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*MULIERIS DIGNITATEM: PORNOGRAPHY AND
THE DIGNITY OF THE SOUL: AN EXPLORATION
OF DIGNITY IN A PROTECTED SPEECH
PARADIGM*

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INTRODUCTION

Pornography. It is a word that has as many different connotations as there are people. For some the word is loaded, signifying a body of material that objectifies at the least and victimizes at its worst. For others, it is more innocuous and implies mere sexual explicitness. While agreement on the term evades us, what is clear is that for many the basis for the meaning they give pornography is outdated and ill informed, referencing magazines of days gone by with pictures of unclothed women. The reality of today's pornography is indeed unrecognizable from that produced in the latter part of the twentieth century in both the type of material and the quantity.

The numbers alone can be astounding, with some reports that every second \$3,075.64 is being spent by the 28,258 Internet users who are viewing pornography on one of the 4.2 million pornographic web sites available to them.¹ While some might argue that such an expansion of pornography poses no social problem, research suggests

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1. Jerry Ropelato, TopTenREVIEWS, Internet Pornography Statistics, <http://internet-filter-review.toptenreviews.com/internet-pornography-statistics.html> (last visited May 14, 2010); see also FREE SPEECH COAL., STATE-OF-THE-INDUSTRY REPORT, 2007–2008, at 1 (2008), <http://www.freespeechcoalition.com/images/pdf/FSCSOI2007.pdf> (claiming the revenue of the adult entertainment industry is \$12.45 billion). These financial numbers do not reflect the free consumption of pornography constituting a significant share of pornography consumption in the United States. See K. Doran, Industry Size, Measurement, and Social Costs 3–6, http://www.socialcostsofpornography.org/Doran_Industry_Size_Measurement_Social_Costs.pdf (last visited May 14, 2010).

that today's pornography increasingly depicts actual violent sex acts involving men dominating and abusing women in a variety of forms, and the proliferation of such material has a social harm.²

Questions, however, remain: How do we as a "culture" respond? Indeed, do we want to limit this proliferation, or more importantly, can we as a society withstand its existence? This social phenomenon has been examined in many disciplines, including social science, philosophy, law—all of which have their place. *Mulieris Dignitatem's* principles regarding the dignity of women and the harm caused by a failure to realize fully that dignity offer a new lens through which to view contemporary social problems affecting women. Chief among these problems is the prevalence and increasing violence of pornography and its implications for the sexualization, objectification, and commoditization of women; the development of healthy sexual maturity; the healthy growth of adolescents, particularly girls; and the strengthening of familial relationships. This inflicts a toll not only on women, but also on men and their perceptions of women, girls, and themselves, as well as on children and society's perception of females as sexualized and objectified beings. *Mulieris Dignitatem* reminds us that the fundamental basis of the analysis of this problem is not the law, or expression, or politics, but dignity. By calling on society to examine the inherent dignity of women, *Mulieris Dignitatem* offers a path out of this morass of harmful images, which can cost a society more than can be measured: its own dignity.

This Article uses *Mulieris Dignitatem* to examine the social problem of pornography through what the Article labels the "lens of dignity." Part I of the Article explores *Mulieris Dignitatem's* statements regarding the inherent dignity of women and its implications on pornography. Part II examines the question of whether John Paul II's concerns have been borne out by looking at the social effects of pornography that have arisen under the "free expression" paradigm dominant in the American dialogue, concluding that the majority of the recent research on the current

2. Jill C. Manning, *The Impact of Internet Pornography on Marriage and the Family: A Review of the Research*, 13 *SEXUAL ADDICTION & COMPULSIVITY* 131 (2006). Robert Wosnitzer & Ana Bridges, *Aggression and Sexual Behavior in Best-Selling Pornography: A Content Analysis Update 1, 3* (Nov. 1, 2006), http://www.allacademic.com/meta/p_mla_apa_research_citation/1/7/0/5/2/pages/70523/p170523-1.php (finding an "unequivocal rise of aggression in pornography in both verbal and physical forms"). See generally Dolf Zillman & Jennings Bryant, *Pornography and Sexual Callousness, and the Trivialization of Rape*, 32 *J. OF COMM.*, Dec. 1982, at 10.

form of pornography does support the social harm concern. Part III contrasts the dignity approach with this “free expression” lens. In so doing, the Article examines whether in our jurisprudence there is a history of a dignity-based analysis. Part IV examines whether there is room in the free expression paradigm for the dignity of women to be considered. Part V concludes that true social change cannot occur through a shift in legal framework, but through a social paradigm shift.

As a threshold matter, one must define the material being discussed. Not surprisingly, the definition of “pornography” remains elusive. Indeed, the 1986 Attorney General’s Commission on Pornography Final Report recognizes the lack of a clear definition.³ At a minimum, pornography refers to “predominantly sexually explicit material intended *primarily* for the purpose of sexual arousal.”⁴ This obviously covers a broad spectrum of material. Hence, the Commission described three subclassifications of pornography: (1) sexually violent material; (2) nonviolent materials depicting degradation, domination, subordination, humiliation; and (3) nonviolent nondegrading materials.⁵ Others have not been so charitable, defining the material as the “documentation of sexual abuse and human-rights violations,” which at its essence portrays women as being used, abused, and assaulted for the purpose of male sexual arousal.⁶

Regardless of the definition, it is tempting to look at this material as a problem only for women. However, Pope John Paul II calls our attention to the reality that pornography offends the concept of

3. U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S COMMISSION ON PORNOGRAPHY: FINAL REPORT 227, 229 (1986).

4. *Id.* at 228–29 (emphasis added).

5. *Id.* at 138–39.

6. John Stoltenberg, *Pornography and International Human Rights*, in NOT FOR SALE 400, 408 (Rebecca Whisnant & Christine Stark eds., 2004). Pornography has also been described “as a documentary of specific women’s abuses in prostitution.” MELISSA FARLEY, PROSTITUTION & TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 153 (2007) (defining pornography further as a “crime scene surveillance tape” and “advertising for prostitution” that conceals the harms documented in the picture by renaming it “adult entertainment”); INDIANAPOLIS AND MARION COUNTY, IND., GENERAL ORDINANCE § 16-3(q) (1984), available at <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppB1.htm> (defining pornography as “the graphic sexually explicit subordination of women”); see also Elizabeth Harmer Dionne, *Pornography, Morality, and Harm: Why Miller Should Survive* Lawrence, 15 GEO. MASON L. REV. 611, 620 (2008) (referencing pornography “that shows women bound, gagged, slashed, burned, and raped”).

dignity beyond the dignity of the women in the images or those harmed by these images. It actually offends the dignity of all women and people.⁷

I. *MULIERIS DIGNITATEM* ARTICULATES PRINCIPLES REGARDING THE DIGNITY OF WOMEN RELEVANT TO ANY CONTEMPORARY SOCIAL PROBLEM THAT VICTIMIZES OR OBJECTIFIES WOMEN

A. *The Dignity of Women*

Mulieris Dignitatem reminds us that women utilized⁸ in the creation of pornography deserve to be treated with dignity for no less reason than that their inherent dignity is not just a philosophical norm, but is awarded to them from God.⁹ To be sure, this is no application of the secular notion of the Golden Rule. It is the nature and quality of this dignity that is the cornerstone of understanding the rights of women and people to elevation rather than degradation.

1. *One Aspect of Dignity: Equality*

As a human, one possesses a deep and holy dignity, which forms the very foundation of humanity. By focusing on *Genesis* 1:27, *Mulieris Dignitatem* expounds on the notion that our dignity is inherent in the creation of humanity.¹⁰ One component of this inherent dignity is the equality of the sexes.¹¹ While such a concept is not revolutionary, John Paul II directs us to *Genesis* 2:18–25 as “[t]he biblical text [that] provides sufficient bases for recognizing the essential equality of man and woman.”¹² Men and women are made

7. See generally Pope John Paul II, *Mulieris Dignitatem* [*Apostolic Letter on the Dignity and Vocation of Women*] (1988) [hereinafter *Mulieris Dignitatem*] (discussing the equality of men and women, and how a break in this equality harms both sexes).

8. There is no optimal verb to use here. Victimized, used, enticed, and trafficked all have connotations. What is meant to be conveyed is the central notion that when one is used as a means to physical arousal, one is victimized and exploited, that is, treated as less than human. *Black’s Law Dictionary* defines “exploitation” as “the act of taking unjust advantage of another for one’s own benefit.” BLACK’S LAW DICTIONARY 619 (8th ed. 2004); see also *id.* at 1407 (defining “sexual exploitation” as “[t]he use of a person, esp[ecially] a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emotional injury”).

9. *Mulieris Dignitatem*, *supra* note 7, ¶ 5.

10. *Id.* ¶ 6.

11. *Id.*

12. *Id.*

in God's image and likeness; no higher dignity could be imbued upon humanity to separate humans from all other creatures.¹³

Equality between men and women is integral to that dignity. As reflected in the New Testament, Christ himself opposed the tradition that discriminated against woman without proper regard for her dignity.¹⁴ "Christ did everything possible to ensure that—in the context of the customs and social relationships of that time—women would find in his teaching and actions their own subjectivity and dignity."¹⁵

It is an oversimplification, however, to conclude that equality with men is the only relevant characteristic of the dignity of women. Indeed, two items of little value may in fact be equal, but if they are not truly valuable then their equality is irrelevant. It is the fact that both men and women are created *to an equal degree in the image and likeness of God* that is "essential for the human being."¹⁶

As to women's unique dignity, John Paul II focuses on Mary as the center of the "salvific event."¹⁷

On the one hand, this dignity consists *in the supernatural elevation to union with God* in Jesus Christ, which determines the ultimate finality of the existence of every person On the other hand, however, the event at Nazareth highlights a form of union with the living God which can *only belong to the "woman,"* Mary: *the union between mother and son.*¹⁸

The concept of Mary as the "new Eve" is not new, but *Mulieris Dignitatem* connects it to

that "beginning" in which one finds the "woman" as she was intended to be in *creation*, and therefore in the eternal mind of God: in the bosom of the Most Holy Trinity. Mary *is* "the new beginning" of the *dignity and vocation of women*, of each and every woman.¹⁹

13. *Id.* ¶¶ 6–8.

14. *Id.* ¶ 12.

15. *Id.* ¶ 14.

16. *Id.* ¶ 6.

17. *Id.* ¶ 3.

18. *Id.* ¶ 4.

19. *Id.* ¶ 11.

2. *One Aspect of Dignity: Dignity Despite Oppression*

A second relevant aspect of dignity as expressed in *Mulieris Dignitatem* is the dignity of the vulnerable and the oppressed. Pornography is often the product of sexual subordination, desperation out of poverty, and sexual slavery.²⁰ Not surprisingly, women involved in pornography are some of the most vulnerable in society.²¹ Pornography can be a gateway behavior for prostitution, and this material is often used to blackmail women to continue to engage in its production.²² John Paul II applies this concept of oppression to women in general.²³ In his 1995 *Letter to Women*, he discusses some of the social sins committed against women:

Then too, when we look at one of the most sensitive aspects of the situation of women in the world, how can we not mention the long and degrading history, albeit often an “underground” history, of violence against women in the area of sexuality? . . . [W]e cannot remain indifferent and resigned before this phenomenon. The time has come to condemn vigorously the types of sexual violence which frequently have women for their object and to pass laws which effectively defend them from such violence. Nor can we fail, in the name of the respect due to the human person, to condemn the widespread hedonistic and commercial culture which encourages the systematic exploitation of sexuality and corrupts even very young girls into letting their bodies be used for profit.²⁴

Mulieris Dignitatem turns directly to the teachings of Jesus to highlight the continuum of the dignity of the oppressed. Through an examination of Jesus’ treatment of oppressed and vulnerable women,

20. Catharine A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U. L. REV. 793, 798 (1991) (recounting testimony of women who were included in pornography by coercion, force, or due to “poverty, sexual abuse as children, homelessness, hopelessness, drug addiction, and desperation”); see also Rebecca Whisnant, *Confronting Pornography*, in NOT FOR SALE, *supra* note 6, at 15, 19 (“[P]ornography is . . . prostitution.”).

21. MacKinnon, *supra* note 20, at 798; see also Whisnant, *supra* note 20, at 23–24 (noting that many factors other than outright coercion lead women to enter a life of prostitution).

22. FARLEY, *supra* note 6, at 153–55 (discussing the link between pornography and prostitution). At the hearings on a Minneapolis anti-pornography ordinance, former victims of prostitution testified that, “without exception, pornography was their introduction to prostitution, used to groom and train them.” Dionne, *supra* note 6, at 645.

23. *Mulieris Dignitatem*, *supra* note 7, ¶ 14.

