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# Exposing the fallacies of anti-porn feminism



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**Abstract** This paper examines an issue at the centre of feminist debates about pornography and sex work, and that is whether these practices reduce women to sex objects. I question the assumption that the expression of sexual desire is unique in its power to degrade and dehumanize persons. I show that this assumption underlies Catharine MacKinnon's attack on pornography by considering MacKinnon's intellectual debt to the philosopher Immanuel Kant. I then examine recent discussions of sexual objectification in the philosophical literature and argue that MacKinnon's adaptation of Kant has flaws comparable to Kant's original account of sexual desire.

**keywords** *sexual objectification, pornography, MacKinnon, sex work, Kant*

## Introduction

The philosopher Immanuel Kant famously argued that sexual desire is 'an appetite for another human being'. Moreover, 'as an Object of appetite for another', Kant writes,

a person becomes a thing and can be treated and used as such by every one. This is the only case in which a human being is designed by nature as the Object of another's enjoyment. Sexual desire is at the root of it; and that is why we are ashamed of it, and why all strict moralists, and those who had pretensions to be regarded as saints, sought to suppress and extirpate it. (Kant, 1963: 163–4)

If sexual acts involve reducing a person to an object for our enjoyment, then they violate the basic rule of morality, which, for Kant, obliges us to treat persons always as ends in themselves and never as mere instruments for our use. Kant's sexual philosophy led him to condemn virtually all sexual acts, including extramarital sex, masturbation, paid sex, and homosexuality. Kant condoned only procreative sex between heterosexual marital partners because, for reasons explained below, procreative sex between marital partners mitigates the moral wrongs of instrumental use, and avoids degrading the humanity of the participants (Herman, 1993: 60–1; Brake, 2005: 58, 76–7).

There are a number of problems with this conception of sexuality, which I will examine in this paper. My main aim, though, is to consider how Kant's assumptions about sex have been deployed by Catharine MacKinnon and other feminists to critique pornography. I will show how Kant's view has been adapted by MacKinnon to expose some of the ills of patriarchy. Although I will spend some time exposing the flaws of Kant's view, I will assume that these are fairly evident, and therefore I will concentrate on whether MacKinnon's adaptation of Kant is susceptible to the same problems. I will argue that it is, but in doing this I will consider Martha Nussbaum's discussion of sexual objectification because, after rejecting most of Kant's extreme claims about sexuality, Nussbaum remains in agreement with MacKinnon's extreme views about pornography. I will show that Nussbaum's criticisms of Kant also apply to MacKinnon's theories about pornography.

I am not the first to point out the similarity between Kant's and MacKinnon's views. The Kant scholar Barbara Herman has noted the similarity between Kant's account of sex and 'a strand of contemporary feminism', by which she means the work of MacKinnon and Andrea Dworkin. Herman concludes from this that feminists and philosophers should take Kant's account of sex more seriously (Herman, 1993: 51). I would like to suggest the obverse: that the similarity between Kant's and MacKinnon's views on sex should lead us to take MacKinnon less seriously. Herman further suggests that Kant's account of human sexuality may help us theorize 'the darker side of sexual relations' and the legitimate role of the state in limiting individual choice. I will argue that, because Kant's and MacKinnon's accounts completely obscure the lighter side of sexuality, they are of little use in understanding how the state should regulate sexual acts and relationships.

## **The power of sex for Kant and MacKinnon**

Three features of Kant's claims about the human sexual impulse should be questioned. First, Kant claims that sexual desire is different from our other natural appetites in that its satisfaction is incompatible with moral respect for persons. Although we often use others to satisfy our needs, Kant enjoins us to enjoy their talents and capacities without disregard for their humanity, rationality, or autonomy. This is precisely what is not possible when we use people to realize our sexual goals. The sexual appetite turns a human being into a thing to be consumed, Kant says, like a steak or a lemon (Kant, 1963: 163, 165). Second, Kant holds that sexual desire is aimed at a part of a person and not the whole person. He writes, 'The desire which a man has for a woman is not directed towards her because she is a human being, but because she is a woman; that she is a human being is of no concern to the man; only her sex is the object of his desires' (Kant, 1963: 164). More specifically, her sexed body parts are the object of his interest, and not her Kantian personhood traits, such as her intellect, character, or autonomous aims and desires. Third, Kant believes that the sexual appetite degrades or dishonours human nature because the latter is

subordinated or 'sacrificed to sex' (Kant, 1963: 164). He further claims that humans degrade themselves to the level of animals when they indulge their sexual appetite. On this point he writes, 'Sexuality . . . exposes mankind to the danger of equality with the beasts' (p. 164). In sum, for Kant, the sexual impulse is potentially more destructive than our other appetites because, in fulfilling it, we inevitably objectify, fragment, and dehumanize others and ourselves. When this happens, 'all motives of moral relationship cease to function' (p. 163), according to Kant; or in other words, sexual desires usually compel us to immoral behaviour.

Two decades ago, Catharine MacKinnon stated that 'Pornography participates in its audience's eroticism because it creates an accessible sexual object, the possession and consumption of which *is* male sexuality, to be consumed and possessed as which *is* female sexuality' (MacKinnon, 1987: 150, emphasis in original). Whereas Kant condemns most sexual acts because participation in them reduces humans to mere things, MacKinnon condemns a particular popular genre for representing sexual acts because the generic conventions (in pornographic magazines and movies) reduce women to sexual objects to be consumed by men. Several pages later, MacKinnon acknowledges her debt to Kant: 'A person, in one Kantian view, is a free and rational agent whose existence is an end in itself, as opposed to instrumental. In pornography women exist to the *end* of male pleasure' (MacKinnon, 1987: 158, emphasis in original). In other words, in pornography, women are not recognized as persons with inherent value, but rather they are valued only as instruments of male erotic pleasure.

