

Back on the Auction Block: A Discussion of Black Women and Pornography

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INTRODUCTION

The *Shorter Oxford English Dictionary* defines pornography as: "The explicit description or exhibition of sexual subjects or activity in literature, painting, films, etc., in a manner intended to stimulate erotic rather than aesthetic feelings."¹ This definition in itself should suffice to say that pornography, having no aesthetic value (that is, not being in accordance with the principles of good taste), has no useful function in society. Unfortunately however, the argument is not that simplistic. Some contend that pornography does indeed serve a useful purpose in society, in that it relieves people's inhibitions or the taboos associated with sexual activity by making such activity public, voyeuristic, even artistic. This argument assumes that repeated display of explicit sexual activity will alter societal mores so that such display will eventually lose its shock value. This assumption however, neglects to take into account the reality that loss of shock value will also alleviate the desired erotic result.² Thus, whatever use pornography may have had is gone. This line of reasoning fails to take into account the fact that pornography is not commonly referred to as the mere exhibition of sexual activity to stimulate an erotic reaction from the observer. This is erotica. Pornography is not simply the exhibition of sex, but the exhibition of illicit sex.³ To be more specific, (but not exhaustive),

pornography is the graphic, sexually explicit subordination of women that includes one of a series of scenarios, from women being dehumanized - turned into objects and commodities - through women showing pleasure in being raped, through the dismemberment of women in a way that makes the dismemberment sexual. If men, children or transsexuals are used in place of women, the material is still pornography.⁴

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1. THE NEW SHORTER OXFORD DICTIONARY (Lesley Brown, ed., 1993).

2. It is believed that erotic implies the stimulation or arousal of sexual feelings from something that is "shockingly" pleasant.

3. What is meant here is that the sexual activity is procured in such a violent way that the methods of procurement should be illegal.

4. Andrea Dworkin, *Where Do We Stand on Pornography*, Ms., Jan./Feb. 1994, at 32.

Any reference to "pornography" throughout this paper is intended to refer the reader to the above definition.⁵

The focus of this paper is not to debate the pros and cons of pornography, for the paper is written from the viewpoint that there are no pros associated with pornography. Nor is it the intention of this paper to provide a forum to compare pornography and erotica. Suffice it to say that for present purposes, this paper agrees with the following distinction between the two, as described by "liberal feminists"⁶ :

erotica involves images or depictions of "mutually pleasurable, sexual expression" between equal and consenting subjects; it celebrates the body and contains an aesthetic or affectionate component. Pornography on the other hand, treats the body as an object to be controlled or dominated; it portrays sex that is violent, degrading or dehumanizing.⁷

This paper has the specific purpose of arguing that pornography, despite all its other ills, wreaks particular havoc on Black⁸ women because of the way they are portrayed. Pornography demoralizes and weakens the Black community by exploiting stereotypes of Black sexuality, all the while, doing a grave disservice to society on the whole by assuming (in some cases correctly) that society is ignorant enough to fall prey to the attitudes expressed by the pornographic images. In developing this argument, the paper will begin with a general description of the harms associated with pornography. Next, the particular harms associated with the image of the Black woman in pornography will be explored. Thirdly, there will be a discussion of mainstream feminist theories and their suitability for addressing the problems that were outlined in part two. Finally, the Black feminist theory developed through the criticism in the third part will be applied in analyzing the litigation strategy used by the Women's Legal Education and Action Fund (LEAF) in arguing the *R. v. Butler*⁹ case before the Supreme Court of Canada.

I PORNOGRAPHY: A GENERAL OVERVIEW OF HARM

It is unlikely that any academic discussion of pornography can take place without some reference to Catharine MacKinnon and Andrea Dworkin. These two women have been the driving force behind the anti-pornography movement. Virtually all academic writing about pornography (either opposing or supporting) makes some reference to the viewpoints and theories that these two feminist academics have been espousing for more than a decade. This paper will be no exception. However, although agreeing that the works of MacKinnon and Dworkin correctly identify the harm that pornography does to women and society in general, their¹⁰ arguments are incomplete in that they do not fully develop a discussion of the

5. The definition may be added to and altered slightly throughout the paper, but nevertheless, the core of the definition will remain intact.

6. See discussion and definition of "liberal feminist" *infra* pp. 35-38, and accompanying text.

7. RONALD J. BERGER, ET AL, *FEMINISM AND PORNOGRAPHY* 55 (Praeger 1991).

8. My use of "Black" assumes that the capitalization of the word captures the cultural and political connotations that are commonly associated with the term "African American" or "African Canadian".

9. *R. v. Butler* 1 S.C.R. 452 (1992) [hereinafter *Butler*].

10. Where MacKinnon and Dworkin are not directly cited, it is assumed that other authors have echoed their viewpoints.

harm that pornography inflicts upon Black women¹¹. I submit that Black women are hit the hardest and the affected worst by the oppressive attitudes that pornography releases into society. Thus, it is the damage done to Black women that feminist scholars and activists need to consider. Once this specific problem is addressed, then the harm that pornography inflicts upon other women can be dealt with, either by analogy, or by trickle-down effect. Without question, Black women are the critical group in this area; therefore, the theory of liberating women from the pornographer's/men's oppression must begin with an examination of the portrayal of Black women in pornography. This paper takes the position that antipornography feminist theory which does not have at its core the sexist and racist oppression of Black women, has no realistic hope of liberating the female population on the whole. For as the saying goes, none of us is free until all of us are free.

