

O N L Y

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W O R D S

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ONLY WORDS



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I



DEFAMATION
AND
DISCRIMINATION



IMAGINE that for hundreds of years your most formative traumas, your daily suffering and pain, the abuse you live through, the terror you live with, are unspeakable—not the basis of literature. You grow up with your father holding you down and covering your mouth so another man can make a horrible searing pain between your legs. When you are older, your husband ties you to the bed and drips hot wax on your nipples and brings in other men to watch and makes you smile through it. Your doctor will not give you drugs he has addicted you to unless you suck his penis.¹

You cannot tell anyone. When you try to speak of these things, you are told it did not happen, you imagined it, you wanted it, you enjoyed it. Books say this. No books say what happened to you. Law says this. No law imagines what happened to you, the way it happened. You live your whole life surrounded by this cultural echo of nothing where your screams and your words should be.

In this thousand years of silence, the camera is invented and pictures are made of you while these things

are being done. You hear the camera clicking or whirring as you are being hurt, keeping time to the rhythm of your pain. You always know that the pictures are out there somewhere, sold or traded or shown around or just kept in a drawer. In them, what was done to you is immortal. He has them; someone, anyone, has seen you there, that way. This is unbearable. What he felt as he watched you as he used you is always being done again and lived again and felt again through the pictures—your violation his arousal, your torture his pleasure. Watching you was how he got off doing it; with the pictures he can watch you and get off any time.²

Slowly, then suddenly, it dawns on you: maybe now I will be believed. You find a guarded way of bringing it up. Maybe the pictures are even evidence of rape.³ You find that the pictures, far from making what happened undeniable, are sex, proof of your desire and your consent.⁴ Those who use you through the pictures feel their own pleasure. They do not feel your pain as pain any more than those who watched as they hurt you to make the pictures felt it. The pictures, surrounded by a special halo of false secrecy and false taboo—false because they really are public and are not really against the rules—have become the authority on what happened to you, the literature of your experience, a sign for sex, sex itself. In a very real way, they have made sex *be* what it is to the people who use you and the pictures of you interchange-

ably. In this, the pictures are not so different from the words and drawings that came before, but your use for the camera gives the pictures a special credibility, a deep verisimilitude, an even stronger claim to truth, to being incontrovertibly about you, because they happened and there you are. And because you are needed for the pictures, the provider has yet another reason to use you over and over and over again.

Finally, somehow, you find other women. Their fathers, husbands, and doctors saw the pictures, liked them, and did the same things to them, things they had never done or said they wanted before. As these other women were held down, or tied up, or examined on the table, pictures like the pictures of you were talked about or pointed to: do what she did, enjoy it the way she enjoyed it. The same acts that were forced on you are forced on them; the same smile you were forced to smile, they must smile. There is, you find, a whole industry in buying and selling captive smiling women to make such pictures, acting as if they like it.

When any one of them tries to tell what happened, she is told it did not happen, she imagined it, she wanted it. Her no meant yes. The pictures prove it. See, she smiles. Besides, why fixate on the pictures, the little artifact, at most a symptom? Even if something wrong was *done* to you, how metaphysically obtuse can you be? The pictures *themselves* do nothing. They are an expression of

ideas, a discussion, a debate, a discourse. How repressed and repressive can you be? They are constitutionally protected speech.

Putting to one side what this progression from life to law does to one's sense of reality, personal security, and place in the community, not to mention faith in the legal system, consider what it does to one's relation to expression: to language, speech, the world of thought and communication. You learn that language does not belong to you, that you cannot use it to say what you know, that knowledge is not what you learn from your life, that information is not made out of your experience. You learn that thinking about what happened to you does not count as "thinking," but doing it apparently does. You learn that your reality subsists somewhere beneath the socially real—totally exposed but invisible, screaming yet inaudible, thought about incessantly yet unthinkable, "expression" yet inexpressible, beyond words. You learn that speech is not what you say but what your abusers do to you.

Your relation to speech is like shouting at a movie. Somebody stop that man, you scream. The audience acts as though nothing has been said, keeps watching fixedly or turns slightly, embarrassed for you. The action on-screen continues as if nothing has been said. As the echo of your voice dies in your ears, you begin to doubt that you said anything. Soon your own experience is not real

to you anymore, like a movie you watch but cannot stop. This is women's version of life imitating art: your life as the pornographer's text. To survive, you learn shame and how to cover it with sexual bravado, inefficacy and how to make it seductive, secrecy and the habit of not telling what you know until you forget it. You learn how to leave your body and create someone else who takes over when you cannot stand it any more. You develop a self who is ingratiating and obsequious and imitative and aggressively passive and silent—you learn, in a word, femininity.

I am asking you to imagine that women's reality is real—something of a leap of faith in a society saturated with pornography, not to mention an academy saturated with deconstruction.⁵ In the early 1980s women spoke of this reality, in Virginia Woolf's words of many years before, "against the male flood":⁶ they spoke of being sexually abused. Thirty-eight percent of women are sexually molested as girls; twenty-four percent of us are raped in our marriages. Nearly half are victims of rape or attempted rape at least once in our lives, many more than once, especially women of color, many involving multiple attackers, mostly men we know. Eighty-five percent of women who work outside the home are sexually harassed at some point by employers.⁷ We do not yet know how many women are sexually harassed by their doctors or how many are bought and sold as sex—the one thing

men will seemingly always pay for, even in a depressed economy.

