

# EXPLORING THE LIMITS: FEMINISM AND THE LEGAL REGULATION OF GAY MALE PORNOGRAPHY

Carl F. Stychin\*

## INTRODUCTION

In recent years, elements of the cultural and radical feminist movement have appropriated the legal regulation of pornography. The all encompassing feminist critique of pornography centers on the perceived objectification of women which some feminists argue is inherent to pornographic representation. To guarantee the civil rights of women, pornography must be attacked directly because it is a site for the social construction of male domination. The breadth of the feminist argument, however, is its weakness.

This article will argue that the failure of the feminist anti-pornography approach to differentiate between heterosexual pornography and gay male pornography is problematic for several reasons. First, the feminist pornography critique is insensitive to the change in the meaning of pornographic representation in a homosexual context. In a gay male context, pornography ceases to be oppressive. Indeed, pornography becomes liberating rather than objectifying. Second, gay pornography has the unique ability to destabilize the coherence of the male *subject*. Many feminists argue that, in pornography, the definition of women in contradistinction to the coherence of the male subject allows for the oppression of women. Gay pornography thus subverts "phallocracy."<sup>1</sup> Third, gay male pornography is useful for revaluing submission and objectification. The pornographic representation of gay male sexuality thereby subverts the meaning imposed on sexuality by the dominant culture.

Finally, after deconstructing the inclusion of gay male pornog-

---

\* Associate in Law, Columbia University School of Law; LL.M. expected 1992, Columbia University School of Law; LL.B. 1988, *honors*, University of Toronto, Canada; B.A. 1985, University of Alberta, Canada. This article was written in partial fulfillment of the requirements of the degree of Master of Laws at Columbia University. The author thanks Kendall Thomas for his many insights and encouragement in the writing of the article.

1. I borrow this term from ZILLAH R. EISENSTEIN, *THE FEMALE BODY AND THE LAW* 21 (1988): "'Phallocratic' describes the male-oriented symbolization of biological difference. The phallus misrepresents the relationships between biology and culture and sex and gender. It constructs and represents the dominant discourse through a male viewing." *Id.*

raphy in the feminist pornography critique, this article will formulate a new approach for the legal regulation of pornography. This new approach focuses on the political dimension of pornography, specifically on the experience of the gay male subject, and formulates a defense of gay pornography based on the political history of sexual minorities. Pornography becomes political speech because the subject of rights emerges from a history of oppression in a liberatory rather than a liberal model. Thus, pornographic representation shifts from a sexual experience to a political expression. This political view of pornography not only emphasizes respect for the *differences* of sexual minorities but also establishes the rights of sexual minorities. As a legal consequence, gay pornography becomes protected speech.

### I. THE FEMINIST CIVIL RIGHTS APPROACH

The development of a uniquely feminist pornography critique is important to the feminist movement. The success of the critique is measured not only by the intellectual sophistication of the approach, but also by the usefulness of the issue in providing a point of unity. Some feminists interpret the pornography issue in a particularly essentialist manner: *all* women are oppressed by *all* men through the representation of women in pornography.<sup>2</sup>

Catharine MacKinnon and Andrea Dworkin receive much of the credit for this agenda-setting maneuver. The ingenuity and novelty of their approach lies in their linkage of sexual oppression, dominance by individual males, sexuality, and pornography. In their approach, male dominance becomes the dominance of individual women by individual men. This dominance is realized through their sexual relations:

[W]hat is called sexuality is the dynamic of control by which male dominance—in forms that range from intimate to institutional, from a look to a rape—eroticizes and thus defines

---

2. The veneer of unity was cracked, however, by the issue of lesbian pornography. For an interesting account of this unique question, see PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY (Carole S. Vance ed., 1984) [hereinafter PLEASURE AND DANGER]. This complex issue is beyond the scope of this article. PLEASURE AND DANGER also is useful for its general discussion of the various strands of cultural and radical feminism. In this article, these terms are used to avoid any suggestion that all feminists subscribe to the same theory of pornography. However, in my view, the feminist anti-pornography position "cuts across" the distinction between cultural and radical feminism. The use of these categories is not meant to suggest that feminist views on this issue are in any way monolithic.

man and woman, gender identity and sexual pleasure. It is also that which maintains and defines male supremacy as a political system. Male sexual desire is thereby simultaneously created and serviced, never satisfied once and for all, while male force is romanticized, even sacralized, potentiated and naturalized, by being submerged into sex itself.<sup>3</sup>

Sexuality, as the tool of male domination in a patriarchal society, becomes equated with heterosexuality because, in the final analysis, sexuality is *defined* in terms of the dominance of men and the submission of women.<sup>4</sup> The gender division becomes, therefore, the fundamental social construct that arises out of sexual relations. As the social construct is eroticized, the assumption of male dominance and female submission becomes the paradigmatic sexual encounter.<sup>5</sup>

The hierarchy of sexuality also defines the relationship between men and women in the public domain. The eroticization of dominance and submission readily reformulates into subject and object positions. Men assume the position of subject—the autonomous, objective position—and women are relegated to the position of object, the “other,” that which only can react to the actions of the subject.<sup>6</sup>

The transformation of a woman into an object provides a man with the freedom to exercise control and to act upon her to achieve sexual pleasure. Indeed, the objectification of women creates a

3. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 137 (1989).

4. *Id.* at 131.

5. *Id.* at 130. MacKinnon states:

Dominance eroticized defines the imperatives of its masculinity, submission eroticized defines its femininity. . . . [S]exual difference is a function of sexual dominance. It is to argue a sexual theory of the distribution of social power by gender, in which this sexuality that is sexuality is substantially what makes the gender division be what it is, which is male dominant, wherever it is, which is nearly everywhere.

*Id.*

6. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* 54-55 (1987). MacKinnon explains the social relationship between men and women:

Why is objectivity as a stance specifically male? . . .

Objectivity is a stance only a subject can take. . . . It is only a subject who gets to take the objective standpoint, the stance which is transparent to its object, the stance that is no stance. A subject is a self. An object is other to that self. . . . Thus the one who has the social access to being that self which takes the stance that is allowed to be objective, that objective person who is a subject, is socially male.

*Id.*

freely exercised hierarchy because only by transforming another autonomous being into an object does dominance cease to be objectionable: "[T]he inevitable and intrinsic cruelty involved in turning a person into an object should be apparent, but since this constricting, this undermining, this devaluing, is normative, no particular cruelty is recognized in it."<sup>7</sup> Because objectification is precisely the basis upon which sex is defined, objectification is always present in the sexual relations of men and women.

However, objectification represents only one end of a spectrum that defines male sexuality. Violence against women is the other logical end of the spectrum: "If violence is seen as occupying the most fully achieved end of a dehumanization continuum on which objectification occupies the least express end, one question that is raised is whether some form of hierarchy—the dynamic of the continuum—is currently essential for male sexuality to experience itself."<sup>8</sup> In fact, the spectrum of sexual relations becomes characterized in patriarchal society solely by the freedom of the male subject: the greater the freedom of the male to objectify and demean, the greater the erotic experience. This objectification appears natural because hierarchy itself has become eroticized.<sup>9</sup>

Pornography has a central role in the construction of this hierarchy. "[P]ornography institutionalizes the sexuality of male supremacy" by fusing "the erotization of dominance and submission with the social construction of male and female."<sup>10</sup> Thus, pornography maintains gender inequality through sexuality:

Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, an institution of gender ine-

7. ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 109 (E.P. Dutton Paperback 1989). Dworkin elaborates:

In male culture, men do argue about the proper bounds of objectification, especially about the viability of objectifying other males; but men do not argue about the moral meaning of objectification as such. It is taken for granted that a sexual response is an objectified response: that is, a response aroused by an object with specific attributes that in themselves provoke sexual desire.

*Id.* at 113.

8. MACKINNON, *supra* note 3, at 145.

9. See JOHN STOLTENBERG, *REFUSING TO BE A MAN: ESSAYS ON SEX AND JUSTICE* 127 (Penguin Group Paperback Reprint 1990). Stoltenberg explains: "Domination and subordination—the very essence of injustice and unfreedom—have become culturally eroticized, and we are supposed to believe that giving eroticized domination and subordination free expression is the fullest flowering of sexual freedom." *Id.*

10. MACKINNON, *supra* note 6, at 148 (citation omitted).

quality. . . . [It] institutionalizes the sexuality of male supremacy, which fuses the erotization of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constitutes the meaning of that sexuality. Men treat women as whom they see women as being. Pornography constructs who that is.<sup>11</sup>

The degree to which pornography presents the dominance of males and the submission of females determines the success of pornography in the creation of sexuality:

[P]ornography . . . provides a concrete social process through which gender and sexuality become functions of each other. Gender and sexuality, in this view, become two different shapes taken by the single social equation of male with dominance and female with submission. Feeling this as identity, acting it as role, inhabiting and presenting it as self, is the domain of gender. . . . Inequality is what is sexualized through pornography; it is what is sexual about it. *The more unequal, the more sexual.*<sup>12</sup>

Pornography is more than just a forum for the depiction of male sexuality, it is the primary arena for the hierarchical creation of sex. If sex is the objectification of women, then pornography, because it necessarily objectifies, fractures, and dehumanizes, creates the appearance of a sexuality reflected in the daily sexual encounters of men and women. Both in *life* and in pornography, the object and the subject position the erotic. Eroticism's success is apparent as sex ceases to be understandable *except* to the degree that this mediation occurs. Moreover, the positions of male and female—dominant and submissive—become completely impermeable: "There is no irreducible essence, no 'just sex.' If sex is a social construct of sexism, men have sex with their image of a woman."<sup>13</sup> Thus, in the final analysis, the pornographic representation of sex

---

11. MacKINNON, *supra* note 3, at 197 (citation omitted). MacKinnon postulates: The way pornography produces its meaning constructs and defines men and women as such. Gender is what gender means. It has no basis in anything other than the social reality its hegemony constructs. The process that gives sexuality its male supremacist meaning is therefore the process through which gender inequality becomes socially real.

MACKINNON, *supra* note 6, at 149 (citation omitted).

12. MacKINNON, *supra* note 3, at 143 (emphasis added).

13. *Id.* at 140. MacKinnon further explains: "Pornography creates an accessible sexual object, the possession and consumption of which is male sexuality, to be possessed and consumed as which is female sexuality. This is not because pornography depicts objectified sex, but because it creates the experience of a sexuality which is itself objectified." *Id.* at 140-41.

is the reality of sex between men and women. The objectification in representation is the objectification of women in reality. Pornography both reflects and constructs that reality.<sup>14</sup>

Not only does pornography define sex as the relationship of subject to object, it also teaches men to evaluate objects in terms of their erotic potential. Because pornography creates the "image" of a woman, men experience sexual pleasure by having intercourse with an image—an image of an object defined by its "usability":

The object world is constructed according to how it looks with respect to its possible uses. Pornography defines women by how we look according to how we can be sexually used. Pornography codes how to look at women, so you know what you can do with one when you see one. Gender is an assignment made visually, both originally and in everyday life. A sex object is defined on the basis of its looks, in terms of its usability for sexual pleasure, such that both the looking—the quality of the gaze, including its point of view—and the definition according to use become eroticized as part of the sex itself.<sup>15</sup>

The definition of pornography completely assimilates the male subject's objectivity and the resulting eroticization of dominance over an object. Pornography is "dehumanizing" because it *necessarily* denies women the values accorded the subject. Pornography can be "sexy" only by dehumanizing and the extent of the dehumanization defines the sexual freedom and liberation experienced by the male. Thus, sadomasochistic imagery becomes a powerful pornographic experience for men because it involves the ultimate defiling of the "other"—the total denial of the fundamental values of the subject:

[T]he acceptance of the social definition of these values—the acceptance of self-respect and the avoidance of pain as val-

14. *Id.* at 198 (citations omitted). MacKinnon argues:

If objectivity is the epistemological stance of which objectification is the social process, the way a perceptual posture is embodied as a social form of power, the most sexually potent depictions and descriptions *would* be the most objective blow-by-blow re-presentations. . . . Escalating explicitness, "exceeding the bounds of candor," is the aesthetic of pornography not because the materials depict objectified sex but because they create the experience of a sexuality that is itself objectified. It is not that life and art imitate each other; in sexuality, they *are* each other.