By way of introduction to feminist theory relating to pornography, it is important to state that feminist theory¹² does not simply see pornography as the practice of depicting explicit sexual activity. But rather pornography is a theory: it is the embodiment of an ideology, just as feminism is the embodiment of the ideology of gender equality. To be specific,

pornography is at once a concrete practice and an ideological statement. The concrete practices are discriminatory; the ideological statements are defamatory. Construed as defamation in the controversial sense, pornography says that women are a lower form of human life defined by their availability for sexual use. Women are dehumanized through the conditioning of male sexuality to their use and abuse which sexualizes, hence lowers, women across the culture, not only in express social interactions. Pornography makes women a public sexual spectacle and common sexual property works to lower the public standard of their perception and treatment, terrorizes and humiliates women, and also at times, offends their sensibilities. Like group libel's historic atrocities, pornography's effects are known but denied or blinked at while being acted out. The abusive acts are presumptively illegal but pervasively permitted, decried in public and savoured in private.¹³

In this way, pornography's "ideological statement" puts forward the notion that women are *intended* to be dehumanized by men through sexual activity. The practice of this "ideological statement" is the actual filming or photographic depiction of women in a subordinate, dehumanizing position vis-à-vis men in the sex act. The desired effect of this display of male power is not so much that it may be construed as the violent and exploitive use of men's self-imposed power over the will of women; in fact, men do not see this exploitation as an abuse of power at all. They see it as the natural expression of relations between men and women. In following this misguided belief, it is seen how

the inequalities of power are masked by formal equality. In this web, domination comes to appear *natural* and *inevitable*. It is in this way that pornography masquerades as the true expression of women's and men's

11. In addition, there is harm done to society in general because of the stereotypes associated with Black women in pornography.

12. At least as it is referred to in this paper.

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

sexuality. The pornographic message created by men largely for men, is sent and received in the context of patriarchal relations and apparently equal freedom of expression. The full implications of its power, including its reinforcing effect on discrimination against women and its "silencing" of women as a group, have been rendered invisible when viewed through the lens of the purposes of the right to freedom of expression.¹⁴ [original emphasis]

It seems almost as though there can be no recognition that power can ever be oppressive where sex is concerned. The assumption is that anything done (to *anyone*) that increases men's enjoyment of sex (either as an observer or a performer) cannot be wrong. Of particular interest here is the notion that anything can be done in the name of freedom of expression. After all, we live in a democratic society and freedom of expression is a sacred constitutional right. Section 2(b) of the *Canadian Charter of Rights and Freedoms* expressly provides:

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.¹⁵

And many have argued under this provision that there is a right to produce pornographic material, not necessarily as erotica, but as a form of artistic expression. The tireless champions of these rights however, often forget that rights have corresponding duties. This begs the question as to whether men who advocate pornography's explicit depiction of sexual activity through freedom of expression infringe upon women's rights to life, liberty and security of the person, as provided for in section 7 of the *Charter*.¹⁶ Sadly, the answer comes too quickly.

Broadly speaking, pornography can be seen to be about the politics of sexism and the male-female power imbalance. This imbalance is a dominant feature in society. It is understood to be based on the theory that given the fact that men and women are different, this difference must by (male) logic imply that one is inferior to the other. This notion of inferiority or subordination is at the core of the pornography issue. Catharine MacKinnon explains that

[p]ornography has a central role in actualizing this system of subordination in the contemporary West, beginning with the conditions of it. Women in pornography are bound, battered, tortured, harassed, raped and humiliated, molested, objectified and used. In all pornography, women are prostituted. This is done because it means sexual pleasure to pornography's consumers and profits to its providers, largely organized crime. But to those who are exploited, it means being bound, battered, tortured, harassed, raped, and sometimes killed or merely humiliated, molested objectified and used. It is done because someone who has more power than they do, someone who matters, someone with rights, a full being and a full citizen, gets pleasure from seeking it, or doing it, or seeing it as a form of doing it. In order to produce what the consumer wants to see, it must

14. B. Quistgaard, *Pornography, Harm and Censorship: A Feminist (Re)Vision of the Right to Freedom of Expression* 52 U. TORONTO FAC. L. REV. 132, 143 (1993).

15. Can. Const. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms), § 2(b). [hereinafter *Charter*].

16. Section 7 reads "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

first be done to someone, usually a woman, a woman with few real choices.¹⁷

Here MacKinnon demonstrates that the torture, harassment, humiliation and objectification of women is done all for the sake of the consumer's pleasure and the pornographer's profit. Interestingly (but not surprisingly) enough, both the consumer and the pornographer are most often men. Pornography functions to highlight the differences between men and women in ways that are exploitive and oppressive. Never can it be forgotten that pornography is essentially about power: male power and female powerlessness. In addition to power however, pornography is also to a large extent about hate.¹⁸ Men do not violate, exploit, victimize and exploit women through pornography because they love them. Pornographic sex is not about sensual love-making between consenting men and women, but rather it is about men debasing and dehumanizing women through violent acts of sex for their own and (other men's) pleasure. Such acts show just how much they *do not* love women. Granted, there are a variety of ways (apart from pornography) that reflect men's hatred of women. But pornography conveys the message of men's hatred of women and male self-imposed superiority in a very particular way. MacKinnon explains that

[b]oth pornography and hate literature are hateful; both propagate individious group stereotypes; both promote and often instigate violence, both dehumanize. But pornography because it is also an industry, because its dynamic is sexual, and because the camera requires live fodder, not only springs from abuse and leads to abuse, it is abuse.¹⁹

It is this feature of being able to perpetuate abuse that makes pornography most appealing to its users and least pleasant for its victims. Thus, it is seen that pornography is not only a practice, but it is also an ideology and an industry. Pornography is a far more expansive concept than it originally presents itself to be. It comes as no surprise then that the harm caused by pornography the practice, pornography the ideology and pornography the industry, also extend much further than originally perceived²⁰.

