

Catharine A. MacKinnon

FEMINISM UNMODIFIED



"It is passionate, brilliant...
MacKinnon offers a
systematic and persuasive
perspective on issues that
are central not only to
feminism but to social
theory in general."

—Alison M. Jaggar,
New York Times
Book Review

Discourses on Life and Law

Feminism

UNMODIFIED

Discourses on Life and Law

CATHARINE A. MACKINNON

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The Art of the Impossible

Brian Coyle: It's sometimes said politics is the art of the possible . . .

Sandra Hilary: Sometimes I think it's more the art of the impossible.

Debate on the civil rights law against pornography, Minneapolis City Council,
July 24, 1984

This is a second look at the second wave of feminism in the United States, after fifteen years of trying to change the status of women by law and every other available means. Because I want you to hear me speaking, rather than read me writing, many of the texts in this collection appear exactly as they were spoken. The formality varies with the occasion, but they were all spoken first without a written text, even those that were later revised. These are engaged works, occasioned by the urgency of the problems women face, not by abstract agendas or academic imperatives. In retrospect, during the years these speeches encompass, 1981 to 1986, the women's movement has been moving toward a crossroads.

The Equal Rights Amendment, designed to make sex legally irrelevant, was lost, in part through opposition by women. The abortion right, framed as a right to privacy rather than a right to sex equality, was recognized, only to be taken almost immediately from women who have least access to it.¹ Losing it entirely is an ever-current danger, and its opponents include women. Women are poor, and pay is at least as far from being sex-equal as it was before the passage of legislation guaranteeing pay equality by law.² Women are more and more losing custody of their children,³ in part because of legal reforms feminists helped put in place. The rape rate is increasing significantly, while the conviction rate for rape is not,⁴ in spite of legal changes feminists fought for and won over the last decade.⁵ We are headed for another showdown on pregnancy, this time framed as a debate on whether states that provide maternity benefits are violating the view of sex equality that organized feminism has sought to institutionalize.⁶ In this string of defeats and declines, the law on sexual harassment⁷ and some legal advances against domestic battery of women and marital rape—the social impact of all of which is as yet unknown—are among the few exceptions. To this picture, add

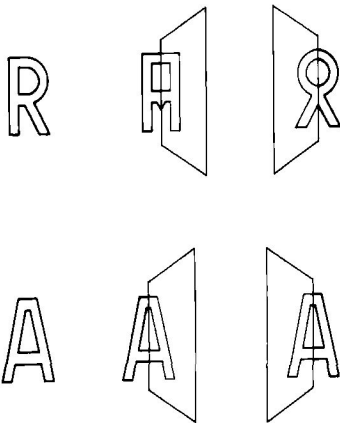
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the feminist attempt to get civil rights for women exploited by pornographers, an attempt that was opposed by some claiming feminist ground for their opposition, and it begins to seem like time for a real reassessment.

Feminism has not changed the status of women. It is not enough to observe that social change is glacial, law is inadequate to move anything basic, and power is powerful. These truisms parade solipsism, the complacency of privilege, and despair as sophistication, critique, even radical politics. And to describe a state of affairs is not to explain it. An explanation of the failure of feminism to change the world for women must be a study *in* that world as well as *of* it.

Because we need to know them, these speeches are looking for answers to the big questions of the subordination of women to men: its roots, damage, pervasiveness, tenacity, enforcement, and capacity for change. We need to know how the inequality of the sexes is lived out, threaded from one moment to the next through millions of lifetimes of habit into individual identities and social relations. We need to know more about how women experience and respond to being second class, from unconsciousness and denial and collaboration to consciousness and resistance and confrontation. We need to know precisely how the benefits and burdens of this system are allocated—including the way showcase indulgences to a few women in a rich liberal state purchase legitimacy for a system that functions nationally and internationally at the expense of all women. We need to know how this system gives each woman a survival stake in the system that is killing her.