MACKINNON, *supra* note 6, at 150 (citations omitted).

15. MACKINNON, *supra* note 6, at 173.

ues—permits the erotization of their negative—debasement and torture—in pornography. It is only to the extent that each of these values is socially accepted as human within a given culture that their negation becomes a quality of sex and is eroticized in and as “woman.” Only when self-respect is accepted as human does debasement become sexy and female; only when the avoidance of pain is accepted as human does torture become sexy and female. . . . [E]xactly what is defined as degrading to a human being, however that is socially defined, is exactly what is sexually arousing to the male point of view in the pornography, just as the one to whom it is done is the girl regardless of sex.<sup>16</sup>

This theory of pornography, indeed of sexuality itself, serves as the foundation for the civil rights approach to the regulation of pornography.<sup>17</sup> The approach is a logical response to the anti-pornography feminists’ theory: if pornography objectifies women, then it necessarily denies them those essential human attributes accorded to the individual male subject. Consequently, pornography not only denies but encourages denial of women’s civil rights as autonomous individuals.

The civil rights approach has shifted attention away from the traditional focus of obscenity laws on “community standards,” to-

16. MACKINNON, *supra* note 3, at 210-11. MacKinnon argues that the taboos against certain forms of pornography (and sex) are the camouflage for a heightened sexual experience: “The domain of the sexual is divided into ‘restriction, repression, and danger’ on the one hand and ‘exploration, pleasure, and agency’ on the other. This division parallels the ideological forms through which dominance and submission are eroticized . . . .” *Id.* at 135 (citation omitted).

Similarly, deviations from the model of male dominance reinforce the paradigmatic sexual experience:

The capacity of gender reversals (dominatrices) and inversions (homosexuality) to stimulate sexual excitement is derived precisely from their mimicry or parody or negation or reversal of the standard arrangement. This affirms rather than undermines or qualifies the standard sexual arrangement as the standard sexual arrangement, the definition of sex, the standard from which all else is defined, that in which sexuality as such inheres.

*Id.* at 144.

17. For a description of the approach and a discussion of its implementation by city ordinance in Minneapolis and Indianapolis see ANDREA DWORKIN & CATHARINE A. MACKINNON, *PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN’S EQUALITY* (1988). The story of the Indianapolis ordinance, culminating in its invalidation by Judge Frank Easterbrook in the Seventh Circuit Court of Appeals, is an interesting one, but beyond the scope of this paper. See *American Booksellers Ass’n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff’d*, 475 U.S. 1001 (1986) (ordinance prohibiting distribution of materials depicting coercion in performance held unconstitutional because of invalid definition of pornography). The Supreme Court refused to hear oral argument in the case. 475 U.S. at 1001.

ward "the sexually explicit subordination of women through pictures or words."<sup>18</sup> However, attempts to implement the civil rights approach at the municipal level have been unsuccessful. Utilizing a civil rights remedial approach, MacKinnon and Dworkin drafted ordinances for Minneapolis and Indianapolis that recognized a civil cause of action for victims of pornography.<sup>19</sup> These ordinances enabled individuals to bring lawsuits based on the discrimination against women which pornography propagates.

The potential breadth of regulation became apparent in the development of the city ordinance. In defining pornography, the Minneapolis ordinance specifically included an enumerated list of actionable representations.<sup>20</sup> Immediately following the enumeration, a subsection stated that "[t]he use of men, children, or transsexuals in the place of women" was included within the definition of pornography.<sup>21</sup> Thus, the civil rights approach under a constitutional guise of neutrality completely subsumed gay male pornography.<sup>22</sup>

18. MACKINNON, *supra* note 6, at 210.

19. This article will not engage in an extensive discussion of the civil rights approach of regulation per se. For a more extensive discussion see generally DWORKIN & MACKINNON, *supra* note 17. The ordinances are reproduced in DWORKIN & MACKINNON, *id.* at 99-132. The civil cause of action also is discussed. *Id.* at 41-52.

20. *Id.* at 101. The actionable representations were as follows:

Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures of sexual submission; or (vi) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

*Id.*

21. *Id.*

22. An argument in favor of the constitutionality of the civil rights approach has been made by Cass Sunstein. Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589. He argues in favor of a civil rights approach that focuses on whether the pornographic material "(a) . . . [is] sexually explicit, (b) depict[s] women as enjoying or deserving some form of physical abuse, and (c) [has] the purpose and effect of producing sexual arousal." *Id.* at 592. Sunstein justifies the approach in terms of the "low-value" of the speech:

Under this approach, or any plausible variation, regulation of pornography

This expansive civil rights approach to regulation was not inadvertent, nor was it solely an attempt to ensure formal equality. In fact, MacKinnon and Dworkin have elaborated extensively on the theoretical basis for the regulation of gay male pornography. Not surprisingly, the discussion of gay pornography is grounded in an examination of homosexuality itself. MacKinnon, for example, reasons that a close nexus exists between the gendered social system and homosexuality. She concludes that homosexuality can in no sense be understood as "outside" of the patriarchy:

Nor is homosexuality without stake in this gendered sexual system. Putting to one side the obviously gendered content of expressly adopted roles, clothing, and sexual mimicry, to the extent the gender of a sexual object is crucial to arousal, the structure of social power which stands behind and defines gender is hardly irrelevant, even if it is rearranged.<sup>23</sup>

Moreover, gay men not only exist within the system of male domination over women, but by having sex with other men they *affirm* the social construct of sexuality: "To the extent gay men choose men because they are men, the meaning of masculinity is affirmed as well as undermined. It may also be that sexuality is so gender marked that it carries dominance and submission with it, whatever the gender of its participants."<sup>24</sup>

---

need not be justified according to standards applicable to political speech. The effect and intent of pornography, as it is defined here, are to produce sexual arousal, not in any sense to affect the course of self-government. Though comprised of words and pictures, pornography does not have the special properties that single out speech for special protection; it is more akin to a sexual aid than a communicative expression. In terms of the distinctions made among classes of speech, pornography is low-value speech not entitled to the same degree of protection accorded other forms of speech.

*Id.* at 606-07 (citation omitted). Sunstein does not explicitly deal with the question of the regulation of gay male pornography.

23. MacKinnon, *supra* note 3, at 141.

24. *Id.* at 142. Andrea Dworkin suggests that although male homosexuality is intolerable in a patriarchal society, male homosexuals engage in a similar willingness to exploit and objectify as do heterosexual men:

It is unlikely that male-male sexuality will be or can be tolerated by men as a class until the very nature of masculinity is changed, that is, until rape is no longer the defining paradigm of sexuality. Those gay men of our time who offer ancient Greece as a utopian model are only confirming that, for them, the continued scapegoating of women and the sexual exploitation of less powerful males would be an insignificant price to pay for a comfortable solution to their own social and sexual dilemma.

Dworkin, *supra* note 7, at 62.

It is difficult to discern precisely how sexuality is so deeply “gender marked” in this theory of sexual hierarchy. Dworkin suggests that gay male sex differs from heterosexual intercourse because it *lacks* the conflation of objectification with eroticism. In gay male sex, she posits that “in no sense is the beloved annihilated. His virility continues to animate his own behavior, either in relation to others or in the sphere of social power.”<sup>25</sup> Thus, while gay male sex may (perhaps necessarily) involve objectification, the object maintains the social power granted to him in the public sphere.

Because pornography constructs male sexuality generally, an analysis of gay male pornography leads to an understanding of male homosexuality. At a minimum, analyzing gay pornography should reveal how homosexual relations differ, if at all, from heterosexual sex. In MacKinnon’s and Dworkin’s analysis, objectification is central to gay male pornography, but this objectification remains specifically the objectification of women. Dworkin most explicitly discusses the objectification of women in gay male pornography:

Without the presence of the female, masculinity cannot be realized, even among men who exclusively want each other; so the female is conjured up, not just to haunt or threaten, but to confirm the real superiority of the male in the mind of the reader. . . . The feminine or references to women in male homosexual pornography clarify for the male that the significance of the penis cannot be compromised, no matter what words are used to describe his (temporary) position or state of mind. . . . [S]uperiority means power and in male terms power is sexually exciting. In pornography, the homosexual male, like the heterosexual male, is encouraged to experience and enjoy his sexual superiority over women.<sup>26</sup>

MacKinnon also accepts that gender is central to *all* pornography. Her understanding of gay pornography is grounded explicitly in gender terms—the representation of gender plus homosexuality: “On a simple descriptive level, the inequality of hierarchy, of which gender is the primary one, seems necessary for sexual arousal to work. Other added inequalities identify various pornographic genres or subthemes, although they are always added through gender: age, disability, *homosexuality*, animals, objects,

---

25. DWORKIN, *supra* note 7, at 43.

26. *Id.* at 44-45.

race . . . . Gender is never irrelevant."<sup>27</sup> It is unclear from this passage whether MacKinnon is referring to the representation of lesbianism for male audiences viewing pornography, or to the exploitation of women in male pornography (Dworkin's view), or to the objectification of men (or women) because they are assuming positions of subordination. Conceivably, all these possibilities represent MacKinnon's views.

John Stoltenberg, a close associate of Andrea Dworkin, developed further the basis for the feminist critique of gay male pornography. Stoltenberg's critique emphasizes the representational quality of pornography. In particular, Stoltenberg describes the representational style of gay male pornography as characteristically resulting in an alienation of the individual rather than a *communitarian* sexual experience:

[T]here is a great deal of repression of affect in gay male sex films . . . .

The film edits go by quickly. A few seconds at one angle. Then a few seconds over there. The camera on the cock. Almost always on the cock. The cock almost always hard and pumping. No moments in between anything. . . . The rhythms of the sex film are the staccatos of sexual disconnecting . . . . The sex acts in gay sex films have the illusion of forging a connection, in the sense of hooking up plumbing; but they seem to be experienced as acts of abstracting-apart, of getting off by going away someplace, of not being there with anybody.<sup>28</sup>

Stoltenberg's criticism suggests that gay male pornography may be qualitatively different from heterosexual pornography. In heterosexual pornography, according to MacKinnon, representation is the reality. Stoltenberg implies that, in gay male pornography, representation is distinct from the reality of "credible . . . sexual communion."<sup>29</sup>

Stoltenberg's critique of gay male pornography, similar to MacKinnon's and Dworkin's pornography analysis, emphasizes objectification. Gay male pornography represents for the viewer the same hierarchy of subject over object as in straight pornography.<sup>30</sup>

---

27. MACKINNON, *supra* note 6, at 172 (emphasis added).

28. STOLTENBERG, *supra* note 9, at 108-09.

29. *Id.* at 108.