24. Pope John Paul II, *Letter to Women* ¶ 5 (1995), reprinted in POPE JOHN PAUL II ON THE GENIUS OF WOMEN 45, 49–50 (Comm. on Women in Soc’y & in the Church, U.S. Catholic Conference ed., 1997) (emphasis omitted).

the document specifically highlights that the proper attitude toward women is one characterized not only by equality, but also by recognition of their dignity.²⁵ It does so by focusing on two demonstrations of worthiness: the woman accused of adultery, and women referred to as harlots.²⁶ Jesus rejects the social assumption that some people can be of lesser value than others. For example, Jesus holds out the widow who gave her money to the Temple “as a model for everyone” and defends her because, at that time, women were defenseless.²⁷

John Paul II goes beyond demonstrating women’s dignity through pointing out Christ’s magnanimous recognition of it. He also explicates their dignity and worthiness by noting their constant fidelity to Christ on the cross.²⁸ Not only was Christ himself a promoter of women’s true full dignity, but women were at the foot of the cross at “the decisive moment . . . [of the] messianic mission.”²⁹ He observes that “in this most arduous test of faith and fidelity the women proved stronger than the Apostles.”³⁰

B. *The Dignity of Men*

While many may disagree even as to whether the proliferation of pornography is problematic, there is no disagreement that the consumers of pornography are growing in number and are predominantly male.³¹ No response to this social phenomenon of pornography will ever succeed without addressing men. *Mulieris Dignitatem* speaks to men as well, reminding them to treat others made in the image and likeness of God with dignity. *Mulieris Dignitatem* also goes far beyond this, noting that Christ is “the model and pattern of all human love, men’s love in particular.”³²

It is clear that men compromise the dignity of women when they accept the use of or actually view pornography. *Mulieris Dignitatem* takes men beyond that reality to the reality that they compromise their

25. See *Mulieris Dignitatem*, *supra* note 7, ¶ 13.

26. *Id.* ¶¶ 13, 15.

27. *Id.* ¶ 13.

28. *Id.* ¶ 15.

29. *Id.*

30. *Id.*

31. Jason S. Carroll et al., *Generation XXX: Pornography Acceptance and Use Among Emerging Adults*, 23 J. ADOLESCENT RES. 6, 6 (2008) (noting an increase in acceptance of pornography among both male and female emerging adults); see *infra* Part III.A–C.

32. *Mulieris Dignitatem*, *supra* note 7, ¶ 25.

own holy dignity when they do so.³³ This is a powerful argument in our contemporary culture, which perceives viewing pornography as a completely victimless passive act.³⁴ *Mulieris Dignitatem* specifically rejects that perspective, arguing that, while Scripture recognizes the inheritance of sin, at the same time Scripture proclaims the need for conversion:³⁵

The books of Sacred Scripture confirm in various places *the actual existence of such situations* and at the same time proclaim the need for conversion, that is to say, for purification from evil and liberation from sin: from what offends neighbor, what “diminishes” man, not only the one who is offended but also the one who causes the offence.³⁶

Indeed, when one utilizes pornography, one denies the dignity of women, thus denying the very order created by God. This is troubling enough. However, “whenever man is responsible for offending a woman’s personal dignity and vocation, he acts contrary to *his own* personal dignity and his own vocation.”³⁷ He acts contrary to the God within.³⁸ This harm manifests itself to men in a variety of ways. One of the many consequences of pornography is that it separates men from God, allowing an illusory fulfillment, as transient as it is, away from God. “Although he was made by God in a state of justice, from the very dawn of history man abused his liberty, at the urging of the Evil One. Man set himself against God and sought to find fulfillment apart from God.”³⁹ While we recognize the free will of man to make such choices, the consequences can be grave. “In its essence . . . sin is a negation of God as Creator in his relationship to man, and of what God wills for man, from the beginning and forever.”⁴⁰

33. *Id.* ¶ 10.

34. See, e.g., PAMELA PAUL, PORNIFIED: HOW PORNOGRAPHY IS TRANSFORMING OUR LIVES, OUR RELATIONSHIPS, AND OUR FAMILIES 9–10 (2005).

35. *Mulieris Dignitatem*, *supra* note 7, ¶ 10.

36. *Id.*

37. *Id.* (emphasis added). For a detailed analysis of how pornography consumers and the pornography industry engage in a cooperative grooming process to accept the content and reconcile moral qualms, see Rebecca Whisnant, *From Jekyll to Hyde: The Grooming of Male Pornography Consumers*, in EVERYDAY PORNOGRAPHIES (Karen Boyle ed., forthcoming 2010).

38. *Mulieris Dignitatem*, *supra* note 7, ¶ 10.

39. *Id.* ¶ 9 (quoting Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶ 13 (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 513, 525 (Nat’l Catholic Welfare Conference trans., 1967) [hereinafter *Gaudium et Spes*]).

40. *Id.*

Furthermore, the essence of sin, according to John Paul II, is not only negating God as creator but is grounded in the very fact that man and woman are made in God's likeness. One who consumes pornography rejects that likeness as a reality for woman by using her as an objectified means to an end, and further, refuses that reality for himself.⁴¹

*By committing sin man rejects this gift [the fullness of God, which flows from being in his own likeness] and at the same time wills to become "as God, knowing good and evil" (Gen 3:5), that is to say, deciding what is good and what is evil independently of God, his Creator.*⁴²

Nowhere in *Mulieris Dignitatem* could John Paul II be more explicit of the sinfulness of sexual exploitation of women, whether the woman is "freely participating" or not, than in his discussion of the adulterous woman.

The episode recorded in the Gospel of John is repeated in countless similar situations in every period of history. A woman is left alone, exposed to public opinion with "her sin," while behind "her" sin there lurks a man—a sinner, guilty "of the other's sin," indeed equally responsible for it. And yet his sin escapes notice, it is passed over in silence: he does not appear to be responsible for "the other's sin"! Sometimes, forgetting his own sin, he makes himself the accuser, as in the case described. How often, in a similar way, *the woman pays* for her own sin (maybe it is she, in some cases, who is guilty of the "other's sin"—the sin of the man), but she alone pays and she pays *all alone!*⁴³

While John Paul II uses this as a vehicle to discuss pregnancy and abortion, it is equally as applicable to pornography. The woman in the image pays; the woman in the image is sexually exploited because the market will pay; the woman viewed and objectified as a means to an end pays; and yet the men who are the market for this exploitation do not.

41. In a legal sense, the very definition of "sexual exploitation" is "[t]he use of a person . . . in prostitution, pornography, or other sexually manipulative activity that has caused . . . serious emotional injury." BLACK'S LAW DICTIONARY, *supra* note 8, at 1407.

42. *Mulieris Dignitatem*, *supra* note 7, ¶ 9.

43. *Id.* ¶ 14.

Similarly, John Paul II turns to the Sermon on the Mount where Jesus condemns lustful views of women, and he notes:

These words, addressed directly to man, show the fundamental truth of his responsibility vis-à-vis woman: her dignity, her motherhood, her vocation. But indirectly these words concern the woman. Christ did everything possible to ensure that—in the context of the customs and social relationships of that time—women would find in his teaching and actions their own subjectivity and dignity.⁴⁴

C. *The Dignity of a People*

These lessons of dignity implicate all humanity. The temptation in the contemporary debate concerning pornography is to demonize and condemn. Because the industry that profits significantly from the sale of pornography attempts to claim that pornography and prostitution are a matter of choice, the public often is tempted to condemn the victim.⁴⁵ By doing so, society can distance itself from that victimization and, therefore, avoid the even more frightening reality that these women could be our daughters, sisters, or nieces, and the most frightening reality that these daughters, sisters, nieces, or strangers are God's children. A second, somewhat more enlightened demonization is to condemn the consumers. Such a position also ignores the current reality that said consumers are likely husbands, brothers, and sons, and today, possibly also daughters.⁴⁶ On a deeper level, John Paul II writes that this heredity of sin is rooted within all persons, not just men.⁴⁷ Pointing to the story of the adulterous woman, John Paul II notes that, before Jesus tells her to sin no more,

44. *Id.*

45. Laura Lederer, *Then and Now: An Interview with a Former Porn Model*, in TAKE BACK THE NIGHT 57, 57 (Laura Lederer ed., 1980) ("We should, they say, attack the women who pose for and act in such degrading films and photographs.").

46. While numbers vary, a recent study noted that forty million adults regularly visit Internet pornography sites. Carroll et al., *supra* note 31, at 7; Ropelato, *supra* note 1; see also Paul C. Perrin et al., *Health Education's Role in Framing Pornography as a Public Health Issue: Local and National Strategies with International Implications*, 15 PROMOTION & EDUC. 11, 14 (2008) (noting that Internet use is now about equal for boys and girls). Two-thirds of young men and nearly half of young women state that pornography use is acceptable. Carroll et al., *supra* note 31, at 6. Finally, eighty-seven percent of young men and thirty-one percent of young women report using pornography. *Id.*

47. *Mulieris Dignitatem*, *supra* note 7, ¶ 14.

he *evokes an awareness* of sin in the men who accuse her in order to stone her, thereby revealing his profound capacity to see human consciences and actions in their true light. Jesus seems to say to the accusers: Is not this woman, for all her sin, above all a confirmation of your own transgressions, of your “male” injustice, your misdeeds?⁴⁸

As discussed, this is clearly a reference to man’s dignity compromised by exploiting woman. However, as John Paul II so simply yet eloquently states, “This truth is *valid for the whole human race*.”⁴⁹

Indeed, John Paul II’s description of Mary at the cross parallels the social exploitation of our contemporary society:

As we contemplate this Mother, whose heart “a sword has pierced” (cf. Lk 2:35), our thoughts go to *all the suffering women in the world*, suffering either physically or morally. In this suffering a woman’s sensitivity plays a role, even though she often succeeds in resisting suffering better than a man. It is difficult to enumerate these sufferings; it is difficult to call them all by name. We may recall her maternal care for her children, especially when they fall sick or fall into bad ways; the death of those most dear to her; the loneliness of mothers forgotten by their grown-up children; the loneliness of widows; the sufferings of women who struggle alone to make a living; and *women who have been wronged or exploited*.⁵⁰

Mulieris Dignitatem reminds us that when we live in a society awash in pornography, the societal acceptance of this situation implicates all.⁵¹

II. PORNOGRAPHY’S HARM: THE DEBATE

The pornography industry has invested much time and money into attempting to argue that pornography causes no harm. Of course, the industry has a financial stake in this argument.⁵² As will

48. *Id.*

49. *Id.*

50. *Id.* ¶ 19 (second emphasis added).

51. *See id.* ¶ 14.

52. Indeed they have sought and made significant inroads into mainstreaming pornography. *See, e.g.,* FREE SPEECH COAL., *supra* note 1, at 1; FREE SPEECH COAL., FREE SPEECH COALITION ANNUAL REPORT 2–3 (2008), *available at* <http://www.fscintl.com/ads/FSC/review081408/annualREPORT8x11color.pdf>. The Free Speech Coalition is an organization primarily funded by “adult businesses,” and its mission is to “protect and support the growth and well-being of the adult entertainment community.” Free Speech Coal., Mission Statement,

be discussed, this position lacks significant support. Nonetheless, it must be addressed. In reviewing the literature regarding the effects of pornography, one must look beyond whether the women in the images are harmed, although this social harm is important.⁵³ The harm of pornography, particularly with its growth in both severity and volume of images, is manifested in several different areas.

As will be discussed below, both feminists and John Paul II share an understanding of the multifaceted effects of pornography. For the feminists, “[m]en consume it and, in turn, are affected by it. Some women are used (or abused) to produce it, and all women must live in a society whose attitudes have been consciously and unconsciously shaped by it.”⁵⁴ This is reflected by John Paul II’s discussion of the effects of sin. He describes “the truth about the consequences of man’s sin, as it is shown by the disturbance of that original relationship between man and woman which corresponds to their individual dignity as persons.”⁵⁵ Two themes from *Mulieris Dignitatem* become clear in the context of pornography. First is the initial sin that results in the disorder between men and women.⁵⁶ Second, John Paul II explicitly notes that dominance replaces “being a sincere gift” in equality to each other.⁵⁷ These concerns are apparent when we examine the current state of pornography in the United States.

<http://www.freespeechcoalition.com/missionstatementaboutus.html> (last visited May 14, 2010). The “Mission Statement” of the Free Speech Coalition includes “[b]eing the legislative watchdog,” “[i]mproving members’ business profit margins,” and “[e]ngaging . . . in litigation.” *Id.*

53. The psychological, emotional, and physical harms to these women can be profound. See, e.g., Frank Rich, *Naked Capitalists*, N.Y. TIMES, May 20, 2001, § 6, at 51, available at <http://www.nytimes.com/2001/05/20/magazine/naked-capitalists.html?pagewanted=1> (discussing the vulnerability of women in pornography and the damage to their personal lives); Rong-Gong Lin II & Kimi Yoshino, *Porn HIV Case Renews Concerns*, L.A. TIMES, June 11, 2009, at A3 (quoting a city health officer asserting that there are sixty to eighty cases of chlamydia and gonorrhea a month in the industry); Kimi Yoshino & Rong-Gong Lin II, *More Porn HIV Cases Disclosed*, L.A. TIMES, June 12, 2009, at A3. The harm discussed in this section is not an exclusive list.

54. Dionne, *supra* note 6, at 612–13. For an extensive discussion of all of pornography’s potential harms, see THE SOCIAL COSTS OF PORNOGRAPHY: A STATEMENT OF FINDINGS AND RECOMMENDATIONS (Mary Eberstadt & Mary Anne Layden eds., 2010) [hereinafter SOCIAL COSTS OF PORNOGRAPHY]. This book is a product of a multidisciplinary scholarly consultation examining the costs of pornography. Its documentation of harm and recommendations have been endorsed by sixty-one scholars from diverse scholarly disciplines.

55. *Mulieris Dignitatem*, *supra* note 7, ¶ 10 (emphasis omitted).

