

Pornography and Harm to Women: “No Empirical Evidence?”

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I. INTRODUCTION

In a series of articles, we have been addressing the forces that render transformative legal thought so halting and slow.¹ We recently examined the history of popular depiction of four ethnic groups of color, concluding that racism is so deeply embedded in our culture that it is for all practical purposes invisible. Inscribed in the master narrative, racial stereotypes function as organizing principles by which we understand and construct the social world. As such, they are highly resistant to reform.²

In this Article we employ a different example, pornography, which many people believe is connected to another social ill, female subjugation. Unlike media racism, pornography has begun to be named and attacked by a number of vocal reformers, including many feminists. The attack on pornography thus brings into play late-stage dynamics; exploring it reveals the mechanisms our culture deploys to slow the advance of a reform movement well under way. It

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¹ We briefly summarize this work in Part IV, *infra*. See Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1992) (depicting resistance as case of perseverance); Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992) [hereinafter *Images*] (system of free expression inadequate to deal with deeply inscribed social ills, including racism); Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929 (1991) [hereinafter *Norms and Narratives*] (exposure to texts and literature inadequate to save even eminent judges from serious moral error and later condemnation); Richard Delgado, “*Our Better Natures*”: *A Revisionist View of Joe Sax's Public-Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform*, 44 VAND. L. REV. 1209 (1991) [hereinafter *Better Natures*] (role of “saviors” in reform movements); Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207 (1989) [hereinafter *Triple Helix*] (role of legal research tools and strategies in confining legal thought).

² *Images*, *supra* note 1.

is worth emphasizing at the outset that this article does not take a stand on whether pornography should or should not be regulated. Rather, it is about *social responses* to the suggestion that such regulation is in order.³

The lessons we draw from the pornography controversy, together with those from earlier work, enable us to offer the outline of a general theory of social regression.⁴ Part II gives a brief history of media depiction of women, including pornography. This review shows that popular depiction of women takes on different forms at different periods. But running through the various images is a constant thread: *functionality*. The pictures of women we coin and circulate adjust women and their images to serve the needs of groups with the power to insist on that adjustment. This process is true of pornography as well. Most members of society's elite groups today profess to find pornography distasteful; they only disagree on whether it should be regulated. One of our findings, however, is that pornography is a tacitly recognized good which the dominant group depends on to achieve certain ends and is naturally reluctant to relinquish.⁵

In Part III, we explain why many who oppose reform do not see pornography as a serious harm. Opponents translate the feminists' claims into versions unlikely to succeed. Further, they ignore evidence that might argue for reform because the very images of women that society circulates disable persons in the culture from seeing the injuries associated with these images. Drawing on cognitive psychology and narrative theory, we show how these mechanisms work.⁶

In Part IV, we summarize our analysis of pornography, place it into the context of earlier work, and show how it links up with other mechanisms in a tacitly conservative framework. The Article concludes by suggesting ways reformers may sometimes escape the mechanisms' sway and assure that some degree of social reform can occur.

³ See *infra* notes 52-64 and accompanying text. To oversimplify somewhat: It is about men's responses to what women say, not about the latter's "truth." We analyze these responses in hopes of learning something about legal reform and resistance. Our concern is not the validity of every point the pro-regulation forces make. Rather, our concern is how men and some liberal women respond to or "translate" claims. See *infra* Part II.

⁴ By "social regression" we mean the unconscious, almost innate mechanisms that culture brings to bear whenever a proposed reform falls outside "normal science," *i.e.*, challenges the paradigm we rely on to communicate and understand the world.

⁵ See *infra* Part II.B.

⁶ See *infra* Part III.A-C.

II. A BRIEF FUNCTIONAL HISTORY OF PORNOGRAPHY AND FEMALE DEPICTION

There is no necessity to the notions that women are more passive than men, more domestic, less venturesome, or that they should have primary responsibility for the care and nurture of children.⁷ Our ideas about women and women's roles are constructed; contingent rather than necessary, their maintenance is a product of reinforcement and conditioning.⁸ The tools of this construction are both verbal and visual—words, images, pictures, and stories. For the sake of brevity, we denote this collection of representations, “narratives.”⁹ The following section briefly reviews the history of media depiction of women and the functions the narratives serve over time. The next section addresses a particular type of depiction that flourishes at certain points in our history—pornography.

A. *History of Female Depiction in General*

In the early years of this nation, women were needed for domestic and farm labor on the frontier and newly developed areas of the West and prairie regions.¹⁰ Accordingly, images of women in the literature of the day depicted

⁷ There is a vast literature on the social construction of sex roles. For example, see CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) [hereinafter *FEMINIST THEORY OF STATE*]; CATHARINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) [hereinafter *FEMINISM UNMODIFIED*]; CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979); Catharine MacKinnon, *Pornography as Sex Discrimination*, 4 *LAW. & INEQ. J.* 38 (1986); and Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983). For a thorough account focusing on the sexuality of women, see JUDITH LAWS & PEPPER SCHWARTZ, *SEXUAL SCRIPTS: THE SOCIAL CONSTRUCTION OF FEMALE SEXUALITY* (1977). See also CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982) (differences between men and women on ethic of caring). On the special issues of black women, see BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1986). On the construction of the social world in general, see PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* (1966).

⁸ *E.g.*, *FEMINISM UNMODIFIED*, *supra* note 7; see also ANDREA DWORKIN & CATHARINE MACKINNON, *PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY* (1988) [hereinafter *NEW DAY*] (suggesting women begin to challenge these notions as contingent, harmful, and false).

⁹ For an earlier treatment of the way in which the tools work, see *Norms and Narratives*, *supra* note 1 (narratives inhibit and confine judicial imagination); and *Images*, *supra* note 1 (exploring particular case of ethnic depiction).