30. *Id.* at 53. This objectification process, according to Stoltenberg, derives from a

Specifically, the same values of dominance and submission are present as well as the denial of the subjecthood of the "other":

Gay male sex films characteristically depict the male body as sex object, but insofar as they also display the male body functioning prominently as sexual subject, gay male sex films present a distillation of what nearly all men believe enviable sex in an anatomically male body might be like if they were ever to have endless quantities of it themselves. As artifacts of a heterosexist culture that is rigidly polarized by gender, gay male sex films exhibit the apotheosis of male sexual functioning as imagined by men who, not unlike straight men, dread the taint of feminization. . . .

The values in the sex that is depicted in gay male sex films are very much the values in the sex that gay men tend to have; they are very much the values in the sex that straight men tend to have; they are very much the values that male supremacists tend to have: taking, using, estranging, dominating—essentially, sexual powermongering.<sup>31</sup>

The fact that a subject may dominate a submissive object suf-

learned response in a male-supremacist culture:

[A]ll male sexual objectifying originates in the common predicament of how to identify and feel real as a male in a male-supremacist culture. The predicament can be resolved either in contradistinction to a female object or through assimilation of a male object. Either way, the resolution strived for is a body-bond with men.

*Id.*

31. *Id.* at 109-10. At some points, Stoltenberg contrasts the gay porn film with what for him is "good sex," namely, the monogamous long-term relationship. One passage is particularly revealing, with its negative connotations which suggest a criticism of casual and anonymous sex:

Gay male sex films offer a particularly focused view of what men believe that *other* men experience when they're having good sex. Of course gay male sex films do not necessarily offer a paradigm of good *sex object*—most men would in fact probably find gay sex films repellent on that score. But however distasteful gay male sex films might be to men who do not participate in the gender-specific objectification and fetishism for which the films are intended, the films themselves reveal a great deal about the relationship between a male viewer and the idealized male sexual subject—the one who is shown in the throes of presumably good (for him) sex. Like almost all sex films, gay male sex films represent sex that has no past (the couplings are historyless), no future (the relationships are commitmentless), and virtually no present (it is physically functional but emotionally alienated). In a real sense, gay male sex films cross over the "sexual orientation" line because they epitomize those qualities of voyeurism and self-involvement in sex that straight men also aspire to.

*Id.* at 107.

fices for Stoltenberg to analogize gay male pornography to heterosexual pornography. Stoltenberg's criticism describes gay male pornography as alienated objectification by male subject of male object *qua* female object mediated by the additional alienated objectification of pornographic representation. Thus, his critique focuses on the alienation of the subject from the object of desire.

Stoltenberg even takes the argument one step further by asserting that gay male pornography objectifies not simply by representing dominance and submission, but by demeaning women and "feminine males." He elides heterosexual and homosexual pornography to create a general critique of pornography as explicitly anti-female:

There is, not surprisingly, an intimate connection between the male supremacy in both heterosexual and homosexual pornography and the woman hating and femiphobia in them both as well. That connection is male-supremacist sex—the social power of men over women acted out as eroticized domination and subordination. The difference is that gay male pornography invents a way for men to be the *objects* of male-supremacist sex without seeming to be its *victims*. In its own special fashion, gay male pornography keeps men safe from male-supremacist sex—by holding out the promise that you'll come away from it more a man.<sup>32</sup>

Stoltenberg's analysis ultimately condemns gay male pornography not only for its similarity to heterosexual pornography, but also for its uniqueness. On the one hand, he condemns the representation of dominance and submission in gay male pornography because it objectifies. On the other hand, he condemns gay male pornography because its extreme forms of dominance and submission do not victimize the object. Instead, the submission empowers the object. In fact, Stoltenberg explicitly argues that a combination of force and mutuality demonstrates conclusively an anti-female bias:

Meanwhile gay male pornography, which often appears to present an idealized, all-male, superbutch world, also contains frequent derogatory references to women, or to feminized males. In order to give vent to male sexual aggression and sadism in homosexual pornography and also to circumvent

---

32. *Id.* at 132-33.

the cultural stigma that ordinarily attaches to men who are “treated like a woman” in sex, gay male pornography has developed several specific “codes.” One such code is that a man who is “capable” of withstanding “discipline”—extremely punishing bondage, humiliation, and fistfucking, for instance—is deemed to have achieved a kind of supermasculinity, almost as if the sexual violence his body ingests from another man enhances his own sexual identity as a man. (This is quite the reverse in heterosexual pornography, where sexual sadism against a woman simply confirms her in her subordinate status.) Another code common in gay male pornography, one found frequently in films, is that if a man is shown being assfucked, he will generally be shown assfucking someone else in turn—this to avoid the connotation that he is at all feminized by being fucked. Still another code in gay male pornography is that depictions of mutuality are not sustained for very long without an intimation or explicit scene of force or coercion—so you don’t go limp out of boredom or anxiety that you’ve been suckered into a scene where there’s no raw male power present.<sup>33</sup>

In conclusion, the civil rights approach criticizes gay male pornography not only for its objectification of other men but also for its treatment of women. Despite the interchangeability of positions (i.e. reciprocity), the focus on domination reveals that gay pornography engages the same values of hierarchy that infuse heterosexual relations. To reassure the viewer that he will not be objectified in a feminine way, the pornographic representation of gay male sex differs from heterosexual sex because the object is not victimized.

The remainder of this article will explore several arguments that rebut the reductionist approach of MacKinnon, Dworkin, and Stoltenberg. These arguments demonstrate that the feminist anti-pornography critique inadequately grasps the nature and value of gay male pornography. First, the civil rights approach fails to examine how gay pornography accomplishes a resignification through the misappropriation and subversive use of the signs and the codes of dominant patriarchal culture. The failure of the civil rights approach to fully comprehend gay male pornography is tied to the cultural feminist’s limited understanding of sexuality. Second, the anti-pornography movement’s conception of the coherent sexual subject proves problematic in light of the work of Judith Butler

---

33. *Id.* at 132.

and Andrew Ross. Butler and Ross deconstruct the sexual subject itself. Third, in examining the relations of dominance and submission within a psychoanalytic framework, Jessica Benjamin reconceives subject and object relations. Finally, Leo Bersani, in advocating a celebration of submission, demonstrates the limitations of the anti-pornography approach.

After deconstructing the *sexual* subject, this article will reconstruct a rights-holding individual forged, not from a coherent sexual experience, but from a *political* experience of sexual oppression. Thus, although necessarily defined as pornographic in the dominant culture, gay male pornography becomes *political speech* worthy of constitutional protection. This approach defends gay pornography not from a liberal rights viewpoint of free expression, but from a liberationist viewpoint. This liberationist viewpoint invites an experiential inquiry into gay male pornography as a resistance to the dominant sexual culture.

## II. RE-PRESENTING GAY MALE PORNOGRAPHY

Without question, pornography can be defined as representation. Both an understanding of pornography's relationship to the "real" and an understanding of the nature of representation are important because the invocation of signifiers creates the sexual act for the viewer.<sup>34</sup> The homosexual depiction of sex alters the unity and coherence of the signifier in heterosexual pornography. The destabilization of the signifier illuminates both the importance of gay male pornography and the relationship between male homosexuality and patriarchy.

---

34. See E. Ann Kaplan, *Pornography and/as Representation*, 9:1 & 2 ENCLITIC 8 (1987). Kaplan asserts that signifiers operate on two levels: "[Pornography] consists of signifiers, whether we think of it on the level of fantasy/dream/hallucination inside the subject's mind; or on the level of more materialist signifiers, i.e. words/images/sounds produced for, and to a degree constructing, the subject-spectator . . ." *Id.* at 8. For an explanation of systems of signification, see generally CATHERINE BELSEY, *CRITICAL PRACTICE* (1980). Belsey describes the role of signifiers in representation:

Ideology is *inscribed in signifying practices*—in discourses, myths, presentations and re-presentations of the way "things" "are"—and to this extent it is inscribed in the language. . . . [T]he signifying system can have an important role in naturalizing the way things are. Because it is characteristic of language to be overlooked, the differences it constructs may seem to be natural, universal and unalterable when in reality they may be produced by a specific form of social organization.

*Id.* at 42.

Indisputably, representation objectifies. MacKinnon stresses this fact because pornography continues to construct an objectified sexual experience. First, representation, like reality, fragments images into less than a complete unmediated subject. The human senses "filter" images, thus *mediating* reality for our ultimate consumption: "The sense of sight itself is selective and reduces all bodies into parts less than wholes; the real world is always partly opaque and hidden; pure transparency would leave no visible forms."<sup>35</sup> If the feminist critique's ultimate goal is to eliminate the fragmentation of images into objects, then fundamental change in observation must be made. If this is the ultimate goal, then pornography is an insignificant factor because all images are consumed pornographically. Consequently, the feminist pornography critique cannot center on the inherent objectification of bodies through representation. Rather, the pornography critique is focused on the particularly offensive objectification of women in pornography.

Assuming that pornography is particularly harmful in *how* it objectifies—its creation of male domination of women—then the critique shifts to the male/female context. For MacKinnon and Dworkin, pornography, despite presenting a range of increasingly objectifying images, is unified by the domination of all men over all women: "[P]ornography is presumed to contain a fixed content . . . involving both sexual behavior and degrees of physical exposure, a presumption which implies the existence of a homogenous field of sexuality independent of and available to, the workings of representation."<sup>36</sup> By shifting the focus of attention from the patriarchal culture to the oppression of individual women by individual men through sexuality, the necessary, categorical conclusion is that all men, due to their gender, are oppressive.<sup>37</sup> Because dominance and

---

35. Scott Tucker, *Gender, Fucking, and Utopia: An Essay in Response to John Stoltenberg's Refusing to Be a Man*, 27 Soc. TEXT 3, 3 (1990).

36. SIMON WATNEY, *POLICING DESIRE: PORNOGRAPHY, AIDS AND THE MEDIA* 71 (2d ed. 1989).

37. Alice Echols, *The New Feminism of Yin and Yang*, in *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* 439 (Ann Snitow et al. eds., 1983) [hereinafter *POWERS OF DESIRE*]. Echols states: "Radical feminism departed from both liberal and early socialist feminism by maintaining that individual men do oppress individual women. . . . By interpreting masculinity as immutable, the cultural feminist analysis assumes that men are the enemy by virtue of their maleness rather than the power a patriarchal system lends them." *Id.* at 443. See also ANDREW ROSS, *NO RESPECT: INTELLECTUALS & POPULAR CULTURE* 175 (1989). Ross interprets the feminist argument in terms of its categorical connection between pornography and dominant (male) culture:

submission are the defining characteristics of sexuality, the ultimate erotic experience is sadomasochistic.<sup>38</sup> The indictment of gay pornography conflates the dominant male role in heterosexual pornography with the assumption of the dominant and the submissive roles by gay men in pornography and in reality:

[T]he gay male sexual subculture of sadomasochism and cross-generational sex demonstrates male rapacity. Dworkin argues that the current popularity of s/m among gay men and the defense of cross-generational sex by some gay male activists are "testimony to the fixedness of the male compulsion to dominate and destroy that is the source of sexual pleasure for men."<sup>39</sup>

---

[The anti-porn movement] has made its claims against pornography against *all men*, and on behalf of *all women*, of all classes, colors, and sexual orientations. In this respect, the feminist critique, in defining the pornographic itself as a "dominant" culture, claims to cut across the class-specific lines traditionally drawn between the "popular" and the "dominant."

