Democracy and Pornography: On Speech, Rights, Privacies, and Pleasures in Conflict

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This article investigates the intersections of secrecy/interiority, the state, and speech/expression, and their implications for the rights of women. I propose a critique of commercial pornography that reanimates MacKinnon's claim that pornography and American democracy are in a relationship of mutual reinforcement, and incorporates poststructuralist (Lyotard, Baudrillard, and Butler) commitments to secrecy and unintelligibility, as well as their role in the production of pleasure.

Maybe she's actually a vagabond, a suburban roughneck, with neither roof nor law to guide her, without marital obligations, sleeping with whomever, wherever, eating whatever, and that it had been from this misfortune that she had truly walked and laughed alike. The life one really leads in that house on the hill, or elsewhere, in identical houses, no one knows, not even the judge. (Duras 1985/2006, 12)

SECRET

In conditions of totalitarianism, the state begins from the assumption that its subjects do not surrender unconditionally. They harbor secrets. For this reason, force may be used, secret police may be dispatched, phones may be bugged, citizens may be imprisoned and interrogated, and so on. The democratic state, in contrast, wants not to use any of these coercions and thus requires a political subject who is completely transparent and committed, with nothing hidden, nothing held back. Lyotard's critique of democracy thus rests on the notion

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that in every individual subject of rights there is a “secret,” a part of existence that is absolutely not subject to anything. It is not our humanity, but the condition of humanity. “Rights and respect for rights are owed to us only because something in us exceeds every recognized right” (Lyotard 1993/1997, 121). Following Nina Berberova, he contrasts the “secret life” with the “general life,” which is another name for how contemporary democracy, rooted in liberal humanism, understands the political subject to whom basic rights are owed. The “general life” position begins from the assumption that a whole, self-contained, self-identical individual pre-exists democratic relations, and modern democracy is “haunted by the suspicion that there is something that escapes [it], that might plot against [it]. [Democracy] needs the whole soul, and . . . need[s] it to surrender unconditionally” (118).

The democratic state denies the subject her secret existence, Lyotard continues, by pressuring her to exert her rights at all times, to be exhaustively, absolutely public. One must be crazy not to exercise the rights one has! “Why didn’t you say this, do that? You had the right!” Clearly, this pressure to exercise one’s rights at all times is in direct conflict with secrecy. “If you are not public, you disappear; if not exposed as much as possible, you don’t exist. Your no-man’s-land is interesting only if expressed and communicated. Heavy pressures are put on silence, to give birth to expression” (1993/1997, 120). We should not be surprised by the recent obsession with self-expression: from the publish-or-perish system of academic writing to reality TV and talk shows on which people air their most private problems (Dr. Phil, for instance). Lyotard would argue that these fit perfectly within the modern democratic framework, where all secrets are put on display.

In contrast to this kind of politics, which demands that the subject becomes ever more public and expressive, Lyotard calls for the political accommodation of that which is secret, singular, and mute.1 I am interested in these intersections of secrecy/interiority, the state, and speech/expression, and their implications for the discourse around the rights of women, particularly the most feminized women, those figured as the most abject and in need of protection by supranational agencies. In the course of exploring these intersections, I hope to offer an alternative reading of Lyotard’s potential significance for feminist theory to the well-known critique offered by Seyla Benhabib, who reads his work on paralogy and the differend as potentially neo-conservative (Benhabib 1984). At the same time, I hope to disrupt the way Sara Ahmed conflates Lyotard and Baudrillard and poses her notion of “feminist practice” against a certain model of the subject that she takes them to have in common (Ahmed 1996). Lyotard’s later work challenges both these critiques. Furthermore, it offers a compelling possibility for theorizing that most pressing of sites where debates concerning protection (from abjection) and rights (to speech) meet: commercial pornography. I propose an outline of a critique of pornogra-
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phy that follows MacKinnon’s original claim that pornography and American democracy are in a relationship of mutual reinforcement, with a commitment to the poststructuralist valuing of secrecy and uncertainty, and their role in the production of pleasure.

