

Politicizing Health, Medicalizing Porn: Rethinking Modern Pornography

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POLITICIZING HEALTH, MEDICALIZING PORN: RETHINKING MODERN PORNOGRAPHY

Lihl Yona*

The issue of pornography is traditionally understood by the legal system through a moral perspective as an obscenity problem, or through a sexism perspective as an equality problem. Both these approaches were insufficient in addressing the harms caused by pornography and problematic in promoting moralistic perceptions of sexuality. This Article examines new data on the harms caused by pornography in light of the immense changes that have occurred in its nature, mainly due to the rise of the internet, and argues that the perspective pornography should be viewed through is the health perspective, characterizing it as a health hazard. Through a critical examination of concepts such as "health" and "disease", as well as the possible risks of medicalization, this Article considers the ways in which the political nature of the concept of health allows new thinking both of health and of pornography. The Article concludes with drafting preliminary guidelines for a possible health policy regarding pornography that would address the harms associated with it, without causing greater risks of its own.

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INTRODUCTION

“[W]e are in the midst of a massive social experiment, only the laboratory here is our world and the effects will be played out on people who never agreed to participate.”¹

Pornography is a health hazard and should be treated as such. Accordingly, this Article takes a critical stance regarding the concept of health, and therefore supports a careful formulation of a health policy that, amongst other things, avoids a censorship or a prohibition on pornography.

I argue that the two traditional frameworks, through which pornography is perceived as negatively influencing our society, are insufficient in capturing the nature and extent of the problems associated with pornography. The two approaches—which often advocate censorship or bans on pornography—regulate areas that should not be regulated, while promoting a problematic understanding of sex and sexuality.

In addition, the arguments used for and against pornography during the “sex wars” of the 1980s have framed our understanding of pornography.² This phenomenon has changed dramatically in the past decade, mainly due to the rise in internet porn,³ in a way that requires societal reevaluation and rethinking.

1. GAIL DINES, *PORNLAND: HOW PORN HAS HIJACKED OUR SEXUALITY* ix (2010).

2. See LISA DUGGAN & NAN D. HUNTER, *SEX WARS: SEXUAL DISSENT AND POLITICAL CULTURE* 1 (2006) (discussing the “sex wars;” fierce debates regarding the politics and role of sex and sexuality).

3. FEONA ATTWOOD, *PORN.COM: MAKING SENSE OF ONLINE PORNOGRAPHY* 1 (2010).

This Article undertakes to examine pornography through a health perspective, framing pornography as a health hazard. Such framing allows acknowledgement of the harms caused by pornography in a non-gendered way, and recognizes the harm caused to men by pornography. Moreover, this framing provides the tools to confront the effect of pornography on men in a way that is not necessarily based on censorship or prohibition.

Finally, the adoption of the health framework expounded upon in this Article does not overlook the complexities and dangers of medicalization, nor the political aspects of the concept of health itself. In fact, these aspects are crucial to the argument made in this Article, operating as a justificatory tool for the re-examination of health and for the stretching of its boundaries. These aspects also serve as a warning sign, in light of which the construction of a health policy and the tools to deal with pornography's adverse effects should be formed.

In this sense, the discussion in this Article revolves around the triangle of health, politics, and pornography, and seeks to examine how the political aspects of health allow for the rethinking of both health and pornography.

Before beginning, I will briefly explain what I mean when I use the term "pornography." Discussions on the issue of pornography largely occurred both outside and inside the feminist movement. The issue reached a peak with the anti-pornography movement in the 1970s.⁴ In recent years, feminist scholars and activists, criticize the anti-pornography movement, arguing that pornography may be considered positive and even empowering to women.⁵ Some of the debate (though not all) has focused on the differences between heterosexual-commercial pornography and other kinds of pornography (lesbian, gay, and

4. LISA DUGGAN ET AL., FALSE PROMISES: FEMINIST ANTI-PORNOGRAPHY LEGISLATION, IN *CAUGHT LOOKING: FEMINISM, PORNOGRAPHY, AND CENSORSHIP* 73 (Kate Ellis et al., eds., 1986).

5. *Id.* at 72, 82.

feminist pornography).⁶ This Article focuses on violent or abusive heterosexual pornography, which is primarily produced by the porn industry.⁷ However, the arguments raised by advocates of other types of pornography remain relevant to this discussion because they may also relate to the dangers of regulating mainstream pornography.

This Article is divided into three parts. Part I illustrates the problems with the two existing frameworks that focus on the negative effects of pornography, and the changes in recent years to the nature of pornography. This part highlights the *need* for a different framework to view pornography. Part II discusses the question of whether we *can* talk about pornography as a health hazard. I claim that, given the empirical evidence of harmful effects linked to pornography usage, it is necessary to treat it as a health problem. I support this claim by acknowledging the political nature of concepts such as “health” and “disease,” which, arguably, provide us with the legitimacy and justification to redefine and expand such concepts. Part III attempts to examine *how* to use the health framework in order to diminish the harms caused by pornography. I open this part with a short review of the possible dangers associated with the medicalization of pornography. Next, I present the guidelines to dictate a proper health policy that addresses the harms associated with pornography, while avoiding the harms of its medicalization.

Careful framing of pornography as a health problem, I

6. Tamara Packard & Melissa Schraubman, *Lesbian Pornography: Escaping the Bonds of Sexual Stereotypes and Strengthening Our Ties to One Another*, 4 *UCLA WOMEN'S L.J.* 299, 302 (1994); Jeffrey G. Sherman, *Love Speech: The Social Utility of Pornography*, 47 *STAN. L. REV.* 661, 661 (1995); ATTWOOD, *supra* note 3, at 160-62; DUGGAN & HUNTER, *supra* note 2, at 82; BRIAN MCNAIR, *STRIPTease CULTURE: SEX, MEDIA, AND THE DEMOCRATISATION OF DESIRE* 199-200 (2002).

7. See Matthew Zook, *Report on the Location of the Internet Adult Industry*, in *C'CLICK ME: A NETPORN STUDIES READER* 103-04 (Katrien Jacobs et al., eds., 2007); DINES, *supra* note 1, at xi (discussing how “gonzo,” a form of body-punishing sex, is one of the largest moneymakers in the porn industry today); See Michael P. Twohig & Jesse M. Crosby, *Acceptance and Commitment Therapy as Treatment for Problematic Internet Pornography Viewing*, 41 *BEHAVIOR THERAPY* 285 (2010) (studies show that the vast majority of pornography viewers are male). Although this article focus is on male viewers, the arguments should be read as gender neutral.

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argue, can provide a potential opportunity for securing the well-being of men, women, and of society as a whole.

I. LAYING THE FOUNDATIONS FOR A DIFFERENT LOOK AT PORNOGRAPHY: THE NEED FOR A DIFFERENT FRAMEWORK

Before I begin my argument regarding the ability to look at pornography as a health hazard, I would like to establish my justification for doing so. First, I explore the existing frameworks, through which pornography has been described as an unwelcomed phenomenon, to demonstrate how such frameworks fail to mitigate, or encapsulate, the problems presented by pornography. Then, I present an analysis of the changes that the pornography industry has undergone in recent years; these changes are due to the rise of internet porn and the acceptance of soft porn in popular culture. This analysis illustrates the need for a new framework to address the new problems of the last decade.

A. THE FAILURE OF PREVIOUS FRAMEWORKS

Over the years pornography was framed as a social problem through different lenses, each spawning different regulatory tools and social perceptions. These frameworks, however, have been proven to be insufficient in addressing the problems associated with pornography.

1. Pornography as a Moral Problem

The framing of pornography as immoral, or obscene, is the original conceptual framework through which pornography was perceived as a negative social force.⁸ Through this framework, pornographic materials are labeled as obscene, subjecting it to regulation and suppression.⁹

8. Donna I. Dennis, *Obscenity Law and Its Consequences in Mid-Nineteenth-Century America*, 16 COLUM. J. GENDER & L. 43, 48-49 (2007).

9. *Id.* at 51-52.

Obscenity laws have been part of the American legal tradition since 1873.¹⁰ The first serious attempt to suppress obscene material dates back to the Civil War era, when nationwide bans on corrupt materials were enacted.¹¹ The rationale behind these laws was the fear that these materials had the power to “deprave and corrupt” the reader.¹² In other words, the problem with pornography was its potential to harm the moral values that conflict with ideas of prurience or desire.¹³

The moral objection to obscene materials originates in religious perspectives regarding sexuality.¹⁴ Historians agree that early bans on obscene materials aimed to protect religion;¹⁵ obscenity, during the seventeenth and eighteenth centuries, was associated with blasphemy.¹⁶ Interestingly, the first case that established obscenity as a crime in common law in 1727, *Dominus Rex v. Curl*, regarded a book titled, *Venus in the Cloister, or the Nun in Her Smock*.¹⁷ The book presents several lesbian sexual dialogues that are carried out between two nuns in a convent.¹⁸ In those dialogues, the elder nun (Sister Angelica)

10. *Id.* at 65.

11. DAVID A. FARBER, *THE FIRST AMENDMENT* 125 (3rd ed. 2010).

12. *Id.* (referring to the language of the first bans on pornography).

13. *Roth v. United States*, 354 U.S. 476, 487 (1957). Over the years courts have grappled with the definition of obscenity. The current test, determined in *Miller v. California*, 413 U.S. 15 (1973), describes obscenity as something “the average person, applying contemporary community standards would find” appealing “to the prurient interest,” and the work depicts offensive or sexual conduct banned by state law, and “as a whole, lacks serious literary, artistic, political or scientific value.” *Id.* at 23.

14. Kevin W. Saunders, *The United States and Canadian Response to the Feminist Attack on Pornography: A Perspective from the History of Obscenity*, 9 *IND. INT’L & COMP. L. REV.* 1, 28 (1998-1999).

15. *Id.* at 18.

16. *Id.* at 18-19; see also, Louis Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 *COLUM. L. REV.* 391, 393-94 (1963); Robert C. Post, *Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment*, 76 *CAL. L. REV.* 297, 305 (1988); see also, *Roth*, 354 U.S. 476, 487 (1957) (showing the link between obscenity and blasphemy); CARL SAGAN & ANN DRUYAN, *SHADOWS OF FORGOTTEN ANCESTORS* 272 (1992) (to some, the idea of lustful thoughts and sexually explicit behavior, blurred the line separating humans from animals).

17. Saunders, *supra* note 14, at 19; Dennis, *supra* note 8, at 49.

18. Diane L. Hoeveler, *The Construction of the Gothic Nun: Fantasies and the Religious Imaginary*, *MARQUETTE UNIVERSITY CONVERSATIONS ACROSS THE HUMANITIES* (Apr. 19, 2013).

tries to seduce the younger nun (Sister Agnes) and introduce her to ideas of a more sexually liberated kind of religion.¹⁹ Schauer and Alpert explain the court's reasoning behind the conviction of the publisher of this book as linked not only to the immoral values it promoted, but also to its attack on religion.²⁰

The link between lust and liberated sexuality, especially non-heterosexual sexuality, and the attack on religion is not coincidental. The religious objection to pornography is based on (1) the assumption that sex is an act preserved for the intimacy and sanctity of marriage, and (2) that pornography violates this idea by depicting sex in promiscuous ways and encouraging viewers or readers to have sexual thoughts.²¹ According to the Catechism of the Catholic Church: "Pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other."²² Accordingly, because the Catholic Church objects to pornography, it also historically objects to homosexuality,²³ adultery,²⁴ and

19. *Id.*

20. FREDRICK F. SCHAUER, *THE LAW OF OBSCENITY* 5 (1976); Leo M. Alpert, *Judicial Censorship of Obscene Literature*, 52 *HARV. L. REV.* 40, 43-44 (1938) ("It may be summarized with safety that, up to this point, obscenity in literature had not been the concern of the courts; it is offenses against religion which have comprised the issues."); see also, Geoffrey R. Stone, *Sex, Violence, and the First Amendment*, 74 *U. CHI. L. REV.* 1857, 1861-62 (2007).

21. See Saunders, *supra* note 14; *Pornography and Censorship*, STANFORD ENCYCLOPEDIA OF PSYCHOLOGY (May 5, 2004), available at <http://plato.stanford.edu/entries/pornography-censorship/>.

22. You shall love your neighbor as yourself, CATECHISM OF THE CATHOLIC CHURCH 2354, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm; see Robin West, *The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General's Commission on Pornography Report*, 1987 *AM. B. FOUND. RES. J.* 681, 707 (1987) (summary of the religious stand regarding pornography).

23. *Id.*

24. Darren E. Sherkat & Christopher G. Ellison, *The Cognitive Structure of a Moral Crusade: Conservative Protestantism and Opposition to Pornography*, 75 *SOCIAL FORCES* 957, 958 (1997). ("Religious organizations and orientations have played a pivotal role as crucibles for political mobilization against pornography. Particularly, Conservative Protestants have lead the fight against pornography at the community level as well as in national politics.")

fornication.²⁵ Indeed, under the Catholic Church's perspective on pornography, other religious organizations, such as Protestantism, and leaders of religious groups have played a central role in the regulation of pornography in the United States.²⁶

There are several problems with the morality framework as a basis for dealing with the problems of pornography. First, the morality lens promotes problematic views regarding sex and sexuality, through seeking to regulate legitimate areas of expressed sexuality. Second, it also fails to address most pornographic materials that are currently not addressed by any set of legal rules.

Regarding the ability to encompass pornography's harm, obscenity usually refers only to "hard-core" pornographic materials.²⁷ However, the definition of hard-core refers to a severe violation of *moral* puritan views of sex in a current society.²⁸ De facto, this definition does not apply to most pornographic materials, which are largely manufactured and distributed legally in the United States.²⁹ In light of the multiple

25. *Miller v. California*, 413 U.S. 15, 23 (1973); *see also*, SCHAUER, *supra* note 20, at 45-48.

26. *Miller*, 413 U.S. at 24.

27. *See* FARBER, *supra* note 12, at 134-35. ("Whatever the Court's intention in *Miller*, obscenity prosecutions . . . seem to have been singularly ineffective in eliminating pornographic material[s].").

