms,” “oblivious to the need for specificity, proof of injury, or ‘hard evidence’” (Lerman 1979, 182-184). By 1993, however, the dynamic between liberals and antipornography feminists had changed dramatically.
For instance, the University of Chicago conference featured presentations from a variety of experts purporting to offer “hard evidence” of pornography’s harms. Evelina Giobbe, founder and executive director of WHISPER, a non-profit organization of ex-prostitutes, and Kathleen Barry, a sociologist specializing in the study of international sex trafficking, spoke to an alleged link between pornography and forced prostitution. Barbara Trees, a carpenter and labor organizer, and Olivia Young, a registered nurse, spoke to the role pornography played in their experiences of sexual harassment in the workplace. Additionally, the edited volume that grew out of the conference, *The Price We Pay: The Case against Racist Speech, Hate Propaganda, and Pornography* (1995), included contributions from a number of psychologists who presented evidence of pornography’s harmful effects on adolescent male consumers as well as its contributions to sexist and racist discrimination and harassment in schools and workplaces. This same volume also included contributions from several distinguished law professors, including Kimberle Crenshaw and Michelle J. Anderson, who proposed new conceptual frameworks to facilitate the legal recognition of the harm of racist speech, hate propaganda, and pornography. Clearly, antipornography feminists were no longer “oblivious to the need for specificity, proof of injury, or ‘hard evidence.’”

Liberals at this conference were also no longer inclined to perceive feminist concerns about pornography as attacks on fundamental liberal values. In fact, to a person, the liberal legal theorists who participated at the conference welcomed feminist insights into the role of pornography and “hate propaganda” in the reproduction of social inequality. Unlike their counterparts at the 1978 New York University colloquium, liberals at the 1993 University of Chicago conference saw these insights as vital contributions to the project of deepening and expanding the freedom of expression. Frank Michelman’s comments on this score are
representative. According to Michelman, “conscientious civil libertarians,” “committed” to the defense of “the values of expressive freedom in human life, and therefore of a legally established system of freedom of expression for all,” are wrong to turn “a deaf ear to [feminist] claims of [pornography’s] silencing [effects]” (Michelman 1995, 273). Some speech, Michelman insists, “degrade[s] the speech of others by summoning castelike perceptions of the others as unworthy to be heard… and in the process reinforces caste” (Michelman 1995, 275). “How in all consistency,” Michelman asks, “can [a society that values freedom of expression] read its Constitution to forbid absolutely restrictions of speech when those restrictions appear aptly and sincerely to be aimed against the evils of caste and subordination, as those evils are reasonably perceived to invade and inhabit and corrupt the system of freedom of expression itself?” (Michelman 1995, 276). As Michelman’s remarks demonstrate, by 1993, many liberals had gone from seeing the feminist critique of pornography as an assault on first amendment values to an invaluable contribution to a more complete realization of those values.

Others adopted a slightly different view. Consider, for example, the proposals for pornography and hate speech regulation offered up at the conference by Elena Kagan, then a junior law professor at the University of Chicago law school. While Kagan expressed a great deal of sympathy for the view that “we live in a society [in which] certain forms of speech perpetuate and promote [racial and gender] inequality,” she also insisted that “any attempt to regulate pornography and hate speech must take into account certain facts… of First Amendment doctrine” (Lederer and Delgado 1995, 202). Kagan was particularly concerned that legal efforts aimed at curbing harmful speech give “the long-standing… principle of viewpoint neutrality” its due. According to this principle, which had been invoked by the majority in American Booksellers v. Hudnut to invalidate the Dworkin-MacKinnon ordinance, laws regulating speech
must not do so on the basis of the viewpoint the regulated speech expresses. Undergirding this principle is a characteristically liberal anxiety regarding government interference in the “private” sphere of thoughts, values, judgments, and beliefs. To permit the government to regulate speech on the basis of viewpoint, so the liberal reasoning goes, is to permit the government to wield authority over fundamentally private matters, effectively deposing the individual as the ultimate arbiter of what is good, true, and worthy of consideration and what is not. It seems that Kagan, embraced something very much like this conventionally liberal view as each of the regulations she proposed was carefully designed to respect the principle of viewpoint neutrality and the public/private distinction it safeguards by refraining from regulating speech altogether (Lederer 1995, 203).

According to Kagan, the most “realistic, principled, and perhaps surprisingly effective” legal measures that might be marshaled against “speech [that] perpetuate[s] and promote[s] inequality” would not regulate speech at all, or at least not in the first instance (Lederer and Delgado 1995, 203). One such measure Kagan recommended was “hate crimes laws” or laws providing enhanced penalties for crimes committed because of the target’s race, gender, sexual orientation, or other stipulated status (Lederer and Delgado 1995, 203). Another remedy proposed by Kagan was a law modeled after federal child pornography laws that “punish[ed] the distribution of materials whose manufacture involved coercion of, or violence against, participants” (Lederer and Delgado 1995, 205). Another was a law “prohibiting carefully defined kinds of harassment, threats, or intimidation, including but not limited to those based on race and sex” (Lederer and Delgado 1995, 204). What made each of these measures not only “feasible” but “proper” means of “eradicating the worst of hate speech and pornography,” in Kagan’s view, was that their ultimate aim was not to curb speech or extirpate undesirable beliefs or opinions
from the minds of citizens, but to prevent illegal “conduct” like “racially based form[s] of
disadvantage,” “the violence and coercion that often occur in the making of pornography,” and
“harassment and intimidation” (Lederer and Delgado 1995, 203; 205).

Kagan’s proposals to regulate inequality-engendering speech only where such speech
intersects with illegal conduct reveals the extent to which liberal conceptions of harm, liberty,
and the public and the private had merged with antipornography feminist thinking by the mid-
1990s. While Kagan was convinced that pornography and hate speech “perpetuate and promote
inequality,” the upshot of her reform proposals, which were widely embraced by other feminist
and anti-racist opponents of pornography and hate speech at the time, is that this alone does not
amount to the sort of “public” harm that might justify the imposition of a legal remedy. By
insisting that pornography and hate speech are “proper[ly]” regulated only indirectly through
measures “aimed not at speech, but acts,” Kagan’s antipornography feminist position reaffirmed
traditional liberal figurations of pornography as “private” and harmless and left liberalism’s
public/private distinction intact and unchallenged. Once irreconcilable opponents, by the mid-
1990s, antipornography feminism and liberalism had become allies and complements.

Kagan was not the only opponent of pornography at the University of Chicago
conference whose vision for reform was colored by liberal investments. In fact, even veteran
antipornography feminist Dorchen Liedholdt, no friend of liberalism in principle, advocated
an approach to pornography regulation at this conference that ceded much to liberal convention.
Liedholdt’s approach centered on figuring pornography as an illegal employment practice under
Title VII of the Civil Rights Act. Drawing on precedents established over nearly two decades of
sexual harassment litigation, Liedholdt argued that “the sexual harassment of women workers
through pornography” can cause “psychological damage,” “emotional distress,” and “psychic
trauma” severe enough “to undermine a woman worker’s peace of mind,… disable her job performance,” and “push her out of her job entirely” (217; 218). For these reasons, Liedholdt maintained, “pornography in the workplace” constitutes “a barrier to equal employment opportunities for women” and is actionable as sex-based employment discrimination (Lederer 1995, 218; 231-232).

Liedholdt’s proposal to use Title VII as a “legal wedge” to combat pornography in the workplace can be seen as a sort of pragmatic capitulation to liberal dictates (Lederer 1995, 232). By figuring pornography as a discriminatory employment practice, Liedholdt ensured that pornography regulation would not extend beyond the workplace into other, more traditionally “private” settings. Also, by casting pornography’s harms in terms of well-established legal injuries like “trauma” and “emotional distress,” both terms of art imported from tort law, Liedholdt moved away from the sweeping and highly politicized representations of harm characteristic of early antipornography feminism (e.g. “objectification,” “subordination, “silencing,” and the like) and toward the narrower and more conventional representations (e.g. “violence,” “criminal acts,” and “illegal conduct”) preferred by liberal antipornography feminists.

Even before the University of Chicago conference, liberal antipornography feminism was well enough established as a legible and credible argumentative position that, in a 1990 review of MacKinnon’s *Toward a Feminist Theory of the State*, Drucilla Cornell was able to criticize MacKinnon for “fail[ing] to see that there are liberal arguments for some of the legal reforms she seeks to make” (Cornell 1990, 2261). However, in the wake of the University of Chicago conference, liberal antipornography feminisms proliferated. In fact, by the mid-1990s, liberal antipornography feminism had risen to such prominence that Nadine Strossen, president of the
ACLU from 1991-2008 and adamant critic of the Dworkin-MacKinnon ordinance, was in a position to lament that “the Dworkin-MacKinnon approach to pornography enjoys an enormous intuitive appeal to many feminists and liberals” (Strossen 1995, 83).

The enormity of antipornography feminism’s appeal amongst liberals in the mid-1990s is evident in liberal political philosopher Martha Nussbaum’s embrace of many aspects of Dworkin and MacKinnon’s critique of pornography in *Sex and Social Justice* (1999). In Nussbaum’s view, despite her self-styled radicalism, her frequent and impassioned fulminations against liberalism, and her unalloyed contempt for liberal feminism, Catharine MacKinnon is, at bottom, “a Kantian liberal, inspired by a deep vision of personhood and autonomy” (Nussbaum 1999, 79).36 “In my view,” Nussbaum writes in the introduction to *Sex and Social Justice*, “the radical feminism of MacKinnon makes… a demand for equal respect, asking that laws and institutions truly acknowledge women’s equal worth in ways they have not previously done” (Nussbaum 1999, 20). “In so arguing,” Nussbaum continues, “MacKinnon… is making the Kantian demand that women be treated as ends in themselves, centers of agency and freedom rather than merely as adjuncts to the plans of men” (Nussbaum 1999, 20). As if making a Kantian liberal out of MacKinnon was not enough, Nussbaum goes a step further, arguing that MacKinnon’s keen insights into the ways in which the sexualities of both men and women have “been shaped by long habits of domination and subordination” were “anticipated” by none other than John Stuart Mill, a thinker who, Nussbaum claims, “understood… that a moral critique of deformed desire and preference is not antithetical to liberal democracy; it is actually essential to its success” (Nussbaum 1999, 12).

Having firmly established MacKinnon’s liberal pedigree, Nussbaum moves to demonstrate how MacKinnon’s critique of the objectification of women in pornography is rooted
in her putatively liberal vision of personhood and autonomy. Accomplishing this is extraordinarily uncomplicated for Nussbaum because, she argues, Kant’s criticism of “sexual desire… for leading people to treat one another as objects” is the “direct ancestor of the arguments of MacKinnon” and, thus, a Kantian “notion of humanity… is implicit in most critiques of objectification in the MacKinnon/Dworkin tradition” (Nussbaum 1999, 152; 218).

“The core idea of MacKinnon’s and Dworkin’s analysis [of objectification and pornography] is Kantian,” Nussbaum explains (Nussbaum 1999, 224). “Like Kant, [MacKinnon and Dworkin] start from the notion that all human beings are owed respect, and that this respect is incompatible with treating them as instruments, and also with denials of autonomy and subjectivity” (Nussbaum 1999, 224). In Nussbaum’s view, certain types of pornography - Nussbaum offers two examples: a “‘novel’” (the scare quotes are Nussbaum’s) entitled *Isabelle and Veronique: Four Months, Four Cities* and *Playboy* magazine – send the unambiguous message that the “[male reader] is the one with the subjectivity and autonomy” and that women “are things that look very sexy and are displayed out there for his consumption, like delicious pieces of fruit, existing only or primarily to satisfy his desire” (Nussbaum 1999, 217; 234). This message, Nussbaum insists, following her stylized versions of MacKinnon and Dworkin, constitutes a “profound betrayal… of the Kantian ideal of human regard” (Nussbaum 1999, 217; 234).

Given Nussbaum’s interpretation of MacKinnon’s critique of pornography as rooted in what are, arguably, some of liberalism’s most fundamental values, it is not at all surprising that she is highly critical of liberals who have rather cursorily dismissed MacKinnon’s and Dworkin’s legal proposals to regulate pornography on the grounds that they “are in favor of the First Amendment” (Nussbaum 1999, 247). “People who attack [MacKinnon’s and Dworkin’s] proposal on [these] grounds… are not,” Nussbaum writes in an uncharacteristically harsh
passage, “saying anything intellectually respectable” (Nussbaum 1999, 247). “The First Amendment,” Nussbaum notes, “has never covered all speech” (Nussbaum 1999, 247). Therefore, Nussbaum continues, “the argument must be made that [pornography] is the type of speech that ought to be protected by the First Amendment,” not that “pornography is speech, so it must be protected” (Nussbaum 1999, 247). Significantly, Nussbaum refrains from making the former argument. In fact, she praises MacKinnon’s and Dworkin’s proposed antipornography legislation for having “identified the right moral target” “in the sense that material depicting abuse and violence against women as sexy is morally problematic in a way that the traditional category of the ‘obscene’ does not seem to be” (Nussbaum 1999, 23; 248). However, despite her wholehearted agreement with Dworkin and MacKinnon’s moral critique of pornography, Nussbaum does not, ultimately, endorse their proposed legislation as she believes that “it is likely to be badly implemented in practice and… may exert a stifling effect on some valuable speech, including the feminist critique of pornography” (Nussbaum 1999, 23).

While Nussbaum ultimately disagrees with Dworkin and MacKinnon’s proposed legal remedy, she enthusiastically endorses their critique of pornography, describing pornography “as an urgent problem that needs to be treated with moral seriousness” (Nussbaum 1999, 250). In making this endorsement, Nussbaum emblazons Dworkin and MacKinnon’s critique of pornography with the imprimatur of canonical liberals such as Kant, J.S. Mill, and herself, and effectively casts those who “have simply refused to acknowledge that there is any moral problem in the representation of women as meant for abuse and humiliation” not only as antifeminist, but illiberal to boot (Nussbaum 1999, 249).

In a 2001 article in the American Political Science Review (APSR) entitled “Feminism and Liberalism Reconsidered: The Case of Catherine MacKinnon,” Denise Schaeffer explicitly
follows Nussbaum in arguing that “certain fundamental aspects of MacKinnon’s work must be understood in a liberal framework” (Schaeffer 2001, 699). Schaeffer’s MacKinnon is both “a harsh critic” of as well as a “fervent adherent” to liberalism who invokes “liberal humanist ideals” such as “freedom, equality, and choice” at the same time that she castigates “liberal idealism” for failing to apprehend the distinctive ways in which women are excluded from these ideals (Schaeffer 2001, 704; 706). “Paradoxically,” Schaeffer writes, “MacKinnon wants liberals to see differently and to see more of what already tends to register as contrary to liberal principles” (Schaeffer 2001, 705). Specifically, MacKinnon wants liberals to acknowledge “sexual use and abuse of women” as a phenomenon that institutes barriers to women’s “individual choice and self-determination” and, therefore, constitutes “harm to another” of the sort that “justifies limitation to one’s freedom” according to liberal doctrine (Schaeffer 2001, 706). “If we could reach an agreement about how best to delineate the harm to women caused by the eroticization of dominance and submission,” Schaeffer insists, “there is no inherent reason it could not be rectified from within a liberal perspective” (Schaeffer 2001, 706). This shows, Schaeffer concludes, that “MacKinnon’s work should be understood as part of a conversation within liberalism, not as a separate and fundamentally antagonistic enterprise” (Schaeffer 2001, 700).

In another APSR article from 2001, MacKinnon responds directly to Schaeffer’s article, insisting that her theory, “while not liberalism in denial or disguise, is engaged in dialogue with liberalism” (MacKinnon 2001, 709). In spite of what appears to be this small concession to Schaeffer and others who would assimilate her position to liberalism, MacKinnon is clear that she believes “we are long past the point where it makes sense to argue that liberal theory will produce sex equality on its own” and that she is skeptical as to “whether liberalism would
recognize its own concepts if they meant in reality what they are supposed to mean in theory… since they would no longer support power as currently organized” (MacKinnon 2001, 709).

“Any attempt to reinvent me as a born-again liberal,” MacKinnon insisted, “must contend with the fact that I criticize the liberal tradition for its methodological idealism…; for its individualism…; and for its relative blindness to organized power in diverse social forms…” (709). “Certainly,” MacKinnon conceded, “some contemporary liberal scholars, notably Martha Nussbaum (1999)… and Cass Sunstein (1993), contend productively with feminist concerns on liberal terrain”; but, she continues, “liberalism’s ideology of consent and choice has made it impossible effectively to stop the pornography industry, even as some individual liberals… have opposed it” and “the existing liberal concept of harm has so far been incapable of seeing women as harmed when they are sexually objectified” (MacKinnon 2001, 710). That MacKinnon felt the need to step forward in 2001 and publicly defend her record as a critic of liberalism and remind readers of the objections that antipornography feminists had been raising against liberalism since the early 1970s is evidence of just how firmly established liberal antipornography feminism was by this time. By 2001, the long history of enmity between antipornography feminism and liberalism had been almost completely elided: it was all but taken for granted that liberals and feminists were allies in an effort to curb pornography’s harmful effects.