Private

Whether one espouses the legal model of rights as something we have, like other possessions, or Iris Young’s model of rights as something we do, as relationships that enable or constrain action (Young 1990), privacy has never been merely one right among others. The category of the private has been particularly significant for debates concerning women as subjects of rights, because the construction of the feminine as belonging properly to the private, domestic sphere has historically caused the exclusion of women from civil society. What is the relationship between Lyotard’s notion of secrecy and modern privacy law? It is important to note that Lyotard’s secrecy is not the same thing as “the home” in Derrida’s recent work on the politics of hospitality (Derrida 1997/2000). In Derrida’s hands, the state and the home are both subject to the same logic, in which the safe, interior space that is mine and in which I rightfully welcome the other is conditioned by the doors and windows through which intruders might enter, by phone calls from telemarketers, and by packages of anthrax in the mail—in short by the possibilities of unwelcome incursions from the outside. In both state and home, the ipseity, that is the possibility of hosting a guest, is conditioned by this permeability of boundaries, the possibility of the intruder. Lyotard, however, describes a secret space in which I precisely cannot host another. The secret self is not something I can give, and thus would be described as neither “mine” nor “secret” according to the Derridean logic. It is this irreducible, we might say, undeconstructable, absolute “privacy,” utterly heterogeneous to the order of the public, or the state, that Lyotard poses as a condition of the subject that bears (or performs) rights.

Privacy is figured in multiple ways across privacy law and by the critics of privacy law. The right to privacy as formulated in the Roe v. Wade decision is one emblematic example. The Supreme Court found that the criminalization of abortion was inconsistent with the constitutionally guaranteed right to privacy, and thus abortion was decriminalized and privatized in one and the same gesture. This gesture has been criticized considerably by feminist theorists, most notably Catharine MacKinnon (1987) and Mary Poovey (1992), as one of the central rights dressed up as “human,” but one that in fact excludes women in practice. Privacy understood as freedom from government allows existing patriarchal institutions and practices to continue uncompromised by government incursions and regulations. As MacKinnon puts it, privacy law “keeps some men out of the bedrooms of other men” (MacKinnon 1987, 102). And far
beyond Roe v. Wade, privacy as a negative freedom operates in international human rights documents concerning abortion. Human rights advocates interpreting abortion law in terms of private decisions about one's reproductive capacity, calling on both the International Covenant on Civil and Political Rights (Article 17(1)) and the American Convention on Human Rights (Article 11), which state that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation." However, MacKinnon writes, although privacy is supposed to be a fundamental human right, in heteropatriarchal practice, the law has protected the privacy of men at the expense of the privacy of women, shielding "the place of battery, marital rape, and women’s exploited labor" (101–02). Women themselves have no privacy, and this lack of privacy defines womanhood and the particular relationship of women to the domestic sphere. It is because the feminine is exhaustively defined by the domestic/private sphere—sexuality, childbearing and -rearing, domestic labor, caretaking, and so on—that the private sphere is "private" only for men. "Feminism confronts the fact that women have no privacy to lose or to guarantee" (100).

She points to an alternative, "positive" version of privacy, understood not as freedom from state incursions, but as the kind of privacy that makes autonomy and self-definition possible at all (MacKinnon 1987, 99–102). It is here, I propose, that she turns our attention to the political significance of a life radically apart from the "human" and outside of civil society. MacKinnon's critique of international human rights emphasizes the legal status of the women who are least situated like men—sex workers, disabled women, poor and illiterate women, battered women, and further: the victim who is also the criminal, like the incest victim who becomes a child abuser, the mother who kills her own children, and the serial-killing prostitute. She argues that because there are forms of violence that are wielded almost exclusively against women, particularly these "abject" women, and not against men, these systemic violences are not figured as violations of human rights. It is the fact that something happens to women and not to men that makes it not a human rights issue, but the concern of a special interest group (MacKinnon 1993b, 94–97). For example, sexual murder is considered to be a human rights issue only insofar as it is murder and thus deprives a gender-neutral subject of its life, but insofar as it is sexual murder—of which prostituted women are so often victims—it is no longer a human rights issue, but an issue of something like "women's rights."4