28. Catherine Mackinnon provides a distinction between obscenity and pornography:

Obscenity, in this light, is a moral idea; an idea about judgments of good and bad. Pornography, by contrast, is a political practice, a practice of power and powerlessness. Obscenity is ideational and abstract; pornography is concrete and substantive. The two concepts represent two entirely different things. Nudity, excess of candor, arousal or excitement, prurient appeal, illegality of the acts depicted, and unnaturalness or perversion are all qualities that bother obscenity law when sex is depicted or portrayed. Sex forced on real women so that it can be sold at a profit to be forced on other real women [...] Obscenity as such probably does little harm. Pornography is integral to attitudes and behaviors of violence and discrimination which define the treatment and status of half the population.

Catherine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 21-2 (1985).

29. *See* Scot A. Duvall, *A Call for Obscenity Law Reform*, 1 WM. & MARY BILL RTS.

negative implications that may result from the distribution of pornography, discussed at length in this Article, it is clear that the focus on societal values alone does not suffice in dealing with many of the problems associated with pornography.

The morality framework is not only ineffective, but it is problematic. First, obscenity laws focus on societal purity instead of any physical harm caused by pornography. Pornography that is proven to corrupt religious beliefs is at risk of being banned, rather than pornography that causes physical harm. Therefore, the moral framework poses a great risk of over-regulation of those who do not share the same religious views.³⁰

In addition, promoting the morality framework through obscenity laws necessarily entails accepting the moral perception on which the morality framework primarily rests. Sex is an act preserved for heterosexual, monogamous, married couples—to be done in the privacy of their bedrooms.³¹ This puritanical view of sex, along with moralistic notions regarding “prurient interest”³² and sexual pleasure, collectively serve as major repressive factors in American history. For example, some states banned, based on this view, pre-marital contraceptives,³³ enacted criminal statutes against same-sex intercourse,³⁴ and statutorily prohibited the sale of sex toys.³⁵ The United States Supreme Court upheld such laws and showed reluctance to acknowledge a right to “sexual intimacy.”³⁶

J. 75, 84-87 (1992).

30. See *Miller*, 413 U.S. at 24.

31. *Eisenstadt v. Baird*, 405 U.S. 438, 440-41 (1972).

32. The notion of prurient interest is part of the obscenity definition. See *Miller*, 413 U.S. at 24.

33. *Griswold v. Connecticut*, 381 U.S. 479, 480 (1965); *Eisenstadt v. Baird*, 405 U.S. 438, 440-41 (1972).

34. *Bowers v. Hardwick*, 478 U.S. 186, 187 (1986).

35. *Williams v. Attorney General of Ala.*, 378 F.3d 1232, 1233 (11th Cir. 2004).

36. The court held, “If we were to accept the invitation to recognize a right to sexual intimacy, this right would theoretically encompass such activities as prostitution, obscenity, and adult incest—even if we were to limit the right to consenting adults.” *Id.* at 1240. See also, see Susan Reid, *Sex, Drugs, and American Jurisprudence: The Medicalization of Pleasure*, 37 VT. L. REV. 47, 112 (2012) (discussing the court’s treatment of “pleasure”).

It appears then, that the morality framework is too broad, while at the same time too narrow. The framework risks the prohibition of public sexual expression, harmful or not. Consequently, this risk is placed on other forms of sexual acts that do not correspond with conservative views on sexuality. Additionally, the framework fails to address other harmful pornographic materials that are currently accepted within community standards.

2. *Pornography as a Gender Inequality Problem*

A second way of looking at pornography, which is most associated with the anti-pornography-feminist movement, is through the prism of inequality and sexism. The basis of this concept is the idea that pornography degrades and dehumanizes women. According to one of the most prominent feminist critic of pornography, Catharine MacKinnon, pornography "eroticizes hierarchy, it sexualizes inequality. It makes dominance and submission sex. Inequality is its central dynamic; the illusion of freedom coming together with the reality of force is central to its working."³⁷ As such, MacKinnon argues pornography is "an institution of gender inequality" that harms women.³⁸

The primary attempt to deal with the harms pornography presents to gender equality is through a model ordinance, drafted by Catharine MacKinnon and her colleague Andrea Dworkin, adopted by the Indianapolis City Council.³⁹ The ordinance sought to prohibit anyone from producing, selling, exhibiting, or distributing pornography by defining these activities as "sex discrimination," which women could sue against.⁴⁰

However, just as the obscenity framework is not successful

37. MacKinnon, *supra* note 28, at 18.

38. Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL. REV. 321, 325 (1984); For a concise review of these two approaches and the connections between them, see Angela A. Liston, *Pornography and the First Amendment: The Feminist Balance*, 27 ARIZ. L. REV. 415, 416 (1985).

39. INDIANAPOLIS, IND., ORDINANCE 24 § 16-1(a)(2) (1984).

40. *Id.*

in encompassing the harms of pornography or in providing an efficient tool to reduce the harms of pornography, the inequality and sexism approach and its most renowned “tools” (mainly, the sex discrimination ordinances) are also unsuccessful. Regarding the ability to encompass the full range of pornographic harm, which under the feminist framework is seen as an expression of sexism, the essential problem with pornography lies in its gendered nature. The difficulty with the feminist approach has been well documented by its opponents insofar as it deprives women of any sexual agency.⁴¹ For present purposes, it is important to emphasize that the MacKinnon-Dworkin approach treats pornography almost exclusively as something that harms women, but it lacks the ability to take into account the extensive research that exposes the multiple ways in which pornography also negatively affects men. The effects on men, along with the problems stemming from this limited scope, are addressed more fully in the next section.⁴²

Furthermore, the equality framework is not very successful in diminishing the harm that stems from pornography, because the framework could not survive challenges based on the First Amendment’s free speech clause.⁴³ In *Am. Booksellers Ass’n v. Hudnut*, the U.S. Court of Appeals for the Seventh Circuit declared the Indianapolis ordinance to be unconstitutional.⁴⁴ The ruling emphasized freedom of speech as a protected constitutional value, particularly in situations where the speech in question is particularly offensive.⁴⁵ Further, the court held

41. DUGGAN & HUNTER, *supra* note 2, at 85; see Elizabeth M. Schneider, *Feminism and the False Dichotomy of Victimization and Agency*, 38 N.Y.L. SCH. L. REV. 387, 395 (1993).

42. See *infra* Part II.

43. *American Booksellers Ass’n, Inc. v. Hudnut*, 771 F.2d 323, 332 (7th Cir. 1985), *aff’d*, 475 U.S. 1001 (1986).

44. *Id.*

45. *Id.* (“Racial bigotry, anti-Semitism, violence on television, reporters’ biases—these and many more influence the culture and shape our socialization. None is directly answerable by more speech, unless that speech too finds its place in the popular culture. Yet all is protected as speech, however insidious. Any other answer leaves the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us.”). *Id.* at 330.

that the definition of pornography in the ordinance, which targeted not only obscene materials but also materials that depict the subordination of violence against women (which would not meet the *Miller v. California* test of obscenity), discriminated against otherwise protected speech on the basis of its content.⁴⁶ *Hudnut* made it clear that any attempt to regulate pornography on the grounds of sex equality beyond the scope of obscene materials will not withstand constitutional scrutiny.⁴⁷ The failure of the MacKinnon-Dworkin ordinance illustrates the limited power of the equality framework: Free speech trumps sex equality rights.⁴⁸

The sexism framework, like the morality-obscenity framework, is similarly subjected to considerable criticism, but rests on different arguments. One line of criticism argues that the anti-pornography movement, based on a sexism framework, only reinforces puritan views regarding sex and collaborates with conservative groups in order to promote its goals.⁴⁹ Another line of criticism objects to the censorship tools used by this feminist approach, which are contrary to ideas of freedom of speech.⁵⁰

One additional major line of criticism rejects the assumption that pornography is necessarily bad for women, and emphasizes the power of pornography as a subversive tool that can actually benefit women:

Pornography carries many messages other than woman-hating: it advocates sexual adventure, sex outside of marriage, sex for no reason other than

46. *Id.* at 329.

47. *Id.* at 331

48. See Lynn S. Chancer, *Feminist Offensives: Defending Pornography and the Splitting of Sex from Sexism*, 48 STAN. L. REV. 739, 741-42 (1996) (reviewing NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* 320 (Scribner ed. 1995)).

49. See, e.g., Carlin Meyer, *Sex, Sin, and Women's Liberation: Against Porn-Suppression*, 72 TEX. L. REV. 1097, 1101 (1994).

50. See, e.g., DRUCILLA CORNELL, *THE IMAGINARY DOMAIN: ABORTION, PORNOGRAPHY AND SEXUAL HARRASSMENT* 141-47 (1995); *SPEAKING OF RACE, SPEAKING OF SEX: HATE SPEECH, CIVIL RIGHTS, AND CIVIL LIBERTIES* 183 (Henry Louis Gates, Jr. et al., eds., 1994).

pleasure, casual sex, anonymous sex, group sex, voyeuristic sex, illegal sex, public sex. Some of these ideas appeal to women reading or seeing pornography, who may interpret some images as legitimating their own sense of sexual urgency or desire to be sexually aggressive.⁵¹

In addition, critics argue that the power of subversive pornography, where non-normative types of sexuality can be explored and expressed, can also help marginal groups discover and construct their identities outside of the boundaries of hegemonic representations.⁵²

The sexism approach, as is apparent from the above discussion, is in fact a subset of the morality approach, for it is also based on moral arguments regarding proper representation of sexuality. Additionally, the sexism approach is limited in its abilities to provide a framework that properly describes the harms of pornography, as well as provide efficient and adequate tools for dealing with these harms. More so, this approach is problematic in its broad ramifications.

While the debate over the different perspectives took place, the subject of this debate—pornography—has undergone extensive changes. These changes, particularly those of the last decade (discussed in the following section), bolster the need to examine other frameworks within which pornography and its associated harms may be discussed.

B. THE CHANGE IN PORNOGRAPHY

“It is said that there are no sudden changes in nature, and the common view has it that when we speak of a growth or a destruction, we always imagine a gradual growth or disappearance. Yet we have seen cases in which the alteration of existence involves not only a

51. DUGGAN, *supra* note 4, at 82.

52. Sherman, *supra* note 6, at 691; Nancy Ehrenreich, *The Progressive Potential in Privatization*, 73 DENV. U. L. REV. 1235, 1247-48 (1996); Packard, *supra* note 6, at 314.

transition from one proportion to another, but also a transition, by a sudden leap, into a . . . qualitatively different thing; an interruption of a gradual process, differing qualitatively from the preceding, the former state."⁵³

In recent years, the nature of pornography as a social phenomenon has greatly changed. This dramatic change was primarily a result of a new actor on the scene: Internet pornography. The nature of pornography was reinforced by another social process known as the "pornification" of popular culture, which is the seeping of soft porn into mainstream media and popular culture.⁵⁴ These changes, which brought about both new risks and possibilities, require the reevaluation of the traditional frameworks to explain and deal with the current reality of pornography. This section discusses the influences of both of these components on the pornography industry.

The entrance of the internet into the pornography industry led to the following three changes in the nature of pornography and the effects on its viewers: first, the change in the *quantity* of online pornography; second, the change in the *quality* of the pornographic films, toward more violent and abusive films; and third, a change in the *accessibility* of pornographic materials, including hard-core abusive genres.⁵⁵

With the rise of the internet, the pornography industry experienced a significant *quantitative* growth. Between 2001 and 2007, in the United States alone, the adult entertainment business grew from a \$3.9 billion to an almost \$13 billion industry.⁵⁶ This growth is ongoing; as of 2009 there were 420

53. NIKOLAI BUKHARIN, *HISTORICAL MATERIALISM* 79-80 (3d. 1928).

54. SUSANNA PAASONEN ET AL., *PORNIFICATION: SEX AND SEXUALITY IN MEDIA CULTURE* (2007); Don Aucoin, *The Pornification of America* BOSTON GLOBE (Jan. 24, 2006), http://www.boston.com/yourlife/articles/2006/01/24/the_pornification_of_america/?page=full.

55. Gabriel Cavaglioni, *Cyber-porn Dependence: Voices of Distress in an Italian Internet Self-help Community*, 7 *INT'L. J. MENT. HEALTH ADDICTION* 295, 295-96 (2009).

56. Foubert et al., *Pornography Viewing among Fraternity Men: Effects on Bystander*

million porn pages, 4.2 million pornographic web sites, and 68 million search engine requests for pornography on the internet on a daily basis.⁵⁷ Another expanding market is mobile pornography—today’s preferred way of watching online porn.⁵⁸

With the immense growth of internet porn, some have argued, comes the potential for undermining the monopoly of the porn industry.⁵⁹ According to this approach, the internet provides a platform for subversive sexual and marginal voices and expressions.⁶⁰ This argument is indeed a powerful one. The ability to distribute pornographic materials—with minimal costs—has bolstered alternative pornography in new and subversive ways.⁶¹ The genre of amateur porn has also flourished in recent years, gaining influence to such an extent that the industry itself is producing professional films that appear to look like they were done by amateurs.⁶²

However, this dramatic growth in the pornography industry has negative consequences. It has pushed the industry to invent new materials able to compete in the expanding market, which results in more violent, extreme, and “edgy” material and scenes that depict a variety of dehumanizing

Intervention, Rape Myth Acceptance and Behavioral Intent to Commit Sexual Assault, J. SEX ADDICTION AND COMPULSIVITY 212, 212-213 (2011).