While much has been made of conservative appropriations of antipornography feminism,37 the liberal appropriations I have catalogued here have gone largely unnoticed.38 One reason for this is doubtlessly that there has been more political hay to be made by linking antipornography feminism to the rise of the New Right than to the emergence of a more nuanced and complicated liberal discourse on the question of pornography’s harmfulness. Another reason, I suspect, is that the success of liberal antipornography feminism has effectively covered over the
historically contentious relationship between liberalism and antipornography feminism, making liberal arguments for the regulation of pornography in the service of women’s equality appear unremarkable, if not even natural and inevitable. As my excavation of the complex and often contentious relationship between antipornography feminism and liberalism has shown, nothing could be further from the truth. Antipornography feminism emerged in the early 1970s as a critical response to a concerted campaign undertaken in the mid-twentieth-century by liberals of a distinctly civil libertarian bent to roll back obscenity regulations in the United States. For over a decade, liberals uniformly reacted to the antipornography feminist critique of this project with great suspicion and hostility. Then, beginning in the mid-1980s, as antipornography feminism was on the wane and under attack even from within the feminist movement, liberals took up the antipornography feminist cause, fundamentally altering both liberalism and antipornography feminism in the process.

Notes

1 Some liberals did concede that pornography was harmful in the ways antipornography feminists alleged, but maintained that it was, nevertheless, deserving of first amendment protection. For instance, at the 1978 New York University colloquium, “Obscenity: Degradation of Women versus Right of Free Speech,” Ephraim London staked out this position. I present London’s position in detail in the main body.

2 WAVA W’s boycott of the recording industry was inspired by a billboard advertisement for the Rolling Stones’ album Black and Blue. The ad featured an image of a woman dressed in lingerie. Her bodice was torn to display her breasts, her hands were tied above her head with ropes, and her bruised legs were spread-eagled atop an image of the Stones, with her crotch hovering just above Mick Jagger’s head. The tagline read, “I’m Black and Blue from the Rolling Stones and I Love It!” For a detailed account of the campaign this ad inspired, see Carolyn Bronstein’s Battling Pornography: The American Feminist Antipornography Movement, 1976–1986.


4 Ephraim London was a well-known civil libertarian attorney who exonerated Roberto Rossellini’s film The Miracle of obscenity charges in 1952 (Joseph Burstyn, Inc. v. Wilson). He also advised Barney Rosset and Grove Press concerning the publication of the unexpurgated edition of Lady Chatterly’s Lover. For a detailed account of London’s involvement with Rossett and Grove, see Loren Glass’s Counter Culture Colophon, pages 104-106.

Sunstein explicitly distances himself from the traditional liberal position that “all speech stands on the same ground and that government has no business censoring speech merely because some people or some officials are puritanical or offended by it” (Sunstein 1993, 262). Elsewhere, Sunstein calls this the “speech is speech position” (Sunstein 1993, 267). Instead, Sunstein advocates for a sort of liberal antipornography feminism that focuses on the regulation of violent pornography. In Sunstein’s view, the problem of pornography is the violence against women that it causes. “Sexually explicit speech should be regulated not when it is sexually explicit (the problem of obscenity) but instead when it merges sex with violence (the problem of pornography). The problem of pornography does not stem from offense, from free access to sexually explicit materials, from an unregulated erotic life, or from the violation of community standards. Instead it is a result of tangible real-world harms, produced by the portrayal of women and children as objects for the control and use of others, most prominently through sexual violence” (Sunstein 1993, 263-264).

Jeanne Schroeder makes a similar argument regarding Sunstein’s project in “The Taming of the Shrew: The Liberal Attempt to Mainstream Radical Feminist Theory,” Yale Journal of Law and Feminism Vol. 5 (1992) 123-180. For Schroeder’s view, however, MacKinnon’s theory invites such a misreading. Jeanne L. Schroeder has put forward a similar view. “In the name of embracing and explicating MacKinnon’s critique of pornography, Sunstein rewrites and distorts it in such a way as to leave only a surface similarity, while excising its essential nature. A call for political and sexual revolution becomes an anticrime, antismut bill” (Schroeder, 1992, 124). Sunstein’s proposal represents a “neutered feminism” (Schroeder, 1992, 124). Sunstein, in Schroeder’s view, “sincerely wants to be simultaneously both a feminist sympathizer and a good liberal working within respectable, mainstream jurisprudence” (Schroeder 1992, 124-125).

For detailed accounts of WAVAW’s various campaigns, see the fourth chapter of Carolyn Bronstein’s Battling Pornography: The Feminist Anti-Pornography Movement, 1976-1986.

As Carolyn Bronstein has emphasized, WAVAW leaders were generally reluctant to use the term “pornography” to designate the field of materials to which they objected. “‘Pornography,’” WAVAW’s national newsletter stressed, “is not a useful word for naming what we are fighting” (Bronstein 2011, 125). It is, the newsletter continued, “both over-inclusive (pulling in erotica and merely sexually explicit materials) and grossly under-inclusive (since it appears to take the heat off of abusive mainstream commercial materials, such as record album advertising)” (Bronstein 2011, 125). Bronstein makes much of this wariness regarding the word “pornography,” arguing that it sets WAVAW apart from other organizations like Women Against Violence in Pornography and Media (WAVPM) and Women Against Pornography (WAP) as an “anti-media violence” organization as opposed to an “anti-pornography” organization. In my view, Bronstein makes too much of this particular difference between WAVAW and WAVPM and WAP. As Bronstein herself notes, WAVAW, WAVPM, and WAP understood themselves as “sister organizations that were part of the same movement, namely ‘the struggle against commercial and cultural exploitation of violence against women’” (Bronstein 2011, 6). None of these organizations objected to materials merely on account of their sexual explicitness and all three objected to materials that they believed contributed to women’s subordination. What set WAVPM and WAP apart from WAVAW (besides, of course, their emphasis on public legal action as opposed to private consumer action), was their belief that a feminist redeployment of the term “pornography” was possible. While WAVPM and WAP struggled to use the term “pornography” in a novel way to refer to a broad swath of materials that eroticized the abuse and degradation of women, WAVAW chose not to contest the term, believing that doing so would breed little but confusion and misunderstanding. This is, indeed, a difference in strategy, but it is not the difference in substance that Bronstein makes it out to be.

The Dworkin-MacKinnon ordinance has often been portrayed, particularly by its critics, as an attempt to codify the sweeping definition of pornography embraced by the broader antipornography feminist movement at the time. For instance, in the Washington Post, Hans Bader accused the Dworkin-MacKinnon ordinance of seeking “to ban French and Italian art films, avant-garde art and even Rolling Stones album covers” (Portrait of the New Puritanism, Wash. Post, Feb. 2, 1992, at C8). Similarly, in the New York Times, Michiko Kakutani criticized MacKinnon for “lump[ing] magazines like Penthouse and Playboy together with snuff films, a stand that leaves the status of

Madonna videos, Calvin Klein ads and movies like ‘Basic Instinct’ decidedly open to question” (Books of the Times: Pornography, the constitution, and the fight thereof, New York Times, October 29, 1993).

11 Dworkin devoted an entire book, Intercourse (1987), to criticizing literary works, from Tolstoy’s The Kreutzer Sonata to James Baldwin’s Another Country, for sanctioning the sexual abuse and degradation of women. Similarly, MacKinnon often noted the troubling continuities she perceived between pornography and other types of media. The following quote from Toward a Feminist Theory of the State (1989) is representative: “Pornography becomes difficult to distinguish from art and ads once it is clear that what is degrading to women is the same as what is compelling to the consumer” (MacKinnon 1989, 113). Also, in this same text, MacKinnon writes, “Pornography converges with more conventionally acceptable depictions and descriptions just as rape does with intercourse, because both are acts within the same power relation” (MacKinnon 203). As Jeanne Schroeder has observed, MacKinnon’s use of the word “pornography” in this more expansive sense in her theoretical writings marks quite a contrast with her “narrower” and more “technical” use of the term in her ordinance (Schroeder 1992, 157).


13 Although the plaintiff’s, the amici, and the lower district court in Hudnut all took issue with the breadth of the ordinance’s definition of pornography, ultimately, this aspect of the ordinance was not decisive in its legal defeat. Rather, what sealed the ordinance’s fate was the determination of the U.S. Court of Appeals for the Seventh Circuit that it amounted to a content-based regulation on speech that was not neutral in regard to viewpoint. As Judge Easterbrook, writing for the majority, explained, “Under the ordinance graphic sexually explicit speech is ‘pornography’ or not depending on the perspective the author adopts” (328). In the eyes of the Hudnut majority, that the ordinance defined pornography as “the graphic sexually explicit subordination of women” meant that the ordinance made actionable only graphic sexually explicit speech that endorses a particular viewpoint: the viewpoint that women are inferior to men. Graphic sexually explicit speech endorsing the opposing viewpoint, that women are equal to men, was left unactionable and untouched. In this sense, Judge Easterbrook argued, the ordinance established “an ‘approved’ view of women, of how they may react to sexual encounters, of how the sexes may relate to each other” and amounted to “thought control” (328). Having found the ordinance unconstitutional on these grounds, it was not necessary for the court to rule on the question of whether the definition of pornography provided by the ordinance was vague or overbroad. “It is the structure of the statute rather than the meaning of one of its terms,” Judge Easterbrook concluded, “that leads to the constitutional problem” (327).

14 As Sunstein explains, under the U.S. Supreme Court’s holding in Miller v. California 413 U.S. 15 (1973) “materials can be regulated as ‘obscene’ when they: (1) taken as a whole, appeal to the prurient interest, (2) portray sexual conduct in a patently offensive way, measured by ‘contemporary community standards,’ and (3) taken as a whole, lack serious social value, whether literary, artistic, political or scientific” (Sunstein 1986, 595).

15 In American Booksellers v. Hudnut, the Court of Appeals for the Seventh Circuit noted the Dworkin-MacKinnon ordinance’s failure to incorporate such traditional exemptions to the regulation of obscenity. “The Indianapolis ordinance does not refer to the prurient interest, to offensiveness, or to the standards of the community. It demands attention to particular depictions not to the work judged as a whole. It is irrelevant under the ordinance whether the work has literary, artistic, political, or scientific value” (324-325). It should be noted, however, that the most expansive provision in the ordinance, the trafficking provision, did stipulate that “isolated passages or isolated parts shall not be actionable under this section” (Dworkin and MacKinnon 1988, 45). Under this provision any woman, whether she had been individually harmed by pornography or not, could bring a complaint against producers, sellers, exhibitors, and distributors of pornography for subordinating women as a group.

16 In a later work, MacKinnon rebuked “significant social value” exemptions even more strongly: “Value can be found in anything, depending, I have come to think… on how much one is being paid. And never underestimate the power of an erection, these days termed ‘entertainment,’ to give a thing value” (MacKinnon 1993, 88).

17 This article was also published under the title “Pornography, Abortion, and Surrogacy” as the ninth chapter in Sunstein’s The Partial Constitution (1993).
Although by no means a supporter of antipornography feminism, philosopher Sandra Bartky has described objectification in a way that sheds light on antipornography feminists’ use of the term. In Bartky’s view, objectification is “compulsive sexualization” (Bartky 1990, 26). To be sexually objectified is “to be routinely perceived by others in a sexual light on occasions when such a perception is inappropriate” (Bartky 1990, 26). As Bartky explains it, objectification functions socially as “a ritual of subjugation,” “a way of maintaining dominance” and “fixing disadvantaged persons in their disadvantage” (Bartky 1990, 27). This closely resembles the arguments of Dworkin, MacKinnon and other antipornography feminists that objectification is one way in which pornography subordinates women. As MacKinnon once put it, “Pornography turns a woman into a thing to be acquired and used” (MacKinnon 1989, 199).

Frank Michelman also called attention to this aspect of Sunstein’s approach. See, for instance, “Civil Liberties, Silencing, and Subordination” in The Price We Pay: The Case Against Racist Speech, Hate Propaganda, and Pornography (Hill and Wang, 1995). “Sunstein urges that not all harms are equal in fitness for First Amendment analysis. Specifically, Sunstein would keep ‘silencing’ and ‘subordination’ off the First Amendment radar. He does not exclude these categories from the field of harms that speech can cause, nor does he minimize their gravity, but still he would screen them out of consideration when it comes to a legal appraisal of restrictions on speech. I wonder whether this position is tenable” (Lederer and Delgado 1995, 272). For a detailed elaboration of why Michelman wonders if Sunstein’s position is tenable, see “Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation” in the Tennessee Law Review (1988).

Jeanne Schroeder has accused Sunstein of transforming Dworkin and MacKinnon’s “call for political and sexual revolution” into “an anticrime, antismut bill” (Schroeder 1992, 124).

For MacKinnon’s critique of liberal jurisprudence, see MacKinnon’s “Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence,” 8 Signs (1983); MacKinnon’s “Francis Biddle’s Sister” (1985); Toward A Feminist Theory of State (1989).

In a 1973 article in the Boston Globe entitled “Is Porn Liberating?,” Brownmiller expressed a more sanguine view of the first amendment. The Supreme Court’s decision in Miller v. California, which was universally reviled by liberals for relaxing obscenity standards and giving the government a freer hand to regulate sexually explicit materials, had given her hope in the possibility that the first amendment might be made to work for women. “Creeping porn in the name of freedom, liberty and pursuit of the quick buck is symptomatic of disease within a body politic that has yet to come to terms with women,” Brownmiller wrote, and “in new respect for Mrs. Grundy,” Brownmiller confessed, “I’m frankly overjoyed that the Court has chosen to give relief” (Brownmiller 1973). Despite the confidence she expressed in the new Miller standards in 1973, by 1979, Brownmiller was no longer convinced that they were sufficient for feminist purposes.

As Sheila Kennedy, an attorney who worked on behalf of the ordinance in Indianapolis, explained, “[The Dworkin-MacKinnon ordinance] is an attempt to amend the existing constitutional framework. This particular group of feminists is quite clear in briefs, etc., that we understand that the ordinance as framed is inconsistent with existing law. But we want existing law changed so that this approach would be acceptable” (Downs 1989, 141).

In making this point, Sunstein cites Ronald Dworkin’s “Two Concepts of Liberty,” an essay that is equal parts ode to Isaiah Berlin and critique of Catherine MacKinnon. Dworkin published several other pieces criticizing MacKinnon in the New York Review of Books.

Jeanne Schroeder has described Sunstein’s approach as transforming Dworkin and MacKinnon’s “call for political and sexual revolution” into “an anticrime, antismut bill” (Schroeder 1992, 124).


Dyzenhaus’s unqualified endorsement of “coercive state action” to mitigate pornography’s inequality producing effects seems to go beyond even what proponents of the Dworkin-MacKinnon ordinance called for. For instance, his definition of “censorship” makes no distinction between criminal bans, civil remedies, or wholly private efforts to curtail the production and consumption of pornography. “Although [antipornography] feminists set no store by
conventional methods of censorship, I use ‘censorship’ here as a shorthand for any coercion, whether state initiated or by dint of informal public pressure, aimed at suppressing production, distribution, and consumption of pornography” (Dyzenhaus 1992, 534). This willingness to use criminal law to address the problem of pornography anticipates the approach to pornography regulation proposed by Elena Kagan that I discuss later in this chapter as well as in the conclusion.

28 This description of the conference is from the conference’s prospectus, excerpted in Off Our Backs, Vol. 23, No. 4.

29 This description comes from Laura Lederer and Richard Delgado’s introduction to The Price We Pay: The case against racist speech, hate propaganda, and pornography (1995), an edited volume that grew out of the conference.

30 For instance, both Catharine MacKinnon and Andrea Dworkin offered defenses of their now decade-old ordinance. Also, critical race theorist Kimberlé Krenshaw delivered a paper criticizing objections to hate-speech regulation that relied on “a particular descriptive and normative image of social relations” in which people “in the absence of state interference” are thought to be “formally equal with one another, … interacting on a free plane, a space open to all, where any inequalities are the products of competition” (Lederer and Delgado 1995, 170). Such an image, Crenshaw argued, is “insufficiently attuned to social reality” and constitutes a “wholesale denial of the social context of racial domination” (Lederer and Delgado 1995, 175; 170).

