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Beyond Barnard: Liberalism, Antipornography Feminism, and the Sex Wars

On **April 24, 1982,** some eight hundred scholars, students, artists, and activists convened at Barnard College for a conference titled "The Scholar and the Feminist IX: Towards a Politics of Sexuality." According to Carole Vance, the academic coordinator for the conference, the conference's aim was to "refocus" the "feminist agenda on sexuality" (Vance 1993, 294) by addressing "women's sexual pleasure, choice, and autonomy, acknowledging that sexuality is simultaneously a domain of restriction, repression, and danger as well as a domain of exploration, pleasure, and agency" (Vance 1984, 443). Judith Butler, who attended the conference as a graduate student and reviewed its controversial program, *A Diary of a Conference on Sexuality*, stated the conference's aim more directly: "The clear purpose of the *Diary*—and of the Barnard Conference—is to dislodge the anti-pornography movement as the one and only feminist discourse on sex" and "counterbalance the anti-pornography perspective on sexuality with an exploration into women's sexual agency and autonomy" (Butler 1982, 1).[1]

Not all those who attended the Barnard Conference embraced this aim. In fact, on the morning of the conference, just outside the gates of Barnard Hall, a group of self-identified radical and lesbian feminists formed a picket line. Sporting T-shirts that read "For a Feminist Sexuality" on the front and "Against S/M" on the back, the protestors distributed a two-page leaflet accusing the conference of endorsing "sexual institutions and values that oppress all women," including "pornography," "butch-femme sex roles," "sadomasochism," "violence against women," and the sexual abuse of chil-

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[1] In addition to attending the conference, Butler participated in a postconference "Speakout on Politically Incorrect Sex" organized by the Lesbian Sex Mafia. A brief account of Butler's contribution can be found in *off our backs'* extensive coverage of the Barnard Conference. See Moira (1982). Butler also cosigned a letter decrying the antipornography feminist protest against the Barnard Conference published in *Feminist Studies* (see Abelove et al. 1983).

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dren.[2] Although the leaflet was signed "The Coalition for a Feminist Sexuality and Against Sadomasochism (Women Against Violence Against Women; Women Against Pornography; New York Radical Feminists)," it was soon discovered to have been the almost exclusive handiwork of Women Against Pornography (WAP), the leading antipornography feminist organization in the United States at the time.[3]

The events I have just described are often portrayed as the catalyst for feminism's sex wars.[4] And, indeed, if the sex wars are conceived of as a straightforward conflict between antipornography feminists on one side and sex radical feminists on another, the Barnard Conference seems an almost natural starting point.[5] Even scholars who take a longer view, arguing that the clash at Barnard was prefigured by earlier clashes between antipornography feminists and lesbian sadomasochists in San Francisco in the late 1970s, do little to displace the Barnard Conference from the center of the sex wars narrative or to challenge the notion that the sex wars were a simple, two-sided, internecine feminist affair (Vance 1993; Rubin 2011). My

[2] The full text of the leaflet was reprinted nearly a year after the conference in *Feminist Studies* 9, no. 1 (1983): 180–82.

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

[4] See, e.g., Rich (1986), Hamilton (1993), Abrams (1995), Chancer (1998), Hollibaugh (2000), Gerhard (2001), and Bronstein (2011).

[5] The "sides" in the sex wars have been called by many names. For instance, in the 1984 *Signs* article that gave the "sex wars" their name, Ann Ferguson describes a conflict between "radical" and "libertarian" feminists (Ferguson 1984). In an article published alongside Ferguson's, Carole Vance and Ann Snitow note that the sex wars are often parsed as a conflict between "anti-sex" and "pro-sex" feminists" (Vance and Snitow 1984). More recently, other commentators have described the sex wars as pitting "pro-censorship," "dominance," and "cultural" feminists against "anticensorship," "sexually liberal," and "sex positive" feminists (Leidholdt and Raymond 1990; Strossen 1995; Gerhard 2001; Stansell 2011; Strub 2011). In the present work, I use the terms "sex radical feminist" to refer to individuals like Pat Califia, Gayle Rubin, and Carole Vance and "antipornography feminist" to refer to individuals like Robin Morgan, Susan Brownmiller, and Catharine MacKinnon. I have chosen these terms because they are by and large terms in which these individuals would have understood themselves during the period under consideration. That said, they have their limitations, particularly the term "antipornography feminist," which I elaborate upon in the main body of this article.

primary objective in this article is to enact just such a displacement and to pose just such a challenge. I aim to unsettle the widely accepted view that the sex wars were coextensive with the sororocidal conflicts that erupted at the Barnard Conference by foregrounding another complex and contentious relationship that, I argue, was also central to the sex wars: the relationship between antipornography feminism and liberalism.

Before I expound on this claim more fully, a few terminological remarks are in order. First, despite the single-minded focus on pornography that the name implies, antipornography feminism encompassed a large brace of concerns, including rape, incest, domestic violence, sexual harassment, child abuse, and forced prostitution. In fact, antipornography feminists' objections to pornography were inextricably bound up with their belief that pornography (along with other sexist media) played a central role in sanctioning and perpetuating these other forms of gender-based violence and subordination (Bronstein 2011, 16). The broad scope of antipornography feminists' concerns should not be overlooked on account of their name. Second, "liberalism" is a notoriously promiscuous term that can be used to signify everything from progressivism to its opposite.[6] In the present work, I use the term to denote a range of positions premised on "the belief that the freedom of the individual is the highest political value" (Ryan 2012, 362) and that "freedom of conscience, freedom of occupational choice, privacy and family rights all place limits on what governments may do" (377). At the heart of liberalism so conceived is a distinction between the public and the private, where the public is figured as a sphere of justice in which law serves as a neutral guarantor of liberty among free and equal individuals, while the private is figured as a sphere "beyond justice" in which law and liberty are fundamentally at odds (Okin 1989, 25).[7] While liberals have traditionally presented the public/private distinction as a means of securing individual liberty against the encroachments of overweening governments, feminist political theorists have noted its utility for other purposes. As Carole Pateman has incisively observed, given "the way in which women and men are differentially located within private life and the public world," liberalism's public/private distinction

[6] As Judith Shklar has observed, "years of ideological conflict . . . have rendered [liberalism] so amorphous that it can now serve as an all-purpose word, whether of abuse or praise" (Shklar 1998, 3). Duncan Bell has recently echoed Shklar's observation, describing liberalism as "a hyper-inflated, multi-faceted, body of thought" and "a deep reservoir of ideological contradictions" (Bell 2014, 691).