*Id.*

38. This view increasingly has come under criticism from within the feminist movement. Angela Harris, *Categorical Discourse and Dominance Theory*, 5 BERKELEY WOMEN'S L.J. 181 (1990) (reviewing CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989)). Harris states: "[C]ategorical discourse understates or even suppresses the existence of complexity, contradiction, and paradox within its categories." *Id.* at 182. See also Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in PLEASURE AND DANGER, *supra* note 2, at 267. Rubin also criticizes categorical discourse's tendency to simplify pornography:

A great deal of anti-porn propaganda implies that sadomasochism is the underlying and essential "truth" towards which all pornography tends. Porn is thought to lead to S/M porn which in turn is alleged to lead to rape. This is a just-so story that revitalizes the notion that sex perverts commit sex crimes, not normal people. . . .

The use of S/M imagery in anti-porn discourse is inflammatory. It implies that the way to make the world safe for women is to get rid of sadomasochism.

*Id.* at 298.

39. Echols, *supra* note 37, at 451 (citing Dworkin, *Pornography and Grief*, in TAKE BACK THE NIGHT 289 (Laura Lederer ed. 1980)). See also Rubin, *supra* note 38, at 301. Rubin elaborates:

The anti-pornography movement and its texts have been the most extensive expression of this discourse. . . . Within this framework, monogamous lesbianism that occurs within long-term, intimate relationships and which does not involve playing with polarized roles, has replaced married, procreative heterosexuality at the top of the value hierarchy. . . . The lower depths are occupied by the usual groups and behaviors: prostitution, transsexuality, sadomasochism, and cross-generational activities. Most gay male conduct, all casual sex, promiscuity, and lesbian behavior that does involve roles or kink or non-monogamy are also censured. Even sexual fantasy during masturbation is denounced as a phallogocentric holdover.

*Id.* at 301 (citations omitted).

The signifiers in pornography thus have a unity and coherence independent of male sexual preferences. The male focus on dominance and objectification defines the signifier both with respect to the images produced and the images received in fantasy by all male viewers.<sup>40</sup>

This definition of signifiers is problematic in several respects and falsely unifies all men. First, the feminist pornography critique completely fails to recognize the importance of the fusion of sexuality with heterosexuality in dominant culture. Desire is *defined* not only by male dominance and female submission, but also by sexual relations between men and women:

[T]here is no unmediated desire. We experience sexual arousal only in the context of difference or mediation, and in hegemonic sexual culture, that mediation has been defined almost solely through the discourse of sexual difference and the corpus of visual codes, strategies, and injunctions that support the "naturalness" of that difference known as heterosexuality.<sup>41</sup>

Significantly, this implies that gay male pornography is a forum for resistance to the heterosexual male hegemony. Although MacKinnon and Dworkin correctly argue that male homosexuality operates within and is created by the dominant discourse, they underestimate the subversive potential of gay male pornography within patriarchal culture. As Foucault suggested, points of resistance can operate strategically in undermining apparent unities in relations of power:

Just as the network of power relations ends by forming a dense web that passes through apparatuses and institutions, without being exactly localized in them, so too the swarm of points of resistance traverses social stratifications and individual unities. And it is doubtless the strategic codification of these points of resistance that makes a revolution possible, somewhat similar to the way in which the state relies on the institutional integration of power relationships.<sup>42</sup>

---

40. See Ross, *supra* note 37, at 187. Ross asserts: "[A]ntiporn feminists also seized on a specifically *cultural* object of attention as the *causal* subject of their critique of power relations. . . . [P]opular pornography came to be seen as the singular cause of sexist oppression in a patriarchal society." *Id.*

41. Thomas Yingling, *How the Eye Is Caste: Robert Mapplethorpe and the Limits of Controversy*, 12.2 DISCOURSE 3, 9-10 (1990) (citation omitted).

42. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME ONE: AN INTRODUCTION* 96 (Robert Hurley trans., 1980). I am not suggesting that gay male pornography operates as a

Gay male pornography is a point of resistance because it runs counter to male dominance and makes visible what the male heterosexual culture has made invisible. While gay male pornography may be a forum for the construction of male sexuality, it also represents a marginalized sexuality that is culturally "outlawed." In fact, the meaning of pornography depends on its context. The dominant culture appropriates the term "pornographic" to describe gay imagery generally because it *represents* what cannot be presented: "[I]f the linkage of male homosexuality . . . has operated as an epistemological aid, it has also assured that homosexuality—even in becoming visible to itself—might never be produced out of sight of the pornographic."<sup>43</sup>

This argument weakens the force of the pornography critique, but it does not refute it completely. Although MacKinnon concedes that homosexuality undermines masculinity as a social construct, she contends that it simultaneously affirms that construct. The affirmation of masculinity as a social construct is manifested by dominance and submission. Like heterosexual pornography, gay male pornography reinforces masculinity by anti-female and objectifying representation. While gay male pornography serves gay men in representing their marginalized sexuality, more importantly, it signifies the same underlying values as straight pornography. Stoltenberg's focus on domination, anti-femininity, and the appropriation of masculinity in gay male sex films further elabo-

completely excluded discourse undermining a dominant discourse of sexual relations. Rather, it may operate within the dominant discourse as an oppositional strategy:

We must make allowance for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it.

*Id.* at 101.

43. Yingling, *supra* note 41, at 3. See also Tucker, *supra* note 35, at 21. Tucker describes gay sex as an act of resistance:

[W]hereas sex often contracts the world of women precisely down to a woman's sex, sex often expands the world of gay men—only by degrees, to be sure, but any gay sex act may be an act of resistance, since gay sex is not merely driven into privacy but into secrecy, and not merely into secrecy but into non-existence.

. . . .  
 . . . Women are likelier to lose identity in sex; gay people are likelier to find an identity in sex (and sometimes nowhere else) which also permits a temporary dissolution of everyday, enforced heterosexual misidentity.

*Id.*

rates this argument. Indeed, Stoltenberg correctly asserts that the signifier in both pornographic genres literally presents sex culminating in penetration. Dominance and submission are emphasized and sadomasochistic imagery represents extreme hierarchy. Literally then, gay pornography appears to appropriate the values of masculine dominance and feminine submissiveness of the dominant sexual culture.

The feminist critique fails to recognize the marginalization of gay men. This marginalization affects the viewer's perception of the pornographic signifier and the differing context changes the signifier's very meaning. The signifier assumes a new meaning because it is received at the fringes of dominant culture. In other words, if the viewer's context defines the meaning of an image, then the dominance and submission of pornography assume a *different* signification when received by marginalized gay men. Thus, the "meaning of any particular sex act, representation, or subjectivity cannot be reduced to a single valence."<sup>44</sup> Consequently, if there is no "pure signifier,"<sup>45</sup> the categorical anti-pornography approach completely fails to capture the complexity of signification. This suggests that a highly personal, experiential inquiry is demanded to uncode meaning:

If we want to study sexuality, we need more information about individual responses to symbol and image. We need to know what the viewer brings with her to make an interpretation: a cultural frame, resonances, connections, and personal experience. The question of context is important too, since viewers read symbols differently depending on the material they are embedded in and the relationship they have to other symbols, as well as individual interpretive frames which are somewhat idiosyncratic.

To assume that symbols have a unitary meaning, the one dominant culture assigns them, is to fail to investigate the individuals' experience and cognition of symbols, as well as individual ability to transform and manipulate symbols in a complex way . . . .<sup>46</sup>

Once the interpretation focuses on the viewer's response, then

---

44. Yingling, *supra* note 41, at 8.

45. *Id.* at 9.

46. Carole S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in PLEASURE AND DANGER, *supra* note 2, at 15.

pornography cannot have a single categorical meaning.<sup>47</sup> Thus, a definition of pornography becomes contingent on the viewer. The viewer's response to gay male pornography suggests that the signification of the phallus is far from unified:

[T]he problem to be addressed in this case is the relation between the phallus of male homosexual desire and the phallus of male heterosexual desire, where "phallus" indicates both the power of the Symbolic order and the sexual organ associable with its articulation. . . . Recent gay male culture has indeed appropriated masculinity as a representational strategy for its own self-empowerment, and that appropriation has been equivocal at best in its commitment to other political questions. But this masculinity, appropriated, no longer takes its meaning solely within the structure of heterosexual institutions and practices; it is wrenched into intertextuality with numerous homosexualities as well.<sup>48</sup>

As masculinity is reappropriated into a new unauthorized context, the representation of that masculinity appropriates a new unauthorized signification.

However, the meaning of a sign also becomes "uncontainable" because of the fluid nature of fantasy—a crucial element in an analysis of pornography. Interestingly, the cultural feminist attack on objectification extends to the realm of fantasy: "[A]nti-pornography activists have extended their critique to encompass fantasy, which they suggest is dangerous because it entails the substitution of an illusion for the 'social-sexual reality' of another person. . . . [C]ultural feminists have developed a highly mechanistic and behavioristic analysis that conflates fantasy with reality and pornography with violence."<sup>49</sup> The anti-pornography approach, though,

---

47. Bette Gordon, *Variety: The Pleasure in Looking*, in *PLEASURE AND DANGER*, *supra* note 2, at 189. Gordon elaborates on this point: "Pornography is not a monolithic construction but consists of a variety of practices operating across various institutions, places, and times and therefore is open to intervention. The codes and conventions which characterize particular pornographic representations, construct sexual difference, and order ways of seeing can be analyzed." *Id.* at 194.

48. Yingling, *supra* note 41, at 7.

49. Echols, *supra* note 37, at 448 (citation omitted). See also Judith Butler, *The Force of Fantasy: Feminism, Mapplethorpe, and Discursive Excess*, 2.2 *DIFFERENCES: A JOURNAL OF FEMINIST CULTURAL STUDIES* 105 (1990). Butler argues that this conflating of fantasy with the real is a misunderstanding of the complex relationship between the two: "Whereas anti-pornography feminists presume a mimetic relation between the real, fantasy, and representation that presumes the priority of the real, we can understand the 'real' as a variable construction which is always and only determined in relation to its constitutive outside: fantasy, the unthinkable, the unreal." *Id.* at 106.

cannot account for the unpredictability and the individuality of fantasy. In fantasy, the appropriation of male heterosexual values operates as a counter-hegemonic force. While pornography represents the sex act, the viewer's response in fantasy infuses the sign with unexpected meaning:

[P]ornography is like fantasies in this respect; no one would dream of recounting the narrative form of either [porn or fantasy]. Pornography, for the most part, provides a stimulus, base, or foundation for individual fantasies to be built upon and elaborated. It merely provides the conditions—stock, generic, eroticizable components such as poses, clothing, and sounds—under which the pleasure of fantasizing, a pleasure unto itself, can be pursued. It cannot, of course, determine the precise nature or shape of the viewer's fantasies; it is aimed in the direction of his or her fantasmatic pleasure. As a result, it does not possess anything like the power of a realist Hollywood film to shape or control the effect of its representations . . . .<sup>50</sup>

In fact, gay male pornography, particularly, has the ability to destabilize the signifier. The ability of gay men to assume both dominant and submissive roles establishes fantasy as open and "boundaryless":

[I]t is important to remember that sexual identification on the part of gay men is always mobile, able to assume different roles and positions, which are always also power relations. "Content" and "effects" based approaches to pornography can never begin to consider the deeper question of how differ-

---

50. Ross, *supra* note 37, at 196-97. See also WATNEY, *supra* note 36, at 74. Watney argues that the relationship of pornographic representation to fantasy is complex. Pornography re-presents the fantasies of the viewer, thereby bringing the fantasmatic to the level of representation, which, in turn, triggers the fantasy of the viewer:

[F]ar from being a unitary phenomenon, recognisable from its explicit subject matter, pornography actually involves an immense array of what we might think of as "specialist literatures", [sic] each of which satisfies the sexual fantasy-structure of countless individuals, who thus find themselves addressed as a group in relation to the fantasy they share. . . . This is a level of sexual organisation which is entirely overlooked in a theory of sexuality which is mechanically rooted in distinctions between biological sex difference, and sexual object-choice. . . . [W]e all move constantly between accepted and rejected identifications with one another, all the time, guided by desire. It is not pornography which is everywhere, it is fantasy.