Thus, human rights discourse accommodates those women who are situated most like men. "Abject" women—who are at the same time the most feminized—are excluded from the category "human" when those systemic violences that affect them in particular are constructed as women's rights violations. This is because the subject of rights is constructed as public, and thus...
violence committed in the private sphere is rendered invisible. For MacKinnon, the problem inheres in the very logic of gender, a logic that states that women are both naturally different from men and worthy of equality (something we hear a lot these days). The difference-and-equality approach results in women being treated more and more equally to men only when they are able to be less and less different from them. In response to this, MacKinnon argues that the two concepts are mutually exclusive: if we wish to hold onto the difference claim, we must surrender the claim to equality. If we desire equality, on the other hand, we must give up difference (MacKinnon 1987, 36–37). Accordingly, much of her work focuses on what happens to women in the eyes of the law when they are the least situated like men, when they are at their most “feminine” in the sense of being feminized, othered in an androcentric legal order and social imaginary—prostitutes, pornography workers, domestic workers, victims of incest, rape victims, and subjects of abortions. When feminized, women become invisible to the law because the protections they need are of the order of the private (MacKinnon 1987, 85–92; MacKinnon 1993b, for instance).

**Rights Beyond Ipseity**

Since the 1993 World Conference on Human Rights (known as the Vienna Conference), during which the international community officially acknowledged that women were systemically marginalized in the United Nations human rights system, feminist political thought has remained actively critical of human rights discourse (Gallagher 1997, 283). Early critiques stated that the category “human” disappears gender—in other words, that in spite of the *de jure* recognition of women, human rights documents and conventions suffer from a *de facto* androcentrism, and thus erase women as a group. Although the critiques become increasingly refined, liberal feminism continues to aim for the inclusion of women in the system, or the extension of the system to women. Other feminist critics of human rights argue instead that a substantive redefinition of the subject of human rights is required. MacKinnon is among them, showing that (1) inclusion is impossible as long as we continue to define women as different, or as not-men and (2) recognizing the humanity of women does not guarantee the protection of women’s rights in a social order where some humans dominate others (MacKinnon 1987, 32–45, 93–102). As Sara Ahmed writes, any attempt at inclusion or extension necessarily performs a critique of the system itself, showing the system to have been exclusive in the first place:

If the concept of rights has to be extended, then its status as universal and self-evident is called into question. Rather than
being intrinsic, they become at once historically produced and defined along exclusive and partial criteria (in this case the criteria as shown to be gendered). Rather than the subject being unified and transhistorical, it becomes at once divisive or differential and historically embedded. (Ahmed 1996, 74)

Beginning with this definition of the feminist critique of human rights, Ahmed then proposes robust critical readings of both Lyotard and Baudrillard, posing them against what she calls “feminist practice.” She specifically takes on Lyotard’s concept of paralogy and the agonistics of language games:

The problem with Lyotard’s paralogy is thus the same problem with free market theories. In its very aestheticism and formalism it fails to recognize that local situations or events are overdetermined within broader structures or social relations characterized by systematic inequality, such as is represented by the gender division. It refuses to recognize, and even conceals, that subjects are always already differentiated from each other in terms of power and resources. . . . (85–86)

This position echoes Benhabib’s characterization of paralogy as a model of society that takes conflict to be a matter of “play” objects to Lyotard’s use of the gaming metaphor and offers what may be described as a reprimand: “there are times when philosophy cannot afford to be a ‘gay science’” (Benhabib 1984, 124). But she and Ahmed forget two important aspects of Lyotard’s work. First, the charges of aestheticism, formalism, and “gay” play overshadow the fact that for Lyotard the differences among language games are always a matter of justice, precisely because they present a conflict, and conflict invariably demands judgment. “Paralogy as an internal form of legitimation” does not mean that language games should be left to work out their differences internally and organically, and that whatever results will be just—as in the case of the free-market model. On the contrary, Lyotard recognizes that androcentrism presents itself as meta-discursive, universal, which is precisely the source of its power (Lyotard 1998). As much as Benhabib and Ahmed appear to reject Lyotard’s metaphors of games and polytheism, they forget how freely he reverts to the use of the word “terror” in the same contexts. Androcentrism is terror because it does not recognize and cannot even “see” paralogy. Paralogy means there is no meta-discursive, universal position from which to adjudicate the differences, which destabilizes androcentric power. Thus, paralogy is always—necessarily—concerned with differences in terms of power and resources.