Although few progressive activists and academics are likely to be sympathetic to Kant's rather negative characterization of human sexuality, many of us have been seduced by MacKinnon's harsh description of pornography. The genius of MacKinnon was to transfer all the negativity and moralism of Kant's attitude to all sexual activities to a genre of erotic materials – pornography. And she effects this transfer, not by appealing to Kant's disgust for the bodily and animalistic nature of sex, but by appealing to feminists' anger at the ongoing violence and discrimination against women, which MacKinnon identifies as the end-result of pornography. More specifically, MacKinnon uses Kant's account of the unique efficacy of sexual desire in objectifying, degrading, and dehumanizing others to explain the efficacy of male desire, manifested most dramatically in pornography, in objectifying, degrading, and dehumanizing women. In MacKinnon's world, pornography is neither a genre of social criticism nor a sexual aid, but provides the hard evidence that most men are prone to treat most women as mere instruments to satisfy desires that have been perverted by a patriarchal culture.

I agree with MacKinnon that women are frequently the targets of gender-based violence, sexual harassment, and discrimination. I also agree with MacKinnon that feminists need to propose ways for women to find effective legal redress against oppressive sexist practices, and I admire the contributions she has made with respect to challenging sexual harassment. I even concede that some pornography, like other expressive materials, may desensitize viewers to the many injustices and indignities that women suffer.

Nevertheless, I disagree with MacKinnon that pornographic expression is more dangerous than sexually non-graphic expression, and that it therefore needs to be suppressed through more forceful governmental regulation. I will show that MacKinnon's case for distinguishing pornography from other forms of expression is that pornography involves depicting people as objects of sexual desire which, for both MacKinnon and Kant, undermines moral respect. It is this assumption that I will examine and challenge.

There are some important differences between Kant's and MacKinnon's theories of sexuality. Unlike Kant, MacKinnon locates the source of sexual objectification in social practices (pornography) and in culturally shaped needs (heterosexual male desire shaped under patriarchy), and not in a natural or universal human appetite (Herman, 1993: 58; Nussbaum, 1999: 225). For this reason, sexual objectification, in MacKinnon's view, is primarily a problem for women rather than men. Because of the historical shaping of the human sexual impulse under patriarchy, women are the instruments of male sexual enjoyment. For MacKinnon, socially ingrained sexual needs and practices define what women are, or what it means to be gendered female. Somehow sexual desires and their institutionalized practices are more fundamental or powerful in defining what a woman is than other social customs, such as those pertaining to education, labour, citizenship, or religious worship. So, even when there are significant cultural practices that recognize women as subjects, heterosexual male erotic desire and expression remains a potentially dangerous force, capable of transforming women into objects of male pleasure, and undermining historical achievements in the establishment of gender equality. Until heterosexual male erotic desire is reshaped by feminism, its expression will be both a symptom and source of ongoing gender oppression, and thus, according to MacKinnon, its concrete expression as pornography needs to be suppressed by giving women the legal tools to punish those who produce and disseminate it.

Although Kant's examples suggest that women are more vulnerable to sexual objectification, his view allows for a man to be degraded through instrumental sexual use by another man or woman, or even by himself (e.g., in masturbation), to satisfy the sexual appetite. In contrast to MacKinnon's view, Kant's solution to the problem of sexual objectification is to limit sex to marriage. Barbara Herman explains why, on Kant's view, marriage can mitigate the injuries of sexual activity. She first clarifies the nature of the injuries sustained through sex, and then why the consensual nature of a sexual act is not sufficient to avoid injury:

Kant makes the further claim that in satisfying sexual desire one party surrenders use of a part for the purposes of gain or pleasure, giving the other a right of disposal over that part. And since 'a human being is a unity,' the right gained thereby is over the whole person. But we cannot have rights of disposal over persons because persons are not things. That is why agreement about use does not provide a remedy: The problem is not one of force. (Herman, 1993: 59)

In yielding sexually and allowing another to take not only a part but 'all of me', as the song goes, a person alienates what should be inalienable,

regardless of her consent, and regardless of the participants' motives, which may be caring and loving. In legal marriage, however, a person gets back what she has alienated (Herman, 1993: 60), because marriage gives her a right of disposal over her spouse, and by extension what he has rights to, namely, herself. But without the rights legally guaranteed to each spouse by marriage and enforceable by the state, sex under other terms leads to self-alienation, subordination, and degradation.

Legal marriage won't do the trick for MacKinnon that it does for Kant. This is because, in a patriarchal society, women and men do not enter marriage as equals, and with equal rights of disposal over each other's body and labour. Social customs and rules permit men to use women sexually, but do not permit women to use and enjoy men to satisfy their sexual needs in the same way. Moreover, a woman does not always have access to her husband's property (e.g., his retirement fund), although a husband generally has access to his wife's property, acquired with her reproductive and productive labour. Therefore, in a legal marriage, a woman does not always get back what she surrenders, while her sexuality and labour are legally at the disposal of one man. Moreover, the state typically enforces a man's right of sexual use of his wife, even when his use is non-consensual and uncaring (e.g., in jurisdictions in which a wife cannot legally charge her husband with sexual assault). Thus marriage, for MacKinnon, does not mitigate the harms of sexual use, but compounds or aggravates them. Indeed marriage, with its attendant myths of mutual love and happiness, obscures what pornography makes evident: the cultural institutions and beliefs that permit men to use women sexually, and to secure their self-surrender and subordination.

Elizabeth Brake has argued that marriage cannot resolve the problem of instrumental sexual use even for Kant, let alone for MacKinnon. Brake writes, 'Kant's account of legal marriage as a remedy for the injustice of unmarried sex fails . . . because legal rights are insufficient to alter the tendencies to objectification which Kant identifies in sex' (Brake, 2005: 59). Brake alleges that the primary problem about sex for Kant is that, in surrendering our bodies sexually, we alienate our inalienable right to freedom (Brake, 2005: 61). And, if sex inevitably violates a person's right of freedom, by treating her as a possession or thing, then marriage will not give her back her freedom; it simply allows her to violate the freedom of the person who is violating hers. That is, marriage becomes a contract of mutual possession or slavery, and 'licenses spouses to use each other as things' (Brake, 2005: 78). Brake argues that the legal structuring of a relationship between two individuals is neither sufficient nor necessary to make their sexual use of each other morally permissible. What renders the use of a person permissible is the motive or intention behind the use. If the intention behind my use is to selfishly satisfy my own desire without regard to the consequences for my partner, then my use is morally objectionable. For Kant, it is only when we perform actions for the sake of carrying out a moral duty that they have moral worth, and the main duty we have, in regard to sex, is to procreate. Therefore Kant should hold that when the motive behind an individual's sexual use of another is to fulfil

her procreative duty, the sexual act does not degrade her humanity nor that of her partner's, assuming he is acting with the same intention. Without the motive of procreation or duty, sexual acts involve using another and oneself 'merely as a means to satisfy an animal impulse' (Kant, quoted in Brake, 2005: 76), and are thereby degrading.