57. DINES, *supra* note 1, at 47.

58. Ryan W. Neal, *Mobile Porn in 2013: Smartphones Most Popular Device For Watching Internet Pornography in US*, INT’L BUS. TIMES (Dec. 23, 2013), <http://www.ibtimes.com/mobile-porn-2013-smartphones-most-popular-device-watching-internet-pornography-us-1518868>. As of 2007, the global market of mobile porn was evaluated to be worth \$775 million, and \$27 million in Europe. DINES, *supra* note 1, at 48; In 2006, the *Denver Post* predicted that “[m]obile pornography – porno for cell phones, PDAs and devices like video iPods . . . [will] grow from \$700 million . . . to \$2.1 billion by 2009.” Clay Calvert & Robert D. Richards, *Stopping the Obscenity Madness 50 Years After Roth v. United States*, 9 TEX. REV. ENT. & SPORTS L. 1, 9 (2008) (citing Douglas Brown, *Pornopolis: Out of the Shadows*, DENVER POST (July 9, 2006)).

59. Carlin Meyer, *Reclaiming Sex from the Pornographers: Cybersexual Possibilities*, 83 GEO. L.J. 1969, 2006-08 (1995).

60. *Id.*

61. See Aristeia Fotopoulou, *Remediating Politics: Brand(ed) New Sexualities and Real Bodies Online*, 17 J. LESBIAN STUDIES 253, 261-62 (2013).

62. See Constance Penley, *Crackers and Whackers: The White Trashing of Porn*, in PORNOGRAPHY: FILM AND CULTURE 99, 109, 162 (Peter Lehman ed., 2006). This style is called “pro-am” porn. *Id.*

behaviors not formerly produced.⁶³ In other words, the change in quantity has led to a *qualitative* change in online pornography.

Studies examining popular pornography in the years following the rise of internet pornography have found:

88% of the scenes in them included physical aggression toward women such as spanking, open-hand slapping, hair pulling, choking, and bondage. Among the most recent trends in 41% of the most popular mainstream pornograph[ic] movies today are scenes [where] a man puts his penis in a woman's anus followed immediately by placing it in her mouth so that she can taste her own excrement, [which is] known as ass-to-mouth or ATM. Another tactic of increasing popularity involves depicting scenes of shoving a penis so forcefully down a woman's throat that it causes gagging and vomiting."⁶⁴

Other genres found online depict "double vagina," "double anal," and "painful anal."⁶⁵

Regarding the gender difference within porn movies, studies found that those meting out the violence were usually male, while the targets of violence and aggression were overwhelmingly female.⁶⁶ In addition, a study examining forty-

63. Foubert, *supra* note 56, at 3; MARY EBERSTADT & MARY ANNE LAYDEN, THE SOCIAL COSTS OF PORNOGRAPHY: A STATEMENT OF FINDINGS AND RECOMMENDATIONS 21 (2010).

64. Foubert, *supra* note 56, at 4 (internal citations omitted). See also, Marty Rimm, *Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in over 2000 Cities in Forty Countries, Provinces, and Territories*, 83 GEO. L.J. 1849, 1900, 1915 (1995). (A study that examined almost one million pornographic images online also found a higher demand for violent materials and faux child pornography. Further, it was found that in the genre of bestiality images (people involved in pornographic acts with animals), 99.1% of the images involved women with animals and only 0.9% depicted men in similar situations.)

65. "Double vagina" refers to the simultaneous vaginal penetration of one woman by two men. DINES, *supra* note 1, at xviii. "Double anal" refers to the simultaneous anal penetration of one woman by two men. *Id.*

66. Stacy Gorman et al., *Free Adult Internet Web Sites: How Prevalent are Degrading Acts?* 27 GENDER ISSUES 131, 137-38 (2010).

five internet adult sites found that the majority of those presented nude were women, whereas the sites depicted a much higher representation of men depicted in sexually dominant positions.⁶⁷

The power of the growing market as a catalyst for increasingly violent pornography is fortified by the evolution of popular media. Soft-porn images started appearing regularly in advertisements, music video clips, shows, and movies.⁶⁸ This process, known as the *pornification* of popular culture, is recognized by those who see it as a positive or neutral process and by those who criticize it.⁶⁹

As popular culture changes, so does the porn industry. The pornography industry operates according to business rationales and motivations.⁷⁰ It could be argued that the penetration of soft-porn images into popular culture forced the pornography industry to distinguish itself from popular culture and the media by altering its product to provide something new to viewers who were already accustomed to the depictions of mostly nude women posing seductively. In other words, once the line separating porn from non-porn shifted, the industry had to adapt in order to survive. This shift also resulted in the porn industry creating more hard-core and violent materials.⁷¹

The existence of more violent pornography, due to the internet, cannot be fully understood without considering the third effect of the internet on the world of pornography—*accessibility*. Significantly easier access to pornography via the internet allows for new dimensions in the use of pornography,

67. *Id.*

68. Feona Attwood, *Sexed up: Theorizing the Sexualization of Culture*, 9 *SEXUALITIES* 77, 86-87 (2006); Marjo Kolehmainen, *Normalizing and Gendering Affects: How the Relation to Porn is Constructed in Young Women's Magazines*, 10 *FEMINIST MEDIA STUDIES* 179, 180-82 (2010).

69. See Calvert, *supra* note 58, at 9. "Sexually explicit content has mainstreamed in American culture. Even vociferous critics such as author Pamela Paul acknowledge this, as she recently wrote that pornography is 'seamlessly integrated into popular culture' and 'the all-pornography, all-the-time mentality is everywhere in today's pornified culture.'" *Id.*

70. See Rimm, *supra* note 64.

71. DINES, *supra* note 1, at 71.

thus leading it to play a greater role in many men's lives. First, the internet eliminates the barriers standing in the way of watching pornography. Pornography today is easier than ever to obtain—all that is required is a computer and an internet connection. This enables adults, as well as young boys (and girls), to experience instant gratification with minimal investment. The lack of barriers also makes it easier to acquire pornographic materials in private. As Dines states: "A key factor driving the growth of the porn market has been the development of technologies allowing users to buy and consume porn in private, without embarrassing trips to seedy stores or video rental shops."⁷² This new situation is not necessarily bad in and of itself. However, it does change the role of pornography in the lives of young boys and men, and should accordingly affect the way we conceptualize it.

Furthermore, the never-ending flow of new materials on the internet has the power to increase consumer demand.⁷³ The connection between what the industry provides and the needs articulated by viewers is found not only with regard to the amount of pornography used, but also to the type of materials provided. The easy access to hard-core and violent materials, as well as their visibility around the web, acts as a tool in shaping taste and preferences. As one pornography viewer explains,

A few years ago I joined Maxhardcore.com (the site of a porn producer known for his violent materials, L.Y.) to see what all the fuss was about and, while I found a lot of the girls really hot in their teeny outfits, Max's

72. *Id.*, at 48.

73. This reverse relationship between supply and demand, and the understanding of the ways in which availability plays a role in constructing consumerism, is well known. See Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 196 (1890). See also, Constantin Popescu et al., *Consumption for the Fulfillment of Human Life*, 12 THE AMFITEATRU ECON. J. 530, 532 (2010); Ruth Colker, *Pornography and Privacy: Towards the Development of a Group Based Theory for Sex Based Intrusions of Privacy*, 1 LAW & INEQ. 191, 201-02 (1983); Katharine K. Baker, *Gender, Genes, and Choice: A Comparative Look at Feminism, Evolution, and Economics*, 80 N.C. L. REV. 465, 505 (2002). But see RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* 276-82 (1981).

attitude and actions in a lot of the clips left me feeling shellshock, sickened and dirty . . . But just as porn moves on, so did my tastes, and gradually I realized I was enjoying Max's extreme scenes more and more—whether that's [sic] corruption or desensitization I don't [sic] know. All I do know is that [I went] from being a onetime Max hater to a Max Hardcore fan⁷⁴

Thus, the easy access to new and more abusive materials operates in such a way that it both encourages consumers, largely men, to watch porn in greater amounts, as well as to expand their tastes and expose themselves to harsher materials.

The analysis provided here reveals the dramatic role that the internet has had in shaping and altering pornography away from how we knew it before. The traditional frameworks, through which pornography is framed as a problem, as well as many of the criticisms of these frameworks, were formed in the pre-internet era in reaction to a social phenomenon that was immensely different from what we are dealing with today.⁷⁵ Pornography's transformation requires us to rethink the ways in which we understand and talk about it.

For example, both the morality framework and the sexism framework promoted censorship and restrictions on the sale and distribution of pornography. However, the ability to restrict content on the internet is almost impossible.⁷⁶ The rate in which new materials are uploaded is too fast, the locations of the uploads are all over the world, and even when some sites are shut down by government for obscenity convictions, new sites pop up almost immediately.⁷⁷

74. DINES, *supra* note 1, at 74.

75. DUGGAN & HUNTER, *supra* note 2.

76. Mark C. Alexander, *The First Amendment and Problems of Political Viability: The Case of Internet Pornography*, 25 HARV. J.L. & PUB. POL'Y 977, 977-78 (2002).

77. David Kluff, *Highlights of Digital Millennium Copyright Act Congressional Hearings*, TRADEMARK COPYRIGHT L. BLOG (Apr. 4, 2014), <http://www.trademarkandcopyrightlawblog.com>. For example, the U.S. Government shut down Max Hardcore's site for obscenity charges. MAXHARDCORE.COM, <http://www.maxhardcore.com> (last visited Sep. 24, 2014). He was eventually convicted on multiple counts relating to producing and trafficking

Another example may be found in some of the approaches that oppose restrictions on pornographic materials. In an argument rebutting claims regarding the effect of pornography on sexual behavior, Nadine Strossen, then the president of the American Civil Liberties Union, claimed:

There is no systematic evidence that people copy what they see or read about in pornography. On the contrary, there is strong evidence that sex patterns, once established, are as difficult to change as any other social habits, and, in addition, there are strong inhibiting factors that intervene to keep our responses within the cultural norms.⁷⁸

From this quote, it is evident that the assumption that lies at the core of Strossen's argument is that the exposure to pornographic materials occurs only *after* sex patterns are established. However, according to recent studies, the average age of first exposure to pornography is eleven-years-old for males and thirteen-years-old for females⁷⁹—well before any patterns of sexual behavior are firmly established.⁸⁰ This should

obscene materials. Memorandum from DOJ on Federal Conviction (June 5, 2008), http://www.justice.gov/criminal/ceos/pressreleases/downloads/MDFL_Little_Conviction_06-05-08.pdf). Upon forfeiture of the website pursuant to 18 U.S.C. §§ 1461 and 1465, Max Hardcore quickly launched a new site, MAXHARDCORETV.COM that continued to provide access to his previous films (MAXHARDCORETV.COM, <http://www.maxhardcore.com> (last visited Sep. 24, 2014)).

78. Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, 79 VA. L. REV. 1099, 1177 (1993) (quoting Thelma McCormack, *Making Sense of Research on Pornography*, in WOMEN AGAINST CENSORSHIP 4, 198 (1985)).

79. Patricia M. Greenfield, *Inadvertent Exposure to Pornography on the Internet: Implications of Peer-to-Peer File-Sharing Networks for Child Development and Families*, 25 APPLIED DEVELOPMENTAL PSYCHOL. 741, 745 (2004).

80. Strossen is basing her argument here regarding the establishment of sexual patterns on Thelma McCormack, *Making Sense of Research on Pornography*, in *Women Against Censorship* (Varda Burstyn ed., 1985). As McCormack notes there that "sex practices, like other social practices, become habitual, routinized and, however boring, conventional. Like other social habits, we do not alter or break this one without some major incentive or without some serious disruption of our lives." (Id., at 189). From this quote it is safe to assume that the assumption of both McCormack and Strossen was that the exposure to pornography occurs only after one is having sex on a regular, routinized way. Further, we might also want to question a second assumption which underlies Strossen's argument – that sexual behavior and patterns are "established", and therefore fixed and stable features of

not necessarily be seen as a criticism of Strossen's argument. Published in 1993,⁸¹ this argument may have been valid at the time it was written. However, much has changed since 1993, and our discussion and understanding of pornography should therefore adapt to these changes.

I argue that the ideal framework for examining pornography today is the health framework, which treats pornography as a health hazard. While this approach is already being employed on the medical front, it has yet to be seriously considered on the legal front.

II. CAN WE THINK OF PORNOGRAPHY AS A HEALTH PROBLEM?

The framing of pornography as a matter of public health was first introduced in 1986 in a report released by the U.S. Surgeon General titled "Pornography and Public Health."⁸² The report was the result of a three-day workshop that brought together experts from the fields of medicine, psychology, psychiatry, and communication.⁸³ The report summarized the current and relevant research conducted on the effects of pornography and concluded with several points of agreement reached by the workshop participants. Among them were the following conclusions: (1) "Pornography that portrays sexual aggression as pleasurable for the victim increases the acceptance of the use of coercion in sexual relations"⁸⁴; (2) "Acceptance of

ones' identity, which cannot change and evolve constantly. See, for instance, Lisa M. Diamond, *Sexual Fluidity* (2008) (I would like to thank Maayan Sudai for this point).

81. See Strossen, *supra* note 78, at 1185.

82. See EDWARD P. MULVEY & JEFFREY L. HAUGAARD, REPORT OF THE SURGEON GENERAL'S WORKSHOP ON PORNOGRAPHY AND PUBLIC HEALTH (1986) [hereinafter SURGEON GENERAL REPORT]. The same year, the Attorney General release a report known as the Meese commission; this report found a causal connection between exposure to pornography and sexual violence, and was harshly criticized for being politicized and manipulating the facts. U.S. DEP'T OF JUSTICE, ATT'Y GENERAL'S COMM'N ON PORNOGRAPHY: FINAL REPORT 905 (1986) [hereinafter Meese Report].

83. Strossen, *supra* note 78, at 1178-80 (presenting a comprehensive review of the critiques on the Meese report).

84. Mulvey, *supra* note 81, at 19.

coercive sexuality appears to be related to sexual aggression,"⁸⁵ and (3) "In laboratory studies measuring short-term effects, exposure to violent pornography increases punitive behavior toward women."⁸⁶ Due to these findings, the report concluded that pornography should be seen as a public health issue.⁸⁷

The Surgeon General's report drew strong criticisms after its publication. First, some researchers argued against the report's heavy reliance on studies carried out in the laboratory, arguing that they are less effective in predicting real life behavior.⁸⁸ One of the members of the workshop also expressed criticism of what he argued was a gap between what was agreed upon in the workshop, and what was reported in the report by the Surgeon General.⁸⁹ In addition, the report presents in some parts a highly traditional approach to sex. For instance, one of the adverse effects of pornography listed in the report is the perception that a higher percentage of the population is performing anal sex.⁹⁰ These problems marked the report as a part of the political agenda of the Reagan administration to ban pornography using conservative arguments and aims.⁹¹

Moreover, the Surgeon General's report was published just

85. *Id.* at 23

86. *Id.* at 28.