Second, these characterizations speak to only one aspect of Lyotard’s work, the championing of paralogy. Lyotard’s critique of democracy and human rights emerges nearly a decade after Benhabib’s article and simultaneously with
Ahmed's. Like the redefinitions—or destabilizations—of the subject of rights that emerge from the feminist jurisprudence of MacKinnon and Poovey, Lyotard offers a rearticulation of the human to accommodate the inhuman, the abject, exiled, mute, opaque thing\(^6\) that is not subject to any rights. The inhuman appears here as a sort of necessary intervention in the discourse of the human on which the human rights tradition, with its grounding in Enlightenment ideologies, relies. Whereas the logic of the human attempts to disappear the inhuman, poststructuralist political theory attempts to articulate ways in which it not only exists, but acts in the world and conditions subjectivity.

In spite of the considerable differences between the ideological traditions in which American feminism and poststructuralism originate, I propose that American feminism may have been talking about something like the inhuman of poststructuralism all along, in the form of “woman” understood as a sort of conceptual limit to the legal model of the human. My point is not that all these thinkers are saying the same thing. MacKinnon’s investment in the agency and self-realization of women is certainly at odds with the model of the irremediably fractured subject with which Lyotard works, but the affinities between other aspects of their work are possibly quite productive. Lyotard’s notion of the secret self not only provides the ground for a positive version of privacy, but also supports and speaks to the feminist critique of international human rights. The singularity—not the humanity—of every political subject is what conditions that subject’s “entry into” the political sphere. The Other-in-me is what makes me non-interchangeable with any other subject in civil society. Is this not what the feminist critique has been saying all along, that the law must come to see and think this otherness, instead of disappearing gender or neutralizing sexual difference in the interests of interchangeability and public life? Rather than insisting that abject women have rights because they are citizens of a global community,\(^7\) for instance, a political engagement based on singularity would affirm their outsideness.

Of course, an affirmation of outsideness is just the beginning. For Lyotard, this outsideness, or estrangement from oneself, is the beginning itself, an essential first moment in the formation of the social. Estrangement is the moment in which I am taken hostage by the Other-in-me and forced into a passive silence so that I may learn what it is I will say. Only following this silence am I able to really speak, to say something new, “something other than the \(\text{déjà dit}\) (what has already been said),” rather than repeating and conserving existing meanings (Lyotard 1993, 143). This Other is the condition of the possibility of interlocution. It is “the Other that language is” (145). Lyotard argues that interlocution is the necessary condition for the state, because from the fact of interlocution arises “an effect of right. If any human being can be an interlocutor for other human beings, he must be able to, that is, must be enabled or allowed to” (140). Thus, forbidding interlocution—silencing someone\(^8\)—is a violation
of this most fundamental right. However, merely clearing the way for them to speak is not enough to guarantee the right: freedom of speech here means more than getting out of the way of speech—it means enabling it, creating the conditions for speech, for the possibility of saying something new. This "something new" speaks through me only in the figure of the Other-in-me. I am able to say something new only insofar as I am estranged from myself, I am not properly "my" self and do not know what it is that I will say. It is in this space of non-self-identity that the new becomes possible.

Thus, instead of "restoring" the figure of the abjected woman to "her"self, we move toward non-self-identity as a site of the political. Consider Judith Butler's work on the concept of the "abject" (in contrast to the subject) as a position from which to think resistance. She argues that the very cultural unintelligibility of some marginalized sexualities, for instance, may be the very place from which to resist, rather than from identity and authenticity.