56. *Id.*

57. *Id.*

A. Size and Character of the Pornography Industry Today

There was a time when the industry itself could be measured by the circulation of magazines, films, and other media. However, as has been well documented, the advent of the Internet has changed the face of pornography. Al Cooper articulates this with the now well recognized term: the “Triple A” effect of the Internet—Accessibility, Affordability, and Anonymity.⁵⁸ More specifically, the Internet has allowed the amount of available pornography to explode.⁵⁹ No longer must one go to an adult bookstore and purchase such items. On the contrary, now one can review one of the several hundred thousand websites from one’s own home.⁶⁰ This often can be done at no cost due to the accessibility of free Internet pornography sites.⁶¹ It can also be done without the risk of discovery. Indeed the adult entertainment industry boasts of the positive effect of the Internet on its business:

The adult Internet is the fastest expanding segment of the U.S. adult entertainment market, having grown from a \$1 billion dollar industry in 2002 to a \$2.5 billion industry today, according to Internet Filter Review. Nielsen Net Ratings says the numbers of unique visits to adult sites grew from an average of about 23 million per month in 2001 to an average 44 million unique visits in 2005. . . .

Websense, Inc., a provider of employee filtering software, says that the number of adult entertainment Websites in their URL database was more than 17 times greater in 2004 than it was just four

58. Al Cooper, *Online Sexual Activity in the New Millennium*, 38 CONTEMP. SEXUALITY 1 (2004).

59. *Id.*; see also FREE SPEECH COAL., WHITE PAPER 2005: A REPORT ON THE ADULT ENTERTAINMENT INDUSTRY 4 (2005), <http://www.docstoc.com/docs/6117965/Free-Speech-Coalition-WHITE-PAPER-A-Report-on-the-2006> (claiming the number of websites grew from 88,000 in 2000 to 1.6 million in 2004). A U.N. Special Rapporteur on child prostitution and pornography was recently quoted stating there had been an increase in child pornography sites, that there were 750,000 sexual predators online at any given time, that 200 new images are added to the Internet every day, and the industry was a multibillion dollar industry. *Some 750,000 Pedophiles Prowling the Internet: UN*, Sept. 16, 2008, http://www.breitbart.com/article.php?id=CNG.566c6d9cae728c5a9d3fc6f1e2b0e0c8.3f1&show_article=1; SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 14–23.

60. Gail Dines, *From Fantasy to Reality: Unmasking the Pornography Industry*, in *SISTERHOOD IS FOREVER: THE WOMEN’S ANTHOLOGY FOR A NEW MILLENNIUM* 306, 311–12 (Robin Morgan ed., 2003); Ropelato, *supra* note 1.

61. See, e.g., Michael Flood, *Exposure to Pornography Among Youth in Australia*, 43 J. OF SOC. 45, 47–49 (2007) (noting that one-third of all spam is related to pornography sites); Doran, *supra* note 1, at 1.

years earlier, surging from approximately 88,000 in 2000 to nearly 1.6 million sites in 2004.⁶²

While the numbers vary among sources, it is clear that the pornography industry is exploding, with the *New York Times* reporting revenues exceeding that of the NFL, NBA, and Major League Baseball combined.⁶³ The mobile phone pornography business is also growing exponentially.⁶⁴ Furthermore, researchers expect mobile adult video services to expand to own seventy percent of mobile adult content.⁶⁵ "Sensing the start of a profitable new era for pocket porn, the adult entertainment industry is investing heavily and feverishly broadening its marketplace of iPhone porn."⁶⁶

The effect of this is not only quantitative, but qualitative. By being so abundant and utilized by so many, pornography has been destigmatized.⁶⁷ Pornography has increased exponentially to reach

62. See FREE SPEECH COAL., ADULT ENTERTAINMENT IN AMERICA: A STATE OF THE INDUSTRY REPORT 2 (2006) (on file with author); see also Beth Barrett, *It's a \$12 Billion Industry, but the Profits Go Elsewhere*, L.A. DAILY NEWS, June 5, 2007, at N1 (reporting the national market's worth is approximately \$12 billion annually).

63. Rich, *supra* note 53 ("The \$4 billion that Americans spend on video pornography is larger than the annual revenue accrued by either the N.F.L., the N.B.A. or Major League Baseball. . . . The porn business is estimated to total between \$10 billion and \$14 billion annually in the United States . . . [from] porn networks and pay-per-view movies, on cable and satellite, Internet Web sites, in-room hotel movies, phone sex, sex toys and that archaic medium of . . . magazines."); see also PAUL, *supra* note 34, at 2-7; Whisnant, *supra* note 20, at 15 ("There can be no doubt, at this moment in history, that pornography is a truly massive industry saturating the human community [P]ornography has become so merged with big business that the two are hardly distinguishable.").

64. *E.g.*, Bruce Gibson, Press Release, Juniper Research, Mobile Adult Video to Outstrip Traditional Text-Based Services Rising to \$1.7bn by 2009 (Sept. 12, 2006), <http://www.juniperresearch.com/shop/viewpressrelease.php?id+28&pr=5>.

65. *Id.*

66. Jeremy Caplan, *The iPhone's Next Frontier: Porn*, TIME, June 18, 2008, <http://www.time.com/time/business/article/0,8599,1815933,00.html>.

67. PAUL, *supra* note 34, at 4.

Scroll back . . . to the eighties, when pornography was surreptitiously obtained on videocassettes via mail-order catalogs or watched in the back rooms of video stores. People were ashamed of, or, at the very least, embarrassed by, the prospect of being caught looking at porn[ography]. . . .

Today, pornography is so seamlessly integrated into popular culture that embarrassment or surreptitiousness is no longer part of the equation.

Id.; see also Rich, *supra* note 53 ("The VCR took porn into America's bedrooms and living rooms.").

“near mainstream status in American culture.”⁶⁸ “[P]roliferation of pornography in the current lives of Americans is undoubtedly linked to the changing technological context of modern society.”⁶⁹

The qualitative change in pornography is apparent as well. The images are not the innocuous ones of a generation ago.

[O]n the Internet, . . . the type of sexuality depicted often has more to do with violence, extreme fetishes and mutual degradation than with sexual or emotional connection. . . . These aren’t airbrushed photos of the girl next door or images of coupling; they are vivid scenes of crying women enduring aggressive multiple penetration. These are images created by pornographers for a singular purpose: To help men masturbate and get them to pay for it.⁷⁰

B. *Effects on Consumers*

While there is no unanimity in studies of the effects of pornography, “substantial data show that pornography correlates with various negative outcomes.”⁷¹ While this relationship may not be causal, the correlation between the two appears definite.⁷² Pornography proponents assert various justifications for pornography, including that it is cathartic, assists with intimacy, and is merely a form of harmless entertainment.⁷³ However, these positions

68. Carroll et al., *supra* note 31, at 7; *see also* FARLEY, *supra* note 6, at 155 (discussing online prostitution becoming mainstream); Rich, *supra* note 53; Barrett, *supra* note 62 (“Porno was a destination. . . . Now with DVDs, cable, satellite, it’s at your fingertips . . . you don’t have to go to a sleazy (adult) bookstore.” (internal quotation marks omitted) (quoting Paul Fishbein, President, Adult Video News)).

69. Carroll et al., *supra* note 31, at 7.

70. Pamela Paul, From Pornography to Porno to Porn: How Porn Became the Norm 2–3, http://www.socialcostsofpornography.org/Paul_How_Porn_Became_the_Norm.pdf (last visited May 14, 2010); *see also* Whisnant, *supra* note 20, at 17–18 (documenting the movement to extreme violent sexual activities).

71. Manning, *supra* note 2, at 135; *see also* Victor Cline, *Pornography Effects: Empirical and Clinical Evidence*, in *MEDIA, CHILDREN, AND THE FAMILY: SOCIAL SCIENTIFIC, PSYCHODYNAMIC, AND CLINICAL PERSPECTIVES* 229, 245 (Dolf Zillmann, Jennings Bryant & Aletha C. Uston eds., 1994) (“Whereas a few people may still argue that there is no proof that pornography can harm anyone, there now exists . . . experimental, field, and clinical studies that give contrary evidence.”); Mary Anne Layden, *Pornography and Violence: A Look at New Research*, http://www.socialcostsofpornography.org/Layden_Pornography_and_Violence.pdf (last visited May 14, 2010).

72. Dionne, *supra* note 6, at 624–26; Manning, *supra* note 2, at 135.

73. For a compelling summary of the relationship between learning beliefs and behaviors and pornography, *see* Layden, *supra* note 71, at 39–42.

have been criticized as lacking serious social science support.⁷⁴ Canadian researcher Jill C. Manning completed an extensive meta-analysis of current research of the effects of pornography. She concluded there is no rigorous research *embracing benefits* to pornography consumption.⁷⁵ Research including meta-analysis shows pornography consumption is associated with increased risk for: (1) “sexual deviancy”; (2) “sexual perpetration”; (3) experiencing difficulties in one’s intimate relationships; (4) accepting rape myths.⁷⁶

A different meta-analysis by Paul C. Perrin similarly supports the viewpoint that pornography can alter a user’s mental, emotional, and social attributes and can put the user “at risk for: (1) developing sexually deviant tendencies; (2) committing sexual offenses; (3) experiencing difficulties in one’s intimate relationships; and (4) accepting rape myths.”⁷⁷ Another meta-analysis conducted by the British Ministry of Justice Research Series on more than thirty areas of different methods of research found a parallel between “sexual arousal to sexually violent pornography and increases in sexually aggressive attitudes, beliefs and behaviours.”⁷⁸ Indeed, in the context of child pornography, researcher Michael C. Seto concluded after study that child pornography possession may be a “stronger indicator of pedophilia” than previous sexual offenses against a child.⁷⁹

74. See *id.*; Dionne, *supra* note 6, at 624; Manning, *supra* note 2, at 135–36.

75. Manning, *supra* note 2, at 137; see also Zillmann & Bryant, *supra* note 2, at 20 (“There are reasons then, to anticipate some undesirable consequences . . .”). “Sociologists, psychologists, and criminologists . . . have long reported strong correlations between pornography and sex crimes. They adamantly contradict the claims of neutralists that pornography is cathartic and that it has no negative impact.” Dionne, *supra* note 6, at 625 (footnote omitted). Some researchers have found levels of aggression correlative to cumulative exposure to aggressive pornography. *Id.* at 632 (citing Edward Donnerstein, *Pornography: Its Effect on Violence Against Women*, in *PORNOGRAPHY AND SEXUAL AGGRESSION* 53, 78 (Neil M. Malamuth & Edward Donnerstein eds., 1984)). See generally Janet Hinson Shope, *When Words Are Not Enough: The Search for the Effect of Pornography on Abused Women*, 10 *VIOLENCE AGAINST WOMEN* 56 (2004) (documenting cases in which wives of pornography consumers were pressured to reenact pornography scenes); Elizabeth Cramer & Judith McFarlane, *Pornography and Abuse of Women*, 11 *PUB. HEALTH NURSING* 268, 270 (1994) (recording abusers showing pornography to battered women and asking for or forcing reenactment or posing).

76. Manning, *supra* note 2, at 137.

77. Perrin et al., *supra* note 46, at 12; see also Layden, *supra* note 71.

78. CATHERINE ITZIN ET AL., MINISTRY OF JUSTICE, *THE EVIDENCE OF HARM TO ADULTS RELATING TO EXPOSURE TO EXTREME PORNOGRAPHIC MATERIAL: A RAPID EVIDENCE ASSESSMENT* 23 (2007), available at <http://www.justice.gov.uk/publications/docs/280907.pdf>.

79. Michael C. Seto et al., *Child Pornography Offenses Are a Valid Diagnostic Indicator of Pedophilia*, 115 *J. ABNORMAL PSYCHOL.* 610, 613 (2006).

More subtle effects of exposure to pornography have also been documented. Overexposure to this material can desensitize consumers who, therefore, start seeking more graphic material.⁸⁰ Indications exist that desensitization could be linked to addiction to pornography. Addiction to pornography, an increasing social problem, occurs in stages: being “hooked”; escalating violence in images to obtain the same stimulation; and acting out sexually to simulate pornography.⁸¹

C. *Effects on Consumers’ Families and Partners*

John Paul II’s concern about disorder within the family is borne out in the research. Because man was unable to exist alone, “he can exist only as a ‘unity of the two’ Being a person in the image and likeness of God thus also involves existing in a relationship, in relation to the other ‘I.’”⁸² Specifically regarding wives, John Paul II writes, “The matrimonial union requires *respect* for and a perfecting of the true personal subjectivity of both of them. *The woman cannot become the ‘object’ of ‘domination’ and male ‘possession.’*”⁸³ Applying this concept to pornography consumption, when men consume pornography, they are not only objectifying women within the images, thereby robbing women of their dignity in their failure to see God’s image and likeness in women. Men are also damaging their familial relationships, therefore compromising their own dignity in a more tangible way. Being “in the image and likeness” means men and women, created as “‘unity of the two’ in their common humanity, are called to live in a communion of love, and in this way to *mirror in the world the communion of love.*”⁸⁴ People are not mirroring the communion of love when consuming images of violence, rape, and sexual dominance of women. Researchers argue that some of the most significant impacts of pornography consumption on female partners of consumers is increased risk of marital distress, separation, divorce, and isolation.⁸⁵ Prolonged exposure to even erotica can have

80. See Dolf Zillmann, *Influence of Unrestrained Access to Erotica on Adolescents’ and Young Adults’ Dispositions Toward Sexuality*, 275 J. ADOLESCENT HEALTH 41 (2000).