We urgently need to comprehend the emerging pattern in which gender, while a distinct inequality, also contributes to the social embodiment and expression of race and class inequalities, at the same time as race and class are deeply imbedded in gender. For example, the sexualization of racial and ethnic attributes like skin color or stereotypes is no less a dynamic within racism for being done through gender. The masculinity of money as a form of power takes nothing from its function as capital, although it does undermine some models of economic rationality, including leftist ones. Women get their class status through their sexual relations with men of particular classes; perhaps their racial status, also no less real for being vicarious, similarly derives from racial hierarchies among men. From these and other examples, gender in this country appears partly to comprise the meaning of, as well as bisect, race and class, even as race and class specificities make up, as well as cross-cut, gender. A



If the two halves are not mirror images of one another, the application of a mirror does not recreate the original object or figure. For example, the letter R does not have mirror symmetry.

The letter A, however, does have mirror symmetry.

We don't actually have to use a mirror to determine whether or not something has mirror symmetry. Just imagining a mirror in place between the left and right halves and envisioning the result is enough. Examples of bilateral symmetry abound in our daily lives. Moreover, this form of symmetry has been utilized repeatedly in the fine arts, as we shall see throughout the following pages.

*Tyger! Tyger! burning bright
In the forests of the night,
What immortal hand or eye
Could frame thy fearful symmetry!*

William Blake
"The Tyger"



Looking at these beautiful tigers and reading Blake's poem, we can understand that symmetry in this context means more than just the geometrical exactitude of the left and right sides of the tiger—here it is equivalent to beauty and harmony.

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with a concrete intention of actually doing something about the damage pornography does to women's safety and status—has somewhat illuminated the social meaning of state power. The terms of the pornography debate have been altered through the feminist exposure of pornography as an industry, not just an iconography; as a trade in female flesh, not just imagery or ideas; as more practice than theory; as a means as well as a metaphor for the oppression of women. Liberal convention imagines a state hostile to sexuality and to speech, especially dissident sexuality and dissident speech. The state, in this view, would leap at any opportunity to restrict pornography. The utter failure of this state to do anything effective about it—with the extremely elastic obscenity standard in its hands and all of its power at its disposal—should suggest that this theory of the state is lacking. The hostile, even contemptuous, response of the courts to the first round of women's attempt to gain civil rights against pornographers¹³ should suggest that this theory of the state is wrong. At the least, this response implies that the dissident and the conventional have been misdiagnosed. The behavior of the state better supports the view that its interest, expressed through its law, is to guarantee that the pornography stays. Just as aesthetics defines and protects pornography as art, literary criticism defines and protects it as literature, and sexology defines and protects it as sex, the First Amendment defines and protects it as speech. And for the same reasons: political reasons, reasons of sexual politics, reasons of the power of men over women. One wonders which came first, the canon or the pornography.

With few exceptions, feminism applied to law has provided no critique of the state of its own, and little insight into specific legal concepts from the standpoint of women's experience of second-class citizenship. Particularly in its upper reaches, much of what has passed for feminism in law has been the attempt to get for men what little has been reserved for women or to get for some women some of the plunder that some men have previously divided (unequally) among themselves. This is not to argue that women should be excluded from the spoils of dominance on the basis of sex, exactly. Rather, it is to say that it is antithetical to what women have learned and gained, by sacrifice chosen and unchosen, through sheer hanging on by bloody fingernails, to have the equality we fought for turned into equal access to the means of exploitation, equal access to force with impunity, equal access to sex with the less powerful, equal access to the privilege of irrelevance. As male academics have been able to afford to talk

in ways that mean nothing, so also women; as male pornographers have been permitted to subordinate women sexually through pictures and words, so also women. In the words of Andrea Dworkin, if this is feminism, it deserves to die.

I think the fatal error of the legal arm of feminism has been its failure to understand that the mainspring of sex inequality is misogyny and the mainspring of misogyny is sexual sadism. The misogyny of liberal legalism included.¹⁴ This, at least, is my understanding of the popular denial that sexual violation is a sexual practice. The determined belief that sex and violence are mutually exclusive is a wish fulfillment that has clouded the theory and confused the activism, including the legal activism, of the movement.¹⁵ Related is the equally popular assumption that the gender inequality we confront is really only a natural biological harmony to be restored, rather than a fundamental social conflict to be resolved. So, too, the alternating and simultaneous rejection and embrace of sex as a difference¹⁶ has evaded the issues of power and left the hierarchy that is gender right in place.

Sexuality

They said, "You are a savage and dangerous woman." [I said] "I am speaking the truth. And the truth is savage and dangerous."