Oppression works not merely through acts of overt prohibition, but covertly, through the constitution of viable subjects and through the corollary constitution of a domain of unviable (un)subjects—"abjects," we might call them—who are neither named nor prohibited within the economy of the law. Here oppression works through the production of a domain of unthinkability and unnameability. (Butler 2004, 126)

Affirming the abjectitude or inhumanity of women does not mean surrendering to the material and ideological conditions that produce this abjectitude. The affirmation marks the very central place of women—or of feminized subjects in general—in the conversation about the ontology of the subject of rights. Butler asks, "Can the exclusion from ontology itself become a rallying point for resistance?" (Butler 2004, 127). Lyotard would respond that it is because the condition of women at their most feminized radically poses a question to the very notion of the human—showing its contingency and vulnerability, its impossibility—that their situation offers the space for resistance. From this vantage point, we can begin to take seriously his claim that "rights and respect for rights are owed to us only because something in us exceeds every recognized right" (Lyotard 1993/1997, 121). Thus, we might look to womanhood—in its originary abjectitude—and not to humanity to understand the nature of rights, and to look outside of ontology, beyond ipseity, outside of what is thinkable, to think the being of the rights-bearing subject.

**Pornographic Speech and the Secret Self**

In any discussion of the relationship between speech and the abjectitude of women, the subject of pornography quickly emerges. MacKinnon writes that
protecting pornography under the First Amendment is incoherent: while we are busy protecting the speech of pornographers, pornographic imagery itself has the effect of silencing women by rendering them passive, receptive, and masochistic. Thus, speech is precisely what women do not enjoy in a pornographic culture, or what MacKinnon might call the pornographic state. The argument against what she calls “First Amendment absolutism” is rooted in the idea that pornography does more than construct gender. It produces gender as an original inequality by producing women who do not speak—beginning with the women depicted in the pornography itself, to the victims of sexual violence encouraged in a pornographic culture, and finally extending further to all women (MacKinnon 1987, 134–62).

This position has come under extensive criticism from feminist-identified sex workers and other pornography activists. Some respond saying that the pornography industry provides work like any other work and should be regulated better in order to protect the rights of the workers. Others claim that pornography itself functions as political speech, and thus it is not like any other work, but is in fact a site of resistance and feminist practice, or a creative avenue for reclaiming the body and rescripting practices. What is called “anti-porn” feminism has also been interrogated by scholarship in the emerging field of porn studies. Linda Williams writes, for instance, that “feminist debates about whether pornography should exist at all have paled before the simple fact that still and moving-image pornographies have become fully recognizable fixtures of popular culture” (Williams 2004, 1). Indeed, as the remarkable statistics in her work show, the existence and proliferation of pornography is irrefutable. From this fact, however, it does not follow that it is impossible to position ourselves critically against pornography—and by “critically,” I mean in the sense of politics, not in the sense of the literary and cultural criticism that is the norm in contemporary porn studies. Following MacKinnon on the one hand, and Baudrillard and Lyotard on the other, I propose that pornography is political in its very structure, and so demands political responses. It is political as labor, as gendered labor, as imagery that participates in gender production in a unique and powerful way, as imagery that (often) eroticizes power difference along lines of gender, race, sexuality, age, class, and species, precisely those lines that politics is endlessly navigating, and as labor that depends on those power differences manifesting themselves in economic terms. It is irreducibly political as sex, if we take seriously the feminist lesson that sex—all sex—is never not political. Williams is absolutely right that it is crucial to study pornography. But the pure aestheticization of it, as if all the politics could be suspended in a sort of cultural studies “epoche,” seems as strange as the aestheticization of factory farming, or public education, or a walk through the local branch of immigration and naturalization services. In other words, to refuse to engage with pornography as political is to miss something important at
its very core. For this reason, I am interested in reanimating some aspects of the “anti-porn” feminism that has been rejected in “sex-positive” discourses, but doing so from a poststructuralist vantage point.