What anti-pornography campaigners identify as "pornography" in a hierarchy of extremes is, in fact, merely the most direct and fixed expression of psychic processes which are omnipresent . . . .

ent pornographic images stand for different desiring subjects, or the terms on which fantasy identifications may be controlled or mobilised. This seems to me to be a *fundamental* aspect of pornography which is partially recognised but displaced into the rhetoric of harms by anti-pornography campaigners who are actually threatened by the possibility that they might "find themselves" within the eroticised space of a sexual fantasy scenario.<sup>51</sup>

Fundamentally, this critique takes issue with the categorical nature of the feminist anti-pornography approach. By adopting an over-inclusive theory of male hierarchy, the approach undertakes a completely literalist interpretation of representation. This literalist interpretation fails to "account for the interplay between the com-

51. WATNEY, *supra* note 36, at 73. See also Yingling, *supra* note 41, at 6. Yingling asserts:

[D]efinitions of pornography shift with the contextual arrangements that call it forth as a mirror of desire, an Imaginary, for some population. It makes common as well as theoretical sense to assert that as a category pornography is particularly difficult to define since taxonomies shift radically according to the subject it places in question. . . .

But however one might seek to settle this debate, it is not clear that pornography has had the same function for gay male culture, desire, and subjectivity as it has had for female culture, desire, and subjectivity. For gay male culture, pornography has historically served as a means to self-ratification through self-gratification . . . and the relation of these experiences to patriarchal privilege and pleasure is not univocal.

*Id.* Yingling further suggests the potential for the mobilization of a text to a new subversive cultural situation:

[A] sign originating in a repressive practice . . . may be dislocated from its initial site and installed in one subversive to the system in which it took its original meaning. We might also consider pornography (however we define it) as a text to be mobilized to effects that can displace violence and phallocratic order; we might think of its images as less irresistible and more open to misappropriation.

*Id.* at 8.

See also MICHAEL BRONSKI, *CULTURE CLASH: THE MAKING OF A GAY SENSIBILITY* (1984). Bronski states: "While it is true that the viewer, sexually aroused, lusts after the object, it is equally true that he may also want to be that object. This element of identification *with* as well as desire *for* the sexual object distinguishes gay and straight porn." *Id.* at 165.

Butler makes the claim that all pornography, gay and straight, involves a complex relationship between the representation and the viewer's fantasy:

[E]ven pornographic representations as textualized fantasy do not supply a single point of identification for their viewers, whether presumed to be stabilized in subject-positions of male or female. Indeed, the postulation of a single identificatory access to the representation is precisely what stabilizes gender identity; the possibility of a cross-identification spells a kind of gender trouble that the anti-pornography analysis fully suppresses.

Butler, *supra* note 49, at 114.

plex constructions of representation and fantasy in the consumption of pornography.”<sup>52</sup> More generally, the anti-pornography interpretation reveals the tendency of some feminist theorists to miss the nuances of sexuality manifest in the tenuous relationship between gay men and the values of the dominant culture, particularly the value of masculinity. By arguing that sexuality is always “gender marked,” MacKinnon fails to acknowledge that homosexuality is both a repressed and a subversive force and “cannot be simply mapped onto categories of gender.”<sup>53</sup> As Rubin persuasively argues, anti-pornography feminists forget that “sexual oppression cuts across other modes of social inequality, sorting out individuals and groups according to its own intrinsic dynamics. It is not reducible to, or understandable in terms of . . . gender.”<sup>54</sup>

Underlying this critique of the feminist anti-pornography approach is that gay male pornography is “good porn” and that gay male sex is “good sex.” Stoltenberg *misreads* the dominance and

52. Ross, *supra* note 37, at 188. Ross argues that this position leads inevitably to a judgment not about representation, but about the fantasies of sexual minorities:

The containment of pornography was tied to a more specific consensus about the containment of radical sex practices in the interests of what was posed as a healthier expression of the social good. . . . [C]onsequences of censorship and proscription were likely to be ugly. They included the certain repression of sexual minorities, to whom pornography was an integral and essential cultural expression of their interests . . . .

*Id.* at 187 (citation omitted).

53. *Id.* at 176.

54. Rubin, *supra* note 38, at 293. This is not to suggest that feminist theory is incapable of grappling with issues of sexuality. Rather, as Vance argues, it is to suggest that questions of sexuality must be recognized as posing a unique methodological challenge:

Sexuality poses a challenge to feminist inquiry, since it is an intersection of the political, social, economic, historical, personal, and experiential, linking behavior and thought, fantasy and action. That these domains intersect does not mean that they are identical. Feminists need sophisticated methodologies and analyses that permit the recognition of each discrete domain as well as their multiple intersections.

Vance, *supra* note 46, at 16. See also Rubin, *supra* note 38, at 309. Rubin elaborates:

Feminist conceptual tools were developed to detect and analyze gender-based hierarchies. To the extent that these overlap with erotic stratifications, feminist theory has some explanatory power. But as issues become less those of gender and more those of sexuality, feminist analysis becomes irrelevant and often misleading. Feminist thought simply lacks angles of vision which can encompass the social organization of sexuality. The criteria of relevance in feminist thought do not allow it to see or assess critical power relations in the area of sexuality.

. . . .  
 . . . These critical tools were fashioned to handle very specific areas of social activity.

*Id.*

submission, the sadomasochism, the anonymity, and the apparent alienation of both gay male pornography and gay male reality. However, the feminist anti-pornography approach is not beyond redemption since the critique does not focus on the feminists' condemnation of the eroticization of hierarchy but rather on the feminists' failure to acknowledge the *unique* position of gay men at the margins of dominant culture. The critique attacks the feminists' failure to recognize the misappropriation of the signifier rather than the feminists' failure to understand the constructs of dominance and submission or the relations of subject and object. Thus, the civil rights approach to pornography has not come under general attack. Rather, the values inherent in the civil rights approach are reinterpreted in a more sensitive manner and applied to gay male sexuality.

### III. THE DECONSTRUCTION OF SUBJECT AND OBJECT: RETHINKING GENDER AS PERFORMANCE

The previous section criticized the anti-pornography approach for its failure to acknowledge that the meaning of a signifier changes once it is appropriated by the gay male subculture. This enhances the *subjectivity* of gay men in a heterosexist culture. Thus, the purpose of the civil rights approach to pornography—to contain *objectification*—does not ensnare gay male pornography.

The feminist theory of pornography also can be analyzed by focusing on the coherence of the feminists' conception of gender. MacKinnon's and Dworkin's approach is embedded in a view of sex that is, in some sense, *prediscursive*. Male patriarchal culture, through domination such as pornography, inscribes a gendered meaning onto the sexes and this becomes *the* primary differentiation of a hierarchical arrangement of society. Through gender classification, patriarchal culture ascribes dominant (subject) and submissive (object) positions to individuals. In the daily arena, sexuality maintains those relations.

The feminist anti-pornography approach assumes that gender is the chief inscription of cultural meaning on the individual. In opposition to this, Judith Butler argues that both gender and sex are culturally produced mechanisms for social control:

Gender ought not to be conceived merely as the cultural inscription of meaning on a pre-given sex (a juridical conception); gender must also designate the very apparatus of pro-

duction whereby the sexes themselves are established. . . . This production of sex as the prediscursive ought to be understood as the effect of the apparatus of cultural construction designated by *gender*.<sup>55</sup>

Thus, not only is sex a discursive function, but the appearance of sex is culturally constructed. Gender analysis, with its binary structure, provides the built-in limitations and constraints upon the discourse.<sup>56</sup> To the extent that feminism focuses on gender as a binary division of prediscursive sexes and on the corresponding division of gender into subject and object positions, it reproduces the same discursive style of the dominant culture: "[T]he effort to identify the enemy as singular in form is a reverse-discourse that uncritically mimics the strategy of the oppressor instead of offering a different set of terms."<sup>57</sup> Consequently, feminism becomes tied into the same set of "identity concepts"<sup>58</sup> that have been discursively constructed.

Butler argues that a theory of the subject is fully understood only by probing these identity concepts because the construct of subjectivity invites examination and deconstruction. The feminist pornography critique's focus on the appropriation of the subject position for women is misplaced because the concept of sub-

55. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 7 (1990).

56. *Id.* at 9. Butler explains:

[T]he boundaries of [gender] analysis suggest the limits of a discursively conditioned experience. These limits are always set within the terms of a hegemonic cultural discourse predicated on binary structures that appear as the language of universal rationality. Constraint is thus built into what that language constitutes as the imaginable domain of gender.

*Id.* See also Ross, *supra* note 37, at 61. Ross analyzes the importance of categorization to cultural power:

Cultural power does not inhere in the contents of categories of taste. On the contrary, it is exercised through the capacity to draw the line between and around categories of taste; it is the power to define where each relational category begins and ends, and the power to determine what it contains at any one time.

. . . That the contents of these categories can be moved around does not affect the durable power to define the categories themselves, and to convert the relational differences between them into socially functional inequalities. Rather, it is through the retention of the form or containing structure of the category itself that cultural power, at any one time, is able to designate what is legitimate, on the one hand, and what can then be governed and policed as illegitimate or inadequate or even deviant, on the other.

*Id.* (citation omitted).

57. BUTLER, *supra* note 55, at 13.

58. *Id.* at 15.

jecthood already is “shot through” with power relations.<sup>59</sup> The feminist pornography critique forecloses the examination and deconstruction of the stabilizing hegemonic concept of the subject because its sole aim is to appropriate the subject position for women. The hierarchy of dominance and submission, according to the feminist pornography critique, is a cultural construction maintained through the institution of pornography.

Since sex as predating culture is a cultural construct, the feminist pornography critique has not taken its deconstruction nearly far enough. First, fantasy fragments and shifts identity concepts and, therefore, identity disintegrates as a coherent construct. In fantasy, the “I” both observes and participates, creating a multiplicity of identification:

There is, then, strictly speaking, no subject who has a fantasy, but only fantasy as the scene of the subject’s fragmentation and dissimulation; fantasy enacts a splitting or fragmentation or, perhaps better put, a multiplication or proliferation of identifications that puts the very locatability of identity into question. In other words, although we might wish to think, even fantasize, that there is an “I” who has or cultivates its fantasy with some measure of mastery and possession, that “I” is always already undone by precisely that which it claims to master.<sup>60</sup>

Second, the feminist pornography critique’s analysis of gay male pornography complicitly accepts gender, sexuality, and sex as “stabilizing concepts”<sup>61</sup> of hegemonic rule. In fact, gay male pornography undermines rather than reinforces male supremacy because it questions the coherence of sexual subjectivity—a concept that the feminist pornography critique asserts is the foundation of hierarchy. If subjectivity or “personhood” is tied to masculinity, it must be tied to received constructs of gender. A person is a subject because *he* is *gendered*.