31 For instance, in their introduction to The Price We Pay, the edited volume that grew out of the University of Chicago conference, conference organizers Laura Lederer and Richard Delgado highlighted two of Kagan’s reform proposals, hate crimes laws and laws criminalizing racist and sexist threats or “fighting words,” as potentially effective solutions to the problems of pornography and hate speech (Lederer and Delgado 1995, 8-10).

32 Leidholdt had been active in the antipornography feminist movement virtually from its inception. She was a founding member the New York chapter of WAVAW (Women Against Violence Against Women) and a participant in that organization’s boycott of the recording industry in the late 1970s. In the early 1980s, she became a leader of WAP (Women Against Pornography). In this capacity, she organized protests against Playboy magazine and drummed up support for the Dworkin-MacKinnon ordinance in cities throughout the U.S. See Bronstein, Battling Pornography, 2011.

33 In her introduction to a volume she co-edited with Janice Raymond entitled The Sexual Liberals and the Attack on Feminism (1990), Leidholdt criticized the liberal contention that “[human freedom] flourishes as long as the power of the state over the individual is kept in check” (Leidholdt and Raymond 1990, xii). “Although this philosophy accurately describes the situation of white men in this country,” Leidholdt claimed, “it has never been applicable to the situation of minorities and women” (Leidholdt and Raymond 1990, xii).

34 Catharine MacKinnon actually called attention to this aspect Leidholdt’s approach during her presentation at this same conference, remarking that, while there may be a civil rights law prohibiting “a hostile working environment,” “there is no law against a hostile living environment, so everywhere [besides the workplace, pornography] is protected speech” (Lederer 1995, 311).


36 Nussbaum credits Barbara Herman’s “Could It Be Worth Thinking About Kant on Sex and Marriage” in A Mind of One’s Own: Feminist Essays on Reason and Objectivity (Boulder, CO: Westview, 1993) for prompting her to think about MacKinnon as a Kantian of sorts.

Jeanne Schroeder’s “The Taming of the Shrew: The Liberal Attempt to Mainstream Radical Feminist Theory” (1992) is one notable exception. Also, in *Defending Pornography*, Nadine Strossen expresses distress at the fact that “feminist proposals to suppress pornography… have been sympathetically received among sectors of the public that traditionally have resisted calls for censorship, including liberals, the media, and academia” (Strossen 1995, 83). However, beyond observing that “the Dworkin-MacKinnon approach to pornography… has dominated many segments of academia, including elite law schools and women’s studies programs,” she does not explore this phenomenon in any great detail (Strossen 1995, 83).
CHAPTER 4
SEX RADICAL FEMINISM AND LIBERALISM

On April 24, 1982, some 800 scholars, students, writers, artists, and activists convened at Barnard College for a conference entitled “The Scholar and the Feminist IX: Towards a Politics of Sexuality.” According to Carole Vance, the academic coordinator for the conference, the conference’s aim was to “refocus” the “feminist agenda on sexuality” by addressing “women’s sexual pleasure, choice, and autonomy, acknowledging that sexuality is simultaneously a domain of restriction, repression, and danger as well as a domain of exploration, pleasure, and agency” (Vance 1993a, 11; 1984, 443).¹ Judith Butler, who attended the conference as a graduate student and reviewed its controversial program, A Diary of a Conference on Sexuality,³ for Gay Community News, stated the conference’s aim more directly. “The clear purpose of the Diary – and of the Barnard conference –,” Butler wrote, “is to dislodge the anti-pornography movement as the one and only feminist discourse on sex” and “counterbalance the anti-pornography perspective on sexuality with an exploration into women’s sexual agency and autonomy” (Butler 1982).

Not all those who attended the Barnard conference embraced this aim. In fact, on the morning of the conference, just outside the gates of Barnard Hall, a group of self-identified “radical” and “lesbian feminists” formed a picket line. Sporting t-shirts that read “For a Feminist Sexuality” on the front and “Against S/M” on the back, the protestors distributed a two-page leaflet accusing the conference, as well as one organizer, two presenters, and one attendee by name,⁴ of endorsing “sexual institutions and values that oppress all women,” including “pornography,” “butch-femme sex roles,” “sadomasochism,” “violence against women,” and the sexual abuse of children (Coalition for a Feminist Sexuality 1983, 180-181).⁵ Although the leaflet was signed “the Coalition for a Feminist Sexuality and Against Sadomasochism (Women
Against Violence Against Women; Women Against Pornography; New York Radical Feminists),” it was soon discovered to have been the almost exclusive handiwork of the New York-based antipornography feminist organization, Women Against Pornography (WAP).  

WAP’s protest at the Barnard conference is often portrayed as the catalyst for feminism’s sex wars. And, indeed, if the sex wars are conceived of as a straightforward conflict between antipornography feminists on one side and sex radical feminists on another, the Barnard conference seems an almost natural starting point. However, as my recounting of the complex and shifting relationship between antipornography feminism and liberalism in the previous two chapters has demonstrated, the sex wars were not a simple, two-sided, and wholly internecine feminist affair, but a dynamic array of conflicts and relationships that encompassed a variety of participants, including antipornography feminists, sex radical feminists, and liberals of various stripes. In the previous two chapters, I excavated and explored antipornography feminism’s vicissitudinous relationship with liberalism. In the present chapter, I do the same for sex radical feminism.

Conceived in the late-1970s in the interstices of the women’s liberation and gay liberation movements, sex radical feminism combined a trenchant critique of heterosexuality with a scandalously expansive vision of sexual freedom and cultural practices of identity articulation and community building for marginalized groups on the sexual fringe. While sex radical feminism is often portrayed as a reaction against antipornography feminism’s single-minded focus on sexual violence at the expense of sexual pleasure and its complicity in the marginalization of stigmatized sexual minorities, antipornography feminism was not the only discourse on sex that sex radical feminism challenged. In its earliest articulations, sex radical feminism also offered a powerful rebuke to conventional liberal views regarding sex and
sexuality. Then, in the mid-1980s, as Andrea Dworkin’s and Catharine MacKinnon’s antipornography civil-rights ordinance gained momentum across the United States, sex-radical feminists aligned themselves with antipornography feminism’s longtime foes, anti-censorship civil libertarians. While sex radical feminists’ strategic deployment of liberal anti-censorship rhetoric proved effective insofar as it contributed to the defeat of the Dworkin-MacKinnon ordinance, this effectiveness came at a price. Aspects of sex radical feminism not readily assimilable to a liberal idiom were obscured and, by the mid-1990s, sex radical feminism had been overtaken by a markedly more liberal project, “anti-censorship”/“pro-sex” feminism.

The Sex Radical Feminist Critique of Liberalism

As I described in chapter two, in the late-1950s and 60s, a cadre of civil libertarian attorneys, publishers, authors, and film producers waged a concerted campaign against the Comstock-era regime of obscenity regulation in the United States. This campaign, I argued, provided a crucial impetus for the emergence of antipornography feminism, which openly called into question its guiding premise: that sex is fundamentally private, apolitical, and harmless. Although sex radical feminists did not engage in dramatic public debates and confrontations with liberals comparable to those engaged in by antipornography feminists in the 1970s and early 1980s, their audacious demands for a vibrant and diverse public sexual culture stood in stark contrast to the measured pleas of mid-century civil libertarians for a somewhat wider berth for sexual expression. In this sense, sex radical feminism, much like its foil, antipornography feminism, can be seen as a critical response to the limited sexual politics of post-war liberalism.

As historian Whitney Strub has observed, throughout the mid-20th century, American liberals opposed censorship in ways that reinforced “a normative sexual regime” (Strub 2011, 44). Not even the stalwart civil libertarians who challenged the Comstock-era regime of obscenity regulation head on were willing to defend sexual expression qua sexual expression or
sexual expression tout court. Consider, for example, the argument made by celebrated civil liberties attorney Charles Rembar in *Grove Press, Inc. v. Christenberry* (1959), the landmark case that exonerationed the first unexpurgated American edition of D. H. Lawrence’s *Lady Chatterly’s Lover* from charges of obscenity and that pioneered the legal strategy that would lead to the exoneration of dozens of other sexually explicit works throughout the 1960s and 70s. As Rembar explains in his first-hand account of the trial, in this case, he did not argue “that the Comstock Act as a whole was invalid, but that the First Amendment forbade its application to the book [he] was defending” (Rembar 1968, 119). Rembar offered two reasons why *Lady Chatterly’s Lover* ought to be exempt from regulation under the Comstock Act. First, despite its patent “lustfulness,” the novel was not “utterly worthless,” and Rembar produced a coterie of scholars, critics, and other literary “experts” to testify to the novel’s status as a “modern classic” (Rembar 1968, 119). Since the Supreme Court, in *Roth v. United States* (1957), had described obscenity “as utterly without redeeming social importance,” a work with “literary merit” such as *Lady Chatterly’s Lover* could not, Rembar reasoned, be adjudged obscene (Rembar 1968, 119). Second, although the novel, in Rembar’s words, “might arouse lust…. it was not the nasty kind of thing that could be called prurient” (Rembar 1968, 124). Since the Supreme Court, also in *Roth v. United States*, had described obscenity as appealing to a “prurient,” meaning “dirty, nasty, morbid, [and] unwholesome,” interest in sex, a work that appealed to a “healthy” and “normal” interest in sex such as *Lady Chatterly’s Lover* could not, Rembar reasoned, be adjudged obscene (Rembar 1968, 124).

As these arguments indicate, in this pioneering challenge to obscenity regulation, neither the legal category of obscenity nor its association with prurience were called into question. In fact, Rembar’s defense of *Lady Chatterly’s Lover* invoked the very logic used to justify the
work’s suppression: productions that are merely “lustful” are of dubious value and “prurience” is beyond the pale. It is tempting, of course, to view this equivocal defense as born of necessity rather than principle. Rembar was, after all, an attorney out to win a law suit, not a philosopher accountable only to his own utopian imaginings. Surely, one might think, a more robust vision of sexual freedom must have animated these narrow legal arguments; as a matter of fact, though, there is much evidence to the contrary. For instance, within a decade of the resolution of Grove Press v. Christenberry, Rembar could be heard publicly denouncing the more permissive sexual culture his groundbreaking legal victory helped bring about. “There is an acne on our culture,” Rembar wrote in the concluding chapter of his memoir The End of Obscenity (1968), pointing to a glut of books, magazines, advertisements, and films that “play upon concupiscence” and “peddle sex with an idiot slyness” (Rembar, 1968, 491). “The current uses of the new freedom are not all to the good,” Rembar warned, “We approach a seductio ad absurdum” (Rembar 1968, 491). Fortunately, Rembar continued, “the present distorted, impoverished, masturbatory concentration on representations of sex will diminish as the restraints on expression recede” (Rembar 1968, 492). “As the courts move along their present path,” Rembar concluded, “they hustle pornography off the scene, a billy in its back” (Rembar 1968, 492).

Rembar’s reflections on “the end of obscenity” reveal a profound ambivalence about sex at the heart of the post-war liberal campaign against obscenity regulation. Undeniably, this campaign sought to broaden the legal boundaries for sexual expression in the United States. However, in doing so, it simultaneously sought to narrow the range of sexual expression on offer and to shore up conventional boundaries between healthy and pathological sex. Nowhere are these ambivalent sexual politics more vividly on display than in “The Playboy Philosophy,” a series of editorial essays written by Playboy Magazine’s creator and editor, Hugh Hefner, and
published in *Playboy* between December 1962 and May 1965. In this ungainly manifesto, Hefner excoriates the law of obscenity for its inability “to discern between the erotic wheat and the salacious chaff” (Hefner 1963, 87). “Few censors comprehend the labyrinthian twistings and turnings that suppressed or perverted sexuality may take in the human animal,” Hefner explained, and, as a consequence, “far more energy is expended… in attempts to suppress appeals to the normally heterosexual than to the somewhat more subtle offerings to sadism, masochism, the homosexual and fetishism” (Hefner 1963, 31). By “remov[ing] the primary heterosexual sources of stimulation from society,” Hefner believed that censorship compelled men “to affix [their] responses to something else – other men, perhaps, or perhaps a shoe or a bit of lace underwear” (Hefner 1963, 90). “This is the kind of sickness,” Hefner thundered, “that the unknowing censor can bring to society” and its only cure is the curtailment of the censor’s power to suppress healthy and normal sexual expression (Hefner 1963, 90). If this prescription is followed, Hefner promised, “perversion, neurosis, psychosis, unsuccessful marriage, divorce and suicide” will diminish and “happy and healthy” sex will flourish (Hefner 1963, 82-83; 89).

This liberal faith in the capacity of sexual freedom to root out sexual perversion lived on well into the 1970s. For instance, in 1978, Herald Price Fahringer, attorney for both Larry Flynt, publisher of *Hustler*, and Al Goldstein, publisher of *Screw*, confessed that he was “distress[ed]” by the “enormous demand for pornography” and the ubiquity of depictions of “gross sex” (Fahringer 1979, 289). “I find something very unhealthy,” Fahringer explained, “about this preoccupation with… sex which is not tastefully portrayed,” “which is not erotic,” and which “is unlike that which is exciting, that which we saw eight years ago in *Playboy*, for example, a beautiful woman… portrayed very attractively” (Fahringer 1979, 290). The antidote to the distressing proliferation of “pornography” and “gross sex,” Fahringer insisted, was not censoring
sexual expression, but freeing it. “Obscenity,” Fahringer explained, “breeds and multiplies in the dark crevices of a frightened society preoccupied with a sense of self-censorship” (Fahrginger 1979, 253). “Once pornography is exposed to the strong sunlight of a completely free and uninhibited people,” Fahringer prophesied, “its appeal will surely diminish” (Fahringer 1979, 253). Like John Stuart Mill, who famously argued that censorship “robs the human race… of the opportunity of exchanging error for truth,” liberal opponents of obscenity regulation believed that the censorship of sexually explicit materials robs the human race of the opportunity of exchanging obscenity’s tawdry thrill for more dignified and authentic pleasures (Mill 1989, 20).

During the sex wars, sex radical feminists assailed this ambivalent sexual politics in a variety of ways. First, unlike mid-century civil libertarian defenders of sexual expression, sex radical feminists were out to subvert boundaries separating the obscene from the non-obscene, the prurient from the wholesome, and the perverse from the normal, not shore them up. This aim is evident throughout sex radical feminist writings, including the first expressly sex radical feminist publication, *What Color is Your Handkerchief: A lesbian s/m sexuality reader* (1979). Published in June of 1979 by the San Francisco-based lesbian feminist s/m group Samois, *What Color is Your Handkerchief* is a 45-page pamphlet on the practice and politics of lesbian sadomasochism. It opens with Samois’s mission statement in which the group’s members identify themselves as “feminist lesbians who share a positive interest in sadomasochism” and “believe that… S/M can exist as part of a healthy and positive lifestyle” (Samois 1979, 2). With this simple act of identification, Samois’s members directly challenged the notion, propagated by mid-century civil libertarians like Rembar, Hefner, and Fahringer, that the only “healthy” and “positive” sex was vanilla (i.e. non-kinky) and heterosexual.
Samois’s mission statement also challenged another boundary between the perverse and the normal, this one defended by many of their lesbian feminist peers. According to “political lesbians” like Ti-Grace Atkinson and Rita Mae Brown, sex involving “power, dominance, role play, and oppression” ran counter to feminist values (Brown 1975). This meant that sadomasochism, which Samois defined as “an eroticized exchange of power negotiated between two or more sexual partners,” was suspect, even counterrevolutionary (Samois 1979, 2). Samois’s members flatly rejected this proposition, arguing that it amounted to a feminist redescription of conventional notions of sexual propriety. “As radical perverts,” Samois’s members declared, “we oppose all social hierarchies based on sexual preference” (Samois 1979, 2). This included hierarchies defended by non-feminist liberals and lesbian feminists alike.

The most radical interrogation of boundaries dividing the perverse from the normal included in What Color is Your Handkerchief is Gayle Rubin’s essay “Sexual Politics, the New Right, and the Sexual Fringe.” In this essay, Rubin, a founding member of Samois and a leading sex radical feminist theorist, called on the women’s and gay liberation movements to work in solidarity with “sadomasochists,” “prostitutes,” “hustlers,” “pedophiles,” “pederasts,” “lovers of young people,” and “men cruising for sex in public places” to secure “legitimacy, rights, and recognition” for all “second class sexual citizens” (Samois 1979, 28-30). “At a time when feminists are called lesbians, when homosexuals are portrayed as child molesters, and when child ‘molesters’ are presented as the four horsemen of the apocalypse,” it is “imperative,” Rubin contended, “that the women’s and gay movements develop more sensitivity to the problems, the humanity, and the legitimate claims of stigmatized sexual minorities” (Samois 1979, 29-30). Rubin’s plea for understanding, “tolerance,” and “simple justice” for groups whose sexual desires and practices are almost universally reviled underscores the extent to which sex radical
feminists were committed to the destabilization of sexual hierarchies and the subversion of boundaries separating perversion from normalcy (Samois 1979, 29; 33).