[7] On the centrality of the public/private distinction to liberal theory and practice, see Okin (1979, 1989), Elshtain (1981), and Pateman (1989).

"obscures the subjection of women to men within an apparently universal, egalitarian individualist order" (Pateman 1989, 120). It is liberalism in this sense, I argue, that played such a crucial role during the sex wars.[8]

While the sex wars tend to be remembered as a conflict among feminists, this is not how they began. In the early 1970s, when antipornography feminism was first cohering as both an ideology and a movement, antipornography feminists' primary opponents were not sex-radical feminists but nonfeminist liberals who had been engaged in a legal crusade against the regulation of obscenity in the United States since the mid-1950s. At the heart of this crusade was the claim that sexually explicit expression, including pornography, was private, apolitical, and harmless. Early antipornography feminists fiercely contested this claim, figuring pornography as "the media of misogyny" (Barry 1979, 175), tantamount to "handbooks or blueprints for sadistic violence, mutilation, . . . female enslavement, and gynocide" (174).[9] Throughout the 1970s and the early 1980s, conflicts between pornography's feminist critics and liberal defenders grew so pronounced that a critical orientation toward liberalism became as fundamental to antipornography feminism as a critical orientation toward pornography. Then, beginning in the mid-1980s, as antipornography feminists championed a municipal ordinance that would define pornography as the "graphic sexually explicit subordination of women"

[8] My use of the term "liberal" differs in significant respects from the uses of other scholars who have written about this same period in feminist history. For instance, in her discussion of the American women's movement of the 1960s and 1970s in *The Feminist Promise* (2011), historian Christine Stansell uses the term "liberal" to distinguish feminists who favored "incremental change and electoral politics" from "radicals," whom Stansell describes as practicing a "searing, melodramatic, and rambunctious . . . politics of confrontation, catharsis, and personal transformation" (222–23). In my view, applying the term "liberal" in this sense to the antipornography feminist movement would breed much in the way of confusion and misunderstanding. This is because so many leading antipornography feminists (e.g., Susan Brownmiller, Kathleen Barry, Andrea Dworkin, and Catharine MacKinnon) engaged in the style of politics Stansell calls "liberal" while at the same time offering searing critiques of liberalism as a political theory. Additionally, many antipornography feminists who engaged in Stansell's "liberal" politics also engaged in a politics that Stansell would undoubtedly call "radical." Andrea Dworkin, who both coauthored antipornography legislation and served as what Stansell has aptly described as the "obsessed melodramatic polemicist of the antipornography feminist movement" (346) is a prime example of an antipornography feminist who confounds Stansell's liberal/radical dichotomy.

[9] Early sex radical feminists fiercely contested this claim too. In their view, liberal critiques of obscenity regulation as an unjustifiable intrusion into the private sphere of sexuality evinced a failure on the part of liberals to look beyond the freedom to peruse pornography in private without fear of legal sanction to a more robust and far less individualistic sexual freedom.

(Dworkin and MacKinnon 1988, 113) and give individuals who could prove they had been harmed by pornography the right to sue its producers and distributors for damages, this relationship began to change.[10] Influential political philosophers, jurists, and legal theorists began to mount recognizably liberal defenses of antipornography feminist claims and legislative proposals, giving rise to a truly improbable ideological amalgam: liberal antipornography feminism.

In this article, I describe how antipornography feminism emerged in the early 1970s as an emphatic critique of liberalism and was transformed over the course of the 1980s and 1990s into a widely accepted tenet of liberalism itself. By way of conclusion, I reflect on the implications of this transformation for a more recent development: the mobilization of feminist critiques of gender-based violence in the service of a politics of criminalization and incarceration that Elizabeth Bernstein has dubbed "carceral feminism" (Bernstein 2010; see also Bernstein 2007, 2012).[11]

The end of obscenity and the rise of antipornography feminism

By the time antipornography and sex-radical feminists squared off at the Barnard Conference in the spring of 1982, antipornography feminists had been battling a very different set of adversaries for more than a decade: liberal opponents of obscenity regulation. Since the days of Anthony Comstock's reign as postal inspector (1873–1915), American liberals had been fighting to roll back the regime of obscenity regulation in the United States.[12] Despite these efforts, Comstock-era obscenity laws remained in force in the United States well into the twentieth century.[13] However, in the late 1950s, when the US Supreme Court revamped federal obscenity standards in *Roth v. United States*, a cadre of civil libertarians, including book and

[10] This language comes from the pornography civil rights ordinance drafted by Dworkin and MacKinnon at the request of the City of Indianapolis in the early spring of 1984. I discuss this ordinance in more detail below.

[11] This phenomenon has also been noted by other scholars. See, for instance, Gottschalk (2006), Simon (2007), Bumiller (2008), and Lancaster (2011).

[12] For accounts of these liberal efforts, see Rabban (1997) and Horowitz (2002).