81. *E.g.*, Perrin et al., *supra* note 46, at 13.

82. *Mulieris Dignitatem*, *supra* note 7, ¶ 7.

83. *Id.* ¶ 10 (first emphasis added).

84. *Id.* ¶ 7 (emphasis added).

85. Manning, *supra* note 2, at 140–45; Ana J. Bridges et al., *Romantic Partners’ Use of Pornography: Its Significance for Women*, 29 J. SEX & MARITAL THERAPY 1, 3, 12–13 (2003); Dolf

similar negative effects on the consumer and his family, including diminished trust, abandonment of hopes for sexual exclusivity, cynical attitudes about love, and negative perceptions of marriage.⁸⁶ Children of Internet pornography consumers are affected significantly with decreased parental time, increased risk of parental separation and divorce, increased risk of consuming pornography themselves, and encountering parental masturbation.⁸⁷

A recent study of pornography among emerging adults found a correlation between acceptance of pornography and acceptance of extramarital sexual behavior for both men and women.⁸⁸ Perrin also found a heightened consciousness of women's features and stimulation of unrealistic and harmful attitudes toward sex.⁸⁹ Excessive interest in pornographic sites has been cited as a significant reason for divorce.⁹⁰ Thus, pornography users risk damage to their families and fail in their divine calling "to exist mutually 'one for the other.'"⁹¹

D. *Effects of Juvenile Exposure*

A growing body of research comments on the negative effects of this proliferation of pornography on juveniles. "[E]vidence indicates that pornography and related sexual media can influence sexual violence, sexual attitudes, moral values, and sexual activity of children and youth."⁹² Again, the presence of the Internet means that children, previously unexposed to such material, are in fact surrounded by it. "Today's youth have access to the Internet and with that access, if unrestricted, they have unlimited access to millions

Zillmann, *Effects of Prolonged Consumption of Pornography*, in PORNOGRAPHY: RESEARCH ADVANCES AND POLICY CONSIDERATIONS 127, 139 (Dolf Zillmann & Jennings Bryant eds., 1989); SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 23–25.

86. Zillmann, *supra* note 80, at 42.

87. J.P. Schneider, *Effects of Cybersex Addiction on the Family: Results of a Survey*, 7 SEXUAL ADDICTION & COMPULSIVITY 31, 46–47 (2000).

88. Carroll et al., *supra* note 31, at 19.

89. Perrin et al., *supra* note 46, at 13.

90. *Is the Internet Bad for Your Marriage? Online Affairs, Pornographic Sites Playing Greater Role in Divorces*, PR NEWSWIRE, Nov. 14, 2002, <http://www.thefreelibrary.com/Is+the+Internet+Bad+for+Your+Marriage%3F+Online+Affairs,+Pornographic...-a094221879>.

91. *Mulieris Dignitatem*, *supra* note 7, ¶ 7 (emphasis omitted).

92. 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 DEV. PSYCHOL. 741, 743 (2004); *see also* SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 27–32.

of pornography web sites.”⁹³ In the United States one study found thirty-four percent of youth Internet users report exposure to unwanted sexual material, eighty-three percent of which occurs when surfing the Internet.⁹⁴ Twenty percent of youth claim this occurs somewhat often.⁹⁵ Indeed, a Columbia University survey reported that 11.5 million teenagers disclosed they have a friend who regularly views and downloads pornography.⁹⁶ The average age of a child’s first exposure to pornography has been reported to be eleven years old.⁹⁷ It has been estimated that thirty percent of boys watch pornography on the Internet at least once a month.⁹⁸ The troubling aspect of this is twofold. First, much research supports the finding that initial exposure of youth who are unable to process the images is upsetting and even traumatic.⁹⁹ Second, research further suggests that over time this leads to desensitization.¹⁰⁰ Because pornography

93. Robert Longo, *Young People with Sexual Behavioral Problems and the Internet*, in CHILD SEXUAL ABUSE AND THE INTERNET: TACKLING THE NEW FRONTIER 57, 57 (Martin Calder ed., 2004).

94. JANIS WOLAK ET AL., NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, ONLINE VICTIMIZATION OF YOUTH: FIVE YEARS LATER 8–9 (2006), http://www.missingkids.com/en_US/publications/NC167.pdf; see also SONIA LIVINGSTONE & MAGDALENA BOBER, LONDON SCHOOL OF ECON., UK CHILDREN GO ONLINE: FINAL REPORT OF KEY PROJECT FINDINGS 20 (2005), http://eprints.lse.ac.uk/399/1/UKCGO_Final_report.pdf (“Nearly six in ten (57%) [of nine- to nineteen-year-olds] have come into contact with online pornography.”); HENRY KAISER FAMILY FOUNDATION REPORT (2002) (indicating that seventy percent of fifteen- to seventeen-year-olds report encountering pornography accidentally online); Flood, *supra* note 61, at 53 (stating that eighty-four percent of boys say they have been exposed to “sex sites” by accident, discussed as “something on the Internet that they thought was offensive or disgusting, and pornography was the material commonly cited”).

95. LIVINGSTONE & BOBER, *supra* note 94, at 21 (reporting that “[a]mong teens (12–19 years), 68% claim to have seen pornography on the internet, 20% saying ‘many times’”). A Kaiser Family Foundation study found seven out of ten fifteen- to seventeen-year-olds reported accidentally coming across pornography with thirty-five percent of girls becoming “very upset” but only six percent of boys. KAISER FAMILY FOUND., GENERATION RX.COM: HOW YOUNG PEOPLE USE THE INTERNET FOR HEALTH INFORMATION 12 (2001), <http://www.kff.org/entmedia/20011211a-index.cfm> (follow “Report” hyperlink).

96. NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., THE NATIONAL SURVEY OF AMERICAN ATTITUDES ON SUBSTANCE ABUSE IX: TEEN DATING PRACTICES AND SEXUAL ACTIVITY 6 (2004).

97. Perrin et al., *supra* note 46, at 13.

98. Dionne, *supra* note 6, at 642.

99. Kimberly J. Mitchell et al., *The Exposure of Youth to Unwanted Sexual Material on the Internet: A National Survey of Risk, Impact, and Prevention*, 34 YOUTH & SOC’Y 330, 346 (2003); see also Greenfield, *supra* note 92, at 744–45 (observing that “[m]emories of impactful sexual media from childhood and adolescence are overwhelmingly negative”).

100. See Zillmann, *supra* note 80, at 41; see also Layden, *supra* note 71 (referencing several studies regarding negative outcomes for juveniles with prior exposure to pornography).

patterns are established during adolescence and rapidly develop in early adulthood, professionals voice concern that accessing pictures and text with sexual content may adversely impact the current or future sexual or emotional development of children or act as a catalyst to sexually problematic behavior with a child or children.¹⁰¹

E. *Disorder: The Effect of Mainstreaming Pornography on Women and Girls*

John Paul II's predicted disorder manifests itself in the changing attitudes of and about women. In a study examining emerging adults' views and use of pornography, Jason S. Carroll confirms what anecdotally was observed in society: pornography is becoming more acceptable and women in particular are at least verbalizing this acceptance.¹⁰² Carroll found that approximately sixty-seven percent of young men and forty-nine percent of young women agree that viewing pornography is acceptable.¹⁰³ To put that number in perspective, it indicates that young women today are more accepting of pornography than their fathers.¹⁰⁴ The use of pornography is also significantly higher. Among these adult men, Carroll found nearly ninety percent reported using it, nearly half of them reported doing so weekly.¹⁰⁵ However, the consumption differs greatly between the sexes. Approximately one third of young women also reported the use of pornography as well.¹⁰⁶ While young men's use is common, women report consuming pornography only once a

101. Ethel Quayle & Max Taylor, *Young People Who Sexually Abuse: The Role of New Technologies*, in CHILDREN AND YOUNG PEOPLE WHO SEXUALLY ABUSE OTHERS 115, 117 (Marcus Erooga & Helen Masson eds., 2d ed. 2006). Jason S. Carroll reports that clinical professionals have noted "a marked increase in the number of clients seeking treatment for sexually addictive problems related to pornography." Carroll et al., *supra* note 31, at 8-9 (citing Kimberly J. Mitchell et al., *Inventory of Problematic Internet Experiences Encountered in Clinical Practice*, 36 PROF. PSYCHOL. 498, 500-01 (2005)); see also SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 30-31 (citing numerous studies documenting child sexual offenders and pornography); Flood, *supra* note 61, at 57 (observing that "[p]ornography consumption may intensify boys' investment in problematic constructions of gender").

102. Carroll et al., *supra* note 31, at 16. This is the byproduct of the industry executives' focus on the growth market of women and couples. See Rich, *supra* note 53 (describing women and couples as "the industry's biggest growth market").

103. Carroll et al., *supra* note 31, at 16.

104. *Id.* at 25.

105. *Id.* at 16, 27.

106. *Id.* at 16.

month or less.¹⁰⁷ Indeed, women report a much higher level of acceptance than actual usage. Carroll again offers an effective analogy: pornography consumption is as common as “binge” alcoholic drinking for the same population.¹⁰⁸ One difference is, however, that most young adults outgrow binge drinking.

One might argue that far from a social cost, this mainstreaming of pornography is a positive social phenomenon, allowing for increased sexual freedom and a reduction in the stigma of sexuality. However, other trends in our culture as they relate to women and girls belie this progress. A significant one is the increased sexualization of girls.

John Paul II reminds us that being made in the image and likeness of God is not only “essential for the human being, [but it] is passed on by the man and woman, as spouses and parents, to their descendants.”¹⁰⁹ This reality forces society to ask itself, is it passing on to its children this sense of their inherent dignity? Or, by having this proliferation of pornography in volume, severity, and now access, is it passing on to its children a sense that they are sexual commodities? The anecdotal and early research indicates reasons for concern.

What is happening to our society has been referred to as “pornification” or “pornographication.”¹¹⁰ Anecdotally, it is apparent in items for sale: children’s pimp and prostitute Halloween costumes; thong underwear for young girls; infant T-shirts with the writing “All Daddy Wanted Was a Blow Job,” and T-shirts for teenagers with “well-hung,” “pimps,” and “b**ches” written across them.¹¹¹ This is also

107. *Id.* at 17.

108. *Id.* at 23.

109. *Mulieris Dignitatem*, *supra* note 7, ¶ 6.

110. PAUL, *supra* note 34, at 11; Julie Gale, Op-Ed, *The Sexualisation of Children*, ABC THE DRUM UNLEASHED, Mar. 3, 2008, <http://www.abc.net.au/unleashed/stories/s2175450.htm>. “There is an increased testing and blurring of boundaries between pornography and mainstream media” Flood, *supra* note 61, at 46; *see also* Whisnant, *supra* note 20, at 17 (noting that an aspect of pornography is the “sexualizing of childhood”); *see also* SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 29 (arguing that pornography has infected modern childhood); *id.* at 34–35 (noting that “several academic studies have suggested that both adolescent boys and girls who are exposed to a sexualized media environment are more likely to view women as sexual objects”).

111. *See, e.g.*, BrandsOnSale.com, Pimp Halloween Costumes for Children, <http://www.brandsonsale.com/082805-halloween-costumes.html> (last visited May 14, 2010); *Trick or Treat 2004: “Pimp and Ho” Kids, Provocative Costumes for Children Spark Outrage Among Some Parents*, WORLD NET DAILY, Aug. 25, 2004, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=40152; *see also* Claudia Wallis, *The Thing About Thongs: Why the Bottom Line Has Become a Battleground for Parents of Tweens*, TIME, Nov. 10, 2003, <http://www.time.com/time/2003/kids2/thongs.html> (“Sales of thongs to tweens (a market now defined ridiculously broadly as ages 7 to 12) have quadrupled since 2000, from a modest

apparent in our media, with the Oscar award winning song “It’s Hard Out Here for a Pimp”; the Calvin Klein line of advertisement with then-minor Brooke Shields famously asserting that “nothing” “comes between me and my Calvins”; and the more recent *Vanity Fair* photographs of fifteen-year-old teen idol, Miley Cyrus, posing apparently topless with a cloth covering her chest, as well as the Internet website “jailbaitcountdown.com’s” countdown to when she will turn eighteen years old.¹¹² A not uncommon theme in pornography is that of the young model in a school uniform.¹¹³ Indeed, one reason the U.S. Supreme Court cited for striking down the Child Pornography Protection Act was because an Oscar-winning film of a previous year, *American Beauty*, depicted a man’s sexual fantasy with a minor.¹¹⁴ At the same time as these and many other events are occurring in our culture, the U.S. Conference of Catholic Bishops reports that “50,000 women and children are trafficked into the United States each year.”¹¹⁵ Additionally, the U.S. Department of State reports, “Sex trafficking comprises a significant portion of overall human trafficking.”¹¹⁶ Furthermore, it is conservatively estimated

\$400,000 to \$1.6 million, according to NPD Fashionworld, a market-tracking firm.”); Gale, *supra* note 110; Karen Brooks, *Shirty with Little Misses*, THE COURIER MAIL, Jan. 22, 2008, <http://www.news.com.au/couriermail/story/0,23739,23091541-27197,00.html>.