The defenses of stigmatized and even criminalized sexualities offered up in What Color is Your Handkerchief point to another significant challenge sex radical feminism posed to the sexual politics of post-war liberalism. Unlike mid-century civil libertarians who sought little more than the easing of extant obscenity regulations, sex radical feminists were out to upend what they viewed as a massive socio-legal regulatory apparatus aimed at the enforcement of erotic conformity. One of the most outspoken sex radical feminists on this score was writer, sex educator, and Samois co-founder, Pat Califia. While Califia is best known for her unsparing critiques of the antipornography feminist movement, she was much more than an opponent of censorship. In fact, in a pair of controversial articles published in The Advocate in the fall of 1980, Califia spoke out passionately in defense of “boy-lovers,” gay men who have sex with male minors, and against laws criminalizing consensual intergenerational sex, including statutory rape and child pornography laws. Just two years later, in another article for The Advocate, Califia came to the defense of “tearoom cruisers,” men who have sex with other men in public restrooms, and forcefully condemned laws criminalizing public sex. In Califia’s view, such laws were not sensible measures designed to protect children or the public, but thinly veiled mechanisms for the punishment of erotic dissidence and the forcible maintenance of “the nuclear family and everything it stands for – middle-class values, homophobia, uniformity, and puritanism” (Califia 1994a, 50).

In her seminal contribution to sex radical feminist theory, “Thinking Sex: Notes For A Radical Theory of The Politics of Sexuality,” Gayle Rubin offered a similar critique of the sexual regulatory regime in the U.S, even going so far as to compare certain aspects of it to “legalized
“racism” (Rubin 1984, 291). In Rubin’s view, laws prohibiting “same sex contact, anal penetration, and oral sex make homosexuals a criminal group denied the privileges of full citizenship” (Rubin 1984, 291). Rubin also decried laws denying minors “access to ‘adult’ sexuality” such as age of consent laws, custody laws that “permit the state to steal the children of anyone whose erotic activities appear questionable,” and certification laws that “require teachers arrested for sex offenses to lose their jobs and credentials” (Rubin 1984, 290). In Rubin’s view, such laws did not protect children so much as cut them off from unorthodox sexual possibilities, thereby ensuring “the transmission of conservative sexual values” from one generation to the next (Rubin 1984, 290). “I don’t think that any consensual sexual behavior should be illegal,” Rubin stated categorically, calling for the “repeal of all sex laws except those few that deal with actual, not statutory, coercion” and “the abolition of vice squads, whose job it is to enforce legislated morality” (Rubin 1984, 294).¹⁸

In addition to calling for the restructuring of sex law to emphasize consent and punish coercion, sex radical feminists also criticized many extra-legal modes of sexual regulation. As Rubin observed in “Thinking Sex,” “although the legal apparatus of sex is staggering, most everyday social control is extra-legal,” taking the form of “less formal, but very effective social sanctions” such as family violence, discrimination in employment, housing, and health-care provision, psychiatric diagnoses, religious condemnation, zoning ordinances relegating sex-related businesses to marginal “sexual underworlds,” discriminatory enforcement of alcoholic beverage codes to shut down businesses catering to sexual minorities, and street harassment (Rubin 1984, 292; 289; 295). Taken together with more formal legal regulations, sex radical feminists believed that these sanctions amounted to a “system of sexual oppression,” a “Kafkaesque nightmare in which unlucky victims become herds of human cattle whose
identification, surveillance, apprehension, treatment, incarceration, and punishment produce jobs and self-satisfaction for thousands of vice police, prison officials, psychiatrists, and social workers” (Rubin 1984, 293). Their ultimate goal was to dismantle this oppressive system and destroy what one sex radical feminist evocatively described as “the sexual hell in which we all grew up” (Rubin 1984, 293; 1979, 11).19

It almost goes without saying that sex radical feminists’ demands for liberation from the “Kafkaesque nightmare” of sexual oppression far outstripped anything civil libertarian opponents of obscenity regulation ever imagined.20 As I have already described, post-war liberal defenders of the freedom of sexual expression like Rembar, Hefner, and Fahringer did not seek to challenge sexual norms but to bolster them by swaddling appeals to “healthy,” “normal,” and “natural” sexual desire in the protection of the First Amendment. Even Al Goldstein, the publisher of the pornographic magazine Screw who prided himself on his willingness to transgress boundaries of sexual propriety others dared not, was unwilling to question taboos concerning intergenerational sex and publically supported stiff criminal penalties for child pornography as a delegate to the Libertarian Party national convention in 1991 (Buckley 1991).

The failure of mid-century liberals to confront the system of sexual oppression in all its facets and offer a clear, consistent, and unqualified defense of sexual freedom was a frequent target of sex radical feminist criticism. For instance, in an article reflecting on the passage of the Protection of Children against Sexual Exploitation Act of 1977, Pat Califia criticized attorney Heather Grant Florence, who represented the ACLU at the congressional hearings for the Act, for neglecting to speak out on behalf of those targeted by the legislation. According to Califia, Florence’s “only objection to [the bill, which made it a felony… to photograph or film a child (anyone under sixteen years of age) in the nude, engaged in sexual activity with another person
or masturbating] was the threat it posed to the First Amendment. She did not object to the committee’s position that sex is bad for children and she even suggested that it would be appropriate for [the committee] to increase the legal penalties for adults who have sex with minors” (Califia 1994a, 45). In Califia’s view, Florence’s testimony missed the point; what was at stake in the proposed law was not only or even primarily expressive freedom, but the sexual freedom of young people, their adult friends and lovers, and gay people generally who were likely to bear the brunt of a law enforcement crack down on sex crime (Califia 1984c, 71).

Califia made a similar point regarding the testimony civil libertarians offered before the 1986 Attorney General’s Commission on Pornography (more commonly known as the “Meese Commission”). “A lot of the people who turned up to testify before the commission on behalf of the First Amendment,” Califia noted, “did not focus their testimony on the issue of pornography” and “chose instead to speak about the dangerous impact that censorship could have on the arts, theater, and literature” (Califia 1984d, 36). As Califia saw it, the failure of these liberals to “stand up at the Meese Commission and say, ‘I want to be able to see somebody get spanked, tied up, and soundly fucked in a full-color film with a gorgeous soundtrack,’” left an opening for the Justice Department to implement many of the Commission’s most draconian recommendations, including cracking down on the production, distribution, and display of gay and s/m pornography as well as comparatively uncontroversial “vanilla porn” (Califia 1994d, 36).

Sex radical feminists were also critical of liberal responses to California’s Proposition 6 (more commonly known as the “Briggs Initiative”), a ballot initiative put forward in 1978 that sought to ban gays, lesbians, and their supporters from working in California’s public schools. For instance, Amber Hollibaugh, a sex radical feminist writer and activist who played a critical
role in the campaign to defeat the Briggs Initiative, spoke out against her anti-Briggs allies advocating a “human rights approach” (Hollibaugh 2011, 53). In Hollibaugh’s view, “emphasizing the ways in which the Initiative violated civil rights and human rights” was a misguided strategy; it “swept [sexuality] under the covers” and left the sexual fears and anxieties animating support for the Initiative unaddressed (Hollibaugh 2011, 50; 52-53; 55). Hollibaugh’s preferred approach, by contrast, was one that “directly confronted homophobia in all its cultural and political manifestations,” “defended sexual freedom,” and “talked about sexuality in an explicitly political way” (Hollibaugh 2011, 50). As Hollibaugh saw it, the Briggs Initiative was “an antigay issue” and framing it as an infringement of “civil rights” or “human rights” obscured this in an insidious and counter-productive way (Hollibaugh 2011, 52-53). “If you can’t be gay when you’re attacked as a gay person, but everybody knows you’re gay,” Hollibaugh explained, “you don’t have anywhere to go, you can’t do anything… It forces people right back into the closet, it makes you dead, it makes you crazy” (Hollibaugh 2011, 53). Like other sex radical feminists, Hollibaugh believed that the abstract liberal language of “civil rights” failed to grasp what Gayle Rubin once called “the political dimensions of erotic life” and hindered the cause of sexual liberation (Rubin 1984, 310).

One final challenge sex radical feminism posed to the sexual politics of post-war liberalism can be seen in the variety of political activities in which sex radical feminists engaged. While the political activities of mid-century civil libertarians were almost exclusively juridical and focused on challenging the constitutional category of obscenity, the political activities of sex radical feminists were primarily cultural and focused on a variety of objectives including identity articulation and community building. Nowhere were these multi-faceted cultural politics more apparent than in the lesbian feminist s/m organization Samois. According to its mission
statement, the purpose of Samois was to “build community, lessen isolation, and sharpen consciousness” among s/m lesbian feminists (Samois 1979, 3). To this end, they engaged in a variety of activities aimed at developing a distinct lesbian feminist s/m identity and community. They organized sex parties and educational workshops that catered to lesbians with feminist sensibilities and s/m sexualities. They published a guide to s/m businesses in San Francisco, an annotated bibliography of literature on lesbian s/m, and a glossary of lesbian feminist s/m terminology. Most significantly, they instituted the “handkerchief code,” a system designed to provide s/m lesbians a way to publically proclaim their sexual identities and preferences, identify one another on the street or in the bar, and “cruise” for prospective sexual partners. The code was simple enough to be practicable, yet complex enough to express an impressive degree of erotic variety. For instance, by sporting a red handkerchief in her left pocket, a woman could indicate that she was a “fist-fucker” (Samois 1979, 36). By moving that handkerchief from her left pocket to her right, she could identify as a “fist-fuckee” (Samois 1979, 36). If she switched her red handkerchief out for a black one, she could become either a “top” (left pocket) or a “bottom” (right pocket) into “heavy S/M and whipping” (Samois 1979, 36). All in all, 36 discrete sexual identities and preferences – ranging from “breast fondler/breast fondlee” to “likes menstruating women/is menstruating” – could be expressed using Samois’s handkerchief code. Lest neophytes have trouble keeping track of all these permutations, Samois offered wallet-sized “hanky code cards” for sale for a quarter.

In addition to working to build a s/m lesbian feminist community of their own, Samois also fought on behalf of s/m lesbian feminists for acceptance within existing gay, lesbian, s/m, and feminist communities. These battles often took the form of struggles for access to communal space. For instance, in 1979, Samois overcame the objections of the organizing committee and
secured a permit to march in San Francisco’s Gay Freedom Day Parade. Later that same year, Samois and its allies pressured the Oakland based feminist bookstore A Woman’s Place into stocking Samois’s pamphlet on lesbian feminist s/m, *What Color is your Handkerchief*. In 1981, after much wrangling with wary staff members, Samois even managed to host an event for s/m lesbians in San Francisco’s Women’s Building. Throughout the four years it existed, Samois also fought many smaller battles to gain access to bars, bathhouses, and sex clubs traditionally reserved for gay men, “vanilla” lesbians, or straight s/m people.21

As Samois’s variegated political activities indicate, the politics of sex radical feminism exceeded a simplistic liberal politics of anti-censorship and legal reform. While sex radical feminists certainly sought to change laws, including those regulating the production and distribution of “obscene” materials, they also sought to carve out broad swaths of public space for sexuality in general and to make alternative sexualities more vibrant, visible, and accessible. Ending the censorship of sexual expression by the state was one part of this, but such legal reform was not the be-all end-all of sex radical feminist politics. Pat Califia makes this point in the introduction to *Public Sex* (1994), a collection of her most influential sex radical feminist writings. “Battles over freedom of expression,” Califia writes, “have implications far beyond the mere ability of print to circulate without being hampered by agents of the state” (Califia 1994d, 19). Also at stake in these battles, Califia observes, is the power of marginalized sexual minorities “to say what [their] sex means” (Califia 1994d, 19). According to Califia, “the line between word and deed is a thin one” and “a desire that cannot be named or described is a desire that cannot be valued, acted upon, or used as the basis for an identity” (Califia 1994d, 19). As this passage makes clear, sex radical feminists valued expressive freedom not as an end in itself, but as the adjunct of a larger and more fundamental sexual freedom. This freedom was not the
freedom Califia once described as the freedom “to visit sex as if it were a brothel or a shooting
gallery, get [a fix], and then go home without getting busted and publically labeled as [a pervert
or a sex fiend]” (Califa 1994d, 36). The freedom sex radical feminists sought was the freedom to
cultivate, craft, express, and live out their sexual desires, identities, and pleasures in public and in
the context of erotically nurturing communities. It was the freedom Amber Hollibaugh thought
gays and lesbians in San Francisco had finally achieved in the aftermath of the White Night
Riots. After the riots, Hollibaugh told the London-based journal The Gay Left, “we have a
different sense of how we’re gay in this town. Not only gayer in the Castro, but gayer
everywhere” (Hollibaugh 2000, 117). It was also the freedom Califia described when she
brazenly declared, “I want the freedom to be as queer, as perverted, on the street and on the job
as I am in my dungeon” (Samois 1981, 251). This freedom vastly exceeded the freedom sought
by mid-century civil libertarians to peruse non-prurient sexually explicit materials possessing
some modicum of redeeming social value in private.

Ellen Willis, an influential sex radical feminist writer and activist who is, perhaps, best
known for her work as a pop music critic for The New Yorker, called attention to this distinction
between the sexual freedom sought by liberals and the more expansive sexual freedom sought by
her and her fellow feminist sex radicals. As Ellis explained, “The philosophy of the ‘sexual
revolution’ as we know it is an extension of liberalism: it defines sexual freedom as the simple
absence of external restrictions – laws and overt social taboos – on sexual information and
activity… This is a superficial view… From a radical standpoint…, sexual liberation involves
not only the abolition of restrictions but the positive presence of social and psychological
conditions that foster satisfying sexual relations… [F]rom that standpoint, this culture is still
deply repressive” (Willis 2014, 184-185).
The foregoing argument, that sex radical feminism posed a number of fundamental challenges to the sexual politics of post-war liberalism, cuts against a long-standing interpretation of sex radical feminism as, essentially, classical liberalism applied to sex. One of the earliest examples of this interpretation appeared in 1982 in the edited volume *Against Sadomasochism* (1982). Here, philosopher Bat-Ami Bar On accuses feminist defenders of sadomasochism of “taking liberal trends to their logical conclusion” and employing “a liberal conception of sexual liberation in which sexual conduct is a matter of individual expression” devoid of any “relational context” (Bar On 1982, 72). Two years later, in an article in *Feminist Review*, Marie France proffered a similar reading, accusing “SAMOIS members” of defending sadomasochism “by means of the liberal credo, a strategy based on a distinction between public and private morality where law only regulates public activity” (France 1984, 35). In that same year, Ann Ferguson published an article in *Signs* characterizing sex radical feminists as “libertarians” (Ferguson 1984, 107). In 1990, this interpretative thesis reached its apogee with the publication of Dorchen Leidholdt’s and Janice Raymond’s *The Sexual Liberals and the Attack on Feminism* (1990). Throughout this collection, the politics of sex radical feminists like Gayle Rubin are lumped together with those of civil libertarians like Hugh Hefner and both are derided for their “sexual liberalism” (Leidholdt and Raymond 1990, xi; 15, 133).

In my view, such interpretations are misleading and mistaken. Not only do they overlook the substantial political differences that existed between sex radical feminists and liberals on issues like pornography, public sex, intergenerational sex, and gay rights in the late 1970s and early 1980s, but they obscure many of sex radical feminism’s most distinctive features. Sex radical feminists condemned defenses of sexual behavior rooted in appeals to privacy, rejected individualistic conceptions of sexual identity and freedom, questioned
portrayals of sexual desire as natural or innate, and demanded a sexual freedom that entailed the destruction of the complex of laws, norms, and social practices that Gayle Rubin called “the system of sexual oppression” as well as the cultivation of diverse sexual identities and erotic communities. Taken together, all of this indicates that sex radical feminism was not a species of liberalism, but a critical engagement with it.