87. See The SURGEON GENERAL REPORT, *supra* note 81, at 35, 56. Two other conclusions regard the participation of children in pornographic movies—which is illegal under 18 U.S.C. § 2251. This is the connection between pornographic movies and the misbelief that "less common sexual practices" are more common, neither of which I would consider to be a public health issue. *Id.* at 17.

88. Daniel Linz et al., *The Findings and Recommendations of the Attorney General's Commission on Pornography: Do the Psychological "Facts" Fit the Political Fury?*, 42 AM. PSYCHOLOGIST 946, 950 (1987). The problem with laboratory studies is also mentioned in the report itself. See SURGEON GENERAL REPORT, *supra* note 94, at 8.

89. See Neil M. Malamuth, *Distinguishing Between the Surgeon General's Personal Views and the Consensus Reached at His Workshop on Pornography*, 44 AM. PSYCHOLOGIST 580 (1989) (arguing that although the workshop participants agreed that "pornography that portrays sexual aggression as pleasurable for the victim increases the acceptance of coercion in sexual relations" they did *not* reach consensus that "this type of pornography is at the root of much of the rape that occurs today," nor did they agree on other statements which Surgeon General Koop appended to their conclusions in his article).

90. SURGEON GENERAL REPORT, *supra* note 81, at 17.

91. See Brian L. Wilcox, *Pornography, Social Science, and Politics: When Research and Ideology Collide*, 42 AM. PSYCHOLOGIST 941, 943 (1987).

one month after then Attorney General Edwin Meese issued his report on pornography.⁹² The Meese Report's conclusions were more decisive and far-reaching than those of the Surgeon General's report,⁹³ drawing harsh criticism for being manipulative and politicized.⁹⁴ The responses to both reports, and the proximity in which they were issued, colored the examination into the effects of pornography as a conservative and political effort to oppress sexuality.

While the reports were politicized and conservative in specific areas, some of the insights raised—especially in the Surgeon General's Report—are worth examining through a different lens than the conservative lens both reports held. It is unfortunate that the political context in which these reports were issued harmed the potential for a meaningful consideration of pornography from a public health perspective. In light of the changes in pornography's production and consumption, the growing role that pornography plays in many men's lives, and new evidence indicating significant public health effects from the consumption of pornography, the time has come to once

92. See *supra* note 81.

93. The Meese Report found that "research . . . shows a causal relationship between exposure to [sexually violent materials] . . ." and "aggressive behavior towards women." Meese Report, *supra* note 81, at 324. In addition, the report determines that "substantial exposure to sexually violent materials . . . bears a causal relationship to antisocial acts of sexual violence and, . . . possibly to unlawful acts of sexual violence." *Id.* at 326.

Pornography that portrays sexual aggression . . . increases the acceptance of the use of coercion in sexual relations . . . the perceived increase in the availability of violent sexual materials . . . and the fact that the Commission only tangentially considered the possibility that these materials could exert an influence unique from erotic pornography. As part of this line of laboratory studies, attitudes have been investigated as possible factors potentially increasing or decreasing any behavioral effects produced by exposure to violent sexual materials.

Cf. Meese Report, *supra* note 81, at 19.

94. See Barry W. Lynn, "Civil Rights" Ordinances and the Attorney General's Commission: New Developments in Pornography Regulation, 21 HARV. C.R.-C.L. L. REV. 27, 65-73 (1986); See Edward I. Donnerstein & Daniel G. Linz, *The Question of Pornography: It is Not Sex, but Violence, that is an Obscenity in Our Society.*, PSYCH. TODAY, Dec. 1986, at 56-9; Linz et al., *supra* note 99, at 946. See also, Strossen, *supra* note 81, at 1178-80 (providing a comprehensive review of the critiques on the Meese Report).

again pay serious attention to the effects of pornography on individual and public health. This time, however, without the taint of an overarching conservative political agenda.

In the years following the Surgeon General's 1986 report, there has been increasing empirical research conducted examining the effects of pornography on viewers and society as a whole.⁹⁵ Reviewing the different effects linked to pornography, these studies document that it is possible to classify the effects into two main categories. The first category includes more traditionally-diagnosed mental health conditions, such as depression and anxiety.⁹⁶ The second category includes effects that are *not* usually perceived as health-related effects, such as an increase in aggression towards women, the trivialization of rape and more direct links to sexual violence, and punitive behavior towards women.

A. TRADITIONAL HEALTH-RELATED EFFECTS OF PORNOGRAPHY

1. *Reviewing the Effects*

In recent years, and especially since the immense growth in online pornography, there has been a rise in studies examining the effects that pornography has on its viewers and consumers. Studies that examined the different effects caused by pornography on its viewers drew a link between the viewing of pornography and a variety of mental and physical disorders. For example, a 2011 study that examined the mental and physical effects of pornography found that pornography users reported more depressive symptoms, as well as a higher number of days during which they felt mentally and physically depleted.⁹⁷ Other studies found a connection between

95. See Edward I. Donnerstein & Daniel G. Linz, *The Question of Pornography: It is Not Sex, but Violence, that is an Obscenity in Our Society.*, PSYCH. TODAY, Dec. 1986, at 56-9; Linz, *supra* note 87, at 946.

96. James B. Weaver III et al., *Mental-and Physical-Health Indicators and Sexually Explicit Media Use Behavior by Adults*, 8 J. SEX. MED. 764 (2011).

97. *Id.*

pornography usage and depression.⁹⁸ A qualitative study based on interviews with self-reported users of online pornography stated that they reported increased symptoms of depression.⁹⁹ In addition, users of pornography also reported high levels of anxiety.¹⁰⁰

The effects of pornography do not bypass children and adolescents. A study that examined 1501 children between ten and seventeen years of age found that 20% of children between fourteen and seventeen years old had intentionally searched and been exposed to pornographic material, as did 8% of children between ten and thirteen years of age.¹⁰¹ A national telephone survey revealed that 15% of adolescents between the ages of twelve and seventeen lied about their age in order to access pornographic websites.¹⁰² In addition, an online European Union study asked 10,000 children, aged nine to sixteen, about what upset them on the internet.¹⁰³ The study found that pornographic content was the top risk named by children.¹⁰⁴

Furthermore, the development of widespread internet use has bolstered the discussion about the addictive qualities of

98. See Michele L. Ybarra & Kimberly J. Mitchell, *Exposure to Internet Pornography Among Children and Adolescents: A National Survey*, 8 CYBER PSYCHOL. & BEHAVIOR, 473 (2005).

99. See Jennifer P. Schneider, *A Qualitative Study of Cybersex Participants: Gender Differences, Recovery Issues, and Implications for Therapists*, 7 SEX. ADDICTION & COMPULSIVITY 249 (2000).

100. Todd G. Morrison et al., *Correlates of Exposure to Sexually Explicit Material Among Canadian Post-Secondary Students* 13 CANADIAN J. HUMAN SEX. 143 (2004); Michael E. Levin et al., *When is Online Pornography Viewing Problematic Among College Males? Examining the Moderating Role of Experiential Avoidance*, 19 SEX. ADDICTION & COMPULSIVITY 168 (2012).

101. Ybarra, *supra* note 97.

102. Amanda Lenhart et al., *Teenage life online: the rise of the instant-message generation and the Internet's impact on friendships and family relations* (2001), http://www.pewinternet.org/~media/Files/Reports/2001/PIP_Teens_Report.pdf. The number of studies examining the effects of exposure to pornography on children is not large. This could be explained by ethical and legal considerations preventing researchers from exposing children and adolescents to "potentially harmful material" Ybarra, *supra* note 97.

103. Sonia Livingstone et al., *In Their Own Words: What Bothers Children Online? With the EU Kids Online Network* (2013), [http://eprints.lse.ac.uk/48357/1/In%20their%20own%20words%20\(lsero\).pdf](http://eprints.lse.ac.uk/48357/1/In%20their%20own%20words%20(lsero).pdf).

104. *Id.*

pornography.¹⁰⁵ In the past few years, many researchers have found evidence that pornography usage, especially on a regular basis, can lead to addiction.¹⁰⁶ A study from 2000 found that 17% of internet pornography users met the criteria for problematic sexual compulsivity.¹⁰⁷

The addictive qualities of pornography, and internet pornography in particular, are explained by the combination of the anonymity of the internet and internet pornography's ability to alter one's mood.¹⁰⁸ One common form of mood alteration sought by internet pornography users is the avoidance of real life thoughts or actions; the ability of internet porn to allow such avoidance and mood alteration created an addiction among viewers. Additionally, studies show that the urge to use pornography on the internet may actually be the result of viewing internet pornography, thus creating a self-perpetuating

105. Jay Clarkson & Shana Kopaczewski, *Pornography Addiction and the Medicalization of Free Speech*, 37 J. COMM'N. INQUIRY 128, 131 (2013).

In 2004, a politicized and controversial hearing was conducted before a Senate subcommittee discussing the scientific evidence of pornography addiction where although some scientists proposed a problematic linkage between usage of pornography and addiction, those who participated were from conservative backgrounds. *See generally, Id.*

106. *See* Matthias Brand et al., *Watching Pornographic Pictures on the Internet: Role of Sexual Arousal Ratings and Psychological- Psychiatric symptoms for Using Internet Sex Sites Excessively*, CYBERPSYCHOLOGY, BEHAVIOR, AND SOCIAL NETWORKING 14 (2011); Chad T. Wetterneck et al., *The Role of Sexual Compulsivity, Impulsivity, and Experiential Avoidance in Internet Pornography Use*, 62 THE PSYCHOLOGICAL RECORD 3, 3 (2012); Michael J. Bostwick & Jeffrey A. Bucci, *Internet Sex Addiction Treated With Naltrexone*, 83(2) MAYO CLINIC PROC. 226, 226 (2008); Gabriel Cavaglion, *Narratives of Self-Help of Cyberporn Dependents*, 15 SEXUAL ADDICTION & COMPULSIVITY 195, 196-97 (2008); Mark D. Griffiths, *Internet Sex Addiction: A Review of Empirical Research*, 20(2) ADDICTION RESEARCH & THEORY 111, 111 (2012); Vincent Egan & Reena Parmar, *Dirty Habits? Online Pornography Use, Personality, Obsessionality, and Compulsivity*, 39 J. OF SEX & MARITAL THERAPY 394, 394 (2013); Michael E. Levin et al., *When is Online Pornography Viewing Problematic Among College Males? Examining the Moderating Role of Experiential Avoidance*, 19 SEX. ADDICTION & COMPULSIVITY 168, 169 (2012); Tara M. Pyle & Ana J. Bridges, *Perceptions of Relationship Satisfaction and Addictive Behavior: Comparing Pornography and Marijuana Use*, 1 J. OF BEHAVIORAL ADDICTIONS 171 (2012).

107. Al Cooper et al., *Online Sexual Problems: Assessment and Predictive Variables*, SEX. ADDICTION & COMPULSIVITY 267, 269 (2001).

108. Ethel Quayle et al., *Sex Offenders, Internet Child Abuse Images and Emotional Avoidance: The Importance of Values*, 11 AGGRESSION AND VIOLENT BEHAVIOR 1, 2 (2006).

cycle of addiction.¹⁰⁹

Research dedicated to exposing the unique results of addiction to pornography found that pornography's most adverse effects include psychological distress,¹¹⁰ low self-esteem, the painful sensation of seeing life fade away, and lack of the ability to concentrate on one's work.¹¹¹ A 2009 study examining college-aged males found that more than half of those who were internet pornography viewers indicated that their usage was problematic in at least one major aspect of their lives, including psychological aspects, relationship problems, and problems at work or in school.¹¹²

In a narrative analysis of self-described pornography addicts, the connection between pornography addiction and forms of psychological distress—such as depression and isolation—also surfaced.¹¹³ The following is a description of a pornography addict's experience:

Since I installed my [i]nternet, chatting and browsing porn videos has been my only occupation during the day. I start the morning by visiting news . . . then I start to download. I have states of euphoria when my browsing is fast and of mild depression when there is nothing new. In the afternoon, it is the same . . . in the evening I select the best material for my archive and delete everything I don't need . . . A good day or a bad one depends upon the number of megabytes I am able to download. All this has ruined my social life. The only positive point is that I have a girlfriend . . . but with her I almost always fake my orgasm, or I fake pains justifying my [giving up and] going back to my screen. Today I don't work, I quit two jobs because

109. See Twohig & Crosby, *supra* note 7.

110. Brand et al. *supra* note 105, at 375.

111. See Cavaglioni, *supra* note 55 at 304.

112. See Michael P. Twohig et. al., *Viewing Internet Pornography: For Whom is it Problematic, How, and Why?*, 16 *SEXUAL ADDICTION & COMPULSIVITY* 253, 254 (2009).

113. Cavaglioni, *supra* note 105, at 196.

they didn't give me enough time to spend in front of the screen.¹¹⁴

Additionally, a survey of 224 corporations, conducted by an electronic monitoring firm, showed that the leading cause for disciplinary action or termination of employment was internet pornography usage.¹¹⁵

From the data gathered in recent years regarding the effects of pornography on its users, it seems evident that pornography is harmful to the mental and other health of those who watch it.

2. *Why Were These Effects not Medicalized?*

Given the mass of data documenting pervasive and serious mental health harms to the users of pornography, it is possible to conclude that pornography is a product that can cause depression, anxiety and other psychological, emotional and behavioral problems.¹¹⁶ Strong evidence also shows pornography is addictive.¹¹⁷

114. Cavaglion, *supra* note 55, at 302.

115. Kimberly S. Young & Carl J. Case, *Employment Internet Abuse: Risk Management Strategies and Their Effectiveness*, 10 PROCEEDINGS OF THE AMERICAN SOCIETY OF BUSINESS AND BEHAVIORAL SCIENCES 21, 21 (2003).