Nawal El Saadawi, *Woman at Point Zero* (1983), the story of a prostitute

Since 1970, feminists have uncovered a vast amount of sexual abuse of women by men. Rape, battery, sexual harassment, sexual abuse of children, prostitution, and pornography, seen for the first time in their true scope and interconnectedness, form a distinctive pattern: the power of men over women in society. These abuses are as allowed *de facto* as they are prohibited *de jure*. Formal prohibition has done little to alter their frequency; it has helped make it hard to believe that they are so common. The reports that are believed are treated as if the events and their victims are statistically deviant, because the events they report have been branded as morally and legally deviant. In fact, it is the woman who has not been sexually abused who deviates.

The reason feminism uncovered this reality, its methodological secret, is that feminism is built on believing women's accounts of sexual use and abuse by men.¹⁷ The pervasiveness of male sexual violence against women is therefore not denied, minimized, trivialized, erot-

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icized, or excepted as marginal or episodic or placed to one side while more important matters are discussed. The fact that only 7.8 percent of women in the United States have not been sexually assaulted or harassed in their lifetime¹⁸ is not considered inconsequential or isolated. The fact that sexual violation is a sexual practice is faced. A new paradigm begins here, one that fits the reality of the experience to be explained. All the ways in which women are suppressed and subjected—restricted, intruded on, violated, objectified—are recognized as what sex is for women and as the meaning and content of femininity.

If this is done, sexuality itself is no longer unimplicated in women's second-class status. Sexual violence can no longer be categorized away as violence not sex.¹⁹ Women do not thrive on violation, whether or not it is done through sex. But our rapists,²⁰ serial murderers ("I killed my mother for the same reason I've killed all those other women. The reason was sex."),²¹ and child molesters ("It's as natural for me to have sex with children the way it's natural for some people to have sex with women.")²² enjoy their acts sexually and as men, to be redundant. It is sex *for them*. What is sex except that which is felt as sexual? When acts of dominance and submission, up to and including acts of violence, are experienced as sexually arousing, as sex itself, that is what they are. The mutual exclusivity of sex and violence is preserved in the face of this evidence by immunizing as "sex" whatever causes a sexual response and by stigmatizing questioning it as repressive, knowing that what is thereby exempted includes humiliation and brutality and molestation and murder as well as rape by any definition. Violence is sex when it is practiced as sex.²³ If violation of the powerless is part of what is sexy about sex, as well as central in the meaning of male and female, the place of sexuality in gender and the place of gender in sexuality need to be looked at together.

When this is done, sexuality appears as the interactive dynamic of gender as an inequality. Stopped as an attribute of a person, sex inequality takes the form of gender; moving as a relation between people, it takes the form of sexuality. Gender emerges as the congealed form of the sexualization of inequality between men and women. So long as this is socially the case, the feelings or acts or desires of particular individuals notwithstanding, gender inequality will divide their society into two communities of interest. The male centrally features hierarchy of control. Aggression against those with less power is experienced as sexual pleasure, an entitlement of mas-

culinity. For the female, subordination is sexualized, in the way that dominance is for the male, as pleasure as well as gender identity, as femininity. Dominance, principally by men, and submission, principally by women, will be the ruling code through which sexual pleasure is experienced. Sexism will be a political inequality that is sexually enjoyed, if unequally so.

Sexual abuse works as a form of terror in creating and maintaining this arrangement. It is a terror so perfectly motivated and systematically concerted that it never need be intentionally organized—an arrangement that, as long as it lasted, would seal the immortality of any totalitarianism. I have come to think that the unique effectiveness of terrorism, like that against Jews in Argentina,²⁴ is that it is at once absolutely systematic and absolutely random: systematic because one group is its target and lives knowing it; random because there is no way of telling who is next on the list. Just to get through another day, women must spend an incredible amount of time, life, and energy cowed, fearful, and colonized, trying to figure out how not to be next on the list. Learning by osmosis what men want in a woman and trying to give it to them, women hope that being the wanted image will alter their odds. Paying attention to every detail of every incident of a woman's violation they can get their hands on, women attempt not to be her. The problem is, combining even a few circumstances, descriptions, conditions, and details of acts of sexual abuse reveals that no woman has a chance. To be about to be raped is to be gender female in the process of going about life as usual. Some things do increase the odds, like being Black. One cannot live one's life attempting not to be a Black woman. As Black women well know, one cannot save it that way, either.