**From Sex Radical to Anti-Censorship/Pro-Sex Feminism**

In the late-1970s and early 1980s, sex radical feminism stood as a defiant alternative to the sexual politics of post-war liberalism. During this period, sex radical feminists like Gayle Rubin, Pat Califia, Amber Hollibaugh, and Ellen Willis challenged the erotic hierarchies that liberals reified and demanded not merely the reform or repeal of extant obscenity laws, but an end to sexual oppression in all its guises and the active cultivation of a vibrant and diverse public sexual culture. However, in the mid-1980s, as sex radical feminists mobilized to combat Andrea Dworkin’s and Catharine MacKinnon’s antipornography civil-rights ordinance, the lines between sex radical feminism and civil libertarianism began to blur. In an effort to counter the lurid rhetoric of antipornography feminists, sex radical feminists began to employ the liberal rhetoric of “anticensorship,” positioning themselves as defenders of expressive freedom pitted against an antipornography movement eager to prescribe its own conservative sexual vision by law. This strategic deployment of civil liberties rhetoric yielded ambiguous results for sex radical feminism. While the Dworkin-MacKinnon ordinance was defeated and a space for a more robust defense of sexual expression than liberals had traditionally offered was opened up within the conceptual confines of liberalism, these achievements came at a price: sex radical feminism’s most distinctive aspects – its expansive vision of sexual freedom, its concern with modes of sexual oppression beyond the censorship of sexual expression by the state, and its commitment to cultural projects of identity articulation and community building on the “sexual fringe” – were
muted and ultimately displaced as sex radical feminism was subsumed under the banner of “anti-censorship/pro-sex” feminism.

The displacement of sex radical feminism by anti-censorship/pro-sex feminism began in the early 1980s as the Dworkin-MacKinnon ordinance gained momentum and sex radical feminists began to organize in opposition to it. Although the ordinance was defeated twice by a Mayoral veto in the City of Minneapolis where it was originally proposed, it fared better in Indianapolis where it passed into law in the spring of 1984. Over the next two years, versions of the Dworkin-MacKinnon ordinance were also considered in Suffolk County, New York, Madison, Wisconsin, Bellingham, Washington, Los Angeles County, California, and Cambridge, Massachusetts. In most of these cities, coordinated opposition to the ordinance came primarily from antipornography feminism’s long-time foes, civil libertarian opponents of obscenity regulation. However, in several instances, traditional liberal coalitions of booksellers, publishing trade associations, and state civil liberties unions were joined by sex radical feminists acting under the aegis of a new organization, the Feminist Anti-Censorship Taskforce (FACT).

According to Carole Vance, an influential sex radical feminist and FACT co-founder, FACT was formed in the fall of 1984 in response to the introduction of a Dworkin-MacKinnon style antipornography ordinance in Suffolk County, New York (Vance 1993a). Within a year, FACT chapters had sprung up in Madison, Wisconsin, Los Angeles, California, and Cambridge, Massachusetts “to oppose the enactment of Indianapolis-style antipornography laws” (Duggan and Hunter 2006, 23; 242). To this end, FACT engaged in a variety of activities, including offering formal testimony at public hearings concerning the ordinance, organizing a street-theatre action in protest of the 1986 Attorney General’s Commission on Pornography, and publishing Caught Looking (1986), a tabloid-style book that paired essays criticizing antipornography
feminism with sexually explicit photographs and illustrations. However, FACT’s most influential intervention was an amicus brief it submitted on behalf of the plaintiffs in a legal challenge to the version of the Dworkin-MacKinnon ordinance enacted by the City of Indianapolis, *American Booksellers v. Hudnut* (771 F.2d 323 (7th Cir. 1985)).

Authored by feminist legal scholars Nan Hunter and Sylvia Law and signed by what the radical feminist periodical *Off Our Backs* described as “an extraordinarily wide range of feminists” from veteran sex radicals like Amber Hollibaugh and Gayle Rubin to civil libertarian attorneys like Nadine Strossen and David Richards, the FACT brief sought to persuade the Court of Appeals for the Seventh Circuit that the Indianapolis ordinance was unconstitutional (Wallsogrove 1985, 12). To this end, the brief marshaled two primary arguments. First, the brief maintained, the ordinance’s definition of pornography was “unconstitutionally vague” and, when paired with the ordinance’s trafficking provision, it amounted to a license to “censor” a “virtually limitless” number of materials in violation of the First Amendment’s free speech guarantee (Hunter and Law 1987, 108; 89; 101). Second, the brief contended, by defining pornography in “gender specific terms as ‘the graphic sexually explicit subordination of women,’” the ordinance “resonate[d] with the traditional concept that sex itself degrades women” (Hunter and Law 1987, 132; 105). In FACT’s view, “sexually explicit speech [was] not *per se* sexist or harmful to women” and a law designed to protect women from such a dubious harm “perpetuate[d] central sexist stereotypes” and violated the Fourteenth Amendment’s equal protection guarantee (Hunter and Law 1987, 89; 130).

Judged solely on the basis of these arguments, the FACT brief appears to be a conventional liberal effort. It figures sexually explicit expression as harmless and denounces attempts to regulate it as censorious encroachments on the freedom of speech. Even the FACT
brief’s novel deployment of the equal protection clause was largely in keeping with the traditional liberal claim that obscenity regulation is patronizing and paternalistic. However, despite these affinities, the FACT brief was no straightforward rehearsal of the liberal creed. In fact, it flouted liberal convention in many ways. For instance, its bold vindication of “sexual speech” as “political” and “highly relevant to our decision-making as citizens on a wide range of social and ethical issues” was a far cry from liberals’ traditionally ambivalent defenses of sexual expression as private and permissible only in a few discreet settings. Similarly, the FACT brief’s argument that the Indianapolis ordinance would exacerbate the “massive discrimination” endured by “sexual minorities” by making their already marginalized “erotica” even more susceptible to suppression was not an argument that traditionally emanated from liberal quarters (Hunter and Law 1987, 109). In fact, liberals had traditionally argued just the opposite: that censorship laws unjustly targeted non-prurient, wholesome, healthy, and normal (read: conventionally heterosexual) materials for suppression and did little to staunch the flow of prurience, filth, and smut. Finally, the FACT brief’s dominant theme (apart from the threat the Indianapolis ordinance posed to expressive freedom in general, of course) was fear that, if enacted, the Indianapolis ordinance would furnish conservatives with “an effective tool” for the curtailment of women’s “freedom to appropriate for themselves” the “traditionally male language” of sexuality (Hunter and Law 1987, 121-122). Such concern for women’s, or anyone’s, ability to express “unladylike, unfeminine, aggressive, power-charged, pushy, vulgar, urgent, confident, and intense” ideas about sex was a definite departure from liberal orthodoxy (Hunter and Law 1987, 122).

That the FACT brief defied as it reproduced the conventional liberal line on “free speech” points to what is, in my view, the most significant aspect of FACT’s intervention in the debate.
over the Dworkin-MacKinnon ordinance. Although many of FACT’s founders and supporters were sex radical feminists committed to an expansive vision of sexual liberation that exceeded liberal strictures, the organization was guided by a strategic vision that held that “effective political action consists in appropriating, transforming and deploying the friendliest discourses, in order to counter the most hostile ones” (Duggan and Hunter 2006, 2). In keeping with this strategy, FACT co-founder Lisa Duggan has explained, FACT “appropriated the rhetoric of ‘anticensorship’” along with the accompanying “framework of civil liberties” to construct what Duggan calls a “bridge discourse” connecting the “reform politics of liberal and progressive groups” to the more radical politics of sex radical feminism (Duggan and Hunter 2006, 2). By speaking in a liberal idiom, FACT was able to hitch sex radical feminism’s ambitious agenda, which included resisting sexual oppression in all its forms and creating a vibrant and diverse public sexual culture, to a familiar (and much less threatening) liberal politics of “free speech” and “civil liberties” (Duggan and Hunter 2006, 7). This enabled FACT to make not only an effective case against the Indianapolis ordinance, but a lasting contribution to liberal thought as well: FACT’s strategic deployment of liberal rhetoric led directly to the creation of a new liberal discourse on pornography and sexual freedom that provided a stark alternative to the ambivalent one liberals had traditionally employed: “anticensorship/pro-sex feminism.”

A key figure in the articulation and popularization of this new liberal discourse was Nadine Strossen. As president of the ACLU, founder of Feminists for Free Expression, and a member of the National Coalition against Censorship’s Working Group on Women, Censorship, and “Pornography,” Strossen worked tirelessly to dispel the “widespread misperception,” “encouraged,” in her view, by “oversimplified, extremist, divisive, pronouncements by feminist pro-censorship leaders,” that feminists and civil libertarians were fundamentally at odds over
According to Strossen, “feminism and civil liberties are inextricable” and the “anticensorship position” customarily grounded in “free speech” and “First Amendment principles” also found sustenance in “feminist principles and concerns” (Strossen 1995, 15; Strossen 1993, 1103; 1106). To support this claim, Strossen drew on the arguments and ideas of sex radical feminists. “Censoring pornography,” Strossen insisted, would not only “violate… cherished First Amendment freedoms,” it would hinder “women’s efforts to develop their own sexuality,” exacerbate the oppression of lesbians and other sexual minorities, “harm women who voluntarily work in the sex industry,” and undermine “essential aspects of human freedom,” including “sexual freedom” (Strossen 1995, 14; Strossen 1993, 1111-1112). Such contentions, originally put forward by sex radical feminists as critiques of the limited defenses of sexual freedom liberals’ espoused, became, in Strossen’s hands, evidence of “the falseness of the purported dichotomy between feminist and civil libertarian principles” (Strossen 1987, 201). Once a critical alternative to liberalism, sex radical feminism had become its ally and its complement.

This improbable union of sex radical feminism and liberalism proved a potent one, contributing not only to the defeat of the Dworkin-MacKinnon ordinance, which, by the summer of 1986, was, legally speaking, a dead letter, but also bringing about some noteworthy shifts in liberal discourse concerning expressive freedom. With the advent of “anticensorship/pro-sex feminism,” liberals who had traditionally demurred from explicit and robust defenses of sexual freedom began to link their traditional concerns like censorship and free speech to a much broader set of concerns, including the freedom of sexual expression and the civil liberties of sexual minorities. A prime example of this new and expanded liberal discourse can be found in “Polluting the Censorship Debate,” a report issued by the ACLU in July of 1986 to criticize the
findings of the Attorney General’s Commission on Pornography (more commonly known as the “Meese Commission”). Throughout this report, the ACLU stakes out a series of positions that bear the unmistakable mark of sex radical feminist influence and diverge significantly from the species of civil libertarianism that animated the anticensorship campaigns of the 1960s and 70s.

The most obvious difference between the 1986 ACLU report and the anticensorship arguments of civil libertarians of the previous generation is that the ACLU report features a bold and unequivocal defense of sexual expression qua sexual expression. As the report states, “the… presumption that there is a difference between sexually-oriented speech and all other kinds of speech is completely unwarranted” and “the First Amendment should protect all sexually explicit speech” without regard to notions such as prurience, offensiveness, or social value or utility (27-29). The report roots this sweeping defense of the freedom of sexual expression in the claim that sexually explicit speech, including pornography, “transmits ideas,” “presents views of aesthetics and ethics about which public debate is certain and desirable,” and “may… have as its purpose or effect the promotion of a political or ideological viewpoint” (30). Among the aesthetic, ethical, and political ideas expressed in pornography according to the ACLU report is the idea that “the kind of sexual activity depicted,” no matter how widely stigmatized or seemingly “unpleasant,” “is worth doing, or at least worth watching” (30). In other words, the ACLU report argues, pornography has an important role to play in “legitimating specific sexual practices” (30). To bolster this claim, the ACLU report quotes directly from an essay by sex radical feminist theorist and activist Ann Snitow, noting that pornography may also promote “‘the joys of passivity, of helpless abandon, of response without responsibility,’” ideas that deserve, the ACLU report insists, to be on the agenda for “public debate… in a society valuing free expression” (30).
The 1986 ACLU report also parts company with the arguments of the previous generation of civil libertarian opponents of censorship by emphasizing pornography’s role in what the report describes as “‘the achievement of self-realization,’… or ‘self-fulfillment’” (31-32). By legitimating the viewers’ “deepest emotions, reactions, or most peculiar rational ideas by showing that others share them,” the ACLU report argues that pornography can play an important role in an individuals’ search for sexual meaning, fulfillment, identity, and community (32). “In the area of sexuality,” the report explains, “where social pressure and taboos frequently prevent the public airing of one’s thoughts, it is difficult even in an otherwise open and tolerant society to find others who feel similarly. There is obvious political significance attached to the knowledge that there are others who think as you do. The social message of certain sexually explicit material may be viewed by some people, particularly those in sexual minorities, as beneficial to their self-identity and self-understanding…” (32-33). This insistence on pornography’s value as a medium of self-realization and self-fulfillment, particularly for sexual minorities, marks a definite shift from earlier and much more ambivalent civil libertarian defenses of sexually explicit expression and shares an undeniable affinity with sex radical feminist ideas and arguments.

The ACLU report also signals concern for the dignity and civil liberties of sexual minorities in other respects. For instance, in its discussion of the Commission’s recommendation that “Congress should amend the Mann Act to make its provisions gender neutral,” the ACLU voices concern that such an amendment would simply “give prosecutors a new weapon against gay lifestyles” (122-123). The report also condemns the commission’s recommendations that “state and local public health authorities” should crack down on violations by “adults only” businesses” for similar reasons, decrying these recommendations as “transparent efforts to find
new ways to criminalize or regulate consensual (albeit dangerous in some cases) behavior, largely of gay or bisexual men” (134-135). The ACLU report even takes steps toward condemning the stigmatization of practitioners of s/m and defending the pornography of this nearly universally reviled sexual subculture. “Although the [Meese Commission’s] Report routinely includes the assertion that ‘sado-masochistic themes’ are ‘sexually violent,’” the ACLU report refers to “a whole body of literature… that suggests that much ‘S/M’ activity is both wholly consensual and non-violent” and insists that “portrayals of… sado-masochism… are not inherently dangerous, harmful or unfair” (69; 120).

In all of these respects, the ACLU’s 1986 report departs from liberal conventions of the 1960s and 70s. However, the extent to which the advent of “anticensorship/prosex feminism” broadened liberal discourse on sexual freedom should not be overstated. For instance, the 1986 ACLU report did not call for the decriminalization of sex work, but defended “constitutionally protected expression” like pornography by insisting on its distinctiveness from criminal conduct such as “pandering” (i.e. pimping) and “prostitution” (131). As the ACLU report argues, “if producing film or pictures, not sexual gratification for money, is the primary purpose of the actors’ work, then that work can in no way be called prostitution, and paying the actors’ salaries can in no way be called pandering” (132).

The ultimately limited nature of the influence sex radical feminism was able to exert on liberal sexual politics is most visible in those aspects of the 1986 ACLU report that touch on the sexuality of young people. For instance, in response to the Meese Commission Report’s claim that “the most frequent exposure to pornography is reported among adolescents between 12 and 17,” the ACLU does not offer a robust defense of the sexual autonomy of young people. Rather, it insists that this statistic is “unsubstantiated by the data in this report” and that “there is not a
shred of evidence to suggest that teenagers consume large amounts of pornography” (76-77). Such a reply, of course, begs the question of whether the ACLU’s position on pornography regulation might change if the Meese Commission Report had offered credible evidence that young people consumed large amounts of pornography.

The ACLU’s critique of the Meese Commission’s recommendation that “Congress should enact legislation prohibiting producers of certain sexually explicit visual depictions from using performers under the age of twenty-one” is similarly limited (138). In the ACLU’s view, “this proposal constitutes a serious abridgment of the civil liberties of persons who are fully adult in virtually all legal senses. Eighteen-year-olds vote, drive, marry, make contracts, give legal consent to medical treatment, and die on the battle field… Yet this change in the law would forbid them from freely choosing to pose for sexually explicit pictures” (138). Of course, concern for the civil and sexual liberty of those who are not yet legally adults is wholly absent from this response, which implicitly endorses the notion that it is permissible to forbid people under the age of 18 from freely choosing to pose for sexually explicit pictures.

Also, the ACLU report’s stance on laws regulating child pornography and intergenerational sex is vastly different from the position on these matter staked out by sex radical feminists like Gayle Rubin and Pat Califia. While Rubin and Califia opposed age-of-consent and child pornography laws as oppressive denials of the sexual autonomy of young people and unjust threats to the civil liberties and sexual freedom of their adult lovers, the ACLU report shows little concern for either of these matters. In fact, the ACLU report clearly states that, while the ACLU believes that child pornography laws pose a threat to constitutionally protected speech, the organization also “agrees with [the Meese Commission] that the vast bulk of child pornography does represent the non-consensual violation of a child’s rights” and that
“the criminal law should proceed… with increased vigor against those who commit the underlying conduct which results in the sexually explicit photographs of children” (103; 105).

“There is much to be done,” the ACLU report continues, “to reach those who finance these photographic productions; those who procure the children (with various degrees of coercion) into making the photographs; those who engage in sexual activities with children, as well as other knowing and willful participants who aid and abet in molestation” (105). The possibility that pictures of young people engaged in sexual conduct with adults depict benign and consensual sexual acts is not mentioned or entertained in the ACLU report. The ACLU’s sole concern is for expressive freedom, not the sexual freedom of the young or oppressed sexual minorities.