¹⁰ For an excellent historical treatment, see SARAH M. EVANS, *BORN FOR LIBERTY: A HISTORY OF WOMEN IN AMERICA 27-34* (1989) (life on hardscrabble farms and

them as pious, God-fearing, resourceful, and able to make fires, mend clothing, fend off Indian raiders, raise children, and help their husbands in the fields from morning to night.¹¹ Not particularly sexual (at least in the image), the woman of this era derived her main satisfaction from work, raising children and standing by her man.¹² Dime novels of the period depicted frontier heroines such as Hurricane Nell, Bess the Trapper, and Mountain Kate, rugged women who rode, roped, toted guns, and confronted grizzlies while constantly maintaining a proper feminine demeanor. Thus, their ultimate reward was that sought by all members of their sex: an idyllic and fruitful marriage.¹³

Later, the nation's attention shifted from survival to consolidation and economic development. The independent, resourceful image of westward expansion receded and was replaced by a much more confined, "ladylike" one.¹⁴ Women's magazines of the period advised their readers to use caution in exercising because their frail constitutions could bear only moderate exercise; women's "fibres are thin and weak," they explained, and "[t]heir feeble arms cannot support severe and long-continued labor."¹⁵ Even women writers of this time had to conform to popular taste; they wrote novels and stories upholding virginity, thrift, and similar virtues.¹⁶ During this period, male industrialists and developers were firmly in charge. Independent, venturesome women would have been threatening; large numbers of women workers were not yet needed in the workplace.¹⁷ Women's images reflected these needs and conditions.

settlements). See also AMERICA'S WORKING WOMEN (Rosalyn Baxandall et al. eds., 1976) [hereinafter WORKING WOMEN] (classic discussion of various periods in the history of the United States, including analysis of women's role, imagery, and treatment under the law).

¹¹ See JANET JAMES, CHANGING IDEAS ABOUT WOMEN IN THE UNITED STATES, 1776-1825, at 6-24 (1981). For a treatment of this period and others in the history of the United States, see IMAGES OF WOMEN IN POPULAR CULTURE (Angela G. Dorenkamp et al. eds., 1985) [hereinafter POPULAR CULTURE].

¹² See JAMES, *supra* note 11, at 15-30 (idea of subordination); MARY RYAN, WOMANHOOD IN AMERICA 20-21, 24 (3d ed. 1983) (idea of women as derived from Adam's rib). But see JUNE SOCHEN, ENDURING VALUES: WOMEN IN POPULAR CULTURE xiv (1987) (Eve, temptress figure, surfaces at other times). For a bibliography of media depiction of women, see LESLIE J. FRIEDMAN, SEX ROLE STEREOTYPING IN THE MASS MEDIA: AN ANNOTATED BIBLIOGRAPHY (1977).

¹³ See JOAN SWALLOW REITER, THE WOMEN 22-23 (1978).

¹⁴ JAMES, *supra* note 11, at 40-49, 55-57; SOCHEN, *supra* note 12, at xiv; EVANS, *supra* note 10, at 35.

¹⁵ *Health and Beauty*, GODEY'S LADY'S BOOK (August 1848), reprinted in POPULAR CULTURE, *supra* note 11, at 129.

¹⁶ SOCHEN, *supra* note 12, at xiv, 9-10. Of course, men wrote in this vein as well. EVANS, *supra* note 10, at 68-69.

¹⁷ EVANS, *supra* note 10, at 31-37; JAMES, *supra* note 11, at 57-63; WORKING WOMEN, *supra* note 10, at 41-63, 85-125.

The late nineteenth century saw the first waves of feminism. Women's suffrage leaders and novelists such as Kate Chopin urged that women could be independent, had intellects, needs, and a sensuous nature of their own.¹⁸ Most readers were taken aback. Chopin was seen as a radical; the early suffragists were derided and ignored.¹⁹ For example, the 1848 Seneca Falls Convention Declaration was belittled in newspaper articles as "a most interesting document" because of its "amusing" assertion of women's "equality."²⁰ The public preferred women to be dreamy, frail, innocent and romantic, a preference that played itself out both in literature and the scripts of the early film period. D.W. Griffith, for example, in *Birth of a Nation*,²¹ *Intolerance*,²² and other films showed Lillian Gish playing the role of the innocent and virginal child-woman who relies on men for protection.²³

With the advent of World War II, a contrasting image similar to depictions in the early westward expansion period surfaced—the strong, independent woman. These characterizations tend to appear during times of stress when the nation faces an impersonal challenge, such as war or depression, requiring women's active engagement.²⁴ Wartime propaganda, for example, featured workers such as "Rosie the Riveter," who labored in the factory while her husband or male friend fought overseas.²⁵ Those women who did not work in the factories were portrayed as cheerfully shouldering additional household responsibilities while waiting faithfully for the man's return.²⁶

¹⁸ SOCHEN, *supra* note 12, at 15–18; WORKING WOMEN, *supra* note 10, at 78–80, 83. American feminism's roots can be traced to the American and French revolutions, when Abigail Adams and Mary Wollstonecraft wrote of women's rights and liberty. See, e.g., EVANS, *supra* note 10, at 45–66; JAMES, *supra* note 11, at 65–119.

¹⁹ SOCHEN, *supra* note 12, at 18. On the trials of the early feminists, see EVANS, *supra* note 10, at 119–43, 156–72.

²⁰ James Gordon Bennett, *Women's Rights Convention*, in 1 HISTORY OF WOMAN SUFFRAGE 805 (1881), reprinted in POPULAR CULTURE, *supra* note 11, at 418.

²¹ BIRTH OF A NATION (Wark Producing Corp. 1915).

²² INTOLERANCE (Wark Producing Corp. 1916).

²³ SOCHEN, *supra* note 12, at 3–4. See also *Images*, *supra* note 1, at 1265, 1269 (describing role of the same filmmaker in disseminating harmful stereotypes of Blacks and American Indians).

²⁴ SOCHEN, *supra* note 12, at xii, 25–38, 95–102; WORKING WOMEN, *supra* note 10, at 241–51, 284–98. On women's status during this period, see EVANS, *supra* note 10, at 198–204, 219–29.

²⁵ EVANS, *supra* note 10, at 222.