It may be that, for Kant, only married persons have a duty to procreate, which would explain why marriage is necessary for the non-instrumental sexual use of others. But Brake points out that if it is the motive for sexual intercourse that transforms the act from an immoral use to a moral use of someone's body, then marriage is not sufficient to make sex permissible. What makes sex permissible is 'making sex part of a larger end' (Brake, 2005: 80). Brake further argues, contra Kant, that it is implausible to limit the proper duties in regard to sex to procreation, and that we also have duties to secure each other's happiness and pleasure (p. 80). It is also implausible to limit these duties to married people. Moreover, Brake contends that moral sex requires consent, for consent is necessary to respect another's right of freedom (p. 82), whether the partners are married or not. That is, the problem is, in part, one of force (to borrow Herman's wording) because use of another that is not merely instrumental involves acknowledging her autonomy. In sum, Brake effectively argues that consent and having legitimate larger aims, such as mutual pleasure, are necessary and sufficient to make sex moral in marriage. But marriage is neither necessary to make consensual sex for mutual pleasure moral, nor is it sufficient to make non-consensual and non-mutually pleasurable sex moral.

Brake observes that her interpretation and reformulation of Kant does not bode well for MacKinnon's approach to pornography. According to Brake, if the problem of sexual objectification is resolved by the intentions of individual agents rather than by the acquisition of marital or legal rights, then the problem of the sexual objectification of women in society is not likely to be resolved through the acquisition of legal rights to punish pornographers. Brake writes,

legal rights cannot in fact effect the desired outcome in the agent's psychology. True, over time they can reshape people's ideas. For instance, now that women in western societies have the right to vote, many people find it unimaginable that they were ever excluded. But their receiving the right to vote did not change the minds of those who at the time were passionately opposed to women receiving it. (Brake, 2005: 85)

According to Brake, giving women the legal right to sue pornographers for damages, as MacKinnon would do, is neither necessary nor sufficient to discourage the sexual objectification of women. The requisite features of respectful relationships are not externally determined, and therefore giving women rights of the sort MacKinnon proposes would not remedy or mitigate the alleged threat to women's freedom that sexual objectification presents, though it might reduce the amount of pornography produced. Yet, even with less pornography available, men can still treat women as mere sexual objects, because the intentions that make relationships

respectful are controlled neither by pornography nor by laws against it. Brake suggests that both laws and popular culture can, over time, shape the intentions and attitudes people form, but individuals can also resist external control.

Brake's remedy for sexual objectification, however, does not rule out MacKinnon's legal proposal. If laws and popular culture can influence, though not entirely determine, our intentions, MacKinnon can argue that less pornography means that men will be influenced less to treat women as mere sexual objects. MacKinnon does not need to argue that her proposal will resolve the problem entirely, only that it will be a step in the right direction. If sex poses a special problem for human freedom, then it is plausible that the government needs to regulate sexual transactions so that human freedom is not compromised for the sake of sex. Neither MacKinnon nor Brake finds marriage to be the right mechanism for restoring or protecting freedom. MacKinnon's remedy, though partial and incomplete for Brake, may address the threat that sexual desire poses to freedom to some degree. Brake's own solution to the problem of sexual objectification is essentially to inculcate a moral rule rather than change our legal rights: people need to frame the right intentions and obtain consent in order to avoid instrumental sexual use. But before we accept either MacKinnon's or Brake's remedies, we should investigate whether sexual desire presents a special threat to human autonomy. Brake's account doesn't challenge the three components of Kant's philosophy of sex I identified at the outset; it only offers a different remedy than Kant does for the inherent problem with sexual desire. Brake herself does not take a stand on 'whether sex involves objectification and inequality essentially, contingently, or not at all' (Brake, 2005: 60), though she notes that, if the last is the case, her remedy is of less interest. If there isn't any inherent or unique problem with sexual desire, then we do not need to inculcate a code of sexual ethics or to have the government suppress graphic sexual materials. Therefore, before developing remedies, it might prove worthwhile to explore how sex poses a problem in the first place.

## Undoing Kant and MacKinnon

Martha Nussbaum offers an account of sexual objectification that challenges the three distinctive components of Kant's philosophy of sex. In particular, Nussbaum's analysis questions whether the use of another's body sexually is always antithetical to her autonomy, and it makes intelligible a person's desire to be 'used' or enjoyed sexually. However, whereas Nussbaum shows appreciation for the light side of sexuality, unlike Kant, she nevertheless agrees with MacKinnon that pornography falls on the dark side. But she does not accept MacKinnon's legal remedy for pornography and, like Brake, proposes moral guidelines instead. I will argue that Nussbaum's undoing of Kant's sexual philosophy exposes the flaws in MacKinnon's analysis of pornography and not only in MacKinnon's proposed remedy.

In discussing Kant's ideas about sexual objectification, Nussbaum writes:

Central to Kant's analysis of sexuality and marriage is the idea that sexual desire is a very powerful force that conduces to the thing-like treatment of persons . . . Why does Kant think that sex does this? . . . The idea seems to be that sexual desire and pleasure cause very acute forms of sensation in a person's own body; that these sensations drive out, for a time, all other thoughts, including the thoughts of respect for humanity that are characteristic of the moral attitude to persons. Apparently he also thinks that they drive out every end-like consideration of the pleasure or experience of the sex partner and cause attention to be riveted on one's own bodily states. In that condition of mind, one cannot manage to see the other person as anything but a tool of one's own interests, a set of bodily parts that are useful tools for one's pleasure, and the powerful urge to secure one's own sexual satisfaction will ensure that instrumentalization . . . the keen interest both parties have in sexual satisfaction will lead them to permit themselves to be treated in this thing-like way by one another, indeed to volunteer eagerly to be dehumanized in order that they can dehumanize the other in turn. (Nussbaum, 1999: 224)

In this passage, Nussbaum analyses objectification as a 'condition of mind' to which one is reduced because of intense bodily sensations. In this condition of mind, one reaches for a human body, just like one reaches for a steak, to satisfy an acute hunger. Presumably, an acutely hungry person gives no thought to the needs of others; his only aim in eating the steak is to satisfy his hunger. Yet, must we satisfy our appetites, or relieve acute desires, so thoughtlessly and selfishly? Even when very hungry, a person can consider whether the steak is theirs and not another diner's, whether to share the steak with other hungry friends, whether they should avoid eating steak, and so on. If the problem with sexual desire is that its intensity can lead to compulsive and selfish consumption, it is not evident that sexual desire is always or even typically debilitating in this way. Although intense desires for food, drink, wealth, jobs, sex, and so on, are sometimes morally disabling, they do not necessarily produce childish, anti-social, or beastly behaviour.