In the course of its discussion of child pornography laws, the ACLU report also reproduces, rather that questions or challenges, characterizations of “pedophilia” as dangerous and pathological. “The [Meese Commission] Report speculates that stringent enforcement [of criminal bans on the production and distribution of child pornography] could decrease the market for such materials,” the ACLU report explains, “but… given the deep pathologies of many pedophiles… such a result is quite unlikely. At its root, there is no basis to conclude that underlying sexual abuse would be stemmed by more child pornography laws” (106). What the ACLU has done here is invoked the specter of the incurably degenerate pedophile to argue against the criminalization of child pornography. Sex radical feminists, who were as concerned with mitigating the social stigma endured by sexual non-conformists as they were with reforming sex law, would have stridently opposed such a strategy.

As this brief discussion of the 1986 ACLU report has shown, the amalgamation of civil liberties and sex radical feminist rhetoric in “anti-censorship/pro-sex” feminism yielded ambiguous results. While the Dworkin-MacKinnon ordinance was defeated and a space for a
more robust defense of sexual expression than liberals had traditionally offered was opened up
within the conceptual confines of liberalism, these achievements came at a price and many of sex
radical feminism’s most radical aspects – its expansive vision of sexual freedom, its concern
with modes of sexual oppression beyond the censorship of sexual expression by the state, and its
commitment to cultural projects of identity articulation and community building on the “sexual
fringe” – did not survive liberal translation.

Notes

1 This description of the conference is taken primarily from the conference’s concept paper, written by Carole Vance
and originally published in the conference’s program, Diary of a Conference on Sexuality. The concept paper was
also included in Pleasure and Danger: Exploring Female Sexuality (1984), an edited volume that grew out of the
conference.

2 In addition to attending the conference, Butler also participated in the post-conference “Speakout on Politically
Incorrect Sex” organized by the Lesbian Sex Mafia. She was also a signatory to the letter decrying WAP’s protest
against the Barnard conference published in Feminist Studies, Vol. 9, No. 1.

3 The conference’s program was more than just a conference program. As Gayle Rubin, one of the Barnard
conference’s most renowned participants, described it, the Diary was a seventy-two page booklet “designed to be an
archival document, not only of the planning process but of the day itself” (Rubin, “Blood Under the Bridge,” 2011,
20). It included minutes of the conference planning committee’s meetings, a concept paper that grew out of those
meetings, blank pages where attendees could take notes, and a page for each workshop. The workshop pages
contained a description of the workshop, a list of the presenters, a suggested bibliography, and a photograph or
image that was somehow tied to workshop’s theme. Some of the images included in the Diary were sexually
explicit. This, along with the conference’s incendiary theme, led Barnard college administrators to confiscate the
Diary days before the conference. For a more detailed description of these events, see note xcvi below.

4 Those individuals singled out in the leaflet by name were Ellen Willis, a member of the conference’s planning
committee, Gayle Rubin and Dorothy Allison, presenters at the conference, and Pat Califia, whose only involvement
with the conference was as an attendee. The leaflet criticized Willis for her involvement with No More Nice Girls, a
pro-abortion organization that the leaflet described as “a group of women writers who publish in the Village Voice
and contend that pornography is liberating.” Rubin, Allison, and Califia were criticized for their public stances in
support of S/M, a sexual practice that the leaflet called “sexual fascism” (1981). While it did not use her name, the
leaflet also singled out Amber Hollibaugh as “a champion of butch-femme sex roles” who “has been selected to give
the closing address” (181). The full text of the leaflet was reprinted nearly a year after the conference in the Notes
and Letters section of the journal Feminist Studies, Vol. 8, No. 1. The reproduction of the leaflet gave rise to a
controversy all its own when Carole Vance, along with Willis, Rubin, Allison, Califia, and several other conference
supporters, sent letters to Feminist Studies criticizing the journal for publishing what Vance described as “the
scurrilous, untruthful, and unprincipled” leaflet (Vance 1983, 589). Feminist Studies quickly published these letters
along with a formal apology from its editors for their “insensitive” decision to publish the leaflet. For the complete
text of these letters and the Feminist Studies editors’ formal apology, see the Notes and Letters section of Feminist
Studies, Vol. 9, No. 3.

5 In the week prior to the conference, similar criticisms were also shared with the Barnard College administration.
According to Carole Vance, “antipornography feminists rained telephone calls on Barnard College officials and
trustees, as well as on prominent local feminists, complaining that the conference was promoting anti-feminist views
and had been taken over by ‘sexual perverts’” (Vance 1993, 294). “Within days,” Vance recounts, “Ellen V. Fuller,
President of Barnard, led an interrogation of the staff of the women’s center, scrutinized the program, and – alarmed at the possible reactions of donors to sexual topics and images – confiscated all copies of the [Diary of a Conference on Sexuality],” the conference’s program. Jane Gould, the director of the Barnard Women’s Center, shares a similar recollection in her memoir. “The president’s office had been inundated with calls from Women Against Pornography attacking the conference,” Gould writes, “calling it pornography, and announcing their intention to picket on the day of the conference” (Gould 1997, 200). Gould also recalls that Barnard President Futter “regarded the [conference Diary] a piece of pornography” and “insisted that it must be destroyed, shredded immediately” (Gould 1997, 200). Ultimately, the Barnard administration confiscated all 1,500 copies of the Diary and did not permit it to be distributed to registrants on the day of the conference. After much legal wrangling, “Barnard College agreed to pay to reprint the Diary, removing two lines of type with the names of Barnard College and the conference funder, the Helena B. Rubinstein Foundation, and to distribute the reprinted document to conference participants” (Rubin 2011, 26). These events are recounted by Lynn Comella in “Looking Backward: Barnard and its Legacies” as well as in a series of stories published in the Barnard Bulletin by Jessica McVay and Mary Witherell. See “President Comments on Confiscation,” “Whose Point of View is it Anyway?,” and “Futter Cites Inaccurate Portrayal for Confiscation” in Barnard Bulletin, vol. 79, no. 13 and “Diary Reprinted and Mailed, But…” in Barnard Bulletin, vol. 80, no. 2.

6 According to Pat Califia’s Feminist Studies letter responding to the charges made against her in the leaflet, by the time of the Barnard conference, New York Radical Feminists existed “only as a post office box” (1983). An article covering the Barnard conference for Gay Community News written by Lisa Orlando, a former member of New York Radical Feminists, corroborates this. The protestors, Orlando writes, “represented a coalition, composed of WAP, Women Against Violence Against Women (WAVAW), and New York Radical Feminists (which, as a former member, I thought no longer existed)” (Orlando 1982). In her Feminist Studies letter, Califia also reported that representatives from Women Against Violence Against Women in Los Angeles told her that, although “they had given WAP permission to use their name,” they had done so without having seen the leaflet and having been reassured by WAP that the leaflet “did not include attacks on individuals” (1983). WAVAW’s involvement with the leaflet has also been called into question by historian Carolyn Bronstein. According to Bronstein, at the time of the Barnard conference, WAVAW was in such a “state of disarray” that “any support for the leaflet could not be said to truly represent the views of a national membership” (Bronstein 2011, 305). Moreover, Bronstein adds, at least one chapter of WAVAW publically dissociated themselves from the leaflet in a letter published in off our backs in November, 1982.

Lorenn Glass emphasizes the central role played by “experts” in legitimating not only the publication of sexually explicit texts, but in “the academic canonization of modernism” and the invention of the “modern classic” (Glass 2013, 103).

The Second Court of Appeals was, ultimately, persuaded by Rembar’s reasoning. According to the majority opinion, “the predominant appeal of Lady Chatterly’s Lover… is demonstrably not ‘prurient interest’” and the work’s “thesis” is the same one “pressed continuously in the modern marriage-counseling and doctors’ books written with apparently quite worthy objectives and advertised steadily in our most sober journals and magazines” (276 F.2d 433 (1960)).

Interestingly enough, the author of Lady Chatterly’s Lover, D.H. Lawrence, appears to have shared these views. In an essay entitled “Pornography and Obscenity,” Lawrence writes, “The right sort of sex stimulus is invaluable to human daily life… but even I would censor genuine pornography, rigorously.” “It would not be very difficult,” Lawrence explains, “In the first place, genuine pornography is almost always underworld, it doesn’t come into the open. In the second, you can recognize it by the insult it offers, invariably, to sex, and to the human spirit. Pornography is the attempt to insult sex, to do dirt on it. This is unpardonable” (Lawrence 1953 [1930], 240-241).

Rembar’s employer, Grove Press owner Barney Rosset, appears to have shared this view. In the late 1960s, Rosset, the publisher of numerous sexually explicit works including an entire catalogue of Victorian and Edwardian pornography, criticized Al Goldstein, the publisher of Screw, for printing material that was “too dirty” (Obscene film). Goldstein retaliated by putting Rosset on his magazine’s infamous “Shitlist.”

For Ti-Grace Atkinson’s views on S/M, see “Why I’m Against S/M Liberation” in Majority Report, September 29, 1977.

Pat Califia is now Patrick Califia. In 1999, he began the process of sexual reassignment and now identifies as a bisexual trans-man. Before 1999, however, Califia was known as “Pat Califia” and identified as a female lesbian. For the sake of historical accuracy, I refer to Califia here using his former name, sexual orientation, and gender identity.


Even Califia’s opposition to censorship differed fundamentally from conventional liberal opposition. For Califia, “battles over freedom of expression… have implications far beyond the mere ability of print to circulate without being hampered by agents of the state” (Califia 1994d, 19). At stake in these battles, as Califia understood them, was the power of marginalized sexual minorities to counter the dominant culture’s inaccurate and harmful messages about their sexualities and “to say what [their] sex means” (Califia 1994d, 19). “The line between word and deed is a thin one,” Califia observed, and “a desire that cannot be named or described is a desire that cannot be valued, acted upon, or used as the basis for an identity” (Califia 1994d, 19). Thus, in Califia’s view, the freedom of sexual expression was not an end in itself but one crucial aspect of a broader politics of sexual resistance and liberation.


In “A Proud and Emotional Statement,” a piece included in What Color Is Your Handkerchief, Janet Schrim adopted a similar stance vis-à-vis sex law. “No one, I repeat, no one,” Schrim declared, “is going to tell me what I can or can’t, should or shouldn’t do with my sexuality so long as I act with mutual consent and a regard for personal safety. No feminist, no politician, no right-wing hero, no church – no one!” (Samois 1979, 23).
This phrase comes from Barbara Ruth’s “Cathexis: A Preliminary Investigation into the Nature of S-M,” an essay included in What Color is your Handkerchief.

In a revised version of her landmark essay, “Thinking Sex,” Gayle Rubin has made a similar observation. “The label ‘libertarian feminist’ or ‘sexual libertarian’ continues to be used as a shorthand for feminist sex radicals. The label is erroneous and misleading… Feminist sex radicals rely on concepts of systemic, socially structured inequalities, and differential powers. In this analysis, state regulation of sex is part of a more complex system of oppression that if reflects, enforces, and influences. The state also develops its own structures of interest, powers, and investments in sexual regulation” (Rubin 2011, 390).


In a footnote in “Thinking Sex,” Gayle Rubin describes these descriptions as “erroneous and misleading” (Rubin 2011, 390). According to Rubin, while it is true that both sex radical feminists and libertarians largely “agree on the pernicious qualities of state activity in [the area of consensual sex],” the similarity between these two parties ends there. As Rubin explains, “Feminist sex radicals rely on concepts of systemic, socially structured inequalities, and differential powers. In this analysis, state regulation of sex is part of a more complex system of oppression that it reflects, enforces, and influences. The state also develops its own structures of interest, powers, and investments in sexual regulation” (Rubin 2011, 390).


Vance was the academic coordinator for “The Scholar and the Feminist IX: Towards a Politics of Sexuality,” a conference held at Barnard College in the spring of 1982 that brought together leading sex radical feminist theorists and activists from across the country to critically engage the sexual politics and ideology of antipornography feminism. She was also the editor of Pleasure and Danger: Exploring Female Sexuality (1985), a collection of essays that is widely considered one of sex radical feminism’s most seminal texts.

While Suffolk County’s antipornography ordinance borrowed language from the version of the Dworkin-MacKinnon ordinance enacted by the City of Indianapolis, it departed significantly from Dworkin and MacKinnon’s original design. For example, it described pornography as a primary cause of “sodomy” and “a serious threat to the health, safety, morals and general welfare” of county residents. (See “Pornography Bill Stirs Furor in Suffolk,” New York Times, October 7, 1984; “Suffolk Officials Vote Down Bill on Pornography,” New York Times, Dec. 27, 1984; and “Pornography Bill is Issue in Suffolk,” New York Times, November 13, 1984.) MacKinnon described the Suffolk County ordinance as “bastardized” and worked to defeat it (MacKinnon and Dworkin 1997, 5).


As Kathryn Abrams has noted, the FACT brief “was animated by many of the concerns that inspired the sex radicals” (Abrams 1995, 321). FACT co-founder and influential sex radical feminist Carole Vance has also
emphasized the continuities between FACT and sex radical feminism more broadly. “Anti-pornography feminists,” Vance recounts, “denounced FACT and its allies as ‘sexual liberals’ and ‘libertarians,’” but “feminist sex radicals… were almost never liberals or libertarians in terms of their political philosophy or analysis and rejected these terms, whether used by anti-porn feminists or thoughtless bystanders, as an attempt to misrepresent their intentions and positions” (Vance 1993 304).

29 My reading of FACT’s strategy and its consequences differs from those of other commentators. For instance, in repudiating attempts to paint FACT and its allies as “sexual liberals” or “libertarians,” Carole Vance makes no mention of FACT’s strategic deployment of liberal rhetoric (Vance 1993, 304). Dierdre English, by contrast, represents FACT as a consummately liberal organization founded by women who “didn’t like having [male civil libertarians] do the fighting for them” (English 1995). On this account, the only distinction between FACT and liberal anticensorship groups were the genders of their members. Finally, Kathryn Abrams has portrayed FACT as a largely failed effort on the part of sex radical feminists to influence liberal thinking concerning women’s agency and subjectivity (Abrams 1995). While I am persuaded by Abrams that FACT did, indeed, fail to influence liberal thinking in this one respect, I am also persuaded that FACT succeeded in influencing liberal thinking in other important respects that Abrams’ account neglects.


31 In the summer of 1986, the U.S. Supreme Court summarily affirmed the ruling of the U.S. Court of Appeals for the Seventh Circuit in American Booksellers v. Hudnut. In Hudnut, the appellate court held that the version of the Dworkin-MacKinnon ordinance enacted by the City of Indianapolis was a content-based regulation of speech that was not neutral in regard to viewpoint and violated the First Amendment. The ruling referenced the FACT brief approvingly.


33 All in all, the ACLU report endorses 32 of the commission’s recommendations pertaining to the regulation of child pornography, including recommendations that state legislatures amend existing laws “to eliminate the requirement that the prosecution identify or procure testimony from the child who is depicted if proof of age can otherwise be established” and “to make child pornography in the possession of an alleged child abuser which depicts that person engaged in sexual conduct with a minor sufficient evidence of child molestation for use in prosecuting that individual, whether or not the child involved is found or is able to testify” (158-159).
CHAPTER 5
CONCLUSION

I began the present work with an invitation to conceive of the sex wars as something other than a straightforward conflict between antipornography feminists on one side and sex radical feminists on another, an invitation to look “beyond Barnard,” so to speak. Accepting this invitation, I promised, would disclose aspects of the sex wars that are rarely considered, including a rich history of theoretical contestation and improbable collaboration between antipornography feminists, sex radical feminists, and liberals of various stripes. Now, having recovered this history and placed it squarely in our view, I would like to extend one final invitation. Let us reflect on the implications of the complex relationships between antipornography feminism, sex radical feminism, and liberalism that the foregoing chapters have illuminated for contemporary feminist politics.

The Sex Wars and Feminism’s “Carceral Turn”

As a growing number of scholars and activists have observed, in the past several decades, feminist efforts to resist gender-based violence have taken on an unmistakably carceral hue.¹ From international campaigns to stiffen penalties for the crime of “sex trafficking” to domestic campaigns to institute mandatory arrest policies in cases of intimate partner violence, ostensibly feminist projects increasingly figure policing, prosecution, and incarceration as solutions to the problem of gender-based violence and oppression. Of the scholars who have documented this “carceral turn” in contemporary feminism, most have attempted to explain it in terms of a confluence of feminist and conservative forces. Kristen Bumiller, for instance, has argued that “reactionary” and “neoliberal forces” “appropriated” the feminist movement against sexual violence in the 1980s, giving rise to “a direct alliance between feminist activists and legislators, prosecutors, and other elected officials” demanding “more punitive action by the state” (Bumiller
Elizabeth Bernstein has offered a similar account of the rise of “carceral paradigms” of justice in the feminist antitrafficking movement (Bernstein 2010, 47). According to Bernstein, the movement’s turn “toward a politics of incarceration” is associated with “a rightward shift” and “feminist-conservative alliances” formed by feminist antitrafficking advocates like Laura Lederer and Dorchen Liedholdt and “right-wing organizations” like the Hudson Institute and the Heritage Foundation (Bernstein 2010, 47; 52-53).