Because gay men exhibit behavior that does not conform to the dominant culture’s understanding of gender, the concepts of gender and subjectivity begin to unravel:

59. See *id.* at 6. Butler argues: “The identity of the feminist subject ought not to be the foundation of feminist politics, if the formation of the subject takes place within a field of power regularly buried through the assertion of that foundation.” *Id.*

60. Butler, *supra* note 49, at 110.

61. BUTLER, *supra* note 55, at 17.

Inasmuch as "identity" is assured through the stabilizing concepts of sex, gender, and sexuality, the very notion of "the person" is called into question by the cultural emergence of those "incoherent" or "discontinuous" gendered beings who appear to be persons but who fail to conform to the gendered norms of cultural intelligibility by which persons are defined.<sup>62</sup>

This failure to conform to the cultural construction of gender fragments the coherence of the concepts of male and female, exposing the concepts as functions of patriarchal discourse.<sup>63</sup> Gender thereby ceases to be recognizable as a cultural construct of predisursive sex. As a result, gender becomes understandable only through performance:

[W]ithin the inherited discourse of the metaphysics of substance, gender proves to be performative—that is, constituting the identity it is purported to be. . . . There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very "expressions" that are said to be its results.<sup>64</sup>

Once gender is deconstructed and reduced to performance, that performance is evaluated for its potential to interrupt and fragment the social construct of gender. If performance reveals the artificiality of gender identity, it also undermines hierarchical gendered arrangements.<sup>65</sup> Gay male pornography, then, should not be understood to reinforce objectification. Rather, it redefines the sexual subject and reveals new possibilities: "The productions swerve from their original purposes and inadvertently mobilize possibilities of 'subjects' that do not merely exceed the bounds of cultural intelligibility, but effectively expand the boundaries of what is, in fact, culturally intelligible."<sup>66</sup>

62. *Id.*

63. *Id.* at 24. Butler argues:

If the notion of an abiding substance is a fictive construction produced through the compulsory ordering of attributes into coherent gender sequences, then it seems that gender as substance, the viability of *man* and *woman* as nouns, is called into question by the dissonant play of attributes that fail to conform to sequential or causal models of intelligibility.

*Id.*

64. *Id.* at 24-25.

65. See *id.* at 28. Butler postulates: "[T]he disruptions of this coherence through the inadvertent reemergence of the repressed reveal not only that 'identity' is constructed, but that the prohibition that constructs identity is inefficacious. . . ." *Id.*

66. *Id.* at 29. Butler further explains: "[T]he very notion of the subject, intelligible only

Gay male pornography's ability to redefine the sexual subject suggests that Stoltenberg's assimilation of gay and straight male representations of dominance and submission is deeply flawed. The repetition and representation of heterosexual male values in a marginalized gay male culture demonstrate the constructed nature of the values and undermine heterosexual hierarchical gender construction:

Within the terms of feminist sexual theory, it is clear that the presence of power dynamics within sexuality is in no sense the same as the simple consolidation or augmentation of a heterosexist or phallogocentric power regime. The "presence" of so-called heterosexual conventions within homosexual contexts as well as the proliferation of specifically gay discourses of sexual difference, as in the case of "butch" and "femme" as historical identities of sexual style, cannot be explained as chimerical representations of originally heterosexual identities. And neither can they be understood as the pernicious insistence of heterosexist constructs within gay sexuality and identity. The repetition of heterosexual constructs within sexual cultures both gay and straight may well be the inevitable site of the denaturalization and mobilization of gender categories. The replication of heterosexual constructs in non-heterosexual frames brings into relief the utterly constructed status of the so-called heterosexual original. Thus, gay is to straight *not* as copy is to original, but, rather, as copy is to copy.<sup>67</sup>

Consequently, gay representation not only resignifies the meaning of the symbols of dominant culture, it also reveals, through a parody of gender, "the arbitrary relation between the signifier and the signified."<sup>68</sup>

The resignification and the revelation are possible in a homosexual context because, even though relegated to the margins of the dominant sexual culture, gay culture is "positioned in subversive or resignificatory relationships to heterosexual cultural configurations."<sup>69</sup> Pornography, like camp and drag, has the potential of parodic displacement because "subversive confusions can be fos-

---

through its appearance as gendered, admits of possibilities that have been forcibly foreclosed by the various reifications of gender that have constituted its contingent ontologies." *Id.* at 33.

67. *Id.* at 31.

68. *Id.* at 122.

69. *Id.* at 121.

tered.”<sup>70</sup> For example, the dominance and submission (“top” and “bottom”) of some gay male pornography parodies the hierarchy and categories of dominant culture. The literal feminist anti-pornography critique is unable to recognize this potential for resignification through parody. Butler illustrates this failure by reference to lesbian subculture:

The idea that butch and femme are in some sense “replicas” or “copies” of heterosexual exchange underestimates the erotic significance of these identities as internally dissonant and complex in their resignification of the hegemonic categories by which they are enabled. . . . [T]he very notion of an original or natural identity is put into question; indeed, it is precisely that question as it is embodied in these identities that becomes one source of their erotic significance.<sup>71</sup>

Rather than broaden the existing concepts of identity and subjectivity to encompass women as a gendered and sexed category, the more fundamental strategy undermines the coherence of gender as a categorization. The destabilization of gender boundaries through subversive parodic performance destabilizes the subject-object dichotomy in heterosexual relations because a coherent gendered subject is made unbelievable:

Regardless of the compelling metaphors of the spatial distinctions of inner and outer, they remain linguistic terms that facilitate and articulate a set of fantasies, feared and desired. “Inner” and “outer” make sense only with reference to a mediating boundary that strives for stability. And this stability, this coherence, is determined in large part by cultural orders that sanction the subject and compel its differentiation from the object. . . . When that subject is challenged, the meaning and necessity of the terms are subject to

---

70. *Id.* at 139.

71. *Id.* at 123. See also Ross, *supra* note 37, at 163 (citing DENNIS ALTMAN, *THE HOMOSEXUALIZATION OF AMERICA. THE AMERICANIZATION OF THE HOMOSEXUAL* 13 (1982)). Ross makes a similar point with reference both to drag and the ‘clone’ image:

As much a fantasy object as the drag queen, the butch clone has been seen as a new form of drag, a send-up of social expectations of male homosexuality, and a subversive commentary on the encoded, misogynistic power of macho masculinity: “If the man dressed as a woman was, in effect, mocking the assumptions society makes about men and women, then the man dressed as a stereotypical man is also mocking the assumptions that to be gay is to want to be a woman.”

*Id.*

displacement.<sup>72</sup>

Thus, fragmented gender identity renders the concept of sexual subjectivity problematic.<sup>73</sup>

The deconstruction of subjectivity also becomes problematic for the civil rights approach to regulating pornography. If one of the feminist pornography critique's principal motivations is to control the "harms to society through social conditioning"<sup>74</sup> caused by pornography, then a thorough critique demands sensitivity to gay male representation's potential to undermine that hierarchical social conditioning. The civil rights approach's focus on autonomy is limiting because it depends on a coherent sexual subject. Furthermore, the approach is valid only if gender, and the corresponding cleavage between subject and object positions, is a coherent construction. Butler's deconstruction of subjectivity requires eliminating gendered subjectivity as the goal. Butler suggests that this elimination will occur only if subjectivity loses its foundational status: "Perhaps, paradoxically, 'representation' will be shown to make sense for feminism only when the subject of 'women' is nowhere presumed."<sup>75</sup>

According to Butler, regulating pornography undermines the aims of the feminist anti-pornography critique because prohibition eroticizes the representation.<sup>76</sup> Furthermore, because regulation assumes a single literal meaning of any representation, it defines and constrains identity:

The claim that the text permits of a single interpretation is itself a construction of the pornographic text as a site of univocal meaning; if pornography is a textualized fantasy of dissimulated and unstable identifications, then *the claim* that pornography enforces a foreclosure of the text's possible readings is itself the forcible act by which that foreclosure is

72. BUTLER, *supra* note 55, at 134.

73. *Id.* at 128. Butler describes the strategy as "thoroughgoing appropriation and redeployment of the categories of identity themselves, not merely to contest 'sex,' but to articulate the convergence of multiple sexual discourses at the site of 'identity' in order to render that category, in whatever form, permanently problematic." *Id.*

74. Sunstein, *supra* note 22, at 595.

75. BUTLER, *supra* note 55, at 6.

76. Butler, *supra* note 49, at 111. "[T]he very rhetoric by which certain erotic acts or relations are prohibited invariably eroticizes that prohibition in the service of a fantasy. These prohibitions of the erotic are always at the same time, and despite themselves, the eroticization of prohibition." *Id.*

effected.<sup>77</sup>

Butler's critique of regulation per se is fatal to the anti-pornography approach. Her critique reveals that the focus on the sexual subject in contradistinction to the demeaned object inadequately explains sexuality. As a feminist strategy, her critique demands the unregulated "proliferation" of representations to destabilize and undermine both the gender categories and the constraints on the concepts of gender and sexuality imposed by anti-pornography feminists.<sup>78</sup>

#### IV. EXPLODING THE BOUNDARIES OF SUBJECTIVITY

The deconstruction of the social construct of sexual subjecthood is important because it casts doubt upon the appropriateness of the feminist civil rights focus on individual sexual autonomy. Leo Bersani and Jessica Benjamin further expose the weaknesses of the feminist pornography critique. Both Bersani and Benjamin turn the civil rights approach "inside out" by shifting the analysis from the denial of the subject role to women in patriarchal culture toward the denial of the *value* of the object role. This argument, in turn, undermines the foundations of the feminist pornography critique—the focus on autonomy and the assertion of the sexual subject.

Bersani has explored the denial of the value of the object role in homosexuality and pornography.<sup>79</sup> His analysis both responds to MacKinnon and Dworkin and questions much of the critical theory concerning gay male pornography. Bersani views skeptically the notion that the resignification of masculinity through its appropriation by gay male subculture is valuable because it subverts the

---

77. *Id.* at 114.

78. Butler, *supra* note 49, at 121. Butler eloquently states:

In other words, it is important to risk losing control of the ways in which the categories of women and homosexuality are represented, even in legal terms, to safeguard the uncontrollability of the signified. In my view, it is in the very proliferation and deregulation of such representations—in the production of a chaotic multiplicity of representations—that the authority and prevalence of the reductive and violent imagery produced by Jesse Helms and other pornographic industries will lose their monopoly on the ontological indicator, the power to define and restrict the terms of political identity.