Kant held that the sexual urge is morally problematic because the urge itself is bodily and animalistic, and the only case in which we are 'designed by nature' to require another human body to satisfy a natural urge. Since the urge itself is fundamentally animalistic, its satisfaction, with the use of another's body or just one's own body, exposes 'mankind to the danger of equality with the beasts' (Kant, 1963: 164). But Nussbaum does not accept that the problem of sexual desire is its bodily origins and aims, and thus looks for a more plausible explanation: the morally disabling acuteness of the sexual urge. However, in supplying a somewhat more plausible explanation of the problem of sexual desire in terms of the psychological and behavioural consequences of intense appetites, Nussbaum offers an analysis of sexual desire in which its degrading and morally objectionable consequences seem to be avoidable in many cases. As long as sexual desire does not drive out all 'thoughts of respect for humanity' (and there's no reason to think it always does), then sexual desires can be fulfilled in ways

that are considerate of 'the pleasure or experience of the sex partner' (Nussbaum, 1999: 224).

Nussbaum's analysis challenges the third component of Kant's philosophy of sex that I identified above. Although in some circumstances, sexual desire can be morally disabling and result in ignoring one's own or someone else's humanity, in many circumstances the fulfilment of sexual desires is compatible with respect for persons. As long as the participants avoid a 'condition of mind' that disregards their partner's subjectivity and autonomy, morally unobjectionable sex should be possible. At first glance, Nussbaum's analysis seems to challenge the first component of Kant's philosophy of sex: that sex is unique in the way it requires us to objectify others. On Nussbaum's analysis, there is no reason to think that the sexual appetite is different from other appetites in causing acute bodily sensations. However, the sexual appetite may still be different from other appetites in finding its fulfilment primarily in another's body. As an appetite that both causes acute bodily sensations and aims at the bodies of others, sexual desire may be uniquely powerful in transforming persons into objects of enjoyment. Thus Nussbaum's view, as elaborated so far, appears to be consistent with the first two components of Kant's view: that sexual desire is unique in the way it often requires us to use the bodies of others and that sexual desire aims primarily at the sexed body of another. I will show below that other parts of her analysis of objectification are inconsistent with the first and second components of Kant's philosophy of sex.

Kant held that sexual desire both emerges and finds its fulfilment in bodies, and, as such, is an impulse that we share with other animals. Because of this, it is not among the capacities that distinguish humans from the beasts: most importantly, our capacities for autonomy and rationality. Because sexual desire is distinct from the latter capacities, when acted upon, it subordinates both the humanity of the agent to an animal impulse and the humanity of his partner to her subhuman parts. Nussbaum contrasts this aspect of Kant's views with the ideas of D.H. Lawrence on sex:

We are now in a position to notice something quite interesting about Kant. He thinks that focusing on the genital organs entails the disregard of personhood – because he apparently believes that personhood and humanity, and along with them, individuality, do not reside in the genital organs; the genital organs are just fungible nonhuman things, like so many tools. Lawrence says, that is a response that itself dehumanizes us, by reducing to something subhuman what properly is a major part of the humanity in us, and the individuality as well. We are a certain type of animal, and animality is part of our personhood, completely interwoven with individuality and personality. (Nussbaum, 1999: 231)

Lawrence contends, contrary to Kant, that our bodies and their appetites can be treated as integral aspects of our humanity, even if they are not what may be most distinctive about us. Lawrence further contends, according to Nussbaum, that women, in particular, need not be desexualized in order to be human and respected as persons. Nussbaum writes, 'Thinking about Lawrence can make us question the account of the deformation of sexuality

given by MacKinnon and Dworkin. For Lawrence suggests that the inequality and, in a sense, dehumanization of women in Britain . . . rests on and derives strength from the denial of women's erotic potentiality, the insistence that women be seen as sexless things and not identified also with their genital organs' (Nussbaum, 1999: 231). In other words, the dehumanization of women is caused by desexualizing them, so that we mistake sexualizing them for sexually objectifying and degrading them. If a woman's sexed body is part of her humanity, then to desire it is not to reduce her to a non-human thing, and when she yields her body sexually she does not give up her status as a human subject. In sum, Lawrence blames the dehumanization of women on sexist or prudish views that equate respect for women with not recognizing their erotic desirability or desires. Unlike MacKinnon, he does not attribute their dehumanization to their being desired sexually by men and the objectifying tendencies of male desire.

Nussbaum expresses some sympathy for Lawrence's views of human sexuality. Although she criticizes his apparent belief that human sexuality should or could be free of societal manipulation, she agrees that desiring someone sexually does not necessarily involve objectifying them in bad ways – in ways that, for example, deny a person's humanity, autonomy, or subjectivity. She also holds that yielding sexually to another person, and the 'bodily receptivity' and 'resignation of control' characteristic of such acts, also do not necessarily involve a loss of personhood. Nussbaum writes further that her 'stance does involve the recognition that our culture is more heterogeneous and allows us more space for negotiation and construction than MacKinnon and Dworkin usually allow' (Nussbaum, 1999: 231). In other words, the cultural shaping of sexuality is probably less monolithic than MacKinnon imagines, and allows for multiple social constructions, including ones in which male desires for women do not turn them into things. But Nussbaum, like MacKinnon, fails to find humanizing constructions of sexuality in pornography. Although a woman can relinquish control of her sexed body parts to a man who desires them without being dehumanized or reduced to a mere thing, according to Nussbaum, pornographic contexts apparently restrict 'the space for negotiation and construction' in ways that turn women's sexed bodies into 'fungible nonhuman things' (Nussbaum, 1999: 234–5).