It was mentioned earlier that pornography is also seen as an "ideological statement", which declares that women are to be exploited in favour of men's sexual satisfaction. However, the argument about the politics of the male-female power imbalance, or sexual politics is far from the last.

The feminist argument against pornography and the oppression of women is not only about sexual politics. It is also about the sexualization of the political. Sexual politics lends the most powerful metaphor to politics: a sexual difference (in the superficial anatomy) grounded in nature - male/female. Generalize political difference, the disequilibrium of power according to Sade: power and powerlessness, master and victim/slave, subject and object, and naturalize it as masculine/feminine. The places are given, their gender established: henceforth the roles can be taken by

17. *Supra* note 12 at 796-7.

18. *See infra* text accompanying notes 23-34 (discussing this notion of hate with particular relevance to Black women and white men).

19. *Supra* note 12 at 803-4.

20. *See supra* text accompanying note 1 (citing the definition of pornography on which this original perception is based).

anyone: man, woman, libertine, prostitute, black, white, Aryan, Jew or Palestinian.²¹

The strength of the sexual politics of pornography lies in grounding the power base in something natural (e.g. male/female difference) and immutable. This grounding leaves room for the argument that the power imbalance (i.e., the way that the sexual politics is played out) is, in some perverse way, natural. One can foresee the argument developing itself to state that the natural differences²² between the oppressor and the oppressed sanction the oppression: why else would the differences exist, if not to be exploited?

II PORNOGRAPHY AND BLACK WOMEN: PARTICULAR HARMS

An attempt has been made to demonstrate some of the lunacy in the arguments that are made to justify men's exploitation of women in pornography. Hopefully it has been made clear that no justification can in fact be possible in a society that prides itself on the complete freedom and equality of its members. It is also hoped that this point will be emphasized even further by the arguments that follow, which discuss the way in which Black women²³ are depicted in pornography. Black women, by virtue of their sex, must contend with the the sexual politics associated with pornography. But gender is not the least of it. Black women must also contend with the racial politics of pornography; and often, this is compounded by an issue of class²⁴. With reference to the portrayal of Black women in pornography, the reality is that

[t]he pornography industry's exploitation of the Black woman's body is qualitatively different from that of the white woman. While white women are pictured as pillow-soft pussy willows, the stereotype of the Black 'dominatrix' portrays the Black woman as ugly, sadistic, and animalistic, undeserving of human affection.²⁵

Where the argument against white women's exploitation in pornography is based primarily on the gender inequalities, the Black women's argument must also factor in resistance to the negative racial stereotypes that inevitably arise from their depiction. The argument assumes that racial stereotypes and racialized sexual myths are a particular problem for Black women because for the most part, both the pornographers and the consumers are white men. With men generally, there is an interest in women's sexual activity. With white men in particular, where Black women are concerned, there is a particular fixation with the way in which racial stereo-

21. SUSANNE KAPPELER, *THE PORNOGRAPHY OF REPRESENTATION* 153 (University of Minnesota Press 1986).

22. Be they sex, race, or both, as will be discussed later.

23. It is acknowledged that all women of color experience intersecting points of oppression from their portrayal in pornography. The focus here however will be on Black women and the particular nature of the intersecting oppression that they experience.

24. The class issue is also a large problem with the portrayal of white women. For the most part, regardless of race, the women used in pornography are not members of society's economic elite. Sexual orientation is often another compounding factor. Lesbian sex is also depicted voyeuristically for men's pleasure.

25. A. Mayall and D.E.H. Russell, quoting L. Teish, in D.E.H. Russell, *Racism in Pornography* in *MAKING VIOLENCE SEXY: FEMENIST VIEWS ON PORNOGRAPHY* 167 (Diana E.H. Russell ed., Teacher's College Press, Columbia University 1993).

types appeal to their sexual fantasies. It is not enough to say that Black women are greatly oppressed and exploited by virtue of their race. That is to say, it is not the depiction of violent, explicit sex with white men that degrades and dehumanizes Black women. For

when a person of color is used in pornography, it's not the physical appearance of that person which makes it racist. Rather, it is how pornography capitalizes on the underlying history and myths surrounding and oppressing people of color in this country which makes it racist.²⁶

Specifically, it is the nature of the violence and the exact way in which sex is imposed upon them that is degrading and dehumanizing.

[W]here white women are depicted in pornography as "objects," Black women are depicted as animals. Where white women are at least depicted as human bodies if not beings, Black women are depicted as shit.²⁷

It is this manner of depiction that highlights the difference between the portrayal of white and Black women in pornography. In fact, it is because the pornographers and the consumers strictly adhere to racial stereotypes that Black women and white women function to serve different needs in the pornography industry. White women are seen to play the role that they should be made available for men's sexual satisfaction. Black women must serve men's sexual satisfaction (by virtue of the natural male-female power imbalance) and they must also serve the man's white supremacist notion of dominance. Just as it was argued earlier that men perceive themselves to be naturally powerful vis-à-vis the powerless female, furthermore, white men see themselves as being racially superior vis-à-vis the Black woman. This second perception translates to much more violent and dehumanizing sexual activity. In particular,

[m]ost Women of Colour portrayed in pornography appear in one specific stereotypical image. Black women are usually depicted in a situation of bondage and slavery. The Black woman is shown in a submissive posture, often with two white males. This setting reminds us all of the trappings of slavery: chains, whips, neck braces, wrist clasps. These are the means of keeping Black people in their place.²⁸

Furthermore:

[c]ontemporary portrayals of Black women in pornography represent the continuation of the historical treatment of their actual bodies. African-American women are usually depicted in a situation of bondage and slavery, typically in a submissive posture, and often with two white men. . . . White women and women of colour have different pornographic images applied to them. The image of Black women in pornography is almost consistently one featuring them breaking from chains.²⁹

The racist stereotypes that portray Black women in pornography are generally of two types: the first is of that described above, which draws its frame of reference from the history of slavery; the second is that of the Black woman as an unsatiable sex animal. It is seen that

26. T. A. Gardner, *Racism in Pornography and the Women's Movement* in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY 105 (Laura Lederer, ed., 1980).