112. Bruno del Granado, *Pimp’ Gives Oscar a Good Rap: ‘Hustle & Flow’ Theme Scores First Academy Award for Hip Hop Group*, ABC NEWS, Mar. 6, 2006, <http://abcnews.go.com/Entertainment/Oscars2006/story?id=1690846&page=1>; Brooke Shields in the Calvin Klein Jeans Commercial 1981, <http://www.youtube.com/watch?v=YK2VZgJ4AoM> (last visited May 14, 2010); JailBaitCountdown.com, http://www.jailbaitcountdown.com/miley_cyrus.html (last visited May 14, 2010); see also Rich, *supra* note 53 (quoting a pornography executive as stating that the teenagers who grew up with cable and the VCR “came to the table already saturated with sex”). While some will no doubt argue that the Miley Cyrus photos are artistic, as they were taken by acclaimed photographer Annie Leibovitz, Cyrus issued a statement announcing she was embarrassed by the photos and apologizing to the public. *Miley Cyrus Embarrassed by Magazine Photos: Teenage Pop Star Apologizes to Fans for Racy Image by Annie Leibovitz*, MSNBC.COM, Apr. 28, 2008, <http://www.msnbc.msn.com/id/24349711>. The Disney Channel, which profits from Miley Cyrus’s hit show *Hannah Montana*, issued a statement that *Vanity Fair* created a situation “to deliberately manipulate a 15-year-old in order to sell magazines.” Sheila Marikar, *Leibovitz Defends Provocative Miley Cyrus Photos: Photographer Calls Bare-Back Picture of Cyrus a “Simple, Classic Portrait,”* ABC NEWS, Apr. 28, 2008, <http://abcnews.go.com/entertainment/story?id=4736358&page=1>.

113. *E.g.*, Lianne George, *Why Are We Dressing Our Daughters Like This?* (Jan. 2007), <http://www.commercialexploitation.org/news/whyarewedressingourdaughters.htm>.

114. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 247–48, 258 (2002).

115. MIGRATION & REFUGEE SERVS., U.S. CONFERENCE OF CATHOLIC BISHOPS, STOP TRAFFICKING OF PEOPLE 2, 7, 10 (2000), <http://www.nccbuscc.org/mrs/stoptraffick.pdf>.

116. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 21 (2009), <http://www.state.gov/documents/organization/123357.pdf>. Although rape statistics report a decline, these have been challenged, for example, by the increase in the number of child pornography images. UNIF.

that 244,000 children per year are currently at risk of becoming victims of commercial child sexual exploitation.¹¹⁷

These anecdotal observations are supported by some preliminary research. The American Psychological Association (“APA”) issued a report on the sexualization of girls, which addressed the effect the massive media exposure had on girls, and it offered some conclusions. The report concluded that 11.5% of coded sexual messaging in primetime programming popular among “children and adolescents” objectified females; male characters in primetime comedies made 85% of the sexual remarks about body parts or nudity; “44%–81% of music videos contain sexual imagery,” a large portion of which objectifies women; adolescents are the largest consumers of movies, and the APA noted trends in increased sexuality in them, including “Disney’s female characters” being marketed with “more cleavage” and cartoons primarily displaying “girls as domestic, interested in boys, and concerned with their appearance.”¹¹⁸ The APA cautions that this self-objectification has a cognitive effect in which chronic attention to physical appearance leaves fewer cognitive resources for other mental or physical activities.¹¹⁹ The mental effects include eating disorders, low self-esteem, depression, and depressed moods.¹²⁰ Finally, far from leading to a healthy sexual development, the APA reports that sexual objectification leads to a diminished sexual understanding.¹²¹

III. “FREE EXPRESSION” LENS IN AMERICAN JURISPRUDENCE

After reading *Mulieris Dignitatem* and its strong argument for women’s dignity, such a framework is a compelling lens through which to examine the role of pornography in our culture. If one

CRIME REPORTING PROGRAM, CRIME IN THE UNITED STATES 2008, available at http://www.fbi.gov/ucr/cius08/offenses/violent_crime/forcible_rape.html (reporting a decline in forcible rape by 1.6% from the previous year).

117. Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the United States*, in MEDICAL, LEGAL, AND SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION 95, 107–08 (Sharon W. Cooper et al. eds., 2005).

118. AM. PSYCH. ASS’N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 6–8 (2007), <http://www.noys.org/Girl%27s%20Sexualization%20Report.pdf>. Sexual objectification is defined as being “made into a thing for others’ sexual use, rather than seen as a person with the capacity for independent action and decision making.” *Id.* at 2.

119. *See id.* at 24–27.

120. *Id.* at 24.

121. *Id.* at 26.

accepts that pornography presents a social problem in the United States, one might be tempted to rewrite laws regarding this problem to reflect this dignity framework. However, a significant obstacle to such a view is not only the current protection from such regulation afforded pornography, but also the very paradigm through which pornography is viewed in the legal culture. Pornography is not viewed through a paradigm of the dignity of women, but rather through a paradigm of “free expression.”

A. *Pornography and the First Amendment*

The protected speech paradigm is one that requires some explanation, as it is wholly distinct from that of the dignity paradigm.¹²² To understand how it implicates pornography, one must review the history of how pornography came to be viewed as speech at all.

“Congress shall make no law . . . abridging the freedom of speech, or of the press.”¹²³ From this text in the First Amendment we draw one of the fundamental rights: the freedom of speech. The breadth of this freedom, and the treatment of pornography as “speech,” evolved over time. While there is some debate as to the purpose of the First Amendment, the U.S. Supreme Court has rejected the claim that it is limited to political speech.¹²⁴ Notwithstanding that, it is equally clear that the right is not absolute and that not all speech is protected. Many theories exist regarding the scope of the free speech protections. Pornography advocates and the pornography industry embrace absolutism, arguing that all speech should be protected equally.¹²⁵ However, the law does not do so, recognizing categories of speech that are outside the First Amendment.¹²⁶ In determining if speech is worthy of protection, the Supreme Court, when faced with a content-based

122. Tomes have been written, and rightly so, on the First Amendment. Space considerations prevent this section from being an exhaustive analysis of the First Amendment implications on pornography. This section, therefore, has the limited purpose of exposing the parameters of the First Amendment as they may implicate applying a dignity paradigm to the question of pornography.

123. U.S. CONST. amend. I.

124. *E.g.*, NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 460 (1958).

125. Andrea Dworkin, *Suffering and Speech*, in IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 25, 27 (Catharine A. MacKinnon & Andrea Dworkin eds., 1997).

126. U.S. DEP'T OF JUSTICE, *supra* note 3, at 251 (“Although urging the public to rise up and overthrow the government is protected by the First Amendment, urging your brother to kill your father so that you can split the insurance money has never been considered the kind of spoken activity with which the First Amendment is concerned.”).

regulation, has balanced the individual's First Amendment rights against any compelling interest of the government.¹²⁷ In so doing, it has allowed some forms of speech to be regulated and others to be entirely unprotected by the First Amendment.¹²⁸ Those that have no protection include, but are not limited to, child pornography, "fighting words," and obscene speech, because they lack meaningful social value and thus are all unworthy of protection.¹²⁹

A common rationale for the First Amendment being interpreted broadly is the "marketplace of ideas" theory, which asserts that ideas compete against each other in an ongoing process of human enlightenment, and that "free exchange of ideas" is more valuable than limiting speech in the name of limiting bad ideas.¹³⁰ This theory is highlighted in *Reno v. ACLU*, which struck down the Communications Decency Act's effort to criminalize the "knowing transmission of obscene or indecent messages" to minors.¹³¹ "[G]overnmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression . . . outweighs any theoretical but unproven benefit of censorship."¹³² Specifically, this theory asserts that the marketplace is the better arena for ideas to be accepted or rejected than the government. "The Constitution exists precisely so that opinions and judgments, including esthetic and moral judgments about art and literature, can be formed, tested, and expressed. What the Constitution says is that these judgments are for the individual to make, not for the Government to decree"¹³³

It is with this backdrop that the Supreme Court addressed obscene speech, which describes some but not all pornography as a First Amendment issue. Prior to 1957, states regulated obscene material on

127. See, e.g., *Virginia v. Black*, 538 U.S. 343, 363 (2003) (finding that cross burning when done with the intent to intimidate is not protected speech); *Pittsburg Press Co. v. Pittsburg Comm'n on Human Relations*, 413 U.S. 376, 388 (1973) (holding that offers to engage in illegal activity are excluded from First Amendment protection).

128. E.g., *United States v. Williams*, 553 U.S. 285, 297 (2008) ("Offers to provide or requests to obtain unlawful material, whether as part of a commercial exchange or not, are . . . undeserving of *First Amendment* protection."); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245–46 (2002) ("The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children.").

129. E.g., *New York v. Ferber*, 458 U.S. 747, 764 (1982); *Roth v. United States*, 354 U.S. 476, 484–85 (1957); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573–74 (1942).

130. See *Reno v. ACLU*, 521 U.S. 844, 885 (1997).

131. *Id.* at 858–59, 882, 885.

132. *Id.* at 885.

133. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 818 (2000).

their own.¹³⁴ However, in *Roth v. United States*, the Supreme Court held the federal obscenity statute constitutional, in addition to upholding the California statute.¹³⁵ To do so, *Roth* relied on the precedent of the “fighting words” cases:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.¹³⁶

In so doing, *Roth* has become very much a double-edged sword. On the one hand, it explicitly excludes obscene speech from First Amendment protection. On the other hand, it frames the discussion of pornography regulations within a discussion of speech and expression. By defining obscene material as unprotected speech, it conceded that it is in fact speech. By implication, nonobscene sexually explicit material is presumed protected speech.¹³⁷ In essence, therefore, *Roth* placed pornography squarely within the realm of traditional First Amendment analysis.

Roth's holding does not transform all pornography into protected speech. As the President's Commission on Pornography noted, there is no shared definition of pornography, as the term covers a broad array of material.¹³⁸ What some would consider pornographic, others would consider merely sexually suggestive. Moreover, as time progresses, what society considers pornographic becomes mainstream

134. See e.g., *State v. Kohler*, 123 A.2d 881, 882, 885 (N.J. Super. Ct. App. Div. 1956) (upholding the conviction of defendants who were convicted of possessing “obscene moving picture films ‘with intent to utter or expose [the same] to the view of another’” (alteration in original)); *State v. Weston*, 275 S.W.2d 601, 601, 603 (Mo. Ct. App. 1955) (affirming the defendant's conviction for showing obscene moving pictures); *People v. Smith*, 252 A.D. 622, 623 (N.Y. App. Div. 1937) (affirming defendant's conviction for “selling an obscene book, and displaying an indecent picture,” in violation of the New York Penal Law).

135. *Roth v. United States*, 354 U.S. 476, 492–94 (1957).

136. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942) (footnotes omitted).

137. See *Roth*, 354 U.S. at 485. Child pornography, similar to obscenity, is unprotected speech. *New York v. Ferber*, 458 U.S. 747, 764 (1982).

138. U.S. DEP'T OF JUSTICE, *supra* note 3, at 227.

material.¹³⁹ While the label “pornography” is relevant in social science and other discussion, under the law, the relevant label is “obscenity.” Therefore, pornography that is obscene is not protected by the First Amendment, whereas pornography not deemed to be obscene enjoys First Amendment protection. The Supreme Court has specifically stated that its goal is not to limit all pornography, but rather simply “hard core” pornography, as “obscene.”¹⁴⁰

Since *Roth*, the Supreme Court has struggled to find a workable definition of obscenity. After becoming unsatisfied with the test articulated in *Roth*, the Supreme Court updated it in *Miller v. California*,¹⁴¹ and then later developed it further in *Smith v. United States*¹⁴² and *Pope v. Illinois*.¹⁴³ When a statute suppresses indecent speech, it must suppress only such speech that is obscene under the *Miller* test. The *Miller* test explicitly states that only depictions of sexuality are to be considered obscene.¹⁴⁴ More importantly, as modified, it consists of the following three-part test:

[1] “[T]he average person, applying contemporary community standards” would find that that the work, taken as a whole, appeals to the prurient interest; [2] whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and [3] whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.¹⁴⁵

All three elements of the test must be satisfied for the material to be considered obscene.¹⁴⁶ The Supreme Court explicitly rejected the

139. See PAUL, *supra* note 34, at 4–5.

140. *Miller v. California*, 413 U.S. 15, 27 (1973). Under obscenity law, “no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive ‘hard core’ sexual conduct specifically defined by the regulating state law, as written or construed.” *Id.*

141. See generally *Miller*, 413 U.S. 15.

142. 431 U.S. 291, 299–302 (1977).

143. 481 U.S. 497, 500–01 (1987).

144. *Miller*, 413 U.S. at 24 (“[W]e now confine the permissible scope of such regulation to works which depict or describe sexual conduct.”).

145. *Id.* (citation omitted) (quoting *Kois v. Wisconsin*, 408 U.S. 229, 230 (1972)). “Prurient interest” is defined as “material having a tendency to excite lustful thoughts.” *Roth v. United States*, 354 U.S. 476, 487 & n.20 (1957).

146. See *Miller*, 413 U.S. at 25 (“If a state law that regulates obscene material is thus limited, as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary.”).

standard that the material be “utterly without redeeming social value.”¹⁴⁷ Moreover, the mere existence of a tenuous plot does not save the material from being found to be obscene speech.¹⁴⁸ Although there is much discussion in public policy as to whether the material causes any harm, under the law there is no need to demonstrate that the obscene material causes harm in order to restrict it.¹⁴⁹

This obscenity test has had many permutations over the years to address many different types of media. While the *Miller* court expressed a grave concern that its test would chill nonobscene sexually explicit speech, this concern seems to have been misplaced. The revenue of the pornography industry has been estimated to be as high as \$97 billion worldwide and \$13.3 billion in the United States, while the adult entertainment industry estimated its profits at approximately \$12.6 billion for 2005.¹⁵⁰ Under the reign of the *Miller* test, both pornography and obscene speech have grown.