One of the pitfalls of MacKinnon’s argument is that it depends on the assumption that hard-core pornography depicts women in ways that hurt women as a group—either as sexually abused and hating it, or (more often) as sexually abused and loving it. But with this at the center of the discussion, it becomes possible to pose the following challenges: Does it follow that soft-core materials (like Playboy) are less socially harmful than hard-core? What about the new “feminist” pornography for straight women and the new queer women’s pornography, both of which target women consumers and claim to contribute to women’s ongoing sexual liberation? At this point, the debate turns to differences of degree, as if some kinds of pornography were better than others. MacKinnon’s critique, however, begins with a claim concerning the pornographic in general: it’s all bad. In order to remain consistent with this initial program of addressing “the pornographic” in general and not different kinds/degrees of pornography, we must have a different conversation. But how can we avoid distinguishing between more or less socially harmful kinds of pornography if we continue to analyze the contents, the images themselves as a social semiotic that teaches men and women how to look at women, how to perform gender, and how to approach their bodies and sexual pleasure (however varied, dynamic, fluid, and surprising the approaches may in fact be) (see Williams 2004, 2)? We are thus stuck in a sort of paradox: we cannot address differences among types of pornography if we seek criteria by which it can be condemned unilaterally, but at the same time, we must address differences among types of pornography because we condemn this “speech” based on its contents, based on the images and messages therein.

Of course, other grounds for critique are possible. The Christian right in America, for instance, condemns pornography as obscenity, the exposing of women’s bodies and of sex acts as dirty and sinful. This critique is open to the same criticisms: we end up focusing on the contents of the images, and some are clearly “dirtier” than others. Is it possible to construct a robust critique that avoids such differences of degree? Baudrillard attempts this in Seduction (Baudrillard 1990), and I second Ahmed’s claim that it is the most important of his texts for feminists to read. According to an ancient metaphysics that this book reanimates, truth, or sex, is of the order of the masculine, while artifice, veiling, and seduction are of the order of the feminine. I fully support Ahmed’s conclusion that in his analysis of the transvestite subject “what Baudrillard is celebrating is precisely women’s status as signs and commodities circulated by and for male spectators and consumers” (Ahmed 1996, 82). That this celebration, for which Baudrillard is well known, is problematic from a feminist perspective goes without saying. More interesting, however, is his analysis of
pornography, which Ahmed does not mention in her reading. It is in his reading of pornography that we get a robust political critique, and one that is not inconsistent with the feminist criticism that Baudrillard has merely echoed an old, essentialist binary. In other words, it may be the case that Baudrillard is both right and wrong, both up against and in accord with a feminist engagement with political ontology.

Baudrillard makes the case that all pornography, no matter how hard or soft, is the ultimate medium of masculinity, but not because it has anything to do with power, or with men’s power over women’s bodies. Instead, pornography is hypermasculine because it makes sex hyperreal, more detailed and better than the real thing. “Pornography is the quadrophonics of sex. It adds a third and fourth track to the sexual act. It is the hallucination of detail that rules... End of the secret. What else does pornography do, in its sham vision, than reveal the inexorable, microscopic truth of sex?” (Baudrillard 1990, 31). Thus, Baudrillard argues that pornography and the feminine are like oil and water—and in our pornographic culture, the seductive power of the feminine is disappearing rapidly, leaving behind only this babbling quadrophonics of sex. He condemns this erasure of the feminine, but not because it causes harm to women in particular. It is everyone who suffers from the disappearance of the feminine.

However, he continues, “there is a strange, fierce complicity” between feminism and this pornographic culture of sex-as-truth (Baudrillard 1990, 8). With its insistence on women’s right to sexual pleasure, feminism is guilty of the same political mistake: “The despoilment of the orgasm, the absence of sexual pleasure, is often advanced as characteristic of women’s oppression. A flagrant injustice whose immediate rectification everyone must pursue in accord with the injunctions of a sort of long-distance race or sex rally. Sexual pleasure has become a requisite and a fundamental right. The most recent of the rights of man” (15). The feminist insistence on the right to sexual pleasure reduces the feminine to sex-as-truth, or to the masculine as it reduces sex to orgasm, “a technological product of a machinery of bodies” (20). Pornography answers the feminist demand perfectly: “Henceforth women will climax, and will know why. All femininity will be made visible—woman as emblematic of orgasm, and orgasm as emblematic of sexuality. No more uncertainty, no more secrets” (20).

This is a story of the feminine “in a culture that produces everything, makes everything speak, everything babble, everything climax. The promotion of the female as a sex in its own right (equal rights, equal pleasures), of the female as value—at the expense of the female as a principle of uncertainty” (20).