²⁶ For example, in the popular movie *Since You Went Away*, the heroine Anne Hilton is initially sheltered from the war effort and restricted to home, family, church, and social affairs. As the movie progresses, however, she makes a series of sacrifices, from giving up her maid to taking in a boarder, and in the end makes the ultimate sacrifice by becoming a welder in a shipyard. She receives male approval, affirming "not only the housewife-heroine's willingness to get a war job, but her conduct through the war (especially [her]

Immediately following World War II, women's image changed again. Women returned from the workplace and provided the "baby boom" that stabilized the nation's numbers and compensated for the low birth rate during the war. Accordingly, films, magazine advertisements, television programs²⁷ and stories of this period depicted women happily engaged in domestic tasks and roles.²⁸

With the return of feminism in the late 1960s and early 1970s, images modestly broadened to incorporate the new vistas the civil rights movement had opened for women and minorities. But even then, publications promoted submissive roles for women. For example, confession magazines often presented accounts of rapes or rape-fantasies in which "the female victim was often to blame," and "the rape functioned as a positive catalyst for the heroine in her never-ending quest for a new boyfriend or an improved relationship with a husband."²⁹ Even well-known women authors followed well-trod tracks. Lois Gold's *Such Good Friends*³⁰ and Erica Jong's *Fear of Flying*³¹ were permutations of old narratives: the woman strays, explores adventure and sex, then returns to husband or old lover at the end.³²

In summary, as with ethnic minorities of color, the dominant stereotypes of women in any era are either limiting or demeaning, yet rarely perceived as such at the time. Rather, they are seen as natural, inevitable, "the way things are."³³ Moreover, the images change to accommodate society's need for labor, sex, reproduction, independence or its opposite. The nation needs workers, Indian-fighters, breeders, or temptresses, and the creative community obligingly responds. All this image-creation takes place largely at an unconscious level; rarely, if ever, does there seem to be anything like a conscious conspiracy.

loyalty to [her husband])." M. JOYCE BAKER, *IMAGES OF WOMEN IN FILM: THE WAR YEARS, 1941-1945*, at 96-110 (1980).

²⁷ For example, television presented images of the idyllic housewife in *The Donna Reed Show* (ABC, 1958-66), *Father Knows Best* (CBS, 1954-62; ABC, 1962-63), and *Leave It To Beaver* (CBS, 1957; ABC, 1958-63).

²⁸ EVANS, *supra* note 10, at 243-50 (development of "feminine mystique" idea); SOCHEN, *supra* note 12, at 35-38; *WORKING WOMEN*, *supra* note 10, at 299-313.

²⁹ Susan Brownmiller, *Confessions: "He Made Me Do It!," in AGAINST OUR WILL: MEN, WOMEN AND RAPE* 381, *reprinted in POPULAR CULTURE*, *supra* note 11, at 152.

³⁰ LOIS GOLD, *SUCH GOOD FRIENDS* (1970).

³¹ ERICA JONG, *FEAR OF FLYING* (1974).

³² SOCHEN, *supra* note 12, at 19-20.

³³ *Compare* FRIEDMAN, *supra* note 12, at ix-x (socialization renders images and their harm invisible or nearly so) *with Images*, *supra* note 1 (similar phenomenon with minorities' depiction through history).

B. *Brief History of Pornography and the Debate over Regulation*

Pornography, a particular form of female depiction, responds to many of the same forces as female depiction generally, but often with a reverse twist. For example, during westward expansion, the dominant image of women was relatively traditional—defender of home and hearth.³⁴ Yet, because there were not enough women to go around, music and burlesque halls, and vaudeville flourished.³⁵ There “bawdy women” spoke and sang of sexual themes, engaged in low humor, and made rude observations on forbidden subjects. They took the preexisting image of Eve, the sexual woman, and portrayed it as socially forceful, lusty, natural. They depicted women courting men, enjoying conquests, and making fun of it all. Anti-prudes and naughty, they mocked society’s reigning view of women as demure and submissive.³⁶

Early pornography and erotica were largely the province of wealthy gentlemen.³⁷ By today’s standards it was relatively tame and refined; those who collected it often pretended it was something else, described their interest in it in scientific, delicate, or euphemistic terms.³⁸ Some portrayed their interest as “hygienic”—as that of controlling, studying, or understanding prostitution and other forms of social “vice.”³⁹

By 1800, the industrial revolution was well underway, however, and with it middle class ideas and conventions gained ascendancy. Sexual morality, at the public level at any rate, became more limiting as religious fervor coupled with economic pressure to force women back into subordinate positions.⁴⁰ The pornography of this time lacked the subtlety, finesse, or literary merit of earlier periods.⁴¹ A dominant theme became the factory girl who left home, succumbed to the wiles and temptations of her new environment, but sadder and wiser lived to tell all.⁴² There were also risqué novels with male Civil War heroes being seduced by amorous ladies.⁴³

³⁴ See *supra* notes 10–12 and accompanying text.

³⁵ SOCHEN, *supra* note 12, at 61–74.

³⁶ *Id. passim.*

³⁷ For a cultural history of pornography, see WALTER KENDRICK, *THE SECRET MUSEUM: PORNOGRAPHY IN MODERN CULTURE* (1987). See also RICHARD KYLE-KEITH, *THE HIGH PRICE OF PORNOGRAPHY* (1961).

³⁸ KENDRICK, *supra* note 37, at 4–51.

³⁹ *Id.* at 66–67.

⁴⁰ KYLE-KEITH, *supra* note 37, at 27–28. The nation’s first anti-obscenity law was passed on March 3, 1865, making it a federal offense to mail matter of an obscene nature. *Id.* at 32.

⁴¹ *Id.* at 29.

⁴² *Id.* at 30.

⁴³ *Id.*

By the end of the nineteenth century, early feminists and social reformers were inveighing against prostitution, pornography, and the demon rum. These "social purists" believed that enabling women to take their places along with men in the workplace and government would bring about a more virtuous, temperate society.⁴⁴ Soon, however, Freud, Krafft-Ebing, and Havelock Ellis would begin writing about the naturalness of sex and the eroticization of much of life. The antipornography strain of the reform movement would begin to lose momentum.⁴⁵

By the time of the feminist revival, pornography in the United States was well established.⁴⁶ Even by 1902, privately screened films with graphic scenes of adult sexuality were available.⁴⁷ Running between ten and twelve minutes without sound or color, these "stag films" generally avoided dealing with female sexual pleasure.⁴⁸ The encounter was impersonal; the woman almost did not exist.