27. A. Walker, *Coming Apart*, in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY 103 (Laura Lederer, ed., 1980).

28. Lourie Bell, *Racism in Pornography* in GOOD GIRLS/BAD GIRLS: FEMINISTS AND SEX TRADE WORKERS FACE TO FACE 59 (Laurie Bell ed., 1980).

29. Patricia Hill Collins, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONCIUSNESS, AND THE POLITICS OF EMPOWERMENT* 169 (Routledge 1991).

Black women as represented in pornography are synonymous with deep carnality, animal desires and uncontrolled lust. The black woman is portrayed as the most sexually voracious, the most wanton of all females.³⁰

These two types of stereotypical depictions of Black women in pornography are not unrelated. In fact, the argument can be made that the Black women's insatiability needed to be restrained for her own good, and the white slave master was doing her a favour by enslaving her, thus rendering her sexual desires and activity subject to his own wants rather than her free will; "[t]his was in practice the socially and legally sanctioned rape of Black women by their white male owners".³¹ Linking the way in which Black women are depicted in pornography to the history of slavery emphasizes the economic motive in pornography. In addition to sex and race, economic status also functions to place the Black woman in a position of heightened disadvantage vis-à-vis white pornographers and consumers. This position demonstrates that

[i]mages of black women are exploited by pornography and black women are exploited by pornographers. Slavery was abolished, but black people still suffer economic discrimination and the disadvantage created by low pay and poverty. Because of their lower economic status and limited opportunities, black and 'Third World' women are economically and sexually exploited by the international pornography market.³²

Thus, not only are these women exploited physically by the practice of pornography, but they are further exploited and objectified for financial purposes by the pornography industry.

However, the financial aspect of pornography, particularly where Black women are concerned, is not entirely a modern-day concept. In fact, this relationship can be traced back to the "antebellum American South [where] white men did not have to look at pornographic pictures of women because they could become voyeurs of Black women on the auction block".³³ If this is taken to be the beginning stages of the economic sexual exploitation of Black women, then it is readily seen how the

treatment of Black women's bodies in nineteenth-century Europe and the United States may be the foundation upon which contemporary pornography as the representation of women's objectification, domination and control is based.³⁴

If this is believed to be the case, and the contemporary embodiment of pornography depicting both white and Black women really developed from the exhibition of slave women, then any notion of antipornography feminist theory must have as its primary and core objective the liberation of Black women from the racist, sexist and economic exploitation of the white male pornographer and consumer. It is important that this theory have such a specific liberatory goal at its root, because it is the problems associated with the exploitation of that particular group that is at the core of the pornographic exploitation of women in general. The argument being

30. A. Forna, *Pornography and Racism: Sexualizing Oppression and Inciting Hatred in Pornography: Women, Violence and Civil Liberties* 104 (Catherine Itzin ed., Oxford University Press 1992).

31. *Supra* note 27 at 103.

32. *Supra* note 27 at 103.

33. *Supra* note 28 at 168.

34. *Id.*

proposed here is that contemporary pornography, regardless of who is being depicted in the sex act stems from the pornographic exploitation of slaves that began on the auction block. In fact, many of the current attitudes present in society today were first developed during that time in history. It was a time during which the politics of economics, sexism, racism and religion were thoughtfully crafted and put into practice, all for the sake of maintaining the system of slavery. And although slavery may formally have been abolished, the ideologies and mindsets that were developed during that time remain. It is recognized that

[p]ornography is pivotal in mediating contradictions in changing societies. It is no accident that racist biology, religious justifications for slavery and women's subordination, and other explanations for nineteenth-century racism and sexism arose during a period of profound political and economic change. . . The exhibition of Sarah Bartmann and Black women on the auction block were not benign intellectual exercises - these practices defended real material and political interests.³⁵

Those "real material and political interests", both then, and certainly today, represent men's interests. And the rationale is that if anyone need be exploited or oppressed in order to secure these interests, then it is all for the better good of mankind.

III FEMINIST OUTCRIES AGAINST PORNOGRAPHY AND THE SILENCING OF BLACK WOMEN

Having taken into account all of the evils associated with pornography, attention can now be paid to various feminist theories and their strategies for combatting it. Keep in mind however, that this paper works from the underlying assumption that pornography has a particular impact on Black women, and any strategy that does not take this impact into account is inadequate for the present purposes. It is recognized from the outset that there are a multitude of feminist theories within the feminist movement itself, although this fact is often overlooked or disregarded by those outside of the movement. The reason for different feminist theories is quite simply (and obviously) because there are different types of feminists. All feminists agree that they must overcome sexism in the struggle for equality. They differ however, on the best way to go about doing this. Furthermore not all feminists believe that sexism is the form of oppression that warrants the most attention. For instance many Black feminists³⁶ see racism as the oppression that is more deserving of their theoretical and strategic attention. This perception in turn, naturally affects the way that they address sexism.

The following overview of feminist theories does not in any way purport to be exhaustive. It is hoped however, that it does manage to capture the most common and readily identifiable schools of feminist thought. The types of feminism that will be discussed are: liberal feminism, Marxism, radical feminism, socialist feminism, and Black feminism. The explanation of each theory will be grounded within the specific context of pornography

35. *Supra* note 26 at 171.