Baudrillard moves from “feminine as artifice” in his analysis of the transvestite subject to “feminine as uncertainty” in his analysis of pornography. Arguably, artifice and uncertainty are so different as to actually be opposed to each other. Do we not hear echoes of Lyotard in this critique of the culture in which everything speaks, babbles, climaxes, in which the secret has
disappeared and all femininity has been made visible? Just as Lyotard is critical of a democratic model of equal rights because it forgets the secret existence of every being, Baudrillard here suggests that the politics of equality are literally pornographic. The thinkers' championing of the feminine as “the principle of uncertainty,” and of this uncertainty as the answer to the culture of interchangeable, exhaustive babblers is a critique of the democratic politics that demands equal rights for everyone. For Baudrillard, pornography and feminism both belong properly to the democratic order that Lyotard denounces under the name “the masters of general life,” while the (rapidly disappearing) feminine offers the possibility of secrecy and resistance, of a silence that makes possible the listening necessary to hear one's own speech, this “something new” emerging from the non-self-identical self, the self that one never quite is.

Returning to MacKinnon’s notion of positive privacy as a critique of the democratic state, it becomes possible to construct a critique of pornography as a discourse in general, without resorting to claims about demeaning imagery or false constructions of women, or engaging in debates about the causal relationships between speech and action. We can continue to take seriously MacKinnon’s important claim that pornography silences (though she claims famously that it silences women in particular). MacKinnon argues that pornography is not endangered speech that risks being suppressed by the state in the same way that communist publications were censored by the U.S. government in the 1950s, but is in fact the perfect expression of the patriarchal state, a veritable instruction booklet (MacKinnon 1993a, 112–13). This is a criticism closely related to Baudrillard’s—that the effect of pornographic culture is to produce a particular kind of political subject—and Lyotard’s—that the babbling of democracy leaves no room for saying something beyond the “déjà dit.” In the classic, second-wave formulations, a different image was often deployed, namely that of a woman literally silenced by the penis in her mouth, but Baudrillard reminds us that the quadrophonic screams of today’s “ecstatic” woman on the computer screen say just as little.

We learn a number of things from these affinities among the texts. As feminist theorists of the political, we learn that pornography is problematic not because a certain kind of image causes its consumer to commit a certain kind of act, or because this imagery produces gender-as-inequality. Pornography is problematic when understood as a “tool” of the kind of democracy that requires the disappearance of the secret existence, of the possibility of real otherness, and thus of the possibility of saying something. As the biggest and fastest growing Internet industry, it is arguably democracy’s most important tool. MacKinnon is right that pornography is American speech par excellence, and so of course the Supreme Court’s job is to protect it at all costs. It is the perfect manifestation of the babbling political body, in which every subject is interchangeable for every other, exercising its rights and expressing, expressing,
more and more, telling us what we already know, climaxing, always recognizable and predictable.

For this reason, no feminist demand that a repression of pornography take place at the level of the law (criminal or civil) can yield the positive privacy MacKinnon calls for. This privacy, the secret Lyotard and Baudrillard wish to save from extinction, is always outside the law, beyond the reach of the state, and no civil or criminal legislation can properly protect it. It is here that the affinities break down: MacKinnon, a vigilant critic of the law, still has a certain faith in the power of the state to create conditions of greater freedom. Baudrillard and Lyotard, on the other hand, come from an intellectual tradition in which freedoms and real speech are structurally heterogeneous to the system, which cannot see them or think them, and so cannot sanction or protect them. Meta-level differences like this have traditionally served to halt conversations between much American feminism and French philosophy, when they could in fact provide grounds for a significant engagement.