With the advent of the women's movement of the 1960s and 1970s, however, pornography took on a sharper edge. Photographs and films became more explicit,⁴⁹ and a substantial portion—as high as one-third—included force by the male against the female.⁵⁰ By the 1980s, pornography had become a large business with distributors, theater chains, and technological advances such as home videos, subscription television, dial-a-porn, and computer sex subscription services widely available.⁵¹

⁴⁴ KENDRICK, *supra* note 37, at 129–30. Earlier, *Huckleberry Finn* had been banned from the library at Concord, Massachusetts when Louisa May Alcott wrote that Mr. Clemens should have better things to write about. KYLE-KEITH, *supra* note 37, at 32.

⁴⁵ KENDRICK, *supra* note 37, at 67, 188–89. Other aspects of the reform movement were quite successful. See RONALD J. BERGER ET AL., FEMINISM AND PORNOGRAPHY 7–9 (1991) (the movement assisted in efforts at self-determination for women and the repeal of repressive or paternalistic legislation, including the Contagious Disease Act).

⁴⁶ KYLE-KEITH, *supra* note 37, at 31–34; Dan Brown & Jennings Bryant, *The Manifest Content of Pornography*, in PORNOGRAPHY: RESEARCH ADVANCES AND POLICY CONSIDERATIONS 4–7 (Dolf Zillman & Jennings Bryant eds., 1989) [hereinafter RESEARCH ADVANCES].

⁴⁷ Brown & Bryant, in RESEARCH ADVANCES, *supra* note 46, at 13.

⁴⁸ *Id.*; see BERGER ET AL., *supra* note 45, at 44.

⁴⁹ LINDA WILLIAMS, HARD CORE: POWER, PLEASURE AND THE "FRENZY OF THE VISIBLE" 96–100 (1989).

⁵⁰ Brown & Bryant in RESEARCH ADVANCES, *supra* note 46, at 9.

⁵¹ *Id.* at 14–20; WILLIAMS, *supra* note 49; Judith Hill, *Pornography and Degradation*, in PORNOGRAPHY: PRIVATE RIGHT OR PUBLIC MENACE? 62, 70 (Robert M. Baird & Stuart E. Rosenbaum eds., 1991) [hereinafter PRIVATE RIGHT] (\$7 billion a year business); William A. Linsley, *The Case Against Censorship of Pornography*, in PRIVATE RIGHT, *supra*, at 138 (165,000 full or part-time workers in the industry; industry accounts for 10–15 percent of videocassette market; 20 million adult magazines purchased monthly; 2 million tickets to X-rated movies purchased weekly; and other statistics).

Like female depiction generally, pornography thus responds to forces emanating from the broader society. Pornographers create and respond to a market that in turn wants women passive, active, or abused and repressed. Always at the extreme end of a continuum of female depiction, pornography marks transitions from one construct of woman to the next. During times of change it teaches women what may be done to them, shows men what may be done, and adds new content to the social construct of women.

C. *The Controversy over Pornography's Regulation*

Proposals to ban pornography can be traced to the early temperance movement, when reformers inveighed against its evils along with those of prostitution, venereal disease, and alcohol.⁵² Beginning in the late 1960s, the American feminist movement gave the campaign against pornography a secular, feminist cast. Instead of portraying pornography as harmful principally to men (the usual consumers) or to society at large (for example, through its impact on public morality), the new critics charged that pornography harms women.⁵³

Antipornography feminism has sometimes allied itself with fundamentalist religion, a union that civil libertarians and some feminists deplore. They assert that conservative churches are anti-woman and that making common cause with them is dangerous and unwise.⁵⁴ Religious conservatives base their objection to pornography on the belief that sex outside marriage is a sin and that pornography increases disrespect toward conjugal love.⁵⁵

In 1983, many of these issues came to a head when Catharine MacKinnon and Andrea Dworkin helped introduce the nation's first antipornography civil rights ordinance in Minneapolis.⁵⁶ The ordinance, which was enacted by the city council but vetoed by the mayor, would have made trafficking in, and coercing persons into, pornography civil harms.⁵⁷

⁵² For similar interpretations, see *Images*, *supra* note 1 (making related observations concerning media depiction of minorities).

⁵³ See *supra* notes 49–51 and accompanying text. See Cass Sunstein, *Neutrality in Constitutional Law (With Special Reference to Pornography, Abortion, and Surrogacy)*, 92 COLUM. L. REV. 1, 18–29 (1992) (discussing issue of harm).

⁵⁴ On this change in focus, see NEW DAY, *supra* note 8.

⁵⁵ E.g., BERGER ET AL., *supra* note 45, at 7–8, 17–20, 25–26; KYLE-KEITH, *supra* note 37, at 212–20.

⁵⁶ See NEW DAY, *supra* note 8, at 99 (Appendix A: The Minneapolis Ordinance). The ordinance also appears in Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 1–2 n.1 (1985) [hereinafter *Civil Rights and Speech*].

⁵⁷ NEW DAY, *supra* note 8, at 31–57 (explaining particular provisions), 95 (history of veto).

Women who opposed the ordinance formed FACT (Feminist Anti-Censorship Task Force),⁵⁸ an organization that successfully opposed a similar ordinance that the city of Indianapolis enacted a few years later.⁵⁹ Just as antipornography activists were criticized for aligning themselves with the religious right, MacKinnon and others charged that their liberal sisters in FACT were in league with right-wing libertarians and the pornography industry and were collaborating with male power.⁶⁰ Members of FACT responded that MacKinnon's ordinance violated freedom of choice, reinforced the double standard, and rested on a dubious causal link.⁶¹ MacKinnon replied that pornography objectifies women, expropriates their sexuality for men's use, and teaches sex roles in which women are subordinate, degraded, or subject to physical abuse.⁶²

A number of American cities and the U.S. Congress have enacted or are considering enacting antipornography regulations, some along the lines proposed by MacKinnon and Dworkin.⁶³ Recently, the Supreme Court of Canada upheld a Canadian antipornography statute, a decision widely viewed as a vindication of MacKinnon's position.⁶⁴

III. "NO EMPIRICAL EVIDENCE": WHY WE FAIL TO FIND ANYTHING (SERIOUSLY) WRONG WITH PORNOGRAPHY

Part II showed that the dominant depictions of women in any era are not seen as particularly injurious at the time. The images teach those in the culture the role of women and how they may act toward them. They enable us, in short, to construct the idea of woman, one that serves varying purposes at different times.⁶⁵ Once the images are in place, they guide what we see.