*Id.*

79. Leo Bersani, *Is the Rectum a Grave?*, in *AIDS: CULTURAL ANALYSIS. CULTURAL ACTIVISM* 197 (Douglas Crimp ed. 1988).

values of the dominant heterosexual culture. Rather, the appropriation by the gay male reinforces the straight male's values of dominance and hierarchy because the gay male pathetically imitates them:

[T]he macho male's rejection of his representation by the leather queen can also be accompanied by the secret satisfaction of knowing that the leather queen, for all his despicable blasphemy, at least *intends* to pay worshipful tribute to the style and behavior he defiles. The very real potential for subversive confusion in the joining of female sexuality . . . and the signifiers of machismo is dissipated once the heterosexual recognizes in the gay-macho style a *yearning* toward machismo, a yearning that, very conveniently for the heterosexual, makes of the leather queen's forbidding armor and warlike manners a *perversion* rather than a *subversion* of real maleness.<sup>80</sup>

Thus, according to Bersani, gay male representations of masculinity fail to resignify the values of heterosexual masculinity. Instead, gay male representations express an inadequacy necessarily felt by the viewer who aspires, but inevitably fails, to realize the power of the phallus as signifier: "[G]ay men run the risk of idealizing and feeling inferior to certain representations of masculinity on the basis of which they are in fact judged and condemned. The logic of homosexual desire includes the potential for a loving identification with the gay man's enemies."<sup>81</sup>

Bersani's critique, however, is not an endorsement of the anti-pornography approach. Even though gay male pornography does not subvert the underlying values of hierarchy inherent in representations of masculinity, it also does not reinforce the dominant patriarchal culture. Instead, Bersani argues that the anti-pornography position is vulnerable for different reasons. First, the feminist pornography critique is disingenuous because the indictment of pornography cannot be limited to the representation alone. Rather, if the representation is the "real," then pornography does nothing more than accurately depict sexuality. As a result, the "real" is subject to the same indictment:

MacKinnon and Dworkin see pornography as playing a major role in constructing a social reality of which it is really only a marginal reflection. . . .

---

80. *Id.* at 207.

81. *Id.* at 208.

. . . MacKinnon and Dworkin are really making a claim for the realism of pornography. That is, whether or not we think of it as constitutive (rather than merely reflective) of an eroticizing of the violence of inequality, pornography would be the most accurate description and the most effective promotion of that inequality. Pornography can't be dismissed as less significant socially than other more pervasive expressions of gender inequality . . . because only pornography tells us . . . the slavishness of women is erotically thrilling. . . . [T]heir most radical claim is not that pornography has a pernicious effect on otherwise nonpernicious sexual relations, but rather that so-called normal sexuality is already pornographic.<sup>82</sup>

Bersani's critique does not begin by asserting that the anti-pornography reading of the representation is too literal. Rather, he criticizes many of the detractors of MacKinnon and Dworkin because they fail to appreciate that gay male pornography may be an accurate depiction of homosexual relations. For Bersani, gay sex (and its pornographic representation) does not become "good sex"—a nonhierarchical communion of equal, autonomous sexual subjects—through a resignifying of masculinity.<sup>83</sup> Bersani substantially agrees with the MacKinnon-Dworkin analysis of sexuality. He differs, though, because he rejects their attempt to recreate sex apart from objectification and dominance. Essential to Bersani's critique is his acceptance of the fusing of sex with the exercise of power:

In short, the social structures from which it is often said that the eroticizing of mastery and subordination derive are perhaps themselves derivations (and sublimations) of the indissociable nature of sexual pleasure and the exercise or loss of power. . . . [P]olarized into relations of mastery and subordination, in sex, and that this potential may be grounded in the shifting experience that every human being has of his or her

---

82. *Id.* at 213-14.

83. *See id.* at 215. Bersani states:

The immense body of contemporary discourse that argues for a radically revised imagination of the body's capacity for pleasure—a discursive project to which Foucault, Weeks, and Watney belong—has as its very condition of possibility a certain refusal of sex as we know it, and a frequently hidden agreement about sexuality as being, in its essence, less disturbing, less socially abrasive, less violent, more respectful of "personhood" than it has been in a male-dominated, phallogocentric culture. The mystifications in gay activist discourse on gay male machismo belong to this enterprise . . . .

*Id.*

body's capacity, or failure, to control and to manipulate the world beyond the self.<sup>84</sup>

The sadomasochistic relationship thereby becomes the paradigm of erotic pleasure. Moreover, if pornography represents human sexual essence, it should proliferate because it is stripped of the cultural clothing that surrounds the social construct of sexuality:

What bothers me about MacKinnon and Dworkin is not their analysis of sexuality, but rather the pastoralizing, redemptive intentions that support the analysis. That is . . . they have given us the reasons why pornography must be multiplied and not abandoned, and, more profoundly, the reasons for defending, for cherishing the very sex they find so hateful. Their indictment of sex—their refusal to prettify it, to romanticize it, to maintain that fucking has anything to do with community or love—has had the immensely desirable effect of publicizing, of lucidly laying out for us, the inestimable value of sex as—at least in certain of its ineradicable aspects—anticonmunal, antiegalitarian, antinurturing, anti-loving.<sup>85</sup>

The understanding of sexuality offered by Bersani is far more radical than that advanced by MacKinnon and Dworkin. Bersani's critique questions the very concepts of sexual relations—autonomy, subjectivity, the "self"—valued by the civil rights approach and the dominant culture. Rather than focus on the objectification in sexuality, Bersani focuses on a male heterosexual discourse that values only the position of subject and the individual's clearly demarcated boundaries of sexual autonomy. The feminist civil rights approach replicates that hegemonic practice because it constructs a theory of pornography, indeed of sexuality, defined exclusively by individual autonomy and a respect for its boundaries.

Bersani revalues the powerlessness involved in sexuality. This revaluation of the loss of the coherent "self" in sex is a profoundly anti-phallogocratic maneuver:

[T]he self which the sexual shatters provides the basis on which sexuality is associated with power. It is possible to think of the sexual as, precisely, moving between a hyperbolic sense of self and a loss of all consciousness of self. But sex as self-hyperbole is perhaps a repression of sex as self-abolition.

---

84. *Id.* at 216.

85. *Id.* at 215.

. . . If, as these words suggest, men are especially apt to "choose" this version of sexual pleasure, because their sexual equipment appears to invite by analogy, or at least to facilitate, the phallicizing of the ego, neither sex has exclusive rights to the practice of sex as self-hyperbole.<sup>86</sup>

Gay male pornography and male homosexuality subvert the dominant culture because they represent a decision to shatter the boundaries of the self in an act of eroticism. The alleged focus of gay male sex on sadomasochism underscores a male sexual identity centered upon the demeaning and debasing of the self. This focus undermines existing definitions of maleness:

Gay men's "obsession" with sex, far from being denied, should be celebrated—not because of its communal virtues, not because of its subversive potential for parodies of machismo, not because it offers a model of genuine pluralism to a society that at once celebrates and punishes pluralism, but rather because it never stops re-presenting the internalized phallic male as an infinitely loved object of sacrifice. Male homosexuality advertises the risk of the sexual itself as the risk of self-dismissal, of *losing sight* of the self, and in so doing it proposes and dangerously represents *jouissance* as a mode of asceticism.<sup>87</sup>

The gay male identity emphasizes the oscillation between dominance and submission—power and powerlessness—and demonstrates the absurdity of equating human value with the arbitrariness of the sexual choice to be a "top" or a "bottom." In this respect, Stoltenberg's critique of gay male sex films is open to attack even if its premises are correct. The flexibility of positions—of both fucking and being fucked—does not reinforce male power. Instead, it demonstrates the ridiculousness of suggesting that real value is coterminous with sexual position.

Gay male pornography uniquely exemplifies the explosion of the absurd boundaries of sexual individuality—graphically demonstrated by penetration.<sup>88</sup> Sadomasochism further underscores the

---

86. *Id.* at 218. Bersani defines phallocentrism as "not primarily the denial of power to women . . . but above all the denial of the *value* of powerlessness in both men and women." *Id.* at 217.

87. *Id.* at 222.

88. As Bersani argues, "what if we said, for example, not that it is wrong to think of so-called passive sex as 'demeaning,' but rather that *the value of sexuality itself is to demean the seriousness of efforts to redeem it?*" *Id.* at 222.

individual's willingness to entrust his sexual subjecthood to another and to allow the boundaries of his autonomy to be undermined, knowing that he will reappear no less a subject. Ultimately, then, the ability to "selectively entrust ourselves to annihilation"<sup>89</sup> reinforces Butler's claim that there is no "naturalness" to subjectivity. The annihilation penetrates the boundaries of the sexual subject; the resulting fluidity of subject and object imparts equal value to both positions.

Bersani's theory is grounded within a psychoanalytic framework. Submission becomes the means for the ego continually to overcome the crisis of separation and individuation: "Masochism would be the psychological strategy that partially defeats a biologically dysfunctional process of maturation. . . . [A] masochism to which the melancholy of the post-Oedipal superego's moral masochism is wholly alien, and in which, so to speak, the self is exuberantly discarded."<sup>90</sup>

Jessica Benjamin, in her analysis of master and slave sexual arrangement, also draws on psychoanalytic theory.<sup>91</sup> Benjamin theorizes that "[t]he fantasy of erotic domination embodies the desire for both independence and recognition. . . . [T]he impulses to erotic violence and submission express deep yearnings for selfhood and transcendence."<sup>92</sup> In the submissive position, masochism enables the individual to receive recognition from the "other" and thereby to transcend the bounds of individuation.<sup>93</sup> Similarly, by the use of force, the dominant "master" overcomes alienation through possessing that "other":

[V]iolence is predicated on the denial of the other person's independent subjectivity and autonomy. Violence is a way of expressing or asserting control over an other, of establishing one's own autonomy and negating the other person's. It is a way of repudiating dependency while attempting to avoid the consequent feeling of aloneness. It makes the other an object

---

89. Tucker, *supra* note 35, at 30.

90. Bersani, *supra* note 79, at 217-18 (citations omitted).

91. Jessica Benjamin, *Master and Slave: The Fantasy of Erotic Domination*, in *POWERS OF DESIRE*, *supra* note 37, at 280 [hereinafter *Master and Slave*]; JESSICA BENJAMIN, *THE BONDS OF LOVE* 51 (1988).

92. Benjamin, *Master and Slave*, *supra* note 91, at 281.

93. *Id.* at 286. Benjamin elaborates: "Masochism is a search for recognition of the self by an other who alone is powerful enough to bestow this recognition. But it is a search for recognition that is alienated or distorted because the element of freedom is replaced by the element of force." *Id.*

but retains possession of her or him.<sup>94</sup>

Thus, the transcendence of the self only can be realized through the presence of another person and only when one person temporarily becomes less than a coherent sexual subject.<sup>95</sup>

Benjamin suggests that both the assertion and transcendence of the self have become increasingly urgent as the need to “connect”—to break down the boundaries of the self and the alienation of the individual—has intensified in Western culture:

[T]he individualistic emphasis on strict boundaries between self and others promotes a sense of isolation and unreality. Paradoxically, the individualism of our culture seems to make it more difficult to accept an other's independence and to experience the other person as real. In turn, it is difficult to connect with others as living erotic beings, to feel erotically alive oneself. Violence acquires its importance in erotic fantasy as an expression of the desire to break out of this numbing encasement. The importance currently assumed by violent fantasy can in part be attributed to the increasingly rational, individualistic character of our culture, to the increasing deprivation of nurturance and recognition in ordinary human intercourse.<sup>96</sup>

Both through the reality and through its representation, male homosexuality exhibits the willingness to transcend the boundaries through a jouissance of exploded limits.<sup>97</sup> Simultaneously, it avoids degenerating “*into a relationship that condemns sexuality to becoming a struggle for power.*”<sup>98</sup> The abstraction and anonymity of gay male pornography that Stoltenberg perceives is, instead, the paradigm of connection and continuity.<sup>99</sup>

94. *Id.* at 285.