116. Peter Conrad, *Medicalization and Social Control*, 18 ANNUAL REV. OF SOCIOLOGY 209, 211 (1992). He clarifies this later in the article:

Medicalization can occur on at least three distinct levels: the conceptual, the institutional, and the interactional levels. On the conceptual level a medical vocabulary (or model) is used to "order" or define the problem at hand; few medical professionals need be involved, and medical treatments are not necessarily applied. On the institutional level, organizations may adopt a medical approach to treating a particular problem in which the organization specializes. Physicians may function as gatekeepers for benefits that are only legitimate in organizations that adopt a medical definition and approach to a problem, but where the everyday routine work is accomplished by nonmedical personnel. On the interactional level, physicians are most directly involved. Medicalization occurs here as part of doctor-patient interaction, when a physician defines a problem as medical (i.e. gives a medical diagnosis) or treats a "social" problem with a medical form of treatment (e.g. prescribing tranquilizer drugs for an unhappy family life). Thus it becomes clearer that medicalization is a broad definitional process, which may or may not directly include physicians and their treatments (although it often does).

Id.

117. See, e.g., Susan R. Schmeiser, *The Ungovernable Citizen: Psychopathy, Sexuality, and the Rise of Medico-Legal Reasoning*, 20 YALE J.L. & HUMAN. 163, 187

In an era where medicalization of different areas of life is so widespread, even to conditions that are not typically classified as harmful (such as aging, menopause, premenstrual syndrome, baldness), how is it that pornography has not similarly been framed as a public health issue?

In order to fully answer this question, a deeper look into the nature of the medicalization process is needed, with special regard to its political nature. The question of how, when, and by whom a social problem or condition is medicalized is a complicated one. As one writer clarifies, the process of medicalization—in which different problems are being understood as part of the medical jurisprudence—is a social and cultural process that may or may not involve the medical system.¹¹⁸

This may account for the fact that despite the numerous studies produced by the medical field on the negatives effects of pornography, pornography still was not able to undergo a medicalization process, and the social understanding of this phenomena does not associate it with health.

What, then, are the social and cultural powers that push forth medicalization processes? In most discussions on the process of medicalization, the word “deviant,” as a crucial element underpinning the shift toward a medical discussion, comes up.¹¹⁹ This is not accidental. Critical writings about

(2008); Martha Minow, *When Difference Has Its Home: Group Homes for the Mentally Retarded, Equal Protection and Legal Treatment of Difference*, 22 HARV. C.R.-C.L. L. REV. 111, 169 (1987); Lois A. Weithorn, *Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates*, 40 STAN. L. REV. 773, 775, 779, 820-21, 823 (1988); Adam B. Shniderman, *The Devil's Advocate: Using Neuroscientific Evidence in International Criminal Trials?*, 38 BROOK. J. INT'L L. 655, 683, 686, 692, 694 (2013); Winsor C. Schmidt, *Medicalization of Aging: The Upside and the Downside*, 13 MARQ. ELDER'S ADVISOR 55-56 (2012); Conrad, *supra* note 131, at 212-13; Jack P. Gibbs, *Conceptions of Deviant Behavior: The Old and the New*, 9 THE PACIFIC SOCIOLOGICAL REVIEW 9, 13 (1966).

118. See Conrad, *supra* note 115, at 212-13; Jack P. Gibbs, *Conceptions of Deviant Behavior: The Old and the New*, 9 THE PACIFIC SOCIOLOGICAL REVIEW 9, 13 (1966).

119. Conrad actually states that medicalization may occur both for deviant behavior and “natural life” processes. However, I found it interesting to examine which “natural life processes” he provides as an example: “[s]exuality, childbirth, child development, menstrual discomfort (PMS), menopause, aging, and death.” *id.* at 213. It appears that most (although not all) of those natural life processes can be

concepts such as "health" and "illness," as well as the medical system, have illustrated how these concepts play a role both in defining what is considered "normal" and in regulating everything that is not. Indeed, the social definition of deviance is itself a politicized one, used to describe the behaviors and bodies of populations that are not part of the privileged hegemonic group of American society. Under this framework, medicalization is a process through which "[t]raditional social 'deviants' transitioned from 'bad' to 'sick.'"¹²⁰ Similar analyses describe the way addiction was formed and shaped to describe "others." According to Brodie and Redfield:

Addiction as a concept and discourse in modern American culture resonated similarly around stereotypes of the opium-smoking Chinese immigrant, the "cocaine-crazed" and sexually-threatening African-American male, the marijuana-smoking and violent Mexican youth of the Southwest . . . Anxieties about addiction meshed with wider American anxieties about lost autonomy and the dangers of the un-American.¹²¹

In light of this framing of the discourse regarding addiction, it could be argued that the absence of an addiction discourse regarding pornography is a result of the social profile of its "users," and the fact that it is not a behavioral pattern that is only found among marginal groups. Given that our society commonly labels "others" as "addicts," it is understood why pornography, despite its clearly addicting qualities, is not currently seen as "addictive."

Lisa Ikemoto coined the term "BioPrivilege" in order to explain this phenomena. BioPrivilege, according to Ikemoto, "uses the characteristics of the dominant or privileged group to set the normative standards in health, define disease, and

characterized by their lack of connection to the American society's baseline of normality: young (white) males.

120. Schmidt, *supra* note 116, at 56.

121. HIGH ANXIETIES: CULTURAL STUDIES IN ADDICTION 3-4 (Janet Farrell Brodie & Marc Redfield eds., 2002).

identify who does and does not comprise a risk group.”¹²² In other words, Ikemoto looks not at what medicalization does to deviant groups, but rather flips the perspective to examine how the social powers that shape the medicalization process influence non-deviant, hegemonic groups.

In light of the understanding of how these powers shape the sociocultural processes of medicalization, it can be argued that the reason that pornography has not been conceptualized as a health hazard, or as an addictive substance, is linked to the fact that it is part of the behavioral patterns of the hegemonic group (white men) that has no interest in it being characterized as such.

Catharine MacKinnon’s analysis of patriarchal power illuminates the problem in a similar way:

In reality . . . virtually every quality that distinguishes men from women is already affirmatively compensated in this society. Men’s physiology defines most sports, their needs define auto and health insurance coverage, their socially designed [sic] biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex.¹²³

In other words, it may be that men’s obsessions or hazardous behaviors are compensated in such a way that they do not constitute deviance, and therefore, are not understood as an illness or as a risky and unhealthy practice. Rather, like rape and sexual harassment, pornography is seen as an inevitable and unavoidable part of any society. Indeed, it enjoys rights of its

122. Lisa C. Ikemoto, *BioPrivilege*, 42 WASH. U. J. L. & POL’Y 61, 61 (2013).

123. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 36 (1987).

own under the First Amendment.

However, it may also be noted that the tendency of medicalization to shift away from the obsessions, habits, and behaviors of men ironically works against them. As it appears from a narrative analysis of Italian porn addicts, described in Gabriel Cavaglion's "Narratives of Self-Help of Cyberporn Dependents," one of the problems associated with pornography dependence is the lack of knowledge about its existence.¹²⁴ As described in the words of one member of the self-help group that was examined in the Article: "F..k!! For me it was like a bolt of lightning. I didn't know that porn dependence is a problem. . ." ¹²⁵ Cavaglion adds that many new members introduce themselves to the group with sentences like: "[A]s usual I was surfing and searching for new porn sites, when I found your link and discovered that there are other people like me. I am not alone and I already feel better."¹²⁶ Indeed, the "compensation" that men receive, as MacKinnon mentions, also hurts them in kind.

The failure to attend to the health risks associated with pornography usage is therefore problematic for several reasons. First, it prevents men (and women) from realizing and assessing the risks involved with pornography usage. For instance, there are no Surgeon General warning signs on pornography products as there are on cigarettes and alcoholic beverages. Second, it prevents people that ultimately suffer these damages from acknowledging that they may have a problem and that there are ways of dealing with it. Finally, even when porn addicts, or other users that suffer from depression and anxiety, realize they have a problem, they will usually seek help in online self-help groups, both due to the lack of resources allocated to dealing with the public health problem of pornography¹²⁷ and due to the shame associated with this unspoken issue. While alcohol,

124. See Cavaglion, *supra* note 105.

125. *Id.* at 203.

126. *Id.* at 203-04.

127. Cavaglion, *supra* note 55, at 297.

tobacco, and drugs all have government-funded programs for treatment and prevention, damages suffered by pornography addictions are not currently recognized by the federal government.¹²⁸ Consequently, there are no government-funded programs to address them.

It is the moralization or the gendering of the issue of pornography, in this context, that operates against men and women's interest in regulating pornography. Not only is the moralization and gendering of the issue an unwise strategy before the courts, as it provided an insufficient tool to confront freedom of speech claims or current community standards, it appears that there is an additional problem with such framing: the framing of pornography solely as a vice or as something "men do to women" has prevented parts of the discussion from evolving around moral and gender-neutral understandings of health. In other words, it is to the benefit of both men and women that pornography be addressed not only as a moral and gender problem, but also as a moral/gender-neutral health problem with moral/gender-neutral mental effects.¹²⁹ Recently, two neurosurgical scholars argued:

The sex industry has successfully characterized any objection to pornography as being from the religious/moral perspective; they then dismiss these objections as First Amendment infringements. If pornography addiction is viewed objectively, evidence indicates that it does indeed cause harm . . . Just as we consider food addiction as having a biologic basis, with

128. See Lisa K. Goldman and Stanton A. Glantz, *Evaluation of Antismoking Advertising Campaigns*, 279 JAMA 772 (1996); *National Youth Anti-Drug Media Campaign*, OFFICE OF NAT'L DRUG CONTROL POLICY, <http://www.whitehouse.gov/ondcp/anti-drug-media-campaign>.

129. At this point, I would like to clarify – I am in no way seeking to deny the multiple gendered damages to women from pornography, nor the gendered damages to men from this sort of shaping of their masculinity. As a matter of fact, I will address those problems in the next part of this Article, which will discuss the ways we ought to gender the health discussion about pornography and health. I am merely arguing that the story has more sides than one, and that it is in our interest to discuss all of its aspects, both from an ontological point of view and a strategic point of view, regarding the potential entailed in the public health framework.

no moral overlay or value-laden terminology, it is time we looked at pornography and other forms of sexual addiction with the same objective eye.¹³⁰

Indeed, the traditional frameworks that seek to explain the problems of pornography and describe it as a problem of vice or sexism do so by engaging the pornography debate on moral grounds, thus opening the door to both just and unjust moral critiques. Shedding light on the health dangers of pornography allows us to move away from the controversy surrounding the "sex wars," and shift the debate towards what can be seen as a more "objective" critique, thus enabling a wider and more comprehensive evaluation of pornography.

B. UNTRADITIONAL HEALTH-RELATED EFFECTS

1. *Reviewing the Effects*

Research conducted on the effects of pornography has revealed two types of categories of harm beyond the more traditional mental health damages discussed above. The first is the increase in sexist perceptions regarding women and sex, including sexual aggression toward women,¹³¹ while the second is a link between pornography and violence against women. These two effects are, quite clearly, interrelated. I will first present the research on these two types of consequences of pornography, which will be discussed concurrently, followed by a discussion of the way they can be framed as unhealthy effects, particularly in light of the aforementioned discussion above regarding the definition of health and health hazards.

One of the first instances of examining the causal link between pornography and sex crimes was in a 1970 report issued by the Federal Commission on Obscenity and

130. See Hilton, Jr. D., Donald L. & Clark Watts, *Pornography Addiction: A Neuroscience Perspective*, 2 SURGICAL NEUROLOGY INTERNATIONAL 19 (2011).

131. See Meyer, *supra* note 49.

Pornography.¹³² The Commission concluded that it could not draw a direct link between the two.¹³³ However, studies that examined the report revealed a major flaw: the report ignored the effects of violent pornography.¹³⁴ This omission seems even more problematic when taking into account the data introduced earlier, which showed that 88% of the scenes in the most popular pornographic movies include aggression toward women.¹³⁵

The connection between exposure to pornography and misogyny, sexual aggression, and violent behavior became the subject of many studies and scholarly controversy.¹³⁶ Nevertheless, researchers today tend to agree that a clear connection exists between such exposure and the aforementioned effects.¹³⁷ A 2000 study that analyzed most of the previously published research concluded that increased exposure to pornography is significantly correlated with trivialization of rape, a greater acceptance of rape myths, a decrease in empathy towards victims of rape or sexual assault, and behavioral aggression.¹³⁸

Post-2000 studies provide additional support for this conclusion. A meta-analysis of correlational and experimental studies demonstrates a link between pornography use and acceptance of aggression and violence against women.¹³⁹ A 2010 meta-analysis examining previous studies and meta-analyses in non-experimental studies concluded that the studies presented a

132. COMMISSION ON OBSCENITY & PORNOGRAPHY, THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 1 (Sep. 1970).

133. *Id.*

134. Jennifer C. Ford, *Everything You Always Wanted to Know About Pornographer Liability (But Were Afraid to Ask)*, 46 *DRAKE L. REV.* 233, 244 (1998).

135. Foubert et al., *supra* note 56, at 213.

136. See William A. Fisher & Guy Grenier, *Violent Pornography, Antiwoman Thoughts, and Antiwoman Acts: In Search of Reliable Effects*, 31 *J. SEX RESEARCH* 23 (1994).

137. See Michael Flood, *The Harms of Pornography Exposure Among Children and Young People*, 18 *CHILD ABUSE REVIEW* 384, 392-93 (2009).

138. See Elizabeth Oddone-Paolucci et al., *A Meta-Analysis of the Published Research on the Effects of Pornography*, 15 *THE CHANGING FAMILY AND CHILD DEV.* 48 (2000).