[13] While the laws themselves remained in effect, the standards by which materials were judged obscene were somewhat liberalized. For instance, under traditional common law standards, entire works could be judged obscene based on the tendency of isolated passages contained within them to "deprave and corrupt" children (Rembar 1968, 22). However, by the end of the 1940s, precedent dictated that allegedly obscene works be judged as a whole and on the basis of their effects on adult readers.

magazine publishers, film distributors, and attorneys, saw an opportunity to succeed where their forebears had failed.[14]

At the forefront of this postwar liberal crusade were the alternative publishing house Grove Press and its maverick owner, Barney Rosset. As Loren Glass has emphasized in his study of Grove, Rosset's press was no mere publishing house; it was the siege engine in what Rosset described as "a carefully planned campaign, much like a military campaign" against what remained of the Comstock-era regime of obscenity regulation (Glass 2013, 101). If Rosset was the general in this campaign, then acclaimed civil liberties lawyer Charles Rembar was his first lieutenant. Retained by Rosset in 1959 to defend Grove against obscenity charges relating to the publication of the first unexpurgated American edition of *Lady Chatterly's Lover*, Rembar pioneered an ingenious legal strategy that would prove devastating to the Comstock Act and its ilk. Turning the justification of obscenity regulation offered by the Supreme Court in *Roth* against itself, Rembar argued that if works lacking in "redeeming social importance" and dealing "with sex in a manner appealing to the prurient interest" are indeed "obscene," then works possessing even a modicum of social importance and dealing with sex in a manner appealing to a healthy and normal interest are not obscene, and are, therefore, entitled to the full protection of the First Amendment. Throughout the 1960s, Rembar, along with other renowned civil liberties lawyers in Grove's employ like Edward de Grazia and Ephraim London, fruitfully employed this inventive interpretation of *Roth* to vindicate works whose publication had once been unthinkable, like Henry Miller's *Tropic of Cancer* and William Burroughs's *Naked Lunch*.[15]

Having successfully championed what might be described as the "literary obscene," Rosset turned Grove's resources to the publication of more straightforwardly pornographic materials, including the wildly explicit works of the Marquis de Sade and hundreds of quaintly salacious "under-the-counter" staples from the Victorian and Edwardian eras (Glass 2013, 140). Rosset also tried his hand at the distribution of sexually explicit motion pictures, licensing *I Am Curious (Yellow)*, an arty Swedish film that mixed leftist politics with explicit sex, for distribution in the United States in 1967. In spite of numerous legal challenges, the film grossed more than

[14] See *Roth v. United States* at 354 U.S. 476 (1957). For detailed first-hand accounts of the postwar liberal campaign against the regulation of obscenity in the United States, see Rembar (1968) and de Grazia (1993). For briefer summaries, see Ellis (1988), Downs (1989), *Obscene* (2008), and Glass (2013).

[15] For detailed accounts of the trials surrounding the American publications of each of these works, see Lewis (1976), Boyer (2002), and Ladenson (2007).

$14 million.[16] Buoyed by its success, Grove went on to become a major distributor of pornographic films (Glass 2013, 191). By the summer of 1969, Rosset's reputation as an unabashed pornographer was cemented when *Life* magazine christened him "The Old Smut Peddler" (Glass 2013, 143).

Rosset's all-out war against the American regime of obscenity regulation set the stage for the first confrontation between the distinctive brand of liberalism animating his crusade and the emerging feminist critique of pornography. On April 13, 1970, a group of thirty women forcibly occupied Grove Press's executive offices in Greenwich Village.[17] The occupation was, in large part, a protest against Grove's involvement in the publication and distribution of pornographic works.[18] In a set of demands issued just before their arrest, the occupiers accused Grove and its subsidiaries of profiting from "the basic theme of humiliating, degrading, and dehumanizing women through sadomasochistic literature, pornographic films, and oppressive exploitive practices against its own female employees" (qouted in Lederer 1980, 269). "In self-defense," the occupiers declared, "we women are holding the Grove offices in trust [until] all publication of books and magazines, and all distribution of films that degrade women [are] stopped" (269). Looking back on these events, Robin Morgan, one of the occupation's organizers, who would go on to cofound the Women's Anti-Defamation League, the predecessor organization to WAP, described the takeover of the Grove Press offices as "the first time feminists openly declared pornography as an enemy" (quoted in Lederer 1980, 268).[19] It was

[16] For instance, in January of 1968, customs officials confiscated six 35 mm. reels containing *I Am Curious (Yellow)* at the US border. Rosset and his legal team successfully sued the federal government for their release (see *United States v. A Motion Picture Film Entitled "I Am Curious—Yellow,"* 285 F. Supp. 465 [S.D.N.Y. 1968]). Also, in November 1969, owners of a Boston movie theater screening *I Am Curious (Yellow)* were indicted for violating state obscenity laws. With Grove's help, the defendants successfully fought the case all the way up to the Supreme Court (See *Byrne v. Karalexis*, 401 U.S. 216 [1971]).

[17] For accounts of the Grove Press occupation, see Gontarski (1998), Rosen (2000), Morgan (2001), and Glass (2013).

[18] The occupation was also a response to the firing of several employees who had been working to unionize Grove, an action widely perceived (and, eventually, confirmed by the National Labor Relations Board) to be union busting. In the final chapter of *Counterculture Colophon*, Loren Glass writes, "[Robin] Morgan was fired along with eight other employees for what an arbitrator later affirmed to be unionization activities" (2013, 196).

[19] For details regarding the Women's Anti-Defamation League, see Brownmiller (1999) and Bronstein (2011). Also, Morgan's assertion is not entirely accurate. Prior to the Grove occupation, at least one feminist had openly declared pornography an enemy. In November of

also the first time feminists had openly challenged liberal portrayals of pornography as private, apolitical, and harmless.