As pornography becomes more private (cheaper, faster, and easier to access than ever, with no possibility that one might be seen entering an adult video store, for instance), the pornographic imaginary becomes one of communities, networks of support, sharing, and open discussion. Pornography has always been a phenomenon of "the masses," but what happens when it imagines itself as such, rather than as something individuals do in hiding? If I am right that pornography is the perfect exemplar of the democratic model, not one among others, then it should come as no surprise that more and more pornography websites are devoted to free file-sharing, where registered users upload and download videos, discuss, and rank them, all of this riding on a logic of democratization and information-sharing (for instance, adultshare.livejournal.com describes itself as a "porn trading community" and broadcastyourass.com claims to be "the youtube of porn"). The significance of this has yet to be robustly theorized, a task that will require a reading of the intersection of postmodern and anti-pornography critiques. As postmodern political thinkers, we learn that those political areas in which we see the most spectacular breakdown of humanism are the areas that have the strongest effects on the lives of women. The kind of resistance the philosophers of postmodernity pose to the democratic model, the opacity, secrecy, and uncertainty they champion, have always been at work in the lives of women. From the perspective of the political traditions we have inherited from the Enlightenment, woman is not merely one Other among many. It is woman—understood as the dark underbelly of the human, the human—that-is-not-exactly-human, the other of the human—who has never fit well into the system, never talked right, who was written out of citizenship, and has systematically threatened the breakdown of the institution of the human. Privacy, pornography, abortion, sex, and the laws that circumscribe the body as a gendered body—these should be at the very center of our critiques of the
democratic state, not just examples among others. This means that the lives and interests of women, and often the most abjected and feminized women, should be at the center of these critiques.

NOTES

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1. This type of critique is consistent with other poststructuralist theories of democracy and ontologies of the political subject, like Jacques Rancière (2004).

2. See, for example, Ishay 2004, who provides an extensive history of human rights without once questioning the model that leads her to begin the introduction with the claim that “human rights are held by individuals, . . .” (3). See also the language of rights being “granted” and “denied” to women in Rowland 2004. Young’s account of rights as something we do poses a true intervention to the logic of rights as possessions accepted in legal literature.

3. Christine Villemin, whom I invoke in the epigraph from Duras, is an example. In fact, Christine V., as she is called, was never even tried for the murder of her four-year-old son, but remains under suspicion by the French public to the present day. Duras’s article about the child’s murder explores the kind of life a woman must have led in order to kill her child. In the end, Duras concludes that such a life need not be different from the lives of most middle-class, married (French) women. In other words, the apparently banal existence of the married woman is sufficiently horrible to produce such an act. This comparison raises a question: is it really so easy to distinguish between women situated similarly to men and abject women? Is not womanhood itself a condition of abjectitude, which the former simply experiences less than the latter (i.e., the street-walking prostitute experiences a different degree of womanhood from that experienced by Margaret Thatcher) (see Duras 1985/2006, 17)? Duras writes about the average marriage as a site of violation: “Look around you. When women are like this, inattentive, forgetful of their children, it’s because they live under man’s law. . . . These women don’t plan gardens. They don’t plant flowers each season. Sometimes they sit in front of the house, exhausted by the blank sky, the harsh light. . . . At night she would dream of slapping him, that she would gouge out his eyes. He will know nothing about that. They never know. No man in the world can know what it’s like for a woman to be taken by a man she doesn’t desire. The woman penetrated without desire is in the murder” (12–14). I thank Andrew Slade for bringing the Duras text to my attention. For more examples of this kind of feminist logic, see Jelinek 1975/1994, which delineates a profound alienation particular to women in conditions of industrial capitalism and patriarchy.

4. MacKinnon would argue that all murders of women at the hands of men, especially men they know, are sexual, regardless of whether sex, rape, or bought sex took place (see MacKinnon 1987, 92).


6. “Thing” is a technical term for Lyotard. To refer to persons as “things” in this case is to thematize the fact that outside of certain political discourses, we cannot
properly call them “persons” or “human.” Thus, the thing is precisely that which resists politics. But Lyotard does call for a sense of “the political,” as opposed to politics, in which the “thing” would not be forgotten.

7. See the analysis of global citizenship in Hardt and Negri 2002, which, in light of this argument, appears less than revolutionary.

8. It is important to note here that this is not Lyotard’s plea for the First Amendment. He draws our attention to, for instance, the wrong that takes place when the prisoner of the death camp or the rape camp is unable to tell the story of the atrocities committed against her in the language (including the very concepts and narrative structures) made available to her by public or legal discourse. Lyotard is focused on this moment of violent political silencing as an essential tool of the maintenance of terror.

9. Cornell 2000 provides an excellent survey of all of these arguments, and more recently, some have been revived in Jensen 2007.

REFERENCES