95. *Id.* Benjamin argues: “One person maintains his or her boundary, and one allows her or his boundary to be broken. . . . Together the partners form the whole—the tension in which the assertion and loss of self are united. Together they achieve the transcendence of which neither, alone, is capable.” *Id.*

96. *Id.* at 282.

97. Bersani, *supra* note 79, at 222.

98. *Id.* at 218.

99. See Tucker, *supra* note 35, at 25-26. Tucker asserts:

Stoltenberg perfects the elision of signifiers, so everything he dislikes really means the same thing as everything else he dislikes [i.e., alienation].

. . . .

. . . [W]e might wonder whether his own fiercely ideological gaze is not at least as dehumanizing as that of the pornographer. Pornographers turn persons into images; anti-pornographers turn images into demonic powers. Stoltenberg never does specify what good sexual images might look like, nor

Feminist anti-pornography theory fails to define the erotic in a reconstructed sexuality without objectification. The feminist civil rights approach focuses on respect for the boundaries of individual sexual subjecthood, rather than on the transcendence of those boundaries to give meaning and to give pleasure.<sup>100</sup> It is appropriate that the MacKinnon-Dworkin feminist pornography critique has taken a civil rights approach because both the feminist pornography critique and a liberal rights critique fail to recognize the tension between individual identity and the "other." Pornography graphically demonstrates that tension—ultimately relieved through penetration.

Gay male pornography emphasizes the transcendence of boundaries in various ways. In the gay pornography theater, boundaries are permeated on at least three different levels: a disruption of the public-private distinction by the private sexual encounter common in the public theater; the connection forged in the sex act; and the fusing of reality and fantasy by the subject viewing the representation. Thus, the alienation and separation that Stoltenberg perceives is inverted to become a deeply subversive boundary disruption.

#### V. TOWARD A NEW REGULATORY APPROACH FOR SEXUALITY: THE "LIBERATORY IMAGINATION" AND THE POLITICAL SUBJECT

Gay male pornography not only reveals the inadequacy of the feminist civil rights approach to a sexual minority, but also demonstrates the difficulty of applying a liberal rights approach to sexuality. Once the sexual subject has been deconstructed and revealed as incoherent, a liberal approach centered on sexual autonomy and subjecthood is rendered problematic. Gay pornography *resists* the universal idea of heterosexual subjectivity.

All of the critiques of the feminist anti-pornography approach

---

even what good sex might be—other than being the feminist antithesis to that patriarchal thesis, phallic power.

*Id.*

100. *Id.* at 30. Tucker asserts:

Stoltenberg prefers an eroticism so diffuse that it sounds less vigorous than a Swedish massage; in his utopia pain and pleasure are always clearly distinct, and a diffusion of sensation implies a concentration of identity. Not sexual identity, of course! Just identity, a self with clear boundaries and borders—in Dworkin's sense, uninvaded, unoccupied, uncolonized.

*Id.*

are more sensitive to the sexual *difference* that is homosexuality and expose the inherent weakness of advocating universal sexual rights. However, a rejection of sexual subjecthood does not mean that subjectivity ceases to be a useful and perhaps necessary basis for a legal approach to the regulation of pornography. Subjecthood must be redefined, though, because the focus shifts from sexual rights to political rights. The difference of sexual minorities demands an analysis of their unique political experience and history. That history allows a fuller discussion of subjectivity and facilitates an examination of gay pornography as primarily *political* rather than *sexual* speech.

This constitutional discourse of free speech does not mean that gay pornography should be understood within a liberal rights approach to expression. Rather, the gay subject, forged from a history of sexual oppression, reveals that gay male pornography not only destabilizes heterosexual male values, but also liberates a marginal sexual group. This approach requires greater recognition of the interests of sexual minorities in the regulation of pornography. Andrew Ross, for example, suggests that this greater recognition is achieved only by eliminating fixed concepts of gender and their universalizing tendency:

Gender-based reforms, such as those proposed by antiporn groups, are likely to be antagonistic to the interests of sexual minorities, and have, in fact, already added to the suppression of minority rights only tentatively extended under the protection of the privacy of sexual conduct. A politics of sexuality that is relatively autonomous from categories of gender may be needed to achieve and guarantee the full sexual rights of sexual minorities.

Such a politics is the domain of what I will call the *liberatory imagination*. Unlike the liberal imagination, which exercises and defends autonomous rights and privileges already achieved and possessed, the liberatory imagination is *pragmatically* linked to the doctrine of "positive liberty," which entails the fresh creation of legal duties to ensure that individuals will have the means that they require in order to pursue liberty and equality.<sup>101</sup>

---

101. Ross, *supra* note 37, at 177 (citation omitted). Ross further discusses the politics of the liberatory imagination:

But it is also this liberatory imagination which sets the agenda of radical democracy beyond liberal pragmatism in pursuit of claims, actions, rights, desires, pleasures, and thoughts that are often still considered too illegitimate

The "liberatory imagination" demands that claims arising from difference not be subsumed within the existing liberal rights approach. It is perhaps ironic that this article responds to a feminist theory—a theory addressing the unique situation of women and emphasizing a civil rights approach that must be sensitive to the universal construction of women as the "other." A shift from a liberal to a liberatory approach demands a rethinking of *all* universalizing concepts in light of the differing political experiences of the subjects.

Interestingly, an examination of history and political experience reveals an unusual alliance between sexual minorities and consumer capitalism. Ross argues that the amoral nature of the marketplace has been useful for the liberatory imagination of gays and lesbians. Against the threat of widespread moral regulation and moral oppression, the libertarianism of capitalism has provided the most consistent support for sexual liberation:

[T]he creation of new sexual identities (women, gays and lesbians) in the liberation movements was partially achieved through the agency of a consumer capitalism which stood to profit from the exploitation of markets formed around these identities. . . . And capital *per se* does not discriminate against profitable minority tastes and pleasures on the basis of morality alone, which is why a *moral agenda à la Reagan/Thatcher* always has to be grafted onto the ideology of an enterprise culture, with all of the resulting contradictions.<sup>102</sup>

The alliance between sexual minorities and capitalism, from the perspective of lesbian and gay liberation, is purely pragmatic. Gay

---

to be recognized as political. Such claims, actions, and rights, etc., invariably do not arise out of liberalism's recognition of the *universal* rights of individuals. Instead, they spring from expressions of difference, from the differentiated needs and interests of individuals and groups who make up the full spectrum of democratic movements today. These differences do not necessarily converge, and they can rarely be posed in relation to rights that would concern or embrace all individuals.

*Id.*

102. *Id.* at 189. Ross argues that the "laissez-faire sexual marketplace" provides the only secure site of resistance at present for homosexuals:

[The market] has become a guarantee, at least until legal equality is won, that the existence of sexual minorities and their struggle for sexual rights remain in the realm of public visibility. More often than not, the first to suffer from any moral regulation of the sexual marketplace are those sexual minorities who survive, for lack of civil legitimacy, on its margins, and this has certainly been one of the first effects of the AIDS crisis.

*Id.*

male pornography demonstrates how the political expression of an oppressed sexual group historically has been realized despite the constant threat of censure from the dominant culture.<sup>103</sup>

This article does not recommend a “deregulated,” purely market driven sex industry as the alternative to oppressive regulation. Rather, a liberatory approach replaces the marketplace with regulation sensitive to sexual differences and historical experience. This liberatory approach further ensures that failures of the market will be rectified. In pornography, the effect is a focus on employment standards rather than moral sanction. For example, the representation of safe sex is important not only for re-presenting the erotic in the age of AIDS, but also for ensuring a safe working environment. The employment of children can be halted because history discloses their exploitation as workers generally and by the sex industries particularly. Finally, this regulatory approach provides for greater participation by sexual minorities in the production and control of the pornography industry. Thus, as a liberatory force, the market creates greater possibilities of subversion within the dominant culture, ultimately helping to ensure “[t]he culturally constructed body . . . an open future of cultural possibilities.”<sup>104</sup>

---

103. Ross suggests that the role of the market in sexual liberation should not be underestimated in pornography:

In this respect, the liberatory imagination must exploit the short-term pragmatic benefits of libertarian principles (wherever they are still in practice) because its eyes are on the prize of full sexual rights; it has no ultimate, long-term interest in the principle of free will or free trade. This is not to sanction the commodification of sex, it is to salvage any available gains, under circumstances that are never ideal, from the contradictions of a capitalist culture. Whether or not one rejects the fundamental principles of a market economy, the limited though positive features of market legitimacy cannot be historically dismissed in the case of pornography.

*Id.* at 189. See also BRONSKI, *supra* note 51, at 173. Bronski postulates that gay porn magazines:

have made images of gay male sexuality available to a large number of people, an especially important thing for gay men who may be insecure in their identities. They have also promoted a notion of a gay sensibility, and a gay community—albeit one based on consumerism—both to the straight and the gay worlds.

*Id.*

104. BUTLER, *supra* note 55, at 93.

## CONCLUSION

The inclusion and regulation of gay male pornography within a feminist anti-pornography approach is of interest for several reasons. In subsuming gay male pornography, the civil rights approach demonstrates a failure to capture the subtlety and complexity of the relationship between sex, gender, and sexuality. Gay male pornography, as the representation of a marginalized sexual subculture, reveals the relations of power in sex, gender and sexuality as dense and multifaceted. In a legal theory of rights, gay male pornography orients an analysis of the failures of universal conceptions of subjectivity. It exemplifies the feminist theory's mimicking of dominant culture by developing universal (and univocal) rights. These rights inevitably establish a standard that defines minority as "other."

Ironically, the feminist approach appropriates a mode of analysis that often has worked to the disadvantage of women, to isolate a sexual subculture. In response to this approach, the coherent sexual subject which establishes universal sexual rights is deconstructed. The final outcome, however, does not reject a discourse of rights and subjectivity. Instead, the deconstruction allows for a reconstruction that creates a liberationist conception of rights derived from the particular political experience and history of the subject. A liberationist concept of rights enables the recognition of a marginalized subject whose experience is characterized by the *denial* of subjecthood within the dominant culture. In other words, only through an appeal to experience does a *particular* subject become understandable and coherent.

Legally, gay male pornography is important because the "political" nature of the speech is discernible from a history of oppression. Pornography permits both resistance to the dominant culture and gay liberation. Legal protection of gay male pornography is necessary because the dominant culture is likely to censure it. This threat of censorship is not surprising since gay male pornography subverts phallogocratic power. This analysis implies that an approach that aspires to achieve sexual equality must be sensitive to the liberationist aspirations of sexual minorities and must accept the qualitative *difference* of marginalized sexuality. Ultimately, this analysis demands a general rethinking of universalizing concepts of sexuality.

Any regulation must respect the limits of sexuality explored

by gay men. To do otherwise is to mimic the dominant sexual discourse, thereby becoming a hegemonic practice. Any narrowing of sexuality at the margins risks foreclosing a point of resistance because it will curtail the force of the liberatory imagination. By respecting the marginalized sexual practices of gay men, a feminist approach overcomes the limits of gender analysis and helps to facilitate the representation of subversive sexual acts. Strategically, then, feminists might benefit from recognizing the usefulness of the subversive acts of gay men. An exploration of sexuality at the margins, in turn, demonstrates the limitless and boundless potential of sexuality as a counterhegemonic force. Thus, this exploration is liberatory because it both resists and subverts phallocratic power.