Over the next decade, feminists built upon the critique of pornography that the Grove Press occupiers had inaugurated, and as they did so, the conflict between liberalism and what would rapidly cohere into a full-fledged antipornography feminist ideology became increasingly explicit. For example, in the concluding chapter of her groundbreaking feminist history of rape, *Against Our Will: Men, Women, and Rape* (1975), Susan Brownmiller, who would go on to serve as the first president of WAP in 1979, berated liberals for placing the rights of producers, purveyors, and purchasers of "ugly smut" above the rights of women (Brownmiller 1975, 392).[20] "The case against pornography and the case against prostitution are central to the fight against rape," Brownmiller wrote, "and if it angers a large part of the liberal population to be so informed, then I would question in turn the political understanding of such liberals and their true concern for the rights of women" (1975, 390). In the course of mounting this blistering critique, Brownmiller drew parallels between the early opposition of the American Civil Liberties Union to feminist efforts to reform rape law and then-current efforts to make "obscenity the new frontier in defense of freedom of speech" (390). The same "defense lawyer mentality" (390) that blinded liberals to the injustice and sexism of the corroborative proof requirements written into the rape laws of many states also blinds them, Brownmiller argued, to the fact that " 'adult' or 'erotic' books and movies" are not "a valid extension of freedom of speech that must be preserved as a Constitutional right" (395) but "the undiluted essence of anti-female propaganda" (394).[21]

1969, in an article titled "'Sexual Revolution': More of the Same Thing," Roxanne Dunbar, founder of the militant leftist-feminist Cell 16, offered a trenchant feminist critique of pornography (Dunbar 1969; see also Echols 1989, 361). Dworkin's description of the takeover of Grove Press as "the first antipornography feminist demonstration" is more accurate, though it does bear mentioning that, in January of 1970, women, some of whom identified as "women's liberationists," staged a takeover of one of the major underground newspapers of the New Left, *Rat* (Dworkin 1997, 28). The *Rat* takeover was motivated at least in part by the paper's publication of sexually explicit images of women. It was also the occasion of Morgan's famous diatribe "Goodbye to All That," which criticizes *Rat* and other New Left publications for their "porny photos, sexist comic strips, and 'nude chickie' covers" (Morgan 1977, 122).

[20] Brownmiller's involvement with WAP is recounted in Brownmiller (1999) and Bronstein (2011).

[21] Corroborative proof rules stipulated that a rape conviction could not be sustained based solely upon the testimony of the "prosecutrix." In the 1970s, feminists successfully campaigned for the repeal of these rules. On this and many other aspects of rape law reform in the United States, see Caringella (2009) and Corrigan (2013).

In January of 1977, just over a year after the publication of Brownmiller's *Against Our Will*, Andrea Dworkin brought her own unique brand of antipornography feminism to the campus of the University of Massachusetts at Amherst and, once again, critical engagement with liberalism was front and center. In response to a controversy surrounding student government funding for student organizations hosting screenings of sexually explicit films on campus, Dworkin delivered a speech titled "Pornography: The New Terrorism," in which she accused civil libertarians of aiding and abetting a reactionary campaign of terror against women (Dworkin 1978, 201).[22] "The concept of 'civil liberties' in this country," Dworkin thundered, "has not ever, and does not now, embody principles and behaviors that respect the sexual rights of women," and those who "ritualistically claim to be the legal guardians of 'free speech,'" are, in fact, "the legal guardians of male profit, male property and phallic power" (202).

One year later, at a colloquium at the New York University School of Law, Dworkin delivered this pointed indictment of pornography and liberalism once again, only this time her audience consisted of more than just sympathetic college students. Sponsored by the *New York University Review of Law and Social Change*, the colloquium had the stated aim of bringing leading civil libertarians together with leading antipornography feminists to discuss the issue of pornography and identify possible opportunities for collaboration between them. "We hoped," Lisa Lerman, the colloquium's coordinator, explained, "to get the civil libertarians 'unstuck' from addressing only the obsolete moralistic objections to pornography, and also to discuss what legal remedies may be available to women subjected to the dehumanization and the physical threats posed by violent pornography" (Lerman 1979, 181). By practically all accounts, these aims went unfulfilled.[23] However, the colloquium was a success in at least one respect: by bringing antipornography feminists and liberals directly into conversation with each other for the first time, it clarified the nature and extent of the theoretical chasm that divided them.[24]

[22] This controversy was reported in a series of articles in the university's student newspaper, *The Collegian*; see Conway (1976a, 1976b), Hoffman (1976a, 1976b), and Cohen (1977).

[23] An account of the day's events published in the radical feminist periodical *off our backs* offers a particularly grim assessment. "As the day wore on," *off our backs* reports, "the conflict between feminists and civil libertarians, never exactly undercover, erupted into many bloody episodes, with feminists drawing most of the blood" (Brooke 1979).

[24] Bronstein has characterized the theoretical chasm on display at the colloquium as a conflict between "classical liberalism" represented by the civil libertarians and "a communitarian social position" represented by the antipornography feminists (Bronstein 2011, 181).

Nowhere was this theoretical chasm more evident than in a confrontation between Dworkin and Paul Chevigny, a law professor and former civil liberties lawyer, during a panel titled "Effects of Violent Pornography." The first shots in this spirited exchange were fired by Chevigny. "There is *nothing* to be said, nothing *rational* to be said," Chevigny declared in his opening statement, "for any government censorship of any writings that relate to sex. It would be an inexcusable interference with the freedom of everyone . . . in this country" and a destructive intrusion into "the emotional relations between men and women" (in Law 1979, 232–33). Having painted his antipornography feminist interlocutors as irrational busybodies, Chevigny proceeded to criticize them for failing to address the panel's topic. While they may have shown that "women are an oppressed class" and that "pornography is a form of propaganda" that "creates an atmosphere which is degrading to women," they had not, Chevigny admonished, offered any evidence that pornography "really hurts women" (in Law 1979, 233). "No one here has said any of the things I thought we were going to hear about effects of pornography," Chevigny exclaimed, "I did not hear anything about any specific effects. *Not a syllable.* Nothing" (1979, 233).