Because the inequality of the sexes is socially defined as the enjoyment of sexuality itself, gender inequality appears consensual. This helps explain the peculiar durability of male supremacy as a system of hegemony as well as its imperviousness to change once it exists. It also helps explain some of the otherwise more bewildering modes of female collaboration. The belief that whatever is sexually arousing is, ipso facto, empowering for women is revealed as a strategy in male rule. It may be worth considering that heterosexuality, the predominant social arrangement that fuses this sexuality of abuse and objectification with gender in intercourse, with attendant trauma, torture, and dehumanization, organizes women's pleasure so as to give us a stake in our own subordination. It may even be that to be "anti-sex," to be against this sex that is sex, is to refuse to affirm

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loyalty to this political system of inequality whose dynamic is male control and use and access to women—which would account for the stigma of the epithet.

Gender

I wish I had been born a doormat, or a man.

Jean Harris, headmistress of Madeira School and convicted killer of Herman Tarnower, her former lover. She testified she had intended to kill herself instead.

Gender is an inequality of power, a social status based on who is permitted to do what to whom. Only derivatively is it a difference. Differences between the sexes do descriptively exist; being a doormat is definitely different from being a man. That these are a woman's realistic options, and that they are so limiting, calls into question the explanatory value and political agenda implicit in terming gender a difference. One is not socially permitted to be a woman and neither doormat nor man.

The differences we attribute to sex are lines inequality draws, not any kind of basis for it. Social and political inequality are, I think, basically indifferent to sameness and difference. Differences are inequality's post hoc excuse, its conclusory artifact, its outcome presented as its origin, the damage that is pointed to as the justification for doing the damage after the damage has been done, the distinctions that perception is socially organized to notice because inequality gives them consequences for social power. Distinctions of body or mind or behavior are pointed to as cause rather than effect, without realizing that they are so deeply effect rather than cause that pointing to them at all is an effect.

Inequality comes first; differences come after. Inequality is substantive and identifies a disparity; difference is abstract and falsely symmetrical. If this is so, a discourse of gender difference serves as ideology to neutralize, rationalize, and cover disparities of power, even as it appears to criticize them. Difference is the velvet glove on the iron fist of domination. This is as true when differences are affirmed as when they are denied, when their substance is applauded or when it is disparaged, when women are punished or when they are protected in their name. A sex inequality is not a difference gone wrong, a lesson the law of sex discrimination has yet to learn.²⁵ One of the most deceptive antifeminisms in society, scholarship, politics, and law is the persistent treatment of gender as if it truly is a question of

difference, rather than treating the gender difference as a construct of the difference gender makes.²⁶

Gender inequality pervades the way we think. If a concept like difference is a conceptual tool of gender inequality, it cannot deconstruct the master's house. Especially when it has built it. Difference is what the gender system says gender is; dominance it denies—only this should be a clue. Consider legal reasoning, in which analogy and distinction are methodological.²⁷ Like and unlike, similar and dissimilar, have been the meta-metaphor through which the law has put its systemic norm of equal treatment into effect: like and unlike are “like” equal and unequal. Like many metaphors, its hold is more tenacious than its applicability often warrants. Why should women have to be “like” men to be treated as equal citizens? Why should sex inequality have to be “like” racial inequality to be treated as an invidious inequality? As Benjamin Cardozo said of metaphor, “[T]he word starts out to free thought and ends by enslaving it.”²⁸ To make a deep change in something that, once it exists, apparently has never not existed—and sex inequality has changed little if sex equality is your standard—requires a new way of thinking, not just thinking about new things.

Try thinking without apology with what you know from being victimized. Give up the Olympian partiality of objectivity and try for a fairness and an authority that neither dominates nor submits to your material or your audience. Keeping time and change moving in your mind, make order intelligible without the crutch of variance. Think the determinism of structural force and the possibility of freedom at the same time. Look for the deepest meanings in the least elevated places. Be more radical than anyone has ever been about the unknown, because what has never been asked is probably what we most need to know. Take the unknowable more seriously than anyone ever has, because most women have died without a trace; but invent the capacity to act, because otherwise women will continue to.