While there is no denying that Bumiller’s and Bernstein’s observations are correct and that certain affinities (as well as more concrete connections) do, indeed, exist between contemporary feminist anti-violence and antitrafficking activism and “conservative,” “neoliberal” or “right-wing” agendas, my research concerning the convergence of antipornography feminism, sex radical feminism, and liberalism in the 1980s and 90s indicates that feminism’s carceral turn may not be exclusively or even primarily a product of conservative or right-wing influence. Consider, for example, the convergence of liberalism and antipornography feminism that I described in chapter three. According to my research, prior to the emergence of liberal antipornography feminism in the mid-1980s, antipornography feminists figured pornography as harmful in ways that challenged traditional liberal conceptions of harm, liberty, and the public and the private. They did not, however, advocate or pursue criminal legal solutions to the problem of pornography. As I have already emphasized, even Catharine MacKinnon, who was notoriously eager to wield the law in the service of feminist ends, advocated only a civil remedy for pornography’s harms and adamantly opposed efforts to regulate pornography through criminal law, including extant obscenity law. In MacKinnon’s own words, she had “no particular interest in increasing the power of the state over sexuality or speech;” her goal was to shift the problem of pornography away from “criminal law,” which
“empowers the state,” and toward “civil law,” which “empowers the people” (MacKinnon 1987, 140; Lederer and Delgado 1995, 302).

With the advent of liberal antipornography feminism, this reluctance to employ the criminal law to address the problem of pornography all but vanished amongst pornography’s feminist critics. Intent on doing something to address pornography’s harmful effects, but wary of the sweeping regulations on speech that broad and deeply politicized conceptions of pornography’s harms like “silencing” and “objectification” could be used to justify, liberal antipornography feminists starting with Cass Sunstein opted to describe pornography’s harms in terms of “violence,” “crime,” and “illegal conduct.” While such narrow descriptions certainly eliminated the possibility for the sort of wholesale regulation of sexually explicit speech that liberals so feared, in my view, they also, inadvertently perhaps, made criminal law appear to be the most justifiable means for mitigating pornography’s harms.

One sees this paradoxical logic at work quite vividly in the liberal antipornography feminist proposals put forward by Elena Kagan in 1993 at the University of Chicago School of Law conference, “Speech, Equality, and Harm: Feminist Legal Perspectives on Pornography and Hate Propaganda.” In her zeal to ameliorate the undesirable effects of pornography and hate speech while remaining faithful to the liberal principle of viewpoint neutrality and preserving the sanctity of the “private” realm of thought and belief, Kagan advocated stepping up the regulation of various acts through criminal law. More specifically, she called for stricter enforcement of existing hate-crimes laws as well as the enactment of new criminal prohibitions on both pornography whose production involved violence or coercion and certain kinds of harassment, threats, and intimidation (Lederer and Delgado 1995, 204). By translating the feminist critique of pornography into a liberal idiom in which “harm” equals “crime” and crime warrants coercive
government action to ensure the preservation of individual liberty, liberals like Kagan infused antipornography feminism with an unmistakably carceral flavor.

My account of the emergence of anti-censorship/pro-sex feminism out of the strategic alliance formed by sex radical feminists and civil libertarians to fight the Dworkin-MacKinnon ordinance in the mid-1980s also points toward a possible liberal genealogy for feminism’s carceral turn. Consider, for example, the carceral thrust of the anti-censorship/pro-sex feminist arguments put forward in the ACLU’s official report on the findings and recommendations of the Meese Commission that I discussed in chapter four. While the report offers a bold defense of sexual expression qua sexual expression and alerts readers to the adverse effects of censorship on sexual minorities, it also, at times, tacitly endorses, and, at other times, openly advocates, the criminalization of a variety of forms of sexual conduct, including prostitution, pandering, intergenerational sex, and the production of so-called “child pornography.”

While it may seem counterintuitive to claim that liberalism, with its emphasis on individual liberty and limited government, helped to forge a feminist politics that figured the “carceral state” as the “enforcement apparatus of feminist goals,” this is precisely what seems to have occurred in the case of both liberal-feminist hybrids that emerged out of the improbable couplings of liberalism and feminism during the sex wars (Bernstein 2010, 56; 2007, 143). In the case of liberal antipornography feminism, a dogged commitment to the inviolability of expressive freedom led to calls for criminal antipornography statutes targeting conduct rather than speech. In the case of anti-censorship/pro-sex feminism, a similarly dogged commitment to expressive freedom supplanted sex radical feminism’s broader vision of sexual freedom and led to the endorsement of a variety of criminal laws regulating sexual conduct. In both of these cases, the carceral thrust, if you will, derived not from some latent conservative impulses or ill-
advised conservative alliances, but from a consummately liberal commitment to the sanctity of the “private” realm of thought and belief. This indicates that feminism’s carceral turn may have been fired by more than merely conservative fuel. Liberal, even “pro-sex,” commitments appear to have been in play here as well.

**The Sex Wars and Recent Calls for Trigger Warnings**

As the foregoing discussion has shown, the convergence of antipornography feminism, sex radical feminism, and liberalism during the sex wars gave rise to new feminist perspectives on sexual expression and its implications that were far less critically oriented toward the carceral power of the state than their feminist predecessors. Nevertheless, the carceral thrust of liberal antipornography feminism and anti-censorship/sex-radical feminism should not obscure the fact that both of these positions were, at bottom, creatures of liberalism, and, as such, jealous of individual liberty, suspicious of state power, and deeply invested in the public/private distinction. Indeed, as I have already demonstrated, it was these consummately liberal commitments that, paradoxically, propelled liberal antipornography feminists and anti-censorship/pro-sex feminists in such improbable carceral directions. However, the criminalization of various acts like the production of pornography involving violence or coercion and the production of child pornography are not the only prescriptions that the curious combinations of liberalism, antipornography feminism, and sex radical feminism that emerged in the course of the sex wars produced. In my view, recent calls for “trigger warnings” on college and university campuses must also be understood, at least in part, as products of liberal antipornography and anti-censorship/pro-sex feminist thinking.

Originating in feminist spaces on the Internet, trigger warnings, as their advocates describe them, are “minimalistic description[s] that tag articles, literature, and other works of art for traumatic content” (Wythe 2014). According to a resolution to “Mandate Warnings For
Triggering Content in Academic Settings” enacted by the University of California, Santa Barbara’s student senate in the spring of 2014, examples of trigger warnings include “Rape, Sexual Assault, Abuse, Self-Injurious Behavior, Suicide, Graphic Violence, Pornography, Kidnapping, and Graphic Depictions of Gore” (Calderon and Wakefield 2014). Affixing labels of this sort to potentially “triggering” materials, advocates argue, enables survivors of sexual assault and other trauma to “protect themselves” from content that might elicit “memories or flashbacks,” “cause… severe emotional, mental, and even physical distress,” and adversely “affect a student’s ability to perform academically” (Wythe 2014; Diamba 2014; Calderon and Wakefield 2014).

While critics denounce trigger warnings as encroachments on academic freedom and freedom of speech,³ advocates insist that they are nothing of the sort. For instance, according to the aforementioned University of California, Santa Barbara student senate resolution, “Including trigger warnings is not a form of criticism or censorship of content… [I]t…simply requests the respect and acknowledgment of the effect of triggering content on students with PTSD, both diagnosed and undiagnosed” (Calderon and Wakefield 2014). An architect of a controversial trigger warning policy at Oberlin College has made a similar point, insisting that the policy outlined in the college’s Sexual Offense Resource Guide “values academic freedom and support for survivors of sexualized violence” (Flaherty 2014). Likewise, in an op-ed urging professors to incorporate trigger warnings into course syllabi, Rutgers University student Phillip Wythe praises “trauma trigger warnings” as “a safety system that allows full artistic expression, as well as psychological protection for those who need it” (Wythe 2014). Justin Peligri, another student trigger warning advocate, has gone so far as to describe trigger warnings as a “liberal-minded attempt to promote sensitivity and respect” (Peligri 2014).
As these arguments on behalf of trigger warnings indicate, trigger warnings are seen by their advocates as a means of addressing the potential harmfulness of depictions of sex and violence without interfering with the freedom of individuals to consider such depictions if they so choose. In this sense, trigger warnings appear to be the descendants of liberal antipornography feminist proposals put forward in the 1980s and 90s. Like the liberal antipornography feminists I described in chapter three, proponents of trigger warnings eschew broad and deeply political conceptions of the harm brought about through sexually explicit or violent depictions (e.g. “objectification,” “subordination,” “silencing,” and the like), opting to speak instead in narrower, more individualized terms of harms such as emotional distress, physical discomfort, and psychological trauma. Such language is, of course, virtually identical to the language employed in the liberal antipornography feminist proposal offered up by Dorchen Leidholdt at the University of Chicago School of Law in 1993. Pornography in the workplace, Leidholdt argued, has the capacity to cause “psychological damage,” “emotional distress,” and “psychic trauma” so severe that it constitutes “a barrier to equal employment opportunities for women” (Lederer 1995, 217; 218). The harm trigger warning advocates hope trigger warnings will obviate – debilitating psychic pain brought about through unwanted exposure to sexually explicit or violent depictions – is virtually identical to the harm that Leidholdt attempted to address through sexual harassment law.

While trigger warning advocates employ descriptions of harm that are virtually identical to those employed by liberal antipornography feminists like Leidholdt, the parallels between the trigger warning phenomenon and liberal antipornography feminism should not be overstated. For instance, despite their insistence that depictions of sex and violence have the power, in certain circumstances, to inflict acute and debilitating psychic pain, trigger warning advocates do not
hitch this figuration of harm to policy prescriptions that seek to eliminate or curtail the availability of sexually explicit or violent depictions. Unlike liberal antipornography feminists, who sought to regulate pornography as extensively as their various understandings of liberal principles would allow, trigger warning advocates do not seek to eliminate or restrain “triggering” expression at all. Rather, what they call for is the adoption of voluntary systems of content labels that enable individuals to make informed decisions about what to look at, listen to, or participate in. As trigger warning advocate and editor in chief of Bitch magazine Kjerstin Johnston has put it, trigger warnings “center around a central tenant of feminism – choice. They’re… a two-word announcement for people to choose to read on or pass over depending on their preference” (Johnston 2010). Such warnings are a far cry even from the attenuated version of the Dworkin-MacKinnon antipornography civil rights ordinance advocated by Sunstein, the criminal ban on materials whose production involved coercion or violence advocated by Kagan, and the sexual harassment approach to pornography in the workplace advocated by Leidholdt. In fact, at least insofar as they take unreconstructed liberal notions of choice, privacy, and expressive freedom as indispensable feminist values, trigger warning advocates appear to be the descendants not of liberal antipornography feminism, but anti-censorship/pro-sex feminism.

An op-ed written in support of trigger warnings by members of the Multicultural Affairs Advisory Board (MAAB) at Columbia University conveys the anti-censorship/pro-sex feminist dimension of the trigger warning phenomenon quite plainly. After describing the experience of a student and sexual-assault survivor who was “triggered” by an assigned reading in a mandatory general education course, the MAAB members urge the Center for the Core Curriculum, the body that oversees the general education program at Columbia, to act on three recommendations. First, they call on the Center to “issue a letter to faculty about potential trigger warnings and
suggestions for how to support triggered students” (Johnson et. al. 2015). Second, they call for the creation of “a mechanism for students to communicate their concerns to professors anonymously” as well as “a mediation mechanism for students who have identity-based disagreements with professors” (Johnson et. al. 2015). Finally, the MAAB members suggest that the Center “create a training program for all professors… which will enable them to constructively facilitate conversations that embrace all identities, share best practices, and think critically about how the Core Curriculum is framed for their students” (Johnson et. al. 2015).

“Our vision for this training,” the MAAB members emphasize, “is not to infringe upon the instructors’ academic freedom… Rather, it is a means of providing them with effective strategies to engage with potential conflicts and confrontations in the classroom, whether they are between students or in response to the material itself” (Johnson et. al. 2015). As a Washington Post report on the Columbia trigger warning controversy observed, the goal of the students advocating trigger warnings is “more discussion, not less” (Miller 2015).

A more consummately liberal response to the problem of allegedly harmful expression is difficult to imagine. In fact, apart from their concern about the potential harmfulness of sexually explicit or violent representations and their vaguely feminist interest in accommodating survivors of sexual assault and “embrac[ing] all identities,” MAAB members defend a position that is very much akin to the liberal position on sexually explicit or otherwise offensive expression that predominated prior to the curious couplings of liberalism and feminism during the sex wars. Consider, for example, the following bit of cold comfort Herald Price Fahringer, defense attorney for Al Goldstein and Larry Flynt, offered antipornography feminists at the New York University School of Law in 1978: “[N]o one is compelled to either see or read what is repulsive to him or her. Those who are appalled by these materials can ignore them” (Fahringer 1979,
Today, in the aftermath of antipornography feminism’s and sex radical feminism’s all but complete subsumption into liberalism, feminists who are concerned by the negative effects of sexually explicit or violent representations are demanding little more than the tools necessary to act on Fahringer’s advice.

The Promise and Poverty of Liberalism

The sex wars have been credited with (and blamed for) many things, from inaugurating the field of queer studies to instigating feminism’s “third-wave” to aiding and abetting America’s projection of military power abroad. For instance, in her introduction to a recent GLQ special issue reflecting on the work of Gayle Rubin, Heather Love notes that Rubin’s call “for an analytic separation between sexuality and gender” coupled with her “broad,” “inclusive,” and “protoqueer” “vision of a coalitional politics of sexual outsiders” “points the way toward the emergence of lesbian, gay, and queer studies as a field separate from feminism” (Love 2011, 5). “Although this genealogy of queer studies – out of lesbian S/M, butch/femme, and sex-work activism – is often forgotten,” Love observes, “the sex-radical position staked out by feminists in the late 1970s and early 1980s was crucial to this history” (Love 2011, 5).

In another vein, Clare Snyder-Hall has linked what she describes as “the divisiveness of the sex wars” to the rise of “third-wave feminism,” “an inclusive and nonjudgmental approach that refuses to police the boundaries of the feminist political” (Snyder-Hall 2008, 175). “Third-wave feminism,” according to Snyder-Hall, “presents a tactical response to three major theoretical challenges” that “hobbled feminist theory and practice” in the 1980s: “the ‘category of women’ debates,” “the end of grand narratives through the decline of Marxism and the rise of poststructuralism…,” and “the sex wars that fractured the unified political stand of feminism on many important feminist issues” (Snyder-Hall 2008, 183). “Because politicized debate about sexuality once shattered the feminist movement,” Snyder-Hall explains, “third-wave feminism
completely embraces non-judgmentalism and choice…” (Snyder-Hall 2008, 190). “By including a diversity of views on sexuality and not judging any of them, third-wave feminists hope to avoid contentious splits” like those that marked the sex-wars era (Snyder-Hall 2008, 189).

Antipornography feminism’s sojourns into the arena of international law after its defeat on the domestic front in the U.S. have also been widely noted and critiqued (Chapkis 2005; Bernstein 2007; Bernstein 2008; Cheng 2008; Brennan 2008; Shah 2008; Augstín 2008; Vance 2010; Rubin 2010; Rubin 2011b; Bernstein 2012). Since the early 1990s, antipornography feminists like Catharine MacKinnon, Dorchen Leidholdt, and Laura Lederer have brought their distinctive set of ideas regarding sexuality’s role in the production and maintenance of male dominance to bear in the international arena, leading controversial efforts to combat international sex trafficking and to have rape, forced prostitution, and forced impregnation recognized by American and international courts as acts of genocide and crimes of war (Stiglmayer 1994; MacKinnon 2006). As MacKinnon has explained in a collection of her writings on international law, “the international is the authentic locale for the fight for women’s rights” and as early as 1991 she was engaged in theorizing what she describes as a “women’s model of human rights… predicated on women’s distinctive experience of violation and of denial of that violation” (MacKinnon 2006, 12; 2). Scholars such as Gayle Rubin and Elizabeth Bernstein have called attention to and criticized various aspects of this antipornography feminist international agenda (Rubin 2011b; Bernstein 2012). According to Rubin, former antipornography feminist leaders have, by and large, “left the women’s movement as their arena of action to work in the federal government and international nongovernmental organizations” where “they hope to codify” “the same agenda they brought to pornography” “in international law and policy,” particularly where the matter of “sex trafficking” is concerned (Rubin 2011b, 35). According to Bernstein, feminist
antitrafficking efforts are animated not simply by “a humanitarian concern with individuals trapped in ‘modern-day slavery,’” but by a commitment to the application of “carceral paradigms of social, and in particular gender, justice” to the global stage in the form of “militarized humanitarianism” (Bernstein 2010, 47; 61).