139. See Michael Flood & Clive Hamilton, *Youth and Pornography in Australia: Evidence on the Extent of Exposure and Likely Effects*, THE AUSTRALIA INSTITUTE (2003).

“significant overall relationship between pornography consumption and attitudes supporting violence against women in non-experimental studies.”¹⁴⁰ The researchers also estimated that similar results would be found when examining experimental studies.¹⁴¹

As expected, a stronger link was found between more violent types of pornography and sexual aggression.¹⁴² However, there is also consistent data regarding similar effects from other, less violent, types of pornography.¹⁴³ Interestingly, behavioral aggression was not linked to mere nudity depictions.¹⁴⁴ This could illustrate, once more, the problems associated with the obscenity framework.

Additional studies have indicated that men who watch pornography frequently, as well as men who watch more violent pornography, are more likely to report that they would sexually harass or assault a woman if they knew they were not at risk of being caught.¹⁴⁵ This research also reveals that these men are more likely to perpetrate sexual coercion and aggression.¹⁴⁶

Similar to the mental effect on pornography users, studies have also traced a link between pornography and sexual aggression among children. A Canadian study examined teenagers at the average age of fourteen, and found a correlation between frequent use of pornography and the conception that it

140. Gert Martin Hald et al., *Pornography and Attitudes Supporting Violence Against Women: Revisiting the Relationship in Nonexperimental Studies*, 36 *AGGRESSIVE BEHAVIOR* 14, 18 (2010).

141. *Id.*, at 18.

142. See generally Neil M. Malamuth et al., *Pornography and Sexual Aggression: Are There Reliable Effects and Can We Understand Them?*, 11 *ANNUAL REVIEW OF SEX RESEARCH* 26 (2000).

143. *Id.* at 51-52; See Vanessa Vega & Neil M. Malamuth, *Predicting Sexual Aggression: The Role of Pornography in the Context of General and Specific Risk Factors*, 33 *AGGRESSIVE BEHAVIOR* 104 (2007).

144. See Mike Allen et al., *Exposure to Pornography and Acceptance of Rape Myths*, 45 *JOURNAL OF COMM'N.* 5 (1995).

145. See e.g., Foubert et al., *supra* note 56, at 222.

146. Malamuth, *supra* note 88, at 580. See also, Joetta Carr & Karen VanDeusen, *Risk Factors for Male Sexual Aggression on College Campuses*, 19(5) *J. OF FAMILY VIOLENCE* 279, 286 (2004).

is acceptable to pin a girl down to have sex.¹⁴⁷ A different study examining boys and girls between the ages of eleven and sixteen-years-old in the United States, found that increased exposure to R and X-rated movies is connected to stronger acceptance of sexual harassment.¹⁴⁸

The Commissioner of the Office of Children in the United Kingdom issued a report in 2011 assessing the effects that exposure to pornography has on children. The report mapped most of the writing and closely examined 276 scholarly works on the subject.¹⁴⁹ It concluded that there is sufficient evidence to determine that access and exposure to pornography is linked to unrealistic attitudes regarding sex, beliefs that women are sex objects, and to less progressive gender role formation.¹⁵⁰ Additionally, the report found that “[c]hildren and young people learn from and may change their behavior [due to] exposure and access to pornography.”¹⁵¹

2. Medicalizing These Effects

The data found within the immense body of work done throughout the years demonstrates an undeniable link between exposure to pornography and an inclination toward violence, sexual aggression, and sexism. But one must ask whether and if so how these behavioral patterns and attitudes are relevant to a health framework? Traditionally, misogyny, sexual aggression, and sexual violence have not been seen as a basis for health

147. James Check, *Teenage Training: The Effects of Pornography on Adolescent Males*, THE PRICE WE PAY: THE CASE AGAINST RACIST SPEECH, HATE PROPAGANDA, AND PORNOGRAPHY 89, 90-91 (Laura Lederer & Richard Delgado eds., 1995).

148. See Jeremiah Strouse et al., *Correlates of Attitudes Toward Sexual Harassment Among Early Adolescents*, 31 SEX ROLES 559 (1994).

149. See generally, Miranda Horvath et al., *Basically... Porn is Everywhere: A Rapid Evidence Assessment on the Effects that Access and Exposure to Pornography Has on Children and Young People* (Oct. 23, 2013), [http://www.cypnow.co.uk/digital_assets/BasicallyporniseverywhereReport\[1\]_copy.pdf](http://www.cypnow.co.uk/digital_assets/BasicallyporniseverywhereReport[1]_copy.pdf).

150. *Id.* at 7, 12.

151. *Id.* at 33. See also, Flood, *supra* note 136 (providing an elaborated review on the different studies on the harmful effects pornography have on children).

attention.¹⁵²

However, the traditional construction of a “health-related issue” is not static, nor should it be. Challenging the traditional boundaries of the concept of health is an important project, and one that has the ability to adjust this concept both to new information and voices that were not part of the original formulation of what is deemed a health issue. This, of course, is not a new project. Feminists and members of the LGBTQIA community, for instance, have challenged the medical system many times, in an effort to *exclude* behaviors, sexual orientations, and life choices from the conceptual boundaries of health.¹⁵³ But such a project can, and should, operate in two directions. Challenging the boundaries of health can also be done by focusing on the areas that the medical system refuses to acknowledge as problematic to the health and well-being of individuals and society. The reality where sexism, aggression, and a tendency toward violence against women are not considered to be a problem affecting the well-being of men or the health of the public is a result of the political powers that have shaped both the current definition of, as well as the societal discourse surrounding, health.

In order to establish this argument it is worth dedicating some additional words to the political nature of health, along with the *possibilities* that this political nature entails.

As previously mentioned, there is a rich body of literature dedicated to the political foundations of the health system.¹⁵⁴

152. Some articles view the *effects* of sexual aggression or misogyny as health issues, but not the tendency to misogyny or sexual aggression in and of itself. See, e.g., Carol E. Jordan, et al., *Violence and women's mental health: the impact of physical, sexual, and psychological aggression*, 6 ANNUAL REVIEW OF CLINICAL PSYCHOLOGY 607 (2010), Rebecca Campbell, et al., *The co-occurrence of childhood sexual abuse, adult sexual assault, intimate partner violence, and sexual harassment: a mediational model of posttraumatic stress disorder and physical health outcomes*, 76(2) JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 194 (2008) and Alyssa N. Zucker and Laura J. Landry, *Embodied discrimination: The relation of sexism and distress to women's drinking and smoking behaviors*, 56(3-4) SEX ROLES 193 (2007).

153. See, e.g., Dean Spade, *Resisting Medicine, Remodeling Gender*, 18 BERKELEY WOMEN'S L. J. 15, 16, 18 (2003).

154. See *supra* pp. 123-129.

The realization stemming from the understanding that health is also a product of political powers could, theoretically, be translated into a deconstruction of the very concept of health, and the denial of the legitimacy of the medical system altogether. At the very least, it could serve as a call for reducing its power and reach.¹⁵⁵ This perception is based on a dichotomized understanding of health and politics.¹⁵⁶ According to this dichotomy, any and all evidence of a connection between health and politics fatally undermines the validity of the medical system. To the contrary, I argue that political power is inherent to any form of decision-making or designing of the boundaries and definition of health. To think that any aspect of health or medicine exists in a sphere evacuated of politics is itself highly naïve.

Acknowledging the inherent role that politics play in the very notions of health and public health is useful in providing a *justification for redefining it*. An action of reclaiming the field of health, which focuses not only on exclusion but also on *inclusion* of “hazards,” can provide powerful tools to those who were not part of its original creation and shaping in order to engage in the redefining of health and not only in its elimination from different areas of life. There is power and potential in saying what medicine *should* look like, not just what it should *not*.

Over the years there have been too few attempts to broaden the definition of health, especially public health, in order for it to accommodate different social issues. This approach was called the “Human Rights as Public Health” approach, and is used to describe discussions on health with relation to various issues

155. See IVAN ILLICH, *MEDICAL NEMESIS* 84, 104-05 (1976); Renée C. Fox, *The Medicalization and Demedicalization of American Society*, 106(1) *DAEDALUS* 9, 12 (1976); Renée C. Fox, *The Medicalization and Demedicalization of American Society*, 106(1) *DAEDALUS* 9, 12 (1977); Mark Rapley et al., *Carving Nature at its Joints? DSM and the Medicalization of Everyday Life* in *DE-MEDICALIZING MISERY: PSYCHIATRY, PSYCHOLOGY AND THE HUMAN CONDITION* 2, 4 (2011).

156. A similar argument made is that “negative reactions to politics may be fashionable, it is important to remember that this fabric of social power provides a supporting matrix for most useful and important institutions and programs.” Thomas E. Schacht, *DSM-III and the Politics of Truth*, 40 *AMERICAN PSYCHOLOGIST* 513, 513 (1985).

such as war, poverty, diet, and lifestyle.¹⁵⁷

There are two ways of formulating the argument that the concept of health must address problems like sexism, sexual violence, and aggression toward women. The first recognizes health as a problem to individual persons. The second way is through a public health argument, recognizing health problems influence on society as a whole. In this section I will illustrate how both concepts can contain the problems previously discussed.

a. Individual Health: Health Risks to Men

Can we see problems such as sexism, violence, aggression toward women, the tendency towards sexual harassment, or violence as unhealthy elements on an individual level? According to the World Health Organization (WHO), "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹⁵⁸

An Article titled *Violence Requires Epidemiological Studies*, published in 1962, argued "it is [clear] that violence does not contribute to 'extending life' or to a 'complete state of well-being.'"¹⁵⁹ Indeed, the connection between violence and health occasionally surfaces in medical literature.¹⁶⁰ However, these

157. Mark A. Rothstein, *Rethinking the Meaning of Public Health*, 30 JOURNAL OF LAW, MEDICINE & ETHICS 144, 144 (2002). Compare, Jonathan M. Mann, *Medicine and Public Health, Ethics and Human Rights*, 27 HASTINGS CENTER REPORT 6, 9 (1997). Mann argues that the human rights approach to health provides the ideal framework for public health:

[M]odern human rights, precisely because they were initially developed entirely outside the health domain and seek to articulate the societal preconditions for human well-being, seem a far more useful framework, vocabulary, and form of guidance for public health efforts to analyze and respond directly to the societal determinants of health than any inherited from the past biomedical or public health traditions.

Id.

158. WORLD HEALTH ORGANIZATION, *Constitution, Preamble* 100 (1946).

159. Etienne G. Krug et al., *The World Report on Violence and Health*, 360 THE LANCET 1083, 1083 (Oct. 5, 2002).

160. See generally, Susan Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (1996).

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sorts of arguments usually frame the *consequences* of that violence as a health problem.¹⁶¹ In other words, it frames the holders of the right to health as the *victims* of violence, never those inflicting it.

Nevertheless, as part of the normative reframing of health, those who are “unhealthy” in a situation of violence and aggression are not only those suffering from its consequences, but also those causing it. While women are the victims of pornography-induced violence, the consumers of pornography suffer an attack on their health as well. It is my view that the overall well-being of individuals conflict with the elements of aggression, misogyny, and violence that increase through the viewing of pornography. As part of this critical challenge to the boundaries of health, I not only argue that men have the right to live without increased feelings of aggression and violence, but also that any usage that increases someone’s overall aggression, violence, and hatred toward half of the population is one that has the potential to harm the well-being of this individual.

There are a number of reasons to support this argument. First, it expresses the normative claim that violence has two victims — both of whom are entitled to the protection of health. Second, it encourages focusing on the mechanisms that create violence and aggression as the primary health hazards, instead of understanding violence in the context of health only as it rises to the surface. Put differently, this view allows society to create a more complex and comprehensive view on violence, as a product of social forces and not as a mere deviant or a naturally occurring phenomenon. Third, this understanding of primary health hazards can also have pragmatic advantages: It enables a health struggle that is mostly concerned with preventing violence instead of merely treating its casualties.

161. The WHO report on violence, for instance, focused on preventing violence through addressing its causes, but ascribed this responsibility to “legal reforms, strengthening of social protection services, education, and advocacy”, while the public health sector was mostly relevant in “assuring the availability of services for victims of violence.” Krug et al., *supra* note 158, at 1087 (echoing the framing of sexual aggression *effects* as health issues).

b. Public Health: Health Risks to Women and Society as a Whole

Another way of associating negative effects such as sexual aggression and sexual violence with the health discourse is through public health.¹⁶² This understanding of public health law as a framework in which public health is defined and in which policy questions are being decided can support the claim that there are legitimate grounds for arguing for its reshaping in order to comply with the interests of different groups in society.

The argument regarding public health is based both on harms caused to men as direct customers of pornography, as well as to women, as the victims of sexism and sexual violence. The public health argument regarding damage to men is relatively clear in light of the discussion presented so far. Indeed, if pornography causes its viewers traditional health-related effects, as well as other harmful effects on the individual level, from the societal perspective, there are legitimate reasons for constructing a public health argument regarding pornography.

This section focuses on another formulation of the public health discussion, from the perspective of the damages caused to women. Given that this argument is less self-explanatory, it is worth dedicating a few words to it.

The ability to argue that these effects constitute a public health problem stems from the fact that they create an

162. "Public health refers to all organized measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole." WORLD HEALTH ORGANIZATION, *Trade, foreign policy, diplomacy and health, Public Health* (Oct. 23, 2014), <http://www.who.int/trade/glossary/story076/en/>. Lawrence Gostin defines public health law as "the study of the legal powers and duties of the state, in collaboration with its partners (e.g., health care, business, the community, the media, and academe), to ensure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population), and of the limitations on the power of the state to constrain for the common good the autonomy, privacy, liberty, proprietary, and other legally protected interests of individuals. The prime objective of public health law is to pursue the highest possible level of physical and mental health in the population, consistent with the values of social justice." Lawrence Gostin, *A Theory and Definition of Public Health Law in Public Health Law Power, Duty, Restraint* (Lawrence Gostin ed., 2nd ed. 2008).

environment in which the safety and the physical and mental state of women is at greater risk. A misogynistic environment, where pornography users' level of anger and aggression towards women increases, is not a healthy environment for women. Under a paradigm that acknowledges both the significant role sexuality plays in our everyday lives and the significant ways in which gender hierarchies and behaviors shape our identities and experiences, it is clear why injecting violence, hatred, and aggression into those areas harms the well-being of men and women as a whole, and more specifically, women who are victims of such aggression.¹⁶³ Given that women have historically been excluded from the discussion regarding the definition of health and its boundaries,¹⁶⁴ there is a particular significance in redrawing this definition in a way that includes the needs and interests of women.