Given this paradigm, one must consider whether there is room for a dialogue on the dignity of women. Under *Miller* there has been little reflection on the meaning of the material’s content as it relates to the perception of women. For example, the Court does recognize to some degree the secondary harms created by pornographic material and allows the regulation of commercial businesses through restrictions in time, place, and manner, as long as they do not unduly burden speech.¹⁵¹ The Court has also allowed regulations of radio broadcasts through time restrictions where material would be harmful to children.¹⁵² However, in the realm of the Internet, the Court has been more reluctant to recognize any restrictions.¹⁵³ The Communications Decency Act regulated the knowing transmission of

147. *Id.* at 24 (internal quotation marks omitted) (quoting *Memoirs v. Massachusetts*, 383 U.S. 413, 418 (1966) (emphasis omitted)).

148. *Kaplan v. California*, 413 U.S. 115, 117–18 (1973).

149. *See Miller*, 413 U.S. at 25–26; *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 60–61 (1973). Yet, the Supreme Court found “ample basis” for a legislature to conclude that “crass commercial exploitation of sex” can distort and debase “family life, community welfare, and the development of human personality.” *Id.* at 63.

150. Ropelato, *supra* note 1 (noting also that this is larger than the combined revenues of the three largest broadcast networks: ABC, NBC, and CBS); *Adult Industry Generates \$12.6 Billion in 2005, AVN Estimates*, HIGH BEAM, Dec. 13, 2005, <http://www.highbeam.com/doc/1G1-139727714.html>.

151. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46 (1986) (allowing an ordinance to prohibit adult theaters within 1000 feet of a residential zone, church, school, or park).

152. *FCC v. Pacifica Found.*, 438 U.S. 726, 750 (1978).

153. *Reno v. ACLU*, 521 U.S. 844, 867–69 (1997).

obscene images, as well as communications that depict or describe in a patently offensive way sexual or excretory activity or organs to children.¹⁵⁴ While the Court did recognize the legitimacy of the congressional goal of protecting children, it distinguished Internet regulations from those in the broadcast media because the broadcast media was heavily regulated by the FCC.¹⁵⁵ The Court chose not to allow increased regulation of the Internet because the Internet was not regulated in a similar way.¹⁵⁶

When the Court has noted the government's right to protect society from social harms, it has done so mostly within the context of child pornography, which it labeled as also outside the protection of the First Amendment, even if not obscene.¹⁵⁷ Indeed the Supreme Court recognized explicitly the harm to children from child pornography. "The pornography's continued existence causes the child victims continuing harm by haunting the children in years to come."¹⁵⁸ However, in 2002, the Court used this recognition as a way of limiting the government's ability to regulate child pornography by noting that if an actual child is not used in the production of the child pornography and the material is not obscene, it receives First Amendment protection.¹⁵⁹

B. *The Use of the Free Expression Paradigm and the Increase in Pornography*

The significance of the recognized social harm of pornography, the effect of its mainstreaming, and the use of the *Miller* test is critical to understanding the legal landscape in addressing this social problem. Pornography is protected speech so long as it is not obscene. Obscenity is determined by community standards. Community standards evolve. If they evolve only in the direction of desensitization due to constant media exposure, then the only result that can occur is that less and

154. *Id.* at 858–60.

155. *Id.* at 868–69.

156. *Id.*

157. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245–46 (2002); *New York v. Ferber*, 458 U.S. 747, 764 (1982).

158. *Osborne v. Ohio*, 495 U.S. 103, 111 (1990) (citing *Ferber*, 458 U.S. at 759).

159. *Ashcroft*, 535 U.S. at 256. For an interesting discussion of how children's "impressionability" has been addressed by the Supreme Court, see DAVID L. TUBBS, *FREEDOM'S ORPHANS: CONTEMPORARY LIBERALISM AND THE FATE OF AMERICAN CHILDREN* 168–76 (2007).

less material will be deemed obscene. Eventually, *nothing* will be obscene.

Therefore, it appears that the allowance of misogynistic pornography with the expectation that good ideas will win the competition in the marketplace of ideas may have failed. Instead, it raises the bar defining obscenity and becomes in a de facto manner an absolutist approach to speech: nothing can be regulated no matter how damaging.

IV. THE FUTURE: IS THERE A HOPE FOR INCORPORATING THE CONCEPT OF DIGNITY INTO OUR FREE SPEECH PARADIGM?

The problem has been identified. John Paul II offers a different lens through which to view the issue. The question then remains whether there is room for the concept of dignity in our discussion of pornography. The legal answer suggests not. This is demonstrated by a previous effort in the United States to reframe the issue of pornography away from free expression toward civil rights.

A. *Feminist Critique*¹⁶⁰

Within American legal and social history, there has been a movement away from examining pornography as a speech issue toward focusing on the women in the images and their right to be free of this objectification and abuse.¹⁶¹ It was led predominantly by Catharine MacKinnon and Andrea Dworkin. As a result of their advocating for a different view of pornography, they were invited by two municipalities, Minneapolis and Indianapolis, to draft ordinances allowing for civil causes of action against the producers and those who profit from pornography.¹⁶² While these ordinances were ultimately unsuccessful, they represent an important shift in viewing pornography within a very different framework: as a civil rights issue.

160. The use of the term "feminist" is not to imply that all feminists oppose pornography. Such is not the case. See, e.g., NADINE STROSSEN, DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS 13–15 (1995); Jeffrey M. Bryan, *Sexual Morality: An Analysis of Dominance Feminism, Christian Theology, and the First Amendment*, 84 U. DET. MERCY L. REV. 655, 659 (2007).

161. See, e.g., Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 27–28 (1985); Whisnant, *supra* note 20, at 22.

162. Andrea Dworkin, *Pornography, Prostitution, and a Beautiful and Tragic Recent History*, in NOT FOR SALE, *supra* note 6, at 137, 137.

Although unlikely allies of John Paul II, the feminists' approach to pornography is strikingly similar. While, with regard to other social questions, these two may find themselves on opposite ends of the debate, on the issue of pornography, the two share a common perception of how women should and should not be treated.¹⁶³ They also share views on the effects of the pornographic material, the role of men in these materials, and the social problems related to ignoring pornography.¹⁶⁴ Just as the abolitionist movement forged an unlikely alliance between non-faith-based radicals and conservative Christians, so too can pornography ally the feminists and religious in a common understanding of the problem and an accurate assessment of its harm.¹⁶⁵

1. *Women Should Not Be Dominated*

Domination is an important concept to both John Paul II and the feminists. *Mulieris Dignitatem* states the disturbance of the original relationship of equality between men and women results in "domination" taking the place of "being a sincere gift" of self to the other.¹⁶⁶ Indeed, John Paul II writes of the correct ethos "confirmed by Christ in opposition to that tradition which discriminate[s] against women. In this tradition the male 'dominate[s],' without having

163. See, e.g., Dworkin, *supra* note 162. To be sure, feminists, like any other group, should not be overgeneralized as only having one view. Additionally, this Article does not suggest that the "radical feminists" and Pope John Paul II share an ideology on most issues. One cannot overstate the many differences between the "radical feminists" movement and the thought of Pope John Paul II. Rebecca Whisnant specifically cautions against pitfalls of an alliance between anti-pornography social conservatives and radical feminists because of, inter alia, the feminists' perception of the broader distinction between these ideologies on roles of women and men in society. Rebecca Whisnant, *Letter From a War Zone: Some Thoughts on Setting an Activist Agenda*, in PORNOGRAPHY: DRIVING THE DEMAND IN INTERNATIONAL SEX TRAFFICKING 329 (2007). This commonality of perspective is insufficient to form an alliance to many, including Andrea Dworkin, who rejected it in her essay *Antifeminism*. Like Pope John Paul II, she notes there is an absolute standard of human dignity as a keystone to feminism. However, from that shared premise she argues that institutions that are male-dominated or have perceptions of different areas of responsibility for men and women are forms of anti-feminism. ANDREA DWORKIN, RIGHT WING WOMEN 195-235 (1983); see also Dworkin, *supra* note 162, at 138, 141 (noting the need to recognize that women in pornography are human, but identifying "marriage and the church" as institutions that control women.).

164. See *infra* part IV.A.1-6.

165. As Judith Hill states in a manner that could be from *Mulieris Dignitatem*, "A person does not have to earn the right to be treated as an end in himself, to be treated with fairness and consideration . . ." Judith M. Hill, *Pornography and Degradation*, in PORNOGRAPHY: PRIVATE RIGHT OR PUBLIC MENACE? 100, 103 (Robert M. Baird & Stuart E. Rosenbaum eds., 1998).

166. *Mulieris Dignitatem*, *supra* note 7, ¶ 10 (internal quotation marks omitted).

proper regard for woman and for her dignity."¹⁶⁷ Therefore, John Paul II acknowledges social disorder resulting from male dominance, which has as its core cause the failure to regard women with dignity.

This is consistent with the feminist view of pornography, which focuses not on the speech aspects of the material but rather on the victimization, objectification, and domination of women. For the feminists, pornographic content reinforces rape myths that lead to increased victimization of women by exacerbating male oppression.¹⁶⁸ More subtly, these themes of male domination objectify women further.¹⁶⁹ The proposed Indianapolis legislation reflected this by defining pornography as:

[T]he graphic sexually explicit subordination of women, . . . that also includes one or more of the following: (1) Women are presented as sexual objects who enjoy pain or humiliation; or (2) Women are presented as sexual objects who experience sexual pleasure in being raped; or (3) Women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or as dismembered or truncated or fragmented or severed into body parts; or (4) Women are presented being penetrated by objects or animals; or (5) Women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual; [or] (6) Women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.¹⁷⁰

Indeed, for the radical feminist, pornography *is* dominance.

Pornography is a practice of discrimination . . . [that] helps keep all women in an inferior status by defining our subordination as our sexuality and equating that with our gender. It is also sex

167. *Id.* ¶ 12.

168. Susan A. Rubin & Laurence B. Alexander, *Regulating Pornography: The Feminist Influence*, 18 COMM. & L. 73, 76 (1996).

169. *Id.*; see also FARLEY, *supra* note 6, at 154 ("Pornography is a document of what men's domination of women in prostitution looks like—in all its racist and classist specificity.").

170. INDIANAPOLIS AND MARION COUNTY, IND., GENERAL ORDINANCE § 16-3(q) (1984) (emphasis added) (second alteration in original), available at <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppB1.htm>.

discrimination because its victims, including men, are selected for victimization on the basis of their gender.¹⁷¹

Like Pope John Paul II, the feminist critique calls upon society to look at the content of this material and see its effect—the denial of women’s rights and dignity.

A second analysis, shared by both Pope John Paul II and the feminists, is the examination of the impact on women who are directly or indirectly exploited by pornography.¹⁷² In so doing, the focus is on the weakest and most vulnerable: those women victimized in its production. This group of women is central to the feminist argument about pornography because they are marginalized and silenced when they discuss the coercion in production. In hearings for these proposed ordinances, not only experts testified, but also women who were hurt and exploited by the pornographic material: rape victims, victims of violence, and prostituted women.¹⁷³ These women asserted their unique exploitation by pornography through the material that legitimized their abuse and provided a gateway into prostitution.¹⁷⁴ Feminists also highlight the obvious racism in pornography, in which black women suffer more violence and black men are portrayed as more sexual and violent.¹⁷⁵

2. *Systemic Effects of Pornography*

When John Paul II discusses the refusal to recognize the inherent and holy dignity of women, he notes the result of this is social and familial disorder.¹⁷⁶ Feminists also argue that pornography’s deleterious effects go well beyond aiding initial acts of violence, becoming systematic.¹⁷⁷ Catharine MacKinnon begins this analysis by

171. MacKinnon, *supra* note 161, at 27.

172. *Mulieris Dignitatem*, *supra* note 7, ¶ 14.

173. See FARLEY, *supra* note 6, at 154; Whisnant, *supra* note 20, at 23–24; MacKinnon, *supra* note 161, at 27.

174. Dionne, *supra* note 6, at 645.

175. *Id.* at 660; see also Vednita Carter, *Prostitution and the New Slavery*, in NOT FOR SALE, *supra* note 6, at 85, 85–88 (noting that pornography is reminiscent of slavery and perpetuates the myth that all African-American women are whores); FARLEY, *supra* note 6, at 154.

176. *Mulieris Dignitatem*, *supra* note 7, ¶ 10.

177. MacKinnon, *supra* note 161, at 17–18; Andrea Dworkin, *For Men, Freedom of Speech; For Women Silence Please*, in TAKE BACK THE NIGHT, *supra* note 45, at 256, 258.