Later, when it was her turn to speak, Dworkin fired back. Taking up Chevigny's charge that she and her fellow antipornography feminists had failed to speak directly to pornography's effects, Dworkin insisted that "we have been here all day discussing the issue of pornography [and] articulating our social situation as women and the fact is that it didn't take, did it?" (in Law 1979, 238). "Women," Dworkin continued, "are denied freedom of expression by rape, by battering, . . . by violence on every level, by sexual harassment . . . , by being unable to make the decent living that gives one the freedom to speak one's mind. . . . When I tell you that pornography silences me . . . and Phyllis Chesler has testified to it, and Leah Fritz has, and Florence Rush has, and women all over the country have, and

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While I think Bronstein's characterization of the civil libertarians' position is apt, I cannot say the same of her characterization of the antipornography feminists' position. The antipornography feminists at the colloquium did not assail the liberals for their universal aspirations, their atomized vision of the self, or their tendency to denigrate tradition and culture. In fact, several of them expressed what can only be described as anticommunitarian views. For instance, Florence Rush blamed traditional notions of marriage and family for the sexual abuse of children, and Dworkin impugned appeals to the common good as ideological ploys used to dupe women into defending a society in which "they have absolutely no stake" (Law 1979, 225, 242). For more on communitarian critiques of liberalism, see Bell (1993) and Delaney (1994).

we are told we haven't said anything about the effects of pornography . . . , then we understand that we are operating in a moral vacuum" (239).[25]

This exchange between Chevigny and Dworkin is a synecdoche for the conflict that defined the relationship between antipornography feminism and liberalism throughout the 1970s. Chevigny's insistence that antipornography feminists were right regarding pornography's role in contributing to an oppressive atmosphere but wrong in their presumption that, in pointing to this role, they were saying anything at all about pornography's "effects" evinces his investment in a quintessentially liberal notion of the public and the private. For Chevigny, the "degrading atmosphere" that pornography begets is not properly considered an "effect of pornography" because, in his conventionally liberal view, this "degrading atmosphere" does not, as he puts it, "really hurt women." What Chevigny means by this is not that living in a culture that widely sanctions women's subordination is good for women but that the subordination of women through pornography is a "private" as opposed to a "public" harm that admits of no legal remedy.[26] If a legal remedy for such a harm were adopted, so Chevigny's liberal reasoning goes, the implications for individual liberty would be disastrous: such a law would ride roughshod over the public/private distinction and subject fundamentally private matters such as "the emotional relations between men and women" to government regulation and control (in Law 1979, 234).

In her response to Chevigny, Dworkin challenges this liberal analysis head on. By insisting that pornography "silences" women, Dworkin both contests liberal figurations of women's subordination through pornography as a merely "private" harm and radically calls into question the status of liberalism's public/private distinction as a safeguard for individual

[25] Chesler, Fritz, and Rush had each presented on the panel prior to Dworkin.

[26] Chevigny's position here is reminiscent of John Stuart Mill's position in *On Liberty* concerning expressions of the opinion that "corn-dealers are starvers of the poor" (Mill [1859] 1989, 56). "When simply circulated through the press," Mill argued, this opinion "ought to be unmolested" ([1859] 1989, 56). However, "when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard," Mill contended, this opinion "may justly incur punishment" (56). What Mill meant by this is that, although accusations circulated through the press that corn-dealers are starvers of the poor are likely to prove "disastrous to the interests" of corn-dealers, merely "private" harms such as this cannot justify the imposition of a limit on the expression of an opinion (Jacobson 2000, 286). Only where the expression of an opinion can be shown to cause "public" harm of the sort likely to be brought about by an impassioned oration delivered to an angry mob can limits on speech be justly imposed in a Millian liberal view.

liberty. After all, if practices that liberals cordon off from the reach of law and government in the name of individual liberty actually work to systematically undermine the liberty of women, then liberalism's public/ private distinction begins to look less like a bulwark against tyranny and more like an instrument of patriarchal domination.

Clearly, by the end of the 1970s, antipornography feminists and liberals had reached an impasse. Holding fast to the public/private distinction and the liberty they believed it safeguarded, liberals either rejected claims regarding pornography's harmfulness altogether or insisted that these harms, though regrettable, could not justify any serious efforts to curtail pornography's production, distribution, or consumption. Meanwhile, in the face of what they perceived as liberals' callous obstinacy, antipornography feminists condemned liberal conceptions of harm, liberty, and the public and the private as too rigid and formalistic to accommodate even the most basic pleas for justice on behalf of women. As the 1970s gave way to the 1980s and antipornography feminists began to champion an ordinance figuring pornography as legally actionable sex discrimination as opposed to constitutionally protected speech, these already profound theoretical differences seemed poised to deepen.

The Dworkin-MacKinnon ordinance and the rise of liberal antipornography feminism

In the fall of 1983, at the request of the City of Minneapolis, Andrea Dworkin and Catharine MacKinnon drafted the first version of their pornography civil rights ordinance. Premised on antipornography feminism's defining dogma that pornography threatens women's physical, political, and economic well-being, the ordinance consisted of a series of amendments to Minneapolis's existing civil rights code. It singled out pornography as a form of sex discrimination and defined specific acts, including "trafficking in pornography," "coercion into pornographic performances," "forcing pornography on a person," and "assault or physical attack due to pornography," as civil rights violations (Dworkin and MacKinnon 1988, 101). As Dworkin and MacKinnon frequently emphasized, the ordinance was a civil as opposed to a criminal law, and it placed "enforcement in the hands of the victim," not police and prosecutors (MacKinnon 1987, 203).[27]

[27] MacKinnon often juxtaposed the ordinance's civil rights approach with the criminal approach embodied in extant obscenity law. As she once explained it, the ordinance "shifts [pornography] from the doctrine of offensive utterances to the doctrine of civil subordination, from the criminal law of morals regulation to the civil law of discrimination, from law

More specifically, the ordinance gave women, as well as any other persons who could prove to the satisfaction of a trier of fact that their civil rights had been violated through a particular piece of pornography, a cause of action to sue the producers and distributors of the material for damages as well as a permanent injunction against the sale, exhibition, and distribution of that material (Dworkin and MacKinnon 1988, 101).