While all of these legacies are important and deserving of more thorough elaboration, my goal here has been to foreground legacies of the sex wars that my analysis of liberalism’s role in and contribution to these events helps bring to light. As I have shown, the liberal antipornography feminist and anti-censorship/pro-sex feminist positions that emerged in the course of the sex wars have contributed in various ways to feminism’s carceral turn. As I have also shown, insofar as they combine a belief that depictions of sex and violence can cause severe psychological harm with a belief that expressive freedom entails an absolute liberty to express any idea no matter how violent or sexually explicit, calls for trigger warnings are unmistakably descended from liberal antipornography feminist and anti-censorship/pro-sex feminist positions.

In effect, what I have argued here is that feminism’s carceral turn and more recent calls for trigger warnings are both the products of one larger and more fundamental bequest that the sex wars have left to the present: a feminism and a liberalism that are much more closely aligned than they were prior to the improbable alliances and appropriations for which the sex wars proved an occasion. For example, when antipornography feminists occupied the executive offices of Grove Press and the earliest rumblings of the sex wars became audible, fundamental liberal principles were seen by liberals and feminists alike as incommensurable with feminist claims regarding the harmfulness of sexually explicit or violent representations. Now, in the wake of the sex wars, many feminists voicing concerns about the potential harmfulness of sexually explicit or violent representations are also espousing liberal principles and advocating
measures that are carefully tailored to accord with them such as trigger warnings. Similarly, prior to the advent of the Feminist Anti-Censorship Taskforce and its strategic attempt to translate sex radical feminist vindications of sexual freedom into a liberal idiom of civil liberties and free speech, liberal principles were only rarely and with the greatest reluctance invoked to defend “prurient” or “obscene” speech. Now, in the wake of the sex wars, liberals are so eager to defend any and all sexual expression that they are willing to support the increased criminalization of sexual acts (e.g. the production and distribution of “violent” or “coercive” pornography, prostitution, and sex trafficking) so long as it means that speech will remain sacrosanct.

What these various transformations show is that the complex and contentious relationships between antipornography feminism, sex radical feminism, and liberalism that played out over the course of the sex wars have yielded ambiguous results. On the one hand, critical feminist engagements with liberalism during the sex wars spurred liberals to grapple with sexuality and its political implications in ways they never had before. While sex radical feminists pressed liberals beyond their grudging defenses of sexual expression as a shameful indulgence that must be tolerated (so long as it is kept private, of course) for the sake of more valuable ends, antipornography feminists goaded liberals into critically evaluating their tendency to consign sexual violence and oppression to an apolitical “private” realm where it could persist unabated. Thus, it seems that one legacy of the sex wars is a liberalism that is more attentive to the political dimensions of sexuality and more inclined to defend a traditional liberal slate of rights for women and certain sexual minorities.

However, on the other hand, another legacy of the engagements between liberals and feminists during the sex wars is a more restrained and cautious feminism, a feminism too timid and unimaginative to deviate from liberal convention. Prior to the strange and unexpected
admixtures of feminism and liberalism during the sex wars, feminists pursued a variety of projects. Antipornography feminists sought to counter the eroticization of violence against women in pornography and media through boycotts, occupations, protests, and an ingenious deployment of civil rights law that, if it had proved successful, would have radically transformed the meaning of the Constitution’s liberty and equality guarantees. At the same time, sex radical feminists sought to resist sexual oppression in all its forms by blurring the boundary between the “perverse” and the “normal,” fighting for the rights of sexual minorities, including the most stigmatized, and vindicating a vision of sexual freedom so expansive that it seems as scandalous and utopian today as it must have seemed in the mid-1970s. While these feminist projects were, in many respects, contradictory and often embroiled in bitter conflict, at their core, they shared a fundamental commonality: their politics were not bound by the strictures of liberalism. In fact, at their boldest, both antipornography and sex radical feminism showed an audacious disregard, even contempt, for liberal principles and conventions. In stark contrast, in the wake of the sex wars, feminism’s political palette appears dull and limited. Feminists pursuing gender justice through means as punitive as criminalization and incarceration and as feeble as trigger warnings both swear allegiance to liberalism and the public/private distinction it valorizes. Thus, while the sex wars may have, to some extent, expanded the liberal political imagination, they have also, to an even greater extent, impoverished feminism, reducing it to a fundamentally carceral project on the one hand and an unreconstructed civil libertarianism on the other.

Nowhere is the impoverishment of contemporary feminism by an uncritical embrace of liberal convention more apparent than in the ideological formation that today travels under the sign of “sex-positive” feminism. Sex-positive feminism presents itself as a feminism that, unlike its matronly, inhibited, judgmental, and “sex-negative” predecessor, affirms, embraces, and
celebrates femininity and women’s sexual agency. As Jane Gerhard has persuasively argued in *Desiring Revolution: Second-wave feminism and the rewriting of American sexual thought, 1920-1982* (2001), the characterization of feminism’s past against which sex-positive feminism articulates itself is “breathtakingly wrong” (Gerhard 2011, 11). Nevertheless, with its breezy post-feminist ethos of sexual fun and freedom and its uncritical embrace of conventional femininity and heterosexuality, sex-positive feminism has become virtually ubiquitous in popular feminist forums such as *Jezebel, Bitch,* and *Bust* and has even made inroads into popular culture more broadly. For instance, in a 2013 interview with *BBC Radio 1’s Newsbeat,* pop-singer Miley Cyrus met questions about her hyper-sexualized image by declaring that she is “one of the biggest feminists in the world because I tell women to not be scared of anything,” including being “naked” (Butterly 2013). “I’m for anybody. I’m for everybody, for everything,” Cyrus elaborated, “I don’t care what you wanna do in your life, who you wanna be with, who you wanna love, who you wanna like” (Butterly 2013). Model, actress, professional celebrity, and outspoken former stripper Amber Rose has also recently become something of a sex-positive feminist icon. For example, in the fall of 2015, Rose produced and starred in a video for the popular comedy website *Funny or Die* that presented a woman’s early-morning “walk of shame” back to her place after a one-night-stand as an empowering and unapologetic “walk of no shame.” In a similar vein, Rose’s recently published book, *How to be a Bad Bitch* (2015), touts itself as “a fiercely fearless guide” that “delivers a message to all women: work hard, love yourself, embrace your femininity and sexuality, and most importantly, chase the best vision of you possible” (Rose 2015).

Perhaps the most significant expression of sex-positive feminism in recent years has been the transnational movement of protest marches known as SlutWalk. Hailed by popular
feminist author, blogger, and avowed sex-positive feminist Jessica Valenti as “the most successful feminist action in the past 20 years,” the SlutWalk movement exudes an unmistakably sex-positive feminist ethos (Valenti 2011). The SlutWalk movement began on April 3, 2011 in Toronto, Canada when some 1,500 people, mostly women, donned miniskirts, fishnets, go-go boots, and other “slutty” attire and marched to the downtown headquarters of the Toronto Police Service carrying signs bearing messages like “Proud slut,” “My dress is not a yes,” and “Whatever we wear, wherever we go, yes means yes and no means no.” Billed by organizers as “SlutWalk Toronto,” the purpose of the march was to decry “slut-shaming” and to protest a Toronto Police Service officer’s remark at a public forum that women “should avoid dressing like sluts” in order not to be raped. By the spring of 2012, SlutWalk Toronto had inspired similar events in approximately 200 cities around the world, from New York to New Delhi, and a global grassroots Slutwalk movement had emerged.

According to SlutWalk Toronto’s website, the original SlutWalk sought to challenge the widespread view that female victims of sexual assault are in some way responsible for their own victimization. “Historically,” the website explains, “the term ‘slut’ has carried a predominantly negative connotation. Aimed at those who are sexually promiscuous, be it for work or pleasure, it has primarily been women who have suffered under the burden of this label” and been subjected to what SlutWalk Toronto’s organizers call “slut-shaming” (Barnett 2011). When the Toronto Police Service officer advised women “to avoid dressing like sluts” in order not to be raped, he “perpetuated the myth and stereotype of ‘the slut,’” and, in doing so, SlutWalk Toronto’s organizers contend, contributed to an environment in which women are unable to express themselves sexually for fear that, if they are sexually assaulted, they will be subject to ridicule, disbelief, and blame (Barnett 2011). “We want Police Services to truly get behind the idea that
victim-blaming, slut-shaming, and sexual profiling are never acceptable,” SlutWalk organizer Sonya Barnett explained in an interview promoting the march (Szakowski 2011). Darshika Selvasivam, vice-president of the York Federation of Students and a SlutWalk sympathizer, echoed Barnett’s sentiments, saying that linking provocative clothing to sexual assault is “a huge myth” that "blam[es] the survivor of a sexual assault while taking the onus away from the perpetrator” (Rush 2011). Thus, by demanding as proud, self-proclaimed “sluts” that police and other authorities treat them with “respect” and engage them in “meaningful dialogue” about “what it is to be a survivor of sexual assault,” the organizers of SlutWalk Toronto hoped to resist the silencing effects of slut-shaming and to secure justice for survivors of sexual assault by holding perpetrators accountable rather than victims (Barnett 2011).

As even this brief description should make clear, in a superficial sense, at least, the SlutWalk movement shares certain affinities with the pre-liberal variants of both antipornography and sex radical feminism. For instance, its resemblance to the Take Back the Night marches pioneered in the late 1970s by the San Francisco-based antipornography feminist organization Women Against Violence in Pornography and Media is undeniable.9 Equally undeniable is the SlutWalk movement’s continuity, in at least some respects, with the audacious spirit of public sexual assertion characteristic of many sex radical feminist undertakings, including Samois’s handkerchief code and the “Speakout on Politically Incorrect Sex” hosted by the Lesbian Sex Mafia at the conclusion of the Barnard Conference. However, these affinities aside, the SlutWalk movement is no mere extension or combination of antipornography and sex radical feminism. In fact, the SlutWalk movement, like the sex-positive feminism that pervades it, can be adequately grasped only by reference to the intermingling of these feminist perspectives with liberalism that the exigencies of the sex wars occasioned.
For example, insofar as it is centered almost exclusively on a highly individualist conception of expressive freedom, namely, the freedom to dress like a “slut” if one so chooses, the SlutWalk movement is unabashedly liberal. Similarly, insofar as it adopts a largely uncritical posture toward the concept of consent and takes it as its ideal model of free sexual agreement, the SlutWalk movement remains firmly locked within the ambit of liberalism. Moreover, the SlutWalk movement’s complicity in valorizing, as opposed to subverting, conventional and widely accepted forms of femininity and (hetero)sexuality signals its allegiance to a politics of sex and gender that are more consistent with anti-censorship/pro-sex feminism and liberal antipornography feminism than either of the feminist projects that preceded them.10 Finally, the SlutWalk movement’s eager embrace of a carceral paradigm of gender justice, as evidenced in its figuration of the slut as a supplicant before the law pleading with police, prosecutors, and judges for solicitude and respect, is more continuous with liberal antipornography feminism and anti-censorship/pro-sex feminism than either antipornography feminism or sex radical feminism.11

It seems, then, that both the SlutWalk movement and the sex-positive feminism animating it are as much creatures of liberalism as they are of feminism, a fact that vividly reflects the extent to which liberal concepts and concerns have come to govern the contemporary feminist political imagination. Thus, while critical feminist engagements with liberalism during the sex wars may have prompted liberals to come more readily to the defense of sexual expression and to admit violence against women as a properly political concern, the influence liberalism managed to exert on feminism during the sex wars appears to have been far more powerful and thoroughgoing. Antipornography feminist concerns with the subordination of women broadly conceived and the deeply patriarchal character of the liberal state and its
concomitant notions of liberty, equality, and the public and the private have been almost entirely supplanted by concerns with sexual violence and how existing concepts, frameworks, and institutions might be mobilized to punish it. Similarly, sex radical feminist visions of a robust sexual freedom that encompasses all those exiled from the “charmed circle” of normative sexuality have been replaced by a narrow concern with censorship, “slut-shaming,” and expressive freedom. The view of contemporary feminism from “beyond Barnard” is, thus, far from inspiring. Recovering and reflecting on the history of how, in part, feminism has come to be what it is at present will, I hope, fire feminist imaginations and revivify something of the radical impulses that animated antipornography and sex radical feminism in their pre-liberal variants.

Notes


2 Much has been made of antipornography feminism’s conservative entanglements, entanglements that Elizabeth Bernstein’s account of the recent political activities of Laura Lederer and Dorchen Liedholdt, two antipornography feminist movement veterans, cannot help but bring to mind. As chronicler of the antipornography feminist movement Carolyn Bronstein has noted, in the mid-1980s – the period during which I have argued liberal antipornography feminism was first coming into its own – “ties linking anti-pornography feminists and religious conservatives” were also forming and tightening (Bronstein 2011; 278). Without denying the accuracy of Bronstein’s observations or minimizing the significance of conservative appropriations of feminist energies and rhetoric, it seems to me that, in the case of the antipornography feminist movement, the turn toward carcerality was propelled by the confluence of liberal and antipornography feminist commitments, not simply the pragmatic conservative political alliances the movement formed. Unwilling, on principle, to engage in “thought control” by regulating speech, liberal antipornography feminists explicitly called for increased regulation of conduct through criminal law. I expand on this below.


4 While some trigger warning advocates have demanded that their use be mandatory, most express a preference for policies that simply encourage, advise, or recommend their use. The guidelines for the use of trigger warnings laid out in Oberlin College’s Sexual Offense Resource Guide are an example of one such voluntary trigger warning policy (Falherty 2014).

5 On October 3, 2015, Amber Rose led her own SlutWalk through the streets of downtown Los Angeles (Rose 2015).
Noor Al-Sibai has described the SlutWalk movement as the “coming out celebration” for sex positive feminism (Al-Sibai 2013).

My description of the original SlutWalk demonstration is based on accounts that appeared in Excalibur, York University’s community newspaper, and The Toronto Star.

SlutWalk co-founder Sonya Barnett also identified a Manitoba judge’s decision to give the defendant in a sexual assault case a reduced sentence “merely because the victim was wearing a tube top with no bra” as an impetus for the original SlutWalk (Szakowski 2011).

This resemblance has recently been noted by legal scholar Deborah Tuerkheimer in an article published in the Minnesota Law Review entitled “Slutwalking in the Shadow of the Law.” “Like the Take Back the Night rallies before it,” Tuerkheimer writes, “SlutWalk seeks to spread awareness – to women who have been raped and to others – of the prevalence and harm of rape” (Tuerkheimer 2014, 1461). Tuerkheimer also notes “important differences in emphasis between the two protests” (Tuerkheimer 2014, 1461). “In contrast to SlutWalk,” Tuerkheimer observes, “Take Back the Night largely targeted stranger rape and related sexual dangers associated with public spaces” (Tuerkheimer 2014, 1461).

Whenever I reflect on the SlutWalk movement and the sex-positive feminism animating it, I cannot help but be reminded of the passage from The History of Sexuality: An Introduction where Michel Foucault remarks that “One day people will be surprised at the eagerness with which we went about pretending to rouse from its slumber a sexuality which everything – our discourses, our customs, our institutions, our regulations, our knowledges – was busy producing in the light of day and broadcasting to noisy accompaniment” (Foucault 1990, 158). Like the left-wing project of sexual liberation Foucault was so keen to take to task in this work, sex positive feminism is committed to the “liberation” of a sexuality that is, in fact, hegemonic, ubiquitous, and normative.

The carceral thrust of the Slut Walk movement is conveyed quite vividly in a chant reportedly employed by protestors at a SlutWalk march in New York City in October of 2011: “NYPD, rape is a felony!” (Kirschner 2011). A remark made by one of SlutWalk’s most outspoken critics, antipornography feminist and professor of sociology and women’s studies at Wheelock College, Gayle Dines, also conveys the carceral vision of gender justice animating the SlutWalk movement. While Dines is sharply critical of the SlutWalk movement’s efforts to reclaim the word “slut,” a word that she believes to be “beyond redemption,” she agrees with the movement’s organizers that “a comment from law enforcement… suggesting that some victims of rape are responsible for the criminal acts of their attackers” is “highly offensive” and suggests that “rather than admonishing women to dress a certain way, police should be warning potential offenders that they should ‘avoid assaulting women in order not to go to prison’” (Dines and Murphy 2011).
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BIOGRAPHICAL SKETCH

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