⁵⁸ See Nan D. Hunter & Sylvia A. Law, *Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al.*, in *American Booksellers Association v. Hudnut*, 21 U. MICH. J.L. REF. 69, 70, 89 (1988) (describing FACT organization).

⁵⁹ *American Booksellers, Inc., v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986) (civil rights antipornography ordinance found to violate first amendment).

⁶⁰ NEW DAY, *supra* note 8, at 76-81, 84.

⁶¹ Hunter & Law, *supra* note 58, at 71-75, 112-18, 125-32. Another group argues that pornography legislation relieves rapists and perpetrators of other sexual violence of responsibility because they can argue that "porn made me do it." See John Elson, *Passions over Pornography*, TIME, Mar. 30, 1992, at 52, 53.

⁶² NEW DAY, *supra* note 8, at 76-81, 84.

⁶³ See, e.g., *id.* at 133 (Appendix C: The Cambridge Ordinance); Elson, *supra* note 61, at 52 (localities considering ordinance; U.S. Senate's proposed "Bundy" bill).

⁶⁴ See *Regina v. Butler*, 89 D.L.R.4TH 449 (1992).

⁶⁵ See *supra* notes 7-9, 11-30 and accompanying text; *Civil Rights and Speech*, *supra* note 56, at 1, 17-22 (construction of reality); MacKinnon, *Pornography as Sex Discrimination*, *supra* note 7, at 44-45 (pornography a core constitutive practice instituting gender inequality).

Pornography, a particular type of negative depiction, flourishes when the needs and expectations of the dominant group with respect to women are not being met in some respect.⁶⁶ When, as now, we are in such a period, a predictable sequence of events occurs: (1) women protest the images;⁶⁷ (2) researchers profess to search for evidence of its harmful nature; and (3) researchers find no such empirical evidence.⁶⁸ These events occur, we believe, because the broad system of female depiction renders most of the harms ordinary and normal, part of “the way things are.”⁶⁹ Society reserves the terms “shocking,” “brutal,” and “misogynist” for treatment that deviates from the norm—that falls outside the range the narratives mark out. Thus, a male researcher may genuinely and sincerely look for violence following the showing of an anti-woman movie or television program and find none, neglecting to notice the joke, putdown, comment, leer, offer of a drink, and pressured sex that go on daily.⁷⁰

Narrative theorists and outsider scholars have been writing of the way in which context and experience shape perception. An example of this mechanism occurred at the sentencing of Mike Tyson. In his statement before the court, Mike Tyson exclaimed, “I didn’t hurt nobody. Nobody has a black eye or broken ribs.”⁷¹ His statement reveals a common misperception surrounding rape: the act constitutes rape only if the victim suffers injuries as a result of the encounter. Mike Tyson and those who share his perception are unable to understand the victim’s viewpoint, namely, that sex without consent is inherently forceful and therefore constitutes rape. Frequently, the man may envision a seduction in which he is being commanding, she coy. However, a woman may experience the same encounter as a degrading violation of her will.⁷² Our engrained ideas of womanhood and male-female relations determine

⁶⁶ See *supra* notes 34–51 and accompanying text.

⁶⁷ E.g., *Civil Rights and Speech*, *supra* note 56.

⁶⁸ See *infra* Part III.B.

⁶⁹ For a summary of some of the images from the past that now strike us as deplorable, yet were received without protest at the time, see *supra* Part II.A.; see also *Images*, *supra* note 1 (reviewing two centuries of ethnic depiction, drawing same conclusion for four minority groups of color).

⁷⁰ See *infra* notes 82–83 and accompanying text (harms not seen as such, fall below observer’s threshold).

⁷¹ Cynthia Tucker, *Rape Does Hurt Somebody*, S.F. CHRON., April 6, 1992, at A16.

⁷² Nancy Gibbs, *When Is It Rape*, TIME, June 3, 1991, 48, at 54. Another example, in a different context, occurred when a Japanese Prime Minister, Kiichi Miyazawa, commented that American workers struck him as lazy and unproductive, and “may lack a work ethic,” a charge that made national headlines. On questioning, it appeared that the basis of his observation lay in the finding of Kabun Moto, former Japanese Minister of International Trade and Industry, that American workers worked essentially a three-day week, being consumed by their weekend plans on Friday and recovering from the weekend on Monday. Americans were outraged; to Americans this behavior seemed normal,

what will strike us as abnormal as well as what we might count as evidence against pornography. The very images under study become internalized; we then use them to judge their own real-world efficacy. In what follows, we describe a number of means by which internalization occurs, including translation and perverse searching.

A. *Translation: How to Avoid Hearing What the Feminists Are Saying*

One mechanism we encountered by which opponents of pornography's regulation were able to avoid the feminists' attack is *translation*. MacKinnon and others maintain that most forms of pornography degrade and injure women and thus ought to be controlled.⁷³ Many opponents of this position say they are unable to verify that claim. For example, one well-regarded constitutional scholar rejected the MacKinnon-Dworkin proposal because the scientific case for a link between exposure to pornography and commission of later antisocial acts is not established.⁷⁴ The studies relied on by a recent Attorney General's Commission, for example, show only correlation, not causation.⁷⁵ The few controlled experiments that do seem to indicate such a connection can be explained by observer effects or the artificiality of the laboratory setting.⁷⁶

The scholar, like many in the anti-regulation camp, fails to understand that for many feminists pornography is a per se harm, namely that of being derogatorily constructed as passive, hypersexual, masochistic, a sexual plaything, and so on.⁷⁷ This harm occurs irrespective of what happens later;

whereas the Japanese pattern of behavior seemed unhuman and robotic. See David E. Sanger, *Japan Premier Joins Critics of Americans' Work Habits*, N.Y. TIMES, Feb. 4, 1992, at A1. But see Steven R. Weisman, *More Japanese Demanding Shorter Hours and Less Hectic Work*, N.Y. TIMES, Mar. 3, 1992, at A8 (commenting that Americans work fewer hours but more intensely).