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

The Minneapolis City Council passed two versions of what eventually came to be known as the "Dworkin-MacKinnon ordinance," the first in December of 1983 and the second in July of 1984. The city's mayor, Don Fraser, vetoed both of them, citing First Amendment concerns.[28] The ordinance fared better in Indianapolis, where it passed into law in the spring of 1984. Over the next two years, versions of the Dworkin-MacKinnon ordinance were also considered in Madison, Wisconsin; Bellingham, Washington; Los Angeles County, California; Cambridge, Massachusetts; and Suffolk County, New York.[29] The ordinance also sparked

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that empowers the state to law that empowers the people [and] . . . redistribute[s] power to citizens" (1995, 301–2).

[28] For a detailed account of the campaigns for and against the Dworkin-MacKinnon ordinance in Minneapolis, see Downs (1989). On the reasons behind Mayor Fraser's veto of the Minneapolis ordinance, see *New York Times* (1984a).

[29] While Suffolk County's antipornography ordinance borrowed language from the version of the Dworkin-MacKinnon ordinance enacted by the City of Indianapolis, it departed significantly from Dworkin's and MacKinnon's original design. For example, it described pornography as a primary cause of "sodomy" and "a serious threat to the health, safety, morals and general welfare" of county residents (see Gruson 1984; *New York Times*

interest at the federal level, and, between the summer and winter of 1985, MacKinnon, Dworkin, and two other prominent antipornography feminists testified about the civil rights approach to pornography before the Attorney General's Commission on Pornography (more commonly known as the Meese Commission).[30]

Despite these early successes, in the summer of 1986, the ordinance's momentum began to flag. This was due in large part to the Supreme Court's summary affirmance of the decision in *American Booksellers Association v. Hudnut*.[31] In this decision, the US Court of Appeals for the Seventh Circuit struck down the Indianapolis version of the Dworkin-MacKinnon ordinance on First Amendment grounds, holding that the law amounted to a content-based restriction on speech that was not neutral in regard to viewpoint. Invoking the same quintessentially liberal notions of the public and the private that antipornography feminists had been assailing since the 1970s, Judge Frank Easterbrook, writing for the majority in *Hudnut*, likened the Dworkin-MacKinnon ordinance to "thought control." Granting that "depictions of subordination tend to perpetuate subordination," Easterbrook nevertheless maintained that legal interventions aimed at curtailing subordinating depictions of women were illegitimate. According to Judge Easterbrook, "all of [pornography's] unhappy effects depend on mental intermediation" and to permit the mitigation of these effects through the regulation of pornography would be to invite the government into the "private" sphere of thoughts and intimate relations, to establish in law "an approved view of women [and] of how the sexes may relate to each other," and to leave "the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us."

Without a doubt, the *Hudnut* ruling was a decisive defeat for the Dworkin-MacKinnon ordinance and the grassroots movement that had been its champion.[32] However, this defeat did not mark the end of antipornography feminism's influence and relevance. In fact, as the ordinance's momentum waned and as the antipornography feminist movement disintegrated,

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1984b). MacKinnon described the Suffolk County ordinance as "bastardized" and worked to defeat it (MacKinnon 1997, 5).

[30] In its final report, issued in July of 1986, the commission expressed its "substantial agreement with the motivations behind the ordinance and the goals it represents" and recommended that Congress "conduct hearings and consider legislation recognizing a civil remedy for harm attributable to pornography" (Attorney General's Commission on Pornography 1986, 62, 186).

[31] See 771 F.2d 323 (7th Cir. 1985, 328–30).

[32] On the unraveling of the antipornography feminist movement in the wake of the *Hudnut* ruling, see the concluding chapter of Bronstein's *Battling Pornography* (2011).

antipornography feminist ideas underwent a renaissance of sorts at the hands of some very unlikely allies. In the mid-1980s, prominent liberal jurists and political philosophers began translating the feminist critique of pornography into a liberal idiom and, in doing so, they dramatically reconfigured the relationship between antipornography feminism and liberalism.

One of the earliest and most influential liberals to take up antipornography feminist ideas was American legal scholar Cass Sunstein. In a string of articles and essays published between 1986 and 1993, Sunstein unequivocally asserted that pornography is a cause of "serious harm, mostly to women" that could be subject to some form of legal regulation (Sunstein 1986, 601–2).[33] Judged solely on the basis of these broad claims, Sunstein's position appears to be largely consonant with the positions of earlier antipornography feminists. However, when one looks beyond these generalities, a major difference between Sunstein and the antipornography feminists who preceded him begins to emerge: Sunstein was a committed liberal formulating an approach to pornography regulation that conformed to, as opposed to defied or confounded, conventional liberal notions of harm, liberty, and the public and the private.