Nussbaum's defence of Lawrence challenges the first component of Kant's views on sex – that sexual desire inevitably transforms persons into things, in part, because it finds satisfaction through the use of the body of another. If the body and its sexual organs are integral parts of one's humanity and not subhuman parts, then to desire and use them sexually is not, by itself, degrading or dehumanizing. For Nussbaum, the sexual use of the sexed body parts of another does not lead to objectification simply because sex is involved; instead, the use of the body or body parts of another (her genitals, hands, and so on) constitutes treating a person as a thing when it largely disregards one or more of the following: her humanity, autonomy, agency, non-fungibility, boundaries, inalienable rights, and subjectivity (Nussbaum, 1999: 218). Nussbaum argues that practices that disregard some items on this list are always morally

objectionable, for example, those that disregard a person's inalienable right to freedom or her non-fungibility, such as allowing persons to be exchanged as property or commodities. But she also writes that the 'denial of autonomy and denial of subjectivity are objectionable if they persist throughout an adult relationship, but as phases in a relationship characterized by mutual regard they can be all right' (Nussbaum, 1999: 238). What matters for Nussbaum is the quality of the larger relationship in which the objectifying use takes place and, as for Brake, the intention behind the use (Nussbaum, 1999: 233). In other words, sex is irrelevant to the objectification of someone (or sexual objectification is no worse than other forms of objectification); rather, objectification occurs when one persists in disregarding key aspects of persons for the wrong purposes.

Kant held that sexual desire inevitably leads to treating persons as things, because it is 'the only case in which a human being is designed by nature as the Object of another's enjoyment' (Kant, 1963: 163–4). However, many desires find their fulfilment primarily through physical interaction with another's body, such as playing contact sports, practising medicine, giving and receiving a massage or a haircut, and so on. Although these interactions are perhaps less intimate than the physical interactions characteristic of sexual activity, people who enjoy cutting hair, practising medicine, or playing sports, cannot do so without using the bodies of others, which they may see as 'designed' for this purpose. Moreover, the need to use another's body to satisfy one's desires does not appear to be the reason an activity leads to thing-like treatment of a person, but rather it is when the use disregards some of the items on Nussbaum's list. Especially in commercial contexts, there is a tendency not to form larger relationships characterized by mutual respect when we provide or receive services involving others' bodies. In a free market, buyers may take their money to the next vendor when they feel like doing so, and employers may hire and fire workers in ways that treat persons as fungible services or tools. Moreover, when we pay for a service, we may expect to control another's body in ways not compatible with recognizing their autonomy, such as when a customer or employer tries to get uncontracted services from a vendor or employee without offering compensation. Because activities organized for material gain are conducive to thing-like treatment of others, we authorize our government to regulate them. In a free market, activities take place between persons having no other relationship than an economic one, and thus the state may need to set guidelines in order to prevent the immoral use of some people by others. However, there is no reason to think the state needs to regulate consensual sexual activities among adults, outside of market contexts, to prevent the dehumanization or degradation of persons. Because pornography brings sex into the free market, it is appropriate for the state to regulate it in some ways. In the last section of this paper, I will say more about what kinds of regulations are needed.

The second component of Kant's view is the easiest to challenge, if we acknowledge that sexual desire is more complicated than a physical urge that is satisfied primarily through contact with the sexed body parts of another. Sexual desires may also involve complicated fantasies or

emotional components, which are fulfilled not merely or exclusively through contact with the sexed body of another but often through communicative acts, such as the mutual expression of erotic desire and affection. In such cases, sexual desire aims at more of one's partner than her sexed body; it aims at producing emotional or mental states through contact with her sexed body. Moreover, some people fulfil their sexual desires in ways that do not involve the use of another's genitals for their own enjoyment, though they may interact with the bodies of others, such as in some forms of sadomasochism and other types of role-play, bondage, spanking, and so forth. In such cases, sexual desire does not aim at another's sexed body or body parts, but at actions another performs with, for example, her hands, boots, whips, or chains. Furthermore, a number of sexual activities (e.g., masturbation, voyeurism, and fetishism) do not require any form of direct interaction with others, but are often solitary activities that involve the use of pictures or other physical objects, such as lingerie or sex toys. In such cases, sexual desire is fulfilled through interaction with things, and therefore involves, at most, the objectification of that which can properly be objectified. In sum, sexual desire may aim at more of a person than her sexed body, at actions she performs with particular equipment rather than her sexed body or body parts, and at eroticized non-human objects. Kant's biographers describe his lifestyle in Königsberg as monastic and devoid of any sexual activity, and this probably limited his sexual imagination. Because Nussbaum's discussions of sex in literature show that her own horizons are not as narrow and that she recognizes more complex impulses at work (Nussbaum, 1999: 215–16), I will assume that she does not adhere to this component of Kant's views on sex.

Although Nussbaum rejects Kant's extreme views on sex and some aspects of MacKinnon's, Nussbaum emphasizes her agreement with what she regards as Kant's and MacKinnon's

central insight: The instrumental treatment of human beings, the treatment of human beings as tools of the purposes of another, is always morally problematic; if it does not take place in the larger context of regard for humanity, it is a central form of the morally objectionable. It is also a common feature of sexual life, especially, though not only, in connection with male treatment of women. (Nussbaum, 1999: 238)

In other words, sexual desire frequently (though not inevitably) leads to the instrumental treatment of others, especially of women by men. Nussbaum's claims amount to a weaker version of both Kant's thesis (that the satisfaction of sexual desire is inconsistent with respect for humanity) and MacKinnon's variation on Kant (that under patriarchy the satisfaction of sexual desire by men is inconsistent with respect for women). The problem with pornography, for Nussbaum, is that the users of it and the women whose bodies are displayed for their enjoyment do not generally have a larger relationship characterized by mutual respect. Moreover, Nussbaum contends that pornography, when 'used as a masturbatory aid, . . . encourages the idea that an easy satisfaction can be had in this uncomplicated way, without the difficulties attendant on recognizing

women's subjectivity and autonomy in a more full-blooded way' (Nussbaum, 1999: 235). In this passage, Nussbaum suggests that pornography, such as *Playboy*, promotes attitudes in men that encourage the thing-like treatment of any woman (i.e., the expectation of 'easy satisfaction') without 'the larger context of regard for humanity'. Furthermore, the people who produce pornographic magazines and films may treat porn actresses and models as fungible bodies, and, in the worse cases, may violate their inalienable rights and boundaries. The person who buys pornography therefore contributes to the instrumental treatment of persons (e.g., by Hugh Hefner and his colleagues), even if he does not directly treat women in and outside the industry in this way himself.