These are largely new conceptual problems, but this is not primarily a conceptual program. This may be what is most new about it. If it does not track bloody footprints across your desk, it is probably not about women. Feminism, the discipline of this reality, refuses to abstract itself in order to be recognized as being a real (that is, axiomatic) theory. In terms of existing theory, the distinctive intellectual challenge of feminism is to retain its specificity without being confined to the parochial; its distinctive practical challenge is to stay con-

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crete without being crushed. In feminist terms, it is difficult to be narrow if you truly are talking about the situation of 53 percent of the population, but it is almost impossible to survive if you do—which makes these one and the same challenge.

Pornography

She gave up, deciding to end this torture once and for all . . . [she] began eagerly to await her death . . . When she had nearly achieved her goal, her Grandmother Clara . . . appeared with the novel idea that the point was not to die, since death came anyway, but to survive, which would be a miracle . . . She suggested that she write a testimony that might one day call attention to the terrible secret she was living through, so that the world would know about this horror that was taking place parallel to the peaceful existence of those who did not want to know, who could afford the illusion of a normal life, and of those who could deny that they were on a raft adrift in a sea of sorrow, ignoring, despite all evidence, that only blocks away from their happy world there were others . . .

Isabel Allende, *The House of the Spirits* (1985), an episode about torture under a Latin American dictatorship

Almost everything that needs to be said about pornography can be said about Linda Marchiano, because everything people think about it, they think about her. As recounted in her book *Ordeal*,²⁹ Linda Marchiano was coerced by abduction, systematic beatings, surveillance, and torture into the persona of “Linda Lovelace,” the centerpiece of the pornographic film *Deep Throat*. During her two and a half years of captivity, she was never out of the sight of the pimp Charles Traynor. When she tried to leave, he threatened her life and the lives of her family. He guarded her with weapons. She had to ask his permission to go to the bathroom, where he watched her through a hole in the wall. He prostituted her; johns who beat her got her for free. He slept on top of her at night. He listened to her telephone calls on an extension. When he recaptured her after escape attempts, he tortured her horribly. He forced her to marry him and, with a gun, to have sex with a dog. These are the conditions under which *Deep Throat*, a paean to women’s sexual freedom, was made. In it “Linda Lovelace” finds sexual ecstasy in fellatio because her clitoris is in her throat.

Men. The stunning and durable success of the film suggests that it is enjoyed by many. An equally stunning and durable part of their enjoyment is the belief that *Deep Throat* is true and *Ordeal* is false.

Linda was willing; she loved it. Men, the best of them, don't want to believe what she says happened, because they try to think of women as human beings like them, and they just can't believe it would happen to them. Which, for the most part, it wouldn't. So much for humanism. Men, the rest of them, don't want to know that she didn't like it. She loved it, see, she was paid. Never mind that consent in sex—and pornography is a form of sex—is supposed to mean freedom of desire expressed, not compensation for services rendered, which is what it means in commodity exchange. To show she did it for the sex should be to show that she did it for free. Not that Linda saw any of the money.

Maybe because this is a bourgeois culture, which cherishes the belief that individuals freely act, it is important that she personally loved taking a penis to the bottom of her throat, as if women really are like that. To hear that Linda Marchiano had to be hypnotized under threat of death to suppress the normal gag response seems to take something away; it is somehow detumescent. But every actual act of force it took to get her to look as though she was having such a wonderful time would have been completely in context had pornography been made of it. Her screams and cries and terror and inert despair and empty eyes would all have been sex in one of the many pornographic Pygmalions: mere biological female becomes real woman through being raped until she discovers she loves it, that is, she discovers her true self.

Had the slave training of Linda Lovelace been presented in pornography instead of in *Ordeal*, it would have been a sex act. As a sex act, the fact that it happened would have been believed. But even if all the force had been shown, the fact that she was forced would still not have been believed, not even then. Men believe what turns them on. What else can one think about the fact that no one had ever seen a woman deep-throat like that—an act whose verisimilitude approaches absolute zero, especially compared with the violence of pimps, which is known—yet it was believed. When a woman becomes the pornographer's "speech," her violation is sex and is therefore the truth. When a woman speaks for herself, her violation becomes an atrocity and is therefore a lie. So *Deep Throat* is protected speech³⁰ and *Ordeal* is sued for libel.³¹