A defense of pornography is a defense of the brute use of money to encourage violence against a class of persons who do not have—and have never had—the civil rights vouchsafed to men as a class. The growing power of the pornographers

noting the absence of women's concerns being represented in the legal system from its beginnings.¹⁷⁸ She then notes that when the law examines pornography, because of this gender inequality, it will not perceive the harm.¹⁷⁹ Ultimately, for example, what is depicted in pornography becomes "just the way things are," thereby institutionalizing inequality in the law.¹⁸⁰ The effect of this is to silence women.¹⁸¹ As an example of how women are silenced, MacKinnon vividly analogizes it to prison rape.¹⁸² She describes prison as the only place where anything like what happens to women happens to men. In prison "their freedom [is] restrained, . . . [t]hey can be tortured at will, and it is passed off as discipline or as means to an end. They become compliant. They can be raped at will, at any moment, and nothing will be done about it. When they scream, nobody hears."¹⁸³

3. *Pornography Is Detrimental to Men*

As John Paul II expressed in *Mulieris Dignitatem*, when men exploit women, they decrease their own inherent dignity. Remarkably, the feminists recognize the harm pornography causes to men as well as to women. "In feminists' view, men will ultimately be more fully realized [human] beings if they are liberated from pornography's bizarre stereotypes. Feminists [have recognized that men] . . . have emotional needs that transcend stimulation and ejaculation."¹⁸⁴ Similarly, current feminist scholar Rebecca Whisnant notes that "[t]he pornography industry damages its consumers' moral personalities at every turn, by hooking them on material that undermines their self-

significantly diminishes the likelihood that women will ever experience freedom of anything, certainly not sexual self-determination, certainly not in the United States.

Id.

178. MacKinnon, *supra* note 161, at 2.

179. *Id.* at 3; *see also* Dworkin, *supra* note 177, at 258.

180. MacKinnon, *supra* note 161, at 8.

181. DWORKIN, *supra* note 163, at 256 ("Both law and pornography express male contempt for women. . . . Both express enduring male social and sexual values; each attempt to fix male behavior so that supremacy of the male over the female will be maintained.").

182. MacKinnon, *supra* note 161, at 15.

183. *Id.*

184. Dionne, *supra* note 6, at 617 (footnote omitted).

respect and their dignity.”¹⁸⁵ While the focus of the feminists is clearly on women, like John Paul II, they recognize that the resulting personal and social disorder of a commoditization of human beings is one that negatively affects all people.¹⁸⁶

4. *Normalization of Pornography*

Pope John Paul II warns of the disorder resulting from denying dignity. This has manifested itself in the pornography realm by an explosion of prevalence, severity, and a bleeding over into the mainstream, thus legitimizing the content. Catharine MacKinnon notes the same:

In pornography, there it is, in one place, all of the abuses that women had to struggle so long even to begin to articulate, all the *unspeakable* abuse: the rape, the battery, the sexual harassment, the prostitution, and the sexual abuse of children. Only in the pornography it is called something else: sex, sex, sex, sex, and sex, respectively. Pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them. More generally, it eroticizes the dominance and submission that is the dynamic common to them all. It makes hierarchy sexy and calls that “the truth about sex” or just a mirror of reality. Through this process, pornography constructs what a woman is as what men want from sex. This is what the pornography means.¹⁸⁷

MacKinnon makes the same observation as Pope John Paul II: the sexual relationship between men and women has been distorted. While they may describe the distortion differently, the common acknowledgement is that there is a distortion of a dignity based on mutual self-giving. In Dworkin and MacKinnon’s view, this is a direct result of pornography. “Inequality is its central dynamic; the

185. Whisnant, *supra* note 37. “To maintain the pornographer’s profits, the consumer’s very humanity, his capacity for empathy and solidarity with other human beings, must be snuffed out.” *Id.*

186. *Id.*

187. MacKinnon, *supra* note 161, at 16–17 (footnote omitted).

What is happening before your very eyes is that the pornography industry has managed to legitimize pornographized sexuality and to make it the duty of every woman to perform sexually as a prostitute. . . . [T]he clearest expression of what it means to be a woman, to be sexual, and to be owned, but to think one is free.

Dworkin, *supra* note 162, at 141.

illusion of *freedom* coming together with the reality of *force* is central to its working. . . . It institutionalizes the sexuality of male supremacy, fusing the erotization of dominance and submission with the social construction of male and female."¹⁸⁸ For MacKinnon, however, the effects of pornography are a profound social disorder. They are not only secondary effects influencing violence, relationships, and victimization. They actually have become reality.

We are now—in the world pornography has decisively defined—having to meet the burden of proving, once and for all, for all of the rape and torture and battery, all of the sexual harassment, all of the child sexual abuse, all of the forced prostitution, *all* of it that the pornography is part of and that is part of the pornography, that the harm *does happen* and that when it happens it looks like this. Which may be why all th[e] evidence never seems to be enough.¹⁸⁹

5. *Rejection of the "Free Expression" Paradigm*

The feminists' focus on women being deprived of certain basic rights or dignity (to use John Paul II's words) leads to a demand to view the social problem of pornography through a different lens than the "free expression" lens dominant in today's discourse. Feminists circumvent the "marketplace of ideas" concept by arguing that it does not exist if women do not have equal access to the marketplace.¹⁹⁰ Noting the wealth and power of the pornography industry and the weakness and silence of pornography victims, the feminists question the validity of this marketplace.¹⁹¹ "In short, radical feminists assert that their positive freedom to speak cannot coexist with the pornography industry's negative freedom to broadcast images of actual female oppression."¹⁹²

Many feminists vehemently disagree with the current obscenity-nonobscenity dichotomy. They argue that such a dichotomy is a

188. MacKinnon, *supra* note 161, at 18 (emphasis added); *see also* Dworkin, *supra* note 162, at 141 ("[T]he pornography industry changes the way in which women are seen.").

189. Dworkin, *supra* note 162, at 60.

190. Dionne, *supra* note 6, at 665.

191. Dworkin, *supra* note 177, at 258 ("The First Amendment, it should be noted, belongs to those who can buy it. Men have economic clout. Pornographers have empires.").

192. Dionne, *supra* note 6, at 665.

value judgment based on sexually conservative mores.¹⁹³ More directly, however, they argue that the problem with the *Miller* test is far more fundamental.¹⁹⁴ It has an entirely different conception of the problem. To the feminists, pornography involves the political practice of power being exercised over the powerless.¹⁹⁵ This has little to do with a notion of obscenity that is a very abstract and moral idea. In their view, the entire *Miller* definition can be challenged for several reasons, some of which include questioning (1) whether the average gender-neutral person exists; (2) the process of defining a community standard; (3) why prurience matters, but powerlessness does not; (4) why sensibilities are protected but women are not; (5) why a body of law which has not in practice been able to tell rape from intercourse would, without further guidance, be entrusted with telling pornography from anything else; (6) why, if a woman is objectified and subjected to exploitation, should it matter if the work has any other value; and (7) why, given the images are almost always about women, “the law of obscenity has never even considered pornography a women’s issue.”¹⁹⁶

Nudity, excess of candor, arousal or excitement . . . 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; women’s bodies trussed and maimed and raped and made into things to be hurt and obtained and accessed and this presented as the nature of women . . . [;] this and more bothers feminists about pornography. 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.¹⁹⁷

Mulieris Dignitatem calls upon humanity to view women and their treatment and role in society as a function of their inherent dignity because they are images of God. The feminists call upon us,

193. MacKinnon, *supra* note 161, at 21–22; *see also* Whisnant, *supra* note 20, at 22 (noting that feminists’ “problem with pornography concerns the harm it does rather than the offense it causes”).

194. *See* Amy Adler, *What’s Left?: Hate Speech, Pornography, and the Problem for Artistic Expression*, 84 CAL. L. REV. 1499, 1509 (1996).

195. *See* CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 202 (1989); *see also* Dworkin, *supra* note 177, at 257–58.

196. MACKINNON, *supra* note 195, at 202.

197. MacKinnon, *supra* note 161, at 21–22 (footnote omitted).

and specifically our legal system, to view pornography also as a victimization of real women with inherent rights not to be exploited.

6. *Result of the MacKinnon-Dworkin Legislative Effort*

As indicated, this movement attempted to change the legal framework regarding pornography. In response to the Minneapolis and Indianapolis invitations, Professor MacKinnon and Andrea Dworkin drafted anti-pornography ordinances.¹⁹⁸ They moved away from a criminal sanction and obscenity model to a civil remedy model based on the violation of women's civil rights. According to MacKinnon, the point of the ordinances was "to hold accountable, to those who are injured, those who profit from and benefit from that injury."¹⁹⁹

The ordinances, which differ in specifics based on lessons learned, had similar general characteristics. They had causes of action for (1) coercing another into pornography, (2) trafficking in pornography, (3) forcing pornography on a person, and (4) assaulting or physically attacking one due to pornography.²⁰⁰ The Minneapolis City Council passed a version of the ordinance in 1983, but it was vetoed by the mayor.²⁰¹ A version was passed again by the Council and again vetoed by the mayor.²⁰² Indianapolis enacted a version that was signed into law, but found unconstitutional by the Seventh Circuit Court of Appeals.²⁰³

The rejection of the ordinance was based on the court's refusal to modify or abandon the free expression legal framework used to address this material. The court found that the proposed definition of pornography impermissibly discriminated on the basis of view-

198. *See id.* at 22.

199. *Id.*

200. INDIANAPOLIS AND MARION COUNTY, IND., GENERAL ORDINANCE § 16-3(g)(4)-(7) (1984), available at <http://nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppB1.htm>; MINNEAPOLIS, MINN., PROPOSED ORDINANCE § 4(l)-(o) (1983), available at <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppA.htm>.

201. Joan C. Williams, *Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years After the PDA*, 21 YALE J.L. & FEMINISM 79, 87 (2009); *see also* *Minneapolis Gets Rights Law to Ban Pornography*, N.Y. TIMES, Dec. 31, 1983, at 24; *Minneapolis Mayor Vetoes Plan Defining Pornography as Sex Bias*, N.Y. TIMES, Jan. 6, 1984, at A11.

202. *Minneapolis Council Fails to Override Veto*, N.Y. TIMES, July 28, 1984, at 6; *see also* Andrew Jacobs, *Rhetoric and Creation of Rights: MacKinnon and the Civil Right To Be Free From Pornography*, 42 U. KAN. L. R. 785, 786-792 (1994).

203. *Am. Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 324, 332, 334 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986).

point.²⁰⁴ Fully embracing the “marketplace of ideas” concept, the court found this to be a content-based ordinance and that “[t]he state[s] may not ordain preferred viewpoints in this way. . . . One of the things that separates our society from [a fascist society] is our absolute right to propagate opinions that the government finds wrong or even hateful.”²⁰⁵ Judge Easterbrook went on to call this “thought control,” establishing “an ‘approved’ view of women, of how they may react to sexual encounters, of how the sexes may relate to each other. Those who espouse the approved view may use sexual images; those who do not, may not.”²⁰⁶ Because of the ordinance’s failure to adhere to the “expression” paradigm, the court found the ordinance unacceptable. With regard to the argument concerning the social harms of pornography, Judge Easterbrook acknowledged there may be support for that, but such a reality “*simply demonstrates the power of pornography as speech.*”²⁰⁷

V. MAKING THE NECESSARY PARADIGM SHIFT

The reality of the proliferation of pornography is substantial. *Mulieris Dignitatem* offers a path out of the morass that increases pornography’s normalization every day. Yet the question remains, is this a viable path under the current paradigm in the United States? The failure of the movement to examine pornography’s content as a civil rights violation suggests not. However, there are two possibilities, one within the current legal framework and one without.

A. *Within the Current Legal Landscape There Is Some Room*

Since 1957, it has been clear that pornography will be examined as a speech and expression concept. As a result, it will be presumptively protected speech. Protected, however, does not mean untouchable. What it means is that legislatures may not pass laws, typically criminal laws, which impede the material.

There is, however, language in our obscenity and child pornography case law that recognizes the value of regulating some harmful material. In *Miller* itself, the Court rejected an absolutist approach to the First Amendment:

204. *Id.* at 332–33.

205. *Id.* at 325, 328, 330.

206. *Id.* at 328.

207. *Id.* at 329 (emphasis added).

[I]n our view, to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a “misuse of the great guarantees of free speech and free press”²⁰⁸

The Constitution does not prohibit the observation “that a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex.”²⁰⁹

Within the context of child pornography, the Court has recognized the compelling interest in regulating child pornography as well as the states’ “legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of . . . exposure to juveniles.”²¹⁰ It has further “repeatedly recognized the governmental interest in protecting children from harmful materials.”²¹¹ Indeed, the state has a compelling interest in protecting the “physical and psychological well-being of [children].”²¹² The state’s “substantial interest” in combating the secondary effects of adult entertainment establishments has also been recognized.²¹³ That language has more recently been minimized by the Supreme Court, most notably in *Ashcroft* when it repeated, inter alia, that speech “within the rights of adults to hear may not be silenced completely in an attempt to shield children from it.”²¹⁴ However, in 2008, the Supreme Court upheld a statute prohibiting the pandering of child pornography.²¹⁵ In so doing, the Court recognized that “[c]hild pornography harms and debases the most defenseless of our citizens.”²¹⁶

208. *Miller v. California*, 413 U.S. 15, 34 (1973) (quoting *Breard v. City of Alexandria*, 341 U.S. 622, 645 (1951)).

209. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63 (1973).

210. *New York v. Ferber*, 458 U.S. 747, 754–55 (1982) (quoting *Miller*, 413 U.S. at 18–19).

211. *Reno v. ACLU*, 521 U.S. 844, 875 (1997) (citing *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); *FCC v. Pacifica Found.*, 438 U.S. 726, 749 (1978)).