36. The term "Black feminist" refers to women who are struggling to overcome sexist oppression and just happen to be Black, as well as Black women who believe that sexism must be battled in tandem with racism.

and Black women, and each theory will be analyzed in terms of its suitability for dealing with this issue.

Liberal feminism to begin with, is "associated with the development of the free market and agrarian capitalism, and is best seen as the political philosophy of the emerging bourgeoisie."³⁷ The concern here is with the relationship between women and their labour, as well as the value that society places on the products of women's labour. It is not relevant to recount the liberal feminists' viewpoint on all aspects of society, or even all aspects of the division of labour, since the immediate concern here is narrowly speaking, pornography, and broadly speaking, sex inequality (as evidenced by the male-female power imbalance) and sex discrimination. This concern stems from the point that "pornography is most appropriately addressed as discrimination".³⁸ Liberal feminists view sex discrimination in two ways: legal and cultural.

To eradicate legal discrimination, liberal feminists encourage two types of legal strategies. The first one consists of demands for sex-blindness in the application of the law in order to abolish legislations that provide different obligations and responsibilities for men and women. . . . The second strategy consists of attempts to use the law in order to redress the imbalance between women and men, that is, to counteract the historical bias against women by compensating them for past injustices. Such demands take the form of affirmative action programmes.³⁹

These strategies, although admirable, may not be directly applicable to pornography, and most definitely do not apply to Black women. In applying the sex-blindness strategy to pornography, the result might be that pornographers would exploit men and women equally; or exploit people in general, regardless of their sex. This approach will not work with the pornography industry, since it is premised upon the exhibition of sex and genitals. The ideal of course is that the pornography industry be eliminated altogether. But before this can happen, the driving force behind the industry—sex discrimination—must be removed. Gender neutrality⁴⁰ is not an appropriate way to ensure this removal, since you cannot ignore the reality that men and women are different. It must be emphasized that this difference does not make one inferior to the other.

The second strategy of affirmative action, or the notion of using the law to redress the power imbalance, is also not directly applicable to the pornography situation because women are not seeking an opportunity to shift the balance of power and exploit men's bodies, for this would not produce any more social benefit or utility than the current exploitation of women's bodies does. In order to be true to their cause, liberal feminists must remember that

the capitalist state and its institutions are. . . biased against certain groups, [and] it is naive to believe that by empowering them they will suddenly become neutral. . . .the institutions themselves require change.⁴¹

37. DANY LACOMBE, *IDEOLOGY AND PUBLIC POLICY: THE CASE AGAINST PORNOGRAPHY* 17 (1988).

38. MacKinnon, *supra* note 12 at 804.

39. Lacombe, *supra* note 36 at 19.

40. This is a formal (perhaps more academic) term. I much rather prefer the colloquialism, "sex-blindness".

41. Bell, *supra* note 33 at 20.

The goal is to eliminate the exploitation of bodies and sexual activity entirely. Similarly, in applying the second strategy of affirmative action to Black women, one recognizes that Black women are not fighting to be portrayed (and perceived) in pornography in the same way in which white women are portrayed.⁴² But rather, they are seeking to eradicate the very industry that exploits them.

The feminist theory of Marxism pays particular attention to the product of people's labour. Marxism is characterized by the formal division of labour where people do what they are best suited for. Individuals develop a special relationship with the products of their labour, and those products are representative of the individual's status and contribution to society. The attitudes arising from this relationship are attributed to the fact that, the first division of labour between women and men is a "natural" one, which occurs in the family through the sex act. This initial division of labour which is not oppressive is, however, instrumental in making men responsible for productive life and women for the reproductive life.⁴³

The argument is that the products of women's labour are not valued as highly as that of men. Where liberalism is concerned with the free market, Marxism specifically addresses the division of labour that supports the production of the items to be sold (and perhaps exploited) in this free market. The market incidentally, is created and perpetuated by capitalism, and "for marxists, the social relations of production, that is how people transform nature, are inherently exploitive under capitalism."⁴⁴ This premise works quite well when applied to both pornography in general and pornography involving Black women in particular. It is readily seen how pornographers "transform nature" - be it sex, race or both - and exploit this transformation (i.e. pornographic depiction of sexual activity) via the capitalist system, which ensures a profit margin in the free market.

Next, radical feminism is described as a "particular view of social structuring in which women are systematically dominated, exploited and oppressed."⁴⁵ This view is premised almost exclusively upon gender being the site of women's oppression. In this way, radical feminists, unlike liberal feminists and marxists see that the root of their oppression lies not in capitalism, but in patriarchy.⁴⁶ Although this focus on gender oppression will enable radical feminists to spotlight the evils of pornography to women in general, it fetters their ability to craft an anti-pornography theory that speaks to those women whose pornographic portrayal depicts race and/or class as intersecting sites of oppression in addition to gender.

A fourth theory to be discussed is socialist feminism, which attempts to conjoin the best aspects of Marxism and radical feminism. This union results in the socialist feminist concern with the relationship between gender and class existence.⁴⁷ In this way, socialist feminism recognizes that a multi- rather than unidimensional approach is the preferred way of ad-

42. Note the way in which white women are portrayed in pornography is seen to be an improvement over the way in which Black women are portrayed.

43. Lacombe, *supra* note 36 at 23.

44. *Id.* at 20.

45. *Id.* at 26.

46. *Id.* at 27.