⁷³ See sources cited *supra* notes 56, 65. See also Ronald J. Berger et al., *Ideological Contours of the Contemporary Pornography Debate: Divisions and Alliances*, 11 FRONTIERS at 30, 32-35 (1990) (describing feminist and radical feminist positions on pornography controversy).

⁷⁴ Anthony D'Amato, *A New Political Truth: Exposure to Sexually Violent Materials Causes Sexual Violence*, 31 WM. & MARY L. REV. 575, 576-85 (1990); see also Elson, *supra* note 61, at 53.

⁷⁵ LARRY BARON & MURRAY A. STRAUS, FOUR THEORIES OF RAPE IN AMERICAN SOCIETY 95-124 (1989); Larry Baron & Murray A. Straus, *Four Theories of Rape*, 34 SOC. PROBS. 467, 468 (1987); D'Amato, *supra* note 74, at 585 (discussing U.S. Attorney General's Commission on Pornography Final Report (July 1986)).

⁷⁶ D'Amato, *supra* note 74, at 588-90; Hunter & Law, *supra* note 58, at 113, 115-17; Thelma McCormack, *Making Sense of the Research on Pornography*, in WOMEN AGAINST CENSORSHIP 183, 192 (Varda Burstyn ed., 1985).

⁷⁷ *Civil Rights and Speech*, *supra* note 56, at 8, 16-18, 22, 27; Andrea Dworkin, *Pornography and Grief*, in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY 286-88

there is no need to show copycat offenses the next day.⁷⁸ But this injury becomes invisible if one translates the feminists' claim into a causal one to be investigated in the usual way—by conducting interviews, looking at crime statistics, exposing laboratory subjects to particular stimuli. The error consists in treating a novel claim, with roots in postmodernism and the social construction of reality, as an ordinary empirical one.⁷⁹

B. "No Empirical Evidence": How Not to Find Documentation by Searching for the Wrong Thing

The case against other forms of pornography, however, is based on its tendency to encourage anti-woman acts. For example, many feminists believe that glorified depiction of sexual violence teaches men that this behavior is acceptable because the victims actually enjoy it.⁸⁰ Yet, researchers and others fail to find the connection that feminists believe must be there.⁸¹ We believe this failure occurs for two reasons: (1) researchers fail to take account of certain types of evidence that if counted would tend to corroborate the feminist claim; and (2) when researchers do find instances of crime incontrovertibly linked to pornography, they deem them abnormal, bizarre, and idiosyncratic.

(Laura Lederer ed., 1980) [hereinafter TAKE BACK THE NIGHT]; Hill, *supra* note 51, at 62–66. On the construction of sexuality and women's role generally, see FEMINIST THEORY OF STATE, *supra* note 7, at 126–54, 171–83.

⁷⁸ E.g., *Civil Rights and Speech*, *supra* note 56, at 17 (harm resides in the way image is constructed).

⁷⁹ See *supra* notes 74–75 and accompanying text; see also Alan Soble, *Defamation and the Endorsement of Pornography*, in PRIVATE RIGHT, *supra* note 51, at 96, 99–101 (degradation in eye of beholder; no empirical proof it occurs broadly). For other instances in which mainstream scholars "translate" MacKinnon's theses into tamer, more familiar forms see Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1364 (1992).

For a different "translation," see KENDRICK, *supra* note 37, at 232 (male author translates MacKinnon's per se degradation-social construction of women thesis into one about men: "I don't feel degraded").

⁸⁰ *Civil Rights and Speech*, *supra* note 56, at 16–17, 53–55. On the teaching function of pornography, see Edward Dinnerstein & Leonard Berkowitz, *Victim Reactions in Aggressive Erotic Films as a Factor in Violence Against Women*, 41 J. PERSONALITY & SOC. PSYCHOL. 710 (October 1981); Doug McKenzie-Mohr & Marla P. Zanna, *Treating Women as Sexual Objects: Look to the (Gender Schematic) Male Who Has Viewed Pornography*, 16 PERSONALITY & SOC. PSYCHOL. 296 (June 1990); and Robin Morgan, *Theory and Practice: Pornography and Rape*, in TAKE BACK THE NIGHT 134, 139 (Laura Lederer ed., 1980) (arguing that pornography is the theory, rape the practice).

⁸¹ See *infra* Part III.B.1 (documenting the ways this failure occurs).

1. *Looking for the Wrong Thing*

One reason why some fail to find later-committed acts associated with pornography is that many such acts strike the observer as ordinary and unremarkable.⁸² How many of us would find the following events significant enough to record as evidence of sexual oppression: aggressive flirting, conspicuous leering, remarks on a woman's appearance, unwanted requests for a date? Incidents such as these may well be highly correlated with pornography consumption, yet our system of female depiction renders them ordinary and invisible and blinds us to the large amount of daily "low-grade" hassling that goes on. The images define what is normal and ordinary; what is ordinary cannot be a harm; therefore, pornography, if it only results in the ordinary, cannot harm women. Pornography functions like a thermostat, setting our threshold at a high level. Once it is set, we fail to notice or consider important much that goes on around us.⁸³

2. *Denial and Dismissal: What Happens When We See Evidence We Cannot Ignore*

Sometimes, however, pornography is followed by an event, for example a "copycat rape,"⁸⁴ that appears incontestably induced by it. Because we are not

⁸² See, e.g., *Columbia Univ. Seminars on Media and Society: Safe Speech, Free Speech, and the University* (PBS television broadcast, June 1991) (American Civil Liberties Union president Nadine Strossen describing leering and whistling at women postulated in moderator's hypothetical as (a) inoffensive and (b) protected speech); Brown & Bryant, in RESEARCH ADVANCES, *supra* note 46, at 3, 3-4 (same).

⁸³ Compare *Civil Rights and Speech*, *supra* note 56, at 1, 8, 16-18, 22, 27 (social construction of women; desensitization thesis) and *Images*, *supra* note 1 (noting similar response to ethnic depiction) with Henry J. Reske, *Stroh's Ads Targeted*, A.B.A. J., Feb. 1992, at 20 (company saw no link between bikini ads and sexual harassment in its workplace; believed there was little of the latter, although women complained of constant leering, touching, and sexual approaches). On these issues, see also F.H. Christensen, *Elicitation of Violence: The Evidence*, in PRIVATE RIGHT, *supra* note 51, at 221, 222-33 (correlation complex), 233-35 (violent depiction does seem to trigger much "low level" aggression against women).