Nevertheless, Nussbaum does not support the civil ordinance approach proposed by MacKinnon, even though she agrees with MacKinnon that there is a problem with pornography: the 'moral problem in the representation of women as meant for abuse and humiliation' (Nussbaum, 1999: 249). She opposes such ordinances for a number of reasons, but especially because it is not evident what degree of responsibility we should assign to the producers of media with violent content for the presumably unintended consequences of their products, and also because such ordinances can be misused to suppress the erotic expression of sexual minorities. Nussbaum also opposes MacKinnon's ordinance proposal because it is not always clear which 'graphic sexually explicit materials . . . subordinate women' (MacKinnon, 1993: 22), which is how such ordinances define 'pornography'. Nussbaum attempts to carve out a position intermediate between MacKinnon and those who fail to recognize a problem with any pornographic works. This position recognizes, she writes,

the all-important issue of context and sense in the work as a whole. Sexual objectification of various types occurs within many relationships that are, in their larger structure, relationships of equality and respect . . . One might reformulate Kant's position, plausibly, as the claim that one moral goal of an intimate relationship is to establish a context within which respect can be taken on trust and acts that would elsewhere mean domination and subordination do not, therefore, mean this. (Nussbaum, 1999: 249)

In this passage, Nussbaum, proposes moral guidelines rather than legal remedies to address the problem of pornography, as does Brake. In general, people should avoid sexual interactions with others outside of contexts of respect and trust, and when a participant's intentions disregard critical aspects of another's personhood. When a pornographic work is created or used in a context of respect for humanity, and when it depicts people in non-degrading, non-thing-like ways, then it is not morally objectionable, a conclusion reached two decades earlier by Ann Garry in her evaluation of the Kantian-MacKinnon argument against pornography (Garry, 1979: 138).

If contexts and intentions are important in structuring the meaning and moral status of sexual acts, as Nussbaum and Brake allege, then we should examine the contexts and intentions that shape the production and

use of conventional pornography, such as *Playboy*. I will argue that the relationship between the porn consumer and porn model is primarily an economic one, not a social or personal one, and thus it should be evaluated in terms of whether it shares enough of the features of other economic relationships that avoid the immoral use of people. If we fully reject the Kantian-MacKinnon thesis that sexual desire is more likely than our other appetites to lead to the instrumental use of others, then we do not need to insure that those who participate in sex markets have larger relationships of respect fundamentally different than those who participate in other markets. In other words, bodily intimacy between strangers can, under certain circumstances, be morally acceptable. Moreover, if we locate the source of instrumental use in market relationships rather than in sexual desire, then we should focus less on how the sexual content of pornography impacts consumers and more on how the processes of its production and marketing impact sex workers. The problem with Nussbaum's analysis of pornography is that it renders porn morally suspicious because of its sexual content, and then only offers moral prescriptions to those who might use or make it as a remedy. But Nussbaum's moral prescriptions do not offer any real protections to women who work in the industry, such as insuring that their inalienable rights and the boundaries they set in performing their work are not violated. As long as we treat pornography as something that is morally tainted, then we are less likely to focus on labour issues, as the latter focus assumes that the problem is not in the nature of the work but the working conditions.

In this respect, I support MacKinnon's approach of proposing methods of legal recourse so that women can better defend themselves against rights violations. But the methods of legal recourse appropriate in the case of pornography should be ones that enable women in the industry to defend their rights as workers, not ones that take away their work. This is what MacKinnon has helped us accomplish vis-à-vis other kinds of work. Moreover, if the objectification of others is a problem with human relationships generally rather than with sexual relationships in particular, then, in addition to worker protections, laws that command respect for groups that have historically received dehumanizing treatment are needed to both challenge attitudes and proscribe behaviours that demean these groups. For example, laws against gender-based discrimination and gender-motivated crimes, including sexual assault and harassment, provide a larger context of social respect in which women can demand equality and respectful treatment in all their relationships, including sexual ones. Feminists, such as MacKinnon, have claimed that sexual relationships are an especially significant site for women's social subordination, but so are employment relationships, familial relationships, and so on. If we no longer adhere to a Kantian model of sexuality, then there is no reason to think that our erotic capacities make us more vulnerable to exploitation than our other human capacities.

## Violent pornography and respect for women

Sex workers often refer to anti-porn feminists as 'anti-sex' feminists. I used to see this as merely clever rhetoric, until I realized how indebted anti-porn feminists are to Kant's very negative analysis of the human sexual impulse. MacKinnon's use of Kant not only renders the anti-porn position an anti-sex one, but it also stigmatizes men for their consumption of pornography and their allegedly perverted patriarchal sexual desires reflected in these consuming habits. While this may seem a clever feminist strategy for combating patriarchy, it is one step away from stigmatizing lesbians and gay men, or other sexual dissidents (e.g., sex workers) for their sexual practices. So not only is MacKinnon's ordinance proposal dangerous because it could potentially be used to suppress the literature of erotic minorities, as Nussbaum and others point out, but the analysis that supports it is likely to be dangerous for erotic minorities as well.

In this final section, I will offer a non-Kantian feminist assessment of pornography in order to challenge MacKinnon's idea that pornography is a potent weapon in maintaining the subordination of women. I will evaluate pornography in terms of the contexts and intentions that typically frame its use, without assuming that a man's enjoyment of a woman's sexed body is necessarily or even frequently dehumanizing. I will then examine a worker empowerment approach to pornography, and other forms of sex work, that has been developed by porn actresses and prostitutes in order to counter the force of feminist attacks on their work, and to demand respect for themselves as persons.