A long time before the women's movement made this information available, in the absence of the words of sexually abused women, in the vacuum of this knowledge, in the silence of this speech, the question of pornography was framed and debated—its trenches dug, its moves choreographed, its voices rehearsed. Before the invention of the camera, which requires the direct use of real women; before the rise of a mammoth profitmaking industry of pictures and words acting as pimp; before women spoke out about sexual abuse and were heard, the question of the legal regulation of pornography was framed as a question of the freedom of expression of the pornographers and their consumers. The government's interest in censoring the expression of ideas about sex was opposed to publishers' right to express them and readers' right to read and think about them.

Frozen in the classic form of prior debates over censorship of political and artistic speech, the pornography debate thus became one of governmental authority threatening to suppress genius and dissent. There was some basis in reality for this division of sides. Under the law of obscenity, governments did try to suppress art and literature because it was sexual in content. This was

before the camera required live fodder and usually resulted in the books' becoming bestsellers.

Once abused women are heard and—this is the real hitch—become real, women's silence can no longer be the context in which pornography and speech are analyzed. Into the symbiotic dance between left and right, between the men who love to hate each other, enters the captive woman, the terms of access to whom they have been fighting over.⁸ Instead of the forces of darkness seeking to suppress what the forces of light are struggling to free, her captivity itself is made central and put in issue for the first time. This changes everything, or should. Before, each woman who said she was abused looked incredible or exceptional; now, the abuse appears deadeningly commonplace. Before, what was done to her was sex; now, it is sexual abuse. Before, she was sex; now, she is a human being gendered female—if anyone can figure out what that is.

In this new context, the expressive issues raised by pornography also change—or should. Protecting pornography means protecting sexual abuse *as* speech, at the same time that both pornography and its protection have deprived women *of* speech, especially speech against sexual abuse. There is a connection between the silence enforced on women, in which we are seen to love and choose our chains because they have been sexual-

ized, and the noise of pornography that surrounds us, passing for discourse (ours, even) and parading under constitutional protection. The operative definition of censorship accordingly shifts from government silencing what powerless people say, to powerful people violating powerless people into silence and hiding behind state power to do it.

In the United States, pornography is protected by the state.⁹ Conceptually, this protection relies centrally on putting it back into the context of the silence of violated women: from real abuse back to an "idea" or "viewpoint" on women and sex. In this de-realization of the subordination of women, this erasure of sexual abuse through which a technologically sophisticated traffic in women becomes a consumer choice of expressive content, abused women become a pornographer's "thought" or "emotion." This posture unites pornography's apologists from libertarian economist and judge Frank Easterbrook¹⁰ to liberal philosopher-king Ronald Dworkin,¹¹ from conservative scholar and judge Richard Posner¹² to pornographers' lawyer Edward DeGrazia.¹³

In their approach, taken together, pornography falls presumptively into the legal category "speech" at the outset through being rendered in terms of "content," "message," "emotion," what it "says," its "viewpoint," its "ideas." Once the women abused in it and through it are

elided this way, its artifact status as pictures and words gets it legal protection through a seemingly indelible categorical formalism that then must be negated for anything to be done.

In this approach, the approach of current law, pornography is essentially treated as defamation rather than as discrimination.¹⁴ That is, it is conceived in terms of what it says, which is imagined more or less effective or harmful as someone then acts on it, rather than in terms of what it does. Fundamentally, in this view, a form of communication cannot, as such, *do* anything bad except offend. Offense is all in the head. Because the purveyor is protected in sending, and the consumer in receiving, the thought or feeling, the fact that an unintended bystander might have offended thoughts or unpleasant feelings is a mere externality, a cost we must pay for freedom. That the First Amendment protects this process of interchange—thought to thought, feeling to feeling—there is no doubt.

Within the confines of this approach, to say that pornography is an act against women is seen as metaphorical or magical, rhetorical or unreal, a literary hyperbole or propaganda device. On the assumption that words have only a referential relation to reality, pornography is defended as only words—even when it is pictures women had to be directly used to make, even

when the means of writing are women's bodies, even when a woman is destroyed in order to say it or show it or because it was said or shown.

A theory of protected speech begins here: words express, hence are *presumed* "speech" in the protected sense. Pictures partake of the same level of expressive protection. But social life is full of words that are legally treated as the acts they constitute without so much as a whimper from the First Amendment. What becomes interesting is when the First Amendment frame is invoked and when it is not. *Saying* "kill" to a trained attack dog is only words. Yet it is not seen as expressing the viewpoint "I want you dead"—which it usually does, in fact, express. It is seen as performing an act tantamount to someone's destruction, like saying "ready, aim, fire" to a firing squad. Under bribery statutes, saying the word "aye" in a legislative vote triggers a crime that can consist entirely of what people say. So does price-fixing under the antitrust laws. "Raise your goddamn fares twenty percent, I'll raise mine the next morning" is not protected speech; it is attempted joint monopolization, a "highly verbal crime." In this case, conviction nicely disproved the defendant's view, expressed in the same conversation, that "we can talk about any goddamn thing we want to talk about."¹⁵

Along with other mere words like "not guilty" and "I do," such words are uniformly treated as the institutions