⁸⁴ See NEW DAY, *supra* note 8, at 34-35; Elson, *supra* note 61, at 52 (discussing copycat sexual violence carried out by men who consumed pornography). In the early 1970s, a nine-year-old girl was the victim of a brutal bottle rape perpetrated by neighborhood youths. Subsequently, a suit was filed against NBC alleging that a made-for-television movie, *Born Innocent*, served as the catalyst for the attack. The prime time movie graphically depicted reformatory schoolgirls raping a classmate with the handle of a plunger. Morton Mintz, *Worries about TV Violence Persistent: Suit Against NBC Raised Question, Jury Never Got A Chance To Decide*, WASHINGTON POST, Aug. 14, 1978, at A2.

accustomed to thinking that images have causal efficacy, we often respond by deeming the perpetrator deranged.⁸⁵ Mere imagery should not have that effect, we say to ourselves. So, by a sort of backward reasoning, we dismiss events that might substantiate pornography's efficacy as idiosyncratic, the product of individual pathology,⁸⁶ despite evidence to the contrary.⁸⁷

C. A Third Method: Deprecation

Some segments of society employ a third approach to minimize the case against pornography: deprecation. If one begins with the premise that pornography is a relatively harmless form of expression, individuals arguing against it must be intolerant and puritanical, bent on depriving men of innocent pleasure, women of free expression of their sexuality.⁸⁸ This criticism gains superficial plausibility because some feminists do in fact preach against the evils of patriarchy and speak unkindly of some men's sexual intentions.⁸⁹

But is opposition to pornography necessarily intolerant and puritanical? Only if one assumes that all sex is voluntarily entered into, is a manifestation of freely expressed love and eroticism carried out by two equal partners of similar standing and ability to choose. Some feminists question those assumptions. For them, men-women relations are carried out against a background of radical

⁸⁵ *E.g.*, Hunter & Law, *supra* note 58, at 113, 127-28 (dismissing incident as exceptional or idiosyncratic; "men are not attack dogs").

⁸⁶ *Id.*

⁸⁷ Considerable evidence suggests that exposure to sexually violent or degrading materials correlates with an increase in the likelihood of aggression in general, and greater acceptance of the rape myth—that women enjoy being coerced into sexual activity, that they enjoy being physically hurt in a sexual context, and that as a result a man who forces himself on a woman sexually is in fact merely acceding to the "real" wishes of the woman—in particular. *E.g.*, PRIVATE RIGHT, *supra* note 51, at 41-42 (reprinting portions of The Attorney General's Commission on Pornography: Final Report (1986)); sources cited *supra* notes 80, 83, 84.

⁸⁸ Hunter & Law, *supra* note 58, at 102-05 (ordinance reinforces "double standard" according to which women are prim, frail, and in need of protection); 130-31 (deprives women of choice to express their sexuality in this way); see Susan Brownmiller, *Women Fight Back*, in PRIVATE RIGHT, *supra* note 51, at 39 (reformers like herself accused of being square or prissy); Barbara Dority, *Feminist Moralism, "Pornography," and Censorship*, in PRIVATE RIGHT, *supra* note 52, at 111, 111-16 (accusing pro-regulation feminists of being moralistic, anti-sex, and Victorian in their attitudes and program of reform).

⁸⁹ SUSAN BROWNMILLER, *AGAINST OUR WILL* (1975); ANDREA DWORKIN, *INTERCOURSE* (1987) (both arguing that systematic sexual violence against women is tacitly permitted or encouraged by men, that much intercourse is not fully consensual on the woman's part and could therefore be seen as rape).

inequality.⁹⁰ What many men consider innocent courtship often looks dangerously like coercion, dangerously like rape. The first camp seems anti-male, anti-sex, and puritanical to the second; to the first camp, the second seems only interested in maintaining current power relations.⁹¹

IV. WHY LEGAL REFORM IS SO DIFFICULT: TOWARD A GENERAL THEORY OF CULTURAL RESISTANCE

As we mentioned in the Introduction to this Article, resistance to the regulation of pornography illustrates a more general pattern of reaction to transformative thought. These patterns of resistance take certain recurring forms almost irrespective of the cause championed. These forms reappear because resistance stems not so much from the nature of the reform movement as from that of the actors called on to position themselves with respect to it.

A. *Particular Mechanisms Inhibiting Reform*

One significant brake on social change lies in our customary tools of thought.⁹² These tools have been devised with particular purposes in mind—those of “normal science.”⁹³ Most lawyers use indexes, digests, and other research tools to locate authority for the case at hand. These tools make legal research easier; one case leads to another until one finds what one believes one wants. The headings and categories track the main ideas of Western, capitalist law. The solutions they enable take the form of incremental refinements and adjustments within that system. If one relies on them, one is unlikely to hit upon a startlingly new solution to a social problem, or even to realize that the case presents an opportunity for doing so.⁹⁴ The structure of legal research channels legal thought and effort into safe, familiar directions.

Sometimes, however, a client or attorney will recognize that a new problem exists, or a new approach is needed for an old problem. Someone wishes to persuade society or the courts that women should be admitted to the bar, that Japanese-Americans ought not be interned unless they are security

⁹⁰ E.g., BROWNMILLER, *supra* note 89; DWORKIN, *supra* note 89; *Ideological Contours*, *supra* note 73, at 33.

⁹¹ For additional development of this idea, see Richard Delgado, *Shadowboxing: An Essay on Power*, 77 CORNELL L. REV. 813 (1992).

⁹² On this channeling effect, see *Triple Helix*, *supra* note 1 (legal research tools and systems confine legal thought and imagination, making breakthroughs difficult).

⁹³ The term is Kuhn's. See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1970) (exploring process of change in paradigms, within which orthodox or “normal” science operates).