In her analysis of sexual objectification, Nussbaum suggests that desiring another primarily as a sexed body may be pleasurable for the person whose body is so desired and used, and this pleasure may be mutually acknowledged and valued by both partners (Nussbaum, 1999: 239). If a woman can experience sexual desire for her body as pleasurable, and the pleasures involved are not harmful, then it should not be irrational or demeaning for her to desire to be desired in this way. What does seem to be the case is that when a woman desires to be sexually desired by men outside of relationships socially prescribed for sex, her desire can be a source of social disrespect. However, there are many women for whom the need to work trumps their concerns with social respectability, or who find the conditions for social respect unacceptable, prudish, and even sexist. If a socially defiant woman can desire to have her body sexually desired, in many contexts and by many men, for pleasure or material reward, then is the recognition of her desire sufficient to establish 'a relationship characterized by mutual regard' (Nussbaum, 1999: 238) between a male porn consumer and herself? Perhaps the consumer recognizes the porn model's desire to be the object of sexual interest, even to strangers, and his consuming habits simultaneously acknowledge her as a person with ends of her own and a physical body that provides him visual pleasure.

I think the above speculations are not implausible and, together with Nussbaum's insights into the pleasures of harmless objectification, yield the following account of porn consumption. If desiring a woman sexually

does not negate her humanity, and if it is not morally base or irrational for a woman to desire to be sexually desired, then expressing these desires through the consensual visual display of the sexed bodies of women, outside of socially prescribed relationships for sex, does not violate the moral requirement to show respect for humanity. When being the object of sexual desire is desired, even for non-sexual reasons, and is acknowledged to bring varying forms of satisfaction or advantage to the participants, then the strangers in this economic relationship are respecting each other's agency, subjectivity, and autonomy. By contrast, the communication of sexual desire when an agent knows (or should have reasons to believe) that the recipient will find this act threatening, or merely unpleasant, fails to show respect for another as an end in herself. Such unwanted expressions when they persist, constitute sexual harassment, stalking, and the invasion of privacy and freedom, and not consensual voyeurism. Some porn consumers may fantasize that the women whom they enjoy visually also desire them in some sexual way. But the women who work in the porn industry generally do not desire sexually the men who view them, although they do desire the men's desires for images of their sexed bodies. As long as porn consumers respect the boundaries that the porn stars define, the buyers are respecting the sellers as persons while simultaneously enjoying their sexed bodies. In her analysis of sexual objectification, Nussbaum suggests that violating another's boundaries (e.g., by watching her clothes get removed) can be an enjoyable part of sex (Nussbaum, 1999: 239), but establishing and respecting boundaries (e.g., by observing rules about touching) are also a part of sexual interaction that renders sex enjoyable, and both can take place simultaneously.

The respectful and equal treatment of persons is a function of both interpersonal features of relationships (e.g., recognizing each other's intentions, agency, subjectivity, etc.) and the larger social context in which activities take place. I have argued that porn consumption can take place in ways that do not involve the immoral instrumental use of others. The relationship between consumers of sexually graphic materials and those who make and sell them can, with normal business regulation, be made to share the features of relationships between other buyers and sellers. The sex industry organizes a variety of activities for material gain, including the production of magazines and films, strip and peep shows, exotic dancing, phone sex, computer simulations of sex, escort services, and so on. If we believe that women can participate in these activities autonomously and achieve some of their own ends (experiential and mercenary) in doing so, and if we reject Kant's thesis that sexual acts inevitably involve alienating ourselves or our freedom and negate our humanity, then the acts of the male consumer are not morally objectionable. The acts of the consumer are certainly not on a par with the acts of the slave owner, sweatshop owner, or political tyrant, whose actions do indeed rob others of their humanity and freedom.

I will conclude this paper by addressing two objections frequently raised by feminists against pornography. The first objection is that much pornography depicts sexual acts that are violent and involve violating women sexually. Therefore, to see such materials as basically respectful, we have

to believe that either some women desire to be sexually assaulted or it is okay for men to ignore a woman's desires. Of course, neither of these beliefs is acceptable. The materials generally singled out for such criticism constitute a genre of pornography containing eroticized sadomasochistic elements, such as rape, bondage, torture, and so on. Responding to this objection is not as difficult as it may at first seem. With all discursive practices there are conventions for their interpretation. For example, when we watch violent movies, we understand that the violence is simulated and not real. If we thought it was real, most viewers would probably not enjoy watching it. People who engage in sexual sadomasochism, off screen, have established rules that allow the participants to obtain the thrill and excitement of simulated sexual domination and submission without harm (Hopkins, 1994; Truscott, 2001; Queen, 1997). Moreover, the norms and practices of S/M communities generally do not single women out for subordination or humiliation. Many men enjoy being 'bottoms' or submitting to simulated sexual violation, and being a bottom or top is not restricted by gender. Sadomasochistic pornography, which involves the filming or photographing of S/M scenes, also takes place in a context with rules that protect the participants' welfare. Of course, these rules can be ignored and accidents can happen, but this does not appear to be more common than in mainstream films, and S/M enthusiasts and sane viewers know that S/M scenes are simulations and not real acts of violence or harm (Williams, 1989: 189–206).

To address the objection that a lot of pornography is violent, we should also recognize that a lot of the popular culture we consume contains gratuitous violence. And just as audiences for mainstream films understand that the action they are viewing is a simulation and not a documentation of real events, consumers of violent pornography know that they are watching a somewhat controlled simulation, and not a real rape or act of torture. That is, consumers of violent or S/M pornography are not generally in the market for snuff films or films of real sexual violence, though there may be some immoral sadists who are. Therefore, to regard violent pornography as respectful of women, we need not believe that women want to be violated or that men should ignore women's desires; we just have to understand that the action in S/M films is not real. Some people derive pleasure from viewing and exploring fictional violence, and violent films, whether they contain graphic sexuality or not, meet this need. So, if S/M or violent pornography follows the S/M and film community's norms of safety and respects the personal boundaries set by the participants, it does not dehumanize or degrade women. And, if we consider the 'context and sense in the work as a whole', as Nussbaum recommends, sadomasochistic pornography does not 'represent women as meant for abuse and humiliation' (Nussbaum, 1999: 249) because typical viewers can distinguish between safe enactments of sexual sadism and commissions of actual harmful acts.