212. *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (internal quotation marks omitted) (quoting *Ferber*, 458 U.S. at 756–57).

213. *Barnes v. Glen Theater*, 501 U.S. 560, 581–82 (1991) (Souter, J., concurring) (upholding a law banning nude bar room dancing).

214. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 252 (2002) (citing *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989)). “The evil in question depends upon the actor’s unlawful conduct, conduct defined as criminal quite apart from any link to the speech in question.” *Id.*

215. *United States v. Williams*, 553 U.S. 285, 307 (2008)

216. *Id.*

Ashcroft rejected the argument that virtual child pornography should be unprotected, even if not obscene or actual child pornography, solely because adult sex offenders may use such images to harm children. In so doing, the Court asserted the government had not proven such a link.²¹⁷ However, some have noted, “[T]o define *Miller* as a morality holding effectively ignores the social science research that for three and a half decades has provided troubling evidence of pornography’s negative social consequences, particularly for women.”²¹⁸ So as social science progresses, there is certainly some language in its jurisprudence that the Court could turn to if it so desired. However, to rely on that development is a mistake. The free expression paradigm is limited by definition.²¹⁹ Moreover, pornography providers and those who profit from pornography have a financial incentive to prevent legislative change.²²⁰ One way they do so is by hiding this purely commercial motive behind the mantle of free speech, thus invoking constitutional protections for their profits.²²¹

B. *The Solution Lies Outside the Legal Paradigm*

The solution to this problem may be one for which *Mulieris Dignitatem* offers guidance. Indeed, the solution may not mean a shift in the *legal* paradigm but one in the *social norm* or political paradigm. Most social problems are complex, and pornography is no exception. As such, criminalizing such social problems is rarely the answer. While legislators may trumpet new laws, without the social will to change the social norm, there is no actual improvement.

Mulieris Dignitatem offers the platform from which to begin: the affirmation of the place of all human beings in the order of the universe. The human being is “the only creature on earth that God

217. *Ashcroft*, 535 U.S. at 253–54 (“The Government has shown no more than a remote connection between speech that might encourage thoughts or impulses and any resulting child abuse. Without a significantly stronger, more direct connection, the Government may not prohibit speech . . .”).

218. Dionne, *supra* note 6, at 612. For a discussion of such harm, see Layden, *supra* note 71.

219. The Supreme Court recently refused to determine categorical exclusions from First Amendment protection by balancing the value of speech against its social costs alone. *United States v. Stevens*, No. 08-769, slip op. at 7–8 (Apr. 20, 2010).

220. See Ropelato, *supra* note 1; see also FREE SPEECH COAL., *supra* note 1, at 1–2 (discussing the amount of money spent on adult entertainment); Doran, *supra* note 1, at 4 (estimating the amount spent per person based on aggregate spending).

221. FREE SPEECH COAL., *supra* note 1, at 1.

willed for its own sake.”²²² Therefore, dignity inheres to all mankind. This is done by first remembering that females, regardless of their circumstances, are more than daughters, sisters, or nieces. Each is God’s daughter and indeed the likeness of God himself. In order to end this use of an image of God himself for one’s own ends, particularly sexual ends, one must shift the paradigm.

Effective models abound in American history. Smoking, driving while under the influence of intoxicants, and high-risk sexual activity were once widely practiced social norms.²²³ However, the social norms in these areas shifted to norms which significantly stigmatize and deem this behavior socially unacceptable.²²⁴ In some instances, the law followed the dictates of the societal shift: new bans on smoking in public places,²²⁵ significant criminal sanctions for driving while under the influence of intoxicants,²²⁶ and massive public health campaigns to stigmatize dangerous sexual practices that may put others at risk.²²⁷ These models have certain key components critical to social change in the pornography arena.

222. *Mulieris Dignitatem*, *supra* note 7, ¶ 30 (quoting *Gaudium et Spes*, *supra* note 39, ¶ 24).

223. See, e.g., CTR. FOR DISEASE CONTROL & PREVENTION, NATIONAL HEALTH INTERVIEW SURVEY 52 (2009), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/earlyrelease/201003.pdf> (indicating a decrease in smoking from 1997 until 2007).

224. See, e.g., Patrick W. Corrigan, *Marlboro Man and the Stigma of Smoking*, in *SMOKE: A GLOBAL HISTORY OF SMOKING* 344 (Sander L. Gilman & Zhou Xun eds., 2004).

225. Surgeon General Luther L. Terry first declared smoking harmful in 1964. U.S. DEP’T OF HEALTH, EDUC. & WELFARE, *SMOKING AND HEALTH: REPORT OF THE ADVISORY COMMITTEE TO THE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE* 33 (1964), available at http://profiles.nlm.nih.gov/NN/B/B/M/Q/_/nmbmq.pdf; CTR. FOR DISEASE CONTROL & PREVENTION, U.S. DEP’T OF HEALTH & HUMAN SERVS., *BEST PRACTICES FOR COMPREHENSIVE TOBACCO CONTROL PROGRAM* 7 (2007), available at <http://www.cdc.gov/tobacco>; see also Ctr. for Disease Control & Prevention, Dep’t of Health & Human Servs., *History of the Surgeon General’s Reports on Smoking and Health* (Dec. 2006), http://www.cdc.gov/tobacco/data_statistics/sgr/history (discussing the particular health risks posed by smoking). By 1997, smoking was largely banned in federal buildings, and currently all fifty states have legislation restricting smoking in state buildings. Exec. Order No. 13,058, 62 Fed. Reg. 43,451 (Aug. 9, 1997); Am. Lung Ass’n, *State Legislated Actions on Tobacco Issues* (2010), <http://slati.lungusa.org/appendixa.asp>.

226. Mothers Against Drunk Driving gained effectiveness as a citizen organization in the 1980s. Tina Wescott Cafaro, *You Drink, You Drive, You Lose, Or Do You?*, 42 GONZ. L. REV. 1, 9 (2006). By 2006, forty-seven states had adopted some form of a mandatory minimum sentence for driving under the influence of alcohol, particularly for subsequent offenders. *Id.*

227. See Thomas A. Brigham et al., *Psychology and AIDS Education: Reducing High-Risk Sexual Behavior*, 12 BEHAV. & SOCIAL ISSUES 10 (2002) (discussing an AIDS education class with data indicating a decrease in high risk behavior after the class); cf. Stoltenberg, *supra* note 6, at 409 (calling for European legislation regarding pornography as a human rights issue).

First, any such movement must have a goal of decreasing consumption. This has been done with a two-pronged approach. First, the evidence disclosing the harm pornography causes must be actively flowing to the public. Second, there must not only be an attack on the supply side, but also an effort to decrease the social acceptability of the behavior.²²⁸ The smoking and drunk driving campaigns are excellent examples of such programs. The Surgeon General's pronouncement of smoking as a health hazard produced an understanding of smoking as more than just a harmless vice.²²⁹ Evidence of harm to unborn children and from secondhand smoke further connected smoking with insensitivity, ignorance, and rudeness, ultimately leading to the social stigma.²³⁰

Similarly, researchers have identified online pornography and the resulting use of sexual gratification to be "a hidden public health hazard."²³¹ Proposals currently exist to shift the paradigm through health education, local boycotts, and increased regulations of Internet Service Providers and the Internet.²³² These are all examples of grassroots social movements, which begin this shift in the paradigm.

228. See Donna Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L. REV. 28, 30, 48 (2008) (discussing measures to prevent human trafficking through attacks on the social acceptance of the sex industry); see also Whisnant, *supra* note 37.

229. See, e.g., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, *supra* note 225; see also CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 225 (discussing the particular health risks of smoking); Exec. Order No. 13,058, 62 Fed. Reg. 43,451 (Aug. 9, 1997) (forbidding smoking in federal buildings because of its health risks); Am. Lung Ass'n, *supra* note 225 (listing states that have anti-smoking laws).

230. CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 225, at 11.

231. See, e.g., Al Cooper et al., *Cybersex Users, Abusers, and Compulsives: New Findings and Implications*, 7 SEXUAL ADDICTION & COMPULSIVITY 5, 25 (2000); see also SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54, at 83 n.5.

232. Perrin et al., *supra* note 46, at 15; Keith L. Kaufman et. al., *New Directions for Prevention: Reconceptualizing Child Sexual Abuse as a Public Health Concern*, in PREVENTING VIOLENCE IN RELATIONSHIPS: DEVELOPMENTALLY APPROPRIATE INTERVENTION ACROSS A LIFESPAN 27 (Paul A. Schewe ed., 2002); Matt Bradley, *Groups Protest Porn on Hotel TVs*, USA TODAY, Sept. 6, 2006, http://www.usatoday.com/travel/hotels/2006-09-06-hotel-pornography_x.htm; Whisnant, *supra* note 20, at 26 (urging women to not date or marry men who use pornography); CleanHotels.com, <http://www.cleanhotels.com> (last visited May 14, 2010) (asserting that "CleanHotels.com is a network of lodging facilities that . . . do not offer in-room, 'adult' . . . pay-per-view movies."); Object: Women Not Sex Objects, www.object.org.uk (last visited May 14, 2010) (challenging the increasing "sexual objectification of women" through grassroots movement); see also STAFF OF H. COMM. ON ENERGY & COMMERCE, 109TH CONG., REPORT ON SEXUAL EXPLOITATION OF CHILDREN OVER THE INTERNET 4-8 (2007); Rich, *supra* at 53 ("[O]nly one of the country's eight major cable providers, Adelphia, forbids [pornography]. The others are too addicted to the cash flow to say no.").

Secondly, there must be a society-wide decrease in the normalization of the sexualization of girls, as called for by the American Psychological Association.²³³ This is already afoot in a number of ways. Some scholars and figures have called pornography and related crimes issues of public health.²³⁴ Many mainstream organizations have identified this as a problem.²³⁵ The National Coalition to Prevent Child Sexual Exploitation has identified the normalization of the sexualization of children as a priority for its national plan of action and are planning a summit to address child sexual exploitation, inter alia, as a public health problem.²³⁶ The Witherspoon Institute convened a national consultation of scholars to study the harms of pornography and offer recommendations, producing a monograph with over sixty signatories from diverse academic disciplines.²³⁷ Similarly, the PROTECT Our Children Act of 2008 calls for a “National Strategy for Child Exploitation Prevention and Interdiction.”²³⁸

CONCLUSION

In *Mulieris Dignitatem*, Pope John Paul II wrote with a focus on “The Dignity and Vocation of Women.”²³⁹ This Article focuses on women’s dignity. However, it must end with *Mulieris Dignitatem*’s call to vocation for all who wish social change. “[A]t this moment when the human race is undergoing so deep a transformation, women imbued with a spirit of the Gospel can do so much to aid humanity in not falling.”²⁴⁰ In other words, on this issue, we find ourselves again at the center of the salvific event.²⁴¹ “[T]he dignity of women is

233. See AM. PSYCH. ASS’N, *supra* note 118, at 5, 44.

234. See, e.g., Nat’l Library of Med., The C. Everett Koop Papers: Reproduction and Family Health, <http://profiles.nlm.nih.gov/PP/Views/Exhibit/narrative/abortion.html> (last visited May 14, 2010). Koop called pornography a public health crisis more than twenty years ago. *Id.*

235. For example, Campaign for Commercial-Free Childhood recently announced a focus on eliminating sexualization in advertisements. See George, *supra* note 113.

236. NAT’L COAL. TO PREVENT CHILD SEXUAL EXPLOITATION, NATIONAL PLAN TO PREVENT THE SEXUAL EXPLOITATION OF CHILDREN 3 (2008), http://www.missingkids.com/en_US/documents/NPCSE_NationalPlan.pdf; Mayo Clinic, Summit to Prevent Child Sexual Exploitation (2010), <http://www.mayoclinic.org/events-rst/pdfs/national-summit-2010.pdf>.

237. SOCIAL COSTS OF PORNOGRAPHY, *supra* note 54.

238. PROTECT Our Children Act of 2008, Pub. L. No. 110-401, 122 Stat. 4229 (2008).

239. *Mulieris Dignitatem*, *supra* note 7.

240. *Id.* ¶ 1.

241. See *id.* ¶ 5 (discussing Mary’s role in Christ’s mission). Pope John Paul II makes much of the free will of Mary at Nazareth. “Mary takes her place within Christ’s messianic service. It

measured by the order of love, which is essentially the order of justice and charity. . . . The person must be loved, since love alone corresponds to what the person is."²⁴² Therefore, if we accept women as a means to an end and an object of lust, she will become that. If we encourage young women and men to continue to accept pornography, pornography will grow from the multibillion dollar industry it is today. If, however, we embrace our own vocations to justice and charity, we will allow each woman to be seen as a person with inherent dignity. In the words of John Paul II, "God entrusts every human being to each and every other human being," and we must join in the social shift to view pornography through a lens of dignity.²⁴³ In so doing, we will fulfill our call to protect humanity from itself.

is precisely this service which constitutes the very foundation of that Kingdom in which 'to serve . . . means to reign.'" *Id.* (quoting Second Vatican Council, *Lumen Gentium* [*Dogmatic Constitution on the Church*] ¶ 36 (1964), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II, *supra* note 39, at 107, 147 (emphasis omitted) (citation omitted)).

242. *Id.* ¶ 29 (emphasis omitted) (footnote omitted).

243. *Id.* ¶ 30 (emphasis omitted).