Sunstein's allegiance to liberalism is most readily evident in the range of materials he singled out for regulation. Unlike the Dworkin-MacKinnon ordinance, which targeted the entire range of wares peddled by the pornography "industry" (MacKinnon 1987, 198), from *Playboy* to "snuff films" (MacKinnon 1993, 22–23), Sunstein's proposed antipornography legislation was, in his words, "tightly targeted to . . . portrayals of sexual violence" (Sunstein 1986, 616). Sunstein's decision to exempt materials that "define women as sexually subordinate to men" but do not "sexualize violence" highlights his investment in a conventionally liberal conception of harm (Sunstein 1986, 592). Traditionally, antipornography feminists had considered the silencing and objectification of women in "so-called sex only" pornography to be full-fledged public harms (MacKinnon 1987, 187).[34] Sunstein, however, broke with this tradition, arguing that only

[33] See also Sunstein (1986, 1988, 1992, 1993).

[34] I have already discussed the emphasis that antipornography feminists like Dworkin placed on pornography's "silencing" effects. Regarding "objectification," the Dworkin-MacKinnon ordinance figured this as one of pornography's principal harms. As Dworkin and MacKinnon explain in their self-published defense of the ordinance, among the ordinance's central aims was to make "the harm of being seen and treated as a sexual thing rather than as a human being" legible and legally actionable (Dworkin and MacKinnon 1988, 45). Even the public hearings organized on behalf of the ordinance were guided by this aim. According to

"violent pornography" (1992, 21), defined as materials combining sexual explicitness with violence, contributes to what he tellingly described as pornography's "principal" (1986, 592) and "concrete, gender-related harms" (595) like "violence against women," "sexual harassment," and other "illegal conduct" (1992, 25). Sounding very much like one of antipornography feminism's liberal critics, Sunstein maintained that "one cannot find [pornography's silencing effects] to be a reason for regulation without making excessive inroads on a system of free expression" (1992, 25) and cautioned that "the notion of objectification is one with which it is extremely difficult for a legal system to work" (25). Far better, Sunstein believed, to adopt an approach to pornography regulation that "does not go so deep" (1988, 846) and that "deals with pornography as a subject of regulation only to the extent that it is associated with violence against women" or other criminal acts (1992, 21).

This, of course, is precisely what Sunstein did. By limiting antipornography feminism's broad definition of pornography to "violent pornography" (1992, 21) and narrowing its expansive conception of harm to violence and other "illegal conduct" (1988, 835), Sunstein devised an antipornography feminist approach that sought to mitigate "sexual inequality," without, in his words, "threaten[ing] areas thought to be personal and private" or offending "traditional First Amendment doctrine" (1986, 608).[35] He devised, in other words, what I have called "liberal antipornography feminism," a variant of antipornography feminism that respects, as opposed to resists, fundamental liberal principles.

In the wake of Sunstein's pioneering efforts, scholars across a variety of disciplines began adapting the feminist critique of pornography to the strictures of liberalism and established constitutional law.[36] In the spring of 1993, this veritable explosion of liberal antipornography feminist discourse was vividly on display at a conference held at the University of Chicago Law School titled "Speech, Equality, and Harm: Feminist Legal Perspectives on Pornography and Hate Propaganda." At this conference,

MacKinnon, "these hearings were the moment when . . . , against a backdrop of claims that [they] do not exist . . . , the harms of pornography stood exposed and took shape as potential legal injuries" (MacKinnon 1997, 4).

[35] Jeanne Schroeder has described Sunstein's approach as transforming Dworkin and MacKinnon's "call for political and sexual revolution" into "an anticrime, antismut bill" (Schroeder 1992, 124).

[36] See, e.g., Okin (1987, 1994), Langton (1990, 1993, 1999), Pollard (1990), Rorty (1990), Dyzenhaus (1992, 1994), Michelman (1995), Schauer (1995), Scoccia (1996), Nussbaum (1999), Schaeffer (2001), Laden (2003), Brake (2004), Eaton (2007), Watson (2007), and McGlynn and Ward (2009).

leading antipornography feminists came together with scholars and activists engaged in campaigns to combat bias-motivated or "hate" crimes.[37] Their goal was to develop legal solutions to the problems of pornography and other forms of "harmful speech," defined by two of the conference's lead organizers as "speech that harms the individual who is [its] target . . . and . . . perpetuates negative stereotypes, promotes discrimination, and maintains whole groups of people as second-class citizens, hampering their participation in our democracy" (Lederer and Delgado 1995a, 5). While a handful of proposals presented at this conference bucked liberal conventions and concepts, many were carefully tailored to accord with central liberal tenets.[38]

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

[37] Conference participants included law professors and legal theorists like Cass Sunstein and Frederick Schauer, critical race theorists like Richard Delgado and Kimberlé Crenshaw, veteran antipornography feminists like Laura Lederer and Dorchen Leidholdt, and psychologists like Gloria Cowan and James Check.

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

like “racially based form[s] of disadvantage” (203), “the violence and coercion that often occur in the making of pornography” (205), and “harassment and intimidation” (205).

Kagan’s proposals to regulate inequality-engendering speech only where such speech intersects with illegal conduct reveals the extent to which liberal conceptions of harm, liberty, and the public and the private had permeated antipornography feminist thinking by the mid-1990s. While Kagan was convinced that pornography and hate speech “perpetuate and promote inequality” (202), the upshot of her reform proposals, which were widely embraced by other feminist and antiracist opponents of pornography and hate speech at the time, is that this alone does not amount to the sort of “public” harm that might justify the imposition of a legal remedy.[39] By insisting that pornography and hate speech are “proper[ly]” regulated only indirectly through measures “aimed not at speech, but *acts*” (203), Kagan’s antipornography feminist position reaffirmed traditional liberal figurations of pornography as “private” and harmless and left liberalism’s public/private distinction intact and unchallenged. Once irreconcilable opponents, by the mid-1990s, antipornography feminism and liberalism had become allies and complements.