Weighing the risks that pornography creates for women, understood as a secondary effect of pornography, provides a relevant factor in framing the issue as a health hazard, which is not an uncommon practice in public health jurisprudence. Secondary effects caused by primary victims of health hazards are often taken into account in other areas of public health. Harm caused by "secondhand smoke" for example, has shaped many of the relevant health policies aimed at reducing the harm caused by tobacco.¹⁶⁵ Damages to secondhand smokers were

163. As Mary Calderone asked in an article from 1972: "From the public health point of view, of course, the question... [is] when and how eroticism may be so misplaced or misused by large enough numbers of people as to become noxious to the society itself, or to large groups of individuals within it." Mary S. Calderone, "Pornography" as a Public Health Problem, 62(3) AMERICAN J. OF PUBLIC HEALTH 374, 375 (1972).

164. See Ikemoto, *supra* note 121, at 71-2. See also 1 Inst. of Med., Women and Health Research: Ethical and Legal Issues of Including Women in Clinical Studies 8 (A.C. Mastroianni et al. eds., 1994) mentioning two forms of gender bias in the design and conduct of clinical trials – "observer error caused by adopting a male perspective and habit of thought" and "the tendency to use males as the standard and to see females as deviant or problematic, even in studying diseases that affect both sexes). Both have been thought to contribute to a predominant focus on men's health problems and on men as research participants." *Id.*

165. See Ronald J. Rychlak, *Cards and Dice in Smoky Rooms: Tobacco Bans and Modern Casinos*, 57 DRAKE L. REV. 467, 482 (2009) (the notion of collateral damage caused by health risks was also acknowledged with regard to alcohol and drugs);

previously at the center of a scientific and societal dispute, as is the case concerning damages to women as a result of pornography.¹⁶⁶

Given the research regarding the ways pornography affects women's lives, and the ability to link these effects to pornography, there is indeed both a justification for and good reason to acknowledge the unhealthy elements of sexual aggression and violence. This provides additional justification to frame pornography as a health hazard.

A similar move was recently carried out with regard to homophobia. Scholars argued that homophobia should be understood as a social or environmental condition that produces disease through a secondary mechanism.¹⁶⁷ This research illuminates the different ways in which homophobia creates anxieties and depression in LGBTQIA people and prevents them from receiving proper health treatment, while also hindering diagnosis and preventative treatment for diseases that are harmful to the community (such as HIV).¹⁶⁸ According to these studies, homophobia also affects the quality of health care afforded to LGBTQIA population by prejudiced doctors.¹⁶⁹ Boucai argues for the "shift from faulting homosexuals as the

Norman Giesbrecht et al., *Collateral Damage From Alcohol: Implications of 'Second-Hand Effects of Drinking' for Populations and Health Priorities*, 105 *ADDICTION* 1323, 1323 (2010); see also, Ricky N. Bluthenthal et al., *Collateral Damage in the War on Drugs: HIV Risk Behaviors Among Injection Drug Users*, 10 *INT'L J. OF DRUG POLICY* 25, 27 (1999).

166. Rychlak, *supra* note 164, at 484.

167. See Michael D. Boucai, *A Legal Remedy for Homophobia: Finding a Cure in the International Right to Health*, 6 *GEO. J. GENDER & L.* 21, 22-24 (2005) (citing, Scott Burris, *Gay Marriage and Public Health*, 7 *TEMP. POL. & CIV. RTS. L. REV.* 417, 420, 427 (1998)).

168. See generally, Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 *J. OF HEALTH AND SOCIAL BEHAVIOR* 38, 51 (1995) (discussing how "internalized homophobia, which relates to gay men's direction of societal negative attitudes toward the self; stigma, which experiences of discrimination and violence); see also, Ilan H. Meyer, *Prejudice as Stress: Conceptual and Measurement Problems*, 93 *AM. J. OF PUBLIC HEALTH* 262-63 (2003).

169. See Jean K. Peterson & Mary Bricker-Jenkins, *Lesbians and the Health Care System*, 5 *J. OF GAY & LESBIAN SOCIAL SERVICES* 33 (1996); Patricia E. Stevens, *Lesbian Health Care Research: A Review of the Literature from 1970 to 1990*, 13 *HEALTH CARE FOR WOMEN INTERNATIONAL* 91, 92 (1992).

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problem to implicitly faulting society for its problem *with* homosexuals. Homophobia, not homosexuality, is the obstacle where lesbian and gay health is concerned.¹⁷⁰

In conclusion, there are sufficient justifications for looking at pornography from a health perspective. Studies have clearly indicated the different harmful effects caused to viewers of pornography. These effects range from depression, anxiety, and addiction to an increase in misogyny, sexual aggression, and sexual violence. I have illustrated how each of these effects provides justification for applying the health approach to pornography and the understanding of pornography as a health hazard.

Moreover, throughout the discussion, I have focused on the two ways in which the political dimension of health plays a role in this question. In the first way, relating to traditional damages, I sought to explain why pornography has not undergone a process of medicalization. In the second way, relating to nontraditional damages, I sought to provide a tool to justify the redefinition of the boundaries of health, and to demand “a place at the table” when these new boundaries are being set.

In the next section, I examine the third way in which the political dimension of medicine plays a role: a warning sign that spotlights the potential dangers inherent in medicalization. Although I described this dimension briefly in the previous section, given the many risks associated with the medical system in general, and specifically with the system’s connection to sexuality, the issue is worth a deeper discussion, along with a look at the ways in which it could be resolved.

170. Boucai, *supra* note 166, at 23.

III. HOW SHOULD WE THINK OF PORNOGRAPHY AS A HEALTH PROBLEM? REFLECTIONS ON THE DECONSTRUCTION AND RECONSTRUCTION OF HEALTH

A. THE POTENTIAL RISKS OF MEDICALIZATION

As implied in the previous section of the Article, the connection between sex, sexuality, and the medical system is often harmful, especially toward women and LGBTQIA people. Indeed, the political nature of concepts such as “health” and “illness” were first and foremost an oppressive mechanism used to regulate nonconforming behaviors and bodies. Examining the shared history of the medical system and sexuality demonstrates how on many occasions, when given the possibility or mandate, the health system took it upon itself to correct nonconforming bodies or behaviors by adapting them to the known, existing patterns of what was deemed healthy.¹⁷¹ The *Diagnostic and Statistical Manual of Mental Disorders* [DSM] has, over the years, born witness to the medicalization of sexual orientation, nonconforming gender identity, and overt sexual behavior, all of which are understood today as legitimate ways of life, not pathologies or perversions.¹⁷² For these reasons, one

171. See MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: VOLUME 1: AN INTRODUCTION* 153 (1976).

172. See Susan R. Schmeiser, *Changing the Immutable*, 41 CONN. L. REV. 1495, 1520 (2009); Daniella A. Schmidt, *Bathroom Bias: Making the Case for Trans Rights Under Disability Law*, 20 MICH. J. GENDER & L. 155, 176 (2013); Marcie Kaplan, *A Woman's View of DSM-III*, 38(7) AM. PSYCHOLOGIST 786, 791 (1983). Homosexuality was removed from the DSM in 1974 See Spitzer, *The diagnostic status of homosexuality in DSM-III: a reformulation of the issues*, 138 Am. J. Psychiatry 210, 210–215 (1981). Similarly, the DSM V have replaced the definition of Gender Identity Disorder to the definition of Gender Dysphoria to reduce stigma against Transgender people. See Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 10 (2014). Finally, a recent proposal to add sexual addiction to the DSM-5 was denied. See Amanda Gardner, *New Diagnostic Guidelines for Mental Illnesses Proposed*, US NEWS HEALTH (Feb. 10, 2010) <http://health.usnews.com/health-news/family-health/brain->

might hesitate in medicalizing the problem of pornography-induced harms.

In the context of the medicalization of pornography usage, there are several specific dangers. First, as discussed above, one of the main risks that accompany any discussion of pornography is the risk of determining what is considered a “healthy sexuality.” Obviously, this risk is intensified through the medicalization of pornography because treating pornography as a health hazard provides the possible risk that the state will gain authority to censor any form of sexual expression that it deems unhealthy or risky to the public.

Indeed, the risk of providing the government with additional tools for censoring sexual expression can affect other types of pornography that do not necessarily cause the damages which have been outlined. Such types may have healthy and positive effects on individuals and groups.¹⁷³ Consequently, allowing the government to label certain sexual behaviors and manifestations as unhealthy bares the risk of harming marginal groups that explore and challenge the boundaries of sexuality.¹⁷⁴ Another risk is the potential medicalization of pleasure, which could potentially strengthen an overall approach that delegitimizes individual pleasure.¹⁷⁵ In the context of pornography, we face the problem of the discussion drifting from the possible harmful effects that result from pornography usage, to an overall stigmatization of pleasure and sexual behavior. This could possibly lead to a situation where the focus

and-behavior/articles/2010/02/10/new-diagnostic-guidelines-for-mental-illnesses-proposed.

173. Such as feminist, LGBT and BDSM pornography, which were mentioned in section I of this Article. As mentioned, these types of pornography provide a positive site for exploring sexuality outside of the hegemonic boundaries.

174. For an example of the dangers of such position regarding BDSM see Regina v. Brown 1 A.C. 212, 217-18 (Eng. H.L. 1993); Laskey v. United Kingdom, 24 Eur. Ct. H.R. 39, 41 (1997). See Pat Califia, *Women and Pornography* 284(1704) HARPER'S 4 (1992) (providing a feminist defense on BDSM); Pat Califia, *Feminism and Sadoomasochism*, 12 HERESIES 30, 31-34 (1981); see also, COLLECTIVE, SAMOIS, COMING TO POWER: WRITINGS AND GRAPHICS ON LESBIAN S/M, (1987).

175. Reid *supra* note 36 (discussing the dangers associated with such delegitimization).

of health policy, originally designed to treat the objective harms of pornography, results in banning harmless ways in which individuals seek sexual pleasure.¹⁷⁶

A good example can be found in the politicized and controversial reports issued on pornography and previously discussed in this Article.¹⁷⁷ The reports, which described anal or casual sex as negative consequences of pornography usage, provide us with a valuable warning sign. Such problematic framing of health and sexuality can lead not only to bans on harmless pornography, but also to the medicalization of anal or casual sex as health problems in need of treatment.

The last example leads to a second type of potential risk that stems from medicalizing pornography: the treatment of healthy people as sick. Treating pornography as a health hazard could lead to the medicalization of all viewers, consumers of pornography, or even to the medicalization of the women suffering from misogyny or sexual aggression. However, it goes without saying that not all pornography viewers suffer from the effects mentioned in this essay. In addition, although a sexist environment with high levels of aggression towards women is not a healthy environment for women to live in, it does not follow that women in such a society are sick or in need of treatment. However, the medicalization of pornography puts them at risk of unnecessary overtreatment, as well as at risk of being labeled as sick or addicted,¹⁷⁸ when they do not perceive themselves as such.

176. See *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 740 (5th Cir. 2008); see also, *Williams v. Attorney Gen. of Ala.*, 378 F.3d 1232, 1233 (11th Cir. 2004) (illustrating the dangers in medicalizing pleasure; while it sometimes provides a good strategy before the court, it promotes a discourse that denounces sexual pleasure as a justified and legitimate aim in and of itself).

177. Meese Report, *supra* note 81; SURGEON GENERAL REPORT, *supra* note 81.

178. Recall the discussion regarding the way addiction was used to discipline behaviors that were conceived as "abnormal" by the state: "While popular usages of addiction are useful for examining the diverse discourses that people use to make sense of their own lives, including those who identify or have been identified as addicts, the term remains a product of the medical establishment and continues to exert considerable disciplinary force on the body." Clarkson & Kopaczewski, *supra* note 104, at 130.

There is no doubt that any medicalization process in general, and the medicalization of pornography, in particular, carries great risks. However, acknowledging these risks should not lead to ignoring the large amount of evidence regarding the harms associated with pornography, but rather to considering it carefully when drafting a health policy, vis-à-vis pornography. In the following section, four guidelines are presented to dictate the ways in which a health policy regarding pornography should be drafted in order to avoid the aforementioned risks.

B. AVOIDING THE POTENTIAL RISKS

In light of the great risks associated with the medicalization of pornography, as well as the “healthification” of sexuality, one should ensure that the main tools of a health policy do not censor or ban pornography when beginning to draft the guidelines for a potential health policy. The problems of censorship detailed in this Article, along with the near impossibility of censorship in the era of the internet, makes this tool harmful as well as inefficient. Therefore, the overall goal of any health policy aimed at dealing with the damages from pornography should be designed as a harm reduction policy instead of as an attempt to eliminate the hazard all together.

However, defining the proper health policy as based on harm reduction is not the end, but rather the starting point of a discussion on how to avoid the potential risks from framing pornography as a health hazard. The following are proposed guidelines for drafting a safer health policy, which can avoid most of the previously-mentioned risks. I also offer relevant examples from other realms where the connection between sexuality and the health system have presented dangers worth examining.

These guidelines should not be seen as hard and fast rules, but rather as guiding principles that should direct the formulation of policy in the right direction. Not every guideline can be carried out to the fullest extent, and in some cases they may even collide. However, taking them all into consideration,

depending on the circumstances, the guidelines may provide a useful foundation for concrete policy. Finding the exact formula for such a health policy is not the aim of this essay. My intention is only to provide a new conceptual framework for pornography, as well as structure the ways in which we ought to think within such a framework.