47. *Id.* at 31.

dressing problems. Socialist feminism is the most functional theory for the purposes of eliminating pornography. In synthesizing both Marxism and radical feminism, socialist feminism takes into account both the gender and economic exploitation of women for the interests of the mutually supportive patriarchal and capitalist systems. This demonstrates that:

[r]ecent socialist feminists are aware of the analytical limitations of the separate spheres approach and are working at developing a conceptual framework that is capable of integrating the complex reality of domination by class, gender and race.⁴⁸

As far as pornography and the various effects it has on a variety of women, socialist feminism is thus far, the most realistic model of attacking the multiple aspects of the issue. The integrative analysis of socialist feminism is perhaps most representative of the diverse composition of the feminist movement.

The ideology of Black feminism⁴⁹ is quite easily stated. The Black feminist critique of existing feminist ideologies has been for the most part, that these theories fail to adequately (if at all) take into account the Black woman's experiences of oppression. It is necessary to point out here that although all Black women share the commonality of racist and sexist oppression, there are other sites of oppression (such as class or sexual orientation) that may not be experienced by all Black women. Hence, the exploitation of Black women under the guise of the same oppression may manifest itself in different ways. With respect to pornography, it may very well be that not all Black women see it as the industry which most highly exploits them, relative to the other aspects in their lives. In fact,

many Black women have discounted feminists' concerns about pornography, believing that it pales in comparison to other problems and describing antipornography feminism as an "instance of misplaced outrage, a spewing of venom that only white middle class women can afford" . . . Others, like libertarian feminists, have viewed pornography as a progressive force, and they have simply desired "equal time" with white women. Since many view black solidarity as more important than female solidarity, black women have been concerned that involvement in feminist activity would alienate black men and fragment the black community.⁵⁰

For those Black women unwilling to take up arms in the battle against pornography alongside white feminists, it is not because they do not believe in that war, but because unlike "middle class white feminists", Black women do not have the luxury of having only one battlefield to which to devote their attention. It is ironic that some Black women are unwilling to join in the battle against pornography because of their concern with maintaining solidarity with their Black men in the fight against racism; when at the same time, the Black man's consumption of the pornography which degrades and dehumanizes the Black woman, erodes any solidarity that might exist. Pornography enables the Black man to exert sexist and oppressive domination over the very same Black woman that sacrificed her fight for his security. It is explained that,

48. *Id.*

49. The references here are to a North American construction of Black feminism, rather than a global one or one rooted in any other continent.

50. Berger, *supra* note 7 at 67.

while pornography is produced and consumed primarily by white men, and while it speaks mainly to their relationships with white women, it is nevertheless relevant to blacks who have been forced to live under the values of white people. Pornography that utilizes white models reinforces the notion that it is white women who are beautiful. . .this pornography also provides black men with symbolic access to white women who have historically been "off limits" to them, thereby allowing them a common bond with white men at women's expense. . .this gender solidarity with white men is especially troubling when the pornography black men enjoy demeans black women. . .while white men have attempted to destroy black men's sense of power, black men have attempted to restore their power by exerting domination over black women.⁵¹

Thus, any Black feminist theory of pornography must also take into account this reality of Black women choosing sides as to which of the *greater*⁵² of the two evils they will align themselves with.

If nothing else, the Black feminist theory on pornography (whether actively vocal in decrying it, or noticeably silent on it and maintaining that racism should be the first battle site against oppression), must at the very least enable Black women to have their voices heard. They must be able to speak about their own pain of the experience of oppression. The worst thing that the mainstream feminist movement can do is to presume to speak for Black women about that nature of their racist and sexist oppression. The danger in this is that

[a]n entire class of women can be discriminated against so that others can have what they call freedom of speech: freedom meaning free access to women's bodies, free use of women's lives; speech meaning women's bodies as a medium for expression. As African-Americans, men as well as women, once were white men's property under the Constitution, all women are now men's "speech" because our pain, humiliation, torture, use and second class status in society is something they want to say.⁵³

If non-Black women presume to speak about the degradation of Black women in pornography (both when Black women themselves are not speaking on the topic, and when white women speak over the voices of Black women), then not only can the lumping together of all women in the battle against pornography lessen the impact of the fact that Black women were once white men's property, but also, Black women become white women's "speech because our pain, humiliation, torture, use and second class status in society is something they want to say".

IV APPLICATION OF BLACK FEMINIST ANTI-PORNOGRAPHY THEORY TO THE *BUTLER* CASE

Having devoted much of this discussion to an examination of pornography and the theories associated with it, it is necessary now to discuss a specific example. Much discussion of pornography (legally based or otherwise) which takes place in Canada refers to the Supreme Court of Canada decision in *R. v. Butler*. The issue in *Butler* was whether the obscenity pro-

51. *Id.* at 68.

52. Racism or sexism cannot be referred to as the "lesser" of two evils, even for the sake of the continuity of a colloquialism.

53. MacKinnon, *supra* note 12 at 815.

visions in s. 163(8) of the *Criminal Code*⁵⁴ infringed upon freedom of expression as guaranteed by section 2 (b) of the *Charter*. The accused, Donald Butler owned a store in which he sold and rented "hard core" video tapes and magazines as well as sexual paraphernalia. He was charged with various accounts of selling obscene material, possessing obscene material for the purpose of distribution or sale, and exposing obscene material to public view, contrary to s. 163 of the *Code*. The court found that there was an infringement, however this was justified under section 1.⁵⁵ In arriving at its decision in *Butler* the court applied a series of tests. The first of these was the "Community Standard of Tolerance Test", which was concerned not with what Canadians would not tolerate being exposed to themselves, but what they would not tolerate *other* Canadians being exposed to.⁵⁶ The point being advanced here is that the test is aimed at prohibiting the display of obscene material that influences observers in such a way that is contrary to the values that society is attempting to maintain.