Women. A lot of women know that what Linda says is true, and some are willing to face it: "I got away and she didn't."³² A lot of women know that what Linda says is true but are not willing to face it. It means that what happened to her could happen to them at any

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time, and nothing would be done about it. A very few, who naturally are given the highest visibility, seemingly would rather see Linda being used, or know that they could, than work to keep anyone, even themselves, from being used like her. Perhaps, particularly with some educated women, who have become accustomed to interpolating themselves into culture as a survival and advancement strategy—reading the Nietzschean man and substituting she for he, reading the Freudian man and finding the oedipal problems more personally resonant than the electra ones—it should be no surprise if they relate to the pornography more as for them than as of them. Within the frame of reference they have adopted, everything is supposed to be for them. It is harder to explain why such women have not also learned that most men cannot really tell the difference between them and Linda—men who live out the class definition of women that both the women and the men deny exists. Yet even among the most privileged women, this is an anomalous reaction. Most do not relate to pornography as for them, even if they do not see it as of them. Not yet.

The politics of the pornography issue do remind one that some women, however nominally, are compensated for women's status better than others. This gives the relatively advantaged a stake in the status quo, which they hang on to with all the tenacity of having something to lose. As things stand, all women who are not prostitutes or in pornography get the benefit of not being that class of woman. A precarious status, and a matter of degree, but very real nonetheless. Women who know that men value them in terms of the sexual access they provide as surely as they know the laws of gravity, and who identify and value themselves as the accessed just as the apple values its ability to fall from the tree, see the attack on pornography as an attack on them. The attack is, instead, on the terms by which all women have had no choice but to be identified and limited and used.

Pornography is a complex issue, but on this level it is really simple: if you are a woman, that could have been you, it is you; if you are a man, it is for you, in your name. Most women do not think the woman in the pornography is them, and most men don't, either. The men are mostly right and the women are mostly wrong.

Law. Before working with the pornography issue, I was taught that inalienable rights was a normative principle of natural law that supposedly underlay positive law. Its idea was, individuals were not to be treated in certain ways. Linda Marchiano's numerous and so far unsuccessful attempts to get relief through the legal system and to

end the abuse to her person, including stopping *Deep Throat*, reveals the utter sentimentality and deceptiveness of these ideas in law. An individual whose rights are systematically and cumulatively violated—for instance, a woman hurt as a woman, as a member of the gender female—does not seem to be what the law had in mind. Usually, a great deal less happens to people, or they are never heard from again. Lawyers considering whether anything can be done for a woman who is damaged in ways that make her less than the perfect case rarely conclude that they should confront or change the law. They look at cases the way surfers look at waves.

It is apparently difficult to carry on about the ultimate inviolability of the person in the face of a person who has been so ultimately violated. The shame and denial over the term “victim” has the same structure. The embarrassment of Linda’s existence in the face of her victimization must be made ideologically comfortable. This is done by turning her into a nonperson and the natural law dogma into a simple empirical tautology: whoever is so cumulatively violated as to be an emblem of collective violation is simply not that bundle of rights termed “the individual.” If it happened and it hurt her, she deserved it. If she didn’t deserve it, either it didn’t happen or it didn’t hurt her. If she says it hurt her, she’s oversensitive or unliberated. If she says it happened, she’s a liar or a natural-born whore. Either it didn’t happen or she loved it.

At one American Civil Liberties Union meeting at which I spoke, a woman told me she thought all speech should be protected, including *Deep Throat*. Asked what Ms. Marchiano should do now, she replied, “Deal with whatever in herself allowed her to let this happen to her.” Linda’s desire not to be dead, is what she was referring to. In this way of thinking, to be a victim, if one is a woman, becomes a statement of status, rather than the noun form of an imposed condition. In this logic, instead of Linda’s resilience and dignity being taken as proof that something, unaccountably, is not destroyed, the violations she suffered are taken as the measure of her individual worth. What was done to her is attributed to her. Thus do the women in pornography become, in Andrea Dworkin’s words, “the sexual disappeared of this society.”³³ When your life is pornography, it’s pornography for life. On bad days, asking why so much less of it destroys most women looks like a hopeful question.

Even those who believe it did happen and Linda did not love it, don’t seem to care. It is this indifference, finally, that gets to you over time. Linda becomes a subject to evade, as if she is not really the