⁹⁴ *Triple Helix*, *supra* note 1, at 210–22.

risks, and so on.⁹⁵ A study of some of the most notorious cases in American legal history, however, shows that even eminent judges often cannot be made to see the danger in such cases. An argument that women have rights, that Indians should not be relocated, that Blacks should not be treated as property, heard for the first time, will frequently strike the judge as unsound. The argument falls outside the dominant narrative. It is only years later, after consciousness has progressed and society has adopted a new narrative, that we see what we wrote earlier as monstrous, an embarrassment.⁹⁶

In time, society will begin to understand that the reformers were right after all; the environment requires attention, women are men's equals, and so on. Now the situation is in flux; everyone realizes change is in the wind. At this point, two mechanisms often appear on the scene to confine change to manageable proportions. Anti-essentialist arguments are raised to challenge any radical reformer's standing.⁹⁷ Further, a savior, a reformer of moderate politics, often will arise to confine change within an acceptable range.⁹⁸ In the early 1970s, for example, the environmental movement was in a state of agitation and flux. Reformers were urging basic reconsideration of our relation to the natural world. New models were discussed that would have required restructuring our dealings with natural species, mineral resources, and governmental land. Predictably, at just that point a savior arose who proposed a safe, incremental solution to the environmental predicament, one that arrested the momentum some of the more radical reformers were generating, but that, ratchet-like, prevented society from slipping back.⁹⁹ The role of such a savior is thus apt to be both transformative and conservative at the same time.

If a savior does not arise, or if the reformers are not satisfied, two final mechanisms may come into play—perseveration and refusal to see evidence of any need for reform. The former occurs if the problem calling for reform is widespread;¹⁰⁰ the latter, if it concerns injustice only for a small group.¹⁰¹

⁹⁵ For discussion of about a dozen "notorious" cases in which eminent justices wrote opinions and upheld practices in a way that are now regarded as embarrassments to outstanding judicial careers, see *Norms and Narratives*, *supra* note 1.

⁹⁶ *Id.* at 1930–31, 1950–55.

⁹⁷ Consider, for example, the recent works in a neoconservative vein that question whether African-American leftist activists are the only legitimate voices of the black community. *E.g.*, STEPHEN CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991); DINESH D'SOUZA, *ILLIBERAL EDUCATION* (1991); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *HARV. L. REV.* 1745 (1989).

⁹⁸ See *Better Natures*, *supra* note 1, at 1210–13, 1225 (discussing role of environmental theorist and reformer Joe Sax).

⁹⁹ *Id.*

¹⁰⁰ See *Rodrigo's Chronicle*, *supra* note 1, at 1373–78 (discussing neoconservative wave).

¹⁰¹ See *supra* notes 80–87 and accompanying text.

Perseveration consists of society's refusal to see its predicament as serious; instead we opt for what worked before. The current wave of neoconservatism can be seen as a response to large-scale challenges facing American society; the solution—return to the virtues of a former golden era—as an effort to avoid the need for basic reform.¹⁰²

Finally, members of the empowered group may simply announce to the disaffected that they do not see their problem, that they have looked for evidence of harm but cannot find it.¹⁰³ Later generations may well marvel, “how could they have been so blind?”¹⁰⁴ But paradigms change slowly. In the meantime, one may describe oneself as a cautious and principled social scientist interested only in the truth. And one's opponent, by a neat reversal, becomes an intolerant zealot willing to trample on the liberties of others without good cause.

B. *What We Can Do to Escape Our Predicament*

The mechanisms we have identified are deeply inscribed in cultural practice; every reform movement evokes them. Perhaps most insidious is the one discussed in this Article, for once one declares invisible the problem the reformers agitate about, any need to deal with it dissolves. The combined weight of the mechanisms suggests that legal reform will often be agonizingly slow, frustrating, and incomplete. Nevertheless, there are a few measures we can take if we desire to provide for orderly change.

First, we may act decisively in the cases of social evil we do see, treating them in effect as proxies for those that we do not. With pornography, for example, we might enact laws prohibiting the worst forms of violent (e.g., “snuff”) films, saving treatment of the more general problem for another time. Second, we should be alert to the way current practice may appear different in history's light. For example, we now see many earlier stereotypes of women and minorities as demeaning. Yet, at the time, artists and consumers did not see them that way. We should bear in mind that our own treatment of women's imagery may in time come to seem similarly inexcusable.

To avoid ensnarement by the mechanisms we have discussed, we should empower outsider speakers and listen closely to their message. Their reality, although surely not the only one, may well prove to be the one a later era adopts. We should pay attention even to the most alienated, extreme-seeming elements of a social reform movement. The message of more moderate factions may well appear to us more reasonable, sensible, and true. Yet what we know

¹⁰² *Rodrigo's Chronicle*, *supra* note 1, at 1373–78.

¹⁰³ *See supra* notes 71–78 and accompanying text.

¹⁰⁴ *See Images*, *supra* note 1 (pointing out that reflecting today on a sorry train of past depictions of minorities of color often prompts similar questions).

about narrative theory puts us on notice: during times of change and paradigm shift, it is precisely the familiar that holds the greatest danger.¹⁰⁵

Understanding how the dialectic of resistance and reform works can enable us, perhaps, to avoid the worst forms of narrow-mindedness, the most devastating of history's judgments. A modest hope, certainly. But if we are right, it may be all our predicament as situated actors, limited by our own range of experience and empathy, admits.

SIDEWALK SISTER

*Down the soft dirt path I walk
into the park's massed greenery.
Thumbnail daisies in young new grass
trace bridal chains of welcome.*

*This world of plants has long dominion.
My world as wife exposed,
laid bare by lawyers and accountants,
dissolves its union.*

*Coming back toward home
I see your picture on the sidewalk
gazing up at me, shadowed
seductive eyes, hands
cupping lovely breasts.
You wanted everyone to see.*

*I pass, and then
go back. Lift you up
and look again. Innocent
your beauty. I crumple you into a ball
and toss you into the bushes.*

*I did it to protect us,
my sidewalk sister.*

Jean Stefancic, 1989

¹⁰⁵ *Images*, *supra* note 1 (speech paradigm-dependent; racism generally embedded in that paradigm hence invisible to users and consumers of racially demeaning images and stereotypes); *Norms and Narratives*, *supra* note 1 (eminent justices wrote opinions now considered anomalies, embarrassments).