1. *Correcting Society Instead of Correcting the Body*

The first thing that should guide any future health policy is to prioritize policies that aim at correcting society instead of correcting the body. The shift from medicine that focuses on correcting the body, to that which focuses on a change in society, is most associated with Disability Legal Studies.¹⁷⁹ The Disability Legal Studies approach sees disability as something that is not inherent to the body, but rather created through a confluence of individual and society, and is mostly understood as a result of the social foundations that create and define disability.¹⁸⁰ In other words, in an entirely accessible society, disability would not be understood in the same way it is today.

Therefore, this approach is focused on reconstructing society in a way that would include and adapt to people with disabilities, rather than focusing on providing individual assistance to people with disabilities in order to “correct” their bodies or force them to adapt to “normal” society as much as possible.¹⁸¹ Such an approach provides a useful tool for future health policies. However, the problematic collision between medicine and bodies stands as a powerful warning sign against the notion that we can resolve the dissonance between the individual and society by directing health policies at society rather than at human bodies is indeed a powerful one.

179. See Sagit Mor, *Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy*, 18 YALE J.L. & HUMAN. 63, 64 (2013) (discussing the formulation of the disability legal studies approach).

180. *Id.* at 69-70.

181. See WENDELL, *supra* note 159.

Drawing from this approach, *mutatis mutandis*,¹⁸² can lead to fruitful conclusions regarding pornography-related health policies. Health policies aimed at correcting society can focus on preventing health problems through changes in societal structure or social phenomena rather than dealing with treating their negative implications on the individual. Analogous to the Disability Legal Studies' ideal of a completely accessible society—a society that promotes gender equality, as well as an open discussion and education regarding sex and sexuality from an early age (earlier than the average age in which children are exposed to pornography, according to current data)—can create a different context in which pornography operates, thus changing its meaning and its role in society.¹⁸³ These changes should be prioritized in the same manner that other problems seen as “epidemics” are being treated.

There are a few possible examples for this view of health. First, it resembles the shift in health policies regarding homophobia, as discussed earlier.¹⁸⁴ A similar argument regarding the shift from individuals to society can be seen vis-à-vis transgender health policies.¹⁸⁵

This principle further assists us in avoiding some of the

182. *Mutatis mutandis* means “[a]ll necessary changes having been made; with the necessary changes.” BLACK’S LAW DICTIONARY (9th ed. 2009). Most importantly, while the disability legal studies rest on the claim that people with disabilities should be accepted as they are, with no moral judgment, *id.* at 43, 81, my argument is based on the notion that the negative effects of pornography are, in fact, negative, and ideally would cease to exist.

183. Susan Wendell, *supra* note 159, at 55-56; The Report of the COMMISSION ON OBSCENITY & PORNOGRAPHY, *supra* note 131, at 32.

184. See Boucai, *supra* note 166, at 23.

185. See Christoph Hansmann, *Counting Us In: Problems and Opportunities in Health Research on Transgender and Gender Nonconforming Communities*, 8 SEATTLE J. FOR SOC. JUST. 541 (2010) claiming that,

The literature on transgender health that is currently available focuses on health disparities, disease prevalence and incidence, and particular associations of trans identity with negative health outcomes (such as experience of violence). This contrasts with earlier studies that explored the etiology of transsexuality itself, and its relationship to, or overlap with, homosexuality. In other words, these studies have shifted from focusing on a *disease* to focusing on a *community*.

Id. at 543.

criticism regarding the concept of addiction. As mentioned previously, one argument made against this discourse is that the notion of addiction is a myth aimed at providing a simple explanation to certain behaviors (in our case, pornography usage), in order to avoid a more thorough and complex explanation for what causes the behaviors.¹⁸⁶

Constructing a health discourse that shifts from framing addiction as an individual problem, to dealing with the societal mechanisms that enable addiction and abusive pornography, would provide a thorough and complex treatment that focuses on the *causes* of addiction or behaviors perceived as addiction. In other words, linking the problems associated with pornography with overall societal problems regarding the construction of gender roles, as well as the taboo and shame around areas of sexual pleasure, would weaken the ability to characterize some groups in society as addicts (who are exclusively responsible for their situation), thus framing their situation within a larger context.

2. Damage-Based Approach Instead of a Morality-Based Approach

This guideline may be most relevant to the potential danger of describing pornography as a health problem. As is clear from the discussion above, one major risk revolves around the medical system attempting to describe "healthy sexuality," and the framing of "promiscuous" sexual behavior as a health problem stemming from pornography. This difficulty may be recognized through the difference between morality-based medicine and damage-based medicine. Under this guide, the health policy on pornography should focus as much as possible on objective damages, rather than on the need to enforce moral values regarding legitimate sexuality. This, of course, is easier said than done. The distinction between morality-based medicine and damage-based medicine is not always obvious.

186. Richard Hammersley & Marie Reid, *Why the Pervasive Addiction Myth is Still Believed*, 10 ADDICTION RESEARCH & THEORY 7, 9-10, 12-13 (2002).

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Most health policies aimed at enforcing moral values are not perceived by their advocates and promoters as such.¹⁸⁷ However, one possible manifestation of this guideline could be through designing health policies that strive to target *subjective* damages (i.e. damages described as such by those suffering from them).

A good example of the importance of this guideline may be found in the different medical approaches for addressing women who experience pain from sexual penetration. Traditional medicine diagnosed this phenomenon as a medical problem, offering treatment in the form of medicine and physiotherapy therapy.¹⁸⁸ Feminist critics argue that this kind of medical approach is actually morally-based and focuses on enforcing heteronormative assumptions according to which a healthy, functional body is one that can be easily penetrated.¹⁸⁹ These critics argue that the inevitability of penetration in intercourse should be questioned, and that medical treatment should strive to accommodate women's preferences when dealing with this condition—either by avoiding penetration or by receiving treatment for the pain it involves.¹⁹⁰ Therefore, this critique recognizes the subjective damage experienced by the patient, if such damage is even perceived.

This principle applies to the case of pornography as well. The formulation of a treatment for the problems caused by pornography should be based itself on subjectively experienced injury. Thus, the naming of casual, or anal sex, as adverse effects resulting from using pornography should be rejected.

187. Indeed, the past inclusion of homosexuality in the DSM illustrate the fact that the supporters of the approach did not consider their actions as promoting merely moral value, but instead as reacting to a concrete danger faced by the individual. Interestingly, groups aimed at "curing" or "treating" homosexuality exist also today. See e.g., HOMOSEXUAL ANONYMOUS, www.homosexuals-anonymous.com (last visited Jan. 10, 2015).

188. See Janine Farrell & and Thea Cacchioni, *The Medicalization of Women's Sexual Pain*, 48 J. OF SEX RESEARCH 328, 333 (2012).

189. *Id.*

190. *Id.* I first became aware of this critique thanks to Sharon Orshalimi, who is currently writing about this issue in Israel, and I am in debt to her for this point.

Instead, the focus should be on pornography-related effects, such as anxiety, depression, or addiction—described by those who suffer from them as problematic and unwanted—as well as damages to women from a violent, sexist society. This difference is relevant when designing informational programs or warnings regarding the possible harms of pornography, or when promoting treatment programs for its adverse effects.¹⁹¹

3. *Voluntary treatment Instead of Coercive Treatment*

One of the most dangerous aspects of the medical system is its ability to force treatment on individuals. The history of unnecessarily forced treatment for nonconforming sexual behavior is long and painful, from clitoris and ovary removal as a cure for nymphomania,¹⁹² to “reparative treatments” such as medication and electric shocks for gay people,¹⁹³ and even present-day operations on intersex infants.¹⁹⁴

At the same time, there is also evidence of the oppressive consequences of the medical system’s refusal to provide treatment to those seeking it. One example is transgender people seeking surgery.¹⁹⁵ The comparison between the medical system’s forced sex-change operations on intersex people to its refusal to administer similar operations for those who ask for them, provides us with a clear illustration of the importance of this guideline. The lesson to be learned from the examples

191. I realize that the mere framing of pornography as a health problem does not automatically lead to federal programs and funding. However, such framing is the necessary first step towards informational and treatment programs. Given this possibility, there needs to be a detailed analysis on how such programs should and should not look, to inform those who might advocate for such governmental intervention.

192. See Carol Groneman, *Nymphomania: The Historical Construction of Female Sexuality*, 19 *SIGNS* 337, 341 (1994).

193. Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in *HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY* 149, 152 (John C. Gonsiorek & James D. Weinrich eds., 1991).

194. See Nancy Ehrenreich & Mark Barr, *Intersex Surgery Female Genital Cutting, and the Selective Condemnation of Cultural Practices*, 40 *HARV. C.R.-C.L. L. REV.* 71, 106 (2005).

195. Spade, *supra* note 152 at 16-19.

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provided is that we must construct a medical approach that will provide medical assistance to pornography users and addicts who seek treatment, while not enforcing it on those who do not ask for assistance.

This tension surfaces in contemporary medical debates over pornography addiction. One positive approach, which echoes the principles discussed here, criticizes definitions of pornography addiction that are based on objective measures, such as the number of hours spent on pornography usage a day, and instead focuses on subjective features, such as people's reported inability to control their usage and unpleasant feelings that accompany viewing, or an individual's self-perceived addiction.

4. Increasing Opportunities Instead of Decreasing Opportunities

The final guideline through which health policies should be formulated is the viewing of possible health policies through the framework of opportunities. Health approaches that increase the range of possibilities to the patient are favorable to those that limit this range, especially regarding controversial topics such as sexuality. A wider range of possibilities allows individuals to make better choices regarding their lives.

A good example of this guideline's importance is provided by the intersex struggle against the medical system. As previously mentioned, one of the main difficulties that intersex individuals face are the sex-determining operations performed on them at infancy. In recent years, an alternative approach for treating intersex people has supported the position that both parental and physician discretion regarding such operations will be limited, delaying the decision regarding whether or not to operate to a time when the intersex person can decide on their own.¹⁹⁶ This view, "the moratorium approach," is based on the

196. See Julie Greenberg, *International Legal Developments Protecting the Autonomy Rights of Sexual Minorities: Who Should Determine the Appropriate Treatment for an Intersex Infant*, 29 *ETHICS AND INTERSEX* 87, 90 (2006).

same moral principal that health policies should also be chosen in accordance with their ability to increase opportunities and choices.

The lessons learned from the intersex case should be applied to the medicalization of pornography. One possible way of putting this principle into practice is by viewing *information* as necessary for the individual in order to increase his or her opportunities. One could argue, relying on the discussion above, that approaches that focus on limiting pornography merely deny patients opportunities, while health policies that provide pornography users with relevant information regarding the risks involved with such usage is favorable. Information could be passed via warning labels on pornography products, federal health information campaigns or educational programs in schools.

Another possible argument is that due to its addictive quality, society must enhance regulations on child exposure to pornography, much as we do with cigarettes and alcohol, in order to truly increase their opportunities as adults.

These four guidelines provide a starting point for any health policy designed to treat and reduce the harms associated with pornography. The ways in which we translate the understanding of pornography as a health matter should take into consideration the above principles, in order to avoid most (if not all) of the dangers inherent to the combination of medicine and sexuality.

These health-related pornography initiatives can be achieved by reconstructing health and health policies that refrain, as much as possible, from medicalization of the body or an attempt to “correct” it, and instead focus (when possible) on societal changes that may diminish individual risks and harms. Policies must be directed at treating subjective damages reported by potential patients, rather than on moral perceptions of sex and sexuality. Health officials and policymakers should also seek to identify individual needs—thus avoiding involuntary treatment—yet still provide treatment when sought

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by patients. Finally, we should construct health policies that ideally increase an individual's range of opportunities and possibilities—ones that will enable patients to make optimal decisions regarding their lives.

CONCLUSION

This Article began by exploring the ways in which the internet has changed pornography. Indeed, the internet, with its lightning-fast speed and endless flow of new information, has provided society with the ability to experience constant and unlimited possibilities. However, societal norms, power dynamics, and moral values have not advanced at the same pace as technology. This gap has created the context in which pornography exists today, which in turn has generated unique difficulties in dealing with pornography's harmful effects.

Within this context, this Article has confronted two great dangers: those that arise as a result of the hazardous effects of pornography on individuals' health, as well as those dangers associated with its medicalization. The solution to this confrontation is the tailoring of a health policy to address the potential harm caused by pornography, without causing a greater overall harm to society.

Connections exist between pornography, politics, and health. The political nature of health has influenced three possible connections between health and pornography. First, it provided an explanatory tool, illustrating the possible reason why the contemporary discussion on pornography is distant from the medical system. Second, it provided a justification for the reshaping and boundary pushing of the definition and concept of health. Finally, the political nature of the concept of health has provided a warning sign, allowing for the critical examination of the danger zone in which a project of medicalization might well enter.

The discussion about the possible connections between health and pornography has also shed light on another, less apparent, intersection—that of health, pornography, and

gender—through the examination of problems arising from “gendering” the current discussion on pornography, mainly in the context of its possible connection to both the medical and the legal systems. The connection between gender and pornography has placed several challenges before the anti-pornography movement. First, it created strategic problems, both regarding the lack of gender equality arguments to address obstacles such as freedom of speech and causation, or provide the legislator with sufficient tools for intervention, as well as its inability to gain support from other groups who do not identify with the gender argument as is worded by the movement. Second, the gender perspective on pornography has shifted the focus away from a gender-neutral realization of pornography’s effect on men. On the other hand, I have also presented two aspects in which the connection between pornography and gender in the context of medicalization are important. I argued that the realization that the context we are speaking of is a struggle for gender justice, and as such is a political struggle, provides us with important justifications and motivations in reframing the discourse regarding health so that it includes women’s interests. Also, by acknowledging the strong sexual character of pornography, I was able to place it on a historical timeline of meeting points between the medical system and sexuality, thus exposing the unique dangers that often accompany such connections.

Indeed, only through acknowledging the complex intersections between the areas of health, gender, and politics with the current problems of pornography, will we be able to reach a well-adjusted solution to these problems discussed in this Article.