The second objection I will address is often formulated as follows. Even if market transactions involving sex can *in theory* be carried out in ways that do not dehumanize persons, the larger social context is such that porn

will *in practice* contribute to the degradation of women. This is because the larger social context includes not just regulated market transactions, but also double standards of sexual morality for women and public opposition to overt promiscuity and public nudity. In responding to a similar objection raised about prostitution, Nussbaum argues that feminists should challenge societal attitudes and prejudices that stigmatize prostitutes for their work, rather than oppose their work because certain stigmas attach to it. She writes, 'the stigma associated with prostitution has an origin that feminists have good reason to connect with unjust background conditions and to decry as both unequal and irrational, based on a hysterical fear of women's unfettered sexuality' (Nussbaum, 1999: 288; see also, Shrager, 2004). The stigmas associated with the work porn models perform can also be connected with unjust background conditions created by traditional fears about women's unfettered sexuality. Nussbaum further recommends that feminists stop treating 'prostitution in isolation from the other realities of working life of which it is a part' and instead concentrate on enhancing 'the economic autonomy and personal dignity' of women who perform this work (Nussbaum, 1999: 297). I recommend that feminists do the same in regard to pornography.

For several decades, feminist-oriented sex worker organizations have been demonstrating that, contra Kant and MacKinnon, the work they perform can be carried out with personal dignity and need not undermine respect for women. The existence and efforts of sex worker associations<sup>1</sup> show that women can achieve social equality and respect without suppressing pornography or sex work, for women's equality really depends on achieving equal treatment under the law, and in the workplace, school, street, kitchen, and bedroom. Moreover, equality in the bedroom or elsewhere does not require keeping sex off the streets, but when it is performed anywhere, for wages, it requires the same protections and privileges as other forms of work. This means that sex workers must have a reasonably tolerant legal and social environment in which to work, health and safety protections, enforceable employment contracts, and so on. In addition to addressing the problems common to all market relationships, many sex workers are addressing the historical prejudices that still exist toward their work and themselves. Because sex work violates conventional norms of sexual morality and female respectability, sex workers are vulnerable to social subordination, disrespect, and pity. To counter their image as the mere instruments of others, many are demanding the right to speak for themselves and to present their lives in positive terms, by publishing books, becoming academic experts and cultural critics, organizing conferences, producing artwork, and so on.<sup>2</sup>

Furthermore, sex workers are joining with other sexual dissidents to challenge both unreasonable restrictions on consensual sexual practices among adults, such as anti-sodomy laws (which are now unconstitutional in the United States), and discrimination against gay men, lesbians, transsexuals, swingers, 'leatherfolk', and other erotic and gender minorities. Following the example of other civil rights activists, sex workers are advocating 'whore pride' and 'slut solidarity' in order to challenge

good/bad girl dichotomies and stifling ideals of female virtue. Some sex workers are challenging the idea that expressing sexual desire is subhuman or unfeminine, and they are challenging the desexualization of older women, large women, and disabled adults. For example, some feminist pornographers are making films featuring women with a diversity of body types and sexual appetites, and they are producing political materials defending the sexual rights of adults with disabilities (Sprinkle, 1998: 104–06, 140; Leigh, 2004). Instead of trying to control the representation of sexuality and women, feminist pornographers are offering alternative visions, as both Judith Butler (2000) and Drucilla Cornell (2000) have recommended. And sex worker organizations in the United States and Europe are forming international coalitions with sex workers from third-world countries, giving sex workers whose lives are circumscribed by global inequalities, neo-colonialism, and racism a larger forum to present their issues.

Anti-porn feminists have represented pornography as the manifestation of the human sex drive distorted by patriarchy so that sex can be deployed to subordinate women. If we no longer view pornography as perverse patriarchal sexual expression, and rather as a genre with many origins, as the work of modern European historians is now demonstrating (Hunt, 1996), then there is no reason that feminists need to find their calling in ridding the world of smut. Pornography can be vulgar, tasteless, and sensationalistic, and often aims to offend. But some pornography has serious political or intellectual content, such as when sexually graphic images are used to attack powerful elites or promote science over religion (see Hunt, 1996). Some pornography is socially irresponsible, although the same could be said of extremely violent and pointless films. I have argued that there is no reason to think that material that is sexually graphic is more powerfully degrading to women than non-pornographic material that valorizes sexist attitudes or other offensive views, such as racist or homophobic ones. While I am concerned that people enjoy watching simulated victimization that has little other purpose than titillation or cheap thrills, I am no more concerned about offensive materials with graphic sexual content than material without it. But I am more concerned about real violence than simulated violence, such as when more murders of prostitutes occur because their victimizers prey on marginalized people and often get away with their crimes. De-marginalizing sex workers and vigorously prosecuting crimes against them will do more to address real violence against women than suppressing the cinematic or photographic simulations of violence in which they voluntarily participate.

MacKinnon's attack on pornography is only plausible if we accept her Kantian assumptions about the unique efficacy of sex to dehumanize and degrade others by turning them into objects. This is why pornography is MacKinnon's target of attack, and not sexist literature in general. On this issue, MacKinnon finds company with Christian conservatives who analyse sexual desire in terms of animalistic and dangerous urges of the flesh and who, as Kant (1963: 163–4) says, seek 'to suppress and extirpate it'. In other words, anti-porn feminists' agendas overlap with those of

Christian conservatives, not simply because they share the goal of suppressing pornography, but because they share some of the same underlying assumptions about the uniquely dehumanizing power of sexual desire and its expression. But, if we reject conservative Christian views about sex and Kant's secular version of it, then we have little reason to regard pornography, and other forms of commerce in sex, as degrading to women and threatening to their equality. In sum, prosecuting real sexual violence, including the sexual exploitation of minors, as well as gender-based crime, discrimination, and violations of workers' rights, will protect women's freedom and equality; suppressing pornography will not. The latter only contributes to the social subordination of sex workers, many of whom simultaneously face social disempowerment on the basis of their gender, sexuality, and class.

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### Notes

1. A search of the Internet will turn up numerous web pages sponsored by these organizations, including Prostitutes' Education Network, Network of Sex Worker Projects, and organizations in the Netherlands, India, Australia, Peru, and many other countries.
2. In the United States, for example, there are now annual sex worker film festivals and art shows, and many sex workers have written books about their profession, including Norma Jean Almodovar, Carol Leigh, Tracy Quan, Carol Queen, Annie Sprinkle, and David Sterry.

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