Liberal antipornography feminism and feminism’s carceral turn

I began this essay with an invitation to conceive of the sex wars as something other than a straightforward conflict between antipornography feminists on one side and sex-radical feminists on another, an invitation to look “beyond Barnard,” so to speak. Accepting this invitation, I promised, would disclose aspects of the sex wars that are rarely considered, including a rich history of theoretical contestation and improbable collaboration between antipornography feminists and liberals. Now, having recovered this history and placed it squarely in our view, I would like to extend one final invitation. Let us reflect on the implications of the convergence of liberalism and antipornography feminism that this article has struggled to illuminate for one particularly urgent contemporary development: the increasingly carceral character of feminist politics.

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

As a growing number of scholars and activists have observed, in the past several decades, feminist efforts to resist gender-based violence and oppression have taken on an unmistakably carceral hue. From international campaigns to stiffen penalties for the crime of "sex trafficking" to domestic campaigns to institute mandatory arrest policies in cases of intimate partner violence, ostensibly feminist projects increasingly figure policing, prosecution, and incarceration as cure-alls for women's subjugation. Of the scholars who have documented this phenomenon, most have attempted to explain it in terms of a confluence of feminist and conservative forces. Kristin Bumiller (2008, 7), for instance, has argued that "reactionary forces" unleashed by the rise of neoliberalism "modified" (7), or, as the subtitle of her book proclaims, "appropriated," the feminist movement against sexual violence in the 1980s, giving rise to "a direct alliance between feminist activists and legislators, prosecutors, and other elected officials" demanding "more punitive action by the state" (7). Elizabeth Bernstein (2010, 47) has offered a similar account of the rise of "carceral paradigms" of justice in the feminist antitrafficking movement. According to Bernstein, the movement's turn "toward a politics of incarceration" is associated with "a rightward shift" (47) and "feminist-conservative alliances" formed between feminist antitrafficking advocates like Laura Lederer and Dorchen Leidholdt and "right-wing organizations" like the Hudson Institute and the Heritage Foundation (53).

While there is no denying that Bumiller's and Bernstein's observations are correct and that certain affinities and relationships do indeed exist between contemporary feminist antiviolence and antitrafficking activism and reactionary, conservative, neoliberal, or right-wing agendas, my research concerning the convergence of antipornography feminism and liberalism in the late 1980s and early 1990s indicates that feminism's carceral turn may not be exclusively or even primarily a product of conservative or right-wing influence. As my research has shown, prior to the emergence of liberal antipornography feminism, antipornography feminists figured pornography as harmful in ways that challenged traditional liberal conceptions of harm, liberty, and the public and the private. They did not, however, advocate or pursue criminal remedies for pornography's harms. Even MacKinnon, who was notoriously eager to wield the law in the service of feminist ends, advocated only a *civil* legal remedy for pornography's harms and adamantly opposed efforts to regulate pornography through criminal law. In MacKinnon's own words, she had "no particular interest in increasing the power of the *state* over sexuality or speech" (1987, 140); her goal was to shift the regulation of pornography away from "criminal law," which "empowers the state," and toward "civil law," which "empowers the people" (1995, 302).

With the advent of liberal antipornography feminism, this reluctance to use criminal law to address pornography's harms all but vanished among pornography's feminist critics. While it may seem counterintuitive to claim that liberalism, with its emphasis on individual liberty and limited government, helped to forge a feminist politics that figured the "carceral state" (Bernstein 2010, 56) as the "enforcement apparatus of feminist goals," this is precisely what occurred in the case of the antipornography feminist movement (Bernstein 2007, 143). Intent on doing something to address pornography's harmful effects but wary of the sweeping regulations on speech that broad and deeply politicized conceptions of pornography's harms like "silencing" and "objectification" could be used to justify, liberal antipornography feminists opted to describe pornography's harms in terms of "violence," "crime," and "illegal conduct." While such narrow descriptions certainly eliminated the possibility for the sort of wholesale regulation of sexually explicit materials that liberals so feared, they also, inadvertently perhaps, made criminal law appear to be the most justifiable means for mitigating pornography's harms.

One sees this paradoxical logic at work quite vividly in the liberal antipornography feminist proposals put forward by Kagan. In her zeal to ameliorate the undesirable effects of pornography and hate speech while remaining faithful to liberal principles and preserving the sanctity of the "private" realm of thought and belief, Kagan advocated stepping up the regulation of acts and conduct through the criminal law. More specifically, she called for stricter enforcement of existing hate-crimes laws as well as the enactment of new criminal prohibitions on both pornography whose production involved violence or coercion and certain kinds of harassment, threats, and intimidation (Kagan 1995, 204). By translating the feminist critique of pornography into a liberal idiom in which "harm" equals "crime" and crime warrants coercive government action to ensure the preservation of individual liberty, liberals like Kagan infused antipornography feminism with an unmistakably carceral flavor.

Of course, there is the matter of antipornography feminism's often noted (and much maligned) conservative entanglements, entanglements that Bernstein's (2010) account of the recent political activities of two veterans of feminist antipornography movement, Lederer and Leidholdt, cannot help but bring to mind. As chronicler of the antipornography feminist movement Carolyn Bronstein has noted, in the mid-1980s—the period during which I have argued liberal antipornography feminism was first coming into its own—"ties linking anti-pornography feminists and religious conservatives" were also forming and tightening (Bronstein 2011, 278). Without

denying the accuracy of Bronstein's observations or minimizing the significance of conservative appropriations of feminist energies and rhetoric, it seems to me that, in the case of the antipornography feminist movement, the turn toward carcerality was propelled by the confluence of liberal and antipornography feminist commitments, not simply the pragmatic conservative political alliances the movement formed. Unwilling, on principle, to engage in "thought control" by regulating speech, liberal antipornography feminists explicitly called for increased regulation of conduct through criminal law. If my account of the relationship between antipornography feminism and liberalism is accurate, it suggests that the genealogy of feminism's carceral turn may be more complex (and more troubling) than current scholarship indicates.

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