The second test applied is the "Degradation or Dehumanization" Test. The premise here is that materials which exploit sex by depicting women in degrading or dehumanizing positions of subordination, servile submission or humiliation, would fail the community standards test because such material is deemed to be harmful to society in general, and women in particular.⁵⁷ This test also makes reference to the "undue" exploitation of sex. In this way, "the line between the mere portrayal of sex and the dehumanization of people is drawn by the 'undue' concept."⁵⁸ This point immediately raises a problem, since it seems to be suggesting that some exploitation of sex is "due".

A third test discussed in the *Butler* decision is the "Internal Necessities Test" or "Artistic Defence". The question here is whether the exploitation of sex has a justifiable role in advancing the plot or the theme, and in considering the work as a whole, does not merely represent 'dirt for dirt's sake' but has a legitimate role when measured by the internal necessities of the work itself.⁵⁹

Although the exact nature of the relationship of the three tests to each other is unclear, it is known that these tests assist the courts in determining at least "what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure."⁶⁰ For the purposes of applying the tests, pornography is divided into three categories:

- i) explicit sex with violence;

54. R.S.C. 1985 c. C-46 [hereinafter *Code*]. The provision reads as follows:

"For the purpose of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

55. Section 1 of the *Charter* provides: *The Canadian Charter of Rights and Freedoms*: guarantees the rights and freedoms set out in and subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

56. *Butler*, *supra* note 8, at 478.

57. *Id.* at 479.

58. *Id.* at 481.

59. *Id.* at 482-3.

60. *Id.* at 483.

- ii) explicit sex without violence but subjects people to treatment that is degrading or dehumanizing;
- iii) explicit sex without violence that is neither degrading nor dehumanizing.⁶¹

It is on the basis of these three categories that courts discern the degree of harm caused by specific pornography. For the purposes of this paper, these categories are rather vague and overbroad in that they do not specifically address what constitutes "degrading or dehumanizing treatment". For instance, it is submitted that the mere depiction of Black women in explicit sexual activity with white men or for the sheer entertainment and mass consumption of white audiences is degrading and dehumanizing treatment. It is not clear that this submission would be accepted as fitting into one of the above three categories.

Although the result of the *Butler* case is in and of itself favourable, it cannot be said that the arguments relied upon by the court in reaching its decision necessarily improved the lot of all women struggling against pornography.⁶² I contend that the arguments the Court relied on did not go far enough in outlining the various harms associated with the different characterizations of women. It should be noted that a great deal of the Court's reasoning was influenced by the factum submitted by the intervenor, the Women's Legal Education and Action Fund (LEAF). Thus, any shortcomings in terms of the Court's ability to devise a conception of harms-based pornography with respect to Black women is partly attributed to LEAF's failure to adequately make the arguments in this area. It is realized that LEAF cannot be expected to submit arguments representing the interests of all women on all issues. However, a woman's organization that commands a position of high prominence and respect, such as LEAF, had a responsibility firstly to outline the nature of the harm associated with pornography and Black women, and secondly, to ensure that the court had a proper grounding in this area. LEAF's factum is criticized here as being far too general. These generalities seem to disadvantage Black women because unless expressly told so, it is highly unlikely that the Court's frame of reference when asked to determine the harm caused to women by the practice, ideology and industry of pornography will include Black women. An example of this generality is evidenced in the LEAF factum where it is submitted that, "pornography amounts to a practice of sex discrimination against individual women and women as a group."⁶³ This submission fails to take into account the fact that when the "individual women" are Black, then the sex discrimination is compounded by race discrimination.

Similarly, another inadequate argument for the purpose of demonstrating the precise harm that pornography does to Black women is brought forward in LEAF's submission that

some pornography is not protected by section 2 (b) of the *Charter*, either because it constitutes a violent form of expression or because it is a dis-

61. *Id.* 7 at 484.

62. The *Butler* decision particularly harmed the feminist community by enabling customs officials to seize lesbian erotica and other feminist materials under the guise of applying the test for obscenity that came out of the Supreme Court of Canada's decision. See also *Little Sisters Book and Art Emporium v. Minister of Justice*, 134 D.L.R. 4th 293 B.C.S.C. (1996).

63. LEAF FACTUM for *R. v. Butler*, at 2 [hereinafter LEAF FACTUM].

criminating form of expression proscribed by section 28 of the *Charter*, which applies to and controls section 2(b). LEAF submits further and in the alternative that under section 1 of the *Charter*, any infringement of free expression is outweighed by the social interest in equality in society.⁶⁴

LEAF contends that pornography is not protected under section 2 (b) as freedom of expression, because it is a discriminating form of expression. However, the argument is not fully developed to demonstrate that not only is pornography a discriminating form of expression, but pornography which exploits and oppresses Black women in a particular way can be described as racist speech/expression. In this way, the notion that pornography involving Black women is a "violent form of expression because it is a discriminating form of expression" which goes beyond the blanket application of section 28⁶⁵ to all women, and attaches specifically to Black women. Furthermore, it is believed that had LEAF made specific reference to the impact of pornography on Black women, it would have been able to advance a section 15⁶⁶ argument on the basis that given that all women are discriminated and exploited in pornography on the basis of their sex, Black women are further discriminated and exploited on the basis of their race. Thus Black women are deserving of a particular remedy (in addition to that granted to all women under section 28) which recognizes their need for particular compensation which addresses the compounded nature of the harm that they experience through pornography. It is believed that subsection 15(2) provides for such a remedy.

Another oversight on LEAF's part is not recognizing the position of the Black woman in submitting that "the community standards test was gender-biased in so far as its reference point was male consumers and audiences."⁶⁷ This indeed is true, but LEAF should have extended its argument to state that the community standards test was racially-biased in so far as the reference point was *white* male consumers and audiences. To its credit, LEAF is not totally oblivious to the fact that there is room to advance a race argument in this factum. In paragraph 47 of the factum it is submitted that

pornography is not only a practice of discrimination which disadvantages women and treats them as second class citizens on the basis of race, it also uses race and age to discriminate through gender. Pornography sexualizes racism and racial stereotypes, and eroticizes the vulnerability of children.⁶⁸

64. Section 28 of the *Charter* provides: Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

65. *Id.*

66. Section 15 of the *Charter* is the equality rights provision and reads as follows:

- (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

67. *LEAF Factum* at 3.

68. *Id.* at 15.

However, this is the only time that race is mentioned in the factum, and the argument could have, and should have been further developed. As it stands, this brief mention of race seems to be just a patchwork argument rather than an emphatic one, stressing the harms that racism causes in all aspects of society (including the pornography industry), as it had the potential to be. In fact, the shallowness of this point makes one curious as to what prompted the inclusion of a race aspect at this point. Was this point included merely because some of the exhibits appended to the factum as examples of the harm caused by pornography depicted Black women?

Despite all that has been said to criticize existing models of feminist theory for failing to adequately address the concerns of Black women, it is still not that easy to develop a Black feminist consciousness. The primary problem with this is that such a development may necessitate foregoing many of the principles and theories that have kept Black women united in their struggles. For it must always be remembered that Black women endure many struggles and some of them require that the race struggle not be given top-billing. Five factors that prohibit the development of a Black feminist consciousness are:

- 1) . . .many black intellectuals and spokespeople have ignored the issue of sexism, largely because it has been viewed as a racially divisive issue.
- 2) . . .the ideology of racism. Racism is so ingrained in American culture, and so entrenched among many white women, that black females could have been reluctant to admit that anything affecting the white female could also affect them.
- 3) . . .the message that emerged in the black social movement of the sixties — black women were told in many different ways that the liberation of black men was more important than their own liberation.
- 4) The idea of black matriarchy. . .this view holds that in their conjugal and parental relationships black women are more dominant than black men, and so black and white women relate to their males in altogether different ways. It is easy to see how this view of black women could be used by some to negate the fact of black female oppression.
- 5) The church. . .Biblical support for sexual inequality is as strong today as it ever was.⁶⁹

These factors go to the heart of the many aspects that characterize the Black woman. Black women together must fight many different battles on many different fronts throughout their lives. And although each struggle may be continuous, perhaps even eternal, they have to ensure that none is lost, for to do so is to lose an essential feature of themselves. This is not to say that Black women are destined for struggle, but it cannot be forgotten that struggle is what they have always done.

CONCLUSION

This paper began with the intention of criticizing the works of Catharine MacKinnon, Andrea Dworkin and other "white middle-class feminists"⁷⁰ as lacking a proper analysis of the harm that pornography causes to

69. Terrelonge, *Feminist Consciousness and Black Women*, in *WOMEN: A FEMINIST PERSPECTIVE* 562-63 (Jo Freeman ed., 1989).

70. This phrase refers to those women who criticize, from their positions of power and academic accomplishment, the *status quo* which has prevented them (on the basis of their gender) from attaining the status and positions of their white male counterparts.

Black women. However the question should be asked as to whether it would be appropriate for any women of this group to purport to speak authoritatively about the harm that the pornographic portrayal of Black women inflicts upon Black women and the Black community at large.

The strongest arguments against the harms caused by pornography are made by those who are the victims of this harm: women in general. Thus, it stands to reason that Black women can be most vociferous in demonstrating the particular harm that pornography causes them. However, pornography is most often identified as a white women's issue. As such, the implications for Black women have not been factored into the popular debate. This is largely due to the fact that

[m]uch of feminist theory has reflected and contributed to what Adrienne Rich has called "white solipsism": the tendency "to think, imagine and speak as if whiteness described the world." While solipsism is "not the consciously held belief that one race is inherently superior to all others, but a tunnel-vision which simply does not see nonwhite experiences or existence as precious or significant, unless in spasmodic, impotent guilt-reflexes, which have little or no long-term, continuing momentum or political usefulness."⁷¹

This exclusionary oversight does little to advance the cause of women generally. If feminism is viewed as a vehicle to bring about the equal treatment of men and women in society, then where does race factor into this? Answer: it does not. Nor should it. The fight for women's equality should not prejudice the interests of one group of women (regardless of what the group-defining characteristic is) for another. If you believe "that violence against women is intertwined with the production of pornography, then the struggle against pornography is part of the struggle for equality."⁷² And equality for all women (assuming that that is indeed the goal of feminism), should factor in the experiences of *all* women. This of course can only be done by consulting all women. By the same token, women of colour (i.e., those not traditionally associated with the popular feminist movement) must recognize that they need not prioritize their battles against their sites of oppression. That is to say, the feminist movement and the anti-racist movement are not mutually exclusive.

I would guess that if forced to choose, the majority of Black women would opt to devote their energies to racism rather than feminism. But the question becomes: why do we have to choose. If the end result of the struggle (assuming optimistically that there is one), is an anti-racist, anti-sexist world, then Black women should not have to fight both battles on their own, nor should they have to align themselves with one particular camp. But rather, they should be joined on the battle fronts by white women, white men and Black men. Only then can the racist, sexist and economic oppression of Black women be overcome. And we shall overcome . . . someday.

71. ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 116 (1988).

72. Mari Matsuda, comment in *Pornography: Does Women's Equality Depend on What We Do About It?*, Ms., Jan./Feb. 